

# **Old Nags Head Cove Home Owners Association**

## **Proposed Restated Covenants with Bylaws**

**April 8th, 2023**

### **Your Response Is Requested**

Hello all property owners, the ONHCA Board decided to review our ONHCA Covenants this year because: the Original antiquated Covenants are from early 1970s and do not comply with current regulations by the State of North Carolina. An amendment to the original Covenants in 2001 did not replace the original and conflicts with some off the original Covenants. It also is not in compliance with current NC regulations. We discovered the extent of these issues when the Board authorized and hired an attorney expert in community association law in NC during 2022. We knew we had items that needed to be updated but had underestimated the extent of updating required or the current regulation that requires 67% approval to adopt any changes to current covenants. Therefore the Board decided, after advice from legal counsel, to create Amended and Restated Declaration of Protective Covenants and Restrictions with Amended and Restated Bylaws. These documents are presented to you in this correspondence and are proposed to replace the old Covenants and Bylaws. This agenda item will be voted on by proxy, email or in person, as per the State of NC regulations, at the Annual Members meeting on May 27th.

Included with this correspondence is this cover letter, Appointment of Proxy, Executive Summary, FAQ's and the proposed Amended and Restated Declaration of Protective Covenants and Restrictions with Amended and Restated Bylaws. If you are receiving this via email, access to these documents will be on our website at <https://oldnagsheadcovehoa.com/> under documents. Access to the current 1970 & 2001 covenants and Bylaws are also available in this folder on the website. (Note we have created this email account, [ONHChoavote@gmail.com](mailto:ONHChoavote@gmail.com) for this process only and will be taken down when the process is complete.)

There are 4 ways you can vote on the proposed documents. 1) An owner can vote and sign the written proxy form (which authorizes the ONHCA President to cast the ballot as you direct) with your address and signature and return it in the provided stamped envelope. 2) Or, an owner can fill in the proxy, scan it, attach it to an email, and send to [ONHChoavote@gmail.com](mailto:ONHChoavote@gmail.com) 3) Or, an owner can simply respond in an email to the special email address saying you are the owner of a specific property and your vote. 4) Lastly, an owner can vote in person at the official vote at our Old Nags Head Cove Annual Meeting scheduled for Saturday May 27<sup>th</sup>, 2023 in the Clubhouse. Paper ballots will be provided at the meeting.

A total of 67% of all lot owners in favor is required to adopt the new Covenants and Bylaws. We thank you for your response to help reach the threshold required for adoption.

The following framework was followed in revising and updating the Covenants.

Priorities guiding the Restatement process were:

- Gain approval of 67% of ONHCA owners, by not making major changes to the HOA documents.
- Carry through requirements that protect property value and existing community lifestyle.
- Recognize the reality of what exists today in ONHC and Nags Head Town that conflicts with 1970s requirements by the original developer before Nags Head had the sophistication it has in the 21<sup>st</sup> century.
- Bring the Covenants into compliance with NC law and regulations.
- Create a set of Covenants that reserves for future Boards of ONHCA and its' members the powers and flexibility to make decisions that we cannot predict now.

Decisions made in the Restatement of the Covenants included:

- Confirming ONHCA membership requirements and 1 vote per lot owner
- Retaining the 10% cap on annual assessments and the ability of the Board to make special assessments with membership approval.

- Following Town of Nags Head requirements regarding building projects, construction oversight processes, and zoning enforcement
- Accomplishing this while retaining ONHCA ability to intervene in the future if our covenant standards are violated.

Your Board and sub committee has put many hours with some some expenditures to bring us to this point. We all enjoy our community and want to preserve the natural setting and beauty of our subdivision. With the legal guidance and the entire Boards input we believe the revised documents will serve our community and Board for many years to come. We thank you you in advance for taking your time to review and respond to the notice. If you have any questions email us at [ONHChoavote@gmail.com](mailto:ONHChoavote@gmail.com) Or call on our business line at 252-489-6807.

Sincerely, HOA Covenants Subcommittee

**OLD NAGS HEAD COVE ASSOCIATION, INC.**

**APPOINTMENT OF PROXY**

The undersigned member of Old Nags Head Cove Association, Inc. (the "Association"), a North Carolina non-profit corporation, hereby constitutes and appoints \_\_\_\_\_ (if blank, appointment is to the President or Vice President of the Association) as proxy with full power of substitution to act and vote for and on behalf of the undersigned at the annual meeting of members of the Association to be held at the ONHC clubhouse on May 27, 2023 and at any adjournment or adjournments thereof. The undersigned hereby directs the proxy to vote as follows [if left blank and undirected, the undersigned authorizes the holder of this proxy to vote in his or her discretion on any matters to come before the membership] :

- 1. To approve the Amended and Restated Declaration of Protective Covenants and Restrictions for Old Nags Head Cove as more specifically set forth in the Notice of Annual Meeting dated April 8, 2023:

<b>FOR</b>	<b>OR</b>	<b>AGAINST</b>
<input type="checkbox"/>		<input type="checkbox"/>

- 2. To approve the Amended and Restated Bylaws for Old Nags Head Cove Association, Inc. as set forth more specifically in the Notice of Annual meeting dated April 8, 2023:

<b>FOR</b>	<b>OR</b>	<b>AGAINST</b>
<input type="checkbox"/>		<input type="checkbox"/>

- 3. In his/her discretion, upon any other business that may properly come before the meeting or any adjournment thereof.

This proxy may be withdrawn at any time by the undersigned.

Dated: \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Old Nags Head Cove  
Street Address

\_\_\_\_\_  
Primary Residence Address

\_\_\_\_\_  
City/State/Zip Code

If you are the owner of Multiple lots in Old Nags Head Cove please list the additional property addresses on the attached sheet with your signature confirming your proxy for those addresses.

\_\_\_\_\_

Old Nags Head Cove Street Address #2

---

Old Nags Head Cove Street Address #3

---

Old Nags Head Cove Street Address #4

---

Continue Listing

---

Confirm Signature for Proxy for Additional Lots

# **Executive Summary: Amended and Restated Declaration of Protective Covenants and Restrictions for Old Nags Head Cove & Amended and Restated Bylaws for Old Nags Head Cove**

## **Protective Covenants:**

**Article I Definitions:** This is the standard introduction of terms in legal documents like this giving specific terms and words specific meaning.

**Article II Property Rights:** This is standard framework language in associations that delineates the roles of property owners and the association in the overall framework of the Covenants.

**Article III Membership and Voting Rights:** Each lot owner shall be a member of ONHC HOA with one vote per lot. This ties ONHCA back to the authority and responsibilities created in the original covenants.

### **Article IV Covenant for Maintenance Assessments:**

Section 1. Each owner by acceptance of a deed in Old Nag Head Cove community is bound to pay association assessments.

Section 2. The Board of ONHCA considers costs to maintain and operate community operations and may increase the annual assessment a maximum of 10% in any given year above the existing assessment. After 2024 the Board may increase the annual amount above 10% if there is a vote of 2/3 of members voting in a meeting called to consider such an action. The Board may make a special assessment for a major repair or replacement of the common areas (i.e.. major storm damage). The Board sets amenity fees.

Section 3. Annual Assessments are due May 1<sup>st</sup>.

Section 4. Details late fees and actions that can be taken for non-payment.

Section 5. Holds the Board to a reasonable standard as to the choices made about assessments and the use of funds.

Section 6. Order of priority of a lien if one exists in favor of the Association.

Section 7. ONHC association and its property and assets are exempt property per NC law.

**Article V. Maintenance:** The association is obligated to maintain all common property. This includes association owned bulkheads. Bulkheads on owner lots are the owner's responsibility and owners must follow all relevant state and federal regulations. Owners are responsible for their properties and to suitably repair and clean up after a fire or other casualty within a reasonable time. Owners of unbuilt lots are responsible to keep lots presentable.

**Article VI. Insurance:** Association must maintain reasonable levels of insurance on association properties and operations for the benefit of the association in a way that protects members of the association.

**Article VII. Easements:** Are shown on plats.

## **Article VIII. Building and use Restrictions:**

Section 1. ONHC is for single family residential dwellings

Section 2. For an owner acquired 2 or more adjoining lots and consolidating to one lot is still restricted to one dwelling.

Section 3. ONHC is not for commercial uses.

Section 4. Lots may not be used to create a new street or right of way.

Section 5. Sewer Disposal – must be in compliance with appropriate regulatory authority.

Section 6. Signs – all must comply with Nags Head Town regulations.

Section 7. Building Restrictions – Grandfathers older dwelling square footage consistent with Nags Head regulations.

Section 8. Use of Lots and Dwellings – Permits must be authorized by Town of Nags Head.

Section 9. Boats and Watercraft – cannot live or reside in a watercraft docked at ONHC.

Section 10. Pets – A reasonable number of generally recognized house pets may be kept. No breeding of animals for commercial purposes. Pets cannot make an unreasonable amount of noise or become a nuisance to others.

Section 11. Foundations – Foundation areas used for storage must be fully or partially enclosed with lattice or similar screening.

Section 12. House Trailers, Trailers, Campers, etc. on unimproved lots – No outside storage of such vehicles on unimproved lots. Specifically boats properly secured, boat trailers are permitted to be stored on unimproved lots.

Section 13. House Trailers, Trailers, Campers, boats/boat trailers etc. on improved lots - these may be stored on improved lots; but, no habitation while there.

Section 14. Nuisances – No rubbish, debris, odorous, unsanitary, unsightly, noxious or offensive activities or other things detrimental to residents in ONHC shall not be carried out on any lot. Violators will be notified by certified mail and have 30 days to take corrective action or receive a justified extension of time. After such time if correction has not occurred the Association can take action to correct the violation.

Section 15. Fencing of Yards – Fences must comply with Town of Nags head requirements.

Section 16. Temporary Structures – shall comply with all Nags Head ordinances.

## **Article IX. Architectural Review:**

Section 1. Purpose: Architectural Review is maintained to preserve the natural setting and beauty of ONHC and protect and promote property values.

Section 2. Approval of Design and Location of Structures: Minimal standard language in community association architectural control covenants to preserve ability of ONHC to protect association members in the future. (Section 4 has specific parameters being monitored going forward).

Section 3. Members – Defines Architectural Review Committee moving forward. (Is a Standing Committee in the revised Bylaws).

Section 4. Requirements – All building projects in ONHC must comply with Nags Head building codes and construction requirements. The Architectural Review Committee will monitor building projects for existing dwellings where a project expands the footprint or square footage of the building with a cost greater than 25% of the assessed value of the property. Also, new dwellings on a vacant lot. An owner is required to file with ONHC Architectural Review Committee the same documents (permit application; drawings; etc.) at the same time these are filed with the Town of Nags Head. The Architectural Review Committee has 45 days to respond if it has any concerns. If no response in 45 days, the project is deemed approved. (Comment: this provides a monitoring process which allows the Architectural Review Committee to monitor building and zoning requirements that might change in the future which are unknown at this point in time).

Section 5. Location of buildings – Practical effort is to be made for location of new dwellings to provide a reasonable view and breeze for adjoining lots. Setbacks and location are through Town of Nags Head building permit process.

Section 6. Construction of Improvements - must comply with building restrictions and zoning requirements of town of Nags Head.

Section 7. Enforcement - The Board is empowered to enforce these provisions.

#### **Article XI. General Provisions:**

Section 1. Enforcement of Restrictions – In event of breaches of the Covenants by an owner or agent for an owner, the owners of in the immediate neighborhood or a group of owners in ONHC have a right to pursue compelling compliance by taking legal action. The association has a right to take action to remove structures in violation of the covenants at the owners expense only after 30 days notice. Any violation no longer how long occurring shall not bar or effect a covenant requirements enforcement.

Section 2. Old Nags Head Cove Association – every owner of a property in the community is afforded privileges of voting membership in the Association which is exclusive only to owners of property in ONHC.

Section 3. Amendment and Duration – these restated covenants will be in force for 10 years with extensions for periods of 10 additional years. And, can be amended further by 67% of members voting approval of changes per NC statute. Amendments are only in force after being recorded in Dare County.

Section 4. Notices – A notice is valid when sent to last know address who appears on the list as owner and if title is held by more than one person – notice to one shall constitute notice to all owners.

Section 5. Interpretation – the provisions in the covenants are controlling in interpretation.

Section 6. Severability – If any provision of these covenants is held invalid, it shall not affect the rest of the provisions.



Section 7. Notice of Sale, Lease, or Mortgage – In the event an owner sells, leases or otherwise disposes of any lot or dwelling; the Owner or the Owners Attorney (typically settlement attorney) must promptly furnish to the association the name of the new owner.

## **Bylaws:**

Article I – gives the name and location of the corporation.

Article II – Membership of ONHCA is exclusively owners of property in the community. A previous development of several properties that adjoin ONHC can pay user fees and access ONHC amenities – they are not members and cannot vote. Members, their spouse and children and legal wards having the same principal residence as the owner may use common areas and facilities. Guests are individuals present on common property at the invitation of a member; not including lessees – they are subject to all the rules and fees set by the Board. Privileges of Membership may be suspended for: 1) period of non-payment of dues; 2) Infraction of published rules and regulations, restrictions and Covenants or laws of Nags Head, or not observing a Declared Emergency Order; 3) Continuance of a violation after written notice to the member. Privileges are reinstated when dues are paid, or violations are corrected.

Article III - Section 1 & 2. Dissolution and Distribution of Assets – Assets belong to the Association and no member has title to any of the community assets. If a dissolution of ONHCA were to take place assets would be distributed in accord with IRS and NC Revenue Dept. requirements. Section 3. Property owners must pay assessments by May 1<sup>st</sup> each year. Section 4. Assessments for Emergencies – In case of emergencies that cannot be paid from Annual Assessments, a notice is made to members, and after a vote by members sufficient to approve the special assessment, notice is given to members and the assessment is due in 30 days.

Article IV - There is a corporate seal.

Article V – Deals with meetings of all lot owners. The Annual Meeting is held in May each year. Special Meetings can be called by the President, a majority of the Board or a request from 10% of the entire membership. Length of notice for such meetings is specified. A Quorum for all Members meeting is 10% of the total members in person plus proxies. There can be adjourned meetings. Voting is one vote per lot and in the case of multiple owners

Article VI – Delineates the Powers and the Duties of the Board of Directors:

- Directors must follow the Covenants, Articles of Incorporation, and Bylaws. The Board is responsible to set and collect assessments; use the proceeds to perform its duties for the maintenance and operations of the common property; purchase insurance for Association property and activities; reconstruction of property after a casualty loss; make reasonable regulations and levy use fees; employ personnel; Directors serve without any remuneration.
- The board can be from 6 to 9 members. Directors can only serve a partial and 2 full terms. Directors are elected at the Annual Members meeting and the Board can fill a vacant slot in between. Board members can participate in a meeting by electronic means when not able to

attend in person and this counts as attendance. Attendance is important – if a Director misses more than 50% of meetings during a year they are automatically removed from the Board. An Organizational meeting of the Board must take place following the Annual Meeting at which time Officers are elected by the Board. Regular meetings of the Board are open meetings and notice is given ahead of time. There is also notice of any special meeting. A majority of the Board is a quorum. The presiding officer in a meeting is the President and in their absence the Vice-President.

- There are 3 standing committees: Executive committee, Planning committee, and the Architectural Review committee. A Board Director is assigned to chair each of the committees and additional members are appointed from members of the ONHC community.

Article VII – Officers: Officers are the President, Vice-President, Secretary, and Treasurer. They are elected annually and have the standard duties associated with such offices. Some duties may be delegated to association staff. Any Officer or Agent of the Association may be removed.

Article VIII – Indemnification: Directors, Officers, and Agents of the Board are indemnified for law suits related to the association. Insurance is maintained.

Article IX – Miscellaneous: The Bylaws are drafted and interpreted so as not to conflict with the Articles of Incorporation or Covenants. In an event some part of the Bylaws are found to be invalid, the rest remain in effect. No restriction or failure to take action means the Bylaws or the powers therein are made invalid.

Article X – Non-profit status -Corporation is a non-profit organization.

Article XI – Each member of ONHCA shall abide by these bylaws and the powers detailed in them. Failure to do so can lead to sanctions. Monies of the Association shall be deposited in a bank designated by the Board and can be only accessed by who the Board designates.

Article XII – describes the amendment process consistent with NC regulation.

## **Old Nags Head Cove Association Proposed Restated Covenants Declaration**

### **Questions/Answers:**

*Who are owners in Old Nags Head Cove subject to the existing and the new proposed Covenants?*

There are multiple types of owners: Permanent primary residence; second homes- non-rental; Rentals -long term lessees, weekly vacation renters, daily rentals; multiple owners of a single property by inheritance or trust; Corporations or LLCs who own rental properties in vacation areas as investments. All these types of owners have an interest in keeping Old Nags Head Cove attractive and sustaining the character and value of properties in the community. Each lot owner has one vote in the association. And an owner with multiple lots has multiple votes with an additional vote for each additional lot.

*Why did the Board decide to pursue updated Covenants?*

We consulted legal counsel expert in NC community association law and regulations. We found that we had 2 layers of covenants in force dating from 1970 and 2000. These existing covenants were antiquated and not totally in compliance with current NC rules and 21st Century community association practices. This was complicated by things that had evolved in ONHC like a requirement that all tanks be hidden behind lattice or some other screening – while many properties had propane tanks that are not screened. Another example was fencing height which was 4 ft. in the oldest covenant and 6 ft. with permit from the Town of Nags Head. Decisions were made to recognize the reality of where things are in 2023 so the restated covenants were workable in today's reality.

*The Covenants are called Restated Covenants – what does that mean?*

It means the Old Covenants are replaced with the Restated ones once 67% of property owners approve the new document, and it is registered in Dare County, NC.

*What is carried forward from the 1970 and 2000 Covenants?*

In drafting the new replacement covenants the lawyer first began by reorganizing the 2 sets of existing covenants together in categories and taking us through each

category to review conflicts and compliance, as well as current circumstances. In this process much of the wording for Building and Use Restrictions was carried forward as worded in the 2000 addons to the original covenants. The purpose of the community and its character as a residential community was retained.

### *What has changed in the new Covenants?*

In most areas where it was felt current Nags Head Town ordinances compared favorably with ONHC standards, and the Town had enforcement provisions, we edited the covenants to say owners must follow current Town of Nags Head processes, ordinances, and requirements. Thereby, ONHC residents can contact Nags Head for enforcement of these ordinances.

### *What if Nags Head changes ordinances or rules that significantly vary from ONHC Covenants?*

First, a community association's covenants may always be stricter than the rules in the jurisdiction in which the community association exists. This means that community homeowner associations like ONHCA need to monitor changes in local ordinances, permitting, zoning and enforcement. In the revised covenants a 10 year term is established for review of the covenants with 10 year extensions as opposed to the 20 year timeframe used before. And covenants can always be amended again in whole or a part with a 67% approval of all owners. One of the important roles of the Board of Directors of ONHCA is to monitor such changes. The proposed Bylaws add three standing committees to pursue monitoring in the future.

### *What are those 3 Standing Committees?*

The committees are: Executive Committee; Planning Committee; and Architectural Review Committee.

### *What does the ONHCA Executive Committee do in the future?*

The Executive Committee consists of the President, Vice President, Secretary, and Treasurer. The committee manages personnel matters, reviews board performance, makes recommendations for changes in the bylaws, prepares initial budget recommendations and other duties as required.

*What does the ONHCA Planning Committee do in the future?*

The Planning Committee will review current projected needs to maintain community property and factor in new activities or amenities that strengthen ONHC and make recommendations to the Board about future direction of the Association consistent with the Covenants (Declaration). This is the Committee where future changes in the covenants will be studied.

*What does the Architectural Review Committee do in the future?*

The Architectural Review committee ensures compliance with the provisions in the Covenants including Article IX.

*Is this a change in architectural control and what does, "ensure compliance with Covenants including Article IX" mean?*

The current existing Covenants architectural controls were numerous and minute in detail. The architectural control provisions laid out that a dwellings style, color, landscaping, placement on a lot, and every other factor were subject to review and approval by ONHCA as successor to the original developer. If we do not adopt the new Restated Covenants the existing burdensome oversight is still in force.

Article IX changes architectural control to architectural review and in section 4 reduces the number and types of projects subject to a review. Only new dwellings on empty lots and major projects that expand the footprint or square footage of an existing dwelling at an amount greater than 25% of the assessed value of the property will be subject to a monitoring review. The requirement is that an owner must file with the Architectural Review Committee the plans for a proposed project at the same time the permit application, specifications and drawings are filed with the Town for the permitting process. The Architectural Committee will have 45 days to respond to this filing of documents. If no response is made within 45 days the project is automatically approved. This Covenant is designed to allow the Architectural Review Committee primarily to monitor any changes that the Town of Nags Head may make in the future zoning which allow projects that are not allowed now. In other words, this review preserves the ability of future ONHCA boards to take action if the Town makes a change that will violate the purpose and character of ONHC. (A theoretical example could be a future

circumstance that an investor would buy 3 side by side lots and attempt to build a triplex in a neighborhood that has always been single family structures). In this theoretical case the Board would have to take action to halt the project.

*What happens when an owner or their property is not in compliance with the covenants? How is enforcement done?*

If non-compliance is in an item that is enforceable by the Town of Nags Head they will be contacted to enforce.

In the case of not paying assessments, the Association after notice escalates overdue penalties on the amount pending and can eventually place a lien on the property. Any owner in arrears on the annual assessment loses the ability to vote in association business until the bill is paid.

If there is a nuisance type violation an owner is first sent a notice and has 30 days in most cases to clean up the item. After 30 days, if no extension is requested or granted and the violation still exists the 'association can hire someone to clean up the item and bill the owner for that expense.

Additionally, a group of owners in a neighborhood, or within the ONHC community, or the association can go to court.

*Are there new additions to the Covenants that protect owners in ONHC?*

There is Article VI. Insurance - which requires the Board of ONHC to maintain adequate insurance coverage to protect ONHCA and its assets. This a NC regulatory requirement.

In Article IV. Maintenance Assessments Section 5 – says association “shall be held to a reasonable standard as to the choice of what assessments are to be used for and in the performance of its other obligations and duties.”



STATE OF NORTH CAROLINA

AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE  
COVENANTS AND RESTRICTIONS  
FOR OLD NAGS HEAD COVE

DARE COUNTY

This Amended and Restated Declaration of Protective Covenants and Restrictions for Old Nags Head Cove is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the Owners of at least sixty-seven percent (67%) of the Lots in Old Nags Head Cove, which represents and the Old Nags Head Cove Association, Inc.

WITNESSETH

WHEREAS, between 1970 and 1971 at various times, Carolina Shores Development Corporation caused to be recorded a certain Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 167, Page 37 the Dare County, Register of Deeds, a Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 173, Page 587 the Dare County, Register of Deeds and a Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 174, Page 568 of the Dare County, Register of Deeds and a Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 176, Page 385 of the Dare County, Register of Deeds and a Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 179, Page 928 of the Dare County, Register of Deeds and a Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 199, Page 700 of the Dare County, Register of Deeds (collectively, "Original Declarations");

WHEREAS, the Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 167, Page 37 the Dare County, Register of Deeds was recorded in 1970 and pertained to "Section A" of Old Nags Head;

WHEREAS, the Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 173, Page 587 the Dare County, Register of Deeds was recorded in or about 1971 and pertained to "Section A" of Old Nags Head;

WHEREAS, the Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 174, Page 468 the Dare County, Register of Deeds was recorded in 1971 and pertained to "Section B" of Old Nags Head;

WHEREAS, the Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 176, Page 365 the Dare County, Register of Deeds was recorded in 1971 and pertained to "Section C" of Old Nags Head;

WHEREAS, the Declaration of Restrictions and Covenants for Old Nags Head Cove Subdivision at Book 179, Page 928 the Dare County, Register of Deeds was recorded in 1971 and pertained to "Section D" of Old Nags Head;



WHEREAS, on or about April 23, 1971, the Old Nags Head Cove Association, Inc., was formed with the filing of Articles of Incorporation with the North Carolina Secretary of State;

WHEREAS, the above-described Original Declarations all contained Articles A, B, C, D, E, F and G;

WHEREAS, in or about May of 1986 a Supplemental Declaration of Protective Covenants of Old Nags Head Cove Subdivision dated February 22, 1984 was recorded at Book 454, Page 864 which added an "Article H" pertaining to Old Nags Head Cove Association, Inc. assessments ("Supplemental Declaration");

WHEREAS, on or about 20 March 2000, the Association caused to be recorded that certain Revised Protective Covenants for Old Nags Head Cove Association at book 1321, page 431 of the Dare County Register of Deeds;

WHEREAS, thereafter, at various dates between June of 2000 and December of 2021, various "Addendums to Revised Protective Covenants of Old Nags Head Cove Subdivision" was wherein Owners consented to the Revised Protective Covenants for Old Nags Head Cove Association at book 1321, page 431 of the Dare County Register of Deeds. Such Addendums were recorded at book 1328, page 178 of the Dare County Registry; book 1328, page 470 of the Dare County Registry; book 1333, page 470 of the Dare County Registry; book 1344, page 391 of the Dare County Registry; book 1364, page 294 of the Dare County Registry; book 1366, page 38 of the Dare County Registry; book 1372, page 215 of the Dare County Registry; book 1385, page 466 of the Dare County Registry; book 1405, page 383 of the Dare County Registry (collectively, "Addendums");

WHEREAS, on or about 28 August 2001, the Association caused to be recorded that certain Notice of Adoption of Revised Protective Covenants for Old Nags Head Cove Association at book 1388, page 427 of the Dare County Register of Deeds;

WHEREAS, the Revised Protective Covenants for Old Nags Head Cove Association at book 1321, page 431 of the Dare County Register of Deeds, the Addendums and the Notice of Adoption of Revised Protective Covenants for Old Nags Head Cove Association at book 1388, page 427 of the Dare County Register of Deeds are referred to herein as the "2000 Declaration Amendment");

WHEREAS, the intent of the 2000 Declaration Amendment was to add Articles H, I and J to the Original Declaration which Articles addressed Old Nags Head Cove Assessments (Article H), Architectural Standards and Use Restrictions (Article I) and General Provisions (Article J);

WHEREAS, the Association has operated as "Planned Community" under the Planned Community Act, N.C.G.S. §§47F-1-101 et seq. ("the Act") continuously since the enactment of the Act;

WHEREAS, Article J (7) of the Revised Protective Covenants for Old Nags Head Cove Association at book 1321, page 431 of the Dare County Register of Deeds provides that a majority of the Owners may amend the Revised Protective Covenants for Old Nags Head

Cove Association, however, N.C. Gen. Stat. § 47-2-117 provides that a declaration may be amended by the affirmative vote of or a written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or any larger majority the declaration specifies; and

WHEREAS, Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated desire to amend and restate the Original Declaration, the 2000 Declaration Amendment, the Addendums and the Supplemental Declaration into one, comprehensive document entitled the "Amended and Restated Declaration of Protective Covenants for Old Nags Head Cove" and made other revisions as set forth below;

NOW THEREFORE, the undersigned hereby declare that this Amended and Restated Declaration of Protective Covenants for Old Nags Head Cove shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the property described in **Exhibit A**, which is attached hereto and incorporated herein by reference, or any part thereof, and shall inure to the benefit of each owner thereof. Such property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the provisions of this Amended and Restated Declaration of Protective Covenants for Old Nags Head Cove and the easements, restrictions, covenants, and conditions described herein, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of such property. This Amended and Restated Declaration of Protective Covenants for Old Nags Head Cove shall amend and supersede and fully replace the Original Declaration, the 2000 Declaration Amendment, the Addendums and the Supplemental Declaration and any amendments thereto. The property subject to this Amended and Restated Declaration of Protective Covenants for Old Nags Head Cove shall be held, sold, and conveyed subject to Chapter 47F of the North Carolina General Statutes, as it may be amended from time to time.

## **ARTICLE I DEFINITIONS**

Unless the context clearly indicates otherwise, the following capitalized words and phrases shall have the indicated meanings when used in this instrument:

**"Act"** means the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes), as amended from time to time, or any corresponding provisions of succeeding law.

**"Articles"** means the Association's Articles of Incorporation.

**"Association"** means Old Nags Head Cove Association, Inc. a non-profit North Carolina corporation, and its successors and assigns.

**"Board"** or **"Board of Directors"** means the body responsible for administration of the Association, elected as provided for in the Bylaws.

**"Bylaws"** means the Bylaws for the Old Nags Head Cove Association, Inc. as they may be amended from time to time. A copy of the Bylaws are attached as **Exhibit B**.

**"Common Area"** means all real property owned by the Association, if any, for the common use and enjoyment of the Members, including without limitation, all land described in Deeds recorded at book 231, page 485 of the Dare County Register of Deeds; book 231, page 491 of the Dare County Register of Deeds; book 231, page 488 of the Dare County Register of Deeds; Quit Claim Deed at book 231, page 497 of the Dare County Register of Deeds; book 307, page 470 of the Dare County Register of Deeds.

**"Common Expenses"** means all sums lawfully assessed by the Association against its Members; expenses of administration, maintenance, repair or replacement of the Common Area and any other property for which the Association bears maintenance responsibility per the terms of this Declaration; expenses declared to be common expenses by the provisions of this Declaration or the Bylaws; expenses agreed by the Members to be common expenses; Association operational costs and management fees; premiums for insurance as the Declaration or the Bylaws may require or authorize the Association to purchase; ad valorem taxes and public assessment charges lawfully levied against Common Area; utilities used in connection with the Common Area; and unpaid assessments.

**"Community"** refers to the single-family residential subdivision in Dare County, North Carolina known as Old Nags Head Cove and described in the Original Declaration, the 2000 Declaration Amendment, the Addendums and the Supplemental Declaration and any amendments thereto.

**"Declaration"** means this Amended and Restated Declaration of Covenants for Old Nags Head Cove, as it may be amended from time to time.

**"Declarant"** means Carolina Shores Development Corporation. However, as of the date of this Amended and Restated Declaration, the Declarant is no longer the owner of any real property located in the Community.

**"Family Members"** Members, their spouse and their children or legal wards having the same principal residence as the member, as well as, relatives whose primary residence is with the member (parents, parents-in-law, brothers, sisters, children and grandchildren).

**"Guest"** shall mean an individual present on common property at the invitations of a member (and not a lessee) and is subject to the Rules and Regulations of the Association.

**"Governing Documents"** means this Amended and Restated Declaration of Covenants for Old Nags Head Cove, the Articles of Incorporation, the Bylaws, and the Rules and Regulations of the Association, collectively and individually.

**"Improvements"** means any structure of any type or kind, including, but not limited to buildings, homes, outbuildings, parking areas, loading areas, refuse collection areas, screening walls, retaining walls, fences, hedges, mass plantings, sidewalks, poles, signs, and utility lines and facilities.

**"Lessee"** shall mean a tenant of an Owner.

**"Lot"** means any plot of land shown upon a Plat, whether or not improvements are constructed thereon, which is intended for residential development, use and occupancy, and includes the single-family residence and related improvements constructed or to be constructed on the Lot.

**"Member"** means every Person who holds membership in the Association per Article III of this Declaration.

**"Mortgage"** means a mortgage, deed of trust, installment land sales contract, security agreement or other similar security instrument granting, creating, or conveying a first lien upon a Lot.

**"Mortgagee"** means the holder, insurer, or guarantor of a Mortgage.

**"Occupants"** means any individual(s) in possession of a Lot, including Owners, Family Members, lessees, guests and invitees of such individual(s), and Family Members, guests, and invitees of such lessees.

**"Owner"** means the record owner, whether one or more Persons, of a fee simple title to any Lot, except those having an interest merely as security for the performance of an obligation.

**"Person"** means an individual, a trust, an estate or a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or other entity.

**"Plat"** refers to all recorded plats describing or identifying the Lots and/or Common Areas for the Community, including, but not limited to, those plats referenced in the Original Declaration, the 2000 Declaration Amendment, the Addendums and the Supplemental Declaration and any amendments thereto, as well as, all Plats shown on **Exhibit A**. Said plats are incorporated into this Declaration by this reference.

**"Property"** refers to that real property located in Dare County, North Carolina which is more particularly described on Exhibit A.

**"Recreation Area"** is the pool and clubhouse owned by the Association and located at 4512 W. Sturgeon Drive, Nags Head, North Carolina 27959 with Dare County Parcel ID: 012441000.

**"Registry"** refers to the Office of the Dare County Register of Deeds.

**"Rules and Regulations"** means the rules and regulations governing the Property as adopted by the Board from time to time.

**"Entrance"** shall mean the entrance to the Old Nags Head Subdivision located on both properties identified as 100 W. Old Cove Road, Nags Head, North Carolina 27959 (Care

County Parcel ID 007761000 and O W. Old Cove Road, Nags Head, North Carolina 27959 (Dare County Parcel ID 007761017).

“**User Fees**” are additional charges the Board may levy from time to time for the use of the Common Area and Recreational Area as set forth in Article IV of the Declaration.

Except as specifically provided to the contrary above, these defined terms shall be construed in a manner consistent with the comparable definitions included in the Act.

## **ARTICLE II PROPERTY RIGHTS**

**Section 1. Owners' Easement of Enjoyment.** Every Owner shall have a right and easement of use and enjoyment in and to the Common Area, including specifically an easement for access, ingress, and egress to and from public and private streets, common parking, and walkways, and such easement shall be appurtenant to and shall pass with the title to every Lot subject to the restrictions set forth in this Declaration and the following provisions:

- a. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, utility or private individual or entity for such purposes and subject to such conditions as may be agreed by the Members; provided, however, such dedication or transfer shall require the approval of Owners holding not less than eighty percent (80%) of the total votes in the Association and shall be subordinate to the rights of homeowners hereunder.
- b. The right of the Association to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage the Common Area, as long as the rights of such mortgagee in the Common Area are subordinate to the rights of the homeowners hereunder.
- c. The Association's right to impose and enforce Rules and Regulations which may restrict the use and enjoyment of the Common Area.
- d. The Association's authority to grant and/or establish upon, over, under and across the Common Area further easements (including, but not limited to those provided in this Declaration) as are required for the convenient use and enjoyment of the Property.
- e. For any period during which any assessment against a Lot remains unpaid for thirty (30) days or longer, the right of the Association to suspend the voting rights of the Lot Owner and to suspend other privileges or services provided by the Association, including use of recreational amenities, if any.
- f. For violation of the Governing Documents, the right of the Association to suspend privileges or services provided by the Association, including use of recreational amenities, if any, for a period not to exceed sixty (60) days, and

the right of the Association after notice and an opportunity to be heard to impose fines.

**Section 2. Delegation of Use.** Any Owner may delegate the Owner's right of enjoyment to the Common Area to the Owner's Family Members and tenants.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

Each Lot Owner in Old Nags Head Cove shall be a member of the Old Nags Head Cove Association, Inc. The responsibility of becoming a member of Old Nags Head Cove Association, Inc. is absolute and becomes effective whether or not the Lot Owner has built a structure on his Lot. The Association shall have one class of membership which shall consist of all Lot Owners. There is one (1) vote per Lot. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. The purpose of the Old Nags Head Cove Association, Inc. is to perform those functions devolved to it from the developer. Specifically, to maintain the Common Area which include the pool, clubhouse, Recreation Area, boat ramp, parking lot and Entrance.

### **ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Lien of Assessments.** Each Owner of a Lot by acceptance of a deed therefor (whether it shall be so expressed in such deed) is deemed to covenant and agree to pay to the Association the assessments as provided in this Declaration. Each assessment, together with interest thereon and the costs of collection including reasonable attorney fees shall be a lien on the applicable Lot from the due date for the assessment as provided under the Act, continuing until paid in full, as well as a personal obligation of the person who was the Owner of the Lot at the time when the assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Owner's successors in title unless expressly assumed by the successor. No Owner shall be exempted from liability for the payment of assessments by waiving the use or enjoyment of any of the Common Area or by abandoning the Owner's Lot.

**Section 2. Assessments.** Owners of each lot shall be assessed annually a per Lot owned. Beginning on the fiscal year immediately after recordation of this amendment, the annual assessment shall be \$195. The Board of Directors may, after consideration of maintenance costs and future needs of the Association, fix future year annual assessments, without a vote of the membership, by a percentage which may not exceed ten percent (10%) above the assessment for the previous year. From and after the 2024 calendar year, the annual assessment may be increased by a percentage greater than permitted by this Section 2 by an affirmative vote of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose. The foregoing, shall not be deemed to preclude the Board of Directors of the Association from imposing a special assessment for any major repair or replacement of the Common Areas. Additional User Fees for specific amenities (event in the Recreation Area or other Common Area) are set by the Board of Directors. User Fees for current amenities with current charges are listed in the Owner's handbook under General information.

**Section 3. Due Date for Assessments.** The annual assessment provided for herein shall first become due and payable upon the beginning of the first fiscal year following recordation of these Amendments (May 1); the assessments for each succeeding year shall become due and payable on anniversary of the recordation of these Amendments each fiscal year thereafter.

**Section 4. Non-Payment.** If the assessments are not paid when due, then such assessments shall become delinquent and shall, together with interest and costs of collection thereof, as hereinafter provided, be due and payable. Late charges of the greater of twenty dollars (\$20.00) per month (or any higher amount allowed by law) will be added to assessments overdue 60 days. After the 60-day period has expired, interest will be added at a rate of one and one-half percent per month (18% per annum). Any assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the entire outstanding balance of any assessment immediately due and payable if any installment thereof becomes delinquent. If an assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late charge not to exceed the greater of twenty dollars (\$20.00) per month (or any higher amount allowed by law) and shall bear interest from the date of delinquency at the lesser of the rate set by the Association's Board (if one has been set) or eighteen percent (18%) per annum and shall further constitute a lien on that Lot when a claim of lien is filed of record as provided under the Act. The Association may bring an action at law against the Owner personally obligated to pay the same or may foreclose the lien against the Lot in the same way a Deed of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the North Carolina General Statutes, or in accordance with Chapter 47F of the North Carolina General Statutes, or pursuant to any other applicable statute. Interests, costs, and reasonable attorney's fees of any such action shall be added to the assessment. Should any deficiency remain after the foreclosure, the Association may also bring an action against the owner for said deficiency. The Association may bring an action at law against the owner(s) personally obligated to pay the same "place a lien on the property for back assessments in arrears.

**Section 5. Purpose of Assessments.** The Old Nags Head Cove Association, Inc. shall be held to a reasonable standard as to the choice of what assessments are to be used for and in performance of its other obligations and duties. Specifically, the assessments shall be used for maintenance and upkeep of all properties owned by the Old Nags Head Cove Association, Inc. and for the maintenance and upkeep of the subdivision's common areas in general.

**Section 6. Subordination of the Lien.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage recorded prior to the filing of a claim of lien under this Article and to ad valorem taxes. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 7. Exempt Property.** All Common Area, all property dedicated to and accepted by a local public authority, all property owned by a public or private utility for the purpose of providing water to the Lots, and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt

from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from these assessments.

## **ARTICLE V MAINTENANCE**

**Section 1. Association's Maintenance Responsibility.** The Association shall maintain all Common Area and improvements thereon. The Association shall have no maintenance or repair responsibility related to any Lot, including any improvements thereon, unless such responsibility is specifically assumed by the Association or set forth in this Declaration. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit all Owners.

**Section 2. Maintenance of Canals and Bulkheads.** Maintenance of canals and any bulkhead structure (and of the lands fronting thereon) which has been constructed by the Declarant on the Recreation Area or Common Area in the Community situated and located upon a sound, canal, or waterway shall be the obligation of the Association. Owners shall maintain any portion of the canals or bulkheads located on a Lot consistent with any and all applicable government regulations, including without limitation, any and all environmental rules, regulations, ordinances and statutes.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Owner's Family Members, guests, lessees, invitees or contractors, and is not covered and paid for by insurance maintained by the Association, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

**Section 3. Owner's Maintenance Responsibility.** All buildings, structures and their appurtenances in the Community shall be maintained by the Owners thereof in suitable state of repair; and in event of destruction by fire or other casualty, the premises shall be cleared and debris shall be removed within ninety (90) days from the date of such casualty. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkept conditions of the buildings and other structured or grounds on his lot which shall tend substantially to decrease the beauty of the specific neighborhood and the community as a whole. Upon the failure of an owner to comply with this requirement, the Association reserves the right, at its option, within two (2) weeks after written notice has been mailed to such owner's last known address, to clean such property up or remove same if such property has been destroyed by fire, etc. The Association's expenses in so doing shall constitute a lien upon such Owner's Lot and improves thereof, enforceable in the same manner as a mortgage or deed of trust.

The Board of Directors may adopt and enforce additional rules and regulations related to required maintenance upon the Lots.



**Section 4. Maintenance by Association Prior to Construction of Residence.** In order to maintain the scenic beauty of the Community and implement effective insect and pest control, the Association reserves for itself the right, but not the obligation, to enter upon any residential lot in the Community on which a residence has not been constructed and upon which no landscaping plan has been implemented, for the purpose of mowing, removing, clearing, cutting and pruning underbrush, weeds or other unsightly growth and trash, which in the opinion of the Association detracts from the overall beauty, setting and safety of the Community. Such entry may be made by personnel with tractors, trucks, or other suitable devices and shall not be deemed a trespass. Unless an emergency situation exists, the Board shall give the Lot Owner ten (10) days' written notice of its intent to exercise selfhelp. All costs of selfhelp, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.. The provisions of this paragraph shall not be construed as an obligation on part of the Association to mow, clear, cut or prune any lot or to provide garbage or trash removal services.

## **ARTICLE VI INSURANCE**

**Section 1. Association Coverage.** To the extent reasonably available, the Association shall maintain property insurance on the Common Area insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. In addition, to the extent reasonably available, the Association shall maintain liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area. If the foregoing insurance is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners or electronically posted on the Association website.

The above policies shall provide that: (1) each lot owner is an insured person under the policy to the extent of the lot owner's insurable interest; (2) the insurer waives its right to subrogation under the policy against any lot owner or member of the lot owner's household; (3) no act or omission by any lot owner, unless acting within the scope of the owner's authority on behalf of the association, will preclude recovery under the policy; (4) if, at the time of a loss under the policy, there is other insurance in the name of a lot owner covering the same risk covered by the policy, the association's policy provides primary insurance; and (5) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner, and each Mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

The Board may also obtain such other insurance coverage as it shall determine from time to time to be desirable and necessary, including, but not limited to, officer and director's liability coverage.

**Section 2. Proceeds.** The proceeds of all policies of physical damage insurance shall be payable to the Association, and the damage shall be repaired or replaced promptly using the proceeds of insurance unless (i) the planned community is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) the Lot Owners decide not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the planned community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the planned community and (ii) the remainder of the proceeds shall be distributed to all the Lot Owners or lien-holders, as their interests may appear, in proportion to the common expense liabilities of all the Lots.

**Section 3. Repair/Reconstruction.** In the event of damage to an Owner's Lot, the Owner shall repair/rebuild such damaged portions of the Lot to a standard consistent with the state of the Lot prior to the event causing such damage consistent with all relevant government ordinances, statutes and rules and regulations, including any Town of Nags Head requirements.

**Section 4. Ownership/Proceeds.** All contracts of insurance purchased by the Association shall be for the benefit of the Association, the Owners, and their respective Mortgagees, if any, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive any proceeds as are paid and to hold them in trust for the purposes stated in this Declaration. The proceeds received by the insurance trustee shall be distributed to or for the benefit of the appropriate beneficiary(ies) as required by the Governing Documents.

**Section 5. Premiums.** Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be included in Common Expenses.

**Section 6. Prohibited Acts.** No Owner shall do or keep anything on the Property which shall cause an increase in the premiums for, or the cancellation of any insurance maintained by the Association.

## **ARTICLE VII EASEMENTS**

Easements as shown on the Plats are reserved for rights of way for the installation, use and maintenance of utilities and drainage or for the purposes designated on the recorded plat. The Association reserves a perpetual, alienable and releasable easement and right on, over and under the ground for the purposes set forth on any and all recorded plats.

## **ARTICLE VIII BUILDING AND USE RESTRICTIONS**

**Section 1. Residential Use.** All Lot in the tract, except those otherwise designated on the recorded plat, shall be used for residential purposes only. No building shall

be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling.

**Section 2. Use to Be Solely Residential.** Each lot in the community shall be used exclusively for residential purposes. If one owner acquires two or more adjoining lots, the adjoining one or more lots may be used together as the site for a single building, in which event the sideline easements, shall apply to the outside perimeter property line of such adjoining lots. No lot shall be subdivided, nor shall its boundary lines be changed, except with the written consent of the Association and approval from the Town of Nags Head.

**Section 3. Commercial Use Prohibited.** No lot in the Community shall at any time be used or occupied for the manufacturer or sale of any articles or for any commercial purposes of any kind or character whatsoever, or for the carrying on of any businesses, or a hotel, motel, rooming house or boarding house, except as provided herein.

**Section 4. Use of Lot as Access Prohibited.** No lot in the Community may be used as a street, lane, right-of-way or easement over which access might be obtained to adjacent properties (whether within or without the Community) without the specific written consent of the Association.

**Section 5. Sewer Disposal.** Prior to occupancy of a residence of any lot in the community, proper and suitable provision shall be made for the disposal of sewage by means of a septic tank or tanks constructed on such lot. All sewage shall be emptied or discharged into such tanks. No sewer shall be emptied or discharged upon any lot; nor may any sewage disposal system be used unless such system is designed, located, constructed, and maintained in accordance with the requirements, standards and recommendations of the appropriate public health authority.

**Section 6. Signs.** All signs shall comply with all applicable Town of Nags Head ordinances and requirements.

**Section 7. Building Restrictions.** The 1200 square foot requirement herein does not apply to homes or dwellings constructed prior to December 1997. Replacement as a result of fire, storm, or other disaster must meet the then current Town of Nags Head's building requirements, including those portions pertaining to setbacks, structural, electrical or mechanical requirements. The dwelling may be reconstructed to square footage previously contained prior to peril.

**Section 8. Use of Lots and Dwellings.** Each lot and dwelling shall be used for residential purposes. Dwellings may not be temporarily or permanently occupied until an occupancy permit has been issued or unless authorized by the Town of Nags Head.

**Section 9. Boats and Water Craft.** No person shall be entitled to live or reside on any Water craft docked, moored or otherwise located in the canals adjacent to Old Nags Head Cove Subdivision property.

**Section 10. Pets.** No animals, livestock, birds, or poultry of any kind shall be raised, bred, or kept by an Owner upon any portion of Old Nags Head Cove Subdivision,

provided that a reasonable number of generally recognized house pets may be kept in Dwellings, subject to rules and regulations adopted by the Association, through its Board of Directors, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance.

**Section 11. Foundations.** Foundation areas used for storage must be fully enclosed or partially enclosed with lattice, louvers siding or a combination of these.

**Section 12. House Trailers, Trailers, Campers, etc. on Unimproved Lots.** There shall be no outside storage or parking upon any lot of any mobile home, motor home, camper, motorized camper or trailer, or other related form of transportation devices or other devices of similar nature on unimproved lots. It is specifically noted that boats, properly secured, or boat trailers, may be stored upon an unimproved lot.

**Section 13. House Trailers, Trailers, Campers, etc. on Improved Lots.** There shall be no active use or habitation of any mobile home, trailer, motor home, camper, motorized camper or trailer, or other related form of transportation devices-er other devices of similar nature on improved lots. It is specifically noted that boats, properly secured, or boat trailers, may be stored upon an improved lot.

**Section 14. Nuisances.** No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of Old Nags Head Cove Subdivision, nor shall any nuisance or odors be permitted to exist or operate upon or arise from Nags Head Cove Subdivision, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of Old Nags Head Cove Subdivision. Noxious or offensive activities shall not be carried on in any Lot. Lot owners will be notified in writing of any violation of this paragraph by Certified Mail to their last known address and given thirty (30) days to correct the cited violation. Failure to correct any violation or receive a justified extension of time from the Old Nags Head Cove Association Board of Directors will result in the Old Nags Head Cove Association taking action to correct the violation at the expense of the lot owner(s). Whenever the Old Nags Head Cove Association, or their respective Successors, assigns, agents or employees are required under this paragraph to enter the property of owner, the entering thereon and the taking of such action shall not be deemed to be trespass.

**Section 15. Fencing of Yards.** All fences shall comply with all applicable Town of Nags Head ordinances and requirements.

**Section 16. Temporary Structures.** Any temporary structures shall comply with any and all applicable local Town of Nags Head ordinances.

## ARTICLE IX ARCHITECTURAL REVIEW

**Section 1. Purpose.** In order to preserve the natural setting and beauty of Old Nags Head Cove Subdivision and to establish and preserve harmonious and aesthetically

pleasing design for Old Nags Head Cove Subdivision, and to protect and promote the value of Old Nags Head Cove Subdivision and all improvements located therein and all lots shall be subject to the restrictions set forth in this Article IX. Every Grantee of any interest in Old Nags Head Cove Subdivision, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article.

**Section 2. Approval of Design and Location of Structures.** Approval of Design and Location of Structures. In order to preserve a uniformity of beauty within the community, the Architectural Review Committee may refuse approval of plans, location or specifications upon any ground, including purely aesthetic considerations, which in the sole discretion of the Architectural Review Committee shall seem sufficient as set forth in Section 4 of this Article. No alterations in the exterior appearance of any building or other structure shall be made without like approval of Architectural Review Committee for its records.

**Section 3. Members.** The Architectural Review Committee shall consist of three (3) or more individuals appointed by the Board on an annual basis, and such appointed members of the Architectural Review Committee may be members of the Board. The Board may remove members of the Architectural Review Committee appointed by the Board at any time with or without cause. In the event of the death, resignation, or removal by the Board of any member of the Architectural Review Committee, the Board shall have full right and authority to designate and appoint a successor to complete the unexpired term of such deceased, resigned or removed member. Members of the Architectural Review Committee shall not be entitled to any compensation for services performed pursuant to this Article.

**Section 4. Requirements.** All Owners shall comply with Nags Head application and permitting processes for any construction project. Owners shall file with the Architectural Review Committee of ONHCA the application and plans at the same time filed with the Town of Nags Head for new dwellings and projects that expand the footprint or increase the square footage of an existing structure by a cost of 25% or more of the assessed property tax value by Dare County for the structure. The Architectural Review committee shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for safety, appearance, aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, The Architectural Review Committee shall consider the suitability of the proposed building, improvement, structure or landscaping and materials in relation to the surrounding area and the effect on adjacent or neighboring property. In the event the Architectural Review committee shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form, within forty-five (45) days after written request for final approval or disapproval, such plans and specifications shall be deemed approved, except that no plans or specifications that are in violation of the terms of this Declaration shall be deemed to be approved.

**Section 5. Location of Buildings.** To assure that location of residences in the community will be staggered where practical and appropriate, so that the maximum amount of view and breeze will be available to each resident in the community and that all permanent structures will be located with regard to topography of each individual Lot, the Association reserves upon itself the right to decide the precise site, elevation and location of any residence or other structure upon all lots in the community. Such location shall be determined only after

reasonable opportunity is afforded Lot Owner to recommend a specific site. Setback requirements of the Town of Nags consistent with the above requirements shall be followed.

**Section 6. Construction of Improvements.** All buildings, structures, or other improvements shall comply with the building restrictions and zoning requirements as currently adopted by the Town of Nags Head. Changes in Town requirements will be accomplished as outlined in paragraph I (2). All exterior improvements must be completed in accordance with the Town of Nags Head requirements.

**Section 7. Enforcement.** The Board is empowered to enforce the provisions of this declaration by any legal or equitable remedy.

## **ARTICLE XI GENERAL PROVISIONS**

**Section 1. Enforcement of Restrictions.** In the event of violations or breach of any of the Protective Restrictions set forth in this Declaration by any owner of property in the Community or agent of such owner, the Association, the owners of Lots in the immediate neighborhood or elsewhere in the Community or any right of them similarly, jointly, or severally shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof and to prevent the violation or breach of such Protective Restrictions. In addition to the foregoing, the Association shall have the right, whenever there shall have been built on any Lot in the Community any structure which is violation of any of the terms of this Declaration, to enter upon the property where such violation exists and summarily remove any such structure at the expense of the owner thereof, if after thirty (30) days written notice of such violation it shall not have been corrected by such owner. Such entry and abatement or removal shall not be deemed a trespass. The failure of Declarant or of any such party so entitled to enforce any restriction 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, which shall remain in full force and effect.

Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Old Nags Head Cove Association.** Every party or person, his heirs, legal representatives, successors or assigns, who shall become the owner of any lot in the Community shall be afforded the privileges of voting membership in the Old Nags Head Cove Association, a non-profit organization, the membership of which shall consist exclusively of owners of property in the Community.

**Section 3. Amendment and Duration.** These covenants and restrictions shall run with, burden, and bind the land for a term of ten (10) years from the date this Amended and Restated Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by the affirmative vote or written agreement of Owners to which at least sixty-seven percent (67%) of the votes

in the Association are allocated in accordance with N.C.G.S. §47F-2-117. If any amendment to these covenants, conditions and restrictions is executed, the Board shall attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. No amendment shall be effective until it is recorded in the Registry.

**Section 4. Notices.** Any notice required to be sent to an 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 Association 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.

**Section 5. Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that reasonable interpretation or construction which, in the opinion of the Board of Directors will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes that are less restrictive. In the event of any conflict between any provisions provided herein and any other prior recorded provisions, these provisions shall be controlling.

**Section 6. 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 this Declaration to any person or to a property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the dis provision or application, and to this end the provisions of this Declaration are declared to be severable.

**Section 7. Notice of Sale, Lease, or Mortgage.** In the event an Owner sells, leases, or otherwise disposes of any Lot or Dwelling, the Owner or Owner's attorney must promptly furnish to the Association in writing the name and address of such purchaser, lessee, or transferee.

**CERTIFICATION OF VALIDITY OF AMENDED AND RESTATED DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR OLD  
NAGS HEAD COVE**

By authority of its Board of Directors, the undersigned officers of the Old Nags Head Cove Association, Inc., hereby certify that the foregoing instrument has been duly adopted and approved by the requisite percentage of Owners of Lots in Old Nags Head Cove and is, therefore, a valid amendment to the existing 2000 Declaration Amendment.

OLD NAGS HEAD COVE ASSOCIATION, INC.

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF NORTH CAROLINA  
COUNTY OF DARE

**ACKNOWLEDGMENT**

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is Secretary/Assistant Secretary of Old Nags Head Cove Association, Inc., a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President and attested by as its Secretary/Assistant Secretary.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2023.

(Stamp or Seal)

\_\_\_\_\_  
Notary Public  
Printed Name:

My commission expires: \_\_\_\_\_

Signature: \_\_\_\_\_



**EXHIBIT A  
LEGAL DESCRIPTION**

The Property subject to the Declaration includes all that property subject to the and described in the Original Declaration, the 2000 Declaration Amendment, the Addendums and the Supplemental Declaration and any amendments thereto, including without limitation, the following property:

SECTION A Section "A" described in Map Book 4, Page 3 of the Dare County Register of Deeds.

SECTION B "Section "B" described in Map Book 4, Page 78 of the Dare County Register of Deeds.

SECTION C "Section "C" described in Map Book 4, Page 93 of the Dare County Register of Deeds.

SECTION D "Section "D" described in Map Book 5, Page 7 of the Dare County Register of Deeds.

SECTION E "Section "E" described in Map Book 4, Page 92 of the Dare County Register of Deeds.

SECTION F "Section "F" described in Map Book 4, Page 91 of the Dare County Register of Deeds and Map Book 5, Page 28 of the Dare County Register of Deeds

SECTION G "Section "G" described in Map Book 6, Page 26 of the Dare County Register of Deeds.

All Sections of Old Nags Head Cove Subdivision as shown on map or plats recorded in Map Book 4, Page 3, Map Book 4, Page 78, Map Book 4, Page 93, Map Book 5, Page 7, Map Book 4, Page 92, Map Book 4, Page 91, Map Book 5, Page 28, Map Book 6, Page 26.

All property described in that Supplemental Declaration of Covenants of Old Nags Head Cove Subdivision recorded at Book 454, Page 864 of the Dare County Register of Deeds.

All Common Area described in Deeds recorded at book 231, page 485 of the Dare County Register of Deeds; book 231, page 491 of the Dare County Register of Deeds; book 231, page 488 of the Dare County Register of Deeds; Quit Claim Deed at book 231, page 497 of the Dare County Register of Deeds; book 307, page 470 of the Dare County Register of Deeds.

**EXHIBIT B**

**AMENDED AND RESTATED BYLAWS  
OF OLD NAGS HEAD COVE ASSOCIATION, INC.**

**ARTICLE I**  
**NAME AND LOCATION OF CORPORATION**

The name of this corporation is Old Nags Head Cove Association, Inc. The principal office of the Association shall be located in the Old Nags Head Cove Clubhouse, Old Nags Head Cove, Nags Head, Dare County, State of North Carolina. The Corporation may have such other offices within Old Nags Head Cove, Nags Head, Dare County, State of North Carolina, the Board of Directors may designate.

**ARTICLE II**

Section 1.      **ADMISSION TO MEMBERSHIP**

Every party or person, their heirs, legal representatives, successors or assigns, who shall become the owner of any lot in Old Nags Head Cove and has complied with ARTICLE II, Section 6, shall be afforded the privilege of voting membership in the Old Nags Head Cove Association, Inc. The membership shall consist exclusively of owners of property in the community.

There shall be one voting member for each “lot” regardless of the number of persons who may have ownership interest in said lot. The voting member, in such cases, shall be that member designated in writing to the Association.

Section 2.      **ROANOKE SOUND SHORES**

Persons in the “Roanoke Sound Shores” desirous of using the Recreational Areas may do so subject to applicable User Fees which may be determined from time to time by the Board of Directors pursuant to Article IV of the Declaration.

Section 3.      **PRIVILEGES OF MEMBERS**

Members and their spouse and their children or legal wards having the same principal residence as the member shall have the license to use the common areas and facilities subject to the provisions of the Declaration of Restrictive Covenants and subject to such other rules, conditions, and fees as may be established from time to time by the Board of Directors.

Section 4.      **PRIVILEGES OF GUESTS**

A guest is an individual present on common property at the invitations of a member (and not a lessee) and is subject to the Rules and Regulations of the Association.

Section 5.      **PRIVILEGES OF LESSEES**

Lessees of homes owned by members with the right to use Common Area will be offered the use of those same Common Area subject to the provisions of Rules and Regulations, terms, conditions and Fees as set by the Board of Directors.

Section 6.      **SUSPENSION OF PRIVILEGES OF MEMBERSHIP**

The Board of Directors may suspend the privileges of membership for:

- (a) Any period that the association membership dues are unpaid.
- (b) Any infraction of the published Rules and Regulations, Restrictions and Covenants or laws of incorporation and the Nags Head Town ordinances or Declared Emergency order (such as natural disaster, public health or safety related order).
- (c) Any continuance of violation following written notice given by the Board of Directors to the member in violation.

Privileges may be reinstated by the Board of Directors when the payment of dues or fines has occurred or when any violation has been corrected.

### ARTICLE III

#### Section 1. DISTRIBUTION OF ASSETS AFTER TERMINATION

No member of this Association shall have, as an individual, any interest or title to the assets of the Association. And, such assets shall be devoted exclusively to the purposes of the Association

#### Section 2. DISSOLUTION

In the event of dissolution or other termination of this Association, all of its assets shall be distributed in accordance with ARTICLE IX of its Corporate Charter pursuant to a plan of distribution which shall be adopted by the members of the Association and which shall be in accord with the appropriate revenue provisions of the Internal Revenue Service and the Department of Revenue of the State of North Carolina, such plan being selected and approved by the Board of Directors.

#### Section 3. ASSESSMENTS

Property owners, present and future, shall pay their fair share of the County and City taxes on the common properties, utility charges to operate the common properties, upkeep and maintenance on the common properties and administrative overhead of these collections and business concerning these properties, plus the cost of the insurance required to protect Old Nags Head Cove Association. This assessment shall be due on or before May 1st of the year for which the assessment is made.

If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment and payment thereon shall be due on or before May 1 until changed by amended assessment. In the event the annual assessment proves to be insufficient, the budget and assessments therefor may be amended at any time by the Board of Directors, if the accounts of the amended budget do not exceed

the limitations thereon for that year. Any account which does exceed such limitations shall be subject to the approval of the membership of the Association heretofore required. The unpaid assessment for the remaining portion of the calendar year for which the amended assessment is made shall be due upon the date of the assessment if made on or before May 1.

**Section 4. ASSESSMENTS FOR EMERGENCIES**

Assessments for common expenses of emergencies which cannot be paid from the annual assessments for common expenses shall be made only after notice of the need therefor to the lot owners. After such notice and upon approval in writing by persons entitled to cast more than one-third of the votes of the lot owners, the assessment shall become effective, and it shall be due after thirty (30) days' notice thereof in such manner as the Board of Directors of the Association may require.

**ARTICLE IV  
CORPORATE SEAL**

The Board of Directors shall provide a suitable corporate seal containing the name of the corporation, which seal shall be in the charge of the Secretary. If so directed by the Board of Directors, a duplicate of the seal may be kept and used by the Treasurer or an Assistant Secretary or Assistant Treasurer or the corporate attorney.

**ARTICLE V  
MEETINGS OF MEMBERS**

**Section 1. PLACE OF MEETINGS**

Meetings of the membership shall be held at the principal office or place of business of the Corporation or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

**Section 2. ANNUAL MEMBERS' MEETINGS**

The annual members' meeting shall be held at of office of the Association on a Saturday in May and at an hour designed by the Board of Directors each year for the purpose of electing directors and of transacting any other business authorized to be transacted by the members. Meeting may be rescheduled do to federal, state, county, or town stay at home orders in conjunction with a Declared Emergency (such as a natural disaster, health or safety order).

**Section 3. SPECIAL MEETINGS**

Special meetings shall be held whenever called by the President or Vice-President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast one-tenth of the votes of the entire membership.

#### Section 4. MEMBERS' MEETINGS

Notice of all members meetings stating the time and place and the objects for which the meeting is called shall be given by the President or Vice President or Secretary unless waived in writing. Such notice shall be in writing to each member at his address (including address for contact by electronic means if owner has provided such) as it appears on the books of the Association and shall be mailed not less than ten (10) nor more than fifty days prior to the date of the meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Notice of meeting may be waived before or after meetings.

#### Section 5. QUORUM

A quorum at either a special meeting or the Annual Meeting shall be the members entitled to cast at least ten percent (10%) of the votes at such meeting in person or by proxy. The vote of a majority of those present in person or by proxy and entitled to vote at any meeting at which a quorum is present shall be necessary for the adoption of any matter to be voted upon by the members, unless a greater proportion is required by law. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

#### Section 6. ADJOURNED MEETINGS

If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

#### Section 7. PROXIES

In all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary.

#### Section 8. VOTING

In the event that any lot is owned by more than one person, the owners of such lots shall execute and deliver to the Secretary of the Association a certificate duly executed by all of such owners designating the person who shall be authorized to cast the vote allocated to the owners of said lot or to signify approval or disapproval of any matter on behalf of the lot owners. Said certificate shall be valid until revoked by a subsequent certificate. Unless and until said certificate is filed with the Secretary of the Association, the vote of such owners shall not be considered for the purpose of determining a quorum or for any other purpose. The requirements of this Section shall not apply if there are no more than two owners and said owners are husband and wife.

#### Section 9. ORDER OF BUSINESS

The order of business at the annual members' meetings, and, as far as practical at all other members meetings, shall be:

- (a) Calling of the roll and certifying of proxies.
- (b) Proof of notice of meeting or waiver of notice and reading of pertinent communications.
- (c) Reading and disposal of any unapproved minutes.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.
- (i) Questions and/or discussion from floor.
- (j) Adjournment.

#### Section 10. INFORMAL ACTION BY MEMBERS

Unless otherwise provided by law, any action required to be taken at a meeting of members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

#### Section 11. VIRTUAL MEETINGS AND VOTING

Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting by written ballots or electronic voting provided all the provisions related to such meeting set forth in N.C.G.S. §55A-7-08 (a) and §55A-7-09 are complied with by the Association.

### **ARTICLE VI POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

All the powers and duties of the Association existing under these Bylaws shall be exercised exclusively by the Board of Directors, its agents' contractors or employees, subject only to approval by property owners when such is specifically required. Such powers and duties of the Directors shall include but shall not be limited to the following, subject, however, to the provisions of these Bylaws, Restrictions and Covenants and the Articles of Incorporation.

- (a) To collect assessments from members to defray the costs and expenses of the Association.
- (b) To use the proceeds of assessments in the exercise of its powers and duties.
- (c) The maintenance, repair, replacement and operation of the common property.
- (d) The purchase of insurance upon the Association property and insurance for the protection of the Association and its members and liability for Board members.
- (e) The reconstruction of improvements after casualty and the further improvement of the property.
- (f) To make and amend reasonable regulations and to levy use fees respecting the use of the property of the Association.
- (g) To enforce by legal means the provisions of the Bylaws and the regulations for the use of property of the Association.
- (h) To employ personnel to perform the services required for proper operation of the Association property, executing contracts as necessary. All written contracts shall be signed by the contractor, the President, and the Secretary of the Board of Directors.
- (i) To approve or disapprove of the transfer, mortgage or ownership of the property of the Association upon approval of two-thirds of the Board of Directors,
- (j) provided that written notice of the same has been mailed to each member at his last known address at least twenty (20) days prior to the date of such
- (k) closing, provided the decision conforms with Article III, Section 2 of these Bylaws.
- (l) Directors will serve without remuneration for their services.

#### Section 1. NUMBER, TENURE AND QUALIFICATIONS

- (a) In order to qualify as a Director, the party must comply with Article II, Section 1 of these Bylaws.
- (b) The number of directors of this corporation shall be a minimum of six and a maximum of nine. Initially, three of whom shall be elected for a term of one year, three for a term of two years and three for a term of three years. From the initial election the rollover system will apply so that the initial members elected for a one-year term will be replaced in the second year by a member who will serve three years. Each year three will be members who have served their initial term and will always be replaced by a member willing to serve a three year term.

- (c) No director will serve more than a partial term vacancy plus two consecutive full terms.

## Section 2. DESIGNATION OF DIRECTORS

The designation of directors shall be in the following manner:

- (a) The directors shall be elected by ballot (unless dispensed by unanimous consent) and by a plurality of the votes cast at the Annual Meeting of the members of the Association. Each person shall be entitled to vote for as many nominees as there are vacancies to be filled.
- (b) Except as to vacancies provided by removal of directors by members, Vacancies on the Board of Directors occurring between annual meetings of members shall be filled by the remaining board.
- (c) Any director may be removed by concurrence of two-thirds of the members of the Association present at a special meeting of the members called for that purpose. The vacancy on the Board of Directors so created shall be filled by the members of the Association at the same meeting.

## Section 3. PARTICIPATION

- (a) Any member of the Board of Directors, or Board Committees, may participate in a meeting of the Board, Executive Committee or standing committee by means of a conference telephone or any other electronic communications equipment by means of which all persons participating in the meeting can hear one another. Participation in a meeting in this manner constitutes presence in person at the meeting.
- (b) Attendance is a prerequisite to continued membership on the Board. All members are required to attend no less than fifty percent (50%) of the meetings of the Board of Directors during the association year. Failure by a Director to maintain the required attendance shall constitute automatic resignation from the Board as of May 1<sup>st</sup> of the year in which the Director fails to maintain the required attendance. (Goal is 100% attendance)

## Section 4. VACANCIES

If any vacancy exists on the Board, such vacancy shall be filled by the remaining directors even though those remaining directors might be less than a quorum. Any person so named a director shall serve until the next annual election, at which time a director will be elected to serve the unexpired portion of the term.

## Section 5. ADDITIONAL ORGANIZATION MEETING



The additional organization meeting of a newly elected Board of Directors shall be held within fourteen (14) days of their election at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary.

#### Section 6. REGULAR MEETINGS

- (a) The regular meetings of the Board of Directors will be open meetings and notice of the meeting will be posted on the bulletin board in the clubhouse and the association website no less than seven (7) days prior to the meeting. Notice of the regular meeting will be given to each director personally or by telephone, email, or regular mail no less than seven (7) days prior to the meeting.
- (b) There shall be time allotted on the agenda of the regular meeting for a discussion period. Members must submit in writing to the Board of Directors the purpose of their business and amount of time needed (not to exceed 15 minutes, or such longer period as the Board in its discretion may deem appropriate in its sole discretion) at least three (3) days before the meeting.

#### Section 7. NOTICE

Notice of any special meeting shall be given at least three days previously thereto by written notice delivered personally or mailed to each director at his business/home address or by electronic communication. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon to be paid. If notice be given by electronic communication and is opened such notice shall be deemed to be delivered. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

#### Section 8. WAIVER OF NOTICE

Any director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

#### Section 9. ACTION WITHOUT MEETING (UNANIMOUS CONSENT)

Unless prohibited by law, any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if authorized in writing and signed by all of the directors who would be entitled to vote upon said action at a meeting, and filed with the Secretary of the Association.

#### Section 10. QUORUM

A majority of the directors shall constitute a quorum to transact business of a Board, and the act of the majority of the directors present at any meeting shall be deemed to be the act of the Board.

#### Section 11. RESIGNATIONS

Any director may resign at any time by giving written notice to the President or the Secretary of the Association. Such resignation shall take effect at the time specified therein, or if no time is specified therein, at such time as the resignation is received by the President or Secretary of the Association.

#### Section 12. PRESUMPTION OF ASSENT

A director of the corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof.

#### Section 13. ADJOURNED MEETINGS

If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

#### Section 14. PRESIDING OFFICER

The presiding officer of the directors meeting shall be the President; and in their absence the Vice-President. In the absence of the President and Vice-President, the directors present shall designate one of their number to preside.

#### Section 15. COMMITTEES

The Board may from time to time appoint members to various committees in its sole discretion. The Board will appoint Committee Chairs and Board member assignments to Standing Committees at the Organizational Meeting following the Annual Meeting. The three Standing Committees are the Executive Committee, the Architectural Review Committee, and the Planning Committee.

- (a) Executive Committee – The membership of the Executive Committee shall be the President, Vice-President, Secretary, and Treasurer. The Executive Committee duties shall be to manage personnel matters, review Board performance, make recommendation for changes in the Bylaws, prepare initial budget recommendations to the Board and other duties as required.

- (b) Architectural Review Committee – membership shall consist of 3 Board members (one of whom shall be Chair) and 3 additional volunteers appointed by the Board. It shall be the duty of the Architectural Review Committee to ensure compliance with the provisions of the Declaration including Article IX.
- (c) Planning Committee – shall consist of 3-7 members and the Chair shall be a current Board member. The Planning Committee will review current projected needs to maintain community property and factor in new activities or amenities that will strengthen ONHC and make recommendations to the Board about future direction of the Association consistent with the Declaration.

The Board may remove members of a Committee appointed by the Board at any time with or without cause. In the event of the death, resignation, or removal by the Board of any member of a committee, the Board shall have full right and authority to designate and appoint a successor to any unexpired term of such deceased, resigned, or removed member. Members of a committee shall not be entitled to any compensation for services performed pursuant to this Article..

## **ARTICLE VII THE OFFICERS**

### **Section 1. OFFICERS**

The officers of the Association shall be the President, one or more Vice- Presidents, the Secretary, the Treasurer and such other officers and assistant officers as the Board may from time to time elect. Any member of the Association in good standing may hold office. Officers shall serve at the will of the Board. Any two or more offices may be held by the same person, except the office of President and Secretary. If more than one Vice-President shall be elected, there shall be a designation as the First Vice-President and Second Vice-President insofar as authority to act in the absence of the President.

### **Section 2. ELECTION AND TERM OF OFFICE**

The officers of the corporation to be elected by the Board of Directors shall be elected annually by the Directors at the organizational meeting held after each Annual Meeting of the membership. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until their successor shall have been duly elected and shall have qualified or until their death or until they shall resign.

### **Section 3. PRESIDENT**

The President shall have all of the powers and duties which are usually vested in the office of President of an association, including but not limited to the power to appoint chairs from among the members from time to time, as they may in their discretion determine appropriate, to assist in the conduct of the affairs of the Association.

#### Section 4. VICE-PRESIDENT

The Vice-President shall in the absence or disability of the President exercise the powers and perform the duties of the President. They shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

#### Section 5. SECRETARY

The Secretary shall (a) keep the minutes of the members' and of the Board of Directors meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of the Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized; (d) keep a registry of the post office address of each member which shall be furnished to the Secretary by each member; (e) have general charge of the membership books of the corporation; and (f) in general perform all duties incident to the office of the Secretary and such other duties as from time to time may be assigned to them by the President or by the Board of Directors. An Assistant Secretary shall perform the duties of the Secretary which the Secretary is absent. The Secretary may delegate some or all of its functions to an association manager.

#### Section 6. TREASURER

The Treasurer shall (a) have charge and custody of and be responsible for all funds and securities of the corporation; (b) receive and give receipts for monies due and payable to the corporation from any source whatsoever, and deposit all such monies in the name of the corporation in such banks, trust companies or other depositories as shall be directed by the Board of Directors; (c) in general perform all the duties incident to the office of the Treasurer, and such other duties as from time to time may be assigned to them by the President or by the Board of Directors and (d) shall provide all necessary materials for the audit and budget committees. An Assistant Treasurer shall perform the duties of the Treasurer when the Treasurer is absent. The Treasurer may delegate all or some of its duties to a manager, accountant or bookkeeper to assist in its duties. subject to overall oversight by the Treasurer.

#### Section 7. OLD NAGS HEAD COVE RECORDS

All records pertinent to the operation of the corporation are to be kept secure in the principal office of the ONHC Association, Inc. with appropriate electronic backup.

#### Section 8. REMOVAL

Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interest of the corporation

would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 9. VACANCIES

A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**ARTICLE VIII  
INDEMNIFICATION OF  
DIRECTORS, OFFICERS AND EMPLOYEES**

Any person who is involved without his consent in any legal action due to the fact that he is or was a director, officer, or employee of the Association shall be indemnified by the Association against all expenses reasonably incurred by him in connection with or resulting from such legal action. Such expenses shall also include amounts paid by him with the consent of the Association acting through its Board of Directors in reasonable settlement of such actions except for those matters as to which it shall be determined that such person was derelict in the performance of his duties to the Association. This right of indemnification shall apply to matters arising both before and after the time of adoption of these Bylaws and shall not exclude any other legal right of indemnification to which such person may be entitled.

**ARTICLE IX  
MISCELLANEOUS**

Section 1. CONFLICT

These Bylaws are subordinate and subject to all provisions of the Declaration of Protective Covenants and Agreements as recorded in Book 176, Page 385, Dare County Registry; the Articles of Incorporation; and the General Statutes of North Carolina. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as in the Declaration, said Articles of Association or said Statutes. Every provision of these Bylaws shall be construed, if possible, so as not to conflict with said Declaration or the Articles of Incorporation.

Section 2. SEVERABILITY

In the event that any provision or provisions of these Bylaws shall be determined to be invalid, void, or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 3. WAIVER

No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 4. WAIVER OF NOTICE

Whenever any notice is required to be given to any Association member or Director by law, by the charter or by these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 5. CAPTIONS

The captions contained in these Bylaws are for convenience only and are not a part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

**ARTICLE X  
NON-PROFIT STATUS**

This corporation is organized on a non-profit basis for the use and benefit of its members and consequently will not have profits from which to pay dividends. After all expenses of the corporation have been paid, the net earnings of the corporation shall be accumulated in a surplus fund for the purpose of replacing, enlarging, or extending the common properties and for such other purposes as the Board of Directors may determine to be for the best interest of the corporation.

**ARTICLE XI  
OBLIGATION TO COMPLY WITH RULES, BYLAWS,  
RESTRICTIVE COVENANTS AND CORPORATION CHARTER**

Section 1. Each member and associate member of the Association and others shall abide by the provisions of these Bylaws as well as any regulation adopted by the Board of Directors of the Association pursuant to these Bylaws. Failure to do so shall justify the Board in imposing sanctions upon such member or associate member as in herein provided, and if necessary, to take legal action against the violator.

Section 2. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board of Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall only be checks signed by such persons as are authorized by the Board. The Board of Directors at its organizational meeting following the Annual Meeting of ONHCA will adopt a signatory resolution designating the officers and agent authorized to sign contracts, invoices, commitments, and checks authorized by the Board. The signatory resolution will state which items, and amounts above which multiple signatures are required.

**ARTICLE XII**

These Bylaws may be amended (1) by the board; and (2) by the members entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the amendment, whichever is less, at an annual or special meeting of the Association providing that the call for said meeting contains the full proposed amendment. No such amendment, decision or alteration shall be made which is contra to the Declaration of Restrictive covenants and agreements hereinbefore referred to.

**CERTIFICATION OF VALIDITY OF AMENDED AND RESTATED  
BYLAWS FOR OLD NAGS HEAD COVE ASSOCIATION, INC.**

By authority of its Board of Directors, the undersigned officers of the Old Nags Head Cove Association, Inc., hereby certify that the foregoing instrument has been duly adopted and approved by the requisite percentage of Owners of Lots in Old Nags Head Cove and is, therefore, a valid amendment to the existing Bylaws for Old Nags Head Cove Association, Inc.

OLD NAGS HEAD COVE ASSOCIATION, INC.

By: \_\_\_\_\_  
President

ATTEST:

Secretary

\_\_\_\_\_  
STATE OF NORTH CAROLINA  
COUNTY OF DARE

**ACKNOWLEDGMENT**

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is Secretary/Assistant Secretary of Old Nags Head Cove Association, Inc., a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President and attested by as its Secretary/Assistant Secretary.

Witness my hand and official stamp or seal, this day of \_\_\_\_\_, 2023.

(Stamp or Seal)

\_\_\_\_\_  
Notary Public  
Printed Name:

My commission expires: \_\_\_\_\_