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**Seventh Amendment to and Restatement of the  
Declaration of Development Standards  
for the Village at Nags Head**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.**

THE SEVENTH AMENDMENT TO AND RESTATEMENT OF THE DECLARATION OF DEVELOPMENT STANDARDS FOR THE VILLAGE AT NAGS HEAD (this "Declaration"), made this 2016 by the Village at Nags Head Property Owners Association, a North Carolina Non-Profit Corporation, P.O. Box 1807, Nags Head, North Carolina.

**RECITALS**

1. On September 26, 1995, the Association approved amendments to its Bylaws, which amended Bylaws are recorded in Book 1010 at page 133 in the office of the Register of Deeds of Dare County, North Carolina (the "Bylaws").
2. The Association has established an Architectural Control Committee to administer the Development Standards, the same being the architectural guidelines for The Village at Nags Head. The Development Standards were established by the Association as a condition of approval of the "Special Plan Development-Community District" for the Village at Nags Head under Section 8.04 of the zoning ordinance of the Town of Nags Head and to ensure development of The Village at Nags Head in accordance with the master plan of development and in conformity with Development Standards.
3. Pursuant to Article VI of the Association's Bylaws, Ammons Dare Corporation transferred and assigned to the Association all authority, right and power to execute and administer all architectural control and the Development Standards in the Village at Nags Head, pursuant to the Transfer of Architectural Control filed on May 23, 1997 in Book 1114 at Page 828 of the Dare County Registry.
4. The Declaration of Development Standards for the Village at Nags Head dated June 11, 1993 was recorded in Book 867 at page 775 of the Dare County Registry. A First Amendment and Restatement to the Declaration of Development Standards for the Village at Nags Head was recorded in Book 1176, Page 452 of the Dare County Registry. A Second Amendment to that Declaration of Development Standards was recorded in Book 1315 at Page 60 of the Dare County Registry. A Third Amendment to that Declaration of Development Standards was recorded in Book 1380 at Page 330 of the Dare County Registry. A Fourth Amendment to that Declaration of Development

Standards was recorded in Book 1816 at Page 179 of the Dare County Registry. A Fifth Amendment and Restatement to that Declaration of Development Standards was recorded in Book 1903 at Page 43 of the Dare County Registry. A Sixth Amendment and Restatement to that Declaration of Development Standards was recorded in Book 2040 at Page 932 of the Dare County Registry.

5. In accordance with Paragraph K of the Declaration of Development Standards for the Village at Nags Head recorded in Book 867 at page 775 of the Dare County Registry, as amended as set forth above, the Association has adopted this Seventh Amendment to and Restatement of the Declaration.

NOW THEREFORE, the Association as part of its delegated responsibility to ensure that any improvements to property situated within The Village shall conform with those standards of Architectural guidelines previously adopted and amended herein for the purpose of insuring that all improvements to properties within the Village reflect the overall design objectives of the entire Village taking into consideration that the unique natural setting of the Village is preserved and enhanced.

**A. Submission of Property.** All property situated in The Village shall be held, transferred, sold, conveyed and occupied subject to the Declaration and the conditions, guidelines and requirements stated herein shall be deemed covenants running with the land of all properties situated within the Village.

**B. Statement of Purpose and Definitions.**

(1) Statement of Purpose. This Declaration reaffirms the existence of the Committee which was initially established as the Architectural Review Committee by the Town of Nags Head as a condition of the approval of the "Special Planned Development-Community District" for The Village at Nags Head under Chapter 48, Article XXI of the Zoning Ordinance of the Town of Nags Head to oversee the development of The Village at Nags Head in accordance with that master plan initially approved by The Town of Nags Head to ensure that any improvements to properties within the Village were in conformance with standards of architectural guidelines for the purpose of protecting the value, desirability and the attractiveness of the Village and to protect property owners within the Village from depreciation of values that could be caused by poor design of materials, inharmonious color schemes and haphazard location of improvements on properties within the Village.

(2) Definitions. The following definitions shall apply to this Declaration:

(a) "Association" shall mean the Village at Nags Head Property Owners Association, a North Carolina Non-Profit Corporation

(b) "Committee" shall mean the Architectural Control Committee of the Association.

(c) "Living Unit" shall have the same meaning as Living Unit as defined in Article I, Section 4 of the Bylaws.

(d) "Lot" shall have the same meaning as Lot as defined in Article I, Section 4 of the Bylaws.

(e) "Owner" shall mean an owner of a Lot in the Village who is a member of the Association.

(f) "PMS" shall mean Pantone Matching System.

(g) "Village" or "Village at Nags Head" shall mean all property situated within the perimeter of Nags Head Village as first referenced by Article IV of the Association's Articles of Incorporation filed May 24, 1982 in the office of the Secretary of State of North Carolina and in Book 9 at Page 355, Dare County Registry, said properties also being more particularly identified and described within that area designated "Special Plan Development-Community District" for The Village at Nags Head under Chapter 48, Article XXI of the Zoning Ordinance of the Town of Nags Head, said lands and properties subject to this Declaration.

### **C. Architectural Control Committee.**

(1) **Membership:** The Committee shall be appointed by the Board of Directors of the Association as set forth in Article VI of the Bylaws. The Committee shall meet monthly as well as upon call of the Chairman. A listing of the current membership, dates, and place of meetings, and copies of current architectural guidelines and any application materials, can be obtained from the offices of the Association.

(2) **Plan Submission Procedure.** The following must be submitted to the offices of the Association no later than 5 business days prior to the scheduled Committee meeting to allow the Committee ample review time:

(a) Any application form prescribed by the Committee with current application fee;  
and

(b) Three (3) sets of all plans.

### **(3) Submission of Plans.**

(a) No building, wall, driveway, swimming pool, tennis court, or other structure, site work or clearing preparatory to construction shall be begun, altered, added to, maintained or reconstructed on any Lot until the plans and specifications for such work have been reviewed and approved by the Committee.

(b) Before commencing such review, an Owner shall submit to the Committee three (3) completed sets of plans and specifications, including, but not limited to: foundation plan, floor plan or plans, the four directional elevations, a schedule of proposed exterior colors and material, shingle colors, grade and weight and a complete site plan showing driveway, parking, and all on site improvements, including exterior lighting, heat pumps, trash receptacles, any accessory uses, landscaping plans and the proposed commencement date of construction and expected completion of improvements.

(c) All plans should be submitted in consistent scale. Unless otherwise impractical, scale should be thirty (30) feet = one (1) inch for all submissions. There must be a complete identification of all colors and materials including but not limited to shingles, fascia, soffits, and siding.

(d) All plans must be in compliance with those Guidelines for Building and Development administered by the Committee which as of the date of this Declaration are those set

forth in Section D, Guidelines for Residential Building and Development, and Section E, Guidelines for Commercial Building and Development, herein.

(e) Any submission that does not include all plans, materials, applications, and other items as may be required by the Committee shall not be placed on any agenda for consideration by the Committee until all requirements for submission have been met.

(f) The Committee shall have the absolute and exclusive right to refuse to approve any such plans and specifications which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons which, in the sole and uncontrolled discretion of the Committee, shall be deemed sufficient.

(g) If construction of any improvement required to be approved shall not have been begun or commenced (as determined by the Committee in its sole and absolute discretion) within 12 months following approval, said approval shall be void and of no effect. In such event, the plans of such improvement shall be resubmitted to the Committee for reconsideration and the Committee may, in its discretion either confirm its earlier approval of plans or disapprove. Owners will make reasonable and good faith efforts to complete their project in a timely manner.

(h) Plans shall not be deemed approved until the Committee has returned a set of plans with an "Approved" or "Approved as Noted" stamp, signed and dated by the Committee Chairman or his/her designee.

(i) Contractor:

1. Contractors who perform work in the Village at Nags Head shall ~~construct~~ the work in accordance with the "Approved" or "Approved as Noted" plans. ~~to incorporate the noted changes into the work.~~ Contractors who fail to construct the modifications in accordance with the Approved or Approved as Noted plans may be banned from future work within the Village. A homeowner who submits an application wherein he or she plans to is employing a banned contractor will be notified that the application is denied but may resubmit the application naming a different contractor.

2. The decision to ban a contractor may be appealed in accordance with paragraph section C. (5) Appeals of Architectural Control Committee Decisions.

3. Contractors may petition the Architectural Control Committee for reinstatement after a period of one year from the ban. The Committee may decide to remove or reinstate the ban.

#### **(4) Architectural Control Committee Meetings.**

(a) The Committee will conduct regular monthly meetings at the offices of the Association or as otherwise designated by the Chairman.

(b) All members of the Committee shall be notified in writing at least five (5) calendar days prior to a scheduled meeting. The notification will contain an agenda for the meeting.

(c) The Committee may hold a special meeting upon five (5) calendar days written notification by the Chairman of the Committee to the members of the Committee of date, time, and place of the special meeting.

(d) The Chairman of the Committee may waive the five (5) business day advance submission requirement for plans submitted to a regular or special meeting.

(e) A quorum for a regular or special meeting of the Committee shall be three (3) members of the Committee. Members who may attend via telephone or other electronic means are counted as part of the quorum. Electronic means for a special meeting may include email where members independently review an application and then discuss and vote; this may occur when a meeting cannot otherwise be convened in a timely manner. Decisions rendered by electronic means will be confirmed in the minutes of the next scheduled meeting of the Committee.

(f) Resolutions, approvals, and disapprovals of the Committee may be adopted only upon majority vote of those present, attending by telephone or other electronic means, or by proxy. Proxies will not qualify to meet the quorum requirements of Section C.(4)(e) of this Declaration.

(g) For the purpose of passing a resolution, the Chairman may propose resolutions and vote on any resolution.

(h) All decisions of the Committee must be declared by the Chairman and will be final, unless appealed through provisions as specified in Section C.(5).

(i) Applicants will be notified, in writing, of all decisions of the Committee. Oral representations of any decision will not be valid and will not represent the official decision of the Committee.

(j) The Committee may return to an applicant a copy of plans reviewed by the Committee with appropriate markings to amplify Committee comments or recommendations. Markings on plans so received will not bind the Committee to any design indicated therein but are offered only as advisory comments, unless those plans are marked "Approved" or "Approved as Noted" and signed and dated by the Committee Chairman or his/her designee.

(k) One set of plans received will be retained by the Committee as part of a permanent record, along with color and material samples.

(l) Special visual aids such as models, slides, etc. may be reclaimed by the applicant after the Committee has taken action on the application.

**(5) Appeals of Architectural Control Committee Decisions.**

(a) An applicant receiving a negative decision from the Committee may revise the plans in accordance with recommendations and resubmit them to the Committee for approval.

(b) Any applicant who is unable to comply with the requirements of the Committee, may request a hearing before the Appeal Board. The request must be made in writing and directed to the Chairman of the Committee within thirty (30) days after the applicant has been notified of the Committee's decision.

(c) The Appeal Board will consist of three (3) members to be appointed by the Chairman of the Architectural Control Committee and is not to include current members of the Committee. The Appeal Board may consult with other professionals as it deems necessary.

(d) The Appeal Board will conduct a review of the most recently disapproved plans of the applicant. The applicant will be given an opportunity to speak before the Appeal Board, using whatever visual aids or consultants the applicant feels appropriate. The Committee will be represented by the Chairman or his/her designated representative.

(e) All Appeal Board members must be present for a quorum. The majority vote of the Appeal Board will be the decision of the Appeal Board.

(f) All decisions of the Appeal Board shall be final.

#### **D. Guidelines for Residential Building and Development.**

(1) All homes built in the Village shall be of the "Old Nags Head" architectural style similar to those built in the Village to date. For purposes of this Declaration, the "Old Nags Head" style shall include the following elements: Buildings with cedar shake roofs with a 6/12 pitch or more, wrap-around porches, handrails with square balusters, shutters, shed dormers and color schemes in accordance with the paint color chart or natural cedar shakes. Single family homes may have up to eight (8) bedrooms, and duplexes may have up to eight (8) total bedrooms, provided they are allowed by lot coverage, building height, and parking. All exterior improvements, building extensions and/or exterior painting of existing dwellings must be approved by the Committee, even though a homeowner may be repainting the house with a previously approved color scheme.

(2) **Paint Standard** All exterior painting, including but not limited to, trim, handrail, fencing, stair risers, stair treads, decking, columns and building body (siding) schemes and colors, must be approved by the Committee prior to painting or repainting, even if repainting using the exact same color(s).

(a) Trim may be left natural, painted white, or painted an approved shade of the body color.

(b) Handrails, stair treads, stair risers, rails, pickets, columns and screening may be left natural, stained using an approved transparent or semi-transparent stain color, painted white, or painted a color approved by the Committee.

(c) Porch and deck ceilings may be left natural, stained using an approved transparent or semi-transparent stain color, or painted a color approved by the Committee.

(d) Only one body color and one trim color are permitted, in addition to surfaces left natural or stained. A compatible shade of the body color may be permitted to accent a specific architectural feature if approved by the Committee. An additional accent color for entry doors and shutters is allowed if approved by the Committee.

(e) Paint applications must reflect a complete and consistent application of the approved color(s); phased or partial painting must be approved in advance by the Committee. Once started, the preparation, painting, and clean-up must be completed in a timely manner, consistent with weather impacts.

(3) All initial landscaping and any major landscaping changes must be approved by the Committee. Native vegetation shall be preferred for landscaping on properties. There shall be no vegetable gardens except in areas well screened from roads and other homes. Artificial vegetation of

any kind, including artificial turf, putting greens, trees, shrubs, or other similar items may not be installed in The Village at Nags Head.

(4) Owners are responsible for keeping their lots and all improvements thereon in good working order and repair including, without limitation, painting (or other appropriate exterior care) of the building, repairing of steps, decks, basketball/volleyball goals and nets, sidewalks and walkways, pruning of overgrown shrubs and weed maintenance, and removal of trash and debris, all in a manner consistent with these Guidelines and with such frequency and in a manner as is consistent with good property management.

(5) Entrance and yard lighting shall be small wattage, low level ground lighting and subject to approval. Flood lighting from poles or dwellings (75 watts or less) may be approved for security purposes providing it is not directed in such a manner as to cause annoyance to neighboring properties. Seasonal outdoor decorations are permitted within The Village at Nags Head providing that they meet the following guidelines: Decorations may be installed no more than thirty days prior to the holiday or occasion which they represent; decorations must be removed within fourteen days following the holiday or occasion which they represent; and outdoor decorative lighting must be low-level and be rated for outdoor use. Outdoor decorative and security lighting must be extinguished nightly by 11:00 pm ET.

(6) Maximum height of dwellings shall be in accordance with the Town of Nags Head Zoning Ordinance, but in no case shall the maximum height of any structure exceed 42 feet.. Enclosed cupolas are allowed provided they do not exceed height limits and tie in with existing "Old Nags Head" styling. There shall be no viewing areas or decks higher than the elevation of the highest finished habitable floor.

(7) Enclosures for trash or garbage receptacles location and elevation must be submitted to the Committee for approval and must be constructed of wood and be enclosed on three sides with the bottom within six inches of finished grade.

(8) The erection of fences that partition adjacent properties is prohibited. All residential fencing must be approved by the Committee. Fences (except pool fences, which are separately regulated in Section D.(9) of this Declaration) may not exceed 48 inches in height, must be constructed of wood, and must be split rail or corral type. A chain, cable, rope or other barrier erected across a driveway is considered a fence under this guideline and is therefore prohibited.

(9) The construction and location of swimming pools and surrounding fencing within building boundary lines is strictly controlled. Pools should be placed on the least conspicuous site possible on the property. Fencing for pools may not exceed seventy-two (72) inches in height. Fences employing stockade, plywood sheeting and chain link are prohibited. Pool fences may be left natural, painted the same color as the house trim or stained with a color approved by the Association. The finished side of the pool fencing must face outward.

The entire pool area including the fence must be completely screened with a vegetative buffer. The vegetative buffer must consist of evergreen plants that are a height of at least 12 inches at planting and which will grow to a height of at least 36 inches within 3 years. There should be a maximum distance of 5 feet between the plants. Oceanfront pools require compatible natural vegetation. Care should be taken to preserve and protect natural vegetation on the site. All vegetation must be installed immediately upon completion of the pool and fencing within seasonal guidelines for planting.

Pool equipment enclosures may be permitted, provided that they are compatible with the architectural details (design, colors etc.) of the house and are no higher than the pool fence.

(10) Drives and parking areas must be paved with concrete, open-faced paving blocks, Turfstone™, or porous concrete and may not exceed eighteen (18) feet in width at connection to streets. The Committee will not approve the painting of driveways that would change the color of the driveway from its natural color (i.e., driveways shall not be painted a different color such as white, red, green, etc.). One full-size automobile parking space of not less than 8' x 16' must be provided as off-street parking for each bedroom and bedroom/den. Parking spaces under houses, in garages or carports or in driveways will be acceptable.

(11) No detached buildings will be permitted other than pool equipment enclosures as noted in Section D.(9) of this Declaration and those identified in this paragraph, and approved by the committee. Prohibited structures include those designed to house or store vehicles and/or tools, or provide occupancy for persons, animals; e.g. sheds, garages and carports. Elevators and cargo lifts (Stair-Tamers, etc) must be attached to the house at all floors and enclosed to match the house siding and roof or, if a cargo lift, be reasonably screened from public view. Structures designed primarily for temporary shelter or entertainment (e.g. gazebos, pergolas and tiki bars) may be permitted at the discretion of the Committee. The construction of permanent volleyball or basketball standards/goals must be approved by the Committee. Skateboard ramps or other similar recreational structures, whether permanent or temporary, are prohibited. No clotheslines shall be located on the property.

(12) All fixed generators, fuel tanks, pool and other equipment, and/or storage receptacles must be firmly secured in place and must be reasonably screened from public view or an adjacent property at ground-level. Where feasible irrigation system above-ground equipment such as backflow preventers should be screened by landscaping.

(13) Exterior siding (including trim, soffit and fascia) shall be of natural wood (or other approved material) painted or treated in accordance with the Paint Standard in Section D.(2) of this Declaration. Roofs must be composed of cedar shakes. No pigmented stain or sealant may be applied to roofs.

(14) Skylights, antennas, weather stations, and wind turbines shall not be permitted unless specifically approved by the Committee. Dish antennas should be as small as possible commensurate with good reception but may not be any larger than the minimum allowed by section 207 of the August 9th, 1996 Telecommunications Act as promulgated by the Federal Communications Commission (currently 1 meter or 39.37 inches). Solar panels may be permitted subject to the approval of the Committee under guidelines established by the Committee, provided that such guidelines shall be in accordance with the requirements set forth in North Carolina General Statute 22B-20, Article 3.

(15) All exterior house pilings shall be covered with wing walls and siding to match the house unless otherwise approved by the Committee. The use of lattice or other materials to cover pilings under decks and porches must be approved.

(16) Setbacks will be in accordance with the Restrictions, recorded plat and/or Coastal Area Management Act (CAMA) regulations.

(17) No signs shall be erected on any Lot except as follows:



(a) Permanent owner identification signs must be attached to the home and must be in good taste. The Committee may require that non-complaint signs be removed. Other owner signage must be reviewed by the Committee; signs must be no larger than 12" x 20", must not exceed two (2) feet in height measured from the ground directly beneath the sign, and must be painted Village Blue (PMS 540) with Cream (PMS 155) lettering.

(b) Real Estate Sales or Rentals. One 12"x20" "FOR SALE" sign and/or one 12"x20" "FOR RENT" sign will be allowed for each property. Rental/Sale signs shall be painted Village Blue (PMS 540) with Cream (PMS 155) lettering. BROCHURE BOXES ARE SPECIFICALLY PROHIBITED. In accordance with the Town of Nags Head requirements, FOR RENT signs must be attached to the house. Where the house is greater than 100 feet from the public right of way fronting the house one additional 12"x20" identification sign, not exceeding two (2) feet in height measured from the ground directly beneath the sign, displaying rental agency name/logo and rental house number in Village Blue (PMS 540) with Cream (PMS 155) lettering may be placed at the end of a driveway. FOR SALE signs must be placed on a stake (1" x 2") or stakes in the yard.

(c) Open House and Yard Sale signs are permitted for 48 hours, and must be removed immediately after the Open House or yard sale event.

(d) Contractor signs. One 24" x 36" contractor sign is allowed per lot. Contractor Signs shall be painted Village Blue (PMS 540) with Cream (PMS 155) lettering. A single Contractor logo is permitted, provided that it does not exceed 9 inches in diameter. The Committee prefers that each company limit wording on the sign to the company name and telephone number. In no case will subcontractor signs be permitted (it is the responsibility of owner and contractor to see that this provision is enforced). Contractor signs must be placed on a stake (1" x 2") or stakes in the yard.

(e) Political and election signs shall be permitted from 45 days prior to the election and must be removed no later than 7 days following the election. Political and election signs shall be no larger than 24" x 36".

(18) Utility lines - all water, sewer, electrical and cable television lines must be installed underground.

(19) Mail boxes and newspaper receptacles must be approved by the Committee.

(20) Individual neighborhoods of the Village and their Associations which have either architectural guidelines and/or restrictive covenants are not exempt from any requirement set forth in this Declaration. Applications for Painting or Architectural modifications for homes located in neighborhoods with a neighborhood association must be approved by that neighborhood association prior to review by the Committee.

(21) A submission of an application for review and consideration by the Committee shall not be placed on any agenda for consideration by the Committee if the property for which architectural approval is sought is delinquent in the payment of assessments or the property is not in compliance with architectural control standards, unless the application is to address the non-compliance issue with the property.

(22) No temporary or permanent air conditioner, heat pump, humidifier, dehumidifier, generator, and/or other similar equipment may be protruding from windows, siding, roof or any exterior part of the building structure. Exemptions may be made for emergency situations, in the sole discretion of the Committee.

(23) Any other exterior additions, modifications, or permanently installed equipment not specified in this Amendment must be approved by the Committee.

#### **E. Guidelines for Commercial Building and Development.**

(1) All commercial establishments built in The Village at Nags Head (and presently zoned by the Town of Nags Head as C-1, C-2 and Hotel and Recreational) shall be of the “Old Nags Head” architectural style similar to the vernacular of improvements built within the Village at Nags Head to date. Owners are encouraged to use wrap-around porches and wooden shutters. All exterior improvements, building extensions and/or exterior painting of existing buildings must be approved by the Committee, even though an owner may be repainting the building with a previously approved color scheme.

(2) Buildings with street frontage in excess of 50 horizontal feet must incorporate recesses and projections (e.g., window boxes, arcades, or awnings) amounting to twenty (20) percent of the façade length. These recesses and projections are to be a minimum depth of three (3) percent of the façade length.

(a) Rooflines must feature two or more of the following characteristics; parapets concealing flat roofs and mechanical equipment, overhanging eaves, or sloping roof.

(b) Materials used in the façade must be of high quality, such as brick, sandstone, wood or stucco. Common cement block and/or poured concrete panels are prohibited.

(c) Façade colors must be low-reflecting, subtle and neutral or earth-toned. The building trim may feature brighter colors.

(3) When a commercial lot proposed for development which is adjacent to a residential lot, an Open Space, or a Common Area owned by the Association or is adjacent to a street abutting residential properties, the commercial Lot shall be screened in accordance with the Town of Nags Zoning Ordinance.

(4) All construction (which term shall include within its definition: staking, clearing, excavation, grading and other site work) or modification (except interior alterations not affecting the external structure or appearance of any building including but not limited to: accessory buildings, waste-water treatment facilities, water distribution facilities and public access facilities) including plantings or removal of plants, trees or shrubs shall not take place except in strict compliance with Section C of the Declaration and with advance written approval from the Committee.

(5) Signage and exterior lighting shall be in accordance with the Town of Nags Head Zoning ordinance, with the following exceptions; roof signs, dynamic signs, tethered balloons, or signs featuring animated cartoon characters shall not be permitted.

(6) Exterior siding shall be of natural wood, stucco, or other approved material and left unpainted or covered with solid, transparent or semi-transparent stain, weathering stain or paint. Only colors approved by the Committee may be used. Approval by the Committee shall also be required if an Owner desires to repaint a building with a previously approved color scheme. Visible roofs must be composed of cedar shakes; this excludes the horizontal portion of mansard or similar roofs.

(7) No noxious or offensive activity shall be conducted on any lot or in any business, and nothing shall be done thereof or therein which may be or may become an annoyance or nuisance to the commercial and mixed residential-commercial nature of the area. At the time of application before the Committee, the Owner shall state the intended commercial uses and shall certify as required by the Committee that neither the Owner or any occupant shall use, generate, store or dispose of hazardous materials on the property or discharge or release any hazard materials on, above or under the property except in compliance with all applicable laws, regulations, ordinance and permits, then only with the prior written consent of the Association. "Hazard materials" means materials, substance, gases, or vapors identified as hazardous, toxic or radioactive by any applicable Federal, State or local laws, regulations or ordinances.

(8) Except for construction trailers, dumpsters and port-a-john facilities used during construction, no structure of a temporary nature shall be allowed to remain on any lot without the prior written permission of the Committee.

(9) High intensity lighting used for illuminating building or parking areas during nighttime operation must be deflected to avoid illumination of any adjacent residential properties.

(10) Each applicant upon submittal of an application to the Committee acknowledges that the composition of the Committee will change from time to time and that decisions regarding aesthetic matters and interpretation and application of the Commercial Guidelines may reasonably vary from time to time. In addition, each applicant acknowledges that it may not always be possible to identify objectionable features of proposed Improvements until the Improvements are completed, in which case it may be unreasonable to require changes to the Improvements previously approved, but the Committee may refuse to approve similar Improvements in the future. Approval of Improvements for any particular applicant shall not be deemed a waiver of the right to withhold approval as to any similar Improvements subsequently submitted for approval.

(11) Review and approval of any application pursuant to this Section is made on the basis of aesthetic considerations only and the Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or for ensuring compliance with building codes and other governmental requirements. Neither the Association, nor any Committee, nor any member of the Association, shall not be liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any commercial property.

(12) All truck docks, trash collection areas and mechanical equipment servicing any building approved by the Committee, including but not limited to garbage cans, trash containers, above-ground tanks, air-conditioning equipment and similar items must be located, or otherwise aesthetically screened so that they are not visible from any residential properties, Open Space or Common Areas owned by the Association or streets.

**F. Variance.** The Committee may from time to time grant an Owner a waiver or variance of the provisions of this Declaration. The conditions under which such a waiver or variance may be granted shall be at the total discretion of the Committee. The expressed purpose of the powers as described in the paragraph is to enable the Committee to alleviate hardships created by the terms of this Declaration under circumstances which are beyond control or fault of the parties and would create irreparable harm or unnecessary hardship without such action; or under conditions where title to the property in question is clouded, encumbered or detrimentally affected by the existence of conditions which otherwise cannot be corrected. To be effective and binding, the variance must be

signed by the Owner and by the Committee Chairman and approved by the Board of Directors. The variance may be recorded with the Dare County Register of Deeds at the discretion of the Board.

**G. Duration.** All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any who shall be burdened and benefitted by this Declaration, in perpetuity.

**H. Notices.** Any notice required to be sent to owner, under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Dare County Tax Department at the time of such mailing. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of a Lot.

**I. Enforcement.** In the event of any violation or breach of any of the restrictions contained herein by any property owner or agent of such owner, the Association, its successors or assigns, or the Owners of Lots within the Village or any of them jointly or severally, shall have the right to proceed in law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach of any of the restrictions set out above, but before litigation may be instituted ten (10) days written notice of such violation shall be given to the Owner or his agent. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction contained in this Declaration shall in no way affect any of the other restrictions, but they and each of them shall remain in full force and effect.

**J. Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Committee will best effect the intent of the general plan of development within the Village. The provisions hereof shall be liberally interpreted and, if necessary, they shall be extended or enlarged by implication as to make them fully effective. The provisions of the Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive.

**K. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid; such prohibition or invalidity shall not affect other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of the Declaration are declared to be severable.

**L. Amendment.** This Declaration may be amended at any time by a majority vote of the Board of Directors of the Association and shall be deemed effective no earlier than thirty (30) days after recordation of said amendment in the offices of the Register of Deeds of Dare County, North Carolina.

IN WITNESS WHEREOF, the Association has caused this instrument to be signed in its corporate name by its duly authorized officer by authority of its Board of Directors, the day and year first above written.

**Village at Nags Head Property Owners Association**

By: *H.S.M. Gwynn* (SEAL)  
President

[Corporate Seal]

STATE OF NORTH CAROLINA  
COUNTY OF DARE

I certify that the following person personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: *H.S.M. Gwynn* (name), President of the Village at Nags Head Property Owners Association, a North Carolina nonprofit corporation,.

Date: *Oct. 20, 2016*

**LESLIE SANDERS**  
**NOTARY PUBLIC**  
Dare County  
North Carolina  
My Commission Expires July 21, 2019

*Leslie Sanders*  
Signature of Notary Public

*LESLIE SANDERS*  
Typed or printed name of Notary Public

(AFFIX NOTARY SEAL)

My commission expires: *July 21, 2019*