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Fax: 919-287-2609

Date: July 22, 2008

Attn:

Pages: 4

Re: Cherry Place

CC:

Urgent For Review Please Comment Please Reply Please Recycle

Per our conversation here is the draft of the Road Maintenance.

If you have any questions, please feel free to call.

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NORTH CAROLINA
ORANGE COUNTY

DECLARATION OF RESTRICTIONS
AND PROVISIONS FOR PRIVATE
ROAD MAINTENANCE FOR
ROYAL OAK LANE

THIS DECLARATION, made this ____ day of _____, 2002, by BRUCE W. CURTIS and wife, SARA E. CURTIS, hereinafter called Declarants, having a mailing address of 2342 Castle Rock Road, Pittsboro, NC 27312.

WITNESSETH:

WHEREAS, Declarants own in fee simple the real property described in Article 1 below;
and

WHEREAS, the said property will have access to Lebanon Road (S.R. 1306) via the private road shown on the plat hereinafter referred to, said private road being known as Royal Oak Lane (hereinafter referred to as private road); and

WHEREAS, Declarants by this Declaration of Restrictions, wish to bind themselves, their successors and assigns to provide all owners of any portion of said property owned by Declarants described below perpetual ingress, egress and regress to State Roads; and

WHEREAS, Declarants by this Declaration of Restrictions, wish to bind themselves, their 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, Declarants agree for themselves 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 insure to the benefit of and be binding upon the heirs, successors and assigns of Declarants 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 Cheeks Township, Orange County, North Carolina, and is more particularly described as follows:

ALL of Lots 1 through 5 inclusive together with the "remaining area" of 29.01 acres depicted upon the plat entitled "Final Plat Cherry Place" prepared by ENT Land Surveys, Inc., revised December 21, 2001 and recorded in Plat Book ____, Page ____ of the Orange County Registry, reference to which is hereby made for a more particular description.

Article 2. Declarants hereby grant unto themselves and the future record owners of the aforesaid property adjoining and abutting the private road as shown on the aforesaid recorded plat(s) and as said private road may be extended into the aforesaid property, 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.

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

For so long as Declarants shall be willing and able to serve they shall be responsible for:

1. Determining what maintenance is necessary in order to maintain Royal Oak Lane.

2. Contracting repairs and notifying the owners of Lot abutting Royal Oak Lane 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 Declarants are unable or unwilling to provide for the maintenance of said road, the owners of the subdivided lots as shown on the recorded plats herein before referred to shall be responsible for maintenance as herein provided. Any owner of a subdivided lot within said property served by said road 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 the said record owners (said meeting to take place no less than 10 days following the mailing of such notice) to all such record 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 (each owner having one vote for each subdivided lot owner and three for each dwelling unit on a lot).

Every owner of any of the aforesaid property using said road 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 costs of said private road shall be the total cost of maintenance multiplied by said owner's votes and divided by the total of all the owners' votes within the property. 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 C 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 Uniform Arbitration Act of North Carolina, North Carolina General Statutes Section 1.567.1 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 4. The private road located within said property may be dedicated to the public at the election of a majority vote of the owners under the same procedure used in Article 3 for the maintenance of said road. In that event, the owners and their successors in title and interest to any of the property described herein will remain responsible for road maintenance by the North Carolina Department of Transportation or other governmental body.

It is probable that future development of the property described in Article 1 will require upgrading of the private road providing access to the property described in Article 1 to either a higher private road standard or to North Carolina Department of Transportation standards. In the event that Orange County or any other governmental body, as a condition to the approval of any further subdivision of the property described in Article 1, may require said private road to be upgraded above a Class C standard or publicly dedicated and constructed to Department of Transportation standards, then in that event, Declarants and all persons taking title to the property described in Article 1 shall be responsible for maintenance and the costs of maintenance of the entire road system to the new standard on the point system described in Article 3. Provided, however, that the initial cost of construction the road or any portion of the road to a higher

private road standard or to Department of Transportation standards shall be borne solely by the owners of the portion of said property, the subdivision of which requires that the road or any portion of it be upgraded. The cost of construction the road or any portion of it to a higher private road standard or to Department of Transportation Standards shall be hared by the owners responsible for the upgrading according to the system described in Article 3. In the event public dedication of the said private road or any extension of the private road or portions thereof is required by Orange County, all persons taking title to the aforesaid property from and through Declarants shall dedicate to the public that portion of the road required to be dedicated.

Article 5. In the event that extensions are made to the said private road within the aforesaid property, or to other property, or for utility access to other property, the costs of maintaining the entire road system shall be borne by all the record owners of any property served by the entire road system as set forth in Article 3; Provided, however, that the initial costs of constructing any extension of the road shall be borne solely by the owners of the portion of said property abutting said road extension as they may agree, or if they do not agree, then among them by the same point system as set out above.

Article 6. This Agreement shall remain in full force and effect as to said road or any portion thereof until such time as said road or any portion thereof shall be taken over by the North Carolina Department of Transpiration for maintenance purposes, and any portion of said road not so taken over by the North Carolina Department of Transportation shall remain subject to this Agreement. Declarants accept all liability related to the use and maintenance of said road and agree to hold Orange County and the State of North Carolina harmless from such liability. Declarants acknowledge that some public services may not be provided to the lots abutting the said private road due to the private nature of said road.

Article 7. This agreement is to govern the maintenance of said road when subject to ordinary use. if any owner liable under this agreement shall cause any extraordinary wear and tear on said road by building, well drilling, or other heavy use, said owner shall be responsible to pay such extraordinary cots of maintenance as is caused by said use. If the responsibility for such extraordinary cots of maintenance is not agreed between the owners at an owners' meeting called under the provisions of Article 3 above, the responsibility for said cost shall be subject to binding arbitration as set out in Article 3 above.

Article 8. This Agreement 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 aforesaid property. When used in this Agreement, the singular shall include the plural, the masculine shall include the feminine and the neuter, and vice versa, as the meaning may require.

IN WITNESS WHEREOF, Declarants have caused this instrument to be signed and sealed on the day and year first written above.

_____(SEAL)
BRUCE W. CURTIS

_____(SEAL)
SARA E. CURTIS

NORTH CAROLINA
_____ COUNTY

I, a Notary Public of said State and County, do hereby certify that personally appeared BRUCE W. CURTIS and wife, SARA E. CURTIS before me this day and acknowledged the due execution of the foregoing Declaration of Restrictions and Provisions for Private Road Maintenance.

Witness my hand and notarial seal, this ___ day of _____, 2002.

Notary Public

My Commission Expires: _____