

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

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**BOOK 3401
PAGES 56 - 59**

Buncombe County, NC
Recorded 08/28/2008 02:54:08pm
No 0023-00234394 1 of 4 pages
Otto W. DeBruhl, Register of Deeds

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

Box #35
Pittsboro

**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.

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 23 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 4.394 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.

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

Ref: Book 2404 page 510

**This 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, Browncor, 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 Browncor, Inc., has platted and recorded but not initially sold Lots 323, 324, 327, 329 and 330; and

Prepared by and return to:
VAN WINKLE LAW FIRM (als)
BOX 55

RECORDED COVENANTS

Between

**BUTLER MOUNTAIN ESTATE PROPERTY
OWNERS' ASSOCIATION, INC., and
BROWNCOR, INC. .**

And

JANE B. MCNEIL and E.S. BROWN, JR.

(d) That upon the sale of each lot by Browncor hereafter to a purchaser, Browncor shall collect and forward to BMEPOA the sum of Two Thousand and no/100 Dollars (\$2,000.00) as an impact fee for road maintenance expense for the roads within Butler Mountain Estates, Plat Book 42, Pages 189 and 190;

(e) That other than the access easement of 30-feet in width on the South side of The Bald, no roads will be built to The Bald. This access easement shall be maintained by Butler Mountain Bald, Inc.

3. Browncor acknowledges that BMEPOA and the Butler Mountain Highlands Property Owners Association are two separate legal entities with responsibility for maintaining their own roads. The property owners in the Highlands use the roads in Butler Mountain Estates and, consequently, have an obligation to pay reasonable road maintenance fees which contribute toward the maintenance of the roads in Butler Mountain Estates and the gate.

4. Browncor covenants, for itself, its successors and assigns, that the water diverted to the West at the bottom of Pinkerton Corner in the Butler Mountain Highlands shall not be re-diverted to the East into Butler Mountain Estates, Plat Book 42, Pages 189 and 190.

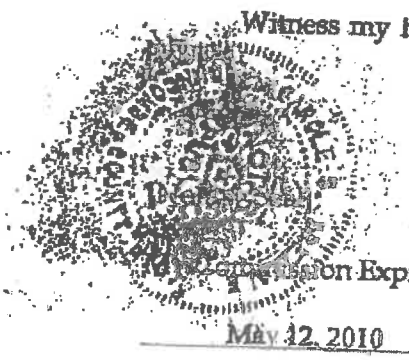
5. With respect to the remaining property not previously conveyed or under contract, and that is described in Deed Book 2270, Page 142, Browncor shall use good faith efforts to encourage all purchasers and contractors to use Ebby Ridge Road for construction traffic.

6. With respect to lots previously conveyed outside Butler Mountain Estates by Browncor or its predecessors in interest, no impact fee shall be payable to BMEPOA. The Lots and parcels subject to this provision include all parcels in Section 2 and Section 3 of Butler Mountain Estates, the Kerney McNeil Subdivision and all parcels conveyed out of the tracts described in Deed Book 1089, Page 171 that are not shown as part of Plat Book 42, Page 189 and 190; provided however, nothing herein shall limit or abridge the common law rights of BMEPOA to assert claims against any party who shall unreasonably overburden the easements over the roads in Butler Mountain Estates or unreasonably damage the roads therein.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Carole S. Brezeale, a Notary Public of the State and County aforesaid, do hereby certify that Edward B. Shoff personally appeared before me this day and acknowledged that he is President of Butler Mountain Estates Property Owners' Association, Inc., a non-profit corporation, and that he as President, being authorized to do so, executed the forgoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 25th day of October,


Carole S. Brezeale
NOTARY PUBLIC

Carole S. Brezeale

[Typed/Printed name of Notary Public]

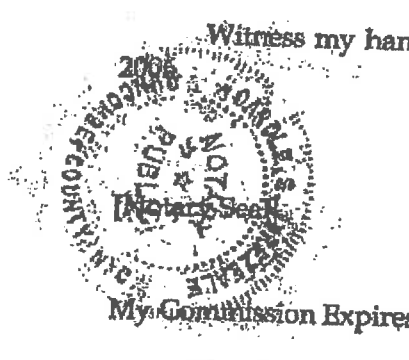
My Commission Expires:

MAY 12, 2010

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Carole S. Brezeale, a Notary Public of the State and County aforesaid, do hereby certify that E. S. Brown, Jr. personally appeared before me this day and acknowledged that he is President of Brownco, Inc., a corporation, and that he as President, being authorized to do so, executed the forgoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 25th day of October,


Carole S. Brezeale
NOTARY PUBLIC

Carole S. Brezeale

[Typed/Printed name of Notary Public]

My Commission Expires:

MAY 12, 2010

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax \$ ~~None~~

Tax Lot No.

Parcel Identifier No.

Verified by

County on the ____ day of _____

2006 by

Mail after recording to

Van Winkle, Buck, Wall, Starnes, & Davis, P.A.

Attorney's Initials: ALSJR

Post Office Box 7376, Asheville, NC 28802-7376

BOX 55

This instrument was prepared by: Van Winkle, Buck, Wall, Starnes, & Davis, P.A. (A.L. Sneed Jr.)
Brief description for the Index: 50 Acres Containing

Brief description for the Index: 5.0 Acre Common Area

THIS DEED made this 25 day of ~~August~~^{October}, 2006, by and between:

GRANTOR

BROWNCOR, INC.,
A North Carolina Corporation
200 Racquet Club Road
Asheville, NC 28803

GRANTEE

Butler Mountain Bald, Inc.
A North Carolina Corporation
65 Pinkerton Corner
Fairview, NC 28730

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land situated in the City of N/A, Biltmore Township, Buncombe County, North Carolina, and more particularly described as follows:

A five (5.0) acre parcel of land, more particularly described as BEGINNING at a point which is located: (i) South 02° 07' 01" East 456.39 feet from a magnetic nail at the northwest corner of Lot 338 as shown on Plat Book 115, Page 182 of the Buncombe County Registry; and (ii) located north 26° 11' 30" West 329.50 feet from NCGS Station Butler North 666357.75 East 968253.62 NAD 1983, and from the beginning point so located running the following courses and distances: North 90° West 127.69 feet, thence South 10° 55' 31" East 479.96 feet, thence South 50° 10' 23" East 244.55 feet, thence North 88° 24' 32" East 121.27 feet to the point in the centerline of the access easement (the beginning point of the easement), thence North 88° 24' 32" East 37.98 feet to a corner, thence North 2° 41' 02"

And Grantor covenants with Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

Easements, covenants, conditions and restrictions of record; 2006 ad valorem taxes, which are not yet due and payable; and utilities physically located on the property

IN WITNESS WHEREOF, Grantor has hereunto set their hands and seals, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

BROWNCOR, INC.

By: [Signature]

President (SEAL)

E. S. Brown, Jr.

ATTEST [Signature]

Secretary (SEAL)

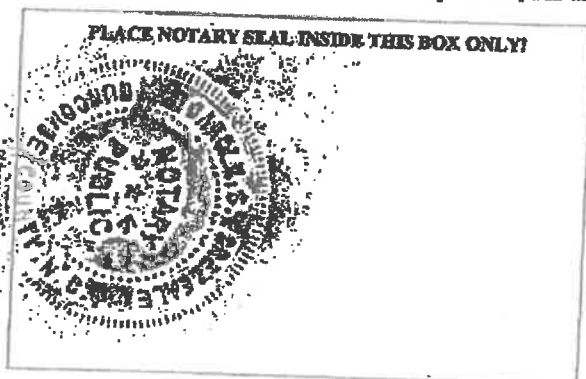
Jane B. McNeil

(Corporate Seal)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Carole S. Brezsek, a Notary Public of the State and County aforesaid, do hereby certify that E. S. Brown, Jr., personally appeared before me this day and acknowledged that he is President of Browncor, Inc., a corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 25th day of August, 2006.



Carole S. Brezsek
Carole S. Brezsek, Notary Public
(Printed Name of Notary)
My Commission Expires: May 12, 2010

Association.

"Limited Common Elements" shall mean and refer to those portions of the Subdivision designated as being either for i) the exclusive use by one or more but fewer than all of the Lot Owners, or ii) designated by Declarant in its sole and absolute discretion, as benefitting, either directly or indirectly, one or more but fewer than all of the Lot Owners.

"Lot" shall mean and refer to any parcel of land within the Subdivision as shown on the Plat designated for separate ownership or occupancy by a lot owner.

"Lot Owner" and/or "Owner" shall mean and refer to the Declarant or other person who owns fee simple title to any Lot which is part of the Subdivision; but does not include a person having an interest in a lot solely as security for an obligation.

"Member" shall mean and refer to each owner or owners of a lot within the Subdivision who shall also than be a member of the Association for such period of ownership. If a lot is owned by more than one person, then such persons collectively shall be the member and shall be entitled to only one vote.

"Restrictions" shall mean and refer to this Declaration of Terms, Conditions, Restrictions and Protective Covenants for Butler Mountain Highlands, as the same may be released, amended or changed; either in whole or part, as provided for herein.

"Special Declarant Rights" shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Declarant.

"Subdivision" and/or "Property" shall mean and refer only to that certain real property shown on Exhibit A hereto and any additions thereto as provided herein. The Declarant shall not be deemed to have subjected any other property which the Declarant may now or hereafter own or acquire to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property is recorded in the Buncombe County, NC Register's Office. The Declarant specifically reserves the right to subject any other property which the Declarant may now own or which Declarant may hereafter acquire to the restrictions set forth herein.

2. **ENFORCEMENT.** If the purchasers and owners of parcels within the Subdivision or the owner of the property herein described or their heirs, successors or assigns, shall violate, or attempt to violate, any of the covenants and restrictions herein, it shall be lawful for any other person or persons owning any real property in the Subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any of such Covenants and either prevent him or them from so doing and/or to recover damages and other recoverable amounts for such violation, including reasonable attorneys' fees incurred in prosecuting said action.

3. **MAINTENANCE OF OTHER ROADS.** All purchasers of parcels in the Subdivision and their heirs, successors and assigns shall be required to contribute on an equitable basis to the Butler Mountain Estates Property Owners Association for purposes of sharing in the annual cost of maintaining the roads located within the Butler Mountain Estates Subdivision as

outside of the dwelling, or on the surrounding property, and provided no customers or patrons are required to visit this dwelling for business purposes on a daily basis. No rental of less than an entire single family dwelling is permitted.

9. **COMPLETION OF DWELLING.** No guest house, garage, carport, or other building shall be constructed on any parcel until after construction of the dwelling house on the same parcel is substantially completed. All construction shall be completed within one (1) year from the start thereof, provided that the Declarant may extend such time when conditions warrant an extension. The exterior finish of each residence must be completed before occupancy.

10. **HUNTING.** Hunting of wildlife shall not be permitted within the boundaries of the property or the Subdivision.

11. **FIREARMS.** Firearms and arrows shall not be shot or discharged within the Subdivision.

12. **UNLICENSED DRIVERS.** No vehicle requiring its operator to have an operator's license under the laws of the State of North Carolina shall be operated upon the roads located within the property or the Subdivision unless the operator has a valid operator's license.

13. **SUBDIVISION.** The word "parcel" as used herein shall mean a separately numbered parcel of real property on a plat for the Subdivision to be known as Butler Mountain Highlands. During the running of these Covenants, parcels within the Subdivision conveyed by the Declarant shall not be subdivided, except that the owner of a parcel within the Subdivision may combine with such numbered parcel, parts or portions of another numbered parcel or parcels, provided that the total number of parcels is not increased, and the aggregate shall be considered as one parcel for the purpose of these Covenants, Bylaws and Road Maintenance Agreement. ~~The right is hereby reserved to the Declarant to subdivide or recombine lots prior to their sale, even if they have been portrayed on a recorded plat, but no lot shall be less than 2 acres.~~

14. **SIGNS.** No billboard, outdoor advertising, display, or other sign shall be constructed, erected, used or placed on any parcel within the Subdivision other than two professional quality signs of not more than four (4) square feet in area, each to be displayed for advertising such parcel, or improvements thereon, for sale, lease or rent.

15. **SEWERAGE DISPOSAL.** Each parcel owner upon construction of a dwelling shall install and maintain a sewerage disposal system consisting of a septic tank and drain field or such other system as may be approved by the Buncombe County Health Department or such successor entity as shall govern such systems.

16. **DRAINAGE.** All natural drainage channels shall remain open and no diversion of natural drainage shall be allowed where such diversion will affect an adjacent parcel or property owner.

17. **FOUNDATION WALLS.** All exposed foundation walls, including concrete block walls, shall be covered with brick, stucco, or other suitable materials consistent with the character

- b. those Special Declarant Rights set forth in the Act;
- c. the right to redesignate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by Declarant.

Declarant reserves an easement fifteen (15') feet in width along the outer boundaries of each parcel in the Subdivision, seven and one-half feet (7.5') of which shall lie on either side of said boundaries, for the installation and maintenance of appropriate utilities, for drainage purposes and for hiking and bridle trails. The Declarant further reserves the right to subject the real property within the boundaries of the Subdivision to a contract with Carolina Power & Light Company for the installation of underground electric cables or the installation of street lighting, or both, either or both of which may require an initial payment and continuing monthly payments to Carolina Power & Light Company by the owner of each parcel. Neither Declarant nor any utility company using the easements herein referred to shall be liable for any damage done by them to shrubbery, trees or flowers or to the property of the owner situated on the land covered by said easement.

24. **ADJOINING PROPERTY.** Declarant and its successors and assigns reserve the right to develop adjoining property outside the boundaries of the proposed Subdivision with or without restrictions of like nature and to use the roads located within the Subdivision for road access and utility rights-of-way to Webb Cove Road and Cedar Mountain Road thereby allowing the Declarant maximum flexibility in the determination of the development of such parcels. In the event of such development, the future purchasers of property would be required to share in the annual maintenance of those roads constructed within the Subdivision over which they may pass for purposes of gaining access to Webb Cove Road and Cedar Mountain Road.

25. **APPROVAL OF PLANS.** All plans for the construction of private roads and driveways and all building plans for the construction of buildings, fences, walls or structures to be erected upon any parcel within the Subdivision, including the property conveyed herein, and including proposed location thereof upon such property and any changes after approval thereof and any structural remodeling, reconstruction, alteration or addition to any building, road, driveway or other structure after its initial completion, shall require the approval of the Declarant. Before beginning the construction of any road, driveway, building, fence, wall or other structure whatsoever or structural remodeling or alteration of same (this is applicable only to changes on the exterior of the structure) upon the property a parcel owner shall submit to Declarant two full sets of plans and specifications for approval. Plan approval in advance of construction is to insure among other things a uniformity of architectural style, and the decision of the Declarant in the approval, modification or rejection of said plans and specifications shall be final. Approval of such plans and specifications shall be evidenced by written endorsement on same with a copy to be delivered to the owner of the parcel prior to the commencement of construction. The Declarant shall not be responsible for any structural defect in such plans or specifications, or in any building or structure or improvement constructed or erected according to such plans and specifications. The Declarant reserves the right to assign all rights for approval of said plans to the Butler Mountain Highlands Association.

26. **ASSOCIATION.** Each owner of a parcel in the Subdivision, by acceptance of a deed, is automatically a member of the BUTLER MOUNTAIN HIGHLANDS ASSOCIATION, INC. and takes title subject to the terms and conditions of the Bylaws set forth as Exhibit B hereto, as amended or modified, and Road Maintenance Agreement attached hereto as Exhibit C, including

EXHIBIT A

DESCRIPTION OF BUTLER MOUNTAIN HIGHLANDS SUBDIVISION

BEGINNING at a point in the center of the right of way for a private road constituting an extension of Pinkerton Corner at the westernmost corner of that Reservoir Tract described in Deed Book 1863 at page 36 of the Buncombe County Public Registry and runs from said beginning point with the north line of said Reservoir Tract North 80 deg. 01' 00" East 84.40 feet to an iron pin at a corner of that 3.92 acre parcel conveyed to Valerie Hedberg by deed recorded in Deed Book 2071, page 113 and runs with the line thereof North 31 deg. 53' 37" East 332.17 feet to an iron pin at the southwest corner of Lot 12 of sheet 2 of Butler Mountain Estates shown on a plat recorded in Plat Book 42 at page 190; thence with the line of said lot 12 North 7 deg. 12' 34" East 175.00 feet; thence a new line South 87 deg. 11' 19" West 693.30 feet; thence same course 40.00 feet; thence South 3 deg. 31' 20" East 386.48 feet; thence South 10 deg. 29' 16" East 27.07 feet; thence North 80 deg. 01' 00" East 40.00 feet; thence South 10 deg. 29' 16" East 579.40 feet to a point in the center of the right of way for that private road known as DJ Drive; thence with the center of said right of way South 44 deg. 59' 07" East 66.40 feet; on a curve to the left with a radius of 167.60 feet, an arc distance of 292.73 feet (chord North 84 deg. 58' 47" East 256.92 feet) and North 34 deg. 56' 34" East 91.60 feet to a point in the center of the extension of Pinkerton Corner; thence with the center of the extension of Pinkerton Corner and the line of the aforesaid Hedberg property,

1. North 53 deg. 29' 00" West 61.87 feet;
2. North 12 deg. 01' 00" West 25.29 feet;
3. North 10 deg. 51' 00" East 23.70 feet;
4. North 12 deg. 10' 00" East 62.39 feet and
5. North 9 deg. 59' 00" West 326.30 feet to the southwest corner of the aforesaid Reservoir Tract; thence North 9 deg. 59' 00" West 41.55 feet to the BEGINNING, containing 11.67 acres, more or less.

to the Covenants and Bylaws;

- (10) provide for the indemnification of and maintain liability insurance for its officers, executive board, directors employees and agents;
- (11) assign its right to future income, including the right to receive common expense assessments, but only to the extent the Covenants expressly so provide;
- (12) exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and
- (13) exercise any other powers necessary and proper for the governance and operation of the Association.

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.

ARTICLE II

Membership of Association

The Owner of each parcel in Butler Mountain Highlands Subdivision shall be a member of this Association. From and after June 1, 2000 each Owner shall be entitled to one (1) vote on all matters coming before members of the Association for vote. If more than one person is the Owner of a parcel, there shall be only one membership for such Parcel and the voting rights in the Association with reference to such Parcel shall be exercised as provided in Article IV, Section 7, of these Bylaws.

Until June 30, 2001 or sooner at Declarant's sole option, the Declarant shall be the agent of this Association for the purpose of performing all management and maintenance duties of the Association, establishment of budgets and assessments, collection of assessments and enforcement of the Covenants and these Bylaws.

ARTICLE III

Board of Directors

Section 1. The affairs of the Association shall be governed by a Board of Directors of three (3) in number, designated by Declarant, and successor Directors shall be designated by the remaining Directors, until a Board of Directors is elected as hereinafter provided.

Elections for Directors shall be held at a meeting to be held between June 1, 2000 and October 31, 2000, upon notice issued by the Declarant and presided over by a representative of the Declarant, at which nominations from the floor will be accepted and a Board of Directors will be elected consisting of those five (5) persons receiving the highest number of votes. Voting may be in person or by written proxy filed with the designated Secretary of the meeting. Such new Directors

Section 6. The order of business at all meetings of Owners shall be as follows:

- (a) Roll Call (or circulation of an attendance list).
- (b) Proof of Notice of Meeting or Waiver of Notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers.
- (e) Reports of Committees.
- (f) Election of Directors (when so required).
- (g) Unfinished business.
- (h) New Business.

Section 7. If only one of the multiple Owners of a Parcel is present at a meeting of the Association, he is entitled to cast the vote allocated to that Parcel. If more than one of the multiple Owners of a Parcel are present, the vote allocated to that Parcel may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the multiple Owners casts the vote allocated to that Parcel without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Parcel.

ARTICLE V

Board of Directors

Section 1. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Owners.

Section 2. Vacancies on the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the then-remaining Directors, even though they may constitute less than a quorum. Each person so elected shall serve the then-remaining term of the previous Director.

Section 3. At any regular or special meeting duly called, any one or more of the Directors previously elected by the Owners may be removed, with or without cause, by a majority of the Owners and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

Section 4. The organizational meeting of a newly elected Board of Directors shall be held within ten (10) days after the meeting at which such Directors were elected at a suitable location in Butler Mountain Highlands Subdivision or such other place convenient to the Owners as may be designated by the President.

Section 5. Regular meetings of the Board of Directors may be held at such times as shall be determined, from time to time, by the President. A minimum of two shall be held. Notice

Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary.

Section 2. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Upon an affirmative vote of a majority of all the members of the Board of Directors, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Board of Directors or at any special meeting of the Board called for such purpose. Any officer whose removal has been proposed shall be given an opportunity to be heard.

Section 4. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of President of an association, including but not limited to the powers to appoint committees from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association, such committees to include at all times at least a majority of Owners.

Section 5. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other members of the board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors.

Section 6. The Secretary shall keep the minutes of all meetings of the board of Directors and the minutes of all meetings of the Association. In addition, he shall have charge of such books and papers as the Board of Directors may direct and he shall, in general, perform all the duties incident to the office of Secretary.

Section 7. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association and shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. However, the Treasurer shall not be responsible for such of the foregoing matters as have been delegated to any management agent.

Section 8. All agreements, contracts, deeds, leases, checks, notices and other instruments to be executed on behalf of the Association shall be executed by any two officers of the Association or by such other person(s), firm(s) or corporation(s), including any management agent, as may be designated by the Board of Directors.

Section 9. No officer shall receive any compensation for serving in said capacity.

ARTICLE VII

Fiscal Management of the Association

Page 8 of Bylaws

which were members of the Association as of the end of the preceding calendar month. Purchasers of Parcels sold by Declarant during a calendar year shall become members of the Association effective upon recording of their deed for a Parcel and shall thereafter be entitled to all privileges and benefits of all other members of the Association, including the right to vote at the annual Association meeting held with reference to the next calendar year. The obligation to pay assessments shall commence as set out in the Road Maintenance Agreement designated as Exhibit C hereto.

Copies of the proposed budget and schedule of assessments shall be transmitted to each Owner on or before November 15 preceding the calendar year for which the budget is made. The Board of Directors shall establish a date for and mail written notice of a meeting to the Owners to consider ratification of the budget and schedule of assessments not less than fourteen (14) nor more than thirty (30) days after mailing of said budget and schedule of assessments. There shall be no requirement that a quorum of Owners be present at such a meeting. The proposed budget and schedule of assessments shall be ratified unless at said meeting fifty-one (51%) percent or more of all the Owners present in person or by proxy reject said proposed budget and schedule of assessments. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget and schedule of assessments proposed by the Board of Directors.

- (d) The Association is responsible for maintenance, repair and replacement when necessary of the roads, streets and common area in the Subdivision and assessment of the Parcel Owners as necessary to recover the costs of such maintenance, repair or replacement. If an unforeseen need cannot be met from the current budget or from accumulated reserves attributable to such a need, the Board may, from and after January 1, 2001, and without approval of the Owners, establish a special assessment to meet that need and the payment method and frequency for such an assessment. If such an assessment is for the purpose of funding new, expanded facilities, other than machinery, tools, equipment or furniture, then the special assessment may be levied only after written approval of a majority of the Owners who would be so assessed.

Section 2. The Board of Directors shall have the authority to borrow money for the purpose of making funds available to the Association to meet its obligations as and when the same become due and may, in connection with any such borrowing, pledge and assign funds to be received in the future from assessments against Owners. No portions of the common areas of the subdivision may be otherwise conveyed or subjected to a security interest by the Board of Directors as collateral for any such borrowing without the approval of at least eighty (80%) percent of the Owners at a regular or special meeting of the Owners called for the purpose of considering such conveyance or pledging of common areas.

Section 3. Annual assessments against the Owners adopted as provided in the

Page 10 of Bylaws

Subdivision and premiums due on insurance obtained by the Association and the same shall be payable as provided in Article VII above. All assessments shall be made equally against all Parcels. Any interest that any Owner may have in any of the above reserve funds or in any of the assets of the Association shall not be transferred or otherwise encumbered except as an appurtenance to the Parcel.

Section 2. If damage is inflicted on any road, street or common element of the Subdivision by an Owner which is not covered by insurance provided by the Association, the Association may direct such Owner to repair such damage or the Association may itself cause the repairs to be made and recover the costs thereof from the responsible Owner. Liabilities of Owners so incurred shall be assessments secured by a lien, as otherwise provided in these Bylaws.

ARTICLE IX

Conveyances

No Owner shall execute any deed, deed of trust, mortgage, lease or other instrument conveying or encumbering his Parcel without including therein all interests and obligations set out herein and in the Covenants and Road Maintenance Agreement applicable to the Subdivision. Any such conveyance or encumbrance shall be conclusively deemed to include such interests and be subject to such obligations.

ARTICLE X

Liability of Officers and Directors of the Association

The officers and members of the Board of Directors of the Association, designated or elected as provided in these Bylaws, shall not be liable to the Owners for any mistake of judgment, negligence or otherwise, except for conduct violative of Article III, Section 2, of these Bylaws. The Owners shall indemnify and hold harmless each of the officers and members of the Board of Directors against all contractual liability to others arising out of contracts made by the officers and Board of Directors, unless their conduct in doing so violates said Article III, Section 2. It is intended that the officers and members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

ARTICLE XI

Amendments to Bylaws

Section 1. These Bylaws may be amended in the following manner:

- (a) Notice of the subject matter of a proposed amendment shall be included in the notice of any Association meeting at which a proposed amendment is considered.
- (b) A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association. Members not present in person or by proxy at the meeting considering the

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 NCCS 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

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.

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.

Residential Property Agent Full

13 South Point Drive #440, Asheville NC 28804-6406

CMLS#: 3315327	Category: Condo/Townhouse	Parcel ID: 9730-98-0824-001	List Price: \$980,000
Status: Closed	Tax Location: Woodfin	County: Buncombe	Closed Price: \$960,000
Subdivision: Reynolds Mountain	Tax Value: \$849,000	Zoning: RES	
Complex: Reynolds Mountain	Deed Ref: 4829-77	Plat Book/Slide: 108/81	
Legal Desc: REYNOLDS MOUNTAIN PH4 440	Approx Lot Dim:	Block/Section:	
Approx Acres: 0.16			
Lot Desc: Cul-de-sac Lot, Long Range View, Mountain View, Views, Year Round View		Elevation: 2000-2500 ft. Elev.	



General Information

Type: 1 Story Basement
Style: Arts and Crafts, Colonial, Middle:
Construction Type: Site Built

School Information

Elem: Woodfin/Eblen
Middle: Clyde A Erwin
High: Clyde A Erwin

HLA
Main: 1,642
Upper: 0
Third: 0
Lower: 1,802
Bsmnt: 0

Unheated Sqft
Main: 0
Upper: 0
Third: 0
Lower: 0
Bsmnt: 0

Bldg Information

Beds: 3
Baths: 3/1
Year Built: 2006
New Const: No
Prop Compl Date:
Construct Status:
Builder:
Model:
Pets: Yes

Above Grade: 3,444
Total: 3,444

Total: 0

Additional Information

Prop Fin: Cash, Conventional
Assumable: No
Ownership: Seller owned for at least one year
Special Conditions: None
Publicly Maint Rd: Yes

Occupant Type:

Yes

Room Information

Room Level	Beds	Baths	Room Type
Main	1	1/1	Bathroom(s), Bedroom(s), Dining Area, Great Room, Kitchen, Laundry, Living Room, Master Bedroom, Pantry
Lower	2	2/	Bathroom(s), Bedroom(s), Billiard, Media, Rec Room, Sitting

Features

Green Bldg Features:	g-Spray Foam Insulation	Green HERS Score:	
Parking:	Attached Garage, Garage - 2 Car	Main Level Garage:	Yes
Driveway:	Brick/Cobblestone	g-Insulated Windows	Yes, TV & attached hardware in lower level; Wall hanging artwork Great Room and LIGHT FIXTURE ABOVE
Laundry:	Main	Doors/Windows:	
		Fixtures Exceptions:	
Foundation:	Basement		
Fireplaces:	Yes, Gas Vented, Great Room		
Floors:	Cork, Tile, Wood		
Equip:	Ceiling Fan(s), Dishwasher, Disposal, Double Oven, Gas Dryer Hookup, Gas Range/Oven, Generator, Microwave, Range/Hood, Refrigerator, Security System		
Comm Features:	Recreation Area, Walking Trails		
Interior Feat:	Breakfast Bar, Built-Ins, Cable Available, Kitchen Island, Open Floorplan, Vaulted Ceiling, Walk-In Closet(s), Window Treatments		
Exterior Feat:	Deck, In-Ground Irrigation		
Exterior Const:	Fiber Cement, Stone		
Porch:	Back, Covered		
Street:	Paved	Roof:	Architectural Shingle

Utilities

Water:	City Water	Wtr Htr:	Gas
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Association Information

Sewer:	City Sewer	Subj to CCRs:	Yes	HOA Subj Dues:	Mandatory
HVAC:	Central Air, Multizone A/C, Multizone Heat	HOA Phone:	828-650-6875	Assoc Fee:	\$2925/Annually
		HOA 2 Email:			
Subject To HOA:	Required	Confirm Spcl Assess:	No		
HOA Management:	IPM				
HOA Email:	info@ipmhoa.com				
Proposed Spcl Assess:					

Condo/Townhouse Information

Entry Level:	Main	Unit's Level In Bldg:	1	Land Included:	Yes
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Public Remarks:

Truly the MOST STUNNINGLY BEAUTIFUL home with MOST SPECTACULAR SOUTH FACING 180 degree view in coveted North Asheville. NUMEROUS additional State of the Art Custom Improvements to this Luxury level property make this an EXCEPTIONAL VALUE in today's market bar none. Nothing has been spared here to make this a FIRST CLASS estate quality home. Discriminating buyers will not be disappointed. MUST SEE. -Please note the outdoor built-ins on main level deck. Storage space for Big Green Egg. TOP OF THE LINE Pool Table negotiable.

Agent Remarks:

Instructions:

Directions:

Showing Service
From Downtown AVL, take Merrimon Avenue North past Beaver Lake. Right on Senator Reynolds Rd. Turn left on Points West Drive, RIGHT on S. Point Drive to # 13 on right.

Listing/Agent/Office Information

DOM:	16	CDOM:	16	TOM Dt:		Expiry Dt:	
Mkt Dt:	08/28/17	UC Dt:	09/13/17	DDP-End Date:	09/23/17	With Dt:	
Agent/Own:	No						

Land Property Agent Full

92 DJ Drive #329, Fairview NC 28730

CMLS#: **3434134** Category: **Lots/Acres/Farms** Parcel ID: **9666-65-5424-000** List Price: **\$279,000**
 Status: **Active** Tax Location: **Buncombe** County: **Buncombe**
 Subdivision: **Butler Mountain Highlands** Tax Value: **1192-5648** Plat Book/Slide: **0159/0009**
 Zoning: **RES** Deed Reference: **1192-5648** Block/Section:
 Legal Desc: **ACREAGE ADJUSTMENT**
 Elevation: **3000-3500 ft. Elev.**

General Information

Type: **Lot**
 Can be Divided?: **No**
 \$/Acre: **\$27,900.00**

Land Information

Approx Acres: **10.00**
 Acres Cleared:
 Acres Wooded:
 Approx Lot Dim:
 Min Sft To Build: **1,800**
 Prop Foundation:

Lot Desc:

Restrictions:

School Information

Elem: **Fairview**
 Middle: **AC Reynolds**
 High: **AC Reynolds**

Utility/Plan Information

Sewer: **Septic Tank, None**
 Water: **Community Well, Well**
 Outbuildings: **No**
 Dwellings: **No**
 Bedrooms Septic: **4**

Basement, Basement Fully Finished, Basement Inside Entrance, B Mountain View, Hilly, Long Range View, Paved Frontage, Private, Sloping, Steep, Stream/Creek, Trees, Views, Winter View, Wooded, Year Round View
Architectural Review, Manufactured Home Not Allowed, Modular Not Allowed, Square Feet

Additional Information

Prop Fin: **Cash, Conventional**
 Transaction Type: **For Sale**
 Ownership: **Seller owned for less than one year**
 Special Conditions: **None**
 Road Responsibility: **Privately Maintained Road or Maintenance Agreement**

Comm Features: **Gated Community, Recreation Area**
 Exterior Feat: **Fire pit**
 Access: **Privately Maintained Rd.**
 Suitable Use: **Residential**

Features

Street:

Paved

Association Information

Subject To HOA: **Required**
 HOA Management:
 Proposed Spcl Assess: **No**

Subj to CCRs: **Yes**
 HOA Phone:

HOA Subj Dues: **Mandatory**
 Assoc Fee: **\$1380/Annually**

Confirm Spcl Assess:

Remarks

Public Remarks:

Ready to build your exquisite mountain home immediately?? THIS IS YOUR LOT! You will love this gorgeous 10-acre property with long range views, 2 babbling creeks, an existing fire pit area, and even adjoins a waterfall! Magnificent rock & boulder formations reveal themselves throughout. This easy-build lot has a well + pump already in place and hook-up ready. 4-BR septic permit. Some clearing has been done and views opened on this rare-to-find lot in gated community less than 15 mins to DT Asheville. Community includes private 5-acre open recreation space & nature preserve at top of Butler Mountain with panoramic, endless views! Jaw-dropping!

Agent Remarks:

Instructions:
 Directions:

Showing Service, Sign

Take 74A East to right on Cedar Mountain Road. Follow to top to right on Lambeth Walk into Butler Mountain Estates. Take Lambeth Walk to 1st sharp right on Pinkerton Corner and follow to top of hill and continue down other side as it winds around to a left on DJ drive. Sign on lot on right, flagged corners.

Listing/Agent/Office Information

DOM: **160** CDOM: **160**
 Mkt Dt: **09/12/18** UC Dt:
 Agent/Own: **Yes**
 For Appointment Call: **828-651-8883**
 List Agent: **Misty Masiello (myma54815)**
 Office: **Beverly-Hanks, Executive Park (NCM1005)**
 Buyer Agency: **5%** Sub Agency: **0%**
 Named Prosp: **No** Dual/Var: **No**
 Web URL:

TOM Dt:
 DDP-End Date:

Expiry Dt:
 With Dt:

List Type:
 Agent Phone:

Exclusive Right
828-777-0902
828-254-7221

Office Ph:
 Transaction Broker:
 Seller Name:
 Full Service:

Bonus:
Misty Masiello & Bill Butcher
Yes

Prepared By: Terry Horner

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Based on information submitted to CarolinaMLS. All data is obtained from various sources and may not have been verified by broker or CarolinaMLS. Supplied Open House Information is subject to change without notice. All information should be independently reviewed and verified for accuracy. Properties may or may not be listed by the office/agent presenting the information.

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 08/22/2005 08:04:08pm
No 00234374 1 of 4 pages
Otto W. DeBruhl, Register of Deeds

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE
Box #35
Patty Atkins

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.

Copy

2

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 exists about 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 officers.

COPY

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

Cynthia S. Conway
NOTARY PUBLIC
My commission expires: 11-22-2004



State of North Carolina, County of Buncombe
This is the foregoing certification of
Cynthia S. Conway
is hereby certified to be correct. Witness my hand on this the
23 day of Sept., 2003
OTTO W. DEBRIER, Register of Deeds By: Deputy

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

Ref: Book 2404 page 510

**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 Deeds 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., North Carolina Corporation

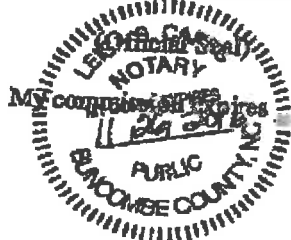
By: Elbert S. Brown, Jr.

(Affix Corporate Seal Here)

STATE OF NORTH CAROLINA
COUNTY OF Burcombe

This 10 day of February, 2012, personally came before me, Leisa 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



Leisa S. Capps
Notary Public

11/26

2016

Prepared by and return to:
VAN WINKLE LAW FIRM (als)
BOX 55

RECORDED COVENANTS

Between

**BUTLER MOUNTAIN ESTATE PROPERTY
OWNERS' ASSOCIATION, INC., and
BROWNCOR, INC.**

And

JANE B. MCNEIL and E.S. BROWN, JR.

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

RECORDED COVENANTS

THIS document is executed and entered into by and between Butler Mountain Estates Property Owners' Association, Inc., hereinafter referred to as "BMEPOA" with Browncor, Inc., hereinafter referred to as "Browncor" and Jane B. McNeil and E. S. Brown, Jr., this the 25 day of OCTOBER, 2006.

WHEREAS, Browncor owns certain property being the remainder of that property conveyed to it by a Deed recorded in Book 2270, Page 142 which has not been sold or conveyed to third parties. All of the said property still titled in the name of Browncor less the parcel under contract for Lot 326 is the property affected by these restrictions; and,

WHEREAS, this document is given in settlement of litigation between BMEPOA and Browncor and Jane B. McNeil and E. S. Brown, Jr.

NOW, THEREFORE, in consideration of the settlement of said litigation, it is agreed between the parties as follows:

1. Browncor and E. S. Brown, Jr. and Jane B. McNeil agree that none of them nor any of their successors or assigns acquiring title subsequent to this Agreement (except Lot 326 in the Highlands) shall undertake to widen Pinkerton Corner within the boundaries as shown on Plat Book 42, Pages 189 and 190. The parties acknowledge that previous Grantees from Browncor are not affected by this covenant.

2. With respect to the remaining property owned by Browncor, less and except Lot 326, all of which being a portion of the property described in the Deed Book 2270, Page 142, Browncor, Inc. agrees and covenants that:

- (a) Each lot sold hereafter by it will require a 100-foot building setback from the five (5) acre Bald at the top of Butler Mountain;
- (b) No lot will be sold to anyone less than ten (10) acres in size and no lot so sold hereafter may be further subdivided with the exception of Lot 326;
- (c) That all lots sold by Browncor will be restricted for residential purposes as restricted in the Covenants for the Butler Mountain Highlands, Deed Book 2404, Page 510 and Book 2505, Page 82 and Book 3401, Page 56;

(d) That upon the sale of each lot by Browncoor hereafter to a purchaser, Browncoor shall collect and forward to BMEPOA the sum of Two Thousand and no/100 Dollars (\$2,000.00) as an impact fee for road maintenance expense for the roads within Butler Mountain Estates, Plat Book 42, Pages 189 and 190;

(e) That other than the access easement of 30-feet in width on the South side of The Bald, no roads will be built to The Bald. This access easement shall be maintained by Butler Mountain Bald, Inc.

3. Browncoor acknowledges that BMEPOA and the Butler Mountain Highlands Property Owners Association are two separate legal entities with responsibility for maintaining their own roads. The property owners in the Highlands use the roads in Butler Mountain Estates and, consequently, have an obligation to pay reasonable road maintenance fees which contribute toward the maintenance of the roads in Butler Mountain Estates and the gate.

4. Browncoor covenants, for itself, its successors and assigns, that the water diverted to the West at the bottom of Pinkerton Corner in the Butler Mountain Highlands shall not be re-diverted to the East into Butler Mountain Estates, Plat Book 42, Pages 189 and 190.

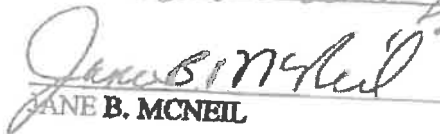
5. With respect to the remaining property not previously conveyed or under contract, and that is described in Deed Book 2270, Page 142, Browncoor shall use good faith efforts to encourage all purchasers and contractors to use Ebby Ridge Road for construction traffic.

6. With respect to lots previously conveyed outside Butler Mountain Estates by Browncoor or its predecessors in interest, no impact fee shall be payable to BMEPOA. The Lots and parcels subject to this provision include all parcels in Section 2 and Section 3 of Butler Mountain Estates, the Kerney McNeil Subdivision and all parcels conveyed out of the tracts described in Deed Book 1089, Page 171 that are not shown as part of Plat Book 42, Page 189 and 190; provided however, nothing herein shall limit or abridge the common law rights of BMEPOA to assert claims against any party who shall unreasonably overburden the easements over the roads in Butler Mountain Estates or unreasonably damage the roads therein.

IN WITNESS WHEREOF, the parties have hereunto set forth their hands and seals the date and year first above written.

BUTLER MOUNTAIN ESTATES
PROPERTY OWNERS' ASSOCIATION,
INC.

By:



JANE B. MCNEIL

SEAL

BROWNCOR, INC.

By:



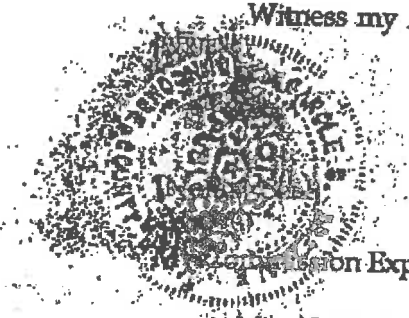
E. S. BROWN, JR.

SEAL

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Carole S. Brezeale, a Notary Public of the State and County aforesaid, do hereby certify that Edward B. Shoff personally appeared before me this day and acknowledged that he is President of Butler Mountain Estates Property Owners' Association, Inc., a non-profit corporation, and that he as President, being authorized to do so, executed the forgoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 25th day of October,


Carole S. Brezeale
NOTARY PUBLIC

Carole S. Brezeale

[Typed/Printed name of Notary Public]

My Commission Expires:

May 12, 2010

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Carole S. Brezeale, a Notary Public of the State and County aforesaid, do hereby certify that E. S. Brown, Jr. personally appeared before me this day and acknowledged that he is President of Browncor, Inc., a corporation, and that he as President, being authorized to do so, executed the forgoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 25th day of October,


Carole S. Brezeale
NOTARY PUBLIC

Carole S. Brezeale

[Typed/Printed name of Notary Public]

My Commission Expires:

May 12, 2010

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Carole S. Brezeale, a Notary Public of the County and State aforesaid, certify that Jane B. McNail personally appeared before me this day and acknowledged the execution of the foregoing instrument.



Witness my hand and official stamp/seal this 25th day of October, 2006..

Carole S. Brezeale
Notary Public

Carole S. Brezeale
[Typed/Printed Name of Notary Public]

My Commission Expires:
May 12, 2010

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Carole S. Brezeale, a Notary Public of the County and State aforesaid, certify that E. S. Brown, Jr. personally appeared before me this day and acknowledged the execution of the foregoing instrument.



Witness my hand and official stamp/seal this 25th day of October, 2006..

Carole S. Brezeale
Notary Public

Carole S. Brezeale
[Typed/Printed Name of Notary Public]

My Commission Expires:
May 12, 2010

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax \$ NONE

Tax Lot No. _____

Parcel Identifier No. _____

Verified by _____

County on the _____

day of _____

2006 by _____

Mail after recording to _____

Van Winkle, Buck, Wall, Starnes, & Davis, P.A.

Attorney's Initials: ALSR

Post Office Box 7376, Asheville, NC 28802-7376

BOX 55

This instrument was prepared by: Van Winkle, Buck, Wall, Starnes, & Davis, P.A. (A.L. Sneed Jr.)

Brief description for the Index: 5.0 Acre Common Area

THIS DEED made this 25 day of October, 2006, by and between:

GRANTOR

BROWNCOR, INC.,
A North Carolina Corporation
200 Racquet Club Road
Asheville, NC 28803

GRANTEE

Butler Mountain Bald, Inc.
A North Carolina Corporation
65 Pinkerton Corner
Fairview, NC 28730

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land situated in the City of N/A, Biltmore Township, Buncombe County, North Carolina, and more particularly described as follows:

A five (5.0) acre parcel of land, more particularly described as BEGINNING at a point which is located: (i) South 02° 07' 01" East degrees 456.39 feet from a magnetic nail at the northwest corner of Lot 338 as shown on Plat Book 115, Page 182 of the Buncombe County Registry; and (ii) located north 26° 11' 30" West 329.50 feet from NCGS Station Butler North 666357.75 East 968253.62 NAD 1983, and from the beginning point so located running the following courses and distances: North 90° West 127.69 feet, thence South 10° 55' 31" East 479.96 feet, thence South 50° 10' 23" East 244.55 feet, thence North 88° 24' 32" East 121.27 feet to the point in the centerline of the access easement (the beginning point of the easement), thence North 88° 24' 32" East 37.98 feet to a corner, thence North 2° 41' 02"

East 283.30 feet to a point, thence North 12° 27' 348.67 feet West to a corner with a number 4 rebar set, thence North 90° West 248.36 feet to the point and place of BEGINNING, containing 5.0 acres.

TOGETHER WITH a non-exclusive easement of access to the above-described parcel for the purposes of ingress, egress and regress, more particularly described as follows: BEGINNING at the point in the southern boundary of the above described 5.0 acre parcel and thence from said BEGINNING point running the following courses along the centerline of the easement: South 41° 48' 22" East 184.05 feet, thence South 37° 48' 33" East 240.77 feet, thence South 70° 08' 29" East 57.01 feet, thence South 40° 43' 39" East 77.72 feet to a point in the centerline of Ebby Ridge Road, the said easement being the 30-feet in width, 15 feet on either side of the above centerline and an easement of access over the roads in Butler Mountains and Highlands to the above described easement.

SUBJECT TO the rights of property owners in the Butler Mountain Highlands for access to the said 5.0 acre parcel as a common area as described in the Restrictive Covenants of Butler Mountain Highlands. Book 2404, Page 510 and Deed Book 3401, page 56 of the Buncombe County Registry and SUBJECT to the rights of Lot Owners in Butler Mountain Highlands for access to the said 5.0 acre tract as a common area.

THIS CONVEYANCE IS MADE FOR THE BENEFIT OF AND SUBJECT TO THE RIGHTS OF all purchasers of lots within the boundaries of the parcels originally acquired by E. S. Brown in Deed Book 1089, Page 171 and all parcels shown in the Kerney McNeil Subdivision for access to the said 5.0 acre parcel as a common area to be enjoyed in common with all others having such rights and at all times subject to reasonable, fair and non-discriminatory rules of conduct in use to be set by the Grantee herein. This easement shall not vest in property owners in Butler Mountain Estates, Plat Book 42, Page 189 and 190 and Butler Mountain Estates Section 2 and Section 3 until such property owners have executed and recorded an Acknowledgment of Deed for Common Area. Once this easement vests, it is an easement appurtenant to the Lot or Lots owned by such grantees of lands within the bounds of Deed Book 1089, Page 171.

AND SUBJECT FURTHER TO:

- 1). The Restrictive Covenant that no structure shall be built upon the said 5.0 acre parcel other than recreational structures and picnic structures, except an underground water tank and ancillary equipment and housing may be installed thereon by Grantor so long as the tank is underground and the ground covering the same has been restored.
- 2). An easement retained by the Grantor for the benefit of itself, its successors and assigns for the installation of a water tank and ancillary equipment on the said parcel at a location selected by Grantor, subject to the requirement that the said water tank shall be entirely underground and the surface restored when installation is complete;
- 3). Subject to an easement in favor of Grantor, its successors and assigns for ingress, egress and repair and maintenance of the water tank and the installation and maintenance of water lines from the tank to the boundary of the property conveyed herein; and
- 4). The right of Grantor, its successors and assigns to install water lines running to the water tank installed on said property.
- 5). Grantor shall screen any above ground structures associated with the water tank with appropriate vegetation.

The property hereinabove described was acquired by Grantor by instrument recorded in Deed Book 2270, Page 142.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to Grantee in fee simple.

And Grantor covenants with Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

Easements, covenants, conditions and restrictions of record; 2006 ad valorem taxes, which are not yet due and payable; and utilities physically located on the property

IN WITNESS WHEREOF, Grantor has hereunto set their hands and seals, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

BROWNCOR, INC.

By:

E. S. Brown, Jr.

President (SEAL)

ATTEST

Jane B. McNeil

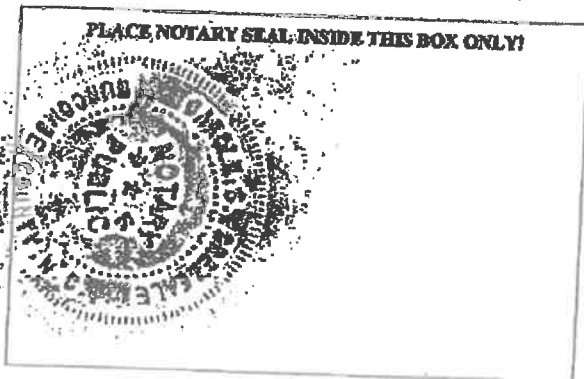
Secretary (SEAL)

(Corporate Seal)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Carole S. Brezeale, a Notary Public of the State and County aforesaid, do hereby certify that E. S. Brown, Jr. personally appeared before me this day and acknowledged that he is President of Browncor, Inc., a corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 25th day of August, 2006.



Carole S. Brezeale
Carole S. Brezeale, Notary Public
(Printed Name of Notary)
My Commission Expires: May 12, 2010

22

Original

Book **2404** Page **510**

**DECLARATION OF COVENANTS, BYLAWS
ROAD MAINTENANCE AGREEMENT**

WILSON COUNTY, NC
Recorded 01/19/2001 at 08:41:40 am
No. 2001-00005767 1 of 22 Pgs
Excise Tax Paid .00
Otto W. Guehrli, Register of Deeds

for

BUTLER MOUNTAIN HIGHLANDS SUBDIVISION

JANUARY 17, 2001

TABLE OF CONTENTS:

1. Covenants
2. Exhibit A-Description of property included in the Subdivision
3. Exhibit B-Bylaws
4. Exhibit C-Road Maintenance Agreement

????????????????????
Work Flow No: 9999-00005303

Return to Doug Thigpen

Association.

"Limited Common Elements" shall mean and refer to those portions of the Subdivision designated as being either for i) the exclusive use by one or more but fewer than all of the Lot Owners, or ii) designated by Declarant in its sole and absolute discretion, as benefitting, either directly or indirectly, one or more but fewer than all of the Lot Owners.

"Lot" shall mean and refer to any parcel of land within the Subdivision as shown on the Plat designated for separate ownership or occupancy by a lot owner.

"Lot Owner" and/or "Owner" shall mean and refer to the Declarant or other person who owns fee simple title to any Lot which is part of the Subdivision; but does not include a person having an interest in a lot solely as security for an obligation.

"Member" shall mean and refer to each owner or owners of a lot within the Subdivision who shall also then be a member of the Association for such period of ownership. If a lot is owned by more than one person, then such persons collectively shall be the member and shall be entitled to only one vote.

"Restrictions" shall mean and refer to this Declaration of Terms, Conditions, Restrictions and Protective Covenants for Butler Mountain Highlands, as the same may be released, amended or changed; either in whole or part, as provided for herein.

"Special Declarant Rights" shall mean and refer to those rights defined in Chapter 47F-1.103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Declarant.

"Subdivision" and/or "Property" shall mean and refer only to that certain real property shown on Exhibit A hereto and any additions thereto as provided herein. The Declarant shall not be deemed to have subjected any other property which the Declarant may now or hereafter own or acquire to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property is recorded in the Buncombe County, NC Register's Office. The Declarant specifically reserves the right to subject any other property which the Declarant may now own or which Declarant may hereafter acquire to the restrictions set forth herein.

2. **ENFORCEMENT.** If the purchasers and owners of parcels within the Subdivision or the owner of the property herein described or their heirs, successors or assigns, shall violate, or attempt to violate, any of the covenants and restrictions herein, it shall be lawful for any other person or persons owning any real property in the Subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any of such Covenants and either prevent him or them from so doing and/or to recover damages and other recoverable amounts for such violation, including reasonable attorneys' fees incurred in prosecuting said action.

3. **MAINTENANCE OF OTHER ROADS.** All purchasers of parcels in the Subdivision and their heirs, successors and assigns shall be required to contribute on an equitable basis to the Butler Mountain Estates Property Owners Association for purposes of sharing in the annual cost of maintaining the roads located within the Butler Mountain Estates Subdivision as

recorded in Plat Book 42 at Pages 189 and 190, which roads provide ingress and egress from the Subdivision to Webb Creek Road and Cedar Mountain Road.

4. **SURVIVAL.** Invalidation of any of these covenants by judgment or Court order shall in no way affect any of the other provisions which shall remain in full force and effect.

5. **SINGLE-FAMILY RESIDENTIAL ONLY; MINIMUM SQUARE FOOTAGE.** Except as otherwise provided herein all of the property herein described or to be sold 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 a parcel conveyed by Declarant. 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. Declarant reserves unto itself any tax or other advantage of said imposition, though the common elements may ultimately be conveyed to the Association.

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 the common area set aside at the crest of Butler Mountain shall be set back one hundred (100) feet from that common area as delineated on any plat of the Subdivision.

Declarant reserves the right to vary this requirement or any other requirement of these Covenants in the event such variance is necessary for the reasonable use of the parcel conveyed by the Declarant.

7. **TEMPORARY STRUCTURES.** No structure of a temporary or mobile nature, mobile home, modular home, camper truck, tent, travel trailer, camping trailer, or other vehicle used or designated for camping use shall be inhabited within the boundary of the property or of the Subdivision. Any travel trailer or camper parked on the property for extended periods shall be shielded from the view of residential dwellings constructed on adjoining parcels.

8. **COMMERCIAL USE.** Grantees of parcels in the Subdivision will not 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. However, a private office may be maintained within a single-family dwelling constructed upon the property, provided no advertising signs are located on the

outside of the dwelling, or on the surrounding property, and provided no customers or patrons are required to visit this dwelling for business purposes on a daily basis. No rental of less than an entire single family dwelling is permitted.

9. **COMPLETION OF DWELLING.** No guest house, garage, carport, or other building shall be constructed on any parcel until after construction of the dwelling house on the same parcel is substantially completed. All construction shall be completed within one (1) year from the start thereof, provided that the Declarant may extend such time when conditions warrant an extension. The exterior finish of each residence must be completed before occupancy.

10. **HUNTING.** Hunting of wildlife shall not be permitted within the boundaries of the property or the Subdivision.

11. **FIREARMS.** Firearms and arrows shall not be shot or discharged within the Subdivision.

12. **UNLICENSED DRIVERS.** No vehicle requiring its operator to have an operator's license under the laws of the State of North Carolina shall be operated upon the roads located within the property or the Subdivision unless the operator has a valid operator's license.

13. **SUBDIVISION.** The word "parcel" as used herein shall mean a separately numbered parcel of real property on a plat for the Subdivision to be known as Butler Mountain Highlands. During the running of these Covenants, parcels within the Subdivision conveyed by the Declarant shall not be subdivided, except that the owner of a parcel within the Subdivision may combine with such numbered parcel, parts or portions of another numbered parcel or parcels, provided that the total number of parcels is not increased, and the aggregate shall be considered as one parcel for the purpose of these Covenants, Bylaws and Road Maintenance Agreement. The right is hereby reserved to the Declarant to subdivide or recombine lots prior to their sale, even if they have been portrayed on a recorded plat, but no lot shall be less than 2 acres.

14. **SIGNS.** No billboard, outdoor advertising, display, or other sign shall be constructed, erected, used or placed on any parcel within the Subdivision other than two professional quality signs of not more than four (4) square feet in area, each to be displayed for advertising such parcel, or improvements thereon, for sale, lease or rent.

15. **SEWERAGE DISPOSAL.** Each parcel owner upon construction of a dwelling shall install and maintain a sewerage disposal system consisting of a septic tank and drain field or such other system as may be approved by the Buncombe County Health Department or such successor entity as shall govern such systems.

16. **DRAINAGE.** All natural drainage channels shall remain open and no diversion of natural drainage shall be allowed where such diversion will affect an adjacent parcel or property owner.

17. **FOUNDATION WALLS.** All exposed foundation walls, including concrete block walls, shall be covered with brick, stucco, or other suitable materials consistent with the character

and design of residences in the Subdivision as approved by Declarant or, if Declarant has conveyed the right of approval to the Association hereinafter provided for, by such Association.

18. **OUTSIDE ACCESS.** Except for rights herein reserved by Declarant to grant easements over the roads developed within the property, the Subdivision, or other adjoining property, and easements of public record, no property owner shall grant a right of way across his property to an owner of property whose land is contiguous to but not within the boundaries of the Subdivision, for purposes of obtaining access to a private or public road located within the Subdivision, or for the purpose of obtaining access from the Subdivision to a public road, except upon consent of the Declarant and ninety percent (90%) of the parcel owners of record in the Subdivision.

19. **STORAGE TANKS.** Any tank for the storage of gas or liquid shall be hidden from the view of other parcels.

20. **GARBAGE DISPOSAL.** All refuse, rubbish, trash, garbage or waste shall be kept, disposed of or removed in a sanitary manner. All household refuse and rubbish, trash, garbage or waste shall be kept in closed containers until taken to a disposal place operated or licensed by the proper public authority for such disposal. Non-household refuse, rubbish, trash, garbage, or waste other than dead leaves and fallen limbs shall not be permitted to remain exposed on the property.

21. **ANIMALS.** No animal of any kind shall be raised, bred or kept for commercial purposes; this does not preclude the keeping of dogs, cats or other pets of an ordinary nature for household enjoyment. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept. No poultry or farm animals may be raised or kept on the property or in the Subdivision, except that horses shall be allowed for riding purposes. No dogs shall be allowed to run loose except when accompanied by a person capable of keeping such dog under surveillance and control.

22. **NUISANCES.** All improvements shall be maintained in such a manner that they do not become (a) unsightly; (b) in disrepair; (c) unsanitary; or (d) a hazard. Noxious, obnoxious, noisy, unsightly, or otherwise offensive objects or activities, specifically including, but not limited to, vehicle repairs outside of an enclosed garage, barking dogs, or other noise-making animals or pets including the littering by same upon other parcels, shall not be permitted, nor shall anything be permitted that may be an unreasonable annoyance or nuisance to other Owners. Further, no substance, thing, or material shall be kept upon or within the Subdivision that will emit foul or obnoxious odors or will cause any noise that will or might unreasonably disturb the reasonable peace, quiet and comfort of adjoining and surrounding property owners. Excessively noisy vehicles of any kind, such as trail bikes, automobiles without mufflers or motorcycles, shall not be used anywhere within the property or the Subdivision.

23. **RESERVATION OF RIGHTS.** Declarant reserves to itself and its successors in interest, as Special Declarant Rights, following:

- a. the right to enter the Subdivision for purposes of maintaining an easement or right of way or to abate a nuisance;

- b. those Special Declarant Rights set forth in the Act;
- c. the right to redesignate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by Declarant.

Declarant reserves an easement fifteen (15') feet in width along the outer boundaries of each parcel in the Subdivision, seven and one-half feet (7.5') of which shall lie on either side of said boundaries, for the installation and maintenance of appropriate utilities, for drainage purposes and for hiking and bridle trails. The Declarant further reserves the right to subject the real property within the boundaries of the Subdivision to a contract with Carolina Power & Light Company for the installation of underground electric cables or the installation of street lighting, or both, either or both of which may require an initial payment and continuing monthly payments to Carolina Power & Light Company by the owner of each parcel. Neither Declarant nor any utility company using the easements herein referred to shall be liable for any damage done by them to shrubbery, trees or flowers or to the property of the owner situated on the land covered by said easement.

24. **ADJOINING PROPERTY.** Declarant and its successors and assigns reserve the right to develop adjoining property outside the boundaries of the proposed Subdivision with or without restrictions of like nature and to use the roads located within the Subdivision for road access and utility rights-of-way to Webb Cove Road and Cedar Mountain Road thereby allowing the Declarant maximum flexibility in the determination of the development of such parcels. In the event of such development, the future purchasers of property would be required to share in the annual maintenance of those roads constructed within the Subdivision over which they may pass for purposes of gaining access to Webb Cove Road and Cedar Mountain Road.

25. **APPROVAL OF PLANS.** All plans for the construction of private roads and driveways and all building plans for the construction of buildings, fences, walls or structures to be erected upon any parcel within the Subdivision, including the property conveyed herein, and including proposed location thereof upon such property and any changes after approval thereof and any structural remodeling, reconstruction, alteration or addition to any building, road, driveway or other structure after its initial completion, shall require the approval of the Declarant. Before beginning the construction of any road, driveway, building, fence, wall or other structure whatsoever or structural remodeling or alteration of same (this is applicable only to changes on the exterior of the structure) upon the property a parcel owner shall submit to Declarant two full sets of plans and specifications for approval. Plan approval in advance of construction is to insure among other things a uniformity of architectural style, and the decision of the Declarant in the approval, modification or rejection of said plans and specifications shall be final. Approval of such plans and specifications shall be evidenced by written endorsement on same with a copy to be delivered to the owner of the parcel prior to the commencement of construction. The Declarant shall not be responsible for any structural defect in such plans or specifications, or in any building or structure or improvement constructed or erected according to such plans and specifications. The Declarant reserves the right to assign all rights for approval of said plans to the Butler Mountain Highlands Association.

26. **ASSOCIATION.** Each owner of a parcel in the Subdivision, by acceptance of a deed, is automatically a member of the BUTLER MOUNTAIN HIGHLANDS ASSOCIATION, INC. and takes title subject to the terms and conditions of the Bylaws set forth as Exhibit B hereto, as amended or modified, and Road Maintenance Agreement attached hereto as Exhibit C, including

the obligation to pay assessments as described therein.

The Association shall be nonprofit in nature and exists for the following purposes:

- a. insuring the reasonable maintenance of all roads constructed within the Subdivision;
- b. assessing and prorating the cost of maintenance of said roads located within the Subdivision, including planning for future needs;
- c. enforcing the provisions of the Bylaws and Road Maintenance Agreement as herein set forth;
- d. approving building and construction plans as herein set forth; and
- e. enhancing the Subdivision and quality of life of the parcel owners.

Until the sale of all parcels within the Subdivision has occurred, the Declarant 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. All other property owners shall be entitled to only one (1) vote for each parcel which they own as hereinabove set forth.

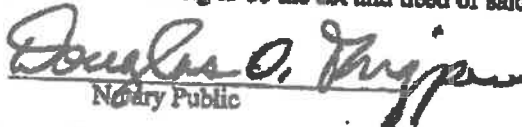
IN WITNESS WHEREOF, Declarant has caused this instrument to be executed this the day and year first above written.

BROWNCOR, INC.

By: 
President



This 16th day of January, 2001, personally came before me ELBERT S. BROWN, JR., who, being by me duly sworn, says that he is President of BROWNCOR, INC., and that the seal affixed to the foregoing instrument in writing is the corporate seal of said company, and that said writing was signed and sealed by him in behalf of said corporation 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.


Notary Public

My commission expires: 3-5-2002



CAVEAT: DO NOT FILE 30623 further as to Highland@notary.com, Highland's deal 1.17.01.wpd

State of North Carolina, County of Wake
Each of the foregoing certificates, of Douglas O. Thigpen
is hereby declared to be correct. Filed for registration on this day
16th day of January, 2001.
OTTO W. DEMARTEL, Registrar of Deeds By: Deputy

EXHIBIT A

DESCRIPTION OF BUTLER MOUNTAIN HIGHLANDS SUBDIVISION

BEGINNING at a point in the center of the right of way for a private road constituting an extension of Pinkerton Corner at the westernmost corner of that Reservoir Tract described in Deed Book 1863 at page 36 of the Buncombe County Public Registry and runs from said beginning point with the north line of said Reservoir Tract North 80 deg. 01' 00" East 84.40 feet to an iron pin at a corner of that 3.92 acre parcel conveyed to Valerie Hedberg by deed recorded in Deed Book 2071, page 113 and runs with the line thereof North 31 deg. 53' 37" East 332.17 feet to an iron pin at the southwest corner of Lot 12 of sheet 2 of Butler Mountain Estates shown on a plat recorded in Plat Book 42 at page 190; thence with the line of said lot 12 North 7 deg. 12' 34" East 175.00 feet; thence a new line South 87 deg. 11' 19" West 693.30 feet; thence same course 40.00 feet; thence South 3 deg. 31' 20" East 386.48 feet; thence South 10 deg. 29' 16" East 27.07 feet; thence North 80 deg. 01' 00" East 40.00 feet; thence South 10 deg. 29' 16" East 579.40 feet to a point in the center of the right of way for that private road known as DJ Drive; thence with the center of said right of way South 44 deg. 59' 07" East 66.40 feet; on a curve to the left with a radius of 167.60 feet, an arc distance of 292.73 feet (chord North 84 deg. 58' 47" East 256.92 feet) and North 34 deg. 56' 34" East 91.60 feet to a point in the center of the extension of Pinkerton Corner; thence with the center of the extension of Pinkerton Corner and the line of the aforesaid Hedberg property,

1. North 53 deg. 29' 00" West 61.87 feet;
2. North 12 deg. 01' 00" West 25.29 feet;
3. North 10 deg. 51' 00" East 23.70 feet;
4. North 12 deg. 10' 00" East 62.39 feet and
5. North 9 deg. 59' 00" West 326.30 feet to the southwest corner of the aforesaid Reservoir

Tract; thence North 9 deg. 59' 00" West 41.55 feet to the BEGINNING, containing 11.67 acres, more or less.

EXHIBIT B
BYLAWS OF
BUTLER MOUNTAIN HIGHLANDS ASSOCIATION, INC.

JANUARY 17, 2001

ARTICLE I

Purposes and Powers of Association

BUTLER MOUNTAIN HIGHLANDS ASSOCIATION, INC. (herein referred to as "the Association") is established and shall function as the governing body of the roads and common areas developed in connection with BUTLER MOUNTAIN HIGHLANDS SUBDIVISION (hereinafter "the Subdivision") in Buncombe County, North Carolina, by BROWNCOR, INC. (hereinafter referred to as "Declarant").

The Association shall, subject to the provisions of the Covenants for BUTLER MOUNTAIN HIGHLANDS SUBDIVISION of record in the office of the Register of Deeds for Buncombe County, and these Bylaws, have the power and authority to:

- (1) adopt and amend these Bylaws;
- (2) adopt and amend budgets for revenues, expenditures and reserves and collect assessments for road maintenance and common expenses from owner of parcels in the Subdivision (hereinafter "Owners");
- (3) hire and terminate managing agents and other employees, agents and independent contractors;
- (4) institute, defend or intervene in its own name in litigation or administrative proceedings on matters affecting the Subdivision;
- (5) make contracts and incur liabilities;
- (6) regulate the use, maintenance, repair, replacement and modification of common areas;
- (7) cause additional improvements to be made as a part of the common areas;
- (8) impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Covenants and Bylaws;
- (9) impose reasonable charges for the preparation and recordation of amendments

to the Covenants and Bylaws;

- (10) provide for the indemnification of and maintain liability insurance for its officers, executive board, directors employees and agents;
- (11) assign its right to future income, including the right to receive common expense assessments, but only to the extent the Covenants expressly so provide;
- (12) exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and
- (13) exercise any other powers necessary and proper for the governance and operation of the Association.

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.

ARTICLE II

Membership of Association

The Owner of each parcel in Butler Mountain Highlands Subdivision shall be a member of this Association. From and after June 1, 2000 each Owner shall be entitled to one (1) vote on all matters coming before members of the Association for vote. If more than one person is the Owner of a parcel, there shall be only one membership for such Parcel and the voting rights in the Association with reference to such Parcel shall be exercised as provided in Article IV, Section 7, of these Bylaws.

Until June 30, 2001 or sooner at Declarant's sole option, the Declarant shall be the agent of this Association for the purpose of performing all management and maintenance duties of the Association, establishment of budgets and assessments, collection of assessments and enforcement of the Covenants and these Bylaws.

ARTICLE III

Board of Directors

Section 1. The affairs of the Association shall be governed by a Board of Directors of three (3) in number, designated by Declarant, and successor Directors shall be designated by the remaining Directors, until a Board of Directors is elected as hereinafter provided.

Elections for Directors shall be held at a meeting to be held between June 1, 2000 and October 31, 2000, upon notice issued by the Declarant and presided over by a representative of the Declarant, at which nominations from the floor will be accepted and a Board of Directors will be elected consisting of those five (5) persons receiving the highest number of votes. Voting may be in person or by written proxy filed with the designated Secretary of the meeting. Such new Directors

shall be initially designated for terms of three (3), two (2) and one (1) year, with the two receiving highest number of votes serving for three years, the two receiving the next highest number of votes serving for two years and the fifth serving for one year. Elections to the Board of Directors shall be held each year thereafter at a time as above specified by the Board of Directors, to elect directors to replace retiring Directors to serve a three year term. Such Directors shall take office upon election.

Section 2. In the performance of their duties, the officers of the Association and members of the Board of Directors shall be deemed to stand in a fiduciary relationship to the Association and the Owners and shall discharge their duties in good faith and with that diligence and care which ordinarily prudent persons would exercise under similar circumstances in like positions.

ARTICLE IV

Administration

Section 1. Meetings of the Association shall be held at a suitable location in Butler Mountain Highlands Subdivision or such other place convenient to the Owners as may be designated by the President.

Section 2. Commencing in 2000, the first annual meeting of the Association shall be held as stated in the foregoing Article III. At such meeting, there shall be elected by ballot of the Owners a Board of Directors in accordance with the requirements of said Article III. The Owners may also transact such other business of the Association as may properly come before them.

Section 3. It shall be the duty of the President to call a special meeting of the Owners as directed by resolution of the Board of Directors or upon a petition signed by twenty (20%) percent in number of the Owners and presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice thereof unless by consent of two-thirds (2/3rds) of all the Owners and said two-thirds (2/3rds) must be present either in person or by proxy.

Section 4. It shall be the duty of the Secretary to mail a notice of each annual or special meeting stating the purpose thereof and an agenda as well as the time and place where it is to be held to each Owner of record at least ten (10) but not more than fifty (50) days prior to such meeting. Notice shall be mailed, postage prepaid, to the Owner's address within the Subdivision or at such other address as an Owner shall have specified to the Association in writing. The mailing of a notice in the manner provided in this Section shall be considered notice served.

Section 5. A quorum at any regular or special meeting shall, except as otherwise specified in these Bylaws, be deemed present throughout said meeting if persons entitled to cast fifty (50%) percent of the votes which may be cast for election of the Board of Directors are present in person or by proxy at the beginning of the meeting. If any meeting of Owners cannot be organized because a quorum has not attended, the owners who are present, either in person or by proxy, may adjourn the meeting to a time specified but not less than twenty-four (24) hours from the time the original or earlier adjourned meeting was called. Proxies executed and filed after the date of the adjourned meeting and before the holding of that meeting shall be eligible for voting at said meeting.

Section 6. The order of business at all meetings of Owners shall be as follows:

- (a) Roll Call (or circulation of an attendance list).
- (b) Proof of Notice of Meeting or Waiver of Notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers.
- (e) Reports of Committees.
- (f) Election of Directors (when so required).
- (g) Unfinished business.
- (h) New Business.

Section 7. If only one of the multiple Owners of a Parcel is present at a meeting of the Association, he is entitled to cast the vote allocated to that Parcel. If more than one of the multiple Owners of a Parcel are present, the vote allocated to that Parcel may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the multiple Owners casts the vote allocated to that Parcel without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Parcel.

ARTICLE V

Board of Directors

Section 1. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Owners.

Section 2. Vacancies on the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the then-remaining Directors, even though they may constitute less than a quorum. Each person so elected shall serve the then-remaining term of the previous Director.

Section 3. At any regular or special meeting duly called, any one or more of the Directors previously elected by the Owners may be removed, with or without cause, by a majority of the Owners and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

Section 4. The organizational meeting of a newly elected Board of Directors shall be held within ten (10) days after the meeting at which such Directors were elected at a suitable location in Butler Mountain Highlands Subdivision or such other place convenient to the Owners as may be designated by the President.

Section 5. Regular meetings of the Board of Directors may be held at such times as shall be determined, from time to time, by the President. A minimum of two shall be held. Notice

of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least ten (10) days prior to the day named for such meeting and shall be posted so as to be visible at the entrance to the Subdivision.

Section 6. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each Director given personally or by mail, telephone or telegraph, which notice shall state the time, place (as designated by the President as hereinabove provided) and purpose of the meeting and shall be posted so as to be visible at the entrance to the Subdivision. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice upon the written request of a majority of the Directors.

Section 7. Before or at any meeting of the Board of Directors, any Director may in writing waive notice of such meeting (including a consent that such meeting be held upon shorter notice than specified in Section 6 above) and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 8. At all meetings of the Board of Directors, three (3) of the Directors shall constitute a quorum for the transaction of business and acts of the majority of the Directors present at the beginning of a meeting at which a quorum is present shall be acts of the Board of Directors. Absent Directors may participate in any meeting by conference telephone or similar communications device, provided that all Directors participating in said meeting are able to hear each other. If at any such meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted at the next meeting without further notice. The Board may also take action by unanimous written consent, whether given during or after the holding of the meeting.

Section 9. The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on any such fidelity bonds shall be paid by the Association.

Section 10. No member of the Board of Directors shall receive any compensation for serving in said capacity.

Section 11. Owners shall be entitled to attend all regular meetings of the Board of Directors and be heard upon matters under consideration by the Board at such meeting. Owners may attend special meetings and participate therein as provided in the notice of the meeting.

ARTICLE VI

Officers

Section 1. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board of Directors. The Secretary and Treasurer may be the same person. The Directors may appoint an

Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary.

Section 2. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Upon an affirmative vote of a majority of all the members of the Board of Directors, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Board of Directors or at any special meeting of the Board called for such purpose. Any officer whose removal has been proposed shall be given an opportunity to be heard.

Section 4. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of President of an association, including but not limited to the powers to appoint committees from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association, such committees to include at all times at least a majority of Owners.

Section 5. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other members of the board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors.

Section 6. The Secretary shall keep the minutes of all meetings of the board of Directors and the minutes of all meetings of the Association. In addition, he shall have charge of such books and papers as the Board of Directors may direct and he shall, in general, perform all the duties incident to the office of Secretary.

Section 7. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association and shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. However, the Treasurer shall not be responsible for such of the foregoing matters as have been delegated to any management agent.

Section 8. All agreements, contracts, deeds, leases, checks, notices and other instruments to be executed on behalf of the Association shall be executed by any two officers of the Association or by such other person(s), firm(s) or corporation(s), including any management agent, as may be designated by the Board of Directors.

Section 9. No officer shall receive any compensation for serving in said capacity.

ARTICLE VII

Fiscal Management of the Association

Section 1. The Board of Directors of the Association shall fulfill its duties of fiscal management of the Association according to the following provisions:

- (a) The receipts and expenditures of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be common expenses:
 - (1) Current maintenance and administrative expenses, which shall include all receipts and expenditures with reference to the calendar year for which the budget is made, including a reasonable allowance for current contingencies and working funds other than expenditures chargeable to reserves and including amounts necessary to make up any deficits in common expenses for any prior year. Any balance in this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year or shall be transferred to the reserve fund or general operating reserves hereinafter provided for, as determined by the Board of Directors.
 - (2) A reserve fund for the purpose of performing major items of maintenance, improvements and for such other purposes as may from time to time appear to be necessary or appropriate, in such amount as the Board of Directors may deem appropriate from time to time.
 - (3) A general operating reserve for the purpose of providing a measure of financial stability during periods of special stress, which may be used to meet deficiencies from time to time as a result of delinquent payment of assessments by owners of parcels in the project and other contingencies, in such amount as the Board of Directors may deem appropriate from time to time.
 - (4) Insurance policies obtained and maintained pursuant to Section 7 of this Article VII.
- (b) Until the initial Board of Directors elected by Owners as provided in the foregoing Article III, Section 1, has been elected and takes office, the annual budget and assessments against Owners shall be determined by the Board of Directors designated by Declarant as provided in sale contracts between Declarant and initial Owners of Parcels during the year of initial sale and thereafter by action of said Board of Directors. On said date, Declarant shall remit to the Association the reserve fund portion of said assessments.
- (c) The Board of Directors shall adopt a proposed budget and schedule of assessments for the calendar year 2001 and each calendar year thereafter, which budget shall include the estimated funds required to pay the common expenses and to provide and maintain funds for the foregoing accounts. The budget shall be assessed in equal shares against the Owners of all Parcels

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which were members of the Association as of the end of the preceding calendar month. Purchasers of Parcels sold by Declarant during a calendar year shall become members of the Association effective upon recording of their deed for a Parcel and shall thereafter be entitled to all privileges and benefits of all other members of the Association, including the right to vote at the annual Association meeting held with reference to the next calendar year. The obligation to pay assessments shall commence as set out in the Road Maintenance Agreement designated as Exhibit C hereto.

Copies of the proposed budget and schedule of assessments shall be transmitted to each Owner on or before November 15 preceding the calendar year for which the budget is made. The Board of Directors shall establish a date for and mail written notice of a meeting to the Owners to consider ratification of the budget and schedule of assessments not less than fourteen (14) nor more than thirty (30) days after mailing of said budget and schedule of assessments. There shall be no requirement that a quorum of Owners be present at such a meeting. The proposed budget and schedule of assessments shall be ratified unless at said meeting fifty-one (51%) percent or more of all the Owners present in person or by proxy reject said proposed budget and schedule of assessments. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget and schedule of assessments proposed by the Board of Directors.

- (d) The Association is responsible for maintenance, repair and replacement when necessary of the roads, streets and common area in the Subdivision and assessment of the Parcel Owners as necessary to recover the costs of such maintenance, repair or replacement. If an unforeseen need cannot be met from the current budget or from accumulated reserves attributable to such a need, the Board may, from and after January 1, 2001, and without approval of the Owners, establish a special assessment to meet that need and the payment method and frequency for such an assessment. If such an assessment is for the purpose of funding new, expanded facilities, other than machinery, tools, equipment or furniture, then the special assessment may be levied only after written approval of a majority of the Owners who would be so assessed.

Section 2. The Board of Directors shall have the authority to borrow money for the purpose of making funds available to the Association to meet its obligations as and when the same become due and may, in connection with any such borrowing, pledge and assign funds to be received in the future from assessments against Owners. No portions of the common areas of the subdivision may be otherwise conveyed or subjected to a security interest by the Board of Directors as collateral for any such borrowing without the approval of at least eighty (80%) percent of the Owners at a regular or special meeting of the Owners called for the purpose of considering such conveyance or pledging of common areas.

Section 3. Annual assessments against the Owners adopted as provided in the

Page 9 of Bylaws

foregoing Article VII(1)(c) shall be due in installments payable annually on March 1 during the particular budget year. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time during the year by the Board of Directors with approval by Owners as specified in the foregoing Section 1(c). Any special assessments adopted by the Board of Directors pursuant to the foregoing Article VII(1)(d) shall be due and payable in accordance with the Board resolution(s) establishing such assessments.

Section 4. If an Owner shall be in default in the payment of an installment upon an assessment, the Association may accelerate the remaining installments of the current year's assessment upon notice to the Owner and then the unpaid balance of the current year's assessment shall come due upon the date stated in the notice, but not less than ten (10) days after delivery of the notice personally to an Owner nor less than twenty (20) days after mailing of such notice to him by registered or certified mail, whichever shall occur first.

Section 5. All unpaid assessments shall bear interest at the rate of eighteen (18%) per cent per annum after thirty (30) days from the time the same are due. In addition, delinquent Owners shall be liable for the costs to the Association, including reasonable attorney fees, of collection of such unpaid assessments and any other fees, charges, late charges, fines and interest charged pursuant to these Bylaws. Any such assessments, fees, charges, late charges, fines, interest and attorney fees levied against an Owner remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Owner's Parcel when filed of record in the Office of the Clerk of Superior Court of Buncombe County, North Carolina, in the manner provided by Article 8, Chapter 44 of the General Statutes of North Carolina or any applicable law. The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale pursuant to Article 2A of Chapter 45 of said General Statutes or any applicable law. The lien of such assessments and other charges shall have the priority established by Section 47C-3-116(b) of said General Statutes and shall be extinguished unless proceedings to enforce said lien are instituted within three (3) years after the filing thereof.

Section 6. The Board of Directors shall be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the Board of Directors may from time to time determine, covering each member of the Board of Directors, the management agent, the manager and each Owner. Such public liability coverage shall also cover cross liability claims of one insured against another.

Owners shall not be prohibited from carrying other insurance for their own benefit, provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

ARTICLE VIII

Obligations of the Owners

Section 1. All Owners are obligated to pay annual assessments imposed by the Association to meet all current expenses of and reserve funds established with reference to the

Subdivision and premiums due on insurance obtained by the Association and the same shall be payable as provided in Article VII above. All assessments shall be made equally against all Parcels. Any interest that any Owner may have in any of the above reserve funds or in any of the assets of the Association shall not be transferred or otherwise encumbered except as an appurtenance to the Parcel.

Section 2. If damage is inflicted on any road, street or common element of the Subdivision by an Owner which is not covered by insurance provided by the Association, the Association may direct such Owner to repair such damage or the Association may itself cause the repairs to be made and recover the costs thereof from the responsible Owner. Liabilities of Owners so incurred shall be assessments secured by a lien, as otherwise provided in these Bylaws.

ARTICLE IX

Conveyances

No Owner shall execute any deed, deed of trust, mortgage, lease or other instrument conveying or encumbering his Parcel without including therein all interests and obligations set out herein and in the Covenants and Road Maintenance Agreement applicable to the Subdivision. Any such conveyance or encumbrance shall be conclusively deemed to include such interests and be subject to such obligations.

ARTICLE X

Liability of Officers and Directors of the Association

The officers and members of the Board of Directors of the Association, designated or elected as provided in these Bylaws, shall not be liable to the Owners for any mistake of judgment, negligence or otherwise, except for conduct violative of Article III, Section 2, of these Bylaws. The Owners shall indemnify and hold harmless each of the officers and members of the Board of Directors against all contractual liability to others arising out of contracts made by the officers and Board of Directors, unless their conduct in doing so violates said Article III, Section 2. It is intended that the officers and members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

ARTICLE XI

Amendments to Bylaws

Section 1. These Bylaws may be amended in the following manner:

- (a) Notice of the subject matter of a proposed amendment shall be included in the notice of any Association meeting at which a proposed amendment is considered.
- (b) A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association. Members not present in person or by proxy at the meeting considering the

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Page 11 of Bylaws

amendment may express their approval in writing, provided such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be made by not less than 2/3 of the votes of the entire membership of the Association present and voting in person or by proxy at the meeting called for such purpose.

Section 2. All Owners shall be bound to abide by any amendment upon the same being passed and duly set forth in a written amendment duly recorded in the Buncombe County, North Carolina, Public Registry.

Section 3. No future amendment to the Bylaws of this Association shall be retroactive to the extent that any mortgage or deed of trust executed on any Parcel shall be in any way affected thereby unless the lending institution or the holder of the note secured by said mortgage or deed of trust agrees in writing to the terms of such amendment.

END OF BYLAWS

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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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Prepared by and return to:
VAN WINKLE LAW FIRM (nls)
BOX 55

RECORDED COVENANTS

Between

**BUTLER MOUNTAIN ESTATE PROPERTY
OWNERS' ASSOCIATION, INC., and
BROWNCOR, INC. .**

And

JANE B. MCNEIL and E.S. BROWN, JR.

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.

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: [Signature]

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: _____