

STATE OF NORTH CAROLINA  
COUNTY OF CARTERET

*Gary Staker signed for BOA*

*12/8/87*

AGREEMENT

*from Joe  
10-29-2012*

THIS AGREEMENT is made and entered into this 5<sup>th</sup> day of December, 1987, by and between Oak Ridge Coal Co., Inc. (hereinafter "Oak Ridge"), North Kerr Properties, Inc. (hereinafter "North Kerr") and Brandywine Owners Association, Inc. (hereinafter "BOA");

BACKGROUND STATEMENT

Oak Ridge is owner/developer of certain property in Carteret County, North Carolina, known generally as "Brandywine Bay Development". North Kerr is purchasing from Oak Ridge a large portion of currently unsubdivided property in Brandywine Bay Development. BOA (the master owners' association in Brandywine Bay Development for residential property in Brandywine Bay Development between N.C. Highway 24 and U.S. Highway 70) and Oak Ridge have, in the past, entered into an agreement in an attempt to resolve a dispute as to the condition of the existing roadways in Brandywine Bay Development and as to when BOA would undertake ownership and maintenance responsibility of the said existing roadways. In addition, North Kerr, as prospective developer of a substantial portion of currently undeveloped property, desires assurance that roadways constructed by it will be taken over, both as to ownership and maintenance, by that master association, assuming said roadways are correctly constructed. Oak Ridge and BOA have now resolved their dispute over the said roadways. Further, BOA has agreed to accept ownership and maintenance responsibility of North Kerr roads (on the terms below). The parties execute this instrument to document such agreements.

TERMS OF AGREEMENT

1. BOA, for itself, its successors and assigns, does, hereby, agree that it will, from and after the date hereof, be solely responsible for repair and maintenance of the existing paved roadways ("Existing Roadways") in Brandywine Bay Development which roadways are:

- a. Brandywine Boulevard from N.C. Highway 24 to U.S. Highway 70;
- b. Lord Granville Drive from Brandywine Boulevard to and including the dedicated portion of Lord Granville Drive in Section II, Map 1B, Brandywine Bay Development;
- c. All those dedicated roadways which are completely constructed and paved in the following Sections and/or Subdivisions of Brandywine Bay Development: Section I, Map 1A (Map Book 18, page 13); Section

I, Map 1B (Map Book 18, page 94); Section I, Map 2 (revised) (Map Book 17, page 43); Section I, Map 3 (Map Book 17, page 83); Section I, Map 4 (Map Book 18, page 80); Section II, Map 1A (Map Book 20, page 2); Section II, Map 1B (Map Book 21, page 38).

2. BOA further agrees that it shall accept from Oak Ridge a deed for such Existing Roadways and rights of way, such deed to be recorded within thirty (30) days following the date of this Agreement.

3. BOA further agrees that it shall, upon request of North Kerr, Oak Ridge or their respective successors, accept full repair and maintenance responsibility and ownership of roads and road rights of way dedicated (privately or publicly) and constructed by North Kerr, Oak Ridge or their respective successors and assigns, in the property purchased or to be purchased by North Kerr from Oak Ridge and on other Brandywine property now owned by Oak Ridge, on the following conditions:

- a. All roadways and drainage shall be professionally engineered in compliance with State paved secondary road specifications (except as to width of right of way, North Kerr, Oak Ridge and their respective successors reserving the right to dedicate rights of way of less than 60 foot widths).
- b. All roadways shall be constructed in full accord with the aforesaid engineering.
- c. BOA shall have the right, at its sole expense, to cause engineering studies of its own to be made to insure compliance with a. and b. above by North Kerr, Oak Ridge and their respective successors, if BOA has cause to believe said roads have not been professionally engineered and/or properly constructed.
- d. BOA will accept, subject to its rights set out in paragraph c., above, title and maintenance responsibility for such roads and rights of way, upon tender to BOA of a deed of conveyance for said roadways (including rights of way) as shown on recorded subdivision plats dedicating such roadways, accompanied by a written statement from a registered engineer that the roads have been properly constructed in accordance with professionally engineered plans, in accordance with State specifications.

4. North Kerr and Oak Ridge agree, for themselves, their successors and assigns, that they will, prior to BOA accepting repair and maintenance responsibility and ownership of such roads constructed by them, either:

a. Cause the property served by said roadways to be made a part of BOA in such fashion that owners thereof (including North Kerr and/or Oak Ridge) will pay to BOA dues on the same basis per lot or living unit as other dues paying property in BOA, or

b. ~~Enter into binding agreement with BOA which will require itself, as owner of property, and its successors, though not necessarily members of BOA, to contribute to BOA for road maintenance and security on the same basis as each lot and/or living unit which is a member of BOA contributes to such road maintenance and security.~~

c. Provided, however, that Oak Ridge shall have the right to develop property east of Brandywine Boulevard without making same a part of BOA ~~(f, and only if,~~ such property has no access to any BOA roads, specifically including, but not limited to, Brandywine Boulevard.

5. BOA, for itself, its successors and assigns, covenants and agrees to and with North Kerr and Oak Ridge that North Kerr, Oak Ridge and their successors and assigns, shall have access over and across all Existing Roadways in Brandywine Bay Development, for access to and from the property to be purchased by North Kerr, and access to and from other undeveloped property in Brandywine now owned by Oak Ridge.

6. Oak Ridge and North Kerr, for themselves, their successors and assigns, covenant and agree to and with BOA that with respect to any new development adjacent to Brandywine Boulevard, the developer of such new development shall be responsible for proper engineering and construction of driveways and drainage along Brandywine Boulevard necessitated by such new development. In addition, Oak Ridge and/or North Kerr shall, in developing property not adjacent to Brandywine Boulevard or other, existing roads, ~~avoid~~ insofar as possible, use of such existing roadways for construction traffic, and shall engineer drainage for such property so as not to adversely affect any previously developed property. With respect to any development adjacent to, and bordering on, Brandywine Boulevard, North Kerr, Oak Ridge, and their successors and assigns agree that they shall ~~post bond with BOA,~~ prior to construction on such properties, to protect BOA against damage to Brandywine Boulevard, damage to

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said Boulevard's right of way, and damage to Brandywine Boulevard's drainage system, any of said damage occasioned by such construction. The bond shall be posted prior to commencement of construction, and shall be returned to such developer at completion of construction, less amounts reasonably necessary to remedy any of the above referenced damages occasioned by such construction. The amount of said bond shall be \$5.00 per front foot of the development, on Brandywine Boulevard, with a minimum bond of \$500.00. BOA shall have the right to change such bond provided that any such change is uniform as to all property in Brandywine Bay Development.

7. BOA agrees with North Kerr and Oak Ridge that it is ~~permissible and appropriate for North Kerr and Oak Ridge to impose different development standards for single family development and construction of property subdivided in the future by North Kerr or Oak Ridge on Brandywine property, as long as such standards are compatible with the standards previously imposed within Brandywine Bay by Oak Ridge, so as to maintain the values of properties within Brandywine Bay.~~ Such standards may include creation of a new architectural control review committee and procedure to be utilized by owners within the newly subdivided area, in lieu of required approval by the BOA architectural review committee.

8. North Kerr covenants and agrees to and with Oak Ridge and BOA, with respect to development of the 76+ acre tract to be purchased by it from Oak Ridge (Tracts One and Two in deed from Oak Ridge to North Kerr) as follows:

- a. That, with regard to possible detached, single family residential development of such property, North Kerr shall, by covenants, impose upon said property a minimum, heated square foot requirement, for each such single family detached dwelling, of not less than 1600 square feet.
- b. North Kerr shall (not) construct, or allow to be constructed, any multi-family residential development within 200 feet of any currently platted (as of the date hereof) single family residential lot. Provided, however, that this restriction shall not apply if the proposed multi-family development is separated from the platted, single family lot by portion or portions of the golf course.

9. This Agreement may be enforced by specific performance, as it is impossible to accurately ascertain monetary damages for breach upon default by any party.

*Allow multi-family in  
Home Section by golf course  
Ex. between holes 18, 9 & 7*

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

OAK RIDGE COAL CO., INC.

BY: [Signature]

ATTEST:

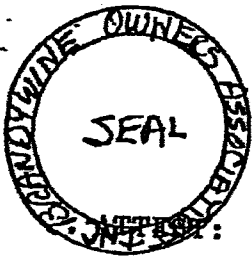
[Signature]

NORTH KERR PROPERTIES, INC.

BY: [Signature]

ATTEST:

[Signature]



BRANDYWINE OWNERS ASSOCIATION, INC.

BY: [Signature]

[Signature]

STATE OF North Carolina  
COUNTY OF Carter

I, a Notary Public of the County and State aforesaid, certify that W. W. McClung personally came before me this day and acknowledged that he is Assistant Secretary of Oak Ridge Coal Co., Inc., a West Virginia corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name