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Currituck County, NC  
Charlene Y Dowdy Register of Deeds

271

BK 1007 PG 241-250

Prepared by and return to:  
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NORTH CAROLINA  
CURRITUCK COUNTY

THIRD AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION

THIS THIRD AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "Amendment") is made this 11th day of June, 2007 by and between SEAGRASS, LLC, a North Carolina limited liability company (the "Successor Developer"), successor developer to Kilmarlic Residential, LLC, a Virginia limited liability company (the "Original Developer"); FORTUNE BAY GOLF CLUB, L.L.C., a Virginia limited liability company ("Fortune Bay"); and KILMARLIC RESIDENTIAL COMMUNITY ASSOCIATION, a North Carolina non-stock, non-profit corporation (the "Association").

WHEREAS, the Original Developer and Fortune Bay executed that certain Declaration of Protective Covenants, Conditions, Restriction and Easements (the "Declaration"), dated March 12, 2003, recorded in the Office of the Register of Deeds of Currituck County, North Carolina (the "Registry"), in Book 658, at Page 90, as amended by that by that certain First Amendment to Declaration of Protective Covenants, Conditions Restrictions and Easements (the "First Amendment"), dated July 23, 2004, recorded in the Registry in Book 799, at Page 651, applicable to certain real property more particularly described therein (the "Original Property");

WHEREAS, by that certain Second Amendment to Declaration of Protective Covenants, Conditions Restrictions and Easements (the "Second Amendment", with the Second Amendment together with the Declaration and the First Amendment being collectively referred to hereinafter as the "Declaration"), dated March 6, 2006, recorded in the Registry in Book 931, at page 470, the Original Developer assigned all of its right, title and interest as Developer under the Declaration to the Successor Developer and submitted certain other real property to be subject to the Declaration (such other real property and the Original Property, excluding any portions thereof that have been released from the operation and effect of the Declaration, being collectively referred to hereinafter as the "Phase I Property");

WHEREAS, the development on the Phase I Property shall be hereinafter referred to as the "Original Development";

WHEREAS, the Successor Developer is the owner of the property depicted as Lots 145 – 175, inclusive, and including the private streets named "Brae Burn Drive" and "Hillock Drive", the areas designated as "OPEN SPACE 404 JURISDICTIONAL WETLANDS" and the areas designated as "UPLAND OPEN SPACE" on that certain plat (the "Phase II Plat") entitled "THE KILMARLIC CLUB - PHASE II, COMMON OPEN SPACE RESIDENTIAL SUBDIVISION, POPLAR BRANCH TOWNSHIP, CURRITUCK COUNTY, NORTH CAROLINA" prepared by Bissell Professional Group, dated the 23<sup>rd</sup> day of August, 2006, and recorded in Plat Cabinet K at Slides 5-7 of the Registry (hereinafter the "Phase II Property");

WHEREAS, Fortune Bay is the owner of the property depicted as Lot 144 on the Phase II Plat (the "Fortune Bay Lot", with the Fortune Bay Lot and the Phase II Property being collectively referred to hereinafter as the "Additional Property");

WHEREAS, the development on the Additional Property shall be hereinafter referred to as the "Phase II Development";

WHEREAS, the Successor Developer desires to add and subject the Phase II Property, and Fortune Bay desires to add and subject the Fortune Bay Lot, to the terms and conditions of the Declaration;

WHEREAS, all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Declaration; and

WHEREAS, pursuant to the provisions of Article 2 of the Declaration, the Association has approved subjecting the Additional Property to the terms and conditions of the Declaration and further consents to the terms and conditions applicable only to the Additional Property as contained herein as evidenced by its execution of this Amendment.

NOW, THEREFORE, Successor Developer for itself, its successors and assigns (as to the Phase II Property), and Fortune Bay for itself, its successors and assigns (as to

WHEREAS, by that certain Second Amendment to Declaration of Protective Covenants, Conditions Restrictions and Easements (the "Second Amendment", with the Second Amendment together with the Declaration and the First Amendment being collectively referred to hereinafter as the "Declaration"), dated March 6, 2006, recorded in the Registry in Book 931, at page 470, the Original Developer assigned all of its right, title and interest as Developer under the Declaration to the Successor Developer and submitted certain other real property to be subject to the Declaration (such other real property and the Original Property, excluding any portions thereof that have been released from the operation and effect of the Declaration, being collectively referred to hereinafter as the "Phase I Property");

WHEREAS, the development on the Phase I Property shall be hereinafter referred to as the "Original Development";

WHEREAS, the Successor Developer is the owner of the property depicted as Lots 145 – 175, inclusive, and including the private streets named "Brae Burn Drive" and "Hillock Drive", the areas designated as "OPEN SPACE 404 JURISDICTIONAL WETLANDS" and the areas designated as "UPLAND OPEN SPACE" on that certain plat (the "Phase II Plat") entitled "THE KILMARLIC CLUB - PHASE II, COMMON OPEN SPACE RESIDENTIAL SUBDIVISION, POPLAR BRANCH TOWNSHIP, CURRITUCK COUNTY, NORTH CAROLINA" prepared by Bissell Professional Group, dated the 23<sup>rd</sup> day of August, 2006, and recorded in Plat Cabinet J at Slides 178-180 of the Registry (hereinafter the "Phase II Property");

WHEREAS, Fortune Bay is the owner of the property depicted as Lot 144 on the Phase II Plat (the "Fortune Bay Lot", with the Fortune Bay Lot and the Phase II Property being collectively referred to hereinafter as the "Additional Property");

WHEREAS, the development on the Additional Property shall be hereinafter referred to as the "Phase II Development";

WHEREAS, the Successor Developer desires to add and subject the Phase II Property, and Fortune Bay desires to add and subject the Fortune Bay Lot, to the terms and conditions of the Declaration;

WHEREAS, all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Declaration; and

WHEREAS, pursuant to the provisions of Article 2 of the Declaration, the Association has approved subjecting the Additional Property to the terms and conditions of the Declaration and further consents to the terms and conditions applicable only to the Additional Property as contained herein as evidenced by its execution of this Amendment.

NOW, THEREFORE, Successor Developer for itself, its successors and assigns (as to the Phase II Property), and Fortune Bay for itself, its successors and assigns (as to

the Fortune Bay Lot), each declare, acknowledge and agree that their respective portions of the Additional Property are hereby brought under the scope of and shall be transferred, sold, conveyed and occupied subject to the Declaration and the following covenants, conditions, restrictions, easements, charges, liens, terms and conditions which shall be applicable only to the Additional Property (the "Additional Property Restrictions"):

1. The Phase II Plat is incorporated herein by reference as if fully set out and all easements, restrictions, terms, conditions and information contained on the Phase II Plat are made a part hereof and imposed upon the Lots depicted thereon (the "Phase II Lots"), and the Phase II Lots shall be conveyed subject to the easements, restrictions, terms, conditions and information set forth on the Phase II Plat.

2. From and after the date of recordation of this Amendment, the Additional Property shall constitute a part of the Property, and the Owners of the Phase II Lots (the "Phase II Lot Owners") shall be Members of the Association and shall each enjoy the use of all common areas located in the Phase II Development (the "Phase II Common Areas") as well as the Common Areas located in the Original Development.

3. The Phase II Lot Owners shall have all membership rights, voting rights and authority to serve as members of all boards and committees of the Association; shall have all property rights and easements provided in the Declaration; shall be responsible for and obligated to pay all assessments and financial obligations of Members of the Association; shall be subject to all architectural controls of the Association; and shall comply with all covenants and restrictions contained in the Declaration.

4. The Association agrees that upon recording of this Declaration, the Association shall assume the maintenance responsibility for all private streets (until such time as they may come under the maintenance responsibility of NCDOT) and the drainage easements within the Phase II Development, and the cost thereof shall be paid as provided in Paragraph 8 below. The Association agrees that upon recordation of this Declaration, the Association shall assume the maintenance responsibility for all other Phase II Common Areas as a portion of its overall budget, and the cost therefore shall be paid equally by all Members of the Association.

5. Upon recordation of this Declaration, the Phase II Development shall be treated as a part of the Original Development for all purposes as if it was a part of the Original Development and shall be subject to all terms and conditions of the Declaration.

6. The Phase II Lot Owners shall have all rights, privileges, obligations and liabilities of Members of the Association as if such Lots were original Lots within the Original Development.

7. Portions of the Additional Property have been determined to meet the requirements for designation as wetlands, streams or protected stream buffers. Any subsequent fill or alteration of these areas shall conform to the requirements of the state rules adopted by the State of North Carolina in force at the time of the proposed

alteration. The intent of this provision is to prevent additional wetland, stream or buffer filling or draining, so the Phase II Lot Owners should not assume that a future application for filling or draining would be approved. The Phase II Lot Owners shall report the name of the subdivision (The Kilmarlic Club – Phase II) in any application pertaining to said rules. This covenant is intended to ensure continued compliance with all rules adopted by the State of North Carolina and therefore the State of North Carolina may enforce benefits. This covenant is to run with the land and shall be binding on all parties and all persons claiming under or through the Successor Developer and/or Fortune Bay.

8. In addition to all other Assessments, each Phase II Lot Owner, by becoming a Phase II Lot Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association annual and special assessments or charges (the “Phase II Maintenance Assessments”) for the maintenance of the private streets within the Phase II Development alone (the “Private Streets”) and the maintenance of the drainage easements located outside of the street rights-of-way and within the easement areas shown on the Phase II Plat (the “Phase II Drainage Easements”). The Association shall have the right to place a claim of lien against any of the Lots within the Phase II Development to collect unpaid Phase II Maintenance Assessments and to maintain a civil action for collection of such sums. The following paragraphs set forth the guidelines, rules and regulations for the purpose of allocating the Phase II Maintenance Assessments and the collection thereof.

(a) The Phase II Maintenance Assessments shall constitute Assessments under the Declaration applicable only to the Phase II Lots and the Owners thereof. In all other respects (except as set forth in subparagraphs (b) – (f) below), the Phase II Maintenance Assessments shall be governed by the applicable provisions of Article V of the Declaration, collectible and enforceable by the Association in the manner provided in the Declaration.

(b) The Phase II Maintenance Assessments shall be used exclusively for the purposes of maintaining the Private Streets in the Phase II Development and maintaining the Phase II Drainage Easements.

(c) The Phase II Maintenance Assessments shall be in an amount determined by Successor Developer until the Board of Directors fixes the amount for any year at an amount it deems necessary to meet the maintenance needs for the Private Streets and the Phase II Drainage Easements, including reserves for future maintenance.

(d) In addition to the annual Phase II Maintenance Assessments authorized herein, the Association may levy in any year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Private Streets or the Phase II Drainage Easements, provided any such Special Assessment shall have the assent of three-fifths (3/5) of the votes of all Phase II

Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Phase II Lot Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

(e) The quorum required for any action authorized by subparagraph (d) shall be as follows: At the first meeting called, the presence at the meeting of Members or of proxies, entitled to cast sixty percent (60%) of all the votes of the Phase II Lot Owners shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above and the required quorum at any such subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting, provided that no such meeting shall be held more than sixty (60) days following the preceding meeting.

(f) The Phase II Maintenance Assessments shall commence on a date to be determined by Successor Developer, and subject to subparagraph (c) above, shall be subject to adjustment by Successor Developer on the same date in each successive year. The due date of the Phase II Maintenance Assessments shall be thirty (30) days after notice of the commencement of the Phase II Maintenance Assessments is mailed to all Phase II Lot Owners by the Association unless the Board of Directors determines the due date to be the same as other Assessments. Subject to subparagraph (c) above, no adjustment or prorations of the Phase II Maintenance Assessments established by the Successor Developer shall be made by the Association.

9. All references in the Declaration to "35' WIDE BALL RETRIEVAL EASEMENT" and "VARIABLE WIDTH BALL RETRIEVAL EASEMENT" (the "Original Ball Retrieval Easements") shall be deemed to include those areas designated as "35' REAR BALL RETRIEVAL EASEMENT" (followed by references to specific Phase II Lots in each instance) as shown on the Phase II Plat and all other ball retrieval easements affecting any Phase II Lot, however designated or created (the "Phase II Ball Retrieval Easements"), and the provisions of the Declaration applicable to the Original Ball Retrieval Easements shall apply to the Phase II Ball Retrieval Easements.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

SEAGRASS, LLC,  
A North Carolina Limited Liability Company

By: [Signature] (SEAL)  
James M. Geraghty, Member

By: [Signature] (SEAL)  
Bryan T. Sullivan, Member

By: [Signature] (SEAL)  
Lorimer J. White, Member

KILMARLIC RESIDENTIAL  
COMMUNITY ASSOCIATION,  
A North Carolina corporation

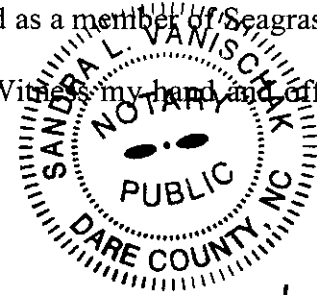
By: [Signature] (SEAL)  
, President

UNRECORDED

STATE OF NORTH CAROLINA  
DARE COUNTY

I, Sandra L. Vanischak, a Notary Public for the state and county aforesaid, certify that James M. Geraghty, Bryan T. Sullivan, and Lorimer J. White, Members; each personally appeared before me this day, each acknowledging that he or she voluntarily signed the foregoing instrument for the purpose stated therein and in the capacity indicated as a member of Seagrass, LLC, a North Carolina limited liability company.

Witness my hand and official stamp or seal this the 9th day of June, 2007.



[Signature]  
Notary Public

My commission expires: 10/31/2009

NORTH CAROLINA, DARE COUNTY.

I, a Notary Public of the County and State aforesaid, certify that personally came before me this day and acknowledged that he/she is PRESIDENT of Kilmarlic Residential Community Association, a North Carolina corporation, and being authorized to do so, executed the foregoing on behalf of the corporation.

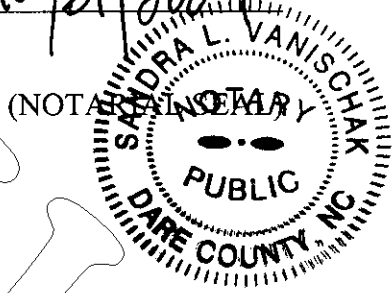
BRYAN SULLIVAN

WITNESS my hand and notarial seal, this 20<sup>th</sup> day of June, 2007.

My commission expires:

10/31/2009

*Sandra L. Vanischak*  
Notary Public



Unofficial



FORTUNE BAY GOLF CLUB, L.L.C.,  
a Virginia limited liability company

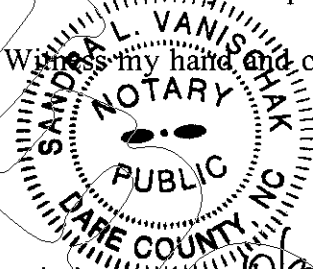
By: [Signature] (SEAL)  
Thomas J. Steele, Manager

By: [Signature] (SEAL)  
Bryan T. Sullivan, Manager

COMMONWEALTH OF VIRGINIA  
STATE OF NORTH CAROLINA  
DARE COUNTY

I, Sandra L. Vanischaak, a Notary Public for the state and county aforesaid, certify that Thomas J. Steele, Manager, personally appeared before me this day, acknowledging that he voluntarily signed the foregoing instrument for the purpose stated therein and in the capacity indicated as a manager of Fortune Bay Golf Club, L.L.C., a Virginia limited liability company.

Witness my hand and official stamp or seal this the 2<sup>th</sup> day of June, 2007.



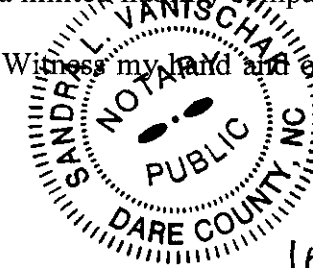
[Signature]  
Notary Public

My commission expires: 10/31/2009

STATE OF NORTH CAROLINA  
DARE COUNTY

I, Sandra L. Vanischaak, a Notary Public for the state and county aforesaid, certify that Bryan T. Sullivan, Manager, personally appeared before me this day, acknowledging that he voluntarily signed the foregoing instrument for the purpose stated therein and in the capacity indicated as a manager of Fortune Bay Golf Club, L.L.C., a Virginia limited liability company.

Witness my hand and official stamp or seal this the 2<sup>th</sup> day of June, 2007.



[Signature]  
Notary Public

My commission expires: 10/31/2009

NORTH CAROLINA, CURRITUCK COUNTY

The foregoing certificate of \_\_\_\_\_,  
a Notary Public of \_\_\_\_\_, is certified to be  
correct.

This instrument and this certificate are duly registered at the date and time and in the  
book and page shown on the first page hereof.

BY: \_\_\_\_\_  
REGISTER OF DEEDS ASST. REGISTER OF DEED

Unofficial