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#2 > 9826-71-0248  
#3 > 9826-71-6570

#4 > 9826-81-4242  
#5 > 9826-80-4805  
9825-79-9832

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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR CHERRY PLACE SUBDIVISION  
AND PROVISIONS FOR PRIVATE ROAD MAINTENANCE**

**NORTH CAROLINA  
ORANGE COUNTY**

Prepared by: Steve F. Yuhasz, 226 South Churton St., Hillsborough, NC 27278  
Return to: Declarant

THIS DECLARATION, made this 27<sup>th</sup> day of March, 2009, by Bruce W. Curtis and spouse Sara E. Curtis, Hendrik Joubert and Susanna F. Joubert, and Donald Coleman McGinnis and spouse Shannon Brook McGinnis, hereinafter called Declarant, having a mailing address of 2342 Castlerock Farm Road, Pittsboro, NC 27312

**WITNESSETH:**

WHEREAS, Declarant owns in fee simple the real property described in Article 1 below (the property), and

WHEREAS, Declarant wishes to ensure a uniform scheme of development for the property, and

WHEREAS, the said property will have access to Lebanon Road (S.R. 1306) via the private road shown on the plat prepared by ENT Land Surveys, Inc. entitled "Cherry Place", dated July 5, 2001 and recorded in the Orange County Registry in Plat Book 89 page 151, said private road being known as Royal Oak Lane (hereinafter referred to as private road); and

WHEREAS, the Declarant by this Declaration of Restrictions wishes to bind himself, his successors and assigns to abide by certain restrictions on the use of the property, and

WHEREAS, Declarant by this Declaration of Restrictions, wishes to bind himself, his successors and assigns to provide all owners of any portion of said property owned by Declarant described below perpetual ingress, egress and regress to State Roads; and

WHEREAS, Declarant by this Declaration of Restrictions, wishes to bind himself, his successors and assigns to provide for maintenance of said private road until such time as the said private road is accepted by the State of North Carolina for maintenance;

**NOW, THEREFORE**, Declarant agrees for himself and with any and all persons, firms or corporations hereafter acquiring any of the property described in Article 1 below, that the same shall be subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof, which restrictions, conditions, and covenants shall run with the said property and inure to the benefit of and be binding upon the heirs, successors and assigns of Declarant and other acquiring parties and persons.

Article 1. The real property which is, and shall be, held, transferred, sold and conveyed subject to the protective and restrictive covenants set forth in the various Articles of this Declaration is located in Chapel Hill Township, Orange County, North Carolina, and is more particularly described as follows:

Lots 1, 2, 3, 4, and 5 as shown on the plat prepared by ENT Land Surveys, Inc. entitled "Cherry Place", dated July 5, 2001 and recorded in the Orange County Registry in Plat Book 89 page 151.



Article 2. Declarant hereby grants unto himself and the future record owners of the aforesaid Article 1 property adjoining and abutting the private road as shown on the aforesaid recorded plat(s) and as said private road may be extended in accordance with this Declaration, perpetual ingress, egress and regress over, on and under the said private road including the use of the road for the purposes of installation and maintenance of utilities. In addition, a perpetual, non-exclusive access easement is hereby established over the private road for the benefit of the County of Orange and all other local, state and/or federal governmental agencies and personnel performing fire fighting, mail delivery, garbage collection, ambulance service, police protection and other emergency duties and services, while in the performance of such duties and services upon the Property.

**TO HAVE AND TO HOLD** the above-described easement as an appurtenance to all of the property, which easement shall run with said lands forever.

Article 3. Unless otherwise specified, actions under this agreement shall be approved by a majority of the votes cast by the owners of the property in person or by written proxy. An owner of a lot has one vote for each lot subject to this Declaration and three additional votes if one or more principal structures are located on such lot. All votes attributable to any one lot must be cast as a unit.

Each owner's pro-rata share of the costs incurred shall be the total cost multiplied by said owner's votes and divided by the total of all the owners' votes within the property.

Article 4. The road shall be maintained to Class B road standards as prescribed by Orange County now and as the same may be revised from time to time.

For so long as Declarant shall be willing and able to serve he shall be responsible for:

1. Determining what maintenance is necessary in order to maintain the private road.
2. Contracting repairs and notifying the owners of each lot abutting the private road of their respective assessments at least annually; and
3. Estimating the costs of maintenance in advance and depositing the funds received in a separate account, the records of which shall be available for inspection by any owner subject to assessment.



If at any time Declarant is unable or unwilling to provide for the maintenance of said road, or if Declarant no longer has an ownership interest in any Article 1 property, the owners of the Article 1 property shall be responsible for maintenance as herein provided. Any owner of Article 1 property or the owner of any interest therein, shall have the right to enforce the maintenance standard by sending by registered or certified mail, return receipt requested, written notice of all proposed maintenance and of the time and place of a meeting of all Article 1 owners (said meeting to take place no less than 10 days following the mailing of such notice) to all such owners at their last known addresses as shown on the Orange County Tax Records.

At such owners meeting all maintenance shall be approved by a majority of the votes cast.

Every owner of any of the Article 1 property shall bear on a pro-rata basis the cost of maintaining said private road, this being each owner's pro-rata share for grading costs, gravel, or rock hauled in to fill ruts, holes, and washed-out sections and necessary replacement of or additional drainage culverts. Each owner's pro-rata share of the maintenance cost of said private road shall be due and owing to whichever other owner initiated the maintenance enforcement within 10 days of the said owners' meeting. If not paid by that time, said initiating owner may file suit for the same on behalf of all of the owners.

Notwithstanding the vote at the owners' meeting, nothing in this Declaration of Restrictions shall be construed as denying any owner the right to see that the said road is maintained to Class A standards, and any owner may require that the maintenance requirements be submitted to binding arbitration under the rules and regulations of the American Arbitration Association (as governed by the Revised Uniform Arbitration Act, North Carolina General Statutes Section 1-569. 1 et seq, as it may be from time to time amended) by notice mailed to all said record owners at their last known addresses by registered or certified mail, return receipt requested, by 5:00 p.m. on the second working day following the owners' meeting, unless such arbitration notice is sent, the vote of the majority of the owners shall be conclusive as to what maintenance is mandated by this Declaration of Restrictions.

Article 5. Future development of the property described in Article 1 may require upgrading the private road to either a higher private road standard or to North Carolina Department of Transportation standards. Extensions of the private road within the aforesaid property, or to other property, or for utility access to other property, will not be permitted unless the property benefited by the extension is thereafter bound by this Declaration as Article 1 property. This Declaration may be amended to include such additional properties by the affirmative vote of 75% of the votes cast under the procedure described in Article 3. In the event that Orange County or any other governmental body requires that the private road be upgraded above a Class A standard or be publicly dedicated and constructed to Department of Transportation standards as a condition to the approval of any development of the property described in Article 1, then all persons bound under this Declaration shall be responsible for maintenance of the entire road system to the new standard. Provided, however, that the initial cost of construction of the new or upgraded roads shall be borne by the owners whose development activity prompts the requirement. The cost of upgrading the road shall be apportioned among those owners as they agree, or if they do not agree, then among them according to the system described in Article 3. A "Notice of Private Road Standard Reclassification" indicating the revised road standard, the Parcel Identifier Numbers of the lots affected by the revised standard, the recordation information of this document, and the recordation information of the county-prepared "Declaration of Development Restrictions and Requirements" imposing the revised standard shall, upon recordation in the Orange County Registry, be sufficient notice to all parties of the revised road standard and corresponding maintenance requirement. In the event public dedication of the private road or portions thereof, as it may have been extended, is required by



(c) All dwellings shall be constructed on the Lot by a building contractor licensed in the State of North Carolina. No dwelling shall be erected or allowed to remain on any Lot unless such dwelling shall contain at least 1800 square feet of heated, furnished living area if a one story residence. In the case of a multi-story residence the ground floor shall contain not less than eleven hundred (1100) square feet of heated, finished living space, and the second floor shall contain not less than nine hundred (900) square feet of heated, finished living space. No dwelling shall exceed three Stories in height. No garage constructed along with a dwelling on any Lot shall exceed the size of a three (3) car garage. Outbuildings may be placed on a lot so long as no portion of the outbuilding is closer to any property line than any portion of the principal dwelling or twice the otherwise applicable setback, whichever is less. No dwelling shall be moved from any other location onto a lot. Prior to construction of a dwelling meeting the above minimum area, one habitable structure, not exceeding the maximum size limit for a "guest house" or similarly defined structure in the applicable governmental zoning regulations, may be constructed on a lot in subject to the following conditions:

- (i) it is constructed no closer than six hundred (600) feet to Royal Oak Lane, and
- (ii) a dwelling in compliance with the minimum area is constructed and occupied on the lot within three (3) years of the completion of the non-conforming structure.

(d) No commercial, inoperative, abandoned, unlicensed motor vehicles or recreational vehicles, boats or sailing vessels, farm or construction machinery and any trailers or carriers, or like equipment or mobile or stationary trailers of any kind shall be kept or permitted to remain on any Lot, without the prior written approval of the Declarant and even with such approval, such vehicles must be stored in an enclosure away from view in rear of property or behind approved fencing, Under no circumstances shall any such vehicle be parked on the streets of the property.

(e) Swing sets, basketball goals, play houses and play areas shall be unobtrusively located on the lot.

(f) At no time shall any lot or parcel be stripped of its topsoil and trees, or allowed to be eroded by being excavated or neglected.

(g) Each owner shall maintain and preserve his or her lot in a clean, orderly, and attractive condition Maintenance and preservation of the lot shall include, for example, the trimming of shrubs, the mowing of grass, landscaping, and the removal of trash, leaves, debris and fallen trees or limbs.

(h) No mobile home or trailers shall be allowed on any lot. Modular homes maybe allowed by a majority vote of the owners in accordance with the provisions of Article 3.

(i) The driveway for each lot shall be constructed of gravel, concrete or asphalt and completed prior to the occupancy of any dwelling constructed on that lot. Each driveway must be of sufficient size to permit the off-street parking of at least two (2) automobiles.

(j) No lumber, brick, stone, excavated earth, cinder block, cement, or other materials used for building purposes shall be stored upon any lot longer than a reasonable time for the completion of construction in which they are used. None of these materials may be stored, or heavy equipment or vehicles parked, within the dripline of any significant trees on or adjacent to the lot during or after construction.

(k) When the construction of any dwelling has commenced, work thereon must be prosecuted diligently and must be completed within a reasonable time not exceeding eighteen (18) months from the date of commencement of construction; provided however, this requirement may be modified by a majority vote of the owners in accordance with the provisions of Article 3.

(l) Each owner shall be responsible for the costs and expenses for any road or utilities repair or other infrastructure improvement necessitated by damage done as a result of the construction of improvements upon the owner's Lot.

(m) No exposed or exterior radio or television transmission or receiving antennas shall be erected, placed or maintained on any part of the property which shall exceed the height of the trees on the lot or that can be seen from the roadway or adjoining lot(s).



(c) All dwellings shall be constructed on the Lot by a building contractor licensed in the State of North Carolina. No dwelling shall be erected or allowed to remain on any Lot unless such dwelling shall contain at least 1800 square feet of heated, furnished living area if a one story residence. In the case of a multi-story residence the ground floor shall contain not less than eleven hundred (1100) square feet of heated, finished living space, and the second floor shall contain not less than nine hundred (900) square feet of heated, finished living space. No dwelling shall exceed three stories in height. No garage constructed along with a dwelling on any Lot shall exceed the size of a three (3) car garage. Outbuildings may be placed on a lot so long as no portion of the outbuilding is closer to any property line than any portion of the principal dwelling or twice the otherwise applicable setback, whichever is less. No dwelling shall be moved from any other location onto a lot. Prior to construction of a dwelling meeting the above minimum area, one habitable structure, not exceeding the maximum size limit for a "guest house" or similarly defined structure in the applicable governmental zoning regulations, may be constructed on a lot in subject to the following conditions:

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(m) No exposed or exterior radio or television transmission or receiving antennas shall be erected, placed or maintained on any part of the property which shall exceed the height of the trees on the lot or that can be seen from the roadway or adjoining lot(s).



(n) No noxious or offensive activity shall be conducted upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to neighborhood or the occupants of any adjoining lots. No industrial, business, or commercial activity whatsoever is permitted on a lot, except as may be permitted by Orange County as a "Home Occupation" in accordance with the Orange County Zoning Ordinance. No animals other than a limited number of dogs and/or cats kept as household pets shall be kept or allowed to remain on any lot. All pets must be restrained at all times. No dogs and for cats may be kept, bred and/or maintained on the lots for commercial purposes.

(o) No structure of a temporary character, such as but not limited to trailers, tent, shack, garage, barn or other outbuilding shall be used or permitted to remain on any lot at any time as a residence.

(p) All outdoor lighting fixtures which are freestanding and thus not affixed to the house or other approved structures shall be of the type and design approved by Orange County.

(q) Owners of each lot shall be responsible for providing adequate garbage disposal for their property. Garbage shall not be permitted to remain uncollected on any lot for more than two successive weeks. Trash, garbage, or other refuse shall be kept in sanitary containers and out of view from the streets in the property. No lot shall be used or maintained as a dumping ground for trash, refuse or garbage.

(r) No sign of any kind shall be displayed to the public view on any lot except a small sign bearing the owner's name and/or house number, and one professional sign of not more than six (6) square feet advertising the lot for sale or rent. Nothing herein shall prevent the display of signs of not more than six (6) square feet advocating for a candidate or a position within 45 days prior to a local, state or federal primary or general election. All such political signs must be removed within three days following the election. Any signs erected and maintained on any lot must comply with all applicable government regulations;

Article 10. Any relief or waiver from the strict requirements of this Declaration are not effective unless such relief or waiver is in writing and recorded in the Orange County Registry.

Article 11. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision herein contained which provisions shall remain in full force and effect.

Article 12. Any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and covenants, now or hereafter imposed by the provisions of this Declaration. Failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of any future right to do so.

Article 13. Article 9 may be amended, in whole or in part, by the affirmative vote of 75% of the votes cast under the procedure described in Article 3.

Article 14. This Declaration shall run with and be appurtenant to the land and shall be binding upon the heirs, successors, and assigns of each record owner of the Article 1 property. When used in this Declaration, the singular shall include the plural; the masculine shall include the feminine and the neuter,

(this space intentionally blank)



IN WITNESS WHEREOF, Declarant has signed and sealed this instrument on the day and year first written above.

Bruce W. Curtis (SEAL)  
Bruce W. Curtis

Sara E. Curtis (SEAL)  
Sara E. Curtis

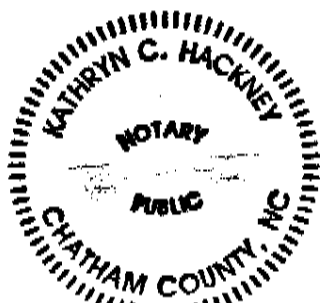
Hendrik Joubert (SEAL)  
Hendrik Joubert

Susanna F. Joubert (SEAL)  
Susanna F. Joubert

Donald Coleman McGinnis (SEAL)  
Donald Coleman McGinnis

Shannon Brook McGinnis (SEAL)  
Shannon Brook McGinnis

NORTH CAROLINA  
ORANGE COUNTY



Place notary seal in box

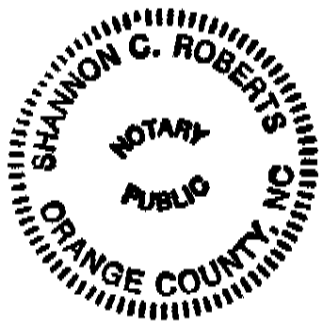
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Bruce W. Curtis and Sara E. Curtis

Kathryn C Hackney  
(print name) Kathryn C. Hackney Notary Public

This 17<sup>th</sup> day of March, 2009

My Commission Expires: April 9, 2011

NORTH CAROLINA  
ORANGE COUNTY



Place notary seal in box

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Hendrik Joubert and Susanna F. Joubert

Shannon C Roberts

(print name) SHANNON C ROBERTS Notary Public

This 6<sup>th</sup> day of April, 2009

My Commission Expires: Aug 15, 2009

RTH CAROLINA  
ORANGE COUNTY



Place notary seal in box

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Donald Coleman McGinnis and Shannon Brook McGinnis

Deborah C. Fox

(print name) Deborah C Fox Notary Public

This 27 day of March, 2009

My Commission Expires: November 18, 2013