

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

AMENDED AND RESTATED DECLARATION OF  
COVENANTS AND RESTRICTIONS  
BRANDYWINE BAY DEVELOPMENT

(Chelsea Park Subdivision, Map Book 28, Page 18)

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS, is dated for purposes of reference this 6<sup>th</sup> of July, 1994 (and is hereinafter the "Restated Declaration" By OAK RIDGE COAL CO., INC., (hereinafter "Declarant") with joinder of H. BUCKMASTER COYNE, JR. (hereinafter "Coyne");

W I T N E S S E T H:

WHEREAS, Declarant, 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 the Declaration to be amended (such Declaration of Covenants and Restrictions, as amended from time to time, being hereinafter called the "Original Declaration"); and

WHEREAS, the Original Declaration contemplates and provides for making additional property within the bounds of the property described on Exhibit A to the Original Declaration subject thereto, by amendment; and

WHEREAS, Declarant desires to submit the property described in Exhibit A, attached hereto (hereinafter "Chelsea Park") to the terms of said Original Declaration, as amended and/or restated hereby;

NOW, THEREFORE, the hereinafter set forth Covenants, Restrictions and Easements shall, from the time of recordation of this instrument, govern the use of Chelsea Park Subdivision as shown in Map Book 28, Page 18, Carteret County Registry.

ARTICLE I

Section i. Description.

The property described in Exhibit A, attached hereto is hereby designated residential single family.

Section ii. Effective Date.

This Restated Declaration shall become effective upon the recordation hereof.

Section iii. Application.

This Restated Declaration amends the original Declaration, and restates the Original Declaration, except to the extent amended hereby, as same pertains to the above-referenced Chelsea Park, only. In the event of conflict between the terms of the Original Declaration and this Restated Declaration, the terms of this Restated Declaration shall prevail.

ARTICLE II

Section i. Definitions.

A. "Allowable Living Unit" shall mean and refer to a permissible but unconstructed Living Unit on a Parcel as hereinafter defined. The maximum number of Allowable Living Units per Parcel shall be as designated by this Restated Declaration or amendments hereto or by the recorded map of a section.

B. "Association" shall mean and refer to Brandywine Owners Association, Inc.

C. "Building" shall mean any structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind. The term "building" shall be construed as if followed by the words "or parts thereof," including porches, decks, carports, garages, sheds, roof extensions and overhangs and other projections. Any extension or addition to an existing building shall be considered a part of the pre-existing building if, upon reasonable evaluation by the Architectural Control Committee established hereunder, it is determined that the roof is aesthetically compatible with the roof of the existing building, and the building materials utilized are identical to or aesthetically compatible with the pre-existing structure or building.

D. "Constructed Living Unit" shall mean and refer to a living unit which has been fully constructed and is ready for occupancy. For purposes of this subparagraph, a Living Unit shall be deemed "fully constructed" if a certificate of occupancy has been issued for said Living Unit by the appropriate authority. Twelve (12) months shall be considered adequate time to complete construction of building once construction has begun.

E. "Family" shall mean and refer to one person living alone or two or more persons, whether related to each other by birth or not, and having common housekeeping facilities.

F. "Living Unit" shall mean or refer to a room or combination of rooms in an apartment house, condominium, cooperative residential building, multifamily house, patio home, cluster home, single-family dwelling or any other building intended for occupancy by one family on a temporary or permanent basis. "Living Unit" shall also refer to any rentable room or suite with sleeping facilities in a motel, hotel, guest lodge, inn, motor court, tourist home. or other building used commercially for lodging of guests.

G. "Lot" shall mean and refer to any individual plot of subdivided land shown upon a recorded subdivision map which is restricted by these covenants, or amendments hereto, to use for detached Single-Family Dwelling.

H. "Multifamily Buildings" shall mean and refer to any combination of two or more Constructed Living Units which have at least one common wall (including floor or ceiling).

I. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, holding the fee simple title to any Lot, Living Unit, or Parcel or combination of Lots, Living Units or Parcels situated in the property to which this Restated Declaration applies.

J. "Parcel" shall mean an area of land shown on a subdivision map and designated by this Restated Declaration for unified development as multifamily.

K. "Person" shall include any individual, partnership, corporation, trust or other entity.

L. "Properties" shall mean and refer to all properties which are or shall become subject to this Restated Declaration.

M. "Single-Family Dwelling" shall mean and refer to a building containing one, and only one, Living Unit.

N. "Section" shall mean and refer to each designated portion of the Properties which shall be developed and for which subdivision map or maps shall be recorded.

#### Section ii. Additions to Existing Property.

Additional lands may become subject to this Restated Declaration in the following manner:

As new Sections are developed, Declarant may, by supplemental declaration to be filed in the Office of the Register of Deeds of Carteret County, make additional portions of the Properties subject to this Declaration so that owners of Lots, Living Units or Allowable Living Units within the added Sections will automatically become members of the Association and their lands subject to the restrictions and covenants herein provided, or provided in amendments hereto. It is the intent of this provision to grant to Declarant the right to develop the Properties under a unified plan. Declarant reserves the right to impose different types of covenants on additional Sections of the Properties by amendment hereto. Provided, however, that in no respect shall any such amendment hereto affect the validity of these covenants as they would apply to the property described on Exhibit A.

### ARTICLE III

Brandywine Owners Association, Inc.

#### Section i. Membership.

Each and every person having any fee ownership interest in a Living Unit, Lot or Allowable Living Unit in property to which this Restated Declaration, or amendments hereto, are applicable, shall be a member of the Association, excluding only persons holding such an interest as security for the performance of an obligation. Further, lessees, regardless of the length of the term of the lease, shall not be members.

## Section ii. Voting Rights.

Each member shall have the voting rights set forth in Article III, Section ii, of the Original Declaration. Each member shall be bound by the provisions of said Original Declaration relating to membership and voting rights in said Association, including all amendments thereto relating to the Association. In addition, all members shall be bound by the By-Laws and the rules and regulations of said Association, as in effect from time to time.

## Section iii. Use of Common Property.

All common property owned by the Association shall be available equally for the use and benefit of each member of the Association. However, nothing contained herein shall prevent the Association from adopting reasonable rules and regulations governing the use of such facilities, including methods of selection for utilizing facilities which may not be able to accommodate all owners.

## Section iv. Allowable Assessments.

The owner of every Lot, Allowable Living Unit and Constructed Living Unit is obligated and bound, whether or not expressly stated in any instrument of conveyance, to pay to the Association, FOR EACH LOT, ALLOWABLE LIVING UNIT or CONSTRUCTED LIVING UNIT OWNED:

- (a) annual charges or dues;
- (b) special assessments; and
- (c) charges for the services or facilities provided by the Association.

Provided, however, that in the event a Lot shall have upon it a Constricted Living Unit, there shall only be one assessment for such Lot and Constructed Living Unit. Likewise, if an Allowable Living Unit shall be constructed and thereby become a Constructed Living Unit, there shall be only one assessment for such Allowable Living Unit and Constructed Living Unit. Further, a Lot shall not be deemed to include an Allowable Living Unit and each Lot shall, likewise, pay only one assessment.

All such assessments, charges and dues, together with any interest thereon, shall be a debt of the Owner and charge on the land and shall be a continuing lien upon the property against which such assessments are made. The time for perfecting said liens shall be as established by the Association from time to time, but in no event more than 360 days from the due date of the charge or assessment.

The assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety, and welfare of the residents of the property, and in particular, for the improvement and maintenance of common properties. Included, but not limited, is the payment of taxes and insurance on common properties, repairs and replacements and additions thereto, the cost of labor, equipment, materials and management and supervision thereof, and particularly, the cost of maintenance of streets, drainage, or other community facilities, such as security, as decided by the Association.

Section v. Amount of Assessments.

(a) Annual. The annual assessment shall be the assessment determined in accordance with Article III, Section vi, of the Original Declaration.

(b) Special. A special assessment may, from time to time, be levied by the members present, at any regular or special meeting, if two-thirds (2/3) of the total votes cast are in favor of such assessment, and upon approval thereof by the Board of Directors, likewise upon a two-thirds (2/3) vote.

(c) Services. Charges for services or facilities shall be assessed by the Board of Directors of the Association on a nonprofit basis.

Section vi. Organization.

The organization of the Association and the functioning of it shall be as established in the Articles of Incorporation and the By-Laws of the Association.

Section vii. Amendments.

All amendments to Article III of the Original Declaration shall be binding on all members of the Association, including, without limitation, those members subject to the provisions of this Restated Declaration.

ARTICLE IV

RESIDENTIAL, SINGLE FAMILY USE RESTRICTIONS.

These restrictions shall apply to Chelsea Park Subdivision. Section i. Land Use and Building Type. No lot shall be used except for residential purposes. No building or structure shall be erected, altered or permitted to remain on any lot other than a detached single family dwelling, a private garage and such other outbuilding as may be approved by the Architectural Control Committee. Said garage may be detached. Before construction, the above mentioned structures must be approved in accordance with Article V, herein. Any detached garage or outbuildings must be constructed with, generally, the same style and materials as the main house so as to be compatible therewith.

Section ii. Dwelling Size. The enclosed floor heated area of the main structure, exclusive of porches and garages, (whether open or closed) shall not be less than 2000 square feet. The enclosed floor heated living area of the ground floor on a dwelling of more than one story shall not be less than 1000 square feet.

Section iii. Building Location. No building or structure, as allowed by Section i. above, shall be located on any lot nearer to the front, side or rear lot lines than the minimum building set-back areas shown or described on Exhibit B attached hereto. For the purpose of this covenant, eaves and steps shall not be considered a part of the building, provided however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

Section iv. Easements.

- (a) Drainage easements are reserved and dedicated as shown on the recorded plat.
- (b) Declarant reserves unto itself an easement for installation and maintenance of water, electric, telephone and cable utility lines and facilities over the front thirty (30) feet and the rear thirty (30) feet of each lot. For purposes of this paragraph all lots front on Brandywine Boulevard. Declarant shall have the right to convey rights in such easement area to various utility companies as necessary.
- (c) There is reserved an easement for installation and maintenance of the existing sewer line 30 feet in width along the rear lines of Lots 5 through 9 in the subdivision.
- (d) There is reserved for the common use of Lots 1, 2, 3 and 4 an easement for installation and maintenance of sewer lines from said lots to the existing sewer line referenced in c, above. Said easement, 20 feet in width, is shown on the recorded subdivision plat and runs along the rear line of Lots 2 and 3, along a portion of the sideline of Lot 4, and along the rear line of Lot 4 and a portion of the rear line of Lot 5, all as shown on said plat.
- (e) In the event that the utility easements shown on the recorded plat are smaller than, or otherwise differ from, the easements described herein, the easements described herein shall apply.

Section v. Subdivision or Dividing of Lots. An owner of two (2) or more adjoining lots may construct a dwelling and/or other structures permitted hereunder upon and across the Original dividing line of such adjoining and contiguous lots, all such structures to comply with the minimum building set-back lines from the new outside boundary lines of the subject owner's property. No lot, as shown on the subdivision plat, shall be subdivided unless the segments of the subdivided lot or lots shall be recombined such that the aggregate number of lots in the subdivision is not increased. Further, by any such recombination, no resubdivided lot shall have total area of less than the area of the smallest of the nine (9) lots as originally platted.

Section vi. Animals. No animals shall be kept on the property save and except normal house pets. No pets may be kept, bred or maintained for any commercial purposes.

Section vii. Prohibition of Nuisance. No noxious or offensive activities 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.

Section viii. Recreational Equipment. All recreational equipment and vehicles, including boats, trailers, campers, and other similar personal property other than operational automobiles must be parked at such location on the property that they are not readily visible from Brandywine Boulevard or from another lot in the subdivision. In no event shall they be parked or stored within the building setback. (See Exhibit B). Further, no junk or wrecked cars or vehicles shall be kept on any lot at any time.

Section ix. Clotheslines. Clotheslines shall be limited to the rear yard area. Satellite dishes must be approved by the Architectural Control Committee to ensure that they are suitably screened from view.

Section x. Outbuildings and Mobile Homes. No "non-house" of any character, including, but not limited to, trailers, recreational vehicles, tents, shacks, garages, barns, and the like shall be used on any lot as a residence either temporarily or permanently. For purposes of this paragraph the term "trailers" shall include trailers, mobile homes, and what is commonly known as "double-wide" trailers or mobile homes.

Section xi. Fill. In order to properly utilize some or all of the lots in the subdivision, it may be necessary to "fill" portions of the property. For purposes of this paragraph the term "fill" shall mean and refer to such activities as are prohibited, without permit, in Section 404 wetlands as laws, rules and regulations regarding same exist at the time of such "filling". In no event shall any such fill encompass more than 25,000 square feet on any lot.

Section xii. Areas to be left Natural. Except as may be necessary for one driveway (not wider than twenty feet) or installation and maintenance of utilities, the following areas of each lot shall be left and maintained in, essentially, their natural state:

- (a) The front (on Brandywine Blvd.) 50 feet of each lot.
- (b) The entire rear and side setback areas as defined above. Any and all driveways in the subdivision shall be engineered and installed such that they will not impede, or adversely effect, the drainage on Brandywine Boulevard.

Section xiii. Construction Bond. Each purchaser, from Declarant, of a Lot in Chelsea Park shall, at time of closing of purchase of such Lot, post with the Association a cash bond in the sum of \$1,500.00 per lot, unless the Association and Declarant shall both agree that the posting of the bond may be delayed until time of commencement of construction on said Lot. Such bond is for purposes of insuring that there is no damage to Brandywine roadways or rights of way, or drainage along Brandywine Boulevard, occasioned by construction of improvements on each Lot. Such bond shall be held by the Association until such time as there is a Constructed Living Unit on a lot. At such time as construction is completed of residence on a Lot (issuance of certificate of occupancy or other, similar certificate by the appropriate governmental authority) the then owner of the lot and residence shall give written notice of same to the Association. The Association shall, within seven (7) days of receipt of such notice, either:

- a) Return the \$1,500.00 bond, in full, to such owner, or
- b) Provide to the owner, in writing a list of damages it asserts arise out of construction on such lot along with costs or charges to repair same.

The owner shall have fourteen (14) days after receipt of the notice in b) to either repair the damages listed or to protest in writing some or all of the items listed. If all repairs are not completed and no protest is made, then the Association shall deduct from the amount of the bond the cost of such uncompleted repairs (as detailed in its written list of damages) and shall return the balance of the bond to the Owner within seven (7) days after expiration of the above fourteen (14) day period. Any protest filed shall be heard and determined by the Board of Directors of the Association. Within seven (7) days after said hearing, the Board shall notify

Owner, in writing, of its determination. Owner shall then have fourteen (14) days within which to repair damages found to be valid by the Board. As to those damages not so repaired, the Association shall deduct the cost (per its original list of damages) of those repairs from the bond and shall return the balance of the bond to Owner within seven (7) days after expiration of the fourteen (14) day period.

Notwithstanding the above schedule, the Association shall advise owner in writing of potential claims against the bond by reason of damages as soon as such potential claims are discovered by the Association.

## ARTICLE V

### Architectural Control Committee

There currently exists a standing Architectural Control Committee of the Association. However, except as hereinafter described, Chelsea Park Subdivision shall not be governed by said standing Architectural Control Committee, but shall be governed by the Architectural Control Committee created and described below.

#### Section i. General.

There is hereby created an Architectural Control Committee for Chelsea Park. Said committee shall consist of three (3) members. The members of the committee shall be appointed by Declarant until such time as plans for house construction have been approved for five (5) of the lots in Chelsea Park, or until such earlier time as Declarant shall elect one of the two options for transfer and control of such Architectural Control Committee as set out in subparagraphs a. and b. below. At time of such termination or election by Declarant, Declarant may elect either of the following:

- (a) To cause an election to be made among property Owners within Chelsea Park to select the members of the Chelsea Park Architectural Control Committee, who shall be lot owners within Chelsea Park; or
- (b) The functions of the Chelsea Park Architectural Control Committee may be transferred to the standing Architectural Control Committee of the Association.

Should Declarant elect to cause an election to be made among the owners within Chelsea Park to select an Architectural Control Committee, voting shall be conducted at a meeting to be called of such owners, with not less than two (2) weeks written notice to each owner of such meeting. At such election, one (1) member shall be selected for one (1) year term, and two (2) members for a two (2) year term. After the expiration of the initial terms, all members shall be elected for two (2) year terms. Any vacancy on the Chelsea Park Architectural Control Committee may be filled until the expiration of the unexpired term by the remaining member or members of such Architectural Control Committee. Should there be no remaining members, the replacement or replacements may be selected by Declarant, or in the absence of selection by Declarant, the option set out in subparagraph b. of this Article V, above, shall be deemed to have been selected. A quorum of the Committee shall be deemed to be two (2) members, and the decision of a simple majority shall be controlling.

All complaints pertaining to, or violations of, this Restated Declaration, whether regarding buildings, building additions, fences, shrubbery, animals, general appearance, or otherwise, should be reported promptly to Declarant and/or the Chairman of the Chelsea Park Architectural Control Committee.

No building, fence or wall, sign or other structure shall be commenced, or erected or maintained upon a portion of the properties to which this Restated Declaration, or amendments hereto apply, nor shall any addition, change or alteration to any exterior be made until the plans and specifications showing the nature, kind, height, materials, color and locations of the same shall have been submitted to and approved in writing by the Committee.

#### Section ii. Plans.

It shall not be required that house plans be prepared by a registered architect licensed to practice in the State of North Carolina. All plans presented to the Architectural Control Committee must be of professional quality, must be complete, and must fairly depict the exterior appearance and site plan for the proposed improvements. All plans and specifications must be submitted to the Architectural Control Committee at least ten (10) days, prior to application for a building permit. The submissions shall show by plot plans, elevations, and perspective sketches all proposed improvements including locations, architectural features and landscaping. In the event said Committee fails to act on a submission within thirty (30) days after sufficient plans have been submitted to it, this Article will be deemed to have been fully complied with.

#### Section iii. Approval.

The Committee will review and shall approve the plans and specifications if the proposed improvements meet all of the requirements of this Restated Declaration, if in its opinion, the exterior appearance of the property will be visibly compatible with other development in the subdivision, or at a minimum, will not be detrimental to future property sales or surrounding property values. No architectural "style" or materials will be excluded; however, all materials; features, and styles must be, in the opinion of the Committee, professionally and aesthetically acceptable.

By acceptance of a Deed, purchasers agree that the actions of the Committee are in the best interest of all Owners within the subdivision and that they will abide by the decisions of the Committee. Declarant, the Committee, or other Owners may seek injunctions to compel compliance with Committee decisions, or damages resulting from failure to act in accordance with directions of the Committee.

#### Section iv. Site Standards.

All Owners agree to leave all vegetation, trees, brooks, creeks, hillsides, springs, water courses, and ravines in as near their natural state as is compatible with good building and land use practices, to the end that an attractive exterior lot appearance will be evident at each building site, and in keeping with surrounding properties. The locations of buildings and parking areas be made such that the overall wooded nature of the subdivision shall be preserved and land left undisturbed. All site plans must show existing elevations and tree

covers so that the Architectural Control Committee may determine if this provision has been adequately considered.

Section v. Appeal.

Any Owner submitting plans, as required by this Restated Declaration, to the Architectural Control Committee, shall be entitled to appeal to the Board of Directors of the Association any adverse ruling. In order to avail himself of this right of appeal, the aggrieved party must notify the Board of Directors, in writing, requesting a hearing, said notification to be given to the Board of Directors within seven (7) days after his receipt of written notification of the adverse decision. The Association shall schedule the hearing within fourteen (14) days after receipt of said notice, shall give to the aggrieved Owner written notice of the date of said hearing, and shall give the Owner the right to appear and personally state his case. The decision of the Board of Directors of the Association shall be controlling in all such matters, and all Owners hereby agree to be bound by such decision. The Board shall overturn a decision of the Committee only if a finding is made that the decision of the Committee was arbitrary, and without rational basis.

ARTICLE VI

Utilities.

Declarant covenants that either public or private water and sewer services will be available to purchasers of lots in Chelsea Park. All users of such services agree to pay rates established by the proper authorities for the use of such services. Provided, however, in the event a lot in Chelsea Park is deemed suitable for septic tank sewage disposal by the appropriate governmental authorities, a lot owner may choose to utilize such septic tank sewage disposal system, and an individual well. Wastewater from cooling and/or heating systems shall not be discharged into any sanitary waste treatment system.

ARTICLE VII

Buffers.

All those common areas set aside as buffers and/or designated as reserved on recorded maps of Sections shall be left in their natural state.

ARTICLE VIII

Duration.

These covenants are to run with the land and shall be binding on all parties and all persons, including Declarant and all persons claiming under them for a period of twenty-five (25) years from the date of recording of these covenants, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change those covenants in whole or in part.

## ARTICLE IX

### Amendment to Declaration.

Article IV of the Restated Declaration (except for Section xii thereof) may be amended by an instrument executed by not less than fifty-one percent (51%) of the lot owners in Chelsea Park. The amendment must be recorded in the Carteret County Registry to become effective. For purposes of this paragraph the term "lot owner" shall mean and refer to an entity which owns one or more lots in the subdivision. For purposes of this section, each lot owner shall receive one (1) vote for each lot owned. The balance of this Restated Declaration may be amended only as and with the Original Declaration.

## ARTICLE X

### Enforcement.

Enforcement of this Restated Declaration shall be by any proceeding in law or equity against any person violating or attempting to violate any provision hereof, whether to restrain a violation or to recover damages, and against the land to enforce any lien created by this Restated Declaration, and failure by the Association or any owner to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. Invalidation of any provision of this Restated Declaration by judgment or court order shall in no wise affect any other provision, and the same shall remain in full force and effect. The right of enforcement of these covenants is hereby decreed to be vested in any Owner, or Declarant, or the Association, acting either singularly or in concert.

## ARTICLE XI

### Interpretation.

This Restated Declaration shall be interpreted in the spirit of reasonableness and, in the absence of authoritative court decisions, the interpretations placed thereon by Declarant shall prevail.

## ARTICLE XII

### Commencement of Dues and Voting Rights

#### Section i.

Liability for dues and assessments hereunder shall be deemed to commence, for all lots in Chelsea Park Subdivision, as of December 1, 1989.

#### Section ii.

Voting rights and all other rights of membership in the Association shall be deemed to commence, for all lots in Chelsea Park, as of the date of recordation of this Restated Declaration.

### ARTICLE XIII

Joinder.

H. Buckmaster Coyne, Jr., being the owner of Lot 5, Chelsea Park Subdivision, joins in the execution hereof for purposes of imposing the terms of this Restated Declaration to the said Lot 5.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed in its corporate name by its corporate officers, and its corporate seal to be hereto affixed, all by order of its Board of Directors first duly given, and Coyne has affixed his signature hereto and adopted the word "SEAL" by his name as his seal, the day and year set out opposite each signature.

OAK RIDGE COAL CO., INC.

EXHIBIT A

AMENDED AND RESTATED DECLARATION CHELSEA PARK SUBDIVISION

Description of Property:

BEING all of Lots 1 through 9, inclusive, Chelsea Park Subdivision, as shown in Map Book 28, page 18, Carteret County Registry.

EXHIBIT B

AMENDED AND RESTATED DECLARATION CHELSEA PARK SUBDIVISION

Building Setbacks

Front Setbacks,      all lots                      75 feet

Rear Setbacks,        all lots                      50 feet

Side Setbacks

Lot 1                                      50 feet

Lot 2                                      40 feet

Lots 3, 7, 8 & 9                      30 feet

Lots 4, 5 & 6                          25 feet