

STATE OF NORTH CAROLINA

COUNTY OF CHEROKEE

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COVENANTS, RESTRICTIONS, RESERVATIONS, TERMS AND
CONDITIONS GOVERNING BOULDER CREEK ESTATES

WHEREAS, the undersigned is the owner and developer of certain tracts or parcels of land lying in Hotla Township, Cherokee County, North Carolina, filed for record in Deed Book 729, Page 107 and Deed Book 729, Page 108, Cherokee County Registry and being more particularly described according to plats of survey by True Line Surveying Company, Charles V. Bryson, R.L.S., filed for record in Plat Cabinet _____, Slide _____, Cherokee County Registry, reference to which is made hereby for incorporation herein for a more particular legal description of said tracts or parcels of land;

AND WHEREAS, it is the plan of said owner and developer that said tracts or parcels of land shall be subject to certain covenants, restrictions, reservations, terms and conditions for the protection of both the present owner and developer, its heirs and/or successors and assigns in interest;

NOW, THEREFORE, for the protection of the owners of any portion of said tracts or parcels of land, the same shall be subject to the following covenants, restrictions, reservations, terms and conditions:

1. A non-exclusive, perpetual 40 foot wide road and utilities easement is reserved on all roads in said subdivision (20 feet on each side of the centerline thereof) for the benefit of the owner and developer, its heirs and/or successors and assigns in interest, for ingress, egress, regress and utilities to all lots in said subdivision and for the benefit of other lands owned now or designated by said owner and developer. All lot owners are hereby granted a non-exclusive, perpetual road and utilities easement over roads in the subdivision to the public highway as a permanent means of ingress, egress, regress and utilities to their said lot or lots.
2. All lots are conveyed subject to a blanket easement given by said owner and developer to Blue Ridge Mountain Electric Membership Corporation, which easement was required by said corporation as a condition to obtain its agreement to make electricity available to said subdivision.
3. The affairs of said subdivision will be governed by an association of the owners to be known as "Boulder Creek Estates Property Owners Association". Each lot, whether owned by said owner and developer or a purchaser, shall constitute membership in the association and each lot owner shall be entitled to one vote in the affairs of said subdivision. All owners are required to be members of the association.

Members of the association shall meet annually on the first Saturday in August of each year at 1 o'clock p.m. at some place in said subdivision for the transaction of association business and for the election of officers and a road maintenance committee of three owners. All matters before the association will be determined by a simple majority vote of the owners present at each meeting. The maintenance committee as well as a President, Secretary and Treasurer shall be elected annually. Special meetings may be called by the President on at least two weeks notice to all members by first class mail addressed to the last known address of each owner.

4. The subdivision roads have not been accepted by the North Carolina Department of Transportation into the public road system. The owner and developer will perform road maintenance

until December 31, 1996, but thereafter the property owners will be responsible for maintenance and repair of said roads. The maintenance committee elected by the association will be empowered to arrange for such maintenance and repair and to determine a fair apportionment of maintenance cost. By purchasing a lot in said subdivision, each purchaser agrees to pay a fair share of maintenance costs. Owners who own lots bordering on the public road will not be subject to road maintenance costs.

Each lot, with the exception of lots bordering on the public road, shall be subject to a lien in favor of the association for the annual maintenance costs or assessments set forth herein. Each assessment, together with such interest thereon as hereinafter provided, shall be a permanent and continuing lien upon said lot against which it relates, and shall be the joint and several personal obligation of each property owner and each property owner by acquiring or holding an interest in any lot shall thereby covenant to pay such amount as when the same shall become due. If an assessment is not paid on the date when due, as hereinabove provided, such assessment shall bear interest from the date of delinquency at the rate of sixteen (16) percent per annum or that rate of interest which at the time of delinquency represents the maximum rate of interest which does not constitute a usurious rate of interest by law, and the association may bring legal action against the property owner, personally obligated to pay the same, or foreclose its lien against the lot to which it relates or pursue either such course at the same time or successively. Each property owner, by his acceptance of a deed or other conveyance to a lot, vests in the association the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding in law or in equity. The association shall have the power to bid on the lot at any foreclosure sale and to acquire, hold, lease, mortgage or convey the same. No property owner may be released from any liability for the assessments provided for herein due to non-use of his lot. Provided, however, that the lien for the annual assessments authorized herein with respect to any lot is hereby made subordinate to the lien of any mortgage or its assigns placed upon such lot if, but only if, all such assessments with respect to such lot which have a due date on or prior to the date such mortgage is filed for record have been paid.

5. Mobile homes are not allowed in the subdivision; (a) constructed dwellings must contain at least 1,200 square feet of enclosed floor space; (b) recreation vehicles and travel trailers may be used if a permanent dwelling is under construction; but construction must be completed within one year of its commencement; (c) only single family residences will be permitted in said subdivision.
6. No inoperable vehicle or vehicle without current registration and licensing will be allowed to remain within said subdivision.
7. Each dwelling shall be equipped with a septic tank and field lines that conform to the sanitation and health laws of Cherokee County, North Carolina and the State of North Carolina. Installation of said septic tank facilities shall be the responsibility of the property owner. No outdoor toilets shall be erected or maintained on any lot.
8. With the exception of horses, no livestock, including cattle, mules, sheep, hogs or goats may be kept in said subdivision.
9. No commercial activities shall be carried on within said subdivision, particularly no auto repair business.
10. Each property owner shall be responsible for providing his

water supply. Installation of said water supply shall conform to the sanitation and health laws of Cherokee County, North Carolina and the State of North Carolina.

11. Each property owner shall provide proper containers for garbage. Containers shall be kept in areas not generally visible from the road. Garbage containers and storage shall comply with all sanitation and health laws. No lot shall be used or maintained as a dumping ground for trash or garbage. Each property owner shall be responsible for the disposal of his own garbage and trash.
12. Any aggrieved lot owner shall have the right to petition the courts for injunctive relief against violation of the covenants, restrictions, reservations, terms and conditions contained in this instrument or to enforce its provisions.
13. This instrument may be amended at any time by an amendment instrument signed by a simple majority of the lot owners at that time. So long as it owns a majority of said lots, the owner and developer may amend the same without joinder of the purchasers. Thereafter, the determination of a majority shall include lots by the owner and developer as well as subsequent purchasers. To be effective, such amendment shall be signed and acknowledged in the manner required for execution of deeds and recorded in the Cherokee County Registry.
14. "Developer" as used in this instrument shall mean Notla River Associates, Inc. "Owner" shall mean any person owning a lot in said subdivision, including the developer, its heirs and/or successors and assigns in interest.
15. Invalidity of any one of these covenants, restrictions, reservations, terms and conditions by a Judgment or Order of a court of competent jurisdiction shall not affect the validity of any of the other provisions contained herein but they shall remain in full force and effect.

IN TESTIMONY WHEREOF, the owner and developer 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, this the 28th day of December, 1995.

CORPORATE SEAL

NOTLA RIVER ASSOCIATES, INC.

By [Signature]
CARREL C. BRANTLEY, President

ATTEST:

[Signature]
SANDRA M. DOBSON, Secretary