

KIRKMAN, KIRKMAN & JENKINS, P .A

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

SECOND AMENDMENT TO AMENDED AND RESTATED

DECLARATION OF COVENANTS AND RESTRICTIONS

BRANDYWINE BAY DEVELOPMENT

(North Kerr Properties, Inc. Tract)

THIS SECOND AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS, dated for purposes of reference only this 14th day of October, 1988 (as amended from time to time, the Second Amendment"), by NORTH KERR PROPERTIES, INC., a North Carolina corporation with offices in Carteret County, North Carolina, hereinafter called "Developer"; with joinder of JESSE W. HOWARD, Successor Trustee, and BRANCH BANKING AND TRUST COMPANY, Beneficiary, under that Deed of Trust recorded in Book 578, Page 167, Carteret County Registry, and with further joinder of H. BUCKMASTER COYNE, JR., Trustee, and OAK RIDGE COAL CO., INC., a West Virginia corporation with offices in Carteret County, North Carolina, Beneficiary, hereinafter called "Seller."

W I T N E S S E T H:

WHEREAS, Seller or its predecessor in interest has previously recorded a Declaration of Covenants and Restrictions in Book 435, Page 362, Carteret County Registry, and has further caused said Declaration to be amended, inter alia, by documents recorded in Book 440, Page 213, Carteret County Registry (rerecorded in Book 440, Page 392, Carteret County Registry), and in Book 494, Page 345, Carteret County Registry (such Declaration of Covenants and Restrictions, as amended from time to time, being hereinafter called the "Existing Declaration"); and

WHEREAS, the Existing Declaration contemplates and provides for making additional property subject thereto, by amendment, in order that all of the property described on Exhibit A attached to the Existing Declaration recorded in Book 435, Page 362, Carteret County Registry, would be subject to the option to be developed in accordance with the uniform plan as set out in said Existing Declaration; and

WHEREAS, Seller has conveyed to Developer portions of the property above described, and has further transferred to Developer the right to amend the Existing Declaration to subject additional property to said Existing Declaration, in accordance with the terms contained within said Existing Declaration; and

WHEREAS, Developer has amended the Existing Declaration pursuant to an Amended and Restated Declaration of Covenants and Restrictions Brandywine Bay Development, recorded in Book 590, Page 171, and by recording a First Amendment and Restated

Declaration of Covenants and Restrictions Brandywine Bay Development, recorded in Book 591, Page 46, Carteret County Registry (the "New Declaration"), in order to subject the property described therein to the Existing Declaration, as amended thereby; and

WHEREAS, Developer desires to subject additional property to the terms and conditions of the Existing Declaration, as modified by the New Declaration; and

WHEREAS, Jesse W. Howard and Branch Banking and Trust Company, have, at the request of Developer, agrees to join in the execution of this Second Amendment solely for the purpose of subordinating that Deed of Trust recorded in Book 578, Page 167, and rerecorded in Book 580, Page 29, Carteret County Registry, to the terms of this Second Amendment; and

WHEREAS, Seller and H. Buckmaster Coyne, have, at the request of Developer, agreed to join in the execution of this Second Amendment for the purpose of subordinating that Deed of Trust recorded in Book 578, Page 166, Carteret County Registry, to the terms of this Second Amendment, and, in the case of Seller, for the purpose of acknowledging its consent hereto;

NOW, THEREFORE, the New Declaration is hereinafter amended and supplemented as set forth below.

ARTICLE I

Section i. Description.

The New Declaration is hereby amended by including the property described herein on Exhibit A hereto to the "Properties" to which the provisions of the New Declaration shall be binding.

Section iii. Effectiveness.

This Second Amendment shall become effective upon the conveyance by Developer of the first Lot within the property described herein.

Section iv. Application.

This Second Amendment amends the New Declaration only to the extent described herein. The New Declaration, by virtue of this Second Amendment, shall apply to the property described on Exhibit A hereto, as well as all properties previously subjected to the New Declaration.

Except as expressly amended hereby, all provisions of the New Declaration shall remain binding and in full force and effect, and shall be binding upon all properties described on Exhibit A hereto.

ARTICLE II

Joinder.

Branch Banking and Trust Company and Jesse W. Howard join in the execution of this Second Amendment for the purpose of subordinating that Deed of Trust recorded in Book 578, Page 167, and rerecorded in Book 580, Page 29, Carteret County Registry, as the same may have been modified from time to time, to the provisions of this Second Amendment, and by affixing their duly authorized signatures, under seal, hereto, Branch Banking and Trust Company and Jesse W. Howard do hereby specifically subordinate said Deed of Trust recorded in Book 578, Page 167, and rerecorded in Book 580, Page 29, Carteret County Registry (including any modifications), to the terms of this Amendment, provided that except for said subordination, the lien of said Deed of Trust shall remain in full force and effect until released by Branch Banking and Trust Company by instrument duly recorded in the office of the Register of Deeds of Carteret County.

Oak Ridge Coal Co., Inc., joins in the execution of this Second Amendment for the purpose of consenting to the terms and conditions contained herein, and Oak Ridge Coal Co., Inc. and H. Buckmaster Coyne join in the execution of this Second Amendment for the purpose of subordinating that Deed of Trust recorded in Book 578, Page 166, Carteret County Registry, as the same may have been modified from time to time, to the provisions of this Second Amendment, and by affixing their duly authorized signatures, under seal, hereto, Oak Ridge Coal Co., Inc. and H. Buckmaster Coyne do hereby specifically subordinate said Deed of Trust recorded in Book 578, page 166, Carteret County Registry (including any modifications), to the terms of this Amendment, provided that except for said subordination, the lien of the said Deed of Trust shall remain in full force and effect until released by Oak Ridge Coal Co., Inc., by instrument duly recorded in the office of the Register of Deeds of Carteret County.

IN TESTIMONY WHEREOF, the parties have caused this Second Amendment to Amended and Restated Declaration of Covenants and Restrictions Brandywine Bay Development to be executed individually under seal and in their corporate names by their corporate officers, and their corporate seals to be hereto affixed, all by order of their Board of Directors first duly given, the day and year set out opposite each signature.

NORTH KERR PROPERTIES. INC.