

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

SECOND AMENDMENT TO DECLARATION
OF COVENANTS FOR BUTLER MOUNTAIN
HIGHLANDS

This Second Amendment is made and entered into this the day and year following the signature line hereof, by BROWNCOR, INC., a North Carolina corporation, Declarant.

WHEREAS, Declarant has heretofore executed and recorded a Declaration of Covenants, Bylaws and Road Maintenance Agreement for Butler Mountain Highlands Subdivision, which is recorded in Buncombe County Deed Book 2404, page 510, as amended in Buncombe County Book 2505 at page 82 (the "Declaration"); and

WHEREAS, Declarant desires to amend the Declaration to clarify certain of the provisions thereof; and

WHEREAS, Declarant desires to impose and make applicable the Declaration to additional property in Buncombe County;

NOW, THEREFORE, Declarant does hereby amend the Declaration as follows:

1. The definition of "Common Elements" in Section 1a of the Declaration is amended so that it reads as follows:

"Common Elements" shall mean and refer to i) private roads shown on any plat recorded by the Declarant which shows any part of the Subdivision or Property as redefined herein, or which is designated as lying within Butler Mountain Highlands Subdivision, as well as any other private road constructed by Declarant which serves the Subdivision or serves any property adjoining the Subdivision; ii) the entrance area to the Subdivision as shown on any plat recorded by the Declarant which shows any of the Subdivision or is designated as lying within Butler Mountain Highlands Subdivision; iii) any other property designated as such, or as Common Area by the Declarant on any plat recorded by the Declarant which shows any part of the Subdivision or is designated as lying within Butler Mountain Highlands, but this provision shall not enable Declarant to so designate any of the Property which is not owned by Declarant at the time of the designation and iv) any real estate owned by the Association other than a Lot.

2. The definition of "Lot" in Section 1a of the Declaration is amended to read as follows:

"Lot" shall mean and refer to any parcel of land shown on any plat recorded by the Declarant which shows any part of the Subdivision or is designated as lying within Butler Mountain Highlands Subdivision and is platted for separate ownership or occupancy by a Lot Owner.

3. Section 5 of the Declaration is amended to read as follows:

5. **SINGLE-FAMILY RESIDENTIAL ONLY; MINIMUM SQUARE FOOTAGE.** Except as otherwise provided herein all of the Property in the Subdivision shall be used solely for single-family residential purposes. No more than one single-family residence plus appropriate ancillary buildings may be erected on any Lot, EXCEPT THAT, where the deed from Declarant so provides, a Lot may be subdivided thereafter once only, with no further subdivision thereafter. ~~(1,800) square feet of finished living area.~~ No apartments (other than a single apartment for a family member within a guest house, detached garage or other like building ancillary to the single residence structure), duplexes, townhomes, condominiums or other multi-family structures may be placed anywhere within the Subdivision by anyone. Any residence constructed in the Subdivision shall contain no less than eighteen hundred (1,800) square feet outside measurement of enclosed heated area on the main level of the residence, exclusive of basements, porches and garages. Dwellings of more than one story shall contain no less than two thousand two hundred (2,200) square feet of heated finished living area with a minimum of eleven hundred (1,100) square feet thereof on the first floor. Appropriate ancillary buildings including a guest house, barn and stable in keeping with the architectural style of the principal building shall be permitted. Grade shall be defined as the highest elevation that earth abuts the structure. No multi-family commune unit or similar type living arrangement shall be permitted anywhere in the Subdivision.

Declarant may, at Declarant's sole option, impose upon any and all common elements of the Subdivision a restriction or easement limiting the same to use as a nature preserve, scenic area, educational and research area, or other use of a similar nature. This provision shall not enable Declarant to so designate a Lot which is not then owned by Declarant. Declarant reserves unto itself any tax or other advantage of said imposition, though the Common Elements may ultimately be conveyed to the Association.

4. Section 6 of the Declaration is amended to read as follows:

6. **SETBACKS; VARIANCE.** No structure shall be constructed nearer than fifty (50) feet from any parcel line, or from any road right of way line. In addition, parcels contiguous with any Common Area at the crest of Butler Mountain as delineated on any plat of the Subdivision shall be set back one hundred (100) feet from that Common Area.

Declarant reserves the right to vary this setback requirement in the event that strict enforcement of such requirement will cause undue and reasonably unanticipated hardship or will prevent the reasonable use of the parcel conveyed by the Declarant in accord with all use limitations hereof.

Declarant reserves the right to vary any other requirement of these Covenants in specific individual instances where strict enforcement of such requirement will result in genuine unreasonable hardship in that instance. This right shall not include the right to loosen or reduce the use limitations of the Declaration.

5. Section 23 of the Declaration is amended by adding the following to subsection 3 thereof:

Such right shall not enable Declarant to so designate a Lot not then owned by Declarant.

6. Section 25 of the Declaration is amended by adding the following at the end thereof:

Plans and specifications so submitted and not disapproved in writing within 21 days of receipt by Declarant shall be deemed approved.

7. Notwithstanding anything to the contrary elsewhere contained herein, or in the Declaration as the same presently and previously exists, the "Subdivision" and the "Property" is all that real property which is encompassed within the bounds of the tract described in the deed recorded in Buncombe County Deed Book 2270; page 142 and which is either presently owned by Declarant or which has been heretofore sold by Declarant, but the conveyance was subject to the Declaration. The limitations, restrictions, conditions, prohibitions and all other provisions contained in the Declaration are intended to and shall apply to the Property heretofore or hereafter sold by the Declarant and to the portions of the Property owned by the Declarant.

8. The "crest of Butler Mountain", as set forth in Section 6 of the Declaration, is a tract of 4.39± acres (subject to Declarant's right to enlarge or reduce) shown on an unrecorded Master Preliminary as Common Area, and is bounded by Lots 336, 338 and 340 on the Master Preliminary. No portion of any other Lots are within 100 feet of such Area.

9. The first sentence of Section 8 of the Declaration is deleted and the following substituted therefor and made a part thereof, to wit: "No owner of any Property in the Subdivision will erect, license or suffer to be erected or maintained in the Subdivision, or any part thereof, any commercial business or trade venture, manufacturing establishment, factory, apartment house, or building to be used for a sanatorium or hospital of any kind, or at any time, use or suffer to be used, any house or building erected thereon for any such purpose.

10. The "Declaration" hereafter shall hereafter be as the same is modified hereby, notwithstanding the previous definition, but except as herein modified, said (original and first amended) Declaration shall remain in full force and effect.

BUT EXCEPT as herein modified, said Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed by its duly authorized officer.

BROWNCOR, INC.

by: 

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of said State and County, certify that ELBERT S. BROWN, JR. personally came before me this day and acknowledge that he is President of BROWNCOR, INC., a North Carolina corporation, and that, as President, being authorized to do so, he executed the foregoing on behalf of the corporation.

WITNESS my hand and Notarial Seal this ____ day of _____, 2003

NOTARY PUBLIC

My commission expires: _____

EXHIBIT C
ROAD MAINTENANCE AGREEMENT
and
SUBDIVISION STREETS DISCLOSURE STATEMENT
for
BUTLER MOUNTAIN HIGHLANDS

BUTLER MOUNTAIN HIGHLANDS (hereinafter "the Subdivision") is a residential development located in Fairview Township of Buncombe County, North Carolina and described on Exhibit A attached to those Covenants, Bylaws and Road Maintenance Agreement of which this Exhibit is a part. The Declarant is **BROWNCOR, INC.**

This Road Maintenance Agreement is established to assure the proper maintenance of the streets and roads in the Subdivision and the fair sharing of the cost thereof. Because the Subdivision is accessed through private roads, the streets and roads in the Subdivision are to remain private even though they may be constructed to the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system.

Responsibility for maintenance of the private streets and roads in the Subdivision shall be borne by the **BUTLER MOUNTAIN HIGHLANDS ASSOCIATION, INC.** (the "Association") of which each purchaser of a parcel in the Subdivision is automatically a member. However, the Declarant shall pave the roads initially as areas of the Subdivision are developed and shall maintain all unpaved roads. The obligation of Declarant to maintain a road or section thereof ceases upon final paving thereof and the maintenance thereof then becomes the obligation of the Association. The obligation of the Owner of a parcel to pay regular maintenance assessments to the Association commences upon the completion of the Owner's dwelling, or upon paving of the road in front of the Owner's lot, whichever comes first. Such assessments shall be prorated to the date of commencement of the obligation.

The method of determining the manner, frequency and extent of maintenance shall be established by vote of the Owners pursuant to the Bylaws attached as Exhibit B to those Covenants, Bylaws and Road Maintenance Agreement of which this Exhibit is a part.

This Exhibit C is intended to serve as a Subdivision Streets Disclosure Statement pursuant to NCGS 136-102.6(f) to disclose the status of the streets and roads in **BUTLER MOUNTAIN HIGHLANDS** as private and the responsibility as to maintenance thereof, which is set out herein. The undersigned Purchaser of a parcel in the Subdivision acknowledges receipt of the above Disclosure Statement and the Covenants and Bylaws for Butler Mountain Highlands.

Date: _____

Date: _____

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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

DECLARATION OF COVENANTS, BYLAWS
and
ROAD MAINTENANCE AGREEMENT
for
BUTLER MOUNTAIN HIGHLANDS

This Agreement for Covenants, Bylaws and Road Maintenance is made this 17th day of January, 2001, by BROWNCOR, INC., a North Carolina corporation, Declarant, and future owners of lots in that subdivision hereinafter described and known as "Butler Mountain Highlands."

WHEREAS, Declarant is the owner of certain real property in Buncombe County, North Carolina, the same being described on Exhibit A attached hereto, identified and designated as Butler Mountain Highlands (hereinafter referred to as "the Subdivision"), and

WHEREAS, Declarant desires to subject all of the property identified and described on the attached Exhibit A, and possibly other property, to Restrictive Covenants and a Road Maintenance Agreement, for the benefit of Declarant and the benefit of future purchasers and owners of land within the Subdivision, so that the same shall be developed and used exclusively for the purposes hereinafter set out.

NOW, THEREFORE, in consideration of the advantages to Declarant and to present owners and to future purchasers of parcels in the subdivision, Declarant, for itself, its successors and assigns, does hereby impose upon the subdivision the following covenants and agreements:

1. **APPLICABILITY; DURATION; MODIFICATION.** These covenants and restrictions ("Covenants") are to be covenants and restrictions running with the Subdivision to be known as Butler Mountain Highlands, (hereinafter "Subdivision"). They shall be binding upon all parties who are purchasers or otherwise receive an interest in the property hereinabove described, their heirs, assigns and successors in interest, and all parties, firms and corporations, claiming by, through or under them together with those purchasers who purchase property in the Subdivision to be known as Butler Mountain Highlands. These covenants shall bind said parties until January 1, 2012, at which time they shall be automatically extended for successive terms of ten (10) years, unless modified or deleted by the filing in the Buncombe County Registry within 90 days before or 90 days after said date or the succeeding 10 year anniversaries thereof of an

instrument executed by the owners of 67% of the parcels in the Subdivision.

Except as otherwise reserved herein, these Covenants may be modified or deleted in whole or in part at any time by a properly recorded and executed instrument signed by the owners of the property herein described and by a written declaration of the owners of ninety percent (90%) of the parcels located in Butler Mountain Highlands, and for this purpose each platted parcel on any plat to be recorded which shall include the property herein described or added to Butler Mountain Highlands as provided herein, shall entitle the owner or owners of same to one vote for or against said written declaration; provided further that such written declaration shall be recorded in the Buncombe County Public Registry; provided further that in the event any parcel or tract of land within the boundaries of Butler Mountain Highlands is owned by two or more persons by the entirety or tenants in common or otherwise, such owners shall nevertheless have only one vote for such designated parcel as platted.

It is the intent of the Declarant to comply with the North Carolina Planned Communities Act (NCGS 47F-1-101 ff.). Where the terms hereof conflict with the provisions thereof, the provisions of said Act shall control.

1a. **DEFINITIONS.** The following terms shall have the meaning indicated unless otherwise stated:

"**Act**" shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.

"**Association**" shall mean and refer to BUTLER MOUNTAIN HIGHLANDS ASSOCIATION, INC., a nonprofit corporation organized under the laws of the State of North Carolina, its successors and assigns.

"**Board**" or "**Board of Directors**" shall mean and refer to the Board of Directors of the Association.

"**Bylaws**" shall mean and refer to the Bylaws of the Association which are attached to this Declaration as an Exhibit.

"**Common Elements**" shall mean and refer to i) private roads designated on the Plat or any other subdivision Plat recorded by Declarant, as well as any other private road constructed by the Declarant serving the Subdivision or any property adjoining the Subdivision; ii) the entrance area as shown on the Plat; iii) any other property designated as such by the Declarant; and iv) any real estate owned by the Association, other than a Lot.

"**Declarant**" shall mean BROWNCOR, INC., a North Carolina corporation, its successors and/or assigns; including any person which succeeds to any Special Declarant Rights as set forth herein and in the Act.

"**Directors**" shall mean and refer to the members of the Board of Directors of the

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BOOK 3401
PAGES 56 - 59

Buncombe County, NC
Recorded 08/28/2008 02:04:03pm
No 0000-00234394 1 of 4 pages
Otto V. DeBruin, Register of Deeds

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE
Box #35
Plat 214-1

SECOND AMENDMENT TO DECLARATION
OF COVENANTS FOR BUTLER MOUNTAIN
HIGHLANDS

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WHEREAS, Declarant desires to amend the Declaration to clarify certain of the provisions thereof; and

WHEREAS, Declarant desires to impose and make applicable the Declaration to additional property in Buncombe County;

NOW, THEREFORE, Declarant does hereby amend the Declaration as follows:

1. The definition of "Common Elements" in Section 1a of the Declaration is amended so that it reads as follows:

"Common Elements" shall mean and refer to i) private roads shown on any plat recorded by the Declarant which shows any part of the Subdivision or Property as redefined herein, or which is designated as lying within Butler Mountain Highlands Subdivision, as well as any other private road constructed by Declarant which serves the Subdivision or serves any property adjoining the Subdivision; ii) the entrance area to the Subdivision as shown on any plat recorded by the Declarant which shows any of the Subdivision or is designated as lying within Butler Mountain Highlands Subdivision; iii) any other property designated as such, or as Common Area by the Declarant on any plat recorded by the Declarant which shows any part of the Subdivision or is designated as lying within Butler Mountain Highlands, but this provision shall not enable Declarant to so designate any of the Property which is not owned by Declarant at the time of the designation and iv) any real estate owned by the Association other than a Lot.

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2. The definition of "Lot" in Section 1a of the Declaration is amended to read as follows:

"Lot" shall mean and refer to any parcel of land shown on any plat recorded by the Declarant which shows any part of the Subdivision or is designated as lying within Butler Mountain Highlands Subdivision and is platted for separate ownership or occupancy by a Lot Owner.

3. Section 5 of the Declaration is amended to read as follows:

5. **SINGLE-FAMILY RESIDENTIAL ONLY; MINIMUM SQUARE FOOTAGE.** Except as otherwise provided herein all of the Property in the Subdivision shall be used solely for single-family residential purposes. No more than one single-family residence plus appropriate ancillary buildings may be erected on any Lot, EXCEPT THAT, where the deed from Declarant so provides, a Lot conveyed by Declarant may be subdivided thereafter once only, with no resulting parcel to contain less than four (4.00) acres, and only one single-family residence may be constructed on each resulting parcel of four or more acres. No apartments (other than a single apartment for a family member within a guest house, detached garage or other like building ancillary to the single residence structure), duplexes, townhomes, condominiums or other multi-family structures may be placed anywhere within the Subdivision by anyone. Any residence constructed in the Subdivision shall contain no less than eighteen hundred (1,800) square feet outside measurement of enclosed heated area on the main level of the residence, exclusive of basements, porches and garages. Dwellings of more than one story shall contain no less than two thousand two hundred (2,200) square feet of heated finished living area with a minimum of eleven hundred (1,100) square feet thereof on the first floor. Appropriate ancillary buildings including a guest house, barn and stable in keeping with the architectural style of the principal building shall be permitted. Grade shall be defined as the highest elevation that earth abuts the structure. No multi-family commune unit or similar type living arrangement shall be permitted anywhere in the Subdivision.

Declarant may, at Declarant's sole option, impose upon any and all common elements of the Subdivision a restriction or easement limiting the same to use as a nature preserve, scenic area, educational and research area, or other use of a similar nature. This provision shall not enable Declarant to so designate a Lot which is not then owned by Declarant. Declarant reserves unto itself any tax or other advantage of said imposition, though the Common Elements may ultimately be conveyed to the Association.

4. Section 6 of the Declaration is amended to read as follows:

6. **SETBACKS; VARIANCE.** No structure shall be constructed nearer than fifty (50) feet from any parcel line, or from any road right of way line. In addition, parcels contiguous with any Common Area at the crest of Butler Mountain as delineated on any plat of the Subdivision shall be set back one hundred (100) feet from that Common Area.

Declarant reserves the right to vary this setback requirement in the event that strict enforcement of such requirement will cause undue and reasonably anticipated hardship or will prevent the reasonable use of the parcel conveyed by the Declarant in accord with all use limitations hereof.

Declarant reserves the right to vary any other requirement of these Covenants in specific individual instances where strict enforcement of such requirement will result in genuine unreasonable hardship in that instance. This right shall not include the right to loosen or reduce the use limitations of the Declaration.

5. Section 23 of the Declaration is amended by adding the following to subsection 3 thereof:

Such right shall not enable Declarant to so designate a Lot not then owned by Declarant.

6. Section 25 of the Declaration is amended by adding the following at the end thereof:
Plans and specifications so submitted and not disapproved in writing within 21 days of receipt by Declarant shall be deemed approved.

7. Notwithstanding anything to the contrary elsewhere contained herein, or in the Declaration as the same presently and previously exists, the "Subdivision" and the "Property" is all that real property which is encompassed within the bounds of the tract described in the deed recorded in Buncombe County Deed Book 2270, page 142 and which is either presently owned by Declarant or which has been heretofore sold by Declarant, but the conveyance was subject to the Declaration. The limitations, restrictions, conditions, prohibitions and all other provisions contained in the Declaration are intended to and shall apply to the Property heretofore or hereafter sold by the Declarant and to the portions of the Property owned by the Declarant.

8. The "crest of Butler Mountain", as set forth in Section 6 of the Declaration, is a tract of 4.39± acres (subject to Declarant's right to enlarge or reduce) shown on an unrecorded Master Preliminary as Common Area, and is bounded by Lots 336, 338 and 340 on the Master Preliminary. No portion of any other Lots are within 100 feet of such Area.

9. The first sentence of Section 8 of the Declaration is deleted and the following substituted therefor and made a part thereof, to wit: "No owner of any Property in the Subdivision will erect, license or suffer to be erected or maintained in the Subdivision, or any part thereof, any commercial business or trade venture, manufacturing establishment, factory, apartment house, or building to be used for a sanatorium or hospital of any kind, or at any time, use or suffer to be used, any house or building erected thereon for any such purpose.

10. The "Declaration" hereafter shall hereafter be as the same is modified hereby, notwithstanding the previous definition, but except as herein modified, said (original and first amended) Declaration shall remain in full force and effect.

BUT EXCEPT as herein modified, said Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed by its duly authorized officer.

COPIES

BROWNCOR, INC.

by: [Signature]
9-23-03 PRESIDENT

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of said State and County, certify that ELBERT S. BROWN, JR. personally came before me this day and acknowledge that he is President of BROWNCOR, INC., a North Carolina corporation, and that, as President, being authorized to do so, he executed the foregoing on behalf of the corporation.

WITNESS my hand and Notarial Seal this 23 day of Sept., 2003

[Signature]
NOTARY PUBLIC
My commission expires: 11-22-2004



State of North Carolina, County of Buncombe
Notary Public, Cynthia L. Conway
is hereby certified to be correct. Filed for registration on this the
23rd day of September, 2003.
OTTO W. DICKERSON, Register of Deeds By: Deputy

Prepared by and Return to: James Michael Lloyd - Attorney; PO Box 948; Asheville, NC 28802

Ref: Book 2404 page 518

**Third Amendment to the Declaration of Covenants
for Butler Mountain Highland Subdivision**

WHEREAS, the Butler Mountain Highland Subdivision was created by that Declaration of Covenants recorded in Book 2404 at page 510, *et seq.* in the Buncombe County Register of Deed's office (hereinafter referred to as "the Declaration"); and

WHEREAS, the Declaration has been previously amended by those two (2) amendments recorded in Book 2505 at page 82 and in Book 3401 at page 56 in the Buncombe County Registry; and

WHEREAS, pursuant to Paragraph 1 of the Declaration the Covenants may be modified by a properly executed instrument signed by the owners of ninety percent (90%) of the platted recorded parcels located in Butler Mountain Highlands at any time and by the owners of sixty-seven percent (67%) of the parcels in the Subdivision with 90 days before or after January 1, 2012; and

WHEREAS, Lots 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 338, 341, 342, 343, and 344 and are the current recorded platted parcels within Butler Mountain; and

WHEREAS, Pursuant to Paragraph 26 of the Declaration, until the sale of all parcels within the Subdivision has occurred, Declarant, Brownco, Inc., shall be entitled to two (2) votes in the conduct of Association affairs for each parcel which has been platted and recorded but not initially sold; and

WHEREAS, at the time relevant to this amendment, Declarant Brownco, Inc., has platted and recorded but not initially sold Lots 323, 324, 327, 329 and 330; and

IN WITNESS THEREOF the undersigned hereby declare that he is entitled and authorized to cast the votes allocated to Parcel numbers 323, 324, 327, 329 and 330 in the Butler Mountain Highlands subdivision and that by his signature below attests that he cast said vote or votes in favor of and for the *Third Amendment to the Declaration of Covenants for Butler Mountain Highland Subdivision*.

Browncor, Inc., a North Carolina Corporation

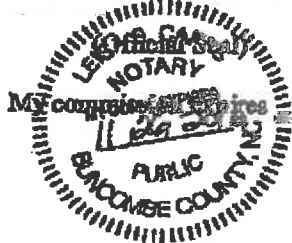
By: Elbert S. Brown, Jr.

(Affix Corporate Seal Here)

STATE OF NORTH CAROLINA
COUNTY OF Burcombe

This 10 day of February, 2012, personally came before me, Lesa S. Capps, a Notary Public for Burcombe, County, North Carolina, Elbert S. Brown, Jr. who, being by me duly sworn, says that he is the President of Browncor, Inc., a North Carolina Corporation, and that the seal affixed to the foregoing in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said company by its authority duly given. And the said Elbert S. Brown, Jr. acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official seal this the 10 day of February, 2012



Lesa S. Capps
Notary Public

11/26

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