

11-10-88

0751 0561

STATE OF NORTH CAROLINA

FILED FOR REGISTRATION
BOOK 751 PAGE 561

AMENDMENT TO RESTRICTIONS
88 NOV 10 AM 9:34

COUNTY OF BRUNSWICK

ROBERT A. LINDHOLM
REGISTER OF DEEDS
BRUNSWICK COUNTY, N.C.

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned are the present owners of the lots in HOLDEN BEACH WEST SUBDIVISION, according to a map of same recorded in Map Cabinet J at page 338-340, Map Cabinet L at page 367, and Map Book 7 at Page 50 in the Office of the Register of Deeds of Brunswick County, North Carolina;

WHEREAS Holden Beach Enterprises, Inc. is the successor in interest to Holden Beach Realty Co., Inc. the developer of the subdivision;

WHEREAS Holden Beach Realty Co., Inc. signed and recorded a Declaration of Restrictions for said Subdivision, which Restrictive Covenants are duly recorded in Book 410 at page 914 Brunswick County Registry; and

WHEREAS the Restrictive Covenants for the Subdivision provide for the amendment of said restrictions by recording an instrument signed by majority of the owners of the lots agreeing to change said covenants in whole or in part; and

20

1.

Rob Sena
66.00
52
162.00 2283
CASH 21

WHEREAS the right of way shown upon the plats of Holden Beach West Subdivision, is a private right of way and not under the jurisdiction of the State of North Carolina Department of Transportation for maintenance purposes; and

WHEREAS the right of way and beach access ways shown upon the Subdivision plats are private and all are in constant need of repair upkeep and maintenance; and

WHEREAS Holden Beach Enterprises Inc., has transferred ownership of a portion of the right of way, eight private beach access ways, and a 120,437 square foot parcel of property to the Holden Beach West Property Owner's Association (hereafter referred to as the "Association") for the exclusive use of the members thereof; and

WHEREAS the undersigned owners of lots in Holden Beach West Subdivision deem it in the best interest of all owners to amend said restriction filed of record as by deleting paragraphs four (4) and nine (9) thereof in their entirety and inserting in lieu thereof the following paragraphs 4, 9 and the additional paragraph sixteen (16):

4. It is the intent and purpose of Holden Beach Enterprises, Inc. to develop and maintain Holden Beach West Subdivision into an exclusive residential community of the highest quality and at

the same time endeavor to retain the natural, unspoiled beauty now existing in the Subdivision, and to that end the following restrictive uses and limitations are placed on all lots within this development:

(a) Each lot owner within the subdivision shall maintain and preserve his or her lot or lots in a clean, orderly and attractive appearance within the spirit of this development as set out above. Failure on the part of the lot owner to adhere to such proper, clean, orderly and attractive maintenance of his or her property, upon ten days written notice given to him or her by the Association or its successor or assign, shall subject lot owner to a suit for specific performance.

(b) No open or exposed storage, including junk or abandoned items of personal property shall be maintained on any lot or lots; No trash or refuse, including leaves, shall be burned in an open incinerator on the lots within the Subdivision.

(c) In an effort to effectively control obnoxious insects and pests, the Association, its agents and employees, shall have the right to enter upon any residential lot within the Subdivision and use such measures as may be necessary for such control of obnoxious insects and pests.

(d) The owners of any lots shall not remove, reduce, cut down or otherwise change or causably remove reduced, cut down or change the elevation of any sand dunes or ridges or both within the subdivision, even upon their respective lots or any other lots in the Subdivision, except with the written permission and consent of Holden Beach Enterprises, Inc. or its successor or assign.

(e) The drilling of private wells for irrigation purposes or for any other purposes is expressly prohibited unless the plans and specifications are approved in advance in writing by the Association.

9. Parking on the traveled streets within the Subdivision shall be prohibited at all times. Each lot owner shall provide off street parking space for his or her family's use and the use of their guests. Any vehicle violating this restriction shall be removed by the Association and towing charges assessed with the impounding of the vehicle.

16. ASSESSMENTS. The owner of each buildable residential lot shall, by the acceptance of a deed or other conveyance for such lot, shall be deemed obligated to pay to the Association an annual assessment and any special assessments (for capital improvements); said annual and special assessments to be fixed, established and collected on a lot by lot basis pursuant to this Amended Declaration and the By-Laws of the Association. A "buildable" residential lot is defined as any platted lot which meets local, county and state requirements for construction or occupancy as residential property. There shall be no annual or special assessment assessed for an unbuildable lot. An "unbuildable" lot is defined as any platted lot which does not meet local, county or state permit requirements for construction or occupancy as residential property. If a presently unbuildable lot ever becomes a buildable lot, said lot will be subject to any

annual or special assessment assessed after the date the lot becomes buildable. This provision exempting unbuildable lots from the requirement to pay assessments may be amended only upon the affirmative vote of one hundred (100) percent of the owners of all platted buildable and unbuildable lots in the Subdivision.

Each annual or special assessment shall, when due, become a lien against the lot against which such assessment is made and the lien shall be deemed to run with the land. Each lot subject to these restrictions is hereby made subject to a continuing lien to secure the payment of each assessment when due. The annual assessment shall be in an amount to be fixed from year to year by the Board of Directors of the Association, which may establish different rates from year to year as it may deem necessary.

The funds arising from said assessments may be used for any or all the following purposes: maintaining and improving Ocean Boulevard West right-of-way, beach access ways, community land and facilities; employing watchmen; protecting common property from erosion; collecting and disposing garbage; enforcing these restrictions; and, in addition, doing any other things necessary or desirable in the opinion of the Board of Directors to keep the common property in neat and good order and to provide for the health, welfare and safety of the owners and residents of Holden Beach West Subdivision.

0751 0566

In addition to the annual assessment, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any new construction, acquisition of land, building or equipment, reconstruction of capital improvements or unexpected repair or replacement of capital improvements upon the common property including the necessary fixtures and personal property related thereto; provided that any such assessment shall be adopted by majority vote of members, voting in person or by proxy in a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten days nor more than sixty days in advance of the meeting setting forth the time, place and purpose of the meeting.

Any annual or special assessment that is not paid when due shall be delinquent. If an assessment is not paid within thirty days after the due date, the assessment shall bear interest from the date of delinquency at the statutory judgement rate in North Carolina per annum and the Association may bring an action at law or in equity against the owner for the amount owing plus interest, costs and reasonable attorney fees of any such action. Such right shall continue in the Association and the lien of assessment shall be deemed to run with the land and successive owners of each lot, by the acceptance of deeds therefor, shall be deemed personally to assume and agree to pay all unpaid assessments or special assessments previously levied against the property and all future assessments to be levied against the

0751 0567

property. No owner may waive or otherwise escape liability for the assessment provided for herein by non use of the common property or abandonment of his or her property.

The lien of the assessment provided for herein on any lot shall be subordinate to the lien of any mortgage on such lot. Sale or transfer of any lot shall not affect the assessment lien; however the 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 become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessment thereafter becoming due or from the lien thereof.

Said Restrictions recorded in Book 410 at page 914 are hereby declared to be in full force and effect save and except as the above set out amendment.

IN TESTAMONY WHEREOF, parties hereto have signed and sealed this instrument this the 8th day of September, 1988.