

RET JUDY WARD  
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STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

AMENDMENT AND ANNEXATION TO PROTECTIVE COVENANTS  
BALD HEAD ISLAND STAGE TWO  
SINGLE FAMILY 13  
CAPE FEAR STATION

This Amendment and Annexation to Protective Covenants, Bald Head Island Stage Two, ("Amendment") is made by Bald Head Island Limited this 24<sup>th</sup> day of JUNE, 2002.

RECITALS:

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 may be set out in the Amendment annexing said lots.

By execution and recordation of this Amendment, it is the intent of the Declarant to annex those properties described hereinafter to the terms, provisions and conditions of the Protective Covenants, subject to the specific provisions contained herein.

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 4302 through 4312,

and odd-numbered Lots 4205 through 4219) as shown on that plat recorded in Map Cabinet 26, Instrument 305, 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, 2003, 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 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.
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, all of the Lots shown on the Plat shall have the following lot type designation: "House (H)". In accordance with the Guidelines, the minimum square footage of heated, enclosed living space for each approved Living Unit shall be 1,000 square feet, and the maximum shall be 30% of the total Lot area, but not to exceed 3,000 square feet.
- (b) Each Lot owner shall keep the grounds on his 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) In order to comply with the North Carolina Coastal Storm Water Regulations enacted by the Department of Environmental Management of the State of North Carolina, each Lot shall contain a maximum square footage covered by impervious surfaces (as defined by the Department of Environmental Management), which limitation shall be as follows: for Lots 4302, 4304, 4310, and 4211, three thousand (3,000) square feet per Lot; for all other Lots shown on the Plat, three thousand five hundred (3,500) square feet per Lot. Impervious surfaces include structures, paved surfaces, walkways, patios of brick, stone, slate and similar materials, and use of other materials that substantially negatively impact the ability of water to be assimilated into the soil. This provision is intended to ensure continued compliance with storm water runoff regulations adopted by the State of North Carolina, and therefore 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. This provision, as well as all other provisions of the Protective Covenants, runs with the land and is binding on all persons owning any Lot as shown on the Plat. No amendment of this provision shall be allowed unless consented to in writing by the State of North Carolina, Department of Environmental Management.

- (e) As shown on the Plat, there exists a private vehicle access easement (alley) twenty (20') feet in width, which provides vehicular access to the rear of the Lots from the public road rights-of-way, and which easement is hereby reserved for the benefit of the Association, its members, the Declarant, 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 the private alley easement with either asphalt or concrete. It is expressly understood and agreed that the Association shall be responsible for the maintenance and upkeep of the entire private alley easement, including any walls or bulkheads therein, and shall cause it to be kept in a 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 private easement.
- (f) As shown on the Plat, all of the Lots abut at least one public road right-of-way, as well as the private vehicular 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 both the front and the rear of his Lot. 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) As shown on the Plat, there exists a pedestrian easement ten (10') feet in width, running upon and across Lots 4213 and 4215, which easement connects the public road right-of-way, Portsmouth Way, with the private

vehicular access easement. The pedestrian easement is hereby reserved for the benefit of the Association, its members, the Declarant, and all public and private utilities. The Declarant shall have no obligation to hard-surface or improve said pedestrian easement, but may do so at its sole discretion. It is expressly understood and agreed that the Association shall be responsible for ~~the maintenance and upkeep of the entire pedestrian easement, and shall cause it to be kept in a good and passable condition at all times.~~

- (h) 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 for the installation and maintenance of all utilities, public and private, and the maintenance of all roads and alleys, upon, under and across the following: all portions of the private vehicular access easement (alley) and the pedestrian easement shown on the Plat, and the front seven (7') feet of each Lot adjacent to the public road rights-of-way.
- (i) No overnight parking shall be allowed within the private vehicular access easement as shown on the Plat, and the Association shall maintain at all times a vertical clearance of at least twelve (12') feet above said easement, in order to facilitate emergency vehicle ingress and egress to and from the Lots.
- (i) 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 Lot by the Committee.
- (j) There will be installed on each of the Lots, by Bald Head Island Utilities, Inc., its successors or assigns (hereinafter Utility Company), 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 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 the Utility Company 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 the Utility Company, 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. The Utility Company 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 the Utility Company, its agents and employees, free and harmless from liability therefor.

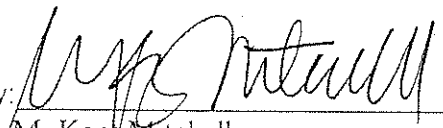
- (k) To the extent that the Village of Bald Head Island enforces driving regulations, including, without limitation, limitations on speed and requirements as to the qualification and condition of the driver of any vehicle, said regulations and conditions are herein specifically incorporated by reference, and the Village of Bald Head Island is specifically granted authority to enforce those regulations and conditions on the private 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 tract designated on the Plat as "Open Space" is hereby declared to be Common Property, and shall be conveyed by Declarant to the Association, subject to any utility and access easements shown on the Plat and/or as set forth herein, and the Association shall thereafter be responsible for the maintenance and upkeep of said tract. The said tract 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, and provided that underground utility installation shall be allowed within the easements.
9. 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.
10. 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.
11. WAIVER. The Village of Bald Head Island is specifically released and held harmless from any claim for damages to property within Single Family 13, Cape Fear Station, whether such damage occurs to or within the private vehicular 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 access easement to provide municipal services.

12. 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 the private access easement (alley) for all maintenance and upkeep expenses relating to improvements on and along said private vehicular access easement maintained by the Association, and the Association may but is not obligated to include reserves for replacement and maintenance of the easement's road surface, which reserves shall be dedicated for the utilization of the repair and maintenance of the road and its shoulders within the private easement as shown on the Plat.
  
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 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 assigns 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. Ken Mitchell  
Attorney in Fact

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

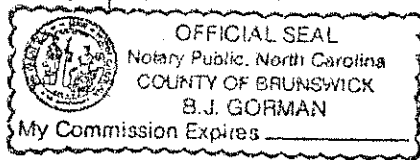
I, B.J. Gorman, a Notary Public for said County and State, do hereby certify that M. Kent Mitchell, attorney in fact for Bald Head Island Limited, personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said 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 in behalf of the said Bald Head Island Limited.

WITNESS my hand and official seal, this the 24<sup>th</sup> day of June, 2002.

My Commission expires: 3/10/03

B.J. Gorman  
Notary Public



STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

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

Notary(ies) Public is (are) Certified to be Correct.  
This Instrument was filed for Registration on this 1<sup>ST</sup> Day of JULY, 2002  
in the Book and page shown on the First Page hereof.

Robert J. Robinson / TE  
ROBERT J. ROBINSON, Register of Deeds





