

FOR REGISTRATION REGISTER OF DEEDS
ELIZABETH T. COOPER
BURKE COUNTY, NC
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INSTRUMENT # 2009011019

DECLARATION
OF
COVENANTS, RESERVATIONS AND RESTRICTIONS
OF
Old Oaks Estates Subdivision

This Declaration of Covenants, Reservations and Restrictions ("the Declaration") made this the 18th day of November, 2009, by K. M. Properties, Ltd, a Florida limited partnership doing business in North Carolina under the assumed name of MCS of NC Ltd Partnership, hereinafter called "Declarant",

WHEREAS, the Declarant is the owner of the real property described in Article I of this Declaration and is desirous of subjecting the said real property to the protective covenants, reservations and restrictions hereinafter set forth for the benefit of such property and for each owner thereof, to apply to and bind the said real estate, and any owner thereof, their successors and assigns

NOW, THEREFORE, the Declarant hereby declares that the real property described in and referred to in Article I hereof is and shall be held, transferred, sold and conveyed subject to this Declaration

ARTICLE I
Old Oaks Subdivision

The real property which is and shall be, held, transferred, sold and conveyed subject to this Declaration is located in Burke County, North Carolina, and is more particularly described as follows

ALL of Lots one (1) through seventy (70), of the subdivision named Old Oaks as more fully shown on that certain plat prepared by Fred C. Howell, P L S L-1483, dated, November 9, 2009

Such property described above is sometimes referred to herein as the "Subdivision" or "Development" Each individual numbered lot as shown on the above described plat is referred to herein as a "Lot"

ARTICLE II
Definitions

- 1 "Association" or "Property Owners Association" means the Old Oaks Property Owners Association, a North Carolina Non-Profit Corporation organized by the Declarant. The membership of the Association shall consist exclusively of all the lot owners and the Declarant
- 2 "Declarant" is K.M. Properties, LTD, doing business in North Carolina under the assumed name of MCS of NC Ltd Partnership, their successors and assigns. All special declarant rights as herein defined and the obligations of declarant as set out herein may be transferred only by written instrument recorded in Burke County, North Carolina, executed by both transferor and transferee

- 3 "North Carolina Planned Community Act" or the "Act" is Chapter 47F of the North Carolina General
 Statutes. Declarant hereby incorporates the provisions of the North Carolina Planned Community Act, and
 declares the same to be applicable to this subdivision in all respects except as specifically modified herein.
- 4 "Common Area" or "Common Element" means any real estate within Old Oaks Subdivision, other than a lot,
 owned by or deeded to the association, and specifically includes rights of way held for, and roadways
 constructed for the general use of lot owners, as shown on the plat.
- 5 "Common Expense" means expenditures made by or financial liabilities of the association, together with any
 allocations to reserves.
- 6 "Common Expense Liability" means the liability for common expenses allocated to each lot as permitted by
 this declaration, by the Act, or otherwise by law.
- 7 "Lot Owner" means the declarant or other person who owns a lot, but does not include a person having an
 interest in a lot solely as security for an obligation.
- 8 "Special Declarant Rights" means rights reserved for the benefit of a declarant including, without limitation, the
 right (i) to complete improvements indicated on plats and plans filed with the declaration, (ii) to exercise any
 development rights, (iii) to maintain sales offices, management offices, signs advertising the planned community,
 and models, (iv) to use easements through the common elements for the purpose of making improvements
 within the planned community or within real estate which may be added to the planned community, (v) to
 make the planned community part of a larger planned community or group of planned communities, (vi) to
 make the planned community subject to a master association, or (vii) to appoint or remove any officer or
 executive board member of the association or any master association during the period of Declarant control.
- 9 "Limited Common Element" means a portion of the property allocated for the exclusive use of one or more,
 but fewer than all the lots, if any shall exist or be so dedicated.

ARTICLE III
Owners Easement of Enjoyment

Every owner of any lot shall have a right and easement of enjoyment in and to the common areas, including roads, which shall be appurtenant to and shall pass with the title to every lot, subject to the following reservations:

- 1 Easements, restrictions, reservations and rights of way as may actually exist, or as shown on the recorded plats, or as set out herein, including but not limited to utility easements, setbacks and roadways.
- 2 Rights reserved herein to the Property Owners Association, including but not limited to the right to impose reasonable regulations on the use and enjoyment of the lots and of the common areas, the right to dedicate or transfer parts of the common area to any public agency, the right to suspend an owner's voting rights and rights to use the common areas for non-payment of any assessment or for infraction of the published rules and regulations of the Association.
- 3 Rights reserved to the Declarant as set forth herein.
- 4 No portion of any of the subdivision, including any lot or common area, shall be used as a road right of way or easement for the purpose of connecting or accessing any adjoining property which is not part of the subdivision, or which is being developed as part of the subdivision. There shall be no access to any Lot on the perimeter of the Development except from designated streets or roads within the Development as shown on the recorded plats of the Development without the express written consent of Declarant which must be recorded in the Office of the Register of Deeds for Burke County, North Carolina.
- 5 The Association shall have an easement for maintenance, installation and repair of utilities along a 15 foot easement shown on the plat, and running along all side lot lines, and along both sides of all subdivision streets.

ARTICLE IV
Protective Covenants

- 1 No Lot shall be used except for residential and recreational purposes. No lot shall be subdivided except as provided herein. No swine, livestock or poultry shall be raised or bred on any lot; however household pets such as cats or dogs, are permissible provided they are not bred or maintained for commercial purposes. Horses and ponies are also permissible provided there shall be a minimum of one (1) acre of pasture land for each horse or pony kept on any lot on a permanent basis. Each Lot owner shall maintain any improvements placed upon any Lot, and no unsightly or dilapidated buildings or other structures shall be permitted on any

Lot No parking or storing of any junked, inoperable or unlicensed automobiles, trucks or heavy equipment is permitted on any Lot or road in the Development

2. No residence shall be erected, constructed, maintained, used or permitted to remain on any Lot other than one single-family dwelling. Any residence must be approved by the Architectural Control Committee (hereinafter "ACC") and follow the guidelines set forth in this declaration. Each residence to be constructed on a Lot shall have a minimum finished heated and cooled area of 1,600 square feet for a single level residence and 2,000 square feet for a two level residence, with a minimum of 900 square feet on the first floor or level of the home built above the basement of the house. For the purpose of this clause, a home with an open loft shall be considered a single level home, but the area of the loft may not be included in the minimum 1,600 square feet. On a multi-level structure, a full walk-out basement can be considered part of the square footage if it is heated space, has a permanent floor (i.e. poured cement, etc.), and has minimum ceiling height of eight (8) feet throughout entire basement square footage, however the basement cannot and will not be considered as the first floor of dwelling. Once construction has begun on said dwelling, all exterior construction must be completed within one (1) year of the commencement of construction.
3. On Lots of two (2,000) acres or greater, a guest suite building may be constructed, which is complimentary to the primary building and constructed of the same materials. If a guesthouse is constructed, the guesthouse must be minimum distance of one hundred (100) feet from the primary building and cannot exceed the primary building either in height or square footage. The guesthouse must be a minimum of 1,000 square feet of enclosed, heated space. Said guesthouse may only be constructed after the completion of construction of the primary residence, and approval from the ACC. Once construction has begun on said guesthouse, all exterior construction must be completed within one (1) year of the commencement of construction.
4. Lots containing more than 5.00 acres may be subdivided one time according to rules and regulations of Burke County, and provided further that upon approval of such subdivision and recordation of a survey showing the same, the owner of such lot(s) shall notify the Association. Only one such subdivision of any lot is permitted, and no lot created by a subdivision of an original lot shall be less than 1.5 acres in size. Each lot so created shall be and become a lot with full voting power in the Association, and subject to full lot owner dues, in the same manner as if such lots were both original subdivision lots, except that such lots shall not be thereafter subdivided.
5. No more than one outbuilding may be constructed on any Lot. Said outbuilding shall be used only for the purposes of housing boats, cars, RVs, as well as, lawn and garden equipment. Said building must be constructed in a workman-like manner and may not be constructed more than one year prior to construction of the main residence. This building must be enclosed on at least three sides and the top with some sort of door, which would thus close in all four sides of the building, and must be approved by the ACC.
6. Any grading or other land use which creates erosion runoff into streams or other Lots is prohibited. Any grading performed in violation of any county, state or federal ordinance, statute or regulation shall be deemed to be a noxious or offensive activity and may result in fines by the Association or by the ACC, or in a civil action to enjoin such activity.
7. In the event that horses or ponies are kept on any lot, an additional structure for housing such animals may be erected or placed on the lot provided such structure is kept in good repair and conforms generally in appearance to the dwelling located on such lot. Such structure must be approved by the ACC. Once construction has begun on said structure, all exterior construction must be completed within one (1) year of the commencement of construction.
8. There shall be no single-wide mobile or manufactured homes, no double-wide mobile or manufactured homes, no modular homes or buildings, no previously constructed homes, buses or systems built homes situated on any Lot as a residence or for storage, either temporarily or permanently with the exception of Blue Ridge Log Cabins of Campobello, SC. Only stick built homes are permitted to be built within Old Oaks Estates Subdivision, however log homes built by Blue Ridge Log Cabins and any other log home builders approved by the ACC are considered for purposes of these covenants to be stick built. Any improvement or construction of any kind must be approved by the ACC before any site work has been started.

- 9 No commercial cutting of timber shall be permitted on any Lot. However, the clearing of home sites, pastures or clearing to establish views from the homesite is permitted provided that no more than twenty-five percent (25%) of trees that measure ten (10) inches or greater in diameter at the base of the trunk of the tree on any Lot may be cleared without the prior approval of the Architectural Control Committee. The removal of any dead or leaning trees is not prohibited in any circumstance. Cutting of smaller trees/bush hogging is permitted and will not be considered part of the twenty-five percent (25%) allowed clearing so long as trees that are cut are less than ten (10) inches in diameter at the base of the trunk of the tree. Existing open land or pasture will not be considered part of the twenty-five percent (25%) allowed clearing.
- 10 No structure, other than a fence, may be built within fifteen (15) feet of any property line or of any right of way for any subdivision roadway or private drive serving another lot. An easement for installation and maintenance of utilities, and for construction and maintenance of drainage facilities is hereby reserved in favor of the Association, located fifteen (15) feet in width along all side Lot lines and along all Lot lines fronting on any road in the Subdivision.
- 11 No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon any Lot not owned by Declarant, nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection therewith, nor shall there be any subsurface mining or drilling activity thereon, provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the installation of utilities and communication facilities and any activities associated with soil testing, construction of building foundations or master drainage control.
- 12 No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure.
- 13 All clotheslines, garbage cans, above-ground tanks, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the other Lots, streets and areas in the Development outside the Lot on which such items are located. Each Lot owner shall provide closed sanitary receptacles for garbage and all rubbish, trash, and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. Furthermore, no bedding or clothing of any type, nor any towels, clothes or other items of wearing or cleaning apparel, or any mops, brushes, brooms or other types of cleaning apparatus shall be hung or placed outside of any structure located on any Lot in the Development in such a manner as to be visible from any street, or other Lot or area located in the Development.
- 14 After any improvements are made to any lot, the owner shall keep and maintain such lot in a neat and well-maintained condition, free of unsightly undergrowth, brush piles, felled trees and the like, and shall keep yards and other open areas of the lot neatly trimmed and either mowed or landscaped.
- 15 This development is not to be used as a campground. Lot owners are not, however, prohibited from overnight stays in professionally manufactured equipment, provided the camping equipment is not left on any Lot for more than five (5) out of any thirty (30) day period and is not in violation of any local ordinance. Tent camping is allowed provided tent(s) are not visible from any road or roadway or any adjacent lot. Permanent residence in any type of camping equipment is strictly forbidden.
- 16 No Lot or Lots within the Development shall be used for the establishment of a hunt club and no property within the Development shall be leased for the purpose of hunting. Hunting is not allowed at any time or on any part of the subdivision, and no firearm shall be discharged within the Development.
- 17 No trade, commerce or other activity which may be considered a nuisance to the neighborhood may be carried on upon any Lot. It is permissible to operate a home-based business, provided that deliveries to the home do not exceed two (2) UPS, Federal Express or similar express carrier per day. No trade materials or inventories may be stored upon any Lot and no tractor trailer type trucks, house trailers or mobile homes may be stored or regularly parked on any Lot. No junk or unsightly vehicles of any type or description or unsightly buildings may be placed upon any Lot. Home-based businesses shall be allowed to store small inventories within the

residence or enclosed outbuilding situated on the Lot. No advertisements or signage of any kind will be permitted on any Lot for home-based businesses.

18. The Declarant reserves the right to erect any signs in Old Oaks Subdivision. Signs may be erected by individual Lot owners but must meet the following criteria and must be approved by the ACC:
- Signs must be neat, clean and made of metal or wood material only.
 - Signs must not exceed two (2) foot by two (2) foot in size.
 - Signs must be mounted on a four (4) inch by four (4) inch pressure treated timber. Sign cannot be mounted on any tree.
 - Only one (1) "For Sale" or "For Rent" or similar sign for the sale or rent of a property may be placed on a lot at any given time.
 - Builders may erect a sign only during construction of the home and said sign must follow the above criteria.
 - Name and address signs do not have to abide by these criteria, but must be neat, clean and made of metal or wood material. Name and address signs must also be of earth-tone colors and/or white and red.
 - Declarant is not required to follow the above criteria when placing signage within Old Oaks Subdivision.
 - Signs can be placed only on individual Lots. Directional signs or any signs for advertisement at the entrance and road intersections are prohibited. Any exceptions of this covenant must be approved by a majority vote of the officers of the Old Oaks Property Owners Association.
 - No "For Sale" signs may be erected on any Lot until Declarant has conveyed all lots within Old Oaks Subdivision unless written approval has been given by the Declarant. Any "For Sale" signs erected on any lot within Old Oaks Subdivision before conveyance of all lots and without written approval by the Declarant may be removed by the Declarant.

ARTICLE V Architectural Control and Standards

There is hereby established an Architectural Control Committee (hereinafter "ACC"), which shall be appointed by the Executive Board.

1. No improvements shall be erected, placed, altered, maintained or permitted to remain on any Lot, nor shall any construction be commenced thereon until plans for such improvements have been approved by action of the ACC in accordance with the provisions herein, provided however, that improvements and alterations completely within the interior of a building may be completed without approval.
2. An impact fee of \$500.00 for extra wear and tear upon the roads within Old Oaks Subdivision attributable to construction of improvements on any lot must be paid to the Association upon issuance of a building permit from Burke County. If damage and/or wear and tear attributed to construction of such improvement is determined by the ACC to exceed \$500.00, then said property owner will be liable for any costs over and above the initial \$500.00 impact fee.
3. The term "Improvements" shall mean and include structures and construction of any kind, whether above or below the land surface, such as, but not limited to, buildings, outbuildings, water lines, sewers, electric and gas distribution facilities.
4. Any Lot owner who commences to build without written permission and stamped plan approval from the ACC is subject to a fine of \$100.00 per day for every calendar day from date of starting construction (i.e. digging footings, clearing Lot to build) until receipt of approval letter from the ACC. The ACC reserves the right to bring legal action against Lot owners who start building without approved plans.
5. Any land disturbance must be stabilized within twenty-four (24) hours, failure of Lot owner or owner's agent to stabilize disturbed area shall result in a fine of \$100.00 per day levied by the ACC or the Association.
6. The ACC has created "Building Standards" which describe construction standards to be used as the criterion for the approval of proposed improvements. The ACC, or the Association shall have the power to modify, alter, supplement, or amend Building Standards at any time by an affirmative vote of sixty-seven percent (67.0%) of Lot owners, excluding Declarant, but such change shall not be effective as to improvements, which have previously been approved. Declarant will have the power to modify, alter,

supplement or amend Building Standards at any time until they have conveyed all lots within Old Oaks Subdivision

7. The actions of the ACC through its approval or disapproval of plans, and other information submitted pursuant hereto, or with respect to any other matter before it, shall be conclusive and binding on all interested parties
8. All communications and submittals shall be addressed to Old Oaks Subdivision ACC, to any such address as the ACC shall hereinafter be designated in writing. The ACC shall reply in writing to all plan submittals within thirty (30) days of receipt hereof. The ACC shall have 30 days to approve complete plans that have been submitted by Lot owner(s) or builder.

The following are "Building Standards" as created by the Old Oaks Subdivision ACC

Building Type

- Stick built construction only (no mobile, modular or systems built homes with the exception of log homes from Blue Ridge Log Cabins of Campobello, SC or any other log home builder approved by the ACC) except as specifically modified herein

Exterior

- Block, brick, rock/stone foundation. Exposed concrete or block must have stucco applied on or before completion of home
- Wood, log, rock/stone, stucco, brick and any combination is permitted. Vinyl and aluminum siding is not permitted. Any siding made of materials other than wood must be approved by the ACC
- Any new materials that are approved by the North Carolina Homebuilders Association may be considered and must be approved by the ACC
- Exterior of homes must be of earth tone colors
- Windows/doors must be of sound quality and workmanship and installed properly
- No satellite dishes over 18 inches in diameter shall be permitted
- No pre-fabricated, metal or plastic outbuilding will be permitted. Outbuildings must be constructed of similar materials and colors as the home. Exceptions for materials and colors of barns constructed on properties will be at the discretion of the ACC
- Detached garages are permitted, but must be constructed of the same exterior material as the home
- Roof-pitch must be a minimum of 6/12. This also applies to outbuildings and detached garages
- No chain-link, barbed wire or other similar wire fencing allowed. All fencing must be constructed of wood, stone or wrought iron. Any other material used for fencing must be approved by the ACC before installation

Contractor Responsibilities

- Contractor must have proof of insurance, to include but not limited to automobile, workman's compensation and liability insurance of no less than one million dollars
- Contractor may be required to provide references to ACC prior to plan approval
- Contractor must provide one (1) portable toilet for each job site within the development. The contractor must present a maintenance agreement, which allows for weekly dumping/cleaning of portable toilet
- Contractors must have a dumpster on site for each job site. Trash and excess/waste building materials shall be placed in dumpster at the end of each working day
- The ACC reserves the right to levy fines of \$100 per day against contractors who do not adequately clean building site or do not have a functioning portable toilet
- Building materials cannot be placed within road rights of way or utility easements
- Contractor must assume liability for all construction vehicles that enter Old Oaks Subdivision en route to their job site, specifically overweight vehicles that damage road surface and negligence of operators. Concrete truck weight limit is 5 yards per truck
- Contractor is responsible for actions of any/all subcontractors
- Contractors/subcontractors are responsible for any cut, break or damage to underground utility caused by their negligence

Lot Owner Responsibilities

- Present 2 copies of blue line schematic drawings of home to ACC (Digital files in PDF format may be accepted as well) Colors used on exterior of home must be included and color samples may be required
- Present all materials requested on attached Architectural Control Checklist to the Old Oaks Subdivision ACC
- Have permission of ACC before commencement of construction
- Lot owner is responsible for agents, employees, contractors, subcontractors and assigns
- If the lot has been improved (built upon), then the owners of the improved lot shall maintain their lot (s) to neatly kept and mowed condition. All stumps, brush piles and debris shall be removed from lot (s) or hidden from sight from the roadways

Architectural Control Checklist

Below is a checklist of items needed for house plan approval from the Architectural Control Committee (ACC)

Preliminary Approval

- 2 copies of preliminary site plan disclosing location of all improvements to be placed on lot (one copy will be returned to you and one copy will be kept and placed in your file)

Final Approval

- 2 copies of schematic drawings of home (locating improvements on lot, showing elevations on all four sides, color schemes, building materials, and all site improvements, is recommended) (one copy will be returned to you and one copy will be placed in your file)
- Contractor/Builders name
- Proof of insurance (builders risk, E&O, Auto & liability, workmen's compensation)
- List of Subcontractors to be used
- Copy of portable toilet and dumpster contract or receipt of payment
- Copy of signed disclaimer from Contractor
- General description of building materials

Upon receipt of all the above items, the ACC will respond within 15 days for Preliminary Approval and 30 days after all documents have been received for Final Approval. Copies of your correspondence to the ACC will be kept and placed in your file

Neither the ACC, nor any member, employee or agent thereof, shall be liable to any owner of a Lot or to anyone submitting plans for approval or to any other interested party by reason of mistake in judgment, negligence, or nonfeasance in connection with the approval, disapproval or failure to approve any such plans or for any other action in connection with its or their duties hereunder. Likewise, anyone who submits plans to the ACC for approval agrees not to bring any action or suit to recover any damages against the Declarant, the ACC, or any partner, member, employee or agent of the Declarant or the ACC

The ACC may make exceptions to the provisions herein, when, in its sole discretion, such exceptions would not be in conflict with the intended character of the property subject to this Declaration when fully developed and occupied in accordance with the developer's plans and objectives therefore

ARTICLE VI

Powers and Duties of the Owners Association

The Old Oaks Property Owners Association, a North Carolina non-profit corporation, (the "Association"), shall have and exercise all of the following rights, powers and authority:

- 1 Adopt and amend bylaws and rules and regulations applicable to the subdivision
- 2 Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners,
- 3 Hire and discharge managing agents and other employees, agents, and independent contractors,
- 4 Institute, defend or intervene in litigation or administrative proceedings on matters affecting the planned community,
- 5 Make contracts and incur liabilities,

- 6 Regulate the use, maintenance, repair, replacement and modification of the common elements,
- 7 Cause additional improvements to be made part of the common elements,
- 8 Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to N C G S 47F-3-112,
- 9 Grant easements, leases, licenses and concession through or over the common elements
- 10 Impose and receive any payments, fees, or charges for the use, or operation of the common elements, and for services provided to lot owners,
- 11 Impose reasonable charges for late payment of assessments, not to exceed the greater of twenty dollars(\$20 00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period or 30 days or longer,
- 12 After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws and rules and regulations of the association,
- 13 Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents,
- 14 Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, or as set out in the Planned Community Act, or as necessary and proper for the governance and operation of the association

The Old Oaks Property Owners Association shall have the following duties and obligations,

- 1 The Association shall cause the common elements, including the subdivision roadways and the rights of ways appurtenant thereto, and including subdivision signage located upon such rights of ways to be maintained, repaired and replaced when necessary, to assess the lot owners as necessary for such costs, and to recover the costs of such maintenance, repair or replacement as herein provided,
- 2 The Association shall keep financial records sufficiently detailed to enable the association to comply with the Planned Community Act and the North Carolina Non-Profit Corporation Act, and shall make such records reasonably available for examination by any lot owner and the authorized agents of such lot owner. Such records shall include records of meetings of the association and the executive board, cash receipts and expenditures, and all assets and liabilities. The Association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge within 75 days of the close of the fiscal year. An audit of the associations books and records for the current or immediately preceding fiscal year may be required by a vote of the executive board, or of a majority of the lot owners voting at any annual meeting or special meeting duly called for that purpose.
- 3 In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no financial payments, including payments made in the form of goods and services, may be made to any officer or member of the executive board or to a business, business associate or relative of an officer or member of the executive board, except as expressly provided for in the bylaws or in payment for services or expenses paid on behalf of the association which are approved in advance by the executive board.
- 4 The Association shall maintain casualty and liability insurance in such amounts and on such common elements as are insurable, in accordance with N C G S 47F-3-113
- 5 The Association shall cause a meeting of the members to be duly called and held in accordance with this declaration at least once each year.

ARTICLE VII Executive Board Powers and Duties

There shall be an Executive Board of the Old Oaks Property Owners Association, which shall consist of such members and officers as determined by the By Laws, and shall have the following duties and obligations,

- 1 Consistent with the by-laws, this declaration, and existing law, the executive board may act unilaterally in all instances on behalf of the Association. In the performance of their duties, officers and members of the executive board shall discharge their duties in good faith. Officers shall act according to the standards for

- officers of a non-profit corporation set forth in N.C.G.S. 55A-8-42, and members of the board shall act according to the standards for directors of a non-profit corporation set forth in N.C.G.S. 55A-8-30
- 2 The executive board may not act unilaterally on behalf of the association to amend the declaration or the by-laws, to terminate the planned community, to elect members of the executive board, or to raise annual or special assessments
 - 3 The lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present may remove any member of the executive board with or without cause, other than a member appointed by the declarant
 - 4 Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak
 - 5 Within 30 days after adoption of any proposed budget for the Association the executive board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The executive board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board in the same manner
 - 6 Notwithstanding any provision to the contrary, no action of the association or the executive board, including the proposal or approval of any budget, shall be effective to raise annual assessments by more than five percent (5%) unless such budget or assessment increase shall be ratified by the affirmative vote of a majority of the lot owners present in person or by proxy at an annual or special meeting called for the purpose of considering such increase, and at which a quorum is present

ARTICLE VIII

Association Meetings, Membership and Voting Rights

- 1 In addition to the annual meeting, a meeting of the Association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%) of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting the secretary shall cause notice to be hand delivered or sent prepaid by U.S. mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer
- 2 A quorum is present throughout any meeting of the association if persons entitled to cast ten percent (10%) of all the authorized votes are present in person or by proxy at the beginning of the meeting
- 3 In the event business cannot be conducted at any meeting of the association or the executive board because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement at the next meeting shall be one-half of the quorum requirements applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted
- 4 Meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order
- 5 Except for lots owned by Declarant during the period of Declarant control, each lot in Old Oaks Subdivision is entitled to one vote in the Association. If only one of the multiple owners of a lot is present at a meeting of the association, the owner who is present is entitled to cast such vote. If more than one of the multiple owners is present, the vote may be cast only in accordance with the agreement of a majority in interest of the multiple owners. Such majority interest is conclusively presumed if any one of the multiple owners casts the vote without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot

- 6 Votes may be cast by written proxy executed by any lot owner. If a lot is owned by more than one person, each owner may vote, or may register protest to the casting of votes by other owners, by proxy. A lot owner may not revoke a proxy except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated. Every proxy expires 11 months after its date, unless a shorter term is specified in the proxy.
- 7 No votes may be cast on behalf of lots owned by the Association.
- 8 The Association, or the Executive Board may by affirmative action, delegate to one or more committees the responsibility for any authorized actions, so as to facilitate efficient and effective management of the Association.

ARTICLE IX
Assessments for Common Expenses

- 1 Except as provided in N.C.G.S. 47F-3-115, common expenses shall be assessed against all lots equally, except that no assessment shall be made on any lot owned or beneficially controlled by the declarant. Until the Association shall make a different common expense assessment, the annual assessment for common expense shall be \$300.00 per lot per year, pro-rated for the remaining portion of any given year when a lot is purchased from declarant.
- 2 Payments of annual assessments shall be due 30 days after the beginning of the fiscal year, or otherwise as determined by the Association. Any assessment levied against a lot which remains unpaid for a period of 30 days or longer shall bear interest at the rate of eighteen per cent (18%) per year from the due date thereof, and shall constitute a lien on that lot when a claim of lien is filed in the office of the Clerk of Superior Court of Burke County, North Carolina.
- 3 Service charges, late charges and other all other charges imposed on a lot or lot owner by the association as fines, fees, special assessments, penalties or the like under the provisions of Article constitute a similar lien, bear the same interest, and are enforceable under this Article as annual assessments, except as limited by the provisions of N.C.G.S. 47F-3-116.
- 4 Under the provisions of N.C.G.S. 47F-3-116, the Association may collect and enforce any and all such assessments by civil action, by foreclosure under Article 2A of Chapter 45 of the General Statutes, by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes, or otherwise as provided by law. In any such action the Association may include and shall recover costs or expenses of collection or foreclosure, including reasonable attorney's fees. The collection of attorney's fees in any such action is limited by the requirement in such General Statute that notice of intent to seek attorney's fees must be provided to the lot owner, and that attorney's fees may not be charged unless the debt is contested.
- 5 The lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Superior Court of Burke County.
- 6 The lien created by this Article is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including but not limited to a deed of trust on the lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot.

ARTICLE X
Declarant Control

- 1 Until such time as Declarant has sold more than 95% of the lots in the subdivision, or until Declarant specifically relinquishes such rights in writing, Declarant shall have the right to appoint each of the members of the Executive Board of the Association, and shall have three votes in the association for every lot owned by Declarant.
- 2 While Declarant owns any lot or adjoining land, Declarant shall have the right to waive, amend or modify this Declaration, to add land to or withdraw land from the subdivision, to revise the subdivision plat as to any unsold lot or the routes of any subdivision roadways, to dedicate additional common areas, to grant easements and rights of way which benefit the association, or to grant variances from the restrictions contained herein as to any lot or lots.
- 3 In the exercise of any of the rights set forth herein, Declarant shall have such additional rights and authority as may be necessary to the full and complete enjoyment thereof.

ARTICLE XI
Procedures for Fines and Suspension of Community Privileges

- 1 The executive board, or an adjudicatory panel appointed by the executive board may hold a hearing to determine if any lot owner should be fined, or if planned community privileges or services should be suspended for violations of the declaration, bylaws, and rules and regulations of the association
- 2 Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board
- 3 The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs
- 4 The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate or modify the prior decision of the adjudicatory body

ARTICLE XII
Amendment

- 1 Except in case of amendment executed by declarant under the terms of this declaration or by special declarant right, this declaration may be amended only by affirmative vote or written agreement signed by the owners of at least sixty-seven percent (67%) of the lots in Old Oaks Subdivision
- 2 Every amendment to this declaration shall be prepared, executed, recorded and certified in accordance with N.C.G.S. 47-41, shall be recorded in the Office of the Register of Deeds of Burke County, North Carolina, and shall be effective only upon such recordation
- 3 No action to challenge the validity of an amendment adopted pursuant to this article may be brought more than one year after the amendment is recorded

ARTICLE XIII
Shared Driveways

- (1) The recorded plat may show the existence of shared driveways or of driveway or access easements. If shown on the recorded plat, such right of way and easement shall be perpetual in nature, and shall inure to the benefit of the owner of any such numbered lot, their heirs and assigns forever
- (2) Each lot owner who establishes access off of such private drive, by acceptance of a deed to such lot, and by establishing access off such joint easement shall be deemed to agree to maintain equally and on a pro-rata basis the said private road in good condition, with proper ditching and drainage on both sides of the road, adequate gravel or pavement, sufficient to keep the road in stable condition, free of ruts and potholes, sufficient to allow comfortable passage by any type of motor vehicle over and across said road, and to and from each of the lots or parcels of real property owned by the parties having executed this instrument
- (3) If the owner of any lot accessed by such roadway desires to improve and to begin use of the roadway, and the owners of one or more of the other lots is not available, or does not wish to participate, then such owner shall have the right to install necessary improvements, including but not limited to culverts, road base, gravel, or minor grading at their own expense. Such owner may certify by paid receipts and invoices to the secretary of the Association, the cost of improvement of such of the roadway as would be jointly maintained. Thereafter, whenever one of the other lot owners entitled to use the road establishes access off such road onto their lot, such owner shall pay their pro rata share of the expense for initial improvement to the roadway to the lot owner who advanced such expense, and shall then be liable for their pro rata proportion of future maintenance of such roadway

ARTICLE XIV
Miscellaneous Provisions

- 1 This Declaration, as may be amended from time to time, shall run with the land and shall be binding on all parties, their successors and assigns, and upon all persons claiming by or under them until January 1, 2037, at

which time said covenants shall be automatically extended for successive periods of ten (10) years unless, by majority vote of the current owners of the Lots described herein, it is agreed to terminate said covenants in whole or in part

2. Invalidation of any of these covenants or any part thereof by judgments or Court order shall in no way affect any of the other provisions which shall remain in full force and effect. The failure of any person or persons to take action to restrain the violation of any of these covenants and restrictions shall not be construed as waiver of any enforcement rights and shall not prevent the enforcement of such covenant or covenants in the future.

IN WITNESS WHEREOF, K.M. PROPERTIES, LTD, doing business in North Carolina under the assumed name of MCS of NC Ltd Partnership has caused this instrument to be executed in its name by its General Partner, this the day and year first above written

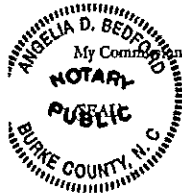
K.M. PROPERTIES, LTD, d/b/a MCS of NC Ltd Partnership
By *Matthew C. Schulte*
Matthew C. Schulte, President
K.M.R. Partners, Inc
General Partner of KM Properties, Ltd

STATE OF NORTH CAROLINA
COUNTY OF BURKE

I, *Angelia D Bedford*, a Notary Public of the County and State aforesaid, certify that MATTHEW C. SCHULTE, President of K.M.R. Partners, Inc, which is the general partner of K.M. Properties, LTD, personally appeared before me this day and acknowledged that he is the President of K.M.R. Partners, Inc, the general partner of K.M. Properties, LTD, and that he, as the President, being authorized to do so, voluntarily executed the foregoing instrument as President of the General Partner, K.M.R. Partners, Inc, on behalf of K. M. Properties, LTD, and further acknowledged the due execution of the foregoing instrument for the purposes stated therein on behalf of K.M. Properties, LTD

Witness my hand and official seal, this the 18th day of November, 2009

Angelia D Bedford
Notary Public
Printed Name *Angelia D Bedford*



My Commission Expires *3-5-2011*



ELIZABETH T COOPER
REGISTER OF DEEDS, BURKE
JUDICIAL BUILDING
201 SOUTH GREEN STREET
MORGANTON, NC 28655

PLEASE RETAIN YELLOW TRAILER PAGE

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and/or cancellation

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