

THIS RESTRICTIVE AGREEMENT made and entered into this the 8th day of May, 1978, by and between ELBERT S. BROWN, hereinafter referred to as "Developer" and the future owners of lots in the subdivision of land, said land hereinafter referred to as "Butler Mountain Estates."

W I T N E S S E T H:

WHEREAS, Developer is the owner of approximately 170 acres of real property located in Buncombe County, North Carolina, having obtained his interest in said property by Deed recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, in Deed Book 1089 at Page 171, reference to which is hereby made for more particular description; and,

WHEREAS, the Developer desires to divide up a portion of this property for residential development of acreage tracts for the benefit of such property and for the benefit of future purchasers and owners of said acreage and that said subdivision property shall be developed and used exclusively as hereinafter set forth; and,

WHEREAS, the acreage to which these restrictions and covenants shall apply consists of approximately 170 acres, more or less, and is to be referred to as "Butler Mountain Estates" and is described as shown on that certain plat of Butler Mountain Estates as recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, in Plat Book 42 at Page 189 and 190, reference to which is hereby made for more particular description as if set out herein in full.

NOW, THEREFORE, IN CONSIDERATION of the premises and for the advantage which the developer will receive for the sale of said lots in a restricted subdivision, the developer, for himself, his heirs and assigns, covenants and agrees and hereby restricts the above referred to property described as BUTLER MOUNTAIN ESTATES, as follows:

1. Terms of Restrictions. These covenants and restrictions are to be covenants running with the land and shall be binding on all parties, their heirs, assigns, and successors in interest, and all parties, firms, corporations, claiming by through or under them until September 1, 1992, at which time such covenants shall be automatically extended for successive terms of ten (10) years each unless modified or deleted. The protective covenants may be, however, modified or deleted in whole or in part at any time by a properly recorded and executed instrument signed by written declarations by the owners of two-thirds (2/3) of the land conveyed in Butler Mountain Estates, provided the owners interest represents two-thirds (2/3) of the land area or total acreage of Butler Mountain Estates; and that for this purpose each bonafide owner or owners of a lot or tract of land located, lying and being within the said boundaries shall be constructed to have one (1) vote for or against said written declarations; and provided further that such written declarations shall be duly executed and recorded in the Office of the Register of Deeds for Buncombe County, North Carolina; and provided further that in the event any lot or tract of land within the boundaries of Butler Mountain Estates is owned by two or more persons as tenants by the entirety or as tenants in common, or otherwise, such person shall nevertheless have only one vote for each designated lot or tract so owned.

2. Remedies for Violation. If the parties hereto or any of them or their heirs 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 Butler Mountain Estates to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions and either prevent him or them from so doing and/or to recover damages or other dues from such violation including reasonable attorneys fees.

3. Invalidation Clause. 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.

4. Use of Real Property. The parties hereto hereby agree that the properties herein specifically described as Butler Mountain Estates upon division and sale shall be used solely for single family residential purposes during the period of these restrictions and that the owners thereof will not erect, license, or suffer to be erected, or maintain on the above described lands or any part thereof any commercial, business or trade venture, manufacturing establishment, factory, apartment house, multiunit dwelling or house designed for use by more than one family, or house or building to be used as a sanitarium 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 or any purpose whatsoever which may be in any way obnoxious or offensive to the neighboring inhabitants. No property owner shall maintain, suffer, or permit upon said land purchased in Butler Mountain Estates any unsanitary, offensive, or unsightly condition arising or growing out of any cause whatsoever and will not maintain, suffer, or license to exist on said land any nuisance of any nature whatsoever. A private business 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 the dwelling for business purposes.

5. Easements.

A. An easement fifteen feet in width is reserved along and within all perimeter property boundaries of each tract of land conveyed in Butler Mountain Estates for the installation and maintenance of appropriate utilities, drainage purposes, and for hiking and bridle trails.

B. The developer further reserves the right to subject the real property in this subdivision to a contract with Carolina Power and Light Company for the installation for underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the owner of each building.

6. Rights-of-Way, Roads, and Road Maintenance.

A. All property to be conveyed by the developer in Butler Mountain Estates, for residential purposes as hereinabove described shall have access to and from their property within the boundaries of Butler Mountain Estates by means of a private road having a right-of-way sixty (60) feet in width. The road or roads shall be constructed by the developer and shall consist of gravel roads which will not be constructed to such standards as to be included for acceptance in the secondary road system maintenance program as required by the North Carolina Department of Transportation. The private roads to be constructed by the developer shall upon completion be maintained as hereinafter set forth by the property owner purchasing property in Butler Mountain Estates.

B. For the purpose of maintaining all private roads constructed in Butler Mountain Estates, each and every purchaser and property owner in accepting a deed for property in Butler Mountain Estates covenants and agrees to be solely responsible for and perform such annual maintenance as may be reasonably necessary for ingress, egress, and regress from their respective properties located in Butler Mountain Estates to Webb Cove Road, a state maintained public road designated as state road #3123. In order to share equally in the annual maintenance expense, each and every property owner purchasing property in Butler Mountain Estates covenants to pay annually their prorata share of the costs of maintaining the private roads constructed in Butler Mountain Estates in an amount equal to their respective acreage and property relative to the amount of property in the entire development which has been

sold by the developer prior to the annual assessment date, multiplied by the cost of said maintenance. The calendar date for purposes of determining the annual assessment shall be December 31 of each year.

C. Failure to pay the annual assessment for the maintenance of the roadways within Butler Mountain Estates when same shall become due, shall constitute a lien upon the property of each individual property owner who has failed to contribute and the same may be enforced in equity as the case of any lien foreclosure. Such annual assessment shall accrue to the benefit of and may be enforced jointly and severally by the other purchasers of property in Butler Mountain Estates by the developer or by an association of property owners if one should be formed.

D. The developer at any time reserves the right to perform such additional maintenance and make further improvements to the roadways constructed in Butler Mountain Estates at no cost to the property owners if same shall in his opinion become necessary for the further development of Butler Mountain Estates.

E. The developer hereby reserves unto himself, his heirs and assigns, in common with all other persons who may hereafter purchase property from the Grantor in Butler Mountain Estates or lands adjoining same, a perpetual road right-of-way easement sixty(60) feet in width for those roads constructed in Butler Mountain Estates and specifically including the roadways designated on the plat of Butler Mountain Estates heretofore referred to.

7. Sewage Disposal. All future property owners shall dispose of sewage by either a regular sewage system or by septic tanks provided said systems are approved in advance of installation by the appropriate local governmental agency.

8. Housing, Construction and Set-Back Requirements. No structure or building shall be erected, altered, placed, or permitted to remain on any property or tract of land conveyed in Butler Mountain Estates other than one detached single family dwelling, permanent in nature, the habitable floor space of which, exclusive of basements, porches, garages, is less than 1,100 square feet on the main level of said residence. Appropriate ancillary buildings, including guest houses, barns and stables, in keeping with the architecture of the principal building, shall be permitted; provided, however, that no used or previously erected or temporary house structure or non-permanent out-building shall be placed, erected or allowed to remain on any of the land except during construction periods. No dwelling house shall be occupied in any manner prior to its completion nor shall any residence when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein, and all other covenants, conditions, reservations and restrictions herein set forth. All construction shall be completed within one year from the start thereof, provided that the developer and/or Property Owners Association may extend such time when in its opinion the conditions warrant such extension. No building or any structure, whether temporary or permanent, erected on said land conveyed in Butler Mountain Estates shall be erected nearer than twenty-five (25) feet to any adjoining or common boundary line. For the purpose of this covenant, eaves, steps, and open porches shall be considered as part of the building.

9. Approval of Plans. All plans for the construction of private roads and driveways and all building plans for any building, fence, wall or structure to be erected upon any property and the proposed location thereof upon such property and any changes after approval thereof, and any remodeling, reconstruction, alteration, or addition to any building, road, driveway or other structure upon any property conveyed shall require the approval of the developer and/or Property Owners Association. Before beginning the construction of any road, driveway, building, fence wall or other structure whatsoever or remodeling, reconstruction, or altering such road, driveway or structure (this is applicable only to changes on the exterior structure) upon any property, the person or persons desiring to erect, construct, or modify the same shall submit to the developer and/or Property Owners Association duplicate copies of a complete set of road or driveway plans showing the locations, courses and widths of same and duplicate copies

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of a complete set of building plans and specifications for the building, fence, wall, or other structure as is applicable, so desired to be erected, constructed, or modified. No structure of any kind, the plan, elevations, and specifications which have not received the written approval of the developer and/or Property Owners Association and which does not comply fully with such approved plans and specifications, shall be erected, constructed, placed, or maintained upon any lot. Approval of such plans and specifications shall be evidenced by written endorsement on such plans and specifications, a copy of which shall be delivered to the owner or owners of the lot upon which the prospective building, road, driveway, or other structure is contemplated prior to the beginning of such construction. The developer and/or Property Owners Association shall not be responsible for any structural defect in such plans or specifications or in any building or structure erected according to such plans and specifications.

10. Subdivision of Lots and Rights-of-Way. None of the lots or properties conveyed in Butler Mountain Estates shall at any time be divided or subdivided into less than two (2) acres in size. No single family dwelling shall be located on lots less than two (2) acres in size. Lots # 1 and 48 as shown on the plat hereinabove referred to shall not be subdivided but a single family dwelling may be constructed upon same. Except for the roads constructed by the developer and easements of public record no future property owner shall grant a right-of-way across his property to an owner of property whose land is contiguous to the outer perimeter boundary of Butler Mountain Estates for the purpose of obtaining access to a public road.

11. Nuisance. No mobile home or trailer, whether single, double, or otherwise in construction, or any other structure of a temporary character including the placement of a tent or shack on the premises, either temporary or permanent in nature shall be allowed on any of the properties sold and developed in Butler Mountain Estates. This shall not restrict, however, overnight camping provided it is recreational in nature and limited in duration. No signs or other advertising shall be displayed on any lots unless the size, form and number of same are first approved in writing by the developer, and/or Property Owners Association. No refuse, trash, junk cars, stumps, vile or unsightly object shall be allowed to be placed or suffer to remain anywhere upon property located in Butler Mountain Estates.

12. Prohibited Activities. Use of motorcycles and motorbikes shall be permitted by future owners of property in Butler Mountain Estates only on the roads constructed in Butler Mountain Estates and on the property of the individual property owners. No individual property owner shall grant a right-of-way or permit a property owner whose property lies adjacent or contiguous to Butler Mountain Estates to cross his property for purpose of gaining access by motorcycle to roads constructed in Butler Mountain Estates. This shall not prohibit future property owners of lands located in Butler Mountain Estates from using motorbikes or motorcycles within the boundaries of their own respective property provided the noise generated by such activity is not unusually burdensome or excessively loud. Upon complaint by other property owners in the event the activity is unusually burdensome because of noise, dust or other reasonable cause, the developer, and/or Property Owners Association upon receiving a complaint, shall advise the offending property owner in writing that such activity constitutes a nuisance and a violation of this restrictive agreement. Further, no substance, thing or material shall be kept upon any property in Butler Mountain Estates that will emit foul or obnoxious odors or will cause any noise that will or might unreasonably disturb the peace, quiet, comfort or serenity of the occupants or persons owning property in Butler Mountain Estates surrounding property.

13. Land sold and developed in Butler Mountain Estates shall not be used by the future owners of same for purposes of conducting a commercial farming venture or for the purpose of maintaining stock or fowl. The keeping of horses shall be allowed provided same shall not interfere unreasonably with the general health and welfare of property owners so as to constitute a nuisance.

14. Appearance and Maintenance of Property. All future property owners shall

maintain their property with consideration of its appearance to the other property owners, preserving insofar as possible the natural beauty of the property.

15. Property Owners Association. Upon the sale by the developer of fifty (50%) percent of the acreage making up Butler Mountain Estates, a majority of the property owners who have purchased property for the purpose of maintaining roads, traffic control, general planning within roadway areas, and all common community services of every kind and nature required or desired within the subdivision for the general use and benefit of all property owners, may create a Property Owners Association. Following the creation of said Property Owners Association, all subsequent purchasers shall automatically become members of said association and shall be bound by the terms and conditions of said association as may be contained in its charter and bylaws. The association shall be nonprofit in nature and shall be created for the sole purpose of insuring the reasonable maintenance of all roads constructed in Butler Mountain Estates; for the purpose of prorating the costs of maintenance equally between all property owners in accordance with the formula hereinabove described in Paragraph 6B or in accordance with any other formula provided it receives the approval of seventy-five (75%) percent of the membership of the Property Owners Association; and for the purpose of approval of plans as set forth in Paragraph 9 and for the purpose of enforcing the covenants of this restrictive agreement. The developer further reserves the right to grant and convey all his rights to enforce these covenants, conditions, reservations, and restrictions, including the approval of plans under the provisions of Paragraph 9, at such time as a Property Owners Association shall be created. Upon such conveyance and grant, the Property Owners Association shall have and succeed to all rights and duties with the same powers as if the association had been named as the developer herein.

IN WITNESS WHEREOF, the parties to this agreement have hereunto set their hands and seals the day and year first above written.

COPY

Elbert S. Brown (SEAL)
ELBERT S. BROWN

Dorothy S. Brown (SEAL)
DOROTHY S. BROWN

STATE OF NORTH CAROLINA, COUNTY OF BUNCOMBE

I, Janet M. Worley, a Notary Public of said State and County, do hereby certify that ELBERT S. BROWN and wife, DOROTHY S. BROWN personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal, this 14th day of July, 1978.

My Commission Expires:

4/27/81

NOTARY PUBLIC

State of North Carolina, County of Buncombe

Each of the foregoing certificates, namely of.....

Janet M. Worley

a notary or Notaries public of the State and County designated is certified to be correct.

This.....17.....day of.....July.....

1978

WILLIAM M. DIGGES

Register of Deeds, Buncombe County

By: *William M. Digges* Deputy

1978 at 8:54 a.m.

WILLIAM M. DIGGES

Register of Deeds, Buncombe County

By: *William M. Digges* Deputy

Filed for registration on the.....17.....day of.....July.....