

Brunswick County—Register of Deeds  
Robert J. Robinson  
Inst #212458 Book 1953Page 505  
06/01/2004 08:38:02am Rec# 191303

NET Jude - Bald Head  
TOTAL 38 REV \_\_\_\_\_ TC# 77  
REC# \_\_\_\_\_ CK AMT 77 CK# \_\_\_\_\_  
CASH \_\_\_\_\_ DEF \_\_\_\_\_ BY JLR

**AMENDED AND RESTATED**  
**AMENDMENT AND ANNEXATION TO PROTECTIVE COVENANTS**  
**BALD HEAD ISLAND STAGE TWO**  
**ECO TRACT C - KITTY HAWK**  
**CAPE FEAR STATION**

This Amended and Restated Amendment and Annexation to Protective Covenants, Bald Head Island Stage Two, ("Amendment") is made by Bald Head Island Limited, with the joinder and consent of the undersigned owners, effective this 27<sup>th</sup> day of May, 2004.

R E C I T A L S:

Bald Head Island Limited, a Texas Limited Partnership qualified to do business in the State of North Carolina ("Declarant") is the developer of property generally referred to as Bald Head Island. In furtherance of that plan of development, Declarant did record Protective Covenants for Bald Head Island Stage Two, dated August 3, 1995 ("Protective Covenants"), which Protective Covenants are recorded in Deed Book 1045, Page 676 et seq., Brunswick County Registry. Paragraph 2 of the Protective Covenants authorizes and allows Declarant to annex additional property on Bald Head Island to the provisions of the Protective Covenants, and to subject lots so annexed to building and site restrictions as set out in the Amendment annexing said lots; and,

WHEREAS, Declarant, has heretofore caused to be recorded in the records of the Brunswick County Registry in Book 1915 at Page 62, an Amendment and Annexation to Protective Covenants for Bald Head Island Stage Two, Eco Tract C - Kitty Hawk, Cape Fear Station, and has further caused to be recorded in said Registry in Map Cabinet 29, Instrument 504, a Plat of survey which sets out and describes the real property and Lots subject to said Amendment and Annexation; and,

WHEREAS, the Declarant, with the joinder and consent of Kenneth Albert Bartko and Jo Ellen Bartko, as the owners of all property and Lots in said Eco Tract C - Kitty Hawk (i.e., even-numbered Lots 5440 through 5472 and 5430 through 5438, and odd-numbered Lots 5431 through 5435 and 5439) as depicted in the aforesaid Plat of survey, has decided to renumber all of the aforesaid Lots, and has caused said Lots to be replatted to reflect the revised Lot numbers, which revised Plat of survey is recorded in Map Cabinet 30, Instrument 245, Brunswick County Registry; and,

WHEREAS, by execution and recordation of this Amendment, it is the intent of the Declarant to amend and restate the Amendment and Annexation by which the property hereinafter described was annexed to the terms, provisions and conditions of the Protective Covenants, using the revised Lot numbers, subject to the revised Plat referenced above and to the specific provisions contained herein, and the Declarant hereby declares that, with regard to the numbering of the Lots, only, this Amendment shall supercede and replace the previous Amendment and Annexation applicable to the property described herein and depicted on the revised Plat.

NOW THEREFORE, the Protective Covenants, as previously amended, are hereby further amended as follows:

1. ADDITIONAL PROPERTIES. The provisions of the Protective Covenants shall apply fully to all of the property (including even-numbered Lots 5130 through 5138, odd-numbered Lots 5031 through 5035 and Lot 5039, and odd-numbered Lots 5337 through 5349), which is shown on that revised plat recorded in Map Cabinet 30, Instrument 245, Brunswick County Registry ("Plat"), as the same may be amended from time to time. As used herein, "Lot" shall mean any numbered Lot designated for residential use as shown on the Plat made subject to the Protective Covenants by this Amendment.
2. ASSOCIATION. As set out in the Protective Covenants, Declarant has chartered a North Carolina non-profit homeowners association named Bald Head Island Stage Two Association, Inc. ("Association"). The owner of each Lot shall be a member of the Association, and shall be required to pay dues thereto as set out in the Protective Covenants. The owner of each of the Lots shall begin paying dues to the Association as of the date of acquisition of title, and as for Lots owned by Declarant or an entity owned or controlled by Declarant, as of January 1, 2005, if not previously conveyed to a third party.
3. SINGLE FAMILY UTILIZATION. Except for such other uses as are hereinafter reserved to Declarant, all Lots shall be limited to use only for single family residential purposes. All of the provisions of Paragraph 3 of the Protective Covenants are specifically incorporated herein by reference.
4. SETBACKS. There shall be no setbacks, other than those imposed by the Village of Bald Head Island or other governmental authority, as set forth on the Plat, or as contained in the Cape Fear Station Design Guidelines ("Guidelines"), except that all construction of every Living Unit is subject to the approval of the Committee, as more fully set out in Paragraph 4 of the Protective Covenants. No construction except improvements allowed in accordance with the ordinances of the Village of Bald Head Island shall be allowed within any setback imposed by the Village of Bald Head Island. The Plat sets forth a minimum setback of ten (10') feet on the front of each Lot where it abuts a public right-of-way, and on the west/ southwest sides of Lots 5138 and 5349 where they abut the public right-of-way known as Kitty Hawk Way. The primary Living Unit may not be constructed within any setback, no matter by whom established. Improvements other than the primary Living Unit, if approved by the Committee, may be constructed within setbacks established by Declarant.

5. COMBINATION OF LOTS. Any two or more contiguous Lots shown on the Plat may be combined into a single Lot, and the provisions of Paragraph 12 of the Protective Covenants shall apply thereto. In the event of such a combination of Lots, any easements or set back requirements, whether set forth herein or appearing on the Plat, which are located along or pertain to a Lot line between any two combined Lots, shall, upon such combination of Lots, be extinguished, provided that said easements shall be extinguished only to the extent that they are used to provide services solely to the combined Lots; and specifically provided that the twenty-foot wide private alley access and utility easement running across the rear of the even-numbered Lots shall not be extinguished in the event of the combination of any of said Lots.
  
6. LIMITATION ON HEIGHT. No structure constructed on any Lot shall exceed thirty-five (35) feet in height as measured from the lowest natural point where the building perimeter meets grade to the roof ridge. The provisions of Paragraph 19 of the Protective Covenants are specifically incorporated herein by reference.
  
7. BUILDING AND SITE RESTRICTIONS. All Lots as shown on the Plat shall be subject to the following restrictions:
  - (a) The Declarant has adopted certain Design Guidelines for the Cape Fear Station Development ("Guidelines"), which are incorporated herein by this reference, and which will be applied by the Committee when approval is sought for construction pursuant to the Protective Covenants. All Lots shown on the Plat are subject to both the general Guidelines and the specific Guidelines applicable to the lot types described therein, as the same may be amended from time to time by Declarant or the Association. Declarant reserves the right to change the lot type designation for any Lot prior to the sale of said Lot to a third party, notwithstanding the sale of other Lots which are subject to the Guidelines. For purposes of the Guidelines, the Lots shown on the Plat shall have the following lot type designations, to wit: Even-numbered Lots 5130 through 5134 and odd-numbered Lots 5337 through 5349 are designated "House (H)", and in accordance with the Guidelines, the minimum square footage of heated, enclosed living space for each approved Living Unit on said Lots shall be 1,000 square feet for each Lot, and the maximum shall be 30% of the total Lot area, but not to exceed 3,000 square feet. Lots 5136 and 5138 are designated "Cottage (C)", and in accordance with the Guidelines, the minimum square footage of heated, enclosed living space for each approved Living Unit on said Lots shall be 700 square feet for each Lot, and the maximum shall be 40% of the total Lot area, but not to exceed 2,000 square feet. Odd-numbered Lots 5031 through 5035 and Lot 5039 are designated "Manor (M)", and in accordance with the Guidelines, the minimum square footage of heated, enclosed living space for each approved Living Unit on said Lots shall be 1,600 square feet for each Lot, and the maximum shall be 30% of the total Lot area, but not to exceed 3,500 square feet.
  
  - (b) Each Lot owner shall keep the grounds on his or her Lot and all structures located thereon in a clean, neat and sightly condition, and shall provide for the regular removal of all trash or refuse from the Lot.

- (c) No animals, livestock or poultry of any kind shall be kept or maintained on any Lot except that no more than 2 dogs or cats are allowed, provided they are attended as required by the ordinances of the Village of Bald Head Island.
- (d) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8-980920MOD, as issued by the Division of Water Quality under NCAC 2H.1000. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit. These covenants (as well as all other provisions of the Protective Covenants) are to run with the land and be binding on all persons and parties claiming under them. Each Lot shall contain a maximum allowable built upon area (BUA) which may be covered by impervious surfaces (as defined by the Department of Environmental Management). The maximum allowable BUA per Lot is as follows: for even-numbered Lots 5130 through 5134 and odd-numbered Lots 5337 through 5349, a maximum of three thousand (3,000) square feet; for Lots 5136 and 5138, a maximum of two thousand five hundred (2,500) square feet; for odd-numbered Lots 5031 through 5035 and 5039, a maximum of three thousand five hundred (3,500) square feet each. These allotted amounts include any BUA constructed within the Lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. BUA includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited. Each Lot will maintain a thirty (30') foot wide vegetated buffer between all impervious areas and surface waters, and all roof drains shall terminate at least thirty (30') feet from the mean high water mark of surface waters. This Paragraph 7(d) may be enforced by the State of North Carolina, as well as any other party entitled to enforce the Protective Covenants. To the extent that the State of North Carolina should revise its existing stormwater permit to allow different impervious surface amount(s) on any one of more of the Lots, upon filing by Declarant or the Association of a notice of said change in permit, the impervious surface limitation as to said Lot or Lots shall be automatically deemed amended to comply with the changed impervious surface limitation allowed by the State of North Carolina by permit. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality, and alteration of the drainage as shown on the approved plant may not take place without the concurrence of the Division of Water Quality.
- (e) As shown on the Plat, Surfman James Pinner Alley is a private alley access and utility easement twenty (20') feet in width, which runs across and provides vehicular access to the rear of even-numbered Lots 5130 through 5138 and odd-numbered Lots 5337 through 5349, as depicted on the Plat. Said easement is hereby reserved for the benefit of the Association, its members, the Village of Bald Head Island, and all public and private utilities. The Declarant will hard-surface a minimum of ten (10') feet in width of said private easement

with either asphalt or concrete. It is expressly understood and agreed that the Association shall be responsible for the maintenance and upkeep of said private easement, in its entirety, including any walls or bulkheads therein, and shall cause it to be kept in good and passable condition at all times. The Association shall have no maintenance obligation as to any driveway or connection extending from said private easement, even if it lies within the easement as shown on the Plat. No overnight parking shall be allowed within the private vehicular access and utility easement, and the Association shall maintain at all times a vertical clearance of at least twelve (12') feet above said easement, to facilitate emergency vehicle ingress and egress to and from all Lots served thereby.

- (f) As shown on the Plat, all of the odd-numbered Lots abut at least one public road right-of-way (either Kinnakeet Way or Kitty Hawk Way), and all even-numbered Lots abut the public road right-of-way known as Kitty Hawk Way. All of the even-numbered Lots and all but four of the odd-numbered Lots also abut the private access easement. It is the intention of Declarant that driveways providing ingress to and egress from the Lots, both primary and secondary, shall be subject to the approval of the Committee as to size and location. Each owner shall, as required by the Association and/or the Village of Bald Head Island, install address bollards or other approved property identification at the front of his or her Lot and at the rear of the Lot where applicable. No improvements shall be constructed by the Owner of any Lot to the extent located between the public street adjacent to the Living Unit on said Lot, and the entry to the Living Unit closest thereto, which would significantly impede emergency access to said entry. Fencing must have unlocked gates sufficiently wide to accommodate such access.
- (g) There are hereby reserved for the benefit of the owners of the Lots within the Plat, the Declarant, the Association, and all public and private utilities, and for the benefit of the Village of Bald Head Island, those certain easements as shown on the Plat, for the installation and maintenance of all utilities, public and private, and the maintenance of all roads, upon, under and across the following: all of Surfman James Pinner Alley, the front seven (7') feet of each Lot where it abuts a public right-of-way, the front seven (7') feet of both Open Space areas, the west seven (7') feet of Lot 5349; and solely for the installation and maintenance of all utilities, public and private, the west five (5') feet of Lot 5132 and the east five (5') feet of Lot 5134.
- (h) Yards shall be maintained with natural vegetation. No grasses or ornamental vegetation shall be permitted, EXCEPT, in the event the Association adopts landscaping guidelines or standards specific to the Lots hereby annexed, then in that event such vegetation shall be permitted as is described in said guidelines or standards and approved for the Lots by the Committee.
- (i) There will be installed on each of the Lots, by Bald Head Island Utilities, Inc., its successors or assigns (hereinafter "Utilities"), a grinder pump for the removal of waste water generated at the Lot, together with the equipment, pipes and lines necessary to process and

transport the waste water from the grinder pump to the sewer main tap located in the utility easement at the front or side of the Lot. The grinder pump for each Lot shall be installed within the area of the Lot designated for that purpose in the Guidelines, subject to approval by Utilities of the suitability of the exact location of said grinder pump. In no event shall any grinder pump be installed within five (5') feet of the exterior wall of any dwelling. There is hereby reserved, for the benefit of the Declarant and Utilities, a perpetual and assignable easement and right-of-way over, upon, under and across each of the Lots for the purpose of installing, accessing, monitoring, maintaining, repairing and replacing the grinder pumps and the appurtenant equipment, pipes and lines, which easements and rights-of-way shall run with the land. Utilities shall be responsible only for the re-establishment of the grade of any Lot upon which the aforesaid installation, maintenance, repair or replacement activity occurs, and the Lot owner shall be responsible for the restoration of any improvements or landscaping damaged or disturbed by such activity, and shall hold Utilities, its agents and employees, free and harmless from liability therefor.

- (j) To the extent that the Village of Bald Head Island enforces driving regulations, including, without limitation, limitations on speed and requirements as to the qualification and condition of the driver of any vehicle, said regulations and conditions are herein specifically incorporated by reference, and the Village of Bald Head Island is specifically granted authority to enforce those regulations and conditions on the private alley access easement shown on the Plat. It is expressly acknowledged and understood that the Village of Bald Head Island has no affirmative obligation to enforce said rules and regulations, but may elect to do so.

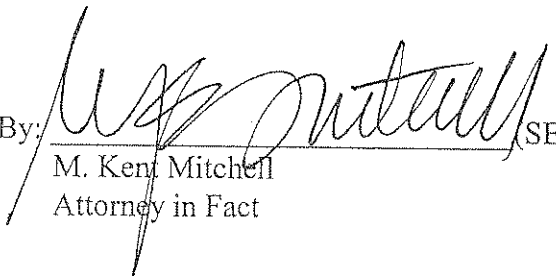
8. OPEN SPACE. The two tracts designated on the Plat as "Open Space" are hereby declared to be Common Property, and shall be conveyed by Declarant to the Association, subject to utility easements as shown on the Plat and as set forth herein, and the Association shall thereafter be responsible for the maintenance and upkeep of said tracts. The Open Space areas shall remain as open space, and no above-ground improvements shall be constructed or maintained thereon, except that walkways, paths, benches and similar improvements consistent with the enjoyment of open space may be installed by Declarant or the Association. Underground utility installation shall be allowed within the easements.

9. WAIVER. The Village of Bald Head Island is specifically released and held harmless from any claim for damages to property within Eco Tract C, Cape Fear Station, whether such damage occurs to or within Surfman James Pinner Alley, the private alley access easement shown on the Plat, to the extent such damages are caused by vehicles or equipment utilizing said private easement or otherwise responding to an emergency or providing municipal services to property within the Plat. It is specifically understood that there is a possibility that pavement or road shoulders could be damaged or destroyed, and the Association assumes the full responsibility for repairing any such damage. Emergency and municipal vehicles, including trash removal vehicles, are specifically authorized to utilize the private alley access easement to provide municipal services.

10. SUPPLEMENTAL DUES. Paragraph 6 of the Protective Covenants specifically authorizes the Association to assess a common group of Lots independently of assessments to other Lots, to the extent that such common group of Lots only is benefitted by such assessment. It is expressly acknowledged and understood that the Association may assess only the owners of those Lots adjacent to Surfman James Pinner Alley for all maintenance and upkeep expenses relating to improvements on and along said private access easement maintained by the Association, and the Association may but is not obligated to include reserves for replacement and maintenance of the road surface of said easement, which reserves shall be dedicated for the utilization of the repair and maintenance of the alley and its shoulders within the private easement area as shown on the Plat.
11. DEFINITIONS. All capitalized terms set out within this Amendment shall have the meaning specified herein, and if not so specified, the definition as contained in the Protective Covenants shall be applicable.
12. INCORPORATION BY REFERENCE. Except as specifically amended by a provision contained within this Amendment, or by a specific limitation contained in the Protective Covenants, all the terms, provisions and conditions of the Protective Covenants are made fully applicable to the property described in Paragraph 1 hereinbefore.
13. DECLARANT RESERVATION. There is hereby reserved to the Declarant, and to any assignee to whom Declarant transfers or assigns its interests hereunder, the right to use any Lot owned or leased by Declarant as a model home, sales office, or for any similar purpose related to the marketing and sale of the Lots, in accordance with Village of Bald Head Island ordinances, notwithstanding any other provisions of this Amendment or the Protective Covenants to the contrary, this right to expire when Declarant or its assignee is no longer actively engaged in the original sale of subdivided Lots on Bald Head Island.

This Amendment is executed as of the day and year first above written, on behalf of Declarant, by its Attorney in Fact, under authority duly granted.

BALD HEAD ISLAND LIMITED (SEAL)  
a Texas Limited Partnership

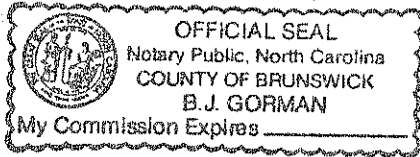
By:  (SEAL)  
M. Kent Mitchell  
Attorney in Fact

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

I, B.J. Gorman, a Notary Public for said County and State, do hereby certify that M. Kent Mitchell, attorney in fact for Bald Head Island Limited, personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and on behalf of the said Bald Head Island Limited, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Brunswick, State of North Carolina, in Deed Book 1143 at Page 912, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said M. Kent Mitchell acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for an on behalf of the said Bald Head Island Limited.

WITNESS my hand and official seal, this the 13<sup>th</sup> day of May, 2004.



B.J. Gorman  
Notary Public  
My commission expires: 3/10/08

THIS AREA LEFT INTENTIONALLY BLANK.

SEE JOINDER AND CONSENT ON FOLLOWING PAGE.



JOINDER AND CONSENT

The undersigned, Albert Kenneth Bartko and Jo Ellen Bartko, husband and wife, of 310 Winrow Drive, Jamestown, North Carolina, being the owners of Lot 5444 (revised Lot 5341) and Lot 5448 (revised Lot 5345), Eco Tract C, Kitty Hawk, Cape Fear Station, Bald Head Island, North Carolina, pursuant to that General Warranty Deed recorded the 29th day of April, 2004, in Deed Book 1934, Page 794, Brunswick County Registry, hereby acknowledge that they have reviewed the above Amended and Restated Amendment and Annexation to Protective Covenants ("Amendment") and the Revised Plat of Eco Tract C, Kitty Hawk, Cape Fear Station, referenced therein, and by their signatures below, join in and consent to the contents of said Amendment and Plat, for themselves, their heirs, successors and assigns.

*[Handwritten Signature]*

(SEAL)

Albert Kenneth Bartko

*[Handwritten Signature]*

(SEAL)

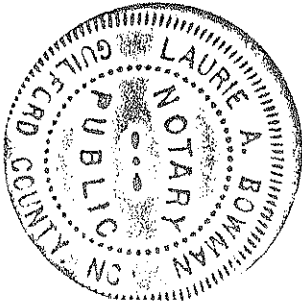
Jo Ellen Bartko

STATE OF North Carolina  
COUNTY OF Guilford

I, Laurie A. Bowman a Notary Public of and for the County and State aforesaid, do hereby certify that Albert Kenneth Bartko and Jo Ellen Barkto, husband and wife, personally appeared before me this day and acknowledged the execution of the foregoing instrument as their free act and deed.

Witness my hand and official stamp or seal, this 27<sup>th</sup> day of May, 2004.

{stamp or seal}



*[Handwritten Signature]*  
Notary Public  
My Commission expires: 11/18/2004

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of B J GORMAN Laurie A. Bowman

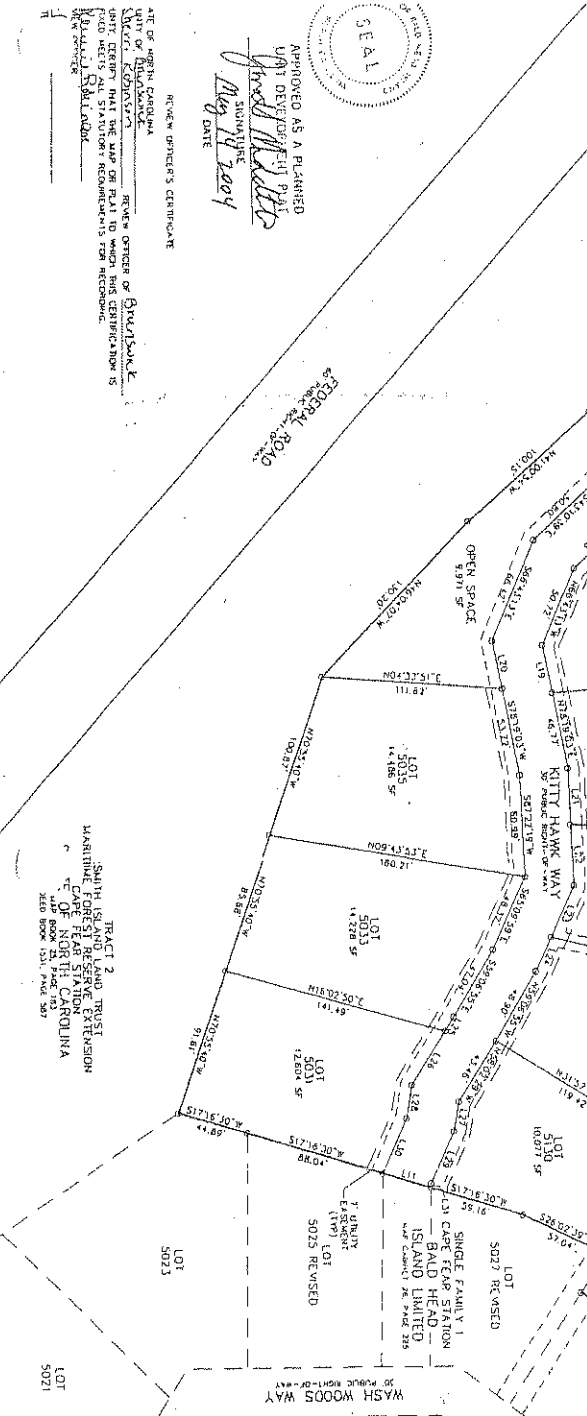
N.C. GRID NORTH, N.A.D. 1983  
 HORIZONTAL GRID DISTANCE  
 SCALE FACTOR: 1.000155

I, THOMAS W. MORGAN, P.L.S. AND L.S.M. CERTIFY THAT THIS PLAN IS OF A SURVEY OF ANOTHER CATEGORY SUCH AS THE RECOMBINATION OF THE DEVIATION OF SUBDIVISION  
 ADDRESS: 177 E. 219  
 TEL: 704-771-7777

THE WALTON OF BALD HEAD ISLAND DOES HEREBY CERTIFY THAT THIS PLAN WAS APPROVED FOR RECORDING BY THE CLERK OF SUPERIOR COURT OF WAREHOUSES AND RECORDS OF BALD HEAD ISLAND, NORTH CAROLINA, ON MAY 14, 2004.  
 THOMAS W. MORGAN  
 May 14, 2004

CAPE FEAR STATION  
 BALD HEAD  
 ISLAND LIMITED  
 AND GRANT 23 PAGE 228

1	34.17	81718.645	124	22.95	46378.38
2	38.19	49872.552	125	10.36	53832.25
3	32.06	10813.41	126	26.60	53812.84
4	31.59	46211.25	127	20.72	58813.57
5	31.59	46211.25	128	20.72	58813.57
6	32.87	55721.45	129	35.41	68537.60
7	38.68	64428.89	130	36.81	68537.60
8	21.03	64428.89	131	17.42	58821.57
9	26.40	44572.27	132	35.41	68537.60
10	38.41	44572.27	133	35.41	68537.60
11	26.40	44572.27	134	20.72	58821.57
12	31.59	46211.25	135	20.72	58821.57
13	31.59	46211.25	136	20.72	58821.57
14	31.59	46211.25	137	20.72	58821.57
15	31.59	46211.25	138	20.72	58821.57
16	31.59	46211.25	139	20.72	58821.57
17	31.59	46211.25	140	20.72	58821.57
18	31.59	46211.25	141	20.72	58821.57
19	31.59	46211.25	142	20.72	58821.57
20	31.59	46211.25	143	20.72	58821.57
21	31.59	46211.25	144	20.72	58821.57



**BRUNSWICK SURVEYING, INC.**  
 THOMAS W. MORGAN  
 Professional Land Surveyor  
 North Carolina and South Carolina  
 1027 Southeast Marine Rd., SW  
 Smyth, North Carolina 28462 (910)842-9391

**CAPE FEAR STATION BALD HEAD ISLAND LIMITED**  
 THIS PLAN REPRESENTS THE BALD HEAD SUBDIVISION THAT WAS RECORDED AT THE BRUNSWICK COUNTY, NORTH CAROLINA DEED OF RECORDS ON MAP BOOK 28 PAGE 228

**LOT 5021**  
 LOT 5022  
 LOT 5023

**LOT 5024**  
 LOT 5025  
 LOT 5026  
 LOT 5027



APPROVED AS A PLANNED UNIT DEVELOPMENT BY THE BOARD OF SUPERVISORS OF BRUNSWICK COUNTY, NORTH CAROLINA, ON MAY 14, 2004.

REVIEW OFFICER'S CERTIFICATE

ART OF NORTH CAROLINA  
 DEPARTMENT OF REVENUE  
 REVIEW OFFICER OF BRUNSWICK COUNTY

cc/01/04 MC 30, PG 245