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 TRANSMITTED & RECORDED:
 07-05-2006 12:01:42 PM
 Patricia A. Reel
 REGISTER OF DEEDS
 BY: LENA HAKER
 COUNTY REGISTER OF DEEDS
BK:CRP 876
PG:141-146

Prepared by and Return to
 Robert E. Yancey
 81 West Fort Street, Marlon, NC 28752

STATE OF NORTH CAROLINA
 COUNTY OF McDOWELL

AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HAVEN HEIGHTS SUBDIVISION, PHASE I AND PHASE II

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 3rd day of January, 2006, by Whimel Properties, Inc., hereinafter referred to as "_____", and Haven Heights Property Owners Association, Inc., a North Carolina Corporation, hereinafter referred to as ("Association") and Steven A. Bottari and wife, Angela M. Bottari, Ciro A. Crespo and wife, Candelaria Rod, Warren J. VanDyke and wife, Marian K. VanDyke, John Hall and wife, Tracy Chiarello-Hall, Valerie J. Okeefe, unmarried, and Donovan Fraser, unmarried, Mildred F. Lett, Robert J. Swanda and wife, Theresa L. Swanda, and Lynn M. McDonnell, Steven Andrews and wife, Mary-Ellen Andrews, Jeannis Rodriguez, unmarried, Melbis Rodriguez, unmarried, and Steven R. Marshall and wife, Patricia Metcalf, hereinafter referred to as ("Lot Owners").

WITNESSETH:

Whereas, Declarant is the owner of that certain property known as Haven Heights Subdivision, Marion Township, McDowell County, North Carolina, which property appears of record in a deed recorded in Deed Book 804, Page 318, McDowell County Registry.

WHEREAS, Declarant has caused Association to be incorporated under the laws of the State of North Carolina, for the purpose of exercising certain functions as set forth in this and other related documents; and

WHEREAS, the properties are subject to those certain restrictions as set forth in that Declaration of Covenants, Conditions and Restrictions of Haven Heights Subdivision as set forth in Deed Book 830 at Page 261, and a Declaration for Haven Heights, Phase II, recorded in Deed

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Book 832 at Page 730, all references to the McDowell County Registry; and

WHEREAS, Declarant and all the current owners of lots in Haven Heights Subdivision, Phase I and Phase II, desire to amend the restrictions of Haven Heights Subdivision as set forth below:

DECLARATION:

NOW THEREFORE, Declarant and all parties hereto hereby declare that Haven Heights Subdivision, Phase I and Phase II, as may be added to and subject to this declaration, is held and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the following amendments to the conditions and restrictions which are currently of record in McDowell County Registry. The purpose of these amendments, like the original Covenants, Conditions and Restrictions are for the purpose of protecting the value and desirability of the real property located in Haven Heights Subdivision and these amendments shall run with and be binding upon any parties having any right, title, or interest in and to the described properties or any part thereof, their legal representatives, heirs, successors, and assigns, and shall enure to the benefit of each owner of lots in Haven Heights Subdivision. The amendments made by this Amendment are as follows:

1. Amendment to Article IV, Section 4.6 of the Original Declaration (Buildings Specifications) is amended to read as follows: The following minimum floor space requirements shall apply to the dwelling in this subdivision, exclusive of garage, porch, breezeway and attic:

All dwellings shall contain no less than 1,000 square feet of living space.

2. Amendment to Article IV, Section 4.8 of Original Declaration (Workmanship-Like Construction) is amended to read as follows: All residential buildings must be completed in a workman like manner using any building materials in general use.

3. Amendment to Article IV, Section 4.11 of Original Declaration (Trailers, Toilets, Tents, Manufactured Housing) is amended to read as follows: No single-wide trailer, double-wide trailer, tent, shack, garage, barn or other out building erected upon any lot shall at any time be used as a residence either temporarily or permanently. No structure of a temporary nature shall be used as a residence. No outside toilets shall be permitted on the property. Campers, recreational vehicles, boats, ATV or motorcycles are permitted upon the property, but must respect the roads and the terrain of the property, and cannot ride upon undeveloped property owned by the Declarant, and the items listed in this provision shall not be placed in front of the residence. No tractor trailers shall be allowed in the subdivision. All speed limits must be observed.

4. Amendment to Article VII of the original Declaration (General Provision) is amended by

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adding the following: 7.4 This Declaration may be amended upon approval of two-thirds (2/3) of the owners, except that Declarant may amend as set forth in Section 2.2 and Section 3.4.

IN WITNESS WHEREOF, the parties hereto have set their hand and seal the day and year first above written, and said corporations have caused this instrument to be signed in their name by their President, attested by its Secretary, and by its member manager this ___ day of January, 2006.

WHITNEL PROPERTIES, INC.
Corporate Name

By: [Signature]
Charles E. Whitnel, President

Attest: [Signature]
Secretary



PROPERTY OWNERS ASSOCIATION, INC.
Corporate Name

By: [Signature]
Joy A. Nash, Vice President

- [Signature] (Seal)
Steven A. Bottari
- [Signature] (Seal)
Angela M. Bottari
- [Signature] (Seal)
Ciro A. Crespo
- [Signature] (Seal)
Candelaria Rod
- [Signature] (Seal)
Warren J. VanDyke
- [Signature] (Seal)
Marian K. VanDyke
- _____ (Seal)
John Hall
- _____ (Seal)
Tracy Chiarello-Hall
- _____ (Seal)
Valerie J. O'Keefe
- _____ (Seal)

Patricia A. Reel
Register of Deeds

Mcdowell County Register of Deeds

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752
Telephone 828-652-4727 • Fax 828-652-1537 • E-Mail preelmcdowell@titlesearcher.com



Filed for Registration: 07/05/2006 12:01:42 PM
Book: CRP 876 Page: 141-146
Document No.: 2006004909
AMENDMENT 5 PGS 29.00
Recorder: LENA BAKER

State of North Carolina, County of McDowell
Filed for registration and duly Recorded this 05TH day of JULY 2006.
PATRICIA A. REEL, REGISTER OF DEEDS

Lena Baker

By: _____
DEPUTY REGISTER OF DEEDS

DO NOT REMOVE!

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.



Prepared by and return to
Robert E. Yancey
81 West Fort Street, Marion, NC 28752

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

DECLARATION OF COVENANTS,
RESERVATION AND RESTRICTIONS

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this ____ day of June, 2005, by Whitnel Properties, Inc., hereinafter referred to as “Declarant.”

I.

STATE OF FACTS AND INTENT

- 1.1 **DECLARANT IS OWNER.** Declarant, Whitnel Properties, Inc., is the owner of certain real property in Marion Township, McDowell County, North Carolina, being known as Haven Heights Subdivision, and is more particularly described on a certain survey map entitled “Survey of Haven Heights Subdivision, Phase 1, Lots 1 through 25” which map is recorded in the Office of the Register of Deeds for McDowell County, North Carolina, in Map Book 10 at Page 98, and which property is a portion of the property described in McDowell County Deed Book 804 at Page 318 et seq., Tract Two.
- 1.2 **INTENT OF DECLARANT.** Declarant desires to subject the property as HAVEN HEIGHTS SUBDIVISION, PHASE 1, to the following easements, reservations, restrictions, covenants and conditions. The Declaration of Covenants, Reservations and Restrictions which apply to Lots 1 through 25 of HAVEN HEIGHTS SUBDIVISION shall be recorded in the Office of the Register of Deeds for McDowell County.
- 1.3 **PURPOSE OF COVENANTS.** The fundamental object and purpose of these restrictive covenants is to create a harmonious whole in HAVEN HEIGHTS SUBDIVISION, to prevent the building of any structure which would be architecturally incompatible with other dwellings, to insure the use of the property for attractive residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, to maintain the desired tone of the community, to preserve the value of the property owned and developed by the owners of lots in the subdivision and to secure to each lot owner the full benefit and enjoyment of his/her home.

NOW THEREFORE, Declarant hereby declares that the real property described as HAVEN HEIGHTS SUBDIVISION, PHASE 1, as the same is described on a plat recorded in the Office of the Register of Deeds for McDowell County, in Plat Book 10 at Page 98, which property is a portion

of the property described in McDowell County Deed Book 804 at Page 318, et seq, or as described in any future deed of said lots, shall be held, sold, and conveyed subject to and together with the following easements, restrictions, covenants, and reservations, which are for the purpose stated above, and which shall run with said real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns.

II.

DEFINITIONS

2.1 OWNER shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties referred to herein, but excluding those who have such interest merely as security for the performance of an obligation.

2.2 ADDITIONS TO THE PROPERTY

- (a) Declarant may cause Additional Property to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the McDowell County Public Registry, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Declarant may also cause additional Access Areas, within the development and a statement by Declarant of its intent to extend the operation and effect of this Declaration to the additional Access Areas. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in Subparagraph (b) below.
- (b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke or modify the covenants and restrictions contained herein with respect to the Property, nor revoke or modify the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for Amendment set forth in this Declaration.
- (c) In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election, without the

consent of any Owner or Owners, to subject any additional phase, section or portion of the Property owned by Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges, and liens, by filing Additional Declaration in the office of the Register of Deeds of McDowell County covering only such phase, section or portion of the Property. Such Additional Declaration may or may not provide for the establishment of a property owners' association to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not a property owners' association is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

- (d) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

- 2.3 PROPERTIES shall mean and refer to that certain real property described as HAVEN HEIGHTS SUBDIVISION, PHASE 1, Lots 1 through 25, all as described in a plat to be recorded in the Office of the Register of Deeds for McDowell County.
- 2.4 LOT shall mean and refer to any numbered plot of land shown upon any subdivision map that may hereinafter be recorded of the properties referenced above.
- 2.5 DECLARANT shall mean and refer to WHITNEL PROPERTIES, INC., its successor and assigns, whom it may designate as "Declarant" or one who acquires title to properties from WHITNEL PROPERTIES, INC., or its successors or assigns, under a deed in lieu of foreclosure judicial foreclosure, or foreclosure under power of sale in any deed of trust.

III.

PROPERTY OWNER'S ASSOCIATION

- 3.1 Each owner of a lot in HAVEN HEIGHTS SUBDIVISION will be a member of Haven Heights Property Owner's Association.

- 3.2 The Declarant, WHITNEL PROPERTIES, INC., retains the right to entirely exempt out parcels from these covenants and restrictions so long as the parcels exempted do not use the road or amenities of Haven Heights SUBDIVISION.
- 3.3 Each lot will have one vote in the association regardless of the number of owners of that lot.
- 3.4 The Declarant, WHITNEL PROPERTIES, INC., retains unto itself up and to the time the association is turned over to the new owners the right to:
- a) Add to or amend these covenants and restrictions for any lot still owned by developer by recordings changes in the McDowell County Register of Deeds Office.
 - b) Grant variances for any provision of these covenants and restrictions to any individual lot owner by providing the variance in writing in recordable form to the said owner. Variances may be granted by the President and the Vice-President of the Association after the property has been turned over to the Association as hereinafter provided. It will be the new owner's responsibility to record said variance for it to become effective.
- 3.5 The Covenants and Restrictions herein set forth or as amended shall exist and be in full force and affect until December 31, 2025, and shall be automatically extended for a successive period of ten years unless prior to the beginning of such a ten year term, an instrument signed by the owners of a majority of lots subject to this Declaration agree to terminate, amend, or modify the Declaration shall have been recorded in the Office of the Register of Deeds for McDowell County, North Carolina.
- 3.6
- a) At the discretion of the Developer, or when 95% of the lots are sold, the Association will be turned over to the owners of said lots and they will elect their own officers. (President, Vice-President, Secretary, Treasurer, and an alternate for a term of one year) and assume all management responsibilities with the following terms and conditions.
 - b) Each officer must be a deeded owner or the legally married spouse of a deeded owner and may only serve (2) consecutive terms in the same office unless 75% of the owners vote to extend the number of terms allowed for a specific officer.
 - c) The maximum expenditures or total encumbrances to the Association that may be approved by any single officer is \$500.00. All expenditures or encumbrances to the Association in excess of \$500.00 must be approved in writing and signed by at least three (3) officers. The approval must be kept by the Treasurer along with the other financial records.
 - d) The Treasurer may sign checks up to \$500.00, all checks over \$500.00 must have the signatures of the Treasurer and one officer.
 - e) In the event the office of President becomes open during the year, the Vice-President will automatically become President.

- f) If the offices of Vice-President, Secretary or Treasurer become open during the year the position will be filled by the alternate.
 - g) If the position of Alternate becomes open during the year, then the President, Vice President, Secretary and Treasurer will select from the Property Owner base, someone willing to fill the alternate position for the remainder of the year.
- 3.7 After the Developer turns the Association over to the new owners the elected President and Vice President of the HAVEN HEIGHTS SUBDIVISION PROPERTY OWNER'S ASSOCIATION will have the right to grant variances pertaining to any individual lot.
- 3.8 The Association, through one or more of its elected officers, will have the power to enforce, in accordance with the laws of North Carolina, Collection of Dues and Compliance to the Covenants and Restrictions, including the recovery of damages and the restraining of violations.
- 3.9 The elected officers will have the power to set association dues on a yearly basis. However, if these dues need to be adjusted upward more than 5% in any given year then a meeting with the entire Association members must be called for this purpose with at least 30 days notice at which time 75% of the members in good standing attending the meeting in person or through proxy (provided a quorum is present) must vote positive to effect the raise.
- 3.10 At the first meeting called by the Association for a specific reason, a quorum of 51% must be present (personally or through proxy) to effect any business. If a quorum is not met, then a second meeting for the same purpose may be called with two week notice and 25% of the owners will represent a quorum. Subsequent meetings are called if a quorum is not present at the 2nd meeting, and will not need a quorum. However, at least two weeks notice to all members restating the purpose of the meeting and that no quorum need be met, needs to be sent to ALL members.
- 3.11
- a) Each lot will be assessed at \$150.00 yearly. Association dues for maintenance of roads, common area, and other minor Association expenses (i.e.: postage, meeting place, taxes, etc.); pro-rated dues will be collected at closing for the remainder of the calendar year, excluding the month of closing. Adjusted from time to time by the Association.
 - b) Any members not paying their dues promptly (by January 31st of each calendar year) will be assessed an additional \$10.00 per month late fee.
 - c) Any owners who are delinquent for five (5) months (150 days) will be given final notice by certified mail of the amount due with request for prompt payment within thirty (30) days.
 - d) If after that notice by certified mail the dues are still not paid in full then any elected officer of the Association may at their discretion file in court for the payment of dues, late fees and the recovery of expenses, and pursue any other remedies deemed advisable, including the right to file a lien and, if necessary, the foreclosure thereof.

- 3.12 a) The Declarant and Haven Heights Property Owners Association will be exempt from paying any Association dues on any lots or common areas owned.
- b) Any one person(s) or entity purchasing and owning two (2) or more contiguous lots in Haven Heights Subdivision (whether in a single deed, or in separate deeds, and whether such purchases are simultaneous or otherwise) will be required to pay Association dues on only one lot per year, as provided in this Declaration; provided, however, that the owner of said lots shall designate to the President of the Association which lot or lots in excess of one are the exempt lot or lots, and such exempt lot or lots will maintain exempt status unless or until a) the lot is sold, b) a living unit is built upon it, and in the event of either (a) or (b) above the exemption will be lost permanently.
- 3.13 Any lots exempt from paying dues unless owned by Declarant or Haven Heights Subdivision Property Owners Association will not be eligible to
- a) vote on any matter regarding dues.
- b) Count toward a quorum on votes regarding dues (all other rights are retained).
- c) Declarant and/or New Haven Heights Owners Association will retain one (1) vote for each lot owned (common areas not included).

IV.

PROTECTIONS AND RESTRICTIONS

- 4.1 SINGLE-FAMILY RESIDENTIAL USE. All lots in this Subdivision shall be known and described as residential lots and shall be used exclusively for single family residential dwellings (except as herein after set forth in this Declaration), and shall contain not less than one acre in area. No structure shall be erected, altered, placed or permitted to remain on any such lot other than one detached single family dwelling, and a small cottage or garage apartment will be permitted if set back from the front of the main residence. A business office or hobby shop can be constructed instead of an apartment, but only one additional building will be allowed on each one acre lot. No loud or heavy type mechanic business shall be allowed to be operated or conducted on any lot.
- 4.2 NUISANCES. No noxious or offensive activity shall be carried on anywhere on the property subject to these covenants, nor shall anything be done thereon which may be or become a nuisance or menace to the neighborhood.
- 4.3 HUNTING. No hunting or shooting of firearms shall be permitted in the subdivision.
- 4.4 RESTRICTIONS ON FURTHER SUBDIVISION. No lots in this Subdivision shall be resubdivided so as to recreate an additional building lot, unless agreed to in writing by Declarant or assigns. This provision is not intended to prevent subdividing of a small portion

or portions of any lot for the purpose of conveying the same to an adjoining property owner or straightening a boundary line.

4.5 WALL AND HEDGES. All walls, fences, or hedges erected shall be of a reasonable height which shall not unduly interfere with the view of contiguous or nearby property owners.

4.6 BUILDING SPECIFICATIONS. The following minimum floor space requirements shall apply to the dwelling in this subdivision, exclusive of garage, porch, breezeway and attic:

All dwellings, whether stick built or double-wide manufactured housing shall contain no less than 1,000 square feet of living space.

4.7 SET-BACKS. No residence, dwelling, garage, or other structure shall be less than 25 feet from the street or front line, 10 feet from any other lot line. In the event that a lot fronts two or more streets, the front lot line shall be deemed to be in the direction the house faces.

4.8 WORKMANSHIP-LIKE CONSTRUCTION. All residential buildings must be completed in a workman like manner using any building materials in general use; all double-wide manufactured housing shall have masonry underpinning of block with brick, rock, or stucco, with 4/12 pitch minimum roof, and all double-wide manufactured housing must have treated lumber porch/deck, and attached steps, front, side, and back.

4.9 SURFACE WATER. Each lot owner and his contractor, subcontractor, laborer, agent of employee shall take full responsibility for surface water run off which may adversely affect or damage adjacent property. Any damage to access road as a result of construction, moving manufactured homes, etc., will be repaired at the responsible party's expense. This shall include re-grading, and additional gravel, if necessary. Repair shall be immediate following damage. All driveway drainpipes shall be minimum of fifteen inches (15") in diameter. Material shall be galvanized metal or concrete. Driveway pipes must be cleaned regularly to assure flow in ditch.

4.10 MINING, DRILLING, EXCAVATION AND QUARRYING. No person or corporation shall permit oil or gas drilling or mineral mining, excavating, tunneling or quarrying on any lot. Declarant reserves the right to remove any and all rock, gravel, and other stone.

4.11 TRAILERS, TOILETS, TENTS, MANUFACTURED HOUSING. No single-wide trailer, tent, shack, garage, barn or other out building erected upon any lot shall at any time be used as a residence either temporarily or permanently. No structure of a temporary nature shall be used as a residence. No house trailer, single-wide mobile home, shall be placed on any lot either temporarily or permanently. No outside toilets shall be permitted on the property. Campers, recreational vehicles, boats, ATV or motorcycles are permitted upon the property, but must respect the roads and the terrain of the property, and cannot ride upon undeveloped property owned by the Declarant, and the items listed in this provision shall not be placed in front of the residence. No tractor trailers shall be allowed in the subdivision. All speed limits must be observed.

- 4.12 ANIMALS. No animals shall be kept, maintained or quartered on any lot except that cats, dogs, and other household pets in reasonable numbers and shall be kept on the owners premises. If such pets are off the owner's premises, they must at all times be kept on leashes. No kennels or breeding businesses shall be allowed. No loud barking dogs shall be permitted to remain upon the property so as to disturb any neighbors. Horses are permitted on parcels of land, four acres or more, and must be kept away from the road and adjacent houses.
- 4.13 CUTTING OF TREES AND LANDSCAPING. The cutting of any hardwood or hemlock trees ten inches in diameter or larger is discouraged on any lot except within fifty feet of the house site, or where necessary for construction of driveways or septic tank systems. The above statement does not prevent an owner from clearing their front lawn, including stump removal.
- 4.14 ADDITIONAL LAND. The Declarant retains the right to add to its subdivision into this original Declaration any and all 310 acres of the real estate described in McDowell County Deed Book 804 at Page 318 et seq.
- 4.15 AUTOMOBILES. No junk automobiles and unlicensed automobiles shall be permitted on the premises. No motor vehicles, whether operable or not, and no trailers shall be regularly parked on, or on the margin of any subdivision street. No inoperable or unlicensed motor vehicles or boats shall be kept on any lot. Any campers, recreational vehicles, boats, or similar vehicles shall be parked or stored only in the rear of, or in the side yard of the residence, and shall not be used thereon as a temporary or permanent residence.
- 4.16 NOISE. No loud or offensive activities shall be allowed on any property by any owner or guest that would affect the peace, and quiet or the enjoyment of their neighbors.
- 4.17 TRACTOR TRAILER. No tractor trailers may enter HAVEN HEIGHTS except for purposes of delivery or pickup.
- 4.18 UTILITY EASEMENT. Utility easement of fifteen feet is reserved along all lots lines.
- 4.19 STORAGE OF FUEL OIL. All fuel oil tanks or propane containers shall be located behind the residence, be covered and be consistent with normal safety regulations.
- 4.20 SIGNS. No signs shall be permitted on any residential lots except that a single sign offering property for sale or for rent may be placed on any such lot provided such sign is not more than twenty four inches wide by twelve inches high. Flashing light signs are not permitted and only flags of the United States and North Carolina shall be allowed to be flown in the subdivision.
- 4.21 MAINTENANCE OF LOTS, LANDSCAPING AND GARDENING. Each owner and member-user shall maintain his lot and improvements thereon. All landscaping and natural

vegetation are to be kept in a presentable manner. Small, non-commercial gardening is permitted.

No weeds, underbrush, or any other unsightly growth shall be permitted to grow or remain upon any lot or any common area, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that any owner shall fail or refuse to keep his lot free of weeds, underbrush or refuse piles, or other unsightly growths or objects, then the Association or the developer may enter upon said lot and remove the same at the expense of the owner, and such entry shall not be deemed a trespass.

- 4.22 ROAD OR ALLEYWAYS. No part of any lot may be dedicated or used as a road or alleyway or for ingress or egress to any other property except upon the consent in writing of Declarant, its successor or assigns.

V.

RIGHTS-OF-WAY, EASEMENTS AND RESERVATIONS

- 5.1 ROADWAYS. All roadways as indicated on any future recorded plat of the properties shall have a right-of-way as shown on said plat. Declarant hereby reserves for itself, its successors and assigns, from each conveyance of a lot the right-of-way shown on said plat.
- 5.2 UTILITY EASEMENTS. Declarant hereby reserves the right to grant to any public utility company, municipality or other governmental unit, water or sewer company an easement for a right-of-way and a fifteen-foot strip of land located along the front lot line and along all other lot lines, for the right to erect and lay, or cause to be erected or laid, maintained, removed or repaired, all electric, telephone and telegraph wires, water, water and gas pipes conduits, catchbasins, surface drains, sewage lines and other customary or usual appurtenances as may from time to time, in the opinion of the Declarant, its successors and assigns, or any utility company or governmental authority, be deemed necessary for maintenance and repair of said utilities. Any right of action arising from temporary inconvenience or property damage within the right-of-way against the Declarant or the utility company is hereby waived by acceptance of the deed of conveyance or contract to purchase.

The Declarant reserves the right to subject the properties to a contract with Duke Power Company or such other utility company which will service the properties for the installation of underground electric cables and/or the installation of roadway lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Duke Power Company, or such other utility company that services the properties by each lot owner.

VI.

ROAD MAINTENANCE

Each owner shall maintain equally and on a pro-rata basis the private subdivision roads in good condition, with proper ditching and drainage on both sides of the road, adequate gravel or pavement sufficient to keep the roads in stable condition, free of ruts and potholes, sufficient to allow comfortable passage by any type of motor vehicle over and across said roads and to and from each of the lots or parcels of real property in the subdivision.

A lot owner who fails to pay his or her proportionate share of the costs in having said private roads repaired or maintained, shall subject himself to liability in favor of the other parties having contributed, or contributing, their proportionate part of such costs. Such liability may be enforced by the contributing parties by instituting suit against the non-contributing party, obtaining judgment against him, and enforcing the judgment through execution.

The owners hereby agree each with the other that they are vitally concerned in keeping and maintaining the said private roads in a neat and attractive condition, and will comply with this agreement whenever such roads need any maintenance or upkeep.

The benefits and burdens of this agreement shall at all times be binding upon the parties hereto and upon their heirs, successors in interest and assigns.

Initially Declarant will complete all roads in the subdivision and maintain same until the Association is turned over to the owners. Pursuant to the provisions of Section 136-102.6 of the North Carolina General Statutes prospective purchasers of lots and property in the Subdivision described or shown on the plat are hereby advised that the roads and streets are private and the responsibility for the maintenance of such road and streets rests with the Declarant and/or the Property Owners Association until such time as the roads are included into the State Highway System for maintenance. Roads in Haven Heights Subdivision are built to county standards for private roads and may not meet state standards.

Unless otherwise ordered by the McDowell County Planning Commission, no parcel of land in Haven Heights Subdivision may be used as ingress or egress to or from other properties not originally a part of the subdivision (unless such other properties are added by the Declarant.

VII.

GENERAL PROVISION

- 7.1 The Covenants and Restrictions are to run with the land and shall be binding upon the Declarant and all persons claiming under it. The invalidation of any one of the Covenants and Restrictions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and affect.
- 7.2 These Covenants may be enforced by the Declarant, the Association, or the Owner of any lot within the subdivision. If an action is brought by the Declarant or the Association to enforce any of these Covenants, the violator must pay all cost and expenses of such action, including

reasonable attorney fees.

7.3 The Declarant intends to develop the property covered by this Declaration in phases, and this Declaration shall apply to all phases, unless covered by a supplemental Declaration duly filed in the Office of the Register of Deeds for McDowell County, North Carolina.

IN WITNESS WHEREOF, WHITNEL PROPERTIES, INC., has caused this instrument to be signed in its name by its President, attested by its Secretary, and its corporate seal affixed hereto, this ____ day of June, 2005.

WHITNEL PROPERTIES, INC.

Corporate Name

By: _____
Charles E. Whitnel, President

Attest: _____
Secretary (Corporate Seal)

SEAL-STAMP

STATE OF NORTH CAROLINA, McDOWELL COUNTY.

I, the undersigned, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that she is Secretary of Whitnel Properties, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its Secretary. Witness my hand and official stamp or seal, this _____ day of June, 2005.

My commission expires: _____ Notary Public