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This Document Prepared By:  
William R. White  
WHITE & DALTON  
Brevard, NC 28712

Return to: R. Adams

**DECLARATION OF  
RESIDENTIAL RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR  
WHITMIRE WOODS AT CHERRYFIELD**

Leder-Sparlin Enterprises, LLC is the Owner and Developer of that certain real property located in Transylvania County, State of North Carolina, known as Whitmire Woods at Cherryfield consisting of 148.37 acres, as surveyed and platted by Michael Petit, RLS, on that certain plat found in Plat File 8 at Slide 19 in the Transylvania County Registry.

Leder-Sparlin Enterprises, LLC intends to sell and convey parcels located within said property, and before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan or scheme of improvements for the benefit of all the parcels to be surveyed in the development and the owners and future owners thereof.

NOW, THEREFORE, Leder-Sparlin Enterprises, LLC declares that all of the parcels in the development are held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration of Restrictive Covenants, all of which are declared and agreed to be in furtherance of the plan for the development, the improvement and sale of said lots and parcels and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness thereof. The provisions of the declaration are intended to create mutual equitable servitudes upon each of said lots and parcels in favor of each and all of the lots and parcels; to create reciprocal rights between the respective owners of parcels and to create privity of contract and estate between the Grantees of said parcel, their heirs, successors

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and assigns and operate as covenants running with the land for the benefit of each and all other such parcels in the development and their respective owners, present and future.

1. DEFINITIONS: The following terms as used in this Declaration of Restrictive Covenants are defined as follows:

(A) "Board" means the Board of Directors of Whitmire Woods at Cherryfield Property Owners' Association, Inc.

(B) "By-laws" means the By-laws of the corporation.

(C) "Corporation" means the Whitmire Woods at Cherryfield Property Owner's Association, Inc., a North Carolina Non-profit Corporation.

(D) "Declarant" means Leder-Sparlin Enterprises, LLC, its successors and assigns.

(E) "Declaration" means this Declaration of Restrictions for Whitmire Woods at Cherryfield Development.

(F) "Developer" means Leder-Sparlin Enterprises, LLC, a North Carolina Corporation.

(G) "Development" means Whitmire Woods at Cherryfield Development of Transylvania County, North Carolina.

(H) "Parcel" means any numbered parcel designated on the plat or any parcel surveyed at a future time from the 148.37 acres.

(I) "Owner" means any person, firm or corporation who holds fee simple title to any parcel.

2. LAND USE: No lot shall be used except for residential purposes. No mobile home (with campers being considered a mobile home) shall be used as a residence at any time.

3. DWELLING SIZE: No dwelling shall be permitted on any parcel where the square

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footage of living area of said dwelling does not equal or exceed fifteen hundred (1500) square feet of heatable space and nine hundred (900) square feet for guest quarters.

4. BUILDING LINE AND DRIVEWAY ENTRANCE: No structure shall be built within eighty (80) feet of any public access road or thirty (30) feet from any sideline. Each driveway entrance shall have at least fifteen (15) feet from the private road of relatively level posture before commencement of incline or decline. Location of each driveway shall be determined in consultation with the development owner.

5. EASEMENTS: Easements for installation and maintenance of the utilities and drainage facilities are reserved within the rights of way. All electrical utilities shall be underground and within the road rights of way.

6. PARCEL SUBDIVISION: That the property restricted by these covenants may be subdivided into 10 acre parcels only when the parcel touches the Eastern boundary of the 148.37 acre tract; that parcels which touch the Western boundary of the 148.37 acre tract may be subdivided into 2 to 5 acre parcels or more; any parcel which touches both boundaries may be subdivided into 2 to 5 acre parcels.

7. TEMPORARY STRUCTURES: No structure of a temporary character, basement, tent, shack, garage, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

8. NUISANCES: No noxious or offensive activity shall be carried on upon any parcel, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. All objects of unsightly character shall be kept from view of the road as well as from view of the neighbors. No motorized mountain trail bikes shall be allowed on the property. No cellular telephone towers or any type of communication towers shall be allowed on the property.

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9. SIGNS: No sign of any kind shall be displayed to the public view on any parcel, except a professional sign of not more than one square foot, one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

10. LIVESTOCK AND PETS: Horses shall be allowed with each horse having a five acre pasture; that other livestock shall be allowed so long as it does not interfere with the peaceful enjoyment of property by other owners. Dogs, cats, or other household pets must be kept if under full control of owners and not kept, bred or maintained for any commercial purposes.

11. GARBAGE AND REFUSE DISPOSAL: No parcel shall be used or maintained for a garbage dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a secluded, clean and sanitary condition.

12. WHITMIRE WOODS AT CHERRYFIELD PROPERTY OWNERS' ASSOCIATION: The Owner of each parcel within the Whitmire Woods at Cherryfield, by the signing of a contract and acceptance of a deed therefor, covenants and agrees to be a member of the Whitmire Woods at Cherryfield Property Owners' Association, a North Carolina Non-Profit Corporation.

A. General. The Whitmire Woods at Cherryfield Property Owners' Association, Inc. shall be a non-profit corporation organized to further and promote the common interests of Property Owners in the development and maintain the private roads within the development. The Corporation shall have such powers in the furtherance of its purposes as are set forth in its Articles and By-laws.

B. Memberships. Each owner shall by reason of ownership become a member of the corporation. The developer shall have a membership in the Corporation for each parcel retained by

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it during the development period but shall not be required to pay maintenance fees as set forth in the Restrictive Covenants. It is, however, understood and agreed that the developer, by virtue of the contract hereinafter mentioned, shall be charged with the duty of maintaining the property and showing that the maintenance fees charged to the Property Owners during the maintenance period are not excessive and constitute a pro-rata share.

C. Rights, Privileges and Obligations. The rights, duties, privileges and obligations of membership in the corporation are set forth in its articles and by-laws.

D. Assessments by Corporation.

(1) General. Pursuant to the powers granted to it in its Articles and By-laws, the corporation is hereby expressly authorized and empowered to charge annual assessments against all parcels in the development. Provided, however, except as may be otherwise indicated, no assessments shall be levied against property owned by the Developer.

(2) Collection of Lien. The amount of the assessment levied by the corporation shall be paid to it on or before the date or dates fixed by resolution of the board. If not so paid, the amount of such assessment, plus any other charges thereon, including interest at the maximum limit provided by law per annum from date of delinquency and cost of collection, including attorney fees, if any, shall constitute and become a lien on the parcel so assessed when the board causes it to be recorded in the Office of Transylvania County Register of Deeds the notice of assessment, which shall state the amount of such assessment and such other charges and a description of the parcel which has been assessed. Such notice shall be signed by the Secretary of the corporation on behalf of the corporation. Upon payment of said assessment and charges in satisfaction thereof, the board shall within a reasonable time, cause to be recorded a further notice stating the satisfaction and release of said lien.

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(3) Priority of Lien. Conveyance of any parcel shall not affect any lien for assessments provided herein. Such lien shall be prior to all other liens recorded subsequent to said notice of assessment.

(4) Enforcement. The lien provided for herein may be foreclosed by suit by the corporation in like manner as a mortgage, and in such event, the corporation may be the bidder at the foreclosure sale. The corporation may also pursue any other remedy against any parcel owner owing money to it which is available to it by law or equity for the collection of debt.

(5) Suspension. The corporation shall not be required to transfer membership on its books or to allow the exercise of any rights or privileges of membership on account thereof to any owner or any persons claiming under them unless or until all assessments and charges to which they are subject have been paid.

13. ARCHITECTURAL CONTROL: No building can be constructed on a parcel within this residential development which is not a single family dwelling. In order to maintain a high level residential development to assure that all houses and other structures are of appropriate size and are of harmonious design, properly located in relationship to neighboring structures and adapted to the terrain of each parcel, the Developer retains full architectural control in order to achieve these objectives. When 50% of the property is sold, the Developer shall appoint three parcel owners to serve as the Architectural Control Committee who shall each serve staggered terms of one, two and three years each; the Whitmire Woods at Cherryfield Property Owners' Association, Inc., shall then reappoint members to this committee for three year terms at the conclusion of their initial terms. When the Developer has appointed the committee as aforementioned, he shall then assign to them the duties prescribed under this article.

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14. ROADS, GREEN AREAS AND ROAD MAINTENANCE:

A. Maintenance of Roads and Green Areas. That each Property Owner in Whitmire Woods at Cherryfield is granted access to their property by way of a deeded right of way across all roads and rights of way through the development to the public road; and each Property Owner of 1 to 10 acres shall pay a maintenance fee of \$250.00 per year for the maintenance of roads and green areas within the development. However, if more than 10 acres is owned, then the property owner shall pay an additional \$250.00 maintenance fee for each 10 acres owned. At the time fifty (50%) percent of the property is sold; the Developer shall convey to the Whitmire Woods at Cherryfield Property Owners Association the green areas and the responsibility for the maintenance of the roads; that this shall be accomplished by the Developer giving ten (10) days written notice to the Whitmire Woods at Cherryfield Property Owners Association that it shall convey each of these items by warranty deed to the Whitmire Woods at Cherryfield Property Owners Association; that after the 10 day period has lapsed, the deed shall be recorded by the Developer to this effect.

B. Assessment for Maintenance. The Property Owner, by the signing of a contract and the acceptance of the deed for his parcel covenants and agrees that he shall become a member of the Whitmire Woods at Cherryfield Property Owners Association, Inc. and shall faithfully abide by the Rules and Regulations of said corporation, and as may be amended from time to time, said Rules and Regulations covering the use of the roads and green areas.

15. ANNEXATION BY DEVELOPER:

A. Property to be Annexed: Developer may from time to time and at its sole discretion, annex to the Developer any other real property owned by it which is contiguous or adjacent to or in the immediate vicinity of the Development.

B. Manner of Annexation: The Developer shall effect such annexation by recording

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a plat of the real property to be annexed and by recording a supplement declaration which shall:

(1) Describe the real property being annexed and designate the permissible uses thereof.

(2) Set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restricted uses of common areas.

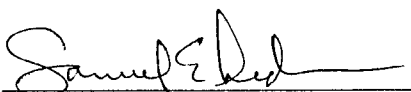
(3) Declare that such annexed properties held and shall be held conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the provisions of this declaration that upon the recording of such plat and supplemental declaration, the annexed area shall become a part of the development as fully as if such area were a part of the development from the date of the recording of this Declaration.

16. TERM: These covenants are to run with the land and shall be binding on all parties and all person claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for a successive period of ten (10) years unless an instrument signed by the majority of then owners of parcels has been recorded, agreeing to change said covenants in whole or in part.

IN TESTIMONY WHEREOF, the Developers has caused this instrument to be executed, this the 8<sup>th</sup> day of June, 2001.

LEDER-SPARLIN ENTERPRISES, LLC

BY:

  
Samuel E Leder, Managing Member  
Developer



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STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

I, Paulette Owen, a Notary Public of County and State aforesaid, hereby certify that SAMUEL E. LEDER, Managing Member Leder-Sparlin Enterprises, LLC, personally appeared before me this day and acknowledged the execution of the foregoing document for the purposes expressed therein.

WITNESS my hand and notarial seal this 8<sup>th</sup> day of June, 2001

My Commission Expires:  
5-15-06

Paulette Owen  
Notary Public



STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

The foregoing certificate \_\_\_\_ of Paulette Owen

Notar(y) (ies) Public is/are certified to be correct. This instrument was presented for registration and recorded in this office in Book 55, Page 471.  
This 8 day of June, 2001, at 2:15 o'clock P.M.

Vickie L. Edwards  
Register of Deeds

By: D'Rua McCall  
Deputy Register of Deeds

This Document Prepared By:  
William R. White  
WHITE & DALTON  
Brevard, NC 28712

**FIRST AMENDMENT TO 000071 000507  
DECLARATION OF  
RESIDENTIAL RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR  
WHITMIRE WOODS AT CHERRYFIELD**

THIS AMENDMENT TO RESTRICTIVE COVENANTS made and entered into this the 10 day of October, 2001, by and among LEDER-SPARLIN ENTERPRISES, LLC, BETTY JO EDMONDS and GLENN JEFFERY McPHERSON and wife, KIM AMUNDSEN McPHERSON, all the owners of that certain 148.37 acres, more particularly depicted on that certain plat found at Plat File 8, Slide 19 in the Transylvania County Registry;

**WITNESSETH:**

WHEREAS, Restrictive and Protective Covenants were placed on that certain 148.37 acres cited above by the developer, Leder-Sparlin Enterprises, LLC;

AND WHEREAS, all of the owners, including the developer, desire to amend the Restrictions as hereinafter set forth.

NOW, THEREFORE, the owners set forth above and who have signed below, amend the Restrictive Covenants found at Deed Book 55, Page 471 et seq. as follows:

(1) Paragraph 4 is deleted in its entirety and the following paragraph inserted:

4. BUILDING LINE AND DRIVEWAY ENTRANCE: No structure shall be built within eighty (80) feet of any public access road or thirty (30) feet from any sideline. Each driveway entrance shall be at least fifteen (15) feet from the private road of relatively level posture before

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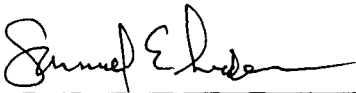
commencement of incline or decline. Location of each driveway shall be determined in consultation with the development owner.

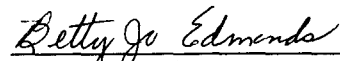
(2) That Paragraph 6 is deleted in its entirety and in lieu thereof the following paragraph is inserted:

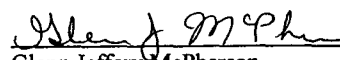
6. PARCEL SUBDIVISION: That the property restricted by these covenants may be subdivided into 10 acre, more or less, parcels only: excepting those parcels which touch the Western boundary of the 148.37 acre tract may be subdivided into as small as 2 to 5 acre parcels if, **and only if**, said parcel is impacted by the proposed Highway 215 connector.

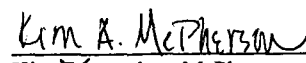
IN TESTIMONY WHEREOF, the Parties hereto set their hands and seals this the day and year first above written.

LEDER-SPARLIN ENTERPRISES, LLC

BY:   
Samuel E Leder, Managing Member  
Developer

 (SEAL)  
Betty Jo Edmonds

 (SEAL)  
Glenn Jeffery McPherson

 (SEAL)  
Kim A. McPherson

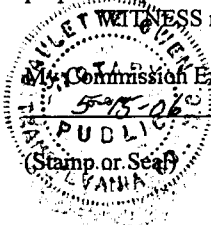
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STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

I, Paulette Owen, a Notary Public of County and State aforesaid, hereby  
certify that SAMUEL E. LEDER, Managing Member Leder-Sparlin Enterprises, LLC, personally  
appeared before me this day and acknowledged the execution of the foregoing document for the  
purposes expressed therein.

WITNESS my hand and notarial seal this 6 day of October, 2001

My Commission Expires:



Paulette Owen  
Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

I, Paulette Owen, a Notary Public of County and State aforesaid, hereby  
certify that BETTY JO EDMONDS, personally appeared before me this day and acknowledged the  
execution of the foregoing document for the purposes expressed therein.

WITNESS my hand and notarial seal this 10 day of October, 2001

My Commission Expires:



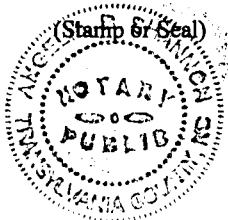
Paulette Owen  
Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

I, Angela D. Danner, a Notary Public of County and State aforesaid, hereby  
certify that GLENN JEFFERY McPHERSON and wife, KIM EDMUNDSEN McPHERSON,  
personally appeared before me this day and acknowledged the execution of the foregoing document  
for the purposes expressed therein.

WITNESS my hand and notarial seal this 10 day of October, 2001

My Commission Expires:



Angela D. Danner  
Notary Public

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STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

The foregoing certificate \_\_\_\_\_ of \_\_\_\_\_

Notar(y) (ies) Public is/are certified to be correct. This instrument was presented for registration and recorded in this office in Book 11, Page 501

This 11 day of October, 2001, at 4:20 o'clock P.M.

William Edwards

Register of Deeds

By: \_\_\_\_\_

Wesley Smith

Deputy Register of Deeds