

Brunswick County—Register of Deeds
Robert J. Robinson
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AMENDED AND RESTATED
AMENDMENT AND ANNEXATION TO PROTECTIVE COVENANTS
BALD HEAD ISLAND STAGE TWO
THE CRESCENT
CAPE FEAR STATION - MULTI-FAMILY 2

This Amended and Restated Amendment and Annexation to Protective Covenants, Bald Head Island Stage Two, ("Amendment") is made by Bald Head Island Limited this 29th day of June, 2005.

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, Brunswick County, North Carolina. 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 aforesaid Brunswick County Registry in Book 2075 at Page 1220, an Amendment and Annexation to Protective Covenants, Bald Head Island Stage Two, The Crescent, Cape Fear Station – Multi-Family 2, and has further caused to be recorded in said Registry in Map Cabinet 31, Instrument 412, a Plat of survey which sets out and describes the property and Units subject to said Amendment and Annexation; and,

WHEREAS, the Declarant, being the sole owner of all property and Units in The Crescent, Cape Fear Station – Multi-Family 2, as depicted in the aforesaid Plat of survey, has decided to revise and reconfigure certain of said real property and Units, and has caused the same to be replatted to reflect such revision and reconfiguration, which revised Plat of survey is recorded in Map Cabinet 32, Instrument 487, Brunswick County Registry; and,

WHEREAS, by execution and recordation of this Amended and Restated Amendment and Annexation, 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, subject to the revised Plat referenced above and to the specific provisions contained herein, and the Declarant hereby declares that this Amended and Restated Amendment and Annexation shall supercede and replace the previous Amendment and Annexation applicable to the property and Units described herein and depicted on said revised Plat;

NOW THEREFORE, the Declarant hereby declares that all of the property and Units shown on the revised Plat shall hereafter be held, owned and conveyed subject to the provisions of this Amended and Restated Amendment and Annexation; that upon the recording of this Amended and Restated Amendment and Annexation, the previous recorded Amendment and Annexation and Plat of survey of the property and Units shall have no further force or effect; and that all conveyances of any interest in the property or Units shall henceforth be made with reference to the revised Plat and this Amended and Restated Amendment and Annexation.

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 Units one [1] through eight [8], Units ten [10] through twelve [12], Units fourteen [14] through seventeen [17] and Unit nineteen [19], with the appurtenant stairs, decks, walkways, patios, crofters (C), garages (G), or combination thereof (CG), Common Property, the private right-of-way, and the areas designated "Future Development" and "Open Space Park"), all as shown on that plat for The Crescent, Cape Fear Station, Multi-Family 2, recorded in Map Cabinet 32, Instrument 487, Brunswick County Registry ("Plat"), as the same may be amended from time to time. As used herein, "Unit" shall mean any numbered building pad designated for construction of a residence ("Living Unit"), the building pad for the garage or garage/crofter combination (if any) assigned thereto, the stairs, decks, walkways, and/or patio attached thereto or associated therewith, together with the land surrounding said building pads to the drip-line of the eaves thereof, as numbered and shown on the Plat, subject to such adjustment of said building pads as may be reasonably necessary due to specific site conditions (e.g., topography and vegetation) to allow construction thereon. The property shown on the Plat which is not included in a Unit, including the areas designated "Open Space Park", but NOT INCLUDING the areas designated "Future Development", is hereby declared to be Common Property of the Association (as defined in the Protective Covenants).
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 Unit shall be a member of the Association, and shall be required to pay dues and assessments as set out in the Protective Covenants, including Supplemental Dues where applicable. The Owner of each of the Units shall begin paying dues and assessments to the Association as of the date of acquisition of title, and for Units owned by Declarant or an entity owned or controlled by Declarant, as of the calendar year following the issuance of a certificate

of occupancy for the Unit, if not previously conveyed to a third party. For all purposes of the Protective Covenants, including but not limited to the assessment and collection of dues, a Unit described hereunder shall be the equivalent of a Lot as set forth and defined therein.

3. SINGLE FAMILY UTILIZATION. Except for such other uses as have been or are hereinafter reserved to Declarant, all Units 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. The Plat sets out allowed building pads for the primary Living Unit and the garage, crofter, or garage/crofter combination (if any) for each Unit. The actual location of said building pads is subject to such adjustment as may be reasonably necessary, due to specific site conditions, to allow construction thereon while having a minimal impact on the topography, vegetation, and other natural features of the area. There shall be no setbacks, other than those depicted on the Plat and/or imposed by the Village of Bald Head Island or other governmental authority, except that all construction of every Living Unit and garage or garage/crofter combination must be within the designated building pad(s) as shown on the Plat or as reasonably adjusted, subject to the approval, rules, and regulations of the Committee, as more fully set out in Paragraph 4 of the Protective Covenants. This requirement to construct within the designated building pad, as shown on the Plat or as reasonably adjusted, shall specifically take precedence over any presumed setbacks as set out in Paragraph 8 of the Protective Covenants. Stairs, decks, walkways, and patios may be constructed outside the building pads, subject to approval by the Committee. In any event, 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, including the ten (10') foot setbacks from the public rights-of-way as shown on the Plat. Improvements other than the primary Living Unit and its garage or garage/crofter combination (if any), if approved by the Committee, may be constructed within setbacks established by Declarant.
5. LIMITATION ON HEIGHT. No structure constructed on any Unit 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.
6. BUILDING AND SITE RESTRICTIONS. All Units 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 Units 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 Unit prior to the sale of said Unit to a third party, notwithstanding the sale of other Units which are subject to the Guidelines. For purposes of the Guidelines, the lot-type designations for each of the Units shown on the Plat shall be as set forth on "Exhibit A", attached hereto and incorporated herein by this reference. In accordance with the Guidelines, the minimum and maximum square footage of heated, enclosed living space for each approved Living Unit shall be as set forth for each Unit type on the attached "Exhibit A".

- (b) Each Unit Owner shall keep all buildings located within his Unit in a clean, neat and sightly condition, and shall provide for the regular removal of all trash or refuse from his Unit, and shall further, at his own expense, be responsible for maintaining in good repair and in a safe, clean, and sightly condition the Living Unit itself (including its garage, crofter, or garage/crofter, if any), and the stairs, decks, individual walkways and/or patio attached to, associated with, or benefiting the Unit, even though the same may be located upon Common Property; PROVIDED, that the Association shall be responsible for the maintenance and upkeep of the Open Space Park, as well as the Common Walkway running from the private right-of-way to the southwestern boundary of the property between even-numbered Units six (6) through twelve (12), and the semi-circular sidewalk and retaining wall on the perimeter of the Open Space Park; but the Association shall not be responsible for the individual walkways which run between the Units and the garages, crofters, or garage/crofter combinations, or from the Units or the garages and garage/crofters to the private right-of-way easement or to the aforesaid Common Walkway. Each such individual walkway shall be maintained by the owner of the Unit to which it is appurtenant.
- (c) No animals, livestock or poultry of any kind shall be kept or maintained on any Unit 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, all of the property shown on the Plat, including the Units, appurtenances constructed thereon, and the areas designated as Future Development and Open Space Park, shall contain a maximum area of one (1) acre covered by impervious surfaces (as defined by the Department of Environmental Management). 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 6(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 a different impervious surface amount on the property shown on the Plat, upon filing by Declarant or the Association of a notice of said change in permit, the impervious surface limitation as to said property 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 Unit or property 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, Sumner's Crescent is a private right-of-way easement twenty (20') feet in width, which provides vehicular access to the Units and their garages or garage/crofters (if any). Owners of the Units are prohibited from establishing driveways or vehicular entrances of any kind along said easement except as are approved by the Committee. 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 is required to hard-surface (pave) a minimum of twelve (12') feet in width of said private right-of-way 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, and shall cause the paved portion thereof 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 right-of-way easement, even if the same lies within the easement area.
- (f) As shown on the Plat, vehicular access to Sumner's Crescent, the private easement, is over the public right-of-way known as Wash Woods Way. It is the intention of Declarant that there shall be one driveway providing ingress to and egress from each of the Units designated 2, 4, 14 and 16, and one shared driveway for each of the two garage/crofter combinations designated Units 6 & 8 and Units 10 & 12, as shown on the Plat. Each driveway shall be surfaced with gravel, and shall be constructed from the paved portion of the private right-of-way at the specific location approved by the Committee. Owners are hereby prohibited from establishing driveways or vehicular entrances of any kind from Wash Woods Way or from Federal Road. Each pair of Owners sharing a driveway which serves the garage/crofters associated their respective Units shall be equally responsible for the maintenance and upkeep of said driveway, even though the same may be located on Common Property or in the private access easement. Each Owner shall install address bollards or other approved property identification at his

Unit as required by the Association and/or the Village of Bald Head Island. No improvements shall be constructed by the Owner of any Unit to the extent located between the private easement and the entry to said Living Unit, 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 Units within the Plat, the Declarant, the Association, all public and private utilities, and the Village of Bald Head Island, those certain easements for the installation and maintenance of all utilities, public and private, and for the maintenance of all roads and rights-of-way, over, upon, under and across the following: the twenty (20') foot private vehicular access easement; seven (7') feet along and adjacent to the public right-of-way known as Wash Woods Way; seven (7') feet along the entire southwestern boundary of the property as depicted on the Plat; and five (5') feet along and adjacent to the drip-lines of the eaves on the sides of each Unit, including its garage, crofter, or crofter/garage combination (if any). There is also hereby reserved, for the benefit of the Declarant and all public and private utilities, an easement, ten (10') feet to seventeen and 1/100 (17.01') feet in width, for access to and maintenance of an existing well, which easement runs in a northeasterly direction from the southwestern boundary of the property just east of the westernmost area designated for Future Development, as shown and described on the Plat. There are further reserved, for the benefit of the Owners of the Units, the Declarant, the Association, and all public and private utilities, such easements upon, across, and under the Common Property as may be necessary for the installation and maintenance of utilities to serve each and every Unit shown on the Plat, as well as other lots or units in Cape Fear Station.
- (h) No overnight parking shall be allowed within the private right-of-way easement 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 access to and from adjacent Units.
- (i) All property shown on the Plat subject to this Amendment 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 property hereby annexed, then in that event such vegetation shall be permitted as is described in said guidelines or standards and approved by the Committee.
- (j) There is shown on the Plat a buffer area, twenty (20) feet in width, along the westernmost boundary of the property in the area designated for Future Development, adjacent to the maritime forest preserve owned by the State of North Carolina. No construction of any kind shall be allowed in said buffer area, except for underground utilities installation, pedestrian crossings, or

drainage structures. The buffer area shall be kept in its natural state, and no tree removal, landscaping or altering of the terrain shall be allowed, except for regular maintenance to include the clearing of brush, and as may be required to allow permitted construction.

7. 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.
8. 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.
9. WAIVER. The Village of Bald Head Island is specifically released and held harmless from any claim for damages to property within the Plat, whether such damage occurs to or within the private right-of-way easement shown on the Plat, to the extent that 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 to the private easement. Emergency and municipal vehicles, including trash removal vehicles, are specifically authorized to utilize Sumner's Crescent to provide municipal services.
10. COMMON PROPERTY. All property shown on the Plat which is not included within a Unit (as herein defined), or within the area called "Future Development", shall be considered Common Property, to be owned, held, managed and maintained for the benefit of the members of the Association, and title to which shall be conveyed by Declarant to the Association on or before the sale of the last Unit to a person or entity other than an entity owned or controlled by Declarant. All such Common Property shall be available for the use and benefit of the members of the Association, subject to the provisions of these Protective Covenants and the reasonable rules and regulations adopted from time to time by the Board of Directors of the Association. To the extent that an Owner is responsible, under these Covenants, for the cost of maintaining an improvement attached to or associated with his Unit and located upon Common Property, the use and benefit of such improvement shall be limited to the Owner and his invitees. The Declarant shall, at its expense, construct upon the Common Property the following improvements for the use and benefit of the members of the Association, to wit: pedestrian paths, a sidewalk and retaining wall along the interior perimeter of the Open Space Park, and a Common Walkway running from Sumner's Crescent to the southwestern boundary of the property between Lots 6, 8, 10 and 12, all as shown on the Plat.

11. SUPPLEMENTAL DUES. Paragraph 6 of the Protective Covenants specifically authorizes the Association to assess Supplemental Dues to a common group of lots independently of dues assessments to other lots, to the extent that such common group of lots only is benefited by such assessment. It is expressly acknowledged and understood that the Association may, in its discretion, limit the use of the Common Property and the improvements to be located on the Common Property to the Owners of the Units depicted on the Plat. In that event, the Association would assess only said Unit Owners for the maintenance and upkeep expenses relating to said Common Property and the improvements located thereon, specifically including (but not limited to) the grounds, paths, parks, and walkways, should the Board of Directors of the Association, in its sole and unlimited discretion, deem it to be in the best interests of the Association to do so. In such event, the Association may but is not obligated to include reserves for replacement and maintenance of the Common Property improvements, which reserves shall be dedicated for the utilization of the repair and maintenance of said improvements as shown on the Plat or any amendment thereto.
12. OPTIONAL SUBASSOCIATION. At any time after all Units depicted on the Plat have been sold by Declarant to persons or entities other than entities owned or controlled by Declarant, the Owners of the Units may, but are not obligated to, establish a separate sub-association to own, maintain, and control the Common Property shown on the Plat, to levy and collect dues and assessments from the Unit Owners to defray the costs of such ownership, maintenance and control, and to establish rules and regulations for the use of the Units and the Common Property within The Crescent development, PROVIDED HOWEVER, that all of said Units, Owners, and Property shall remain subject to and bound by the Protective Covenants of the Bald Head Island Stage Two Association, Inc. (the "Master Association") as said Covenants may be amended from time-to-time, and specifically to the authority of said Master Association to levy and collect dues and assessments from all Owners as set forth in said Covenants. The subassociation authorized by this paragraph shall be established only upon the affirmative vote of two-thirds (2/3) of the Owners of the Units depicted on the Plat, one vote being allowed per Unit. If such a subassociation is established, it shall own, maintain, and control all of the Common Property shown on the Plat and described in this Amendment
13. OPEN SPACE. There is shown on the Plat an Open Space Park, which total area of which shall be open and primarily undisturbed, and which shall be maintained to preserve its natural and undisturbed character. No above-ground improvements shall be constructed within said Open Space area except walking paths and the semi-circular perimeter sidewalk and retaining wall, intended to accommodate casual, pedestrian use, and minor utility structures for pumps, wells, and similar purposes. The Association shall be responsible for maintenance of the Open Space Park, and shall cause it to be maintained in a good and sightly condition, as authorized by and in accordance with the requirements of the Protective Covenants.

- 14. DECLARANT RESERVATIONS. 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 Unit owned or leased by Declarant as a model home, sales office, or for any similar purpose related to the marketing and sale of the Units, 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 lots on Bald Head Island. There is hereby further reserved to the Declarant the right (but not the obligation) to develop the areas which are designated on the Plat for Future Development, with Lots and/or Units which may be added to The Crescent by addendum to this Amendment and Annexation, or which may be developed independently hereof.

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
a Texas Limited Partnership

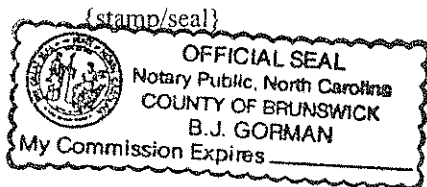
By: [Signature] (SEAL)
M. Kent Mitchell
Attorney in Fact

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 in behalf of the said Bald Head Island Limited.

WITNESS my hand and official seal, this the 29th day of June, 2005.



[Signature]
Notary Public
My Commission expires: 3/10/08

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

B. J. GORMAN

The Foregoing (or annexed) Certificate(s) of _____

EXHIBIT A

THE CRESCENT
LOT TYPE DESIGNATIONS

<u>Unit Number</u>	<u>Home Type</u>	<u>Maximum Heated Area (sq.ft.)</u>
1	Crescent Cottage	1,200
2	Breech's Buoy	2,000
3	Crescent Cottage	1,200
4	Boatswain 2	2,000
5	Crescent Cottage	1,200
6	Boatswain	2,000
7	Crescent Cottage	1,200
8	Key Post	2,000
10	Key Post	2,000
11	Crescent Cottage	1,200
12	Boatswain	2,000
14	Key Post	2,000
15	Crescent Cottage	1,200
16	Breech's Buoy	2,000
17	Crescent Cottage	1,200
19	Crescent Cottage	1,200

