

Prepared by Robert Hartford  
Return To: Cane Creek Partners. LLC  
5424 Hough Rd.  
Hillsborough, N.C. 27278

North Carolina

DECLARATION OF RESTRICTIONS AND  
PROVISIONS FOR PRIVATE ROAD

Orange County

MAINTENANCE

This Declaration, made this 3rd day of January, 2003, by  
**Cane Creek Partners LLC**  
5424 Hough Rd  
Hillsborough NC 27278  
hereinafter called Declarants.

**WITNESSETH:**

Whereas declarants own in fee simple the real property described in article 1 below, known as

**TEN OAKS**

Whereas, the said property will have access to Harmony Church Road and via the private roads shown on the plat hereinafter referred to, said private road being known as Ten Oaks South and Ten Oaks North.

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 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 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:

Article 2. Declarants hereby grant unto themselves and the future owners of the aforesaid property adjoining and abutting **Ten Oaks South and Ten Oaks North**, as shown on the aforesaid recorded plat and as said roads may be extended into the aforesaid property, perpetual ingress, egress and regress along the said roads and for the purposes of installation and maintenance of utilities.

Article 3. Declarants, so long as they shall be record owners of any of the aforesaid property, shall be responsible for the maintenance of said private roads as herein provided. In the event Declarants no longer own any of the aforesaid property, and no Director for the Association as referred to in article 5 below has been elected, the Owners of Lot # 1 as shown on the recorded plat herein before referred to shall be responsible for maintenance as herein provided.

Article 4. Each record owner of the aforesaid property abutting on said roads shall bear on a pro-rata basis the cost of maintaining said private roads, this being each owner's pro-rata share for grading costs, gravel, or rock to be hauled in to fill ruts, holes, and washed out sections, necessary replacement of, or additional, drainage culverts, patching of the surface material, and resurfacing as may be needed from time to time. Written notice of all proposed maintenance shall be made to all owners of record at their last known address. The private road(s) shall be maintained to the private road standard as prescribed by Orange County now and as the same may be revised from time to time. Maintenance and repairs necessary to keep the said road(s) to the standards shall be approved by a majority of the votes cast with respect to the proposed maintenance provided that for this purpose each owner shall have one vote for each "point" assigned to his property. Each owner's pro-rata share of the maintenance costs of said private roads shall be computed by a point system whereby one point is assigned per each acre owned, calculated to the nearest acre, and three points for each occupied dwelling unit and each owner's share shall be in proportion of his total points to the total points of the aforesaid property. Each owner's pro-rata share of the maintenance cost of the said private roads shall be due and owing to whomever takes at that time the responsibility for maintenance of said road within 30 days of the work being completed. If not paid by that time, then said costs may be reduced to a judgment and shall become a lien on the land of the defaulting owner.

Article 5. A homeowners' association may be formed if a 2/3rds majority of the Owner's so wish and shall be charged with enforcing the articles contained herein, and shall hereinafter be known as the "Association". The Association membership shall consist of the owners of record of the real property described in article 1, and each member shall have pro-rata voting privileges in the association according to article 4 herein. The association shall meet at least one time per year and elect one of its members as director, providing that at least five separate members exist. The first annual meeting of the Association shall be held within one year of the creation of the subdivision, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. In the event fewer than five separate members exist, the owner of the greatest number of lots of record shall perform the duties of the association director. Written notice of each meeting of the members shall be given by, or at the direction of, the director, by mailing a copy of such notice, postage paid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the members last appearing address on the books of the association.

The duties of the director shall be:

- To hire such parties as may be required for maintenance of the private road(s).
- To collect such funds from the members as may be required to cover costs of maintenance of private roads, according to their pro-rata share.
- To keep a record of the cost of maintenance of private roads.
- To disburse funds required for maintenance of the private roads.
- To conduct any other business that may be agreed upon by majority vote of the members.

The association may choose by majority vote to impose dues on the members to be paid on an annual basis, in such amount as may be agreed upon. Funds raised in this manner shall be kept in an insured demand deposit checking account bearing the name of the association with the director and at least one other member as signatories.

Funds from the account shall be exclusively used for maintenance of the private road, or other legitimate business as may be agreed upon by the members. The cost of maintaining the association checking account shall be drawn from the fund's balance. Should the cost of private road maintenance and or other association business exceed the balance in the account, the director shall call a meeting of the members, the purpose of such meeting being to raise the required funds according to article 4 above.

The director shall receive no compensation for any service he may render the association. However, the director may be reimbursed for his actual expenses incurred in the performance of his duties.

The director shall keep proper books of account concerning the business of the Association. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member for a proper purpose.

Article 5a. Action Taken without Meeting. The director shall have the right to take any action in the absence of a meeting which could be taken at any meeting by obtaining the written approval of all the members. Any action so approved shall have the same effect as though taken at a meeting of the members.

Article 5b. Assessments. As more fully provided in this declaration, each member is obligated to pay their pro-rata share of assessments and agreed upon dues which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty days after the due date, the assessment shall bear interest from the date of delinquency at the legal rate allowed for judgments in the courts of North Carolina, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the private roads.

Article 6. In the event that the said private road is extended within the aforesaid property, the costs of maintaining the entire road system shall be borne by all the members of said property on the point system set out above, provided, however, that the initial cost of construction 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 by the same point system set out above.

Article 7. In the event Orange County or any other governmental body, as 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 private road 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 4. Provided, however, that the initial cost of constructing the road or any portion of the road to a higher than 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 constructing the road to or any portion of it to a higher private road standard or to Department of Transportation standards shall be shared by the owners responsible for the upgrading according to the point system described in article 4. In the event that public dedication of the said private road or portion thereof is required by Orange County, Declarants and all persons taking title to the aforesaid property from and through Declarants shall publicly dedicate the portion of said road required to be dedicated.

Article 8. The private road located within said property may be dedicated to the public at the election of the owners in the event dedication is not required by a governing body as set forth above. In that event, the owners and their successors in title and interest to any of the property described herein will remain responsible for the road maintenance as here provided until such time as the road dedicated is maintained by the North Carolina Department of Transportation of other governmental body.

## SPECIFIC RESTRICTIONS

Article 9. Homes or dwellings attached to metal frames approved by the by the N.C. Department of Transportation for over-the-road transport shall not be allowed on any subject lot whether or not permanently affixed. This reference is more specifically made to those structures commonly called "mobile homes" and "doublewides". Modular homes may be allowed ONLY with approval of the Declarant. Such approval will require submission of complete and detailed plans for the modular home. Declarants' decision regarding suitability of a modular home is final.

Article 10. No single family dwelling shall be built, erected, altered, or used unless the main body of the structure, exclusive of garages, porches, breezeways, stoops, and terraces shall contain a minimum of 1800 square feet of heated floor space.

Article 11. No swine may be kept on the subject property. Other domestic animals may be kept on the subject property under reasonable control and sanitation, provided they do not become a nuisance to others in the development, and further provided that except for horses, all large domestic animals shall not be kept, bred, or maintained on any subject lot. Fencing for horses shall be at least fifteen feet from any right-of-way, even though said right-of way may be completely contained on a subject lot. Fencing within 25' of any right-of-way or property line shall be 3 or 4 board fencing painted white or brown. No animals may be kept, bred, or maintained for any commercial purpose.

Article 12. Personal property such as boats, travel trailers, clotheslines, etc. shall be discreetly screened or unobtrusively placed or stored at the rear of the lot. No travel trailer so stored shall at any time be used as a residence, either temporarily or permanently.

Article 13. There shall be no hunting allowed on the subject property.

Article 14. There shall be no commercial activities which require traffic by retail consumers, trucks with greater than 3/4 ton capacity, or heavy equipment such as earth moving machinery.

Article 15. Lots of the subject property may not be divided or subdivided, but may be recombined according to the regulations of the Orange County Planning Department.

Article 16. Driveways entering onto Ten Oaks South and Ten Oaks North from opposing sides of the road shall be off set from each other by at least 60'.

Article 17. Out door lighting of any kind shall be equipped with a manual on/off switch.

Article 18. For so long as Declarants, or their properly designated successors or assigns own at least one-half of the lots in the subject property, Declarants or their properly designated successors or assigns may amend these covenants without joinder of any other owners; after Declarants have sold more than one-half of the lots in the subject property, these covenants may be amended by the owner's of three-quarters of the lots in the subject property. Such changes or amendments may not substantially affect the character of the subdivision.

Article 19. Any structure built on any subject lot shall be setback from the property line and closest part of any right-of-way at least 50', even though the subject property may contain a portion of the right-of-way.

Article 20. 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.

Article 21. If any of the provisions hereof are declared invalid by any tribunal, the remaining provisions shall not be affected thereby.

Article 22. Access to any subject lot in Ten Oaks shall be only from the subdivision road(s) Ten Oaks North and Ten Oaks South.

IN WITNESS THEREOF, Declarant, has caused this instrument to be signed on the day and year first written above.

**Cane Creek Partners, LLC**

By: \_\_\_\_\_(SEAL)

Robert A. Hartford, Manager

By: \_\_\_\_\_(SEAL)

James R. Hall, Manager

NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the county and state aforesaid do hereby certify that **Robert A. Hartford**, personally appeared before me this day and acknowledged that he is a manager of **Cane Creek Partners, LLC**, a North Carolina Limited Liability Company, and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires : \_\_\_\_\_

NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the county and state aforesaid do hereby certify that **James R. Hall**, personally appeared before me this day and acknowledged that he is a manager of **Cane Creek Partners, LLC**, a North Carolina Limited Liability Company, and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires : \_\_\_\_\_