

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

FOURTH AMMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS BRANDYWINE BAY DEVELOPMENT

(North Kerr Properties, Inc. Tract)

THIS FOURTH AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS, dated for purposes of reference only this 25th day of July, 1990 (as amended from time to time, the "Fourth Amendment"), by NORTH KERR PROPERTIES, INC., a North Carolina corporation with offices in Carteret County, North Carolina, hereinafter called "Developer"; with joinder of J. FRANK BULLARD, III, Trustee, and BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation with offices in Carteret County, North Carolina, Beneficiary, under that Deed of Trust recorded in Book 627, Page 460, Carteret County Registry, hereinafter called "Seller."

W I T N E S S E T H

WHEREAS, Developer's 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, Developer has been granted the right to amend the Existing Declaration to subject additional property to the provisions of the 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 to Amended and Restated Declaration of Covenants and Restrictions Brandywine Bay Development, recorded in Book 591, Page 46, Carteret County Registry, and by recording it Second Amendment to Amended and Restated Declaration of Covenants and Restrictions Brandywine Bay Development, recorded in Book 597, Page 198, Carteret County Registry, and by recording a Third Amendment to Amended and Restated Declaration of Covenants and Restrictions Brandywine Bay Development, recorded in Book 619, Page 232 (collectively, as amended, 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, J. Frank Bullard, III, and Branch Banking and Trust Company, have, at the request of Developer, agreed to join in the execution of this Fourth Amendment solely for the purpose of subordinating that Deed of Trust recorded in Book 627, Page 460, Carteret County Registry, to the terms of this Fourth 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 ii. Minimum Square Footage Requirement.

With respect to the property described on Exhibit A hereto, Section i of Article IV of the New Declaration is amended to delete "1,600 square feet of enclosed, heated living space" from the first sentence of the second paragraph thereof and to substitute therefore "2,000 square feet of enclosed, heated living space." This limitation is applicable only to properties described on Exhibit A attached hereto, all other properties described in the New Declaration retaining the 1,600 square foot minimum heated living space requirement.

Section iii. Effectiveness.

This Fourth amend-ant shall become effective upon the conveyance by Developer of the first Lit within the property described herein.

Section iv. Application.

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

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 J. Frank Bullard, III, join in the execution of this Fourth Amendment for the purpose of subordinating that Dead of Trust recorded in Book 627, Page 466, Carteret County Registry, as the same may have been modified from time to time, to the provisions of this Fourth Amendment, and by affixing their duly authorized signatures, under

seal, hereto, Branch Banking and Trust Company and J. Frank Bullard, III, do hereby specifically subordinate said Deed of Trust recorded in Book 627, Page 460, 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, Inc., by instrument duly recorded in the office of the Register of Deeds of Carteret County.

IN TESTIMONY WHEREOF, the parties have caused this Fourth 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,

EXHIBIT A

Being that property located in Carteret County, Morehead Township, and being all of Section V, The Honours at Brandywine Bay, as said property is shown on plat recorded in Map Book 28, Page 120, Carteret County Registry.