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## **NOTICE OF LIMITATIONS OF USE AND RESTRICTIONS**

Prepared by and return to Robert B. Hobbs, Jr., Attorney  
Hornthal, Riley, Ellis & Maland, LLP  
Post Office Box 310  
Nags Head, NC 27959

Site Address: 7300 S. Virginia Dare Trail, Nags Head, NC 27959

Property Owner: Town of Nags Head, North Carolina

THIS NOTICE OF LIMITATIONS OF USE AND RESTRICTIONS, made on October \_\_\_\_\_, 2008, by TOWN OF NAGS HEAD, NORTH CAROLINA ("Property Owner").

### **Recitals**

WHEREAS, Property Owner is the present owner of certain real property (the "Property") located in the County of Dare, State of North Carolina, more particularly described as follows:

#### **PARCEL ONE:**

All those certain lots or parcels of land lying and being on the West side of U.S. Highway No. 158 and to the West thereof, sometimes known as Virginia Dare Trail, in the Town of Nags Head, Nags Head Township, Dare County, North Carolina, and known and designated as and being Lots No. 19, 20, 43, 44, 45 and 46, Block 10, in the subdivision known as Whalebone Beaches as shown and delineated on a map or plat of said subdivision designated "Composite Map of Whalebone Beaches, formerly Nags Head Beach, including Section A," made by T. J. Jessup, North Carolina Registered Surveyor, August 5, 1946, and duly recorded in Map Book 1, Page 154, in the office of the Register of Deeds of Dare County, North Carolina, reference to which is hereby made for a more particular description thereof.

PARCEL TWO:

Being Lot 2, Block 11A as shown on that certain map or plat entitled "Revised Plat, Portion of Whalebone Beaches" made by Southern Mapping Engineering Company dated July 6, 1963 which map is of record in Map Book 2 at page 203, Office of the Register of Deeds of Dare County, North Carolina.

Parcels One and Two being the same property conveyed to the Town of Nags Head, North Carolina by deeds dated September 30, 2008 and filed in Book 1781, Page 60 and Book 1781, Page 61, Dare County Registry.

and

WHEREAS, the Property Owner accepted grant funds for property acquisition and recombination plat in the amount of \$568,500 from the North Carolina Public Beach and Coastal Waterfront Access Program under contract 001634 as awarded by the North Carolina Department of Environment and Natural Resources and administered by the Division of Coastal Management; and

WHEREAS, contract 001634 between the North Carolina Department of Environment and Natural Resources and the Town of Nags Head requires filing in the office of the local Register of Deeds a Notice of Limitation of Use and Restrictions which sets forth the land-use restrictions contained in the grant award contract as follows:

The Property will be retained and used for public access.

The use of the Property may not be changed from the approved use unless approval is obtained from the North Carolina Department of Environment and Natural Resources/Division of Coastal Management.

The Property Owner may impose reasonable limits on the type and extent of use of areas and facilities when such limitation is necessary for maintenance or preservation of the Property.

The Property Owner may assess reasonable user fees as long as those fees are used exclusively for the operation and maintenance of the access facility and/or other public access facilities within the local jurisdiction with the written consent of the North Carolina Department of Environment and Natural Resources/Division of Coastal Management.

Future improvements, modifications, or changes to the Property will be subject to review and approval by the North Carolina Department of Environment and Natural Resources/Division of Coastal Management. Unapproved changes may or can result in required repayment of granted funds.

The Property Owner will transfer title of the property to the North Carolina Department of Environment and Natural Resources if the Property is used for a purpose other than public access.

If the Property Owner elects to sell the Property, proceeds from the sale shall be held by the North Carolina Department of Environment and Natural Resources or the Property Owner and disposed of in accordance with a plan approved by the North Carolina Department of Environment and Natural Resources.

This instrument is the deed restriction recorded in compliance with contract 001634 between the North Carolina Department of Environment and Natural Resources and the Town of Nags Head.

NOW, THEREFORE, Property Owner declares and agrees as follows:

1. Agreement to Comply with Restrictions: In satisfaction of the above-referenced conditions, Property Owner hereby accepts the obligation to notice future buyer(s) of all conditions that apply to use of the Property.

2. Rights Appurtenant: This declaration is intended to be a covenant running with the land and shall bind and inure to the benefit of the heirs, personal representatives, successors and assigns of each present and future owner of the Property described herein.

Property Owner declares under penalty of perjury that these restrictions will be adhered to and it has executed this *Notice of Limitations of Use and Restrictions*.

IN WITNESS WHEREOF, and under penalty of perjury, The Town of Nags Head has caused this instrument to be executed in its name and behalf by its Mayor, attested by the Town Clerk and its seal affixed hereto, all as the act and deed of its Board of Commissioners, pursuant to a resolution adopted on the \_\_\_\_ day of \_\_\_\_\_, 2008, all the day and year first above written.

TOWN OF NAGS HEAD, NORTH CAROLINA

By: \_\_\_\_\_  
M. Renée Cahoon, Mayor

ATTEST:

\_\_\_\_\_  
Carolyn F. Morris, Town Clerk

[AFFIX SEAL]

STATE OF NORTH CAROLINA  
COUNTY OF DARE

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that M. Renée Cahoon personally came before me this day and acknowledged that she is Mayor of The Town of Nags Head, a North Carolina municipal corporation, and that by authority duly given and as the act of the town, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by Carolyn F. Morris, its Town Clerk. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of October, 2008.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Typed or printed name of Notary Public

My Commission Expires: \_\_\_\_\_

AFFIX NOTARY SEAL - STAMP