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Caldwell County, NC  
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BK 1623 PG 976-983

*Hamber*  
STATE OF NORTH CAROLINA  
COUNTY OF CALDWELL

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
AS AMENDED SEPTEMBER 8, 2006

WITNESSETH:

WHEREAS, The CURTIS MOUNTAIN PROPERTY OWNERS ASSOCIATION, herein called the "Declarant", having been given the power by R.B. Johnston & Sons, to amend the Covenants governing certain real property located in PATTERSON TOWNSHIP, CALDWELL COUNTY, NORTH CAROLINA, desires that said property be used, maintained and managed for the benefit and welfare of owners of property in CURTIS MOUNTAIN; and

WHEREAS, the Declarant desires to provide for the continued maintenance and operation of the private roads in the community, and

WHEREAS, the Declarant has deemed it desirable for the maintenance and operation of the private roads that certain easements, assessments, and liens be established and declared to be covenants running with the land; and that an agency be created to which will be delegated the powers and duties of maintaining the roads, and collecting and disbursing assessments;

NOW, THEREFORE, in consideration of the premises, the Declarant hereby declares that all of the property hereafter described at Deed Book 1050 page 695, Caldwell County Registry of Deeds, are and shall be held, and matters hereinafter set forth, said Restrictions and matters to be construed as covenants running with the land which shall be binding on all property, or any part thereof, and which shall inure to the benefit of each owner thereof, for and during the time hereinafter specified. Every party hereafter acquiring any tract or portion thereof, whether from the Declarant or a subsequent owner of such tract, accepts such deed or contract subject to each and all of the covenants, restrictions, and agreements contained within these Restrictions, as well as any additions or amendments hereto, and also accepts such deed or contract subject to the jurisdiction, rights and powers of the Declarant, the Curtis Mountain Property Owners Association, and their successors and assigns. Each grantee of any tract subject to these Restrictions, by accepting the deed or contract thereto, shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Declarant, the Association, and the grantees and

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subsequent owners of each of the tracts within Curtis Mountain to keep, observe, comply with and perform said Restrictions and agreements.

ARTICLE I  
DEFINITIONS

1. "Association" shall mean and refer to the Curtis Mountain Property Owners Association, a non-profit organization existing under the laws of the State of North Carolina, its successors and assigns.

2. "Tract" shall mean and refer to a plot of land identified as a tract at Deed Book 1050 Page 695, Caldwell County Registry of Deeds (except tracts numbered 45, and 56-70), or on any deed or contract of conveyance from the Declarant, or any subdivided portion of any tract.

3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any tract as herein defined, excluding, however, those parties having such interest merely as a security interest for the performance of any obligation.

4. "Curtis Mountain" shall mean that land divided into tracts as described at Map Book 1050 Page 695, Caldwell County Registry of Deeds.

5. "Member" shall mean and refer to every person or entity who holds membership in the Association by virtue of acceptance of a deed or contract for any tract or portion of tract within the bound of Curtis Mountain, as described above.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declarations is located in Patterson Township, Caldwell County, North Carolina, and is more particularly described at Map Book 1050 Page 695, Caldwell County Registry, except tracts numbered 45 and 56-70.

2. Excluded Property. No property of Declarant shall be subject to these restrictions except that property made subject thereto as herein provided. No property of Declarant shall be subject to any restrictions by implication arising from Declarant imposing these restrictions on the property herein identified.

3. Additional property. Additions to the Curtis Mountain Property Owners Association can be made subject to approval by a majority of the voting members of the Board of Directors provided there is a quorum present. Such additions shall be made in order to extend the scheme of these Covenants to all real property that will become part of the Curtis Mountain Property Owners Association and to bring such property within the jurisdiction of the Association, thereby subjecting such tracts to assessment for their proportionate share of the Association's expenses. Such tracts shall be made a part of Curtis Mountain Property Owners Association by filing of record a deed with reference to this recorded document of Declaration of Covenants, which shall incorporate these Covenants by reference.

4. REMOVING PROPERTY: Members wishing to remove property from the Association must apply in writing to the Board of Directors, who are authorized to determine if the property will be released. A favorable vote by a majority of the Board of Directors, provided there is a quorum, will release the owner of said property from any future obligation to the Association. The owner thereby renounces all right of access to said property by means of Association property or right-of-way. The owner of the property and the Chairman of the Board of Directors will then sign a joint agreement releasing the property from the Restrictions and

Covenants, which will then be filed in the Office of the Register of Deeds for Caldwell County. The withdrawing member will pay all fees and costs associated with removing the property from the Association and the Restrictive Covenants.

### ARTICLE III

1. Private Roads. All of the roads in Curtis Mountain now designated on any recorded or unrecorded map, are private roads, and neither the execution nor recording of any plat nor any other act of the Declarant or Declarant's successor in title to all or any portion of the property is, or is intended to be, or shall be construed as, a dedication to the public of any roads, except those that hereafter may be dedicated by a specific written and recorded deed or agreement of dedication.

2. Reservations of Easement. The Declarant acknowledges that the roads, other than existing State Roads, within Curtis Mountain, are not constructed to the State of North Carolina Department of Transportation's minimum standards for roads. Therefore, the Department may not accept the roads into its secondary roads system. All private road maintenance, including repairs and snow removal, will be the responsibility of the Association. The Declarant acknowledges that it is the policy of the Caldwell County Board of Education that school buses will not travel on private roads.

3. Owner's Easements of Enjoyment. Every tract owner shall have a non-exclusive right-of-way, right to and easement of enjoyment in and to the roads which shall be appurtenant to and shall pass with the title to every tract, subject to the provisions of the Declaration and the Charter and Bylaws of the Association as to the following provisions:

a. The right and easement of enjoyment in and to the roads shall be limited to those roads owned and maintained by the Association.

b. The right of the Association to limit use of the roads to owners, their families and guests.

c. The right of the Association to suspend the voting rights and other rights of membership by an owner for any period during which any assessment against his tract remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

d. The right of the Association to grant an easement in, dedicate or transfer all or any part of the roads to any public agency, authority, or utility for such purposes, subject to such conditions as may be agreed to by the members.

### ARTICLE IV

#### ADMINISTRATION, MEMBERSHIP, AND VOTING RIGHTS

1. Administration of Roads. The administration of the roads, including maintenance, repair, and upkeep, including the acts required by the Declaration and the Bylaws, shall be performed by the Association.

2. Rules and Regulations. The Association may also adopt and enforce rules and regulations not inconsistent with these Covenants or the Bylaws of the Association for the operations and administration of the Association of its property.

3. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any tract in Curtis Mountain shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any tract, and shall be transferred automatically when the owner conveys, devises, gives or otherwise transfers his tract, even though such conveyance, devises or gift does not make mentions of the membership rights of the Association.



Such membership is not intended to apply to those persons or entities who hold an interest in any tract merely as security for the performance of an obligation to pay money, e.g., mortgages or deeds of trust; however, if such a secured party should realize upon his security and become the fee owner of a tract, he and his assigns of the tract will then be subject to all the requirements and limitations imposed in these Restrictions on owners of tracts within the development and on members of the Associations, including those provisions with respect to payment of annual charges. The Board of Directors may include reasonable rules relating to the proof of ownership of a tract in the Curtis Mountain Property Owners Association.

4. Voting Rights and Membership

a. Membership. Every person or entity who is a record owner of a fee simple interest in any tract is subject by this Declaration to assessment by the Association and shall be a member of the Association; provided, however, that any such person or entity to hold such interest merely as a security for the performance of any obligation shall not be a member.

b. Voting Rights. Each member shall be entitled to one vote for each tract which he owns. When more than one person or entity holds an interest in any tract, all such persons or entities shall be members. The vote for such tract shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any tract, nor shall any vote be fractionalized.

5. Violation or Delinquency. During any period in which a member shall be in default in the payment of any annual, special, or other assessment levied by the Association, his rights to vote and all other rights in the Association may be suspended by the Board of Directors until such assessment is paid. A member's voting and use of rights may also be suspended for violation of the Association's published rules and regulations; that prior to any suspension for such violation, the Board of Directors (or a committee thereof) shall conduct a hearing regarding the alleged violation after giving the accused member at least ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. At the hearing, the accused member shall have the right to call and question his own witnesses as well as any opposing witnesses. A determination of violation as well as the terms of any suspension shall be made only by a majority vote of the Board.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

1. Creation of Lien and Personal Obligation for Assessments. The owner of each tract in Curtis Mountain, by acceptance of a deed therefor, and Declarant, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments for capital improvements. Such Covenant will be deemed to arise whether or not it is expressly stated in the deed or other conveyance to the owner. The annual and special assessments, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. However, the personal obligation for delinquent assessments shall not pass to his successors in title (other than as a continuing lien on the land) unless expressly assumed by the successor.

2. Purpose of Assessments. All assessments levied by the Association shall be used to provide funds for such purposes as the Association may determine are for the benefit of its members. Such purposes may include, but are not limited to: maintenance of the roads; construction, repair and replacement of improvements upon the roads; the cost of labor, equipment, materials, management and supervision thereof; the payment of taxes assessed against the roads; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; and such other needs as may

arise.

3. Determination of Assessment Amount. Prior to December 31 of each year, the Board of Directors shall prepare a budget for the next calendar year, and based upon such budget, the Board shall fix the assessment amount for each tract of property as being one share per tract.

4. Payment of Assessments. All annual and special assessments provided for herein shall commence as to all tracts on the first day of the month following the transfer of title to owner. Thereafter, payment of assessments shall be made annually to the Association or its designee, on or before the due date established by the Board; however, that the Board may elect to receive payments on a quarterly basis. The Board of Directors shall fix the amount of the annual assessment at least thirty days before the due date and written notice of the charge so fixed shall be sent to each member.

5. Special Assessments. In addition to the annual assessment authorized above, the association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of acquisition of and any construction, reconstruction, repair or replacement of a capital improvement upon common areas. Prior to the imposition of any such special assessment, two-thirds (2/3) of the members voting at a meeting called to consider such assessment and at which a quorum was present, must vote their assent to its imposition.

6. Notice and Quorum. Except for a vote to amend the covenants and restrictions contained herein, the notice and quorum required for any sections of the Association authorized by Articles IV and V of this Declaration or as otherwise in the Bylaws or by law provided, shall be as follows:

a. Written notice of any meeting called for the purpose of taking any action authorized under Articles IV and V of these restrictions shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

b. Members may attend and may vote in person or by proxy executed in writing by a member. No proxy shall be valid after eleven (11) months from the date of its execution, or after conveyance by the member of his tract.

c. At any meeting called for the purpose of taking some action by the Association membership, the presence in person or by proxy of members entitled to cast 20% of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and any number of members attending such a subsequent meeting, so long as such number represents at least 10% of all the outstanding votes shall constitute a quorum. No such subsequent meeting shall be held more than six (6) months following the scheduled date of the proceeding meeting.

d. Notice of Association meetings will be sent by first class U.S. Mail to the last known address of the member. The Secretary will keep a list of current addresses of all members. It will be the responsibility of the members to inform the Secretary of any change of address or phone number.

e. Notice of a hearing for a rule violation will be sent by certified mail (with return receipt) to the last known address (see sub-paragraph d) of the accused member.

7. Exempt Property. The lien of a mortgage or deed of trust representing a first lien placed upon any tract for the purpose of purchasing the tract or for permanent financing and/or construction of a residence or the improvement thereon recorded in accordance with the applicable state laws from the date of recordation, shall be superior to any and all liens provided for herein. The sale or transfer of any tract by foreclosure of any first mortgage or any proceeding in lieu thereof, shall not extinguish the lien of such assessments as to payments due prior to the sale or transfer, providing that such transfer shall not have been made for the purpose of defeating the lien.

8. Continuance of Lien.

a. The assessments and charges created herein shall constitute a continuing lien upon all tracts in Curtis Mountain and no owner may waive or in any way reduce his liability for the assessment by non-use of road or abandonment of his tract.

b. In the event that any charge or assessment created in this Declaration remains unpaid by an Association member for thirty (30) days after the due date announced by the Board of Directors, the Association, through its agents and employees, may record with the Caldwell County Clerk of Court, a notice of the lien created by this Declaration.

9. Effect of Nonpayment of Assessments: Remedies of the Association. In the event that any assessment or charge created herein remains unpaid for thirty days after the due date announced by the Board of Directors, such unpaid assessment shall bear interest from the date of delinquency, said interest rate to be set by the Board of Directors from time to time, but in no event shall it exceed the maximum interest rate allowed by law. The Association, its agent or representative, may bring an action by law against the owner personally obligated to pay the same and/or foreclose the lien against the tract subject to the unpaid assessment in either case, interest, costs and reasonable attorney's fees shall be added to the amount of such assessment to the extent allowed by law. Any foreclosure conducted pursuant to this section shall comply fully with the North Carolina procedure for judicial foreclosure.

10. Certificate of Payment. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified tract have been paid or that certain charges against said tract remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. For the purposes of obtaining a certificate, interested parties should contact the Association at its address.

ARTICLE VI  
RESTRICTIVE COVENANTS, EASEMENTS

Easements.

The Declarant reserves for itself, its successors and assigns, the following easements and/or right of way:

a. Declarant reserves unto itself, its successors and assigns, and for the benefit of all tract owners in Curtis Mountain, the road rights-of-way shown on the plats now or hereafter recorded of Curtis Mountain for purposes of ingress and egress, for maintenance of utility lines and mains and for drainage, and no tract owner may interfere with such rights-of-way or such uses therein.

b. On each tract, the rights-of-way shall be maintained continuously by the Association, but no structures (including mailboxes), plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the maintenance of the road, or utilities, which may change the direction or flow of drainage channels in the easements, which may obstruct or retard the flow of water through the drainage channels in the easements, or interfere with established slope ratios or create erosion or sliding problems, provided, however, that the existing location of a drainage channel may be relocated, provided such relocation does not cause an encroachment on any other tract in the development. Improvements within such areas shall also be maintained by the respective tract owner except for those for which a public authority or utility is responsible.



c. In order to maintain a minimum tract size of ten (10) acres, the Curtis Mountain Property Owners Association, Inc. will not accept for membership any tract containing less than ten (10) acres. Members will not be allowed to subdivide existing tracts into tracts containing less than ten (10) acres.

ARTICLE VII  
GENERAL PROVISIONS

1. Enforcement. The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. Term. The Restrictions shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until January 1, 2021. By accepting a deed to a tract subject to these Restrictions, the tract owners agree that after January 1, 2021, these Restrictions shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the members holding more than fifty (50) percent of the voting rights in the Association has been recorded, agreeing to change the Covenants in whole or in part; provided, however, that at any time after January 1, 1994, these Restrictions may be ended by a vote of two-thirds (2/3) of the members of the Association to make variations in the Restrictions but not to make changes that would annul any material rights of owners provided herein.

3. Mutuality of Benefit and Obligation. The Restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every tract in the development and are intended to create mutual, equitable servitudes upon each tract in favor of each and all of the other tracts therein; to create a privity of contract and estate between the grantees of said tracts, their heirs, successors and assigns, and to the Association, and shall, as to the owner of each tract, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other tracts in the development and their respective owners. Declarant, so long as it shall own a tract or any common area in its own name, any tract owner or the Association shall have the right to enforce these Restrictions.

4. Every part of these Restrictions are hereby declared to be independent of, and severable from the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the Restrictions.

5. Captions. The captions preceding the various paragraphs and subparagraphs of these Covenants are for convenience or reference only, and none of them shall be used as an aid to construction of any provision of these Covenants. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or to apply to the feminine or to the neuter.

6. Right of Association to Amend to Achieve Tax-Exempt Status. The Board of Directors of the Association may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, in order to qualify the Association or the properties or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Caldwell County Registry.

IN WITNESS WHEREOF, THE CURTIS MOUNTAIN PROPERTY OWNERS ASSOCIATION, in accordance with ARTICLE VI, paragraph 2 of the original recorded Covenant has caused this Declaration to be executed, this the 2<sup>nd</sup> day of December, 2006.

Glenn Strickland

Glenn Strickland, Pres., CMPOA  
CURTIS MOUNTAIN PROPERTY OWNERS ASSOCIATION

Russ Tanner

Russ Tanner, Sec., CMPOA  
CURTIS MOUNTAIN PROPERTY OWNERS ASSOCIATION

STATE OF NORTH CAROLINA

COUNTY OF Caldwell

I, Dale L. Hamby, a Notary Public in and for said County and State, do hereby certify that Russ Tanner personally appeared before me this day and acknowledge that he is Secretary of Curtis Mountain Property Owners Association, a non-profit corporation, and that by authority duly given, and as the act of the corporation, the foregoing instrument was signed in its name by its President, and attested by himself as its Secretary.

WITNESS my hand and notarial seal this 2<sup>nd</sup> day of December, 2006.

Dale L. Hamby  
NOTARY PUBLIC

Printed Name of Notary Public: Dale L. Hamby

My Commission Expires: 8/8/2010

