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STATE OF NORTH CAROLINA  
COUNTY OF JACKSON

*[Signature]*  
REGISTERED  
JACKSON COUNTY

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REGISTERED  
JACKSON COUNTY

COVENANTS, RESTRICTIONS, EASEMENTS, RESERVATIONS, TERMS AND  
CONDITIONS GOVERNING HIGHER GROUND GARDENS, CULLOWHEE TOWNSHIP,  
JACKSON COUNTY, NORTH CAROLINA

PART A - PREAMBLE

ROBERT E. BRETT, JR. and wife, CYNTHIA W. BRETT, being the  
owners and developers of the land situate and lying in Jackson  
County, North Carolina, and described as follows:

That certain tract of land described in Exhibit "A"  
attached hereto, reference to which is hereby made for a more  
particular description, the same which shall for the purposes of  
these restrictive covenants be known as HIGHER GROUND GARDENS  
does hereby by these presents make, declare and impose upon said  
described land the following agreements, conditions,  
restrictions, limitations and easements which shall be and  
constitute covenants running with the land and shall be binding  
upon the undersigned, her successors and assigns, as well as  
upon people claiming under them and each and all subsequent  
purchasers, their heirs, personal representatives, successors  
and assigns, of said property or any part, parcel or portion  
thereof, subject to the provisions contained herein below, to-  
wit:

PART B - RESIDENTIAL AREA COVENANTS

(1) USE RESTRICTIONS: A construction shed or camper may  
be placed on a lot and remain there temporarily during the  
course of active construction of a residence not to exceed one  
year, otherwise no portable or temporary buildings, mobile  
homes, double wide mobile homes or trailers may be placed on a  
lot. This restriction shall not apply to boat trailers, small  
utility trailers and camper units.

(2) SETBACK RESTRICTIONS: Subject to the exceptions  
hereinafter mentioned, no building or any part thereof may  
project beyond setback lines as follows:

- 40 feet from center line of all roadways;
- 25 feet from rear property lines;
- 25 feet from either side property line;

EXCEPTIONS TO SETBACK RESTRICTIONS: Terraces, walls,  
fences and low platforms or steps may be erected outside of  
setback lines, except front lines may not have any structure,  
terrace walls or fences within five (5) feet of the right of  
way, and further provided such construction shall not interfere  
with the exposure or view, or reasonable privacy of adjoining,  
or facing property.

(3) ROADWAY: Forty Five (45) foot road rights-of-way for  
roads in their present location for the purpose of ingress and  
egress to and from the lands so purchased to the public road,  
and in addition a right of way for the same purposes forty-five  
(45) feet in width, across existing roadways as set forth  
hereinafter or as shown on the plats herein referenced. Said  
road rights of way to be perpetual, assignable and to run with  
the lands of each respective owner.

(b) In the event any lot owner makes a driveway  
connection with any road, said owner shall install a culvert of  
sufficient size (a minimum of 15 inches) in the ditch line along

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said drive to carry the normal flow of water of the ditch line through said culvert.

(4) GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish. No garbage, refuse or rubbish shall be deposited or kept on any lot except in a suitable container; provided, however, that garden trash and rubbish that Jackson County requires to be placed at the front of a lot in order to be collected by the Jackson County garbage licensee, may be placed and kept at the front of the lot, and need not be in any container, for periods not exceeding twenty-four hours. All equipment and containers for the storage or disposal of such material shall be kept in good repair and in a clean and sanitary condition.

(5) LIVESTOCK: Any animals of any kind kept on any parcel or lot shall be properly housed and provided adequate pasture. Pets properly housed and controlled such as dogs, cats, birds, etc., are permitted. All animals and pets must be properly housed and controlled so as not to be a nuisance or threat to others.

(6) NUISANCES: No noxious or offensive activity, including but not limited to the operation of go carts, dirt bikes and other all terrain vehicles, shall be carried on upon any lot; nor shall anything be done thereon which may become a nuisance to the neighborhood.

(7) OIL AND MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

(8) SEWAGE: The owner or occupant of each and every lot by acceptance of title thereto or by taking possession thereof covenants and agrees that no septic tanks shall be placed upon his lot unless and until the plans and specifications therefor have been approved by the lawful authorities of the State of North Carolina or Jackson County.

(9) CONSTRUCTION COMMENCEMENT: Owner shall have a period of one year from the date of commencement of construction in which to complete all exterior work required by such construction.

(10) PROPERTY OWNERS' ASSOCIATION: Each lot owner of HIGHER GROUND GARDENS shall be bound by the rules and obligations of any Property Owners' Associations formed and as adopted from time to time by the Property Owners' Association. Until such time as the Property Owners Association shall be formed and assume responsibility for all road maintenance, lot owners agree to pay to developers herein, their heirs, assigns, executors or administrators, the sum of \$150.00 annually for the purpose of road maintenance, so long as said developers are willing to accept the money and oversee the maintenance to the extent of the monies collected. The developers shall not be subject to the road maintenance fee until such time as lots are sold at which time the grantees thereof, their heirs and assigns shall become subject to the road maintenance fee.

(11) PURPOSES: Said lands and premises shall be used for residential purposes and single family dwellings only, and not commercial or apartment house purposes. The lot owners shall erect or suffer to be erected or maintained on said lands only one main residential dwelling plus one secondary dwelling or cottage. Residential or vacation rental activity shall be

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permitted, including the parking of motor homes and travel trailers for storage purposes only.

(12) VEHICLES: There shall be no unlicensed or uninsured vehicles allowed to remain on the premises for longer than sixty (60) days.

(13) OCCUPANCY: No dwelling shall be occupied before completion of the exterior construction, including final painting, unless written approval for such occupancy is first obtained from the Developer.

(14) ADDITIONS: All garages, carports, and any subsequent additions to the dwelling shall be of the same kind and quality of material as the construction of the original dwelling, and the same shall be substantial and conform architecturally with the dwelling.

(15) SUBDIVIDING: The lots in said development may not be divided by developer and/or subdivided by the owners, their heirs, assigns, executors, administrators, and successors, except where a landowner has bought more than one adjoining lot. In that event there shall be no more than one main dwelling plus one secondary dwelling or cottage erected on each lot, and each lot must contain no less than two (2) acres.

(16) UTILITIES: There shall be reserved unto the Developers, their heirs and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground to erect maintain and use electric and telephone poles, wires, cable, cable TV, conduits, sewers, underground pipelines, underground conduits, cable and wires, storm sewers, water mains and other suitable equipment for the transmission and use of electricity, telephone, telegraph, cable television, gas, sewer, water or other public conveniences or utilities on, in or over twenty feet inside the outside boundary lines of each lot.

(17) AESTHETICS: It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, or unkept conditions of building or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood, as a whole, or in a specific area.

(18) SPECIFICATIONS:

(a) Each principle dwelling must contain at least 1200 square feet of heated living space above ground excluding basements and be no higher than two stories above ground level. Each secondary dwelling must contain at least 800 square feet heated living space.

(b) Each lot owner must submit complete house plans to the developers for approval prior to the time any constructions commences. The developer will not withhold approval unreasonably or unnecessarily. The purpose of the same being to keep the homes in said subdivision of similar type construction and appearance. Developer must give their approval or disapproval of the same within fifteen (15) days from the date received by the developer, or the same shall be deemed approved.

(19) RUBBISH: Each lot owner shall be responsible for clearing all rubbish from the lot before, during and after construction, and to seed and/or gravel any disturbed earth within thirty (30) days after the construction of the home is completed. All disturbed slopes, banks, and road sides shall be seeded or covered with burlap netting to prevent erosion until permanent seeding is done.

(20) PARKING: Each home or dwelling shall provide off-road parking for at least two vehicles per dwelling after

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completion of construction, and shall provide for sufficient off-street parking at the commencement and during construction of the dwelling on said lots.

(21) REMOVAL OF TREES: Each lot owner is encouraged to be conscious of the environment in their development of said lot and clear cutting of any lot is prohibited.

These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of fifteen (15) years from and after the date hereof, after which they shall be extended automatically for successive periods of ten (10) years unless a variance is granted by the Developers or an instrument is signed by the majority of the then lot owners and recorded in the Office of the Register of Deeds of Jackson County, North Carolina, agreeing to change the covenants in whole or in part. For the purpose of determining a majority of the lot owners, when one lot is owned by more than one person, firm or corporation, the combined ownership of said lot shall be entitled to one vote only. When one or more persons, firms or corporations own more than one lot, they will be entitled to one vote for each lot owned.

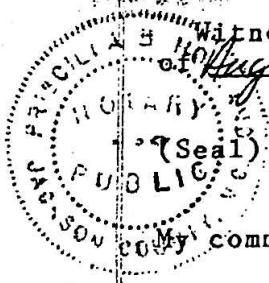
Witness my hand and seal this the 23<sup>rd</sup> day of August, 1993.

Robert E. Brett, Jr. (Seal)  
ROBERT E. BRETT, JR., Developer

Cynthia W. Brett (Seal)  
CYNTHIA W. BRETT, Developer

STATE OF NORTH CAROLINA  
COUNTY OF JACKSON

I, a Notary Public of the County and State aforesaid, certify that ROBERT E. BRETT, JR. and CYNTHIA W. BRETT, each personally appeared before me this day and acknowledged the execution of the foregoing instrument.



Witness my hand and official stamp or seal, this the 23<sup>rd</sup> day of August, 1993.

Priscilla B. Holland  
Notary Public

My commission expires: 8-15-96

NORTH CAROLINA  
JACKSON COUNTY

The foregoing certificate is certified to be correct. This instrument was filed for registration and recorded in this office in Book 838 at Page

This the 25<sup>th</sup> day of August, 1993 at 1:09 P.M.

MAX K. HOLLAND  
ATTORNEY AT LAW  
19 - 21 MILL ST.  
P. O. BOX 1905  
SYLVA, N. C. 28779

Donald Sumrell  
REGISTER OF DEEDS

NORTH CAROLINA  
JACKSON COUNTY  
The foregoing certificate of Priscilla B. Holland a Notary Public was presented for registration and recorded in this office in Book 838 at page 359 This 23<sup>rd</sup> August 19 93 10:46 A.M.  
Register of Deeds Donald Sumrell

The purpose of the re-recording of this instrument is to add Exhibit "A" which was inadvertently omitted with the original recording in Book 838, page 359, Jackson County Public Registry. This the 25th day of August, 1993.

Max K. Holland  
Max K. Holland, Attorney

## EXHIBIT "A"

BEGINNING on a red plastake in the fence on Milksick Ridge, and running with the fence and ridge S 72-15 W 36.06 feet to an existing iron pin in an oak stump; thence S 62-00 W 135.18 feet; thence S 50-00 W 135.73 feet; thence S 47-00 W 112.44 feet; thence S 44-00 W 196.34 feet; thence S 49-00 W 58.64 feet; thence S 49-40 W 171.41; thence S 75-45 W 306.06 feet; thence S 74-30 W 162.41 feet; thence S 83.45 W 140.60 feet to a red plastake on a knob; thence continuing with the fence and ridge N 25-00 W 206.81 feet; thence N 13-00 W 71.06 feet; thence N 05-00 W 88.67 feet; thence N 04-00 W 57.96 feet; thence N 08-40 E 64.56 feet; thence N 14-00 E 75.74 feet to a red plastake and stake at fence corner; thence S 66-00 E 25.00 feet to an existing iron pin at a 10" hickory; thence N 49-30 E 94.55 feet to a stake and tack; thence still with fence and ridge N 39-55 E 95.45 feet to an existing iron pin (chestnut oak witness); thence N 29-00 E 194.06 feet; thence N 36-55 E 148.95 feet; thence N 39-30 E 89.16 feet to an existing iron pin; thence still with fence and ridge; thence N 40-30 E 83.60 feet; thence N 46-00 E 109.61 feet; thence N 49-40 E 83.73 feet to an existing iron pin; thence N 50-30 E 73.39 feet; thence N 52-35 E 121.57 feet to an existing iron pin; thence N 49-45 E 158.36 feet; thence N 46-20 E 139.10 feet to a nail in an 18" walnut; thence N 50-30 E 80.80 feet; thence N 66-30 E 74.04 feet to a stake and tack; thence N 66-30 E 63.68 feet to an existing iron pin still with fence and ridge; thence S 49-30 E 62.44 feet; thence S 27-15 E 98.31 feet; thence S 36-00 E 160.42 feet to a red plastake at a 30" locust; thence S 76-35 E 153.29 feet; thence S 80-20 E 209.41 feet; thence S 88-00 E 133.47 feet; thence N 84-00 E 37.70 feet; thence N 67-40 E 67.39 feet; thence N 56-30 E 217.90 feet; thence N 57-05 E 197.54 feet to an 18" red oak; thence N 60-20 E 67.78 feet to a 20" black oak; thence leaving the ridge but still with the fence S 38-00 W 40.45 feet to a 12 inch hickory; thence S 09-30 E 95.12 feet to a red plastake; thence N 86-25 E 938.30 feet to a point in the centerline of Speedwell Road (SR #1001), and red plastake set 16.00 feet from the centerline of said road; thence with the centerline of said road S 26-14 W 1,257.75 feet; thence S 16-46 W 463.81 feet; thence leaving said road and running with the fence N 63-20 W 465.39 feet (red plastake set 16.00 feet from the centerline of said road), to a red plastake in fence; thence with the fence N 36-00 W 143.79 feet; thence N 68-00 W 135.23; thence N 79-00 W 108.26 feet; thence N 78-30 W 283.31 feet; thence N 51-30 W 78.42 feet; thence N 45-30 W 167.09 feet; thence N 32-30 W 97.34 feet to the point of the beginning, containing 72.723 acres, more or less, by DMD, as surveyed by W.G. Davis & Associates, RLS, on 15 March, 1983.

Excepting and Reserving from the above described and conveyed lands a tract of land containing 1.001 acres, more or less described in and conveyed by a deed dated 19 June, 1980 from Mark H. Freeman and wife, Frances S. Freeman to Ivan H. Carr and wife, Donna B. Carr, recorded in Book 517 page 18, Jackson County Registry to which reference is hereby made for a more accurate and complete description as if fully set forth herein.

Further excepting and reserving from the above described lands Tracts "A" and "C", containing 11.41 acres and more particularly described as follows:

BEGINNING at a PK nail set in the center line of State Road #1001, said PK nail also being set S 24-35-04 W 300.00 feet from the beginning corner of Tract "B" proposed to Ward, thence from the point of beginning and with the center line of State Road #1001 and Watson (754/592) the following courses and distances: S 24-05-21 W 224.65 feet to a point, S 24-28-01 W 215.40 feet to a point at intersecting access roads, S 24-30-34 W 528.71 feet to a point, said point being located S 4-14 E 132.88 feet from the northeast corner of house and S 28-39 E 115.85 feet from the southwest corner of house, thence continuing with State Road #1001 and Northrup (330/204) S 23-19-50 W 80.09 feet to a point, S 20-33-47 W 62.43 feet to a point, S 17-04-00 W 73.80 feet to a point and S 13-36-26 W 223.90 feet to a PK nail found at corner common to Coward & Phillips (727-5); thence leaving State Road #1001 and with Coward & Phillips N 66-08-25 W 278.23 feet to an iron pin found, passing a concrete monument found at 30.00 feet, thence N 58-08-02 W 188.12 feet to an iron pin found, corner common to Tract "D" (proposed to Murdock), passing a point at 27.21 feet, corner of Tract "A" and Tract "C"; thence with Tract "D"

N 10-35-32 W 133.47 feet to an iron pin set; thence N 33-56-48 E 26.01 feet to a point in center line of existing 30 foot right of way for 15 foot gravel drive; thence continuing with center line of 30 foot right of way S 67-38-31 E 16.34 feet to a point, N 77-09-33 E 18.89 feet to a point, N 48-42-16 E 19.64 feet to a point, N 28-32-08 E 31.18 feet to a point, N 18-48-40 E 60.60 feet to a point, N 22-16-40 E 26.21 feet to a point, N 28-28-25 E 77.64 feet to a point, N 41-00-54 E 64.51 feet to a point, N 37-18-50 E 80.04 feet to a point, said point being located S 66-58-23 E 20 feet from a reference iron pin set; thence continuing with centerline of 30 foot right of way N 37-18-50 E 55.11 feet to a point, thence N 52-16-44 E 49.32 feet to a point; thence leaving 30 foot right of way N 39-01-27 E 267.10 feet to an iron pin set in fence line, passing a reference iron pin set at 25 feet; thence continuing along fence line N 23-43-38 E 374.32 feet to an iron pin set in line of Tract "B"; thence with Tract "B" N 87-46-53 E 340.75 feet to the point of beginning, passing a reference iron pin set at 320.75 feet, being Tracts "A" and "C" containing 11.41 acres as per survey of Davenport & Assoc., Inc, RLS, dated February 4, 1993 and revised May 19, 1993, drawing No. J-1009.