

NORTH CAROLINA

CURRITUCK COUNTY

AMENDMENT & MODIFICATION OF RESTRICTIVE COVENANTS
(Whalehead Club Subdivision)

THIS AMENDMENT & MODIFICATION OF RESTRICTIVE COVENANTS made this 18th day of January, 1999 from COROLLA ASSOCIATES, a limited partnership, WHALEHEAD ASSOCIATES, a limited partnership and H I S Whalehead, a limited partnership, by their duly constituted Attorneys-in-Fact and GERALD J. FRIEDMAN, Partners trading as WHALEHEAD PROPERTIES, a Joint Venture and NANCY FRIEDMAN, wife of Gerald J. Friedman by her duly constituted Attorney-in-Fact, the undersigned, as Grantor and Developer to ALL PERSONS, FIRMS or CORPORSTIONS heretofore or hereafter acquiring property in Sections Three (3) through Fourteen (14) of Whalehead Club Subdivision as shown on plats of record in Map Book 3 at Pages 66 through 77 of the Currituck County Registry, As Grantee;

W I T N E S S E T H :

Whereas, Grantor and Developer has sold and developed properties on the Currituck County Outer Banks, including various lots in Sections Three (3) through Fourteen (14) of Whalehead Club as shown on plats of record in the Currituck County Registry in Map Book 3 at Pages 66 through 77; and

Whereas, such properties were sold and developed subject to a declaration of restrictive covenants executed by Grantor and Developer dated March 6, 1972 of record in Book 116, Page 422 of the Currituck County Registry as amended from time to time; and

Whereas, Grantor and Developer has heretofore granted, transferred and conveyed to Curritcuk County Lot 35A, Section Four (4); Lot 24A, Section Eleven (11); and Lot 35A, Section Thirteen (13) of Whalehead Club Subdivision by deed dated June 5, 1972 of record in Book 117, Page 226 of the Currituck County Registry for use by the County in providing services to Whalehead Club residents and the public; and

Whereas, Currituck County has heretofore constructed a fire and rescue station on Lot 35A, Section Thirteen (13) and parking lots on Lot 24A, Section Three (3), Lot 35A, Section Four (4), Lot

34A, Section Seven (7), Lot 35A, Section Nine (9) and Lot 34A, Section Eleven (11), but some question has arisen with regard to (1) the right of Currituck County to so use its lots in light of Section First and Section Second of the declaration of restrictive covenants of record in Book 116, Page 422 of the Currituck County Registry and as subsequently amended and modified; and (2) the right of Currituck County to erect "Parking" signs on said lots and directional signs to such lots within the platted rights-of-way of the streets in Whalehead Club Subdivision in light of Section Eighth of the declaration of restrictive covenants of record in Book 116, Page 422 of the Currituck County Registry and as subsequently amended and modified; and

Whereas, the Grantor and Developer heretofore dedicated all streets, alleys, walks, parks and other open spaces shown and designated on the plats of Sections Three (3) through Fourteen (14) of the Whalehead Club Subdivision of record in Map Book 3 at Pages 66 through 77 of the Currituck County Registry to public or private use as noted (See Certificate of Ownership and Dedication in Map Book 3 at Page 79 of the Currituck County Registry); and

Whereas, Currituck County accepted the dedication of the easements, rights-of-way and public park shown on the plats or maps of Whalehead Club Subdivision, but assumed no responsibility to open or maintain the same until, in the opinion of the governing body of Currituck County, it was in the public interest to do so (See Certificate of Approval and Acceptance of Dedication in Map Book 3 at Page 79 of the Currituck County Registry); and

Whereas, despite the Grantor and Developer's offer of dedication, Currituck County's acceptance of the offer of dedication, and the law applicable thereto as noted in Emanuelson v. Gibbs, 49 N.C. App. 417, 271 S.E.2d 557 (1980), some question has arisen in light of the above referenced Certificates of Ownership and Dedication and Approval and Acceptance of Dedication and Sections Second and Eleventh of the declaration of restrictive covenants of record in Book 116, Page 422 of the Currituck County Registry and as subsequently amended and modified with regard to the right of Currituck County to construct and maintain vehicle access ramps and pedestrian access ramps, boardwalks or walkways

within the areas shown on the Whalehead Club Subdivision plats in Map Book 3 at Pages 66 through 77 of the Currituck County Registry as streets or street rights-of-way and easements and walks or pedestrian rights-of-way and easements; and

Whereas, Grantor and Developer believes that the aforementioned uses by Currituck County of its lots and dedicated areas as noted above are consistent with the declaration of restrictive covenants of record in Book 116, Page 422 of the Currituck County Registry and as subsequently amended, but because of the questions which have nonetheless arisen, Grantor and Developer desires by this Amendment & Modification of Restrictive Covenants to remove any uncertainty regarding the permissibility of the uses, activities and structures in question an amend and modify the declaration of restrictive covenants dated March 6, 1972 of record in Book 116, Page 422 of the Currituck County Registry as subsequently amended and modified to the extent required to render the uses, activities and structures permissible; and

Whereas, Grantor and Developer still owns and has title to certain lots in the Whalehead Club Subdivision as shown and depicted on one or more of the plats for Section Three (3) through Fourteen (14) of the subdivision of record in Map Book 3 at Pages 66 through 77 of the Currituck County Registry; and

Whereas, pursuant to Section Fifteenth of the declaration of restrictive covenants, Grantor and Developer has reserved onto itself, its successors and assigns, the right to amend, modify or vacate any restriction whenever the circumstances, in the opinion of the Developer, its successors or assigns, warrant such amendment, modification or vacation as being necessary to desirable; and

Whereas, Grantor and Developer's right to act pursuant to Section Fifteenth of the declaration of restrictive covenants dated March 6, 1972 of record in Book 116, Page 422 of the Currituck county Registry as subsequently amended and modified has been confirmed in Rosi v. McCoy, 319 N.C. 589, 356 S.E.2d 568 (1987);

NOW THEREFORE, acting pursuant to Section Fifteenth of the declaration of restrictive covenants dated March 6, 1972 and filed March 15, 1972 in Book 116, Page 422 of the Currituck County Registry for Whalehead Club Subdivision, including Sections Three (3) through Fourteen (14) as shown on the plats of record in Map Book 3 at Pages 66 through 77 of the Currituck County Registry, Grantor and Developer herewith amends and modifies said declaration of restrictive covenants as follows:

1. Section FIRST of the declaration of restrictive covenants in Book 116, Page 422 is stricken, deleted and removed. In lieu thereof, the following is inserted as the amended and modified Section FIRST of the declaration of restrictive covenants:

FIRST: Except as hereinafter expressly provided, commercial multi-family structures such as motels and apartment houses may be built on all lots in Whalehead Club, sections one, two, fifteen and sixteen (1, 2, 15 and 16). Any other proposed type of business structure in lieu thereof must be approved by the Developers. Owners of these business sites may build a residential house, however, plans must be approved by the Developers

Lot 35A of section 4 (4), Lot 24A of section 3 (three), Lot 34A of section 7 (seven), Lot 35A of section 9 (nine), Lot 34A of section 11 (eleven), and Lot 35A of section 13 (thirteen) were conveyed by the Developer to the County of Currituck by deed dated June 5, 1972 of record in Book 117, Page 26 of the Currituck County Public Registry for use by the County of Currituck in provided services, including but not limited to fire, rescue and parking to Whalehead Club residents and the public. Use of such lots for said purposes is expressly permitted notwithstanding the fact that such lots are not located in Whalehead Club, sections three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen (3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14).

2. Section SECOND of the declaration of restrictive covenants in Book 116, Page 422 is stricken, deleted and removed. In lieu thereof, the following is inserted as the amended and modified Section SECOND of the declaration of restrictive covenants:

SECOND: Except as hereinafter expressly provided, all lots in Whalehead club, sections three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen (3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14) shall be used for residential purposes only. No building shall be erected or placed or permitted to remain on any lot other than one detached single family dwelling not to exceed 2 ½ stories in height and same may contain a private garage for not more than two cars for each unit

Lot 35A of section four (4), Lot 24A of section 3 (three), Lot 34A of section 7 (seven), Lot 35A of section 9 (nine), Lot 34A of section 11 (eleven) and Lot 35A of section 13 (thirteen) were conveyed by the Developer to the County of Currituck by deed dated June 5, 1972 of record in Book 117, Page 26 of the Currituck County Public Registry for use by the County of Currituck in provided services, including but not limited to fire, rescue, and parking to Whalehead Club residents and the public. Use of such lots for said purposes is expressly permitted.

3. Section EIGHTH of the declaration of restrictive covenants in Book 116, Page 422 is stricken, deleted and removed. In lieu thereof, the following is inserted as the amended and modified Section EIGHTH of the declaration of restrictive covenants:

EIGHTH: Except as hereinafter provided, no sign of any kind shall be displayed to the public view on any lot except on sign of not more than 5 square feet advertising the property for sale or rent or signs used by the Develops to advertise the property during construction and sale period.

Lot 35A of section four (4), Lot 24A of section 3 (three), Lot 34A of section 7 (seven), Lot 35A of section 9 (nine), Lot 34A of section 11 (eleven) and Lot 35A of section 13 (thirteen) were conveyed by the Developer to the County of Currituck by deed dated June 5, 1972 of record in Book 117, Page 26 of the Currituck County Public Registry for use by the County of Currituck in provided services, including but not limited to fire, rescue, and parking to Whalehead Club residents and the public. The erection and display of two signs on each of said lots not more than 5 square feet so indicating the use of such lots for said purposes and the erection and beach access signs within the Whalehead Club street right-of-way is expressly permitted.

4. Section ELEVENTH of the declaration of restrictive covenants in Book 116, Page 422 is stricken, deleted and removed. In lieu thereof, the following is inserted as the amended and modified Section ELEVENTH of the declaration of restrictive covenants:

ELEVENTH: No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Consistent with the Developer's offer of dedication of the streets, alleys, parks and other open spaces shown and designated on the plats of Sections Three (3) through 14 (fourteen) of the Whalehead Club Subdivision of record in Map Book 3 at Pages 66 through 77 of the Currituck Country Registry and Currituck County's

acceptance of dedication of the easements, rights-of-way and public park shown on said plats, the construction and maintenance by Currituck County of vehicle access ramps and pedestrian access ramps, boardwalks or walkways within the areas shown on the Whalehead club subdivision plats in Map Book 3 at Pages 66 through 77 of the Currituck County Registry as streets or street rights-of-way and easements and walks or pedestrian rights-of-way and easements for use by Whalehead Club residents and the public is a permitted use under this declaration of restrictive covenants.

Except as expressly amended and modified, the declaration of restrictive covenants in Book 116, Page 422 of the Currituck County Registry and as subsequently amended and enforceable as written on all lots platted in Sections Three (3) through Fourteen (14) of the Whalehead Club Subdivision duly filed for record in Map Book 3 at pages 66 through 77 of the Currituck County Registry.

IN WITNESS WHEREOF Grantor and Developer has caused these presents to be executed in its name with its seal or seals affixed hereto as of the day and year first above written.

COROLLA ASSOCIATES,
A Limited Partnership

WHALEHEAD ASSOCIATES,
A Limited Partnership

H I S WHALEHEAD
A Limited Partnership

Partners Trading as WHALEHEAD
PROPERTIES, A Joint Venture
and NANCY FRIEDMAN, wife of
Gerald J. Friedman