

PREPARED BY
RUSSELL E.
TWIFORD

NORTH CAROLINA
DARE COUNTY

DK 377 PG 0724

FILED

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DORRIS A. FRY
Register of Deeds
Dare County, N. C.

DECLARATION OF
CO-OWNERSHIP INTERESTS

THIS DECLARATION, made and entered into this 1st day of August, 1984, by NACS HEADER HOMES, INC., a North Carolina Corporation, hereafter called Declarant, for itself, its successors and assigns, hereby submits the following described property to Co-Ownership Interests as herein defined, subject to the terms and conditions hereafter set out.

The property being submitted to Co-Ownership Interests is described as follows:

Northern 30 feet of Lot #7 and the 40 Southern feet of Lot #8, Block 3, Section 1, Amended Map, Nags Head Shores, Map Book 1, Page 179, Hotel Nags Header Property, Nags Head, North Carolina. This property fronting a distance of 70 feet on the East side of U. S. Highway 158 Business and extending back between parallel lines in an Eastwardly direction, to the Atlantic Ocean, together with all water and riparian rights running with or connected to the title of said land.

This property being described by metes and bounds as follows: BEGINNING at an iron pipe located in the East right-of-way line of U. S. Highway #158 Business, said highway having a right-of-way of 60 feet and said iron pipe being located in a general Southeastwardly direction a distance of 280 feet from a concrete monument located in the Southeast intersection of U. S. Highway #158 Business and Second Street and running thence and along the East right-of-way line of said highway North 19° 30' West a distance of 70 feet to an iron pipe; running thence North 70° 30' East through an iron pipe a distance of 295 feet, more or less, to the Atlantic Ocean; running thence in a general Southeasterly direction a distance of 70 feet to a point; running thence South 70° 30' West a distance of 288 feet, more or less, to an iron pipe, BEING THE POINT AND PLACE OF BEGINNING. This property being described and delineated on a plat prepared by C. P. Lewis, Jr., Registered Surveyor, entitled "Surveyed For Nags Header Homes, Inc., being the Northern 30' of Lot 7 and the Southern 40' of Lot 8, Block 3, Section 1, 'Nags Head Shores,' Town of Nags Head, Nags Head Township, Dare County, N. C., Surveyed 10-25-83, GBN, Platted 10-26-83 TDC, Scale 1" = 50'."

This being the property acquired by Nags Header Homes, Inc., by a certain Warranty Deed dated January 1, 1984, and recorded in Deed Book 362, on Page 424, from Russell E. Twiford and wife, Martha D. Twiford, and reference is expressly made to said Deed for a more particular description to said property.

The Declarant proposes to convey a one-twentieth undivided interest in the land described above and a one-tenth interest in Unit A or in Unit B, both units together constituting the building situated on the lands described above and shown on that plat referenced to above, to tenants in common. Said conveyances will be made expressly subject to the terms of this Declaration and the conditions and covenants therein stated. The occupancy of the unit shall be limited in that each grantee or grantees shall receive the exclusive right to occupy said building during five weeks of each year as hereinafter allocated.

By this Declaration, Declarant intends to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration, remodeling and improvement of the land and the units situated thereon and interests therein so conveyed or reserved, and the payment of taxes, assessments and other expenses pertaining thereto, and declares that the land and units are and shall be held, conveyed, encumbered, leased, rented, occupied and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared to be in furtherance of a plan established for the purpose of enhancing and protecting the value, desirability and enjoyment of the property and the interests so to be conveyed or reserved. All such limitations, restrictions, covenants and conditions are intended to run with the land and property, to wit, the interests so conveyed or reserved

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and to inure to the benefit of and be binding upon such interest so conveyed or reserved and all parties having or acquiring any right, title, interest or estate therein.

The interest in said land shall be conveyed subject to easements as follows:

1. Encroachment; Easement. In the event that either of the units has heretofore encroached upon or hereafter encroaches upon either of the other units as a result of:

(a) Settling of the building or any other improvement on the land; or

(b) Alterations, repairs or additions to either of the units or to any additional improvements on the lot; or

(c) Condemnation or eminent domain proceedings relating to either of the units or to the land it is situated on, or in the event that any encroachment by either of the units or any portion of the land upon any other unit shall occur as a result of:

(d) The partial or total destruction of the building or any portion of either of the units or any portion of the improvements situated on the land; and

(e) The rebuilding or reconstruction thereof in substantially the same location, a valid easement with respect to any such encroachment and for the maintenance of the same shall exist for as long as the units and the divided interest in the land described herein shall exist.

2. In interpreting any and all provisions of the Declaration with respect to mortgages of any unit the actual location of the unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally, vertically, or laterally, from the location as indicated on the deed plan:

3. A valid easement does and shall continue to exist throughout the property for the purpose of installation, maintenance, operation, repair and replacement of drain fields, sewer, septic tank, water, electric, gas, power, telephone and television pipes, lines, mains, conduits, wires, poles, transformers, and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility system; provided however, any easement through a unit for such utilities or facilities shall be only at the original location thereof unless approved in writing by all of the owners within each of the units situated on the land described herein, unless otherwise required by the local governing authority requiring a relocation of said facility.

4. A valid easement shall exist for support and access of the building situated on the land.

I. Definitions. The following terms as used in this Declaration shall have the following meanings:

(a) "Declarant" shall mean Nags Header Homes, Inc., of Nags Head or any successors or assigns in interest by liquidation or distribution or by an express assignment or conveyance of the rights of Declarant hereunder by an instrument executed by Declarant and recorded in Dare County Registry.

(b) "Unit" shall mean one of the two distinct living areas, attached only by roofing covering a walkway between the two living areas, located on the real property described above and the common furnishings located therein. Each unit shall be treated as a separate entity although they are connected structurally.

(c) "Lot" shall mean the land above described upon which the two units are situated and all appurtenances thereto.

(d) "Season Week" shall mean a one-week period of right of use in the Unit to be assigned as hereafter provided by the Agent. Unless otherwise provided by regulations adopted pursuant to this Declaration, a week shall commence and end at 12:00 noon on Sunday.

(e) "Co-Ownership Interest" shall mean a one-twentieth undivided interest in the Lot and a one-tenth undivided interest in Unit-A or Unit-B of the structure thereon and the right of use and enjoyment of the same in the manner provided herein.

(f) "Owner" shall mean and include (i) the grantee or grantees named in each Deed of a Co-Ownership interest, (ii) the successive owners of each Co-Ownership Interest so conveyed by Declarant and (iii) Declarant with respect to any Co-Ownership Interest not conveyed.

(g) "Common Furnishings" shall mean furniture, appliances and furnishings for the particular unit to which an Owner is granted an interest, or other personal property from time to time owned or held for use in common by all Owners of the particular Unit during their respective occupancies.

(h) "Agent" shall mean the Owners' Agent appointed as hereinafter provided.

(i) "Two-Third's Majority in Interest of Owners" shall mean Owner or Owners owning in the aggregate more than two-thirds of the undivided interest in the particular Unit or in the Lot upon which the Units are situated, depending upon the majority so designated. In voting on matters pertaining to a Unit that come before the Owners, each Owner shall be entitled to one vote for each one-tenth undivided interest owned in that particular Unit. In voting on matters pertaining to the Lot that come before the Owners, each Owner shall be entitled to one vote for each one-twentieth undivided interest owned in the Lot.

II. Exclusive Use and Occupancy. Each owner shall have the exclusive right to occupy the Unit in which a Co-Ownership Interest is conveyed to that Owner, and as between all Owners of the Lot, to use and enjoy the land upon which both units, Unit-A and Unit-B, are situated and the rights and easements appurtenant to such land, during such of the Season Weeks as are hereafter provided (and, in the case of Declarant, during all Season Weeks not included in any Co-Ownership Interests theretofore conveyed) and to authorize others so to do, together with the nonexclusive right in common with all other Owners, but only when acting through the Agent (or, if no Agent be appointed and acting, when acting with a Two-Third's Majority in Interest of Owners of the Unit), to maintain and repair the Unit. No Owner shall occupy the Unit, or exercise any other rights of ownership in respect of the Unit other than the rights herein provided to him, during any other Season Week unless expressly so authorized by the Owner entitled to occupy the Unit during such Season Week.

The Agent shall reserve two weeks for the repair, maintenance, repainting and thorough housecleaning of the Unit and said weeks shall not be conveyed as a week of use and occupancy to any Owner, but shall be owned jointly by all Owners. All painting, maintenance and repairs, except emergency repairs, shall be confined to the two weeks so designated by the Agent.

The maximum overnight occupancy of the Unit shall be ten (10) persons. No animals or pets of any kind shall be kept in the Unit, except personally by an Owner when the Owner is physically present on the premises. Each Owner shall keep the Unit and all Common Furnishings in good condition and repair during his Season Week, vacate the Unit at the expiration of his Season Week, remove all persons and property therefrom excluding only Common Furnishings, leave the Unit in good and sanitary condition and repair, and otherwise comply with such reasonable checkout and other procedures as may from time to time be contained in rules promulgated by the Agent or by a Two-Thirds Majority in Interest in Owners of the Unit. In order to provide the Agent sufficient time to provide housekeeping services for each Owner, all Owners agree to abide by the reasonable rules adopted by the Agent for checking in and checking out, provided the Agent can increase the check out time and reduce the check in time if each Owner involved agrees.

III. **Management.** Management of the Unit, maintenance and repair of the Unit, acquisition, maintenance, repair and replacement of Common Furnishings, and administration of the affairs of Owners with respect to the Unit, occupancy of the Unit, and payment of expenses and costs enumerated in this Declaration, shall be under the direction and control of an Agent appointed by a Two-Third's Majority in Interest of Owners of the Unit. The Agent so appointed is expressly authorized, in the Agent's discretion and on behalf of the Owners, to do any or all of the following to the extent not inconsistent with directions given by a Two-Third's Majority in Interest of Owners of the Unit:

(a) To repair, maintain, repaint, remodel, furnish or refurnish the Unit or any part thereof; to establish reserves for anticipated costs, including the acquisition and replacement of Common Furnishings; and to acquire and pay for materials, supplies, furniture, furnishings, labor or services which the Agent deems necessary or proper for the maintenance and operation of the Unit that have been previously approved in the budget adopted by the Owners of a Unit. The Agent shall be permitted to make emergency capital expenditures from the reserve funds not exceeding \$2,000.00 without prior consent, if for instance, the air conditioner or heating plant needs repair or replacement. The Agent shall not, however, make any other capital expenditures without the prior approval of a Two-Third's Majority in Interest of Owners of the Unit.

(b) To pay all taxes and assessments, including assessments by any Homeowners Association to which the property described herein may be deemed to be a member as hereafter provided, and other costs or charges affecting or relating to the Unit, and to discharge, contest or protest liens or charges affecting the Unit.

(c) To Obtain and pay the costs of electrical, water, sewer, telephone, cable television and other utility services for the Unit.

(d) To adopt from time to time and enforce reasonable rules relating to the possession, use and enjoyment of the Unit by the Owners.

(e) To obtain and pay the cost of legal and accounting services necessary or proper in the maintenance and operation of the Unit and the enforcement of the Declaration.

(f) To obtain and pay the cost of: (i) insurance covering the Unit and the common furnishings against loss or damage by fire and other hazards customarily covered by fire insurance policies written with extended coverage to an amount equal, or as nearly as possible, to the full replacement value thereof; (ii) public liability insurance, insuring against liability for personal injury or property damage resulting from an occurrence in, on or about the Unit or Lot; (iii) flood hazard insurance; and (iv) any other insurance deemed necessary or desirable by the Agent or by a Two-Third's Majority in Interest of Owners.

(g) To do all other acts or things necessary or appropriate to the ordinary and necessary operation and maintenance of the Unit or to preserve and protect the Unit in the event of any emergency.

(h) To delegate the authority and responsibilities of the Agent hereunder to one or more subagents for such periods and upon such terms as the Agent deems proper.

(i) To collect, either in advance of disbursement or following disbursement, if the Agent advances sums in payment of any of the foregoing, each Owner's share of the aforesaid costs and any other amounts properly expended by the Agent; to estimate any such expenditure in advance, and to bill the Owners accordingly; and to take proper steps to enforce any Owner's obligations hereunder.

(j) Each year, prior to November 1, the Agent shall submit to each Owner a proposed budget for each Owner's Unit for the forthcoming calendar year specifying the amounts that will be required for maintenance, expenses, utilities, services and reserves. The budget proposed by the Agent shall be deemed to be adopted if the Agent does not receive objections to the proposed budget from Two-Third's Majority in Interest of Owners of the Unit prior to the next January 1, and each Owner shall pay his proportionate share of the

budget so adopted in advance in monthly installments on or before the first day of each month.

(k) The Agent shall provide each Owner an Income and Disbursement Statement within thirty (30) days after the end of each year showing the receipts of common assessments and any other sums for that year, the payment of all expenses and fees and the balance in the reserve fund. The Agent shall retain all invoices, paid receipts and cancelled checks for each Unit for a period of seven (7) years subsequent to the furnishing of each Income and Disbursement Statement for audit and review by any Owner or attorney or Agent of any Owner.

(l) Upon request by any Owner or prospective purchaser of a Co-Ownership Interest, or attorney or agent of any Owner or prospective purchaser, the Agent shall furnish a written statement setting forth the status of any Owner's account as to any arrearages, or funds held for the benefit of said Owner, in reserve or otherwise, and said statement shall be binding on the Agent in favor of any person who in good faith relies upon it.

(m) Upon a sale or transfer of any Owner's Co-Ownership Interest, any funds so held by the Agent, or held otherwise for an Owner, shall be deemed transferred with the Co-Ownership Interest so transferred.

(n) The Agent shall obtain and keep in force a surety bond for the faithful performance of his duties in the amount of \$10,000.00, unless directed otherwise in writing by a Two-Third's Majority in Interest of Owners of the Unit, and the premium for such bond shall be an expense of the Unit.

IV. Expenses: Each Owner shall pay:

(a) The cost of long distance telephone charges, other special services allocable to the occupancy of the Unit during such Owner's Season Week or Weeks, the costs net of insurance to repair any damage to the Unit or to repair or replace any property contained therein on account of loss or damage occurring during his Season Week or Weeks, and the costs to satisfy any expense to any of the other Owners due to any intentional or negligent act or omission of such Owner, his family, guests, invitees, tenants or lessees or resulting from his breach of any provisions of this Declaration;

(b) A share of the following costs and expenses which bears the same relationship to the whole as such Owner's undivided Co-Ownership Interest bears to the entire ownership of the unit and lot:

- (i) Real Property taxes and special assessments;
- (ii) Insurance premiums for fire and extended coverage insurance and other casualty insurance and liability insurance;
- (iii) Utility charges for electricity, water, sewer, telephone and cable television and for firewood;
- (iv) Common assessments and special assessments levied by any Homeowners Association hereinafter organized;
- (v) Pest control;
- (vi) Charges for maintenance and cleaning supplies and replacement costs for nondurable items consumed by the owners;
- (vii) Costs for ordinary maintenance, repairs and replacement of appliances and fixtures;
- (viii) Costs for cleaning, maintaining, painting and refurnishing the units;
- (ix) The agent's compensation for management services;
- (x) Amounts necessary to establish proper reserves for the foregoing items.

(c) Other costs and expenses elsewhere herein provided to be paid, or other costs and expenses deemed necessary or desirable by the Agent for the maintenance and repair of the Unit.

All such payments shall be made through the Agent unless the Agent or a Two-Third's Majority in Interest of Owners of the Unit otherwise directs.

The Agent shall be under no obligation to, but may in its discretion advance sums required to pay the obligations of any one or more of the Owners or to make the aforesaid payments or incur obligations within the Agents'

authority, notwithstanding the failure of any one or more of the Owners to provide funds therefor. The Agent shall not be responsible for the acts or conduct of any of the Owners or for the breach of any of the obligations of any of the Owners hereunder. The Agent shall not be liable to any Owner in the absence of bad faith or negligence but shall hold the Owners harmless from and against any and all claims, expenses, liabilities, demands, causes of action, awards, or judgments rendered against the Agent or the Owners arising out of or in connection with the negligent conduct of the Agent, its officers, employees or subagents.

In addition to the enforcement of a lien for the payment of an Owner's share of the costs and expenses in Section XII hereafter, the Agent is hereby granted the right to prohibit any Owner from using and occupying the Unit at any time if the Owner is in arrears in his share of costs and expenses as determined hereunder. In the event there is any dispute as to the nature or amount of any charges sought to be collected, the Owner may pay such charges under protest and sue for a refund in Dare County District Court or Dare County Superior Court, whereupon the Owner shall be entitled to the use, possession and occupancy of the Unit for the Owner's Season Week or Weeks.

V. The Agent. Declarant shall employ the initial Agent. The initial Agent and each successor Agent may be removed upon 30 days written notice which shall also set forth the appointment of a successor Agent and shall be signed, or otherwise consented to, by a Two-Third's Majority in Interest of Owners of the Unit.

An Agent may resign upon giving 45 days notice to each of the Owners of the Unit. In such event the Owners shall use their best efforts to agree upon the appointment of a successor Agent with the consent of Two-Third's Majority in Interest of Owners. If they cannot so agree within 30 days after receipt of the notice of the Agent's resignation, the Clerk of Superior Court of Dare County shall have authority, upon the request of any Owner, to appoint a successor Agent upon such terms and for such compensation as the Clerk may, in his discretion, determine, but an Agent appointed by the Clerk shall be subject to removal as hereinafter provided.

Each Unit shall be managed by an Agent until the termination of this Declaration as hereinafter provided, unless all of the Owners of an interest in a Unit agree to eliminate the services of an Agent.

Each Agent shall enter into a written contract in which the Agent agrees to perform the obligations and duties set forth herein. The Agent shall be entitled to compensation from the Owners for its services at the rate provided for and adopted in the budget each year unless the Agent and a Two-Third's Majority in Interest of the Owners of the Unit shall otherwise agree or unless a new rate shall be established by the Clerk of Superior Court upon the appointment of a successor Agent as provided above.

V-A. Agreement of Purchaser. Purchaser of Co-Ownership Interest expressly covenants and agrees, as evidenced by acceptance of his deed to be issued, that:

(a) That he will comply with the terms of all decisions validly taken by the agent, and all such decisions or resolutions validly taken or passed hereafter;

(b) That he will pay all sums assessed by agent from time to time in accordance with this Declaration and that his interest in the property shall be subject to a charge and a lien for all amounts so assessed;

(c) That his deed, the Declaration, and the contract between the agent governs the respective rights and obligations of all persons now undividedly owning in common the undivided interest in land and undivided interest in the unit described above and all other persons who may hereafter undividedly own in common the unit, and all other present or future owners of undivided interest in the property described in this Declaration.

(d) That the unit shall be used only for the purposes designated in this Declaration.

(e) That the purchaser shall have the exclusive right to use the unit in which he purchased the above interest during the periods as set forth in this Declaration, but shall have no right to use such unit or the property on which it is situated at any other time except as a tenant, licensee or assignee of or from another unit owner during such other unit Owner's Season Week or Weeks.

(f) The purchaser further covenants and agrees that in the event he conveys, transfers or sells his Co-Ownership Interest, he will execute the conveyance, transfer, or sale through a deed conveying the entire interest in the unit, land, common facilities and common furnishings, subject to covenants and agreements which his deed contains, and imposing upon his purchaser the same obligations as his deed imposed upon him.

VI. Separate Deeds of Trust. Each Owner shall have the right to mortgage or otherwise encumber his Co-Ownership Interest. No Owner shall attempt to mortgage or otherwise encumber in any manner whatsoever the Unit or Lot or any part thereof except his Co-Ownership Interest, nor shall any Owner have the right or authority so to do. Any mortgage, deed of trust or other encumbrance of any Co-Ownership Interest shall be subordinate to all of the provisions of this Declaration and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

VII. Waiver of Partition. No Owner or other person or entity acquiring any right, title or interest in the Unit or the Lot shall seek or obtain through any legal procedures, judicial partition of the Unit or Lot or sale of the Unit or Lot in lieu of partition at any date prior to the expiration of 60 years after the date of this Declaration. If, however, any Co-Ownership Interest as herein defined shall be owned by two or more persons as tenants-in-common, nothing herein contained shall prohibit a judicial sale of the Co-Ownership Interest in lieu of partition as between such co-tenants or joint tenants.

VIII. Establishing Co-Ownership Interests. Subject to all of the terms and conditions contained elsewhere in this Declaration, each Owner of a Co-Ownership Interest in a particular and specified Unit shall have the exclusive right to use and occupy that Unit and the Common Furnishings of that Unit for a period composed of five (5) Season Weeks a Year, consisting of one (1) week from the Spring Season, one (1) week from the Summer Season, one (1) week from the Fall Season, one (1) week from the Winter Season and one (1) week from the Holiday Season. The various weeks shall be assigned in the manner described herein.

Each Owner of a Co-Ownership Interest in a particular and specified Unit initially will be assigned a number from one (1) to ten (10), that number determining the particular Season Weeks to comprise that Owner's period of use for the remaining portion of year 1983 and for the calendar year of 1984. The weeks of each season are numbered consecutively from one (1) to ten (10), and an Owner's annual number will correspond to the number of each of the five (5) Season Weeks and Holiday Week assigned to him.

The Holiday Season is a separate season comprised of ten weeks, (10) being the weeks during which New Year's Day, Easter, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas fall, together with three additional weeks selected by the Agent. Each of these weeks is assigned a number from one to ten as the week occurs chronologically during the year to determine the Season Week to be assigned to each Owner.

An Owner who is assigned the number "one" (1) for the remaining portion of year 1983 and the calendar year of 1984 will be assigned a period composed of the first week in the Spring Season, the first week in the Summer Season, the first week in the Fall Season, the first week in the Winter Season and the first week in the Holiday Season; in like fashion, the other Owners of that particular and specified Unit will receive a period of use for these years composed of Season Weeks corresponding to their assigned numbers. The numbers used to establish the periods of use will be assigned at the closing of each Owner's purchase, and for the calendar year of 1985 and following years, the said numbers will be rotated among the Owners in an orderly and consistent manner, that is, the Owner assigned the number "one" (1) for 1983 and 1984

will be assigned the number "Two" (2) for the following calendar year of 1985, with other Owners' numbers to be rotated in the same manner.

When the Agent submits the proposed budget to each Owner prior to November 1 each year, he shall at the same time provide each Owner with the calendar indicating which weeks are allocated to each Owner for the forthcoming year, together with the names and addresses of the other Owners and the number of the period of use for each Owner.

In the event the Agent determines that the assignment procedures set forth herein are unworkable or are, for any reason, unfair to Owners, the Agent may, without the consent of the Owners revise the Assignment procedures from time to time and set other conditions, restrictions and limitations deemed necessary to assure a manageable and fair procedure for use by the Owners. In no event, however, will the period of use of five (5) weeks per year, one (1) from each of the four established regular seasons, and one (1) week from the Holiday Season, be diminished.

IX. Damage or Destruction. In the event of any damage or destruction to the Unit or the Common Furnishings, except as otherwise provided in this Declaration, the Agent shall forthwith cause such damage to be repaired and shall so apply any available insurance proceeds. If the damage is not covered by insurance, or if the available insurance proceeds are insufficient, the Agent shall assess and the Owners shall pay the cost thereof or deficiency in proportion to their undivided ownership interests in the Unit unless the damage was caused by the intentional or negligent act or omission of any Owner, his family, guests, invitees or lessees, in which event the cost of repair or deficiency shall be paid by such Owner.

Any insurance proceeds allocable to the Unit and payable to the Owners as the result of (i) any excess of insurance proceeds over the cost of repair or restoration, or (ii) not being required to repair or restore the Unit or the Common Furnishings or any part thereof, or paid to compensate any one or more Owners for loss or damage to their individual person or property (in which case such distribution shall be with due regard to the loss or damage incurred), shall be distributed to the Owners in proportion to their respective undivided ownership interests in the Unit.

X. Restriction on Owners. Except as otherwise provided in this Declaration, by direction of the Agent, by express consent of all Owners, or required to prevent damage or injury to persons or property in an emergency, no Owner shall make improvements, decorations or repairs to the Unit or the Common Furnishings or contract so to do or subject the Unit or the Common Furnishings to any liens for the making of improvements, decorations or repairs. No Owner shall create or permit to exist any nuisance in the Unit or commit waste with respect to the Unit or permit anything to be done or kept in the Unit which would increase the rate of insurance upon the Unit or Common Furnishings.

XI. Enforcement of Restrictions. In the event that any Owner should fail to comply with any of the provisions of this Declaration, the Agent or any other Owner or Owners may bring action for damages, or to enjoin the violation or specifically enforce the provisions of this Declaration, or to enforce any statutory or contractual lien or lien provided herein, including foreclosure of any such lien and the appointment of a receiver for any Owner or take possession of the Co-Ownership Interest of any Owner. In any such legal proceeding, the prevailing party shall be entitled to costs and reasonable attorneys' fees. All sums payable hereunder by any Owner shall bear interest at 15% per annum from the due date, or if advanced or incurred by any Owner or by the Agent and provided herein to be repaid, from 10 days after repayment is requested.

The aforesaid remedies shall be cumulative and in addition to all other remedies which may be available at law or in equity; provided, however, that no breach of any provision hereof by any Owner or by Agent or failure of any Owner or Agent to comply with any provision hereof shall permit or empower any other Owner to terminate any such provision or excuse any such breach or failure, and each Owner shall continue to perform and comply with and hold his Co-Ownership Interest subject to all of the provisions of this Declaration notwithstanding any such breach or failure.

XII. Lien on Interests. Each Owner shall have a lien, in the nature of a deed of trust with a private power of sale, on the interest of each other Owner in the Unit and Lot in Common Furnishings as security for prompt and faithful performance by such other Owner of the obligations under this Declaration and payment of costs of enforcement and reasonable attorneys' fees; provided, however, that, as against any transferee, mortgagee or beneficiary of an Owner's interest acquiring all or any interest in such Owner's interest by deed, mortgage or deed of trust given by such Owner for valuable consideration and accepted by the transferee, mortgagee or beneficiary without notice of default in the payment or performance secured, no such lien shall be effective to secure any past due payment or performance in default at the time of recording such deed, mortgage or deed of trust except to the extent that notice of default in the payment or performance has been given at the time or recording such deed, mortgage or deed of trust by the prior recording of a notice of lien recorded within the immediately preceding 24 calendar months in the Office of the Clerk of Superior Court of Dare County, which notice of lien describes the Co-Ownership Interest affected and sets forth the name of the record owner thereof and recites that the particular payment or performance is or may be in default. The lien herein created may be enforced by sale by any owner, or by the Agent, as Agent and attorney-in-fact for any Owner or Owners, and the delinquent Owner's interest in the Unit and Lot and Common Furnishings may be sold at a sale conducted in accordance with the provisions of North Carolina General Statutes Chapter 44A, Article 2, Part 1, as amended, or in any other manner permitted by law. The purchaser at any foreclosure sale shall obtain title subject to the provisions of this Declaration. Either the Agent or any Owner or Owners may bid at the foreclosure sale and may hold, lease, mortgage, or convey any interest in the Unit and Lot and Common Furnishings acquired by such sale. The aforesaid lien and right of foreclosure shall be in addition to and not in substitution for all other rights and remedies which the Owners or Agent may have hereunder.

XIII. Protection of Interest. No Owner shall permit his interest in the Unit, Lot or Common Furnishings to be subject to any lien (other than the liens of current real property taxes and the current and future installments of special district assessments), the enforcement of which may result in a sale or threatened sale of the interest of any other Owner in the Unit, Lot or Common Furnishings or any part thereof, or in any interference with the use or enjoyment thereof by any other Owner; and in the event that the sale of the entire Unit, Lot or Common Furnishings or the interest of any Owner or any part thereof, or the use and enjoyment of any thereof by any Owner be threatened by reason of any lien against the interest of any other Owner, or proceedings be instituted to affect any such sale or interference, any Owner or Owners acting on his or their own behalf or through the Agent, or the Agent acting on behalf of any one or more Owners, unless promptly indemnified to his or their satisfaction, may, but shall not be required to, pay or compromise the lien without inquiry into the proper amount or validity thereof and, in that event, the Owner whose interest was subject to such lien shall forthwith repay the amount so paid or expended to the Owner or Owners or Agent, whosoever shall have paid or compromised the lien together with such reasonable attorneys' fees and related costs as he or they may have incurred.

No Owner shall permit his interest in any funds from time to time in the possession of the Agent to be subjected to any attachment, lien, claim or charge or other legal process and each shall promptly restore any funds held by the Agent in respect of his Co-Ownership Interest to the extent depleted by reason of the assertion of any such attachment, lien, claim, charge or other legal process and reimburse the Agent for all reasonable attorneys' fees or other costs incurred in respect thereof.

XIV. Sale of Co-Ownership Interest. If an Owner desires to sell his Co-Ownership Interest, such Owner shall, in writing, first notify the Agent of his intention to do so. An Owner may not sell to any subsequent purchaser less than the Co-Ownership Interest as described herein.

XV. Termination. This Declaration shall terminate under the following conditions:

(a) At the expiration of sixty (60) days from the date of this Declaration at which time the Lot and two Units shall be sold at public sale (or private sale upon consent of Two-Third's Majority in Interest of Owners of each Unit) and the net proceeds divided among the then Owners of the Lot and Units in proportion to their existing undivided interests.

(b) By the unanimous consent of all Owners of undivided interests in the lot together with the holders of all liens on Co-Ownership interests of said Owners.

XVI. Homeowners Association. Declarant is contemplating developing other lots adjoining the Lot described herein, into Co-Ownership Interest. Should such development occur, Declarant intends to form a Homeowner's Association to maintain the lots, walkways, fences, lights, signs and landscaping for the several lots so as to preserve the common scheme and plan of the development. At such time as the Homeowners Association is created, the Lot with the two Units described herein shall initially become a member of said Association and shall remain a member until Two-Third's Majority in Interest of Owners in both Units elect to withdraw from the Association. Declarant covenants that after the Association is formed, each lot it develops shall initially be made members of the Association in the same manner.

XVII. Notices. Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given when delivered personally or when deposited in the United States mail addressed to any Owner at the last address such Owner designates to the Agent for delivery of notices or, in the event of no such designation, at such Owner's last known address or, if there be none, to the address of the Unit.

XVIII. Severability and Rule Against Perpetuities. If any provision of this Declaration shall be held invalid it shall not affect the validity of the remainder of this Declaration. If any provisions of this Declaration would violate the Rule against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provision shall be deemed to remain in effect only for the maximum permissible period permitted by law.

XIX. Successors. The provisions of this Declaration shall be binding upon all parties having or acquiring any right, title or interest in the land above described or any part thereof and shall be for the benefit of each Owner and his heirs, successors and assigns. Each Owner (including Declarant) shall be fully discharged and relieved of liability on the covenants hereunder insofar as the same relate to each Co-Ownership Interest upon ceasing to own any interest therein and paying all sums accrued and performing all obligations hereunder in respect of such Co-Ownership Interest to the time his ownership interest terminated.

XX. No Exemption. No Owner may exempt himself from liability for any obligations set forth herein by any waiver of the use or enjoyment of the Unit or Lot or by any other action.

XXI. No Waiver. The failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce such provision thereafter.

XXII. Interpretation. The section titles at the beginning of each number section of this Declaration are for convenience only and the words contained therein shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Declaration. As used herein, the singular shall include the plural and the masculine or neuter gender shall include the other genders.

XXIII. Amendment. This Declaration may be amended, by written instrument executed by Owners holding of record Two-Third's Majority Interest of Owners of each Unit, provided; however, that no such amendment may affect or alter the right of any Owners exclusively to occupy the Unit and as between Owners, to use and enjoy the common areas of the land upon which the Unit is situated and the rights and easements appurtenant to said land, unless such Owner shall expressly so consent. Subject to the foregoing provision, any amendment shall be binding upon every Owner and every Co-Ownership Interest whether the burdens thereon are increased or decreased. No amendment shall be effective until the written instrument referred to above is recorded in the Dare County Registry.

XXIV. Declarant by an appropriate document filed in the Office of the Register of Deeds of Dare County, North Carolina, may submit other lots to this same Declaration, provided; however, that no interest as described herein in the property herein described shall be in any manner diminished.

BK 377 PG 0734

IN TESTIMONY WHEREOF, Nags Header Homes, Inc., a North Carolina Corporation has caused this Declaration to be signed by its President and attested by its Secretary, all by authority duly given the day and year first above written.

NAGS HEADER HOMES, INC., a North Carolina Corporation

BY: Charles Jennings McCotter, III (SEAL)
CHARLES JENNINGS MCCOTTER, III
President



Lourenda C. Godfrey
LOURENDA C. GODFREY, Secretary



NORTH CAROLINA
PASQUOTANK COUNTY

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Lourenda C. Godfrey personally came before me this day and acknowledged that she is the Secretary of Nags Header Homes, Inc., a North Carolina 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, sealed with its corporate seal and attested by her as its Secretary.

Witness my hand and official stamp or seal, this 1 day of August, 1984.

Bessie M. Hearn
Notary Public

My commission expires:

March 20, 1989

NORTH CAROLINA
DARE COUNTY

The foregoing certificate of Bessie M. Hearn, a Notary Public of Pasquotank County, N.C., is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Donna C. Gray
REGISTER OF DEEDS OF DARE COUNTY

BY: _____
DEPUTY

RECORDED AUG. 29, 1984

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