

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

THIRD AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
BRANDYWINE BAY DEVELOPMENT
(North Kerr Properties, Inc. Tract)

THIS THIRD AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS, dated for purposes of reference only this 14th day of September, 1989 (as amended from time to time, the "Third Amendment"), by NORTH KERR PROPERTIES, INC., a North Carolina corporation with offices in Carteret County, North Carolina, hereinafter called "Developer" with 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, under that Deed of Trust recorded Book 578, Page 166, Carteret County Registry, 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 59C, 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, and by recording a Second Amendment and Restated Declaration of Covenants and Restrictions Brandywine Bay Development, recorded in Book 597, Page 198, 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, H. Buckmaster Coyne, Jr. and Oak Ridge Coal Co., Inc., have, at the request of Developer, agreed to join in the execution of this Third Amendment solely for the purpose of subordinating that Deed of Trust recorded in Book 578, Page 166, Carteret County Registry, to the terms of this Third Amendment; and

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

Section iv. Application.

This Third Amendment amends the New Declaration only to the extent described herein. The New Declaration, by virtue of this Third 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.

Oak Ridge Coal Co., Inc., and H. Buckmaster Coyne, Jr., 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 Third Amendment, and by affixing their duly authorized signatures, under seal, hereto, Oak Ridge Coal Co., Inc., and H. Buckmaster Coyne, Jr., 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 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 Third 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.