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*AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR*



*Prepared by and Return to: Susan Taylor Rash
Adams Hendon Carson Crow & Saenger, P.A. (Box #1)
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Asheville, NC 28802*

**AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DROVERS ROAD PRESERVE**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DROVERS ROAD PRESERVE is made and entered into this the 14th day of February, 2006, by DROVERS ROAD ASSOCIATION, INC., a North Carolina nonprofit corporation with its principal office in Buncombe County, North Carolina (hereinafter referred to as the "Association") and consented to by FLYING CLOUD PROPERTIES, LIMITED, a North Carolina corporation with its principal office in Buncombe County, North Carolina (hereinafter referred to as "Declarant").

WITNESSETH:

Declarant and the Association Members are the owners of that certain real property located in Buncombe County, North Carolina, shown on the Plat recorded in Plat Book 90 at Page 164 in the Office of the Register of Deeds for Buncombe County, North Carolina, reference to which Plat is hereby made for a more particular description (the "Property"), which is being developed by Declarant as a residential community known as Drovers Road Preserve.

Declarant has provided for the preservation and enhancement of property values, amenities and opportunities in the Property and for the maintenance of the Property and improvements thereon in the Declaration of Covenants, Conditions and Restrictions for Drovers Road Preserve recorded in Book 3572 at Page 1 (the "Declaration"), in the Office for the Register of Deeds for Buncombe County, North Carolina. Declarant and the Association Members desire to amend the Declaration as hereinafter set forth and/or described.

Article XIII, Section 2 of the Declaration provides for the amendment of the Declaration by the affirmative vote of at least sixty-seven percent (67%) of all votes entitled to be cast by Association Members at a duly held meeting of the Association Members at which a quorum is present, provided that such amendment is consented to by Declarant so long as it owns any Lot or other portion of the Property and provided that the amendment is executed by the Association Members or contains a certification of the Secretary of the Association stating that the amendment has been voted on and approved by the requisite number of votes of the Association Members. Article XIII, Section 2 of the Declaration further provides that an amendment of the Declaration shall become effective upon the recording of the amendment in the Office of the Register of Deeds for Buncombe County, North Carolina.

At a duly held meeting of the Association Members at which a quorum was present, the Association Members, by a vote of at least sixty-seven percent (67%) of all votes entitled to be cast

by Association Members, voted to amend the Declaration pursuant to Article XIII, Section 2 of the Declaration. The Association and Declarant desire to amend the Declaration as set forth below.

NOW, THEREFORE, the Association and Declarant hereby amend the Declaration as follows:

**ARTICLE I
DEFINITIONS**

All capitalized terms when used in this Amendment to Declaration (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in Article I, Definitions, of the Declaration.

**ARTICLE II
PROPERTY**

The property made subject to this Amendment to Declaration shall be the Property shown on the Plat recorded in Plat Book 90 at Page 164 in the Office of the Register of Deeds for Buncombe County, North Carolina, reference to which Plats is hereby made for a more particular description.

Article II, Section 5, Use of Common Areas, is hereby deleted in its entirety and replaced with the following new Section 5:

Section 5. Use of Common Areas. The Declarant contemplates as a part of the development of the Property that Drovers Road Partners, LLC, or the Declarant shall convey to the Association by deed or easement, areas of the Property or contiguous property which shall become a part of the Common Area or Common Areas which may be used for parks, trails, walking, jogging, biking, or other recreational uses. Drovers Road Partners, LLC, and Declarant expressly reserve the right to grant to others the right to use the Common Areas for the purposes for which the Common Areas are designed. Specifically, Declarant shall have the right to enter into (i) a cross easement agreement with John C. Ager, Jr., and Annie C. Ager, the owners of the adjacent property, granting to the Agers and to the Association Members the right to use the hiking trails and horse trails located on the Ager property and on the Drovers Road Preserve Common Areas and (ii) an agreement granting Cameron Smail, Robert E. Pyeatt, John C. Ager, Jr., and their respective families, guests, and invitees the right to use the Common Areas for the purposes for which the Common Areas are designed. Declarant may, but shall not be required to, obligate the users, owners or associations to which the right to use the Common Areas is granted, to make payments to the Association for the purpose of contributing to the maintenance and upkeep of the Common Areas as a condition of such use. The amount of the contribution to be made by such non-Member users shall be in the sole discretion of the Declarant. The right to Declarant and/or Drovers Road Partners, LLC, to enter into new agreements granting others the right to use the Common Areas shall terminate on the earlier of (i) the date Declarant no longer owns any portion of the Property or (ii) December 31, 2015; provided, however, that the termination of the Declarant's right to enter into new agreements shall not affect the existing agreements, which shall remain in full force and effect. Nothing in this section shall give the

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Declarant the right to allow the owner of any adjoining property to use the Drovers Road Preserve roads for vehicular access to the adjoining property.

ARTICLE III ASSOCIATION ASSESSMENTS

Article V, Section 4. Amount of Annual Assessments, Paragraph c (i) is hereby deleted in its entirety and replaced with the following:

- (i) For calendar year 2005 and thereafter for all years before the Turnover Date, the Board, by a vote in accordance with the Bylaws, without a vote of the Association Members, may increase the Annual Assessment to be levied against each Lot.

Article V, Section 4. Amount of Annual Assessments, Paragraph c is hereby amended by deleting subparagraph (ii) in its entirety.

ARTICLE IV MISCELLANEOUS PROVISIONS

Section 1. Duration. This Amendment to Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and any Owner, and shall inure to the benefit of every Owner of a Lot in the Property and every Owner of any other portion of the Property including Declarant, and their respective heirs, successors, and assigns, for a term of thirty (30) years beginning on the date the Declaration was recorded in the Office of the Register of Deeds of Buncombe County, North Carolina, March 9, 2004. At the end of such thirty (30) year period, the covenants, conditions and restrictions set forth herein shall automatically be extended for successive period(s) of ten (10) additional years, unless prior to the expiration of a respective period, by two-thirds ($\frac{2}{3}$) vote of the Association Members, there shall be adopted a resolution to terminate this Amendment to Declaration. Owners may vote in person or by proxy at a meeting duly called for such purpose at which a quorum is present, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth the purpose of such meeting.

Section 2. Enforcement. The Declarant shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Amendment to Declaration. Enforcement of this Amendment to Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate this Amendment to Declaration, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Declarant to enforce this Amendment to Declaration shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof.

Section 3. Titles. The titles, headings and captions which have been used throughout this Amendment to Declaration are for convenience only and are not to be used on construing this Amendment to Declaration or any part thereof

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Section 4. No Exemption. No Owner or other party may exempt himself or herself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or the Common Areas.

**ARTICLE V
EFFECT OF AMENDMENT**

Except as the same shall have been expressly modified by this Amendment to Declaration, the covenants, conditions, and restrictions contained in the Declaration shall remain in full force and effect. The Declarant and the Association Members hereby subject the Property to the amended covenants, conditions, and restrictions hereinabove set forth and declare that the Property shall be held, sold and conveyed subject to the covenants, conditions, and restrictions of this Amendment to Declaration all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. Subject to the rights of Declarant described in the Declaration and in this Amendment to Declaration, such covenants, conditions, and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property and shall inure to the benefit of each owner of a Lot located within the Property or any part thereof.

**ARTICLE VI
SECRETARY'S CERTIFICATE**

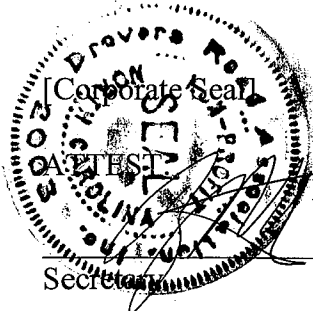
Pursuant to Article XIII, Section 2 of the Declaration, the undersigned Secretary of Drovers Road Association, Inc., hereby certifies that an affirmative vote of at least sixty-seven percent (67%) of Association Members entitled to vote was received in favor of this Amendment to Declaration at a duly constituted and called meeting on the 22nd day of October, 2005, at which a quorum was present.



DROVERS ROAD ASSOCIATION, INC.

BY: [Signature]
Secretary

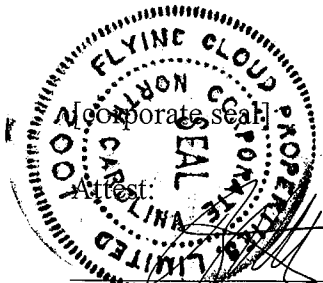
IN WITNESS WHEREOF, Drovers Road Association, Inc., has caused this Amendment to Declaration and to be executed by its duly authorized officers and its corporate seal to be hereunto affixed the day and year first above written.



DROVERS ROAD ASSOCIATION, INC.

By: [Signature]
President

The Declarant hereby Consents to this Amendment to Declaration and causes it to be executed by officers thereunto duly authorized the day and year first above written.



FLYING CLOUD PROPERTIES, LIMITED
A North Carolina Corporation

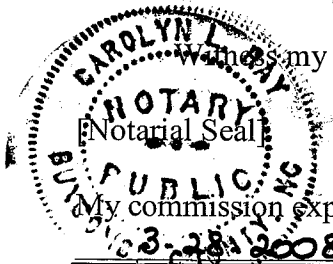
By: [Signature]
Cameron Smail, President

[Signature]
Robert E. Pyeatt, Secretary

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of said County and State, do hereby certify that Robert E. Pyeatt personally appeared before me this day and acknowledged that he is Secretary of Drovers Road Association, Inc., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was voluntarily signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and official stamp or seal, this 14th day of February, 2006.



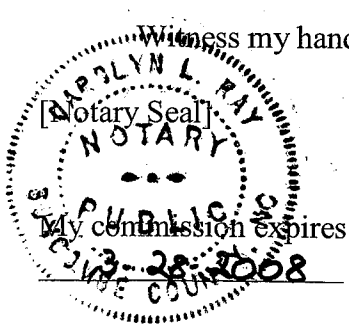
[Signature]
Notary Public

Printed Name of Notary Public: Carolyn L. Ray

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of said County and State, do hereby certify that Robert E. Pyeatt personally appeared before me this day and acknowledged that he is Secretary of Flying Cloud Properties, Limited, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was voluntarily signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and official stamp or seal, this 14th day of February, 2006.



[Signature]
Notary Public

Printed Name of Notary Public: Carolyn L. Ray