

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

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DROVERS ROAD PRESERVE is made and entered into this the \_\_\_\_ day of February, 2004, by FLYING CLOUD PROPERTIES, LIMITED, a North Carolina corporation with its principal office in Buncombe County, North Carolina, hereinafter referred to as Declarant, Drovers Road Partners, LLC, a North Carolina limited liability company (hereinafter sometimes referred to as "Drovers Road"), Annie McClure Clarke Ager and John Curtis Ager, Jr., Trustees of the Annie McClure Clarke Ager Living Trust dated August 30, 2000 (hereinafter referred to as the "Trustees").

**WITNESSETH:**

Declarant, Drovers Road, and the Trustees are the owners and Declarant is the developer of that certain real property located in Buncombe County, North Carolina, and more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "Property"), which is being developed by Declarant as a residential community to be known as DROVERS ROAD PRESERVE.

Declarant, Drovers Road, and the Trustees desire to provide for the preservation and enhancement of property values, amenities and opportunities in Drovers Road Preserve and for the maintenance of the Property and improvements thereon, and to this end desire to subject the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described.

NOW, THEREFORE, Declarant, Drovers Road, and the Trustees hereby subject the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declare that (subject to certain rights of amendment, as hereinafter described) the Property shall be held, sold and conveyed subject to the easements, covenants, conditions, restrictions, charges and liens of this Declaration all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. Subject to the above described rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens 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 I  
DEFINITIONS**

The following terms when used in this Declaration or any amendment or supplement hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the following meanings:

**Section 1. "Additional Declaration"** shall mean and refer to any Declaration of Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of Buncombe County, North Carolina with regard to a certain phase, section or portion of the Property, as more particularly described in Article II, Section 3 hereof.

**Section 2. "Annual Assessments"** shall have the meaning as set forth in Article V, Section 3 hereof.

**Section 3. "Annual Budget"** shall mean the budget prepared by the Association each year covering the estimated costs of operating the Association as more particularly described in Article V, Section 4 hereof.

**Section 4. "Approved Builder"** shall mean a builder of any Improvements on any Lot within the Property who has qualified under the Drovers Road Builder Program to become an Approved Builder as more particularly described in Article X, Section 11 hereof.

**Section 5. "Articles"** shall mean the Articles of the Incorporation of Drovers Road Association, Inc., a copy of which is attached hereto as Exhibit "B," as the same may be amended from time to time.

**Section 6. "Assessment"** shall mean charges by the Association as more particularly described in Article V hereof.

**Section 7. "Association"** shall mean and refer to Drovers Road Association, Inc., a North Carolina non-profit corporation.

**Section 8. "Association Documents"** shall mean this Declaration, the Design Guidelines, the Articles, the Bylaws, the Community Rules, the Schedule of Fees and any other document adopted by the Association as an Association Document.

**Section 9. "Association Member"** shall mean and refer to any Person who is a member of the Association as set forth in Article IV, Section 1 hereof. Association Members shall include all Owners of Lots in Drovers Road Preserve and Declarant for so long as Declarant owns any part of the Property.

**Section 10. "Board"** shall mean the Board of Directors of the Association.

**Section 11. "Bylaws"** shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto as Exhibit "C," as they may now or hereafter exist.

**Section 12. "Common Area" and "Common Areas"** shall mean and refer, singularly or collectively, as applicable, to all land, improvements and other properties which hereafter shall be deeded to or acquired by, in fee or easement, from time to time by the Association for the common use and enjoyment of the Owners and the Occupants, including without limitation the Roadways, until dedicated to and accepted for maintenance by a public authority.

**Section 13. "Conservation Easement"** shall mean the Deed of Conservation Easement between Drovers Road Partners, LLC, and the Southern Appalachian Highlands Conservancy dated December 18, 2003, and recorded in Book 3498 at Page 612 in the Office of the Register of Deeds for Buncombe County, North Carolina.

**Section 14. "Corporation"** shall mean Drovers Road Association, Inc., a North Carolina non-profit corporation.

**Section 15. "Declarant"** shall mean Flying Cloud Properties, Limited, its successors in title and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

**Section 16. "Declaration"** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Drovers Road Preserve as it may be amended and/or supplemented from time to time as herein provided.

**Section 17. "Design Guidelines"** shall have the meaning set forth in Article X, Section 4 hereof.

**Section 18. "Design Review Committee"** shall have the meaning set forth in Article X, Section 2 hereof.

**Section 19. "Entrance Monument Easements"** shall mean and refer to the easements reserved by Declarant and granted to the Association in Article XI, Section 6 hereof over, across and under certain areas of the Property, for the installation and maintenance of entrance monuments for the Property, all as more particularly described in Article XI, Section 6 hereof.

**Section 20. "Improvements"** shall have the meaning as set forth in Article X, Section 5 hereof.

**Section 21. "Lot"** shall mean and refer to any numbered or lettered tract of land shown on any plat of any portion of the Property recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract is located.

**Section 22. "Maintenance Areas"** shall mean those portions of the property as more particularly described in Article XI, Section 6 hereof.

**Section 23. "Member"** shall mean and refer to each Owner who is a member of the Association.

**Section 24. "Mortgage"** shall mean and refer to any mortgage or deed of trust constituting a first lien on a Lot.

**Section 25. "Mortgagee"** shall mean the owner and holder of a mortgage at the time such term is being applied.

**Section 26. "Occupant"** shall mean and refer to any person occupying all or any portion of a Lot, for any period of time, regardless of whether such person is a tenant of the Owner of such Lot.

**Section 27. "Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot in Drovers Road Preserve but excluding those having such interest merely as security for the performance of an obligation.

**Section 28. "Person"** shall mean and refer to any natural person, corporation, limited liability company, joint venture, partnership (general or limited), association, trust or other legal entity.

**Section 29. "Plat"** shall mean and refer to any plat of the Property or any part of it which has been recorded in the Office of the Register of Deeds of Buncombe County, North Carolina.

**Section 30. "Property"** shall mean and refer to that certain real property located in Buncombe County, North Carolina and more particularly described in Exhibit A attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II, Section 2 hereof.

**Section 31. "Roadways"** shall mean and refer to the roads, streets, entranceways and cul-de-sacs as shown on the plats of the Property, and where indicated any other roads, streets, entranceways and cul-de-sacs on the Property, all to be privately maintained by the Association or an Association until dedicated to and accepted for maintenance by a public authority as set forth in Article VII, Section 7 hereof.

**Section 32. "Special Assessment"** shall have the meaning set forth in Article V, Section 6 hereof.

**Section 33. "Special Individual Assessment"** shall have the meaning set forth in Article V, Section 7 hereof.

**Section 34. "Subdivision"** shall mean and refer to any phase, section or portion of the Property for which a separate plat or plats are recorded in the Office of the Register of Deeds of Buncombe County, North Carolina.

**Section 35. "Supplementary Declaration"** shall mean and refer to any Supplementary Declaration of Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of Buncombe County, North Carolina to bring additional property within the coverage of this

Declaration and any Additional Declaration and the jurisdiction of the Association, as more particularly described in Article II, Section 2 hereof.

**Section 36. "Turnover Date"** shall have the meaning set forth in Article IV, Section 2 hereof.

## **ARTICLE II PROPERTY**

**Section 1. Property Made Subject to this Declaration.** The property made subject to this Declaration shall be the Property described in Exhibit A attached hereto and incorporated herein by reference.

**Section 2. Additional Property.** Declarant shall have the right, at its election without the consent of any Owner or Owners, to bring within the coverage of this Declaration and any Additional Declaration and the jurisdiction of the Association any additional property. Such additions authorized hereby shall be made by filing of record in the Office of the Register of Deeds of Buncombe County, North Carolina, Supplementary Declarations of Covenants, Conditions and Restrictions with respect to such additional property. Each such supplementary declaration shall extend the scheme of this Declaration and any Additional Declaration and the jurisdiction of the Association to such additional property and thereby subject such additional property to assessment for its just share of the Association's expenses. Such Supplementary Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect a different character of the additional property and as are not inconsistent with the provisions of this Declaration. Nothing contained in this Section 2, however, shall be construed to obligate Declarant to bring any additional property within the coverage of this Declaration.

**Section 3. Additional Declarations.** 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 phase, section or portion of the Property to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of Buncombe County covering only such phase, section or portion of the Property. Such Additional Declaration may or may not provide for the establishment of an association to govern the ownership and/or maintenance of the portion of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not an 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.

**Section 4. Merger or Consolidation.** Upon any merger or consolidation of an association with another association, the properties, rights and obligations of the association may be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may be added to the property, rights and obligations of such

association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered an association and shall administer the terms and provisions of this Declaration (to the extent they relate to the phase(s) or section(s) of the Property over which such association has jurisdiction) and the applicable Additional Declarations affecting the portions of the Property in the jurisdiction of such association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effectuate a revocation, change or addition to the terms and provisions of this Declaration or any Additional Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

**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. 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.

**Section 6. Changes to this Declaration or Additional or Supplementary Declarations Requiring Declarant's Consent.** 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 Supplementary Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

### **ARTICLE III ASSOCIATION**

A Corporation named Drovers Road Association, Inc., has been formed pursuant to the rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina as an association of the Owners of Lots in Drovers Road Preserve (the "Association"). Its purposes are to own, manage, maintain, and operate the Common Areas, Maintenance Areas and facilities located upon those Areas; to enforce the restrictions contained herein; and to make and enforce rules and regulations governing the use of the Common Areas and the Owners' use and occupation of Lots, all as set forth herein.

### **ARTICLE IV MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Membership in the Association.** Each and every Owner of a Lot in Drovers Road Preserve shall automatically become and be an Association Member upon the first conveyance by Declarant to an Owner of a Lot within the Property. In addition, for so long as Declarant owns

any part of the Property, Declarant shall be an Association Member. The Bylaws shall control with respect to the determination of the proper exercise of voting rights with respect to a Lot owned by two (2) or more Persons.

**Section 2. Classes of Voting Association Members.** The Association shall have two classes of voting Members:

a. Class A. Class A Members shall be all those Owners with the exception of the Declarant, and the Declarant may become a Class A member after the Turnover Date as defined below. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the required ownership interest. When more than one person or entity holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot and no fractional vote may be cast with respect to any Lot.

b. Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to forty-five (45) votes for each Lot in which it holds the required ownership interest. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs first:

(1) The date on which the Declarant no longer owns any part of the Property;

(2) The date Declarant shall elect, in its sole discretion, that its Class B membership cease and be converted to Class A membership (which election may be made, if at all, upon Declarant giving written notice of the election to the Association Board); or

(3) December 31, 2015.

The earlier to occur of 1, 2, or 3 above shall herein be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class A Association Member.

c. Notwithstanding the above, the provisions contained in Article VI or otherwise providing for the election of the Board by the Declarant or any other right reserved to the Declarant shall control.

**Section 3. Voting, Quorum and Notice Requirements for the Association.** Except as may be otherwise specifically set forth in this Declaration or in the Articles or Bylaws, the vote of a majority of all votes entitled to be cast by all classes of the Association Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Association Members. The number of votes present at a meeting of the Association Members that is properly called and that will constitute a quorum shall be as set forth in the Bylaws. Notice requirements for all actions to be taken by the Association Members shall be as set forth herein or in the Bylaws. Notwithstanding the above, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Association Members shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any

governmental agency which has regulatory or judicial authority over the Property or any part thereof; or (2) assert a claim against or sue Declarant.

## **ARTICLE V ASSOCIATION ASSESSMENTS**

**Section 1. Covenant for Assessments.** Declarant, for each Lot owned by it after the Turnover Date, and each Owner of any Lot other than Declarant, by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree to pay to the Association:

- a. annual assessments or charges, such assessments to be fixed, established and collected from time to time as herein provided;
- b. special assessments for capital improvements and other purposes, such assessments to be fixed, established and collected from time to time as herein provided; and
- c. special individual assessments levied against individual Owners, as may be fixed, established and collected from time to time as herein provided.

The assessments described above (the "Assessments") together with interest thereon, late charges, attorneys' fees, court costs and other costs of collection thereof, as herein provided shall be a charge on the land and shall be a continuing lien upon each Lot, against which each such Assessment is made and shall also be the personal obligation of the Owner, at the time when the Assessment fell due, of the Lot, against which such Assessment is made. No Owner may exempt himself or herself from liability for such Assessment or waive or otherwise escape liability for the Assessments by non-use of the Common Area or abandonment of his or her property. The personal obligation to pay any such Assessment, together with interest thereon, attorneys' fees, late charges, court costs and other costs of collection thereof, as herein provided, shall pass to the successors in title of such Owner whether or not expressly assumed in writing by such successors; provided however, that such personal obligation to pay Assessments and other costs and charges shall not pass to mortgagees or trustees under mortgages of such Owner who succeed to the title of such Owner.

**Section 2. Purpose of Association Assessments.** The assessments levied by the Association shall be used for the purposes of the carrying out of the rights and powers of the Association pursuant to the terms and provisions hereof and promoting the enjoyment and welfare of the Property and, in particular, but without limitation, for the following:

- a. Maintenance of the Roadways, unless the Association offers to dedicate the Roadways and they are accepted for maintenance by a public authority;
- b. Maintenance of any other Common Areas to the extent repair and maintenance thereof shall not have been delegated to or required of another entity having jurisdiction thereover;

- c. Payment of all ad valorem taxes levied against the Common Areas and any other property owned by the Association;
- d. Payment of all premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;
- e. Payment of all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws, including all costs and expenses of the Design Review Committee not paid by the collection of fees by the Design Review Committee pursuant to Article X, Section 10;
- f. Carrying out the powers and duties of the Board, as more particularly described in Article VI hereof;
- g. Carrying out all other purposes and duties of the Association and the Design Review Committee as stated in the Articles, the Bylaws and in this Declaration;
- h. Paying for the cost of rubbish removal services, if any, provided to the Lots.

**Section 3. Payment of Annual Assessments; Due Dates.** Each Owner of a Lot shall pay to the Association the annual assessments levied by the Association (the "Annual Assessments") as hereinafter set forth.

- a. The Annual Assessment provided for herein as to any Lot shall commence as of the date of the conveyance by Declarant to an Owner other than Declarant of such Lot. The Annual Assessment for the first year in which a Lot is subject thereto shall be prorated based upon the number of days remaining in the calendar year from the date of such conveyance.
- b. Subject to the provisions of (a) above, the Annual Assessments as to each Lot shall be due and payable on January 1 of each calendar year. Provided that the Board, without the approval of any Association Member or Owner, may provide that the Annual Assessments be paid in installments due other than annually, and thereafter the Annual Assessments shall be paid in such manner and on such dates as may be fixed by the Board, in its sole discretion.

**Section 4. Amount of Annual Assessments.**

- a. It shall be the duty of the Board annually to prepare a budget (the "Annual Budget") covering the estimated costs of operating the Association during the coming year, taking into consideration, among other things, the then current development and/or maintenance costs to be borne by the Association, estimated increases in development and/or maintenance costs and the future needs of the Association (which may include a reasonable contingency fund).
- b. The initial Annual Budget has been set by Declarant and, based upon such Annual Budget, the Annual Assessments until December 31, 2004, shall be \$250.00 per Lot owned by any Owner other than Declarant. The Annual Assessments for each and every calendar year thereafter shall be set by the Board in accordance with (c) below.

c. The Annual Assessment to be levied on each Lot for a calendar year shall be in an amount as set by the Board in accordance 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 by a maximum amount equal to ten percent (10%) of the previous year's Annual Assessment.

(ii) If the Annual Assessment to be levied against each Lot is not increased by the maximum amount permitted under the terms of this Section 4(c), the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessment to be levied against each Lot may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board, without a vote of the Association Members. Provided, however, that after the Turnover Date the Annual Assessment to be levied against each Lot may be increased without limitation if such increase is approved by a vote of no less than a majority of all votes entitled to be cast by Association Members, taken at a duly held meeting of such Association Members in accordance with the Bylaws.

(iii) For each calendar year after the Turnover Date, within thirty (30) days of the adoption of any proposed Annual Budget, the Board shall provide all Association Members with a summary of the Annual Budget and notice of a meeting to consider ratification of the Annual Budget. The notice shall be sent not less than ten (10) days nor more than sixty (60) days before the date of such meeting and shall include a statement that the Annual Budget may be ratified without a quorum. The Annual Budget is ratified unless at that meeting a majority of Association Members rejects the Annual Budget. There is no quorum requirement for the meeting. If the Annual Budget is rejected, the periodic budget last ratified by the Association Members shall be continued until such time as the Association Members ratify a subsequent budget proposed by the Board. The Board shall set the amount of the Annual Assessment based on the Annual Budget.

d. The Board shall fix the amount of the Annual Assessment as to each Lot for any calendar year and shall send written notice of the amount of and due date of each installment of such Annual Assessment to each Owner at least thirty (30) days prior to January 1 of such calendar year.

e. Should any Lot be conveyed by Declarant during a calendar year beginning prior to the Turnover Date, then the purchaser of such Lot shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing occurs on such Lot, prorated based upon the number of days remaining in such installment period. Should any Lot be conveyed by Declarant during a calendar year beginning after the Turnover Date or be conveyed by any Owner other than Declarant during any calendar year, then the Annual Assessment applicable to such Lot shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

f. Declarant shall have the discretionary authority to reduce the Annual Assessment on any Lot owned by an Approved Builder on which no structure has been completed until such time as the Approved Builder sells or otherwise transfers ownership of its Lot.

**Section 5. Payments by Declarant in Lieu of Annual Assessments.** Notwithstanding the provisions of this Article V, for calendar years beginning prior to the Turnover Date, in lieu of the payment of Annual Assessments, Declarant shall be responsible for paying for each such calendar year that portion of the annual expenses of the Association (but not including any reserves) which exceeds the total amount of the Annual Assessments paid by the Owners other than Declarant, if any. For calendar years beginning after the Turnover Date, Declarant shall be responsible for paying Annual Assessments in the same manner as any other Owner of a Lot located in Drovers Road Preserve, as more particularly described in this Article V.

**Section 6. Special Assessments.** In addition to the Annual Assessments described in Sections 3 and 4 above, the Board, without a vote of the Association Members, may levy in any assessment year or years a special assessment or assessments ("Special Assessments") for the purpose of defraying, in whole or in part, any costs incurred by the Association which are not paid for out of funds on hand in the Association or out of the Annual Assessments collected by the Association. Such costs may include, but shall not be limited to, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and the Roadways and utilities serving the Property. Notwithstanding the above, all fees and costs incurred by the Association in exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such a Special Assessment must be approved by a vote of the Association Members entitled to cast no less than two-thirds (2/3) of all votes entitled to be cast by the Association Members. Special Assessments shall be assessed pursuant to this Section 6 against the Owners of Lots. Provided, however, that Declarant shall not be obligated to pay any Special Assessments on Lots owned by Declarant except with Declarant's prior written approval. The due date of any Special Assessment levied pursuant to this Section 6 shall be fixed in the Board resolution authorizing such Special Assessment. Upon the establishment of a Special Assessment, the Board shall send written notice of the amount and due date of such Special Assessment to each Owner at least thirty (30) days prior to the date such Special Assessment is due.

**Section 7. Special Individual Assessments.** The Board may levy special assessments against individual Owners ("Special Individual Assessments") (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas including the Roadways and other improvements occasioned by the acts of Owner(s) or the Owner's Approved Builder, any subcontractor or any other agent and not the result of ordinary wear and tear or (ii) for payment of fines, penalties or other charges imposed against an individual or separate Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated hereunder, including without limitation, penalties assessed by the Design Review Committee pursuant to the Design Guidelines, reimbursement to the Design Review Committee for any sums it expends on an Owner's behalf pursuant to the Design Guidelines, and reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article IX. Provided, however, that Declarant shall not be obligated to pay any Special Individual Assessment except with

Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 7 shall be fixed in the Board resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

**Section 8. Omission of Association.** The omission of the Board, before the expiration of any year, to fix the Annual Assessments hereunder for that or the next year, shall not be deemed to waive or modify in any respect any of the provisions of this Declaration, or to release any Owner from the obligation to pay the assessment due from such Owner for that or any subsequent year, and the Annual Assessments fixed for the preceding year shall continue until new Annual Assessments are fixed.

**Section 9. Collection Agent.** At the option of the Board, a representative of the Association designated by the Board may act as collection agent for any and all Assessments (whether Annual Assessments, Special Assessments or Special Individual Assessments) imposed by the Association against the Owners.

**Section 10. Owner's Personal Obligation for Payment of Assessments.** The Annual Assessments, Special Assessments, and Special Individual Assessments provided for herein shall be the personal and individual debt of the Owners (as of the due date of the applicable Assessment payment) of the Lots to which such Assessments related. No Owner may exempt himself or herself from liability for such Assessments by non-use of his or her property or the Common Area or otherwise. In the event of default in the payment of any such Assessment, the defaulting Owner shall be obligated to pay interest at the rate of eighteen percent (18%) per annum or the highest rate permitted by the law, whichever is less, on the amount of the Assessment from the due date thereof until the date such Assessment and interest is paid, together with all costs and expenses of collection, including reasonable attorneys' fees. In addition, the delinquent Owner shall also pay such late charges as may have been theretofore established by the Board to defray the costs arising because of late payment.

**Section 11. Assessment Lien and Foreclosure.** All sums assessed in the manner provided in this Article V but unpaid shall, together with interest and late charges as provided in this Article V and the cost of collection, including reasonable attorneys' fees, become a continuing lien and charge on the portion of the Property and improvements thereon owned by the defaulting Owner as of the Assessment due date and shall bind such property and improvements then in the hands of the defaulting Owner, his, her or its heirs, devisees, personal representatives, successors, and assigns. The aforesaid lien shall be superior to all other liens and charges against such property and the improvements thereon, including the lien of any mortgage. Provided, however, that the Board shall have the power to subordinate the aforesaid assessment lien to the lien of any mortgage or to any other lien, and such power shall be entirely discretionary with the Board. To evidence the aforesaid assessment lien, the Board may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the property and improvements thereon covered by such lien and a description of the property. Such notice shall be signed by one of the officers of the Association and shall be filed of record in the Office of the Clerk of Superior Court of Buncombe County, North Carolina. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by

the foreclosure of the defaulting Owner's property and improvements thereon by the Association in like manner as a deed of trust with power of sale on real property under Article 2A of Chapter 45 of the North Carolina General Statutes subsequent to the recording of a notice of assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the assessments and/or for foreclosure of the aforesaid lien judicially or may seek any other available remedy or relief. In any foreclosure proceeding, whether judicial or non-judicial, or in any lawsuit, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on the Owner's property and improvements at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

**Section 12. Reserves.** The Annual Assessments shall, as determined by the Board, include reasonable amounts as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Areas. All amounts collected as reserves, whether pursuant to this Section 12 or otherwise, shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Association. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments.

**Section 13. Certificate Regarding Assessments.** The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. If the certificate is requested by an Owner of a Lot, the Association shall also state on the certificate the amount of unpaid Assessments and other charges against the Lot and shall issue the certificate within ten (10) business days of the date the Association receives the request for the certificate. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

## **ARTICLE VI THE BOARD**

**Section 1. Members of the Board.** So long as Declarant owns any Lot or other portion of the Property, the members of the Board shall be appointed by Declarant. The number of members of the Board shall be as set forth in the Bylaws. At such time as Declarant owns no Lot or other portion of the Property, then the members of the Board shall thereafter be elected by a vote of the Association Members in accordance with the Bylaws. Provided, however, that Declarant may choose, in its sole discretion, to relinquish its right to appoint the members of the Board prior to the time that it owns no portion of the Property, whereupon the Association Members shall thereafter elect the members of the Board in accordance with the Bylaws.

**Section 2. Duties of the Board.** The Board, for the mutual benefit of the Association Members and the Owners, shall have the following specific duties:

- a. To maintain or cause to be maintained the Common Areas including, but not limited to, planting, mowing, pruning, fertilizing, preservation, and replacement of the landscaping and the upkeep and maintenance of greenways, trails, pathways, foot bridges, walks, signage, lighting, irrigation, and other improvements in the Common Areas;

- b. Until accepted for maintenance by a governmental unit to own and maintain or cause to be maintained the Roadways, storm drainage systems and any swales, buffers and medians of the Roadways to the standard of maintenance (if one is ascertainable) which is required by the applicable governmental unit before it would accept such Roadways and systems for maintenance;
- c. To make available to each Association Member within sixty (60) days after the end of each year an annual report of the Association and, upon resolution adopted by the Board or upon the written request of the Association Members holding at least three-fourths (3/4th) of the eligible votes of the Association at such time, to have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Association Member within thirty (30) days after completion;
- d. To cause to be kept a complete record of all its acts and corporate affairs;
- e. To supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- f. As more fully provided in this Declaration:
  - (1) To fix the amount of the Annual Assessments, Special Assessments, and Special Individual Assessments;
  - (2) To send written notice of the Annual Assessments and Special Assessments to each Owner, and Special Individual Assessments to affected Owners;
- g. To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. (A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.);
- h. To procure and maintain adequate liability insurance covering the Association and the directors and officers thereof and adequate hazard insurance on the property owned by the Association;
- i. Subject to Declarant's right to appoint the Design Review Committee, to appoint the Design Review Committee, all as more particularly provided in Article X of this Declaration; and
- j. To enter into agreements or contracts for rubbish removal services to be provided to Lots within the Property, and to pay for such agreements or contracts.

**Section 3. Powers of the Board.** The Board, for the mutual benefit of the Association Members and the Owners, shall have the following specific powers and rights (without limitation of other powers and rights such Board may have):

- a. To enter into agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Areas or portions thereof;
- b. To make reasonable rules and regulations for the use and operation of the Common Areas and Maintenance Areas, and to amend them from time to time;
- c. To enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Areas, Maintenance Areas and/or the Association;
- d. To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas, Maintenance Areas and/or the Association;
- e. Subject to the affirmative vote of no less than eighty percent (80%) of all votes entitled to be cast by Association Members, which vote is taken at a duly held meeting of the Association Members at which quorum is present, all in accordance with the Bylaws, to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Association Members see fit; provided, however, that until such time as Declarant no longer owns any portion of the Property, the Board may not mortgage any portion of the Common Area without the prior written approval of Declarant;
- f. To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- g. Subject to the provisions of Article IV, Section 3 hereof, to sue or defend in any court of law in behalf of the Association;
- h. To levy assessments in accordance with the provisions of Article V hereof;
- i. To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property of the Association and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;
- j. To exercise for the Association all powers, duties and authority vested in or delegated by this Declaration, the Bylaws, or the Articles to the Association and not reserved to the Association Members or Declarant by other provisions of this Declaration, the Bylaws or the Articles;
- k. To declare the office of a member of the Board to be vacant in the event such member shall be absent, without the consent of the Board, from three (3) consecutive regular meetings of the Board;
- l. To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;

- m. To enter into agreements or contracts with builders regarding the construction of Improvements on Lots and to require that all Owners building Improvements on Lots use only a builder approved by the Board or Declarant, as more specifically provided in Article X, Section 10, and the Design Guidelines;
- n. To retain the services of legal and accounting firms;
- o. As more fully provided in this Declaration, to foreclose the lien against any property for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;
- p. To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;
- q. To the extent permitted hereby, to enforce the provisions of this Declaration and any Additional or Supplementary Declaration and any rules made hereunder or thereunder and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or rules and/or by Special Individual Assessments against any Owner for violation of such provisions or rules pursuant to the provisions of Articles V and XII hereof;
- r. To contract with any third party or any Association Member (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association;
- s. To employ or retain the services of professional architects or other Persons to serve on or advise the Design Review Committee;
- t. To grant all necessary easements and rights-of-way over and across the Common Areas when in its sole discretion it deems such an action to be necessary and appropriate, including but not limited to easements for the installation and maintenance of electrical, telephone, cablevision, water, sewerage and other utilities and drainage facilities and any easement where consistent with the general use of such areas; provided, however, that until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;
- u. Subject to the affirmative vote of no less than eighty percent (80%) of all votes entitled to be cast by Association Members, which vote is taken at a duly held meeting of the Association Members at which quorum is present, all in accordance with the Bylaws, to convey fee simple title to all or any part of the Common Area; provided, however, that until such time as Declarant no longer owns any portion of the Property, the Board may not convey any portion of the Common Area without the prior written approval of Declarant;
- v. To contract with any third party, including any other property owners' association, for the sharing of costs of maintaining Common Areas and Maintenance Areas; and

w. To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder or for the operational protection of the Association.

Notwithstanding anything contained herein to the contrary, none of the above-described rights and powers of the Board shall be obligatory on the part of the Board, and the failure or refusal by the Board to implement any such rights and powers shall not constitute a breach or default by the Board of any duties or obligations arising hereunder or otherwise owing to the Association Members.

**Section 4. Liability Limitations.** Neither Declarant, nor Drovers Road Partners, LLC, nor any Association Member, nor the Board, nor the Association, nor any officers, directors, members, managers, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor Drovers Road Partners, LLC, nor the Association, nor their directors, officers, members, managers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

**Section 5. Reserve Funds.** The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Association. The aggregate deposits in such reserve funds shall not exceed an amount as may be reasonably determined by the Board to be necessary.

## **ARTICLE VII PROPERTY RIGHTS IN THE COMMON AREAS**

**Section 1. Conservation Easement.** All or a portion of the Common Area is subject to the Conservation Easement recorded in Book 3498 at Page 612 in the Office of the Register of Deeds for Buncombe County, North Carolina. The use and maintenance of the Common Area subject to the Conservation Easement shall be in accordance with the provisions of the Conservation Easement.

**Section 2. Owners' Easements of Enjoyment.** Subject to the provisions of Section 1 and Section 6, every Owner, and each individual who resides with such Owner and guests of such Owner, shall have a right and easement of use and enjoyment in and to the Common Areas and such

easement shall be appurtenant to and shall pass with the title to such Owner's Lot; PROVIDED, HOWEVER, such easement(s) shall not give such person the right to make alterations, additions or improvements to any part of any Common Area.

**Section 3. Owners' Easements for Ingress and Egress.** To the extent that the Roadways have not been dedicated to the use and enjoyment of the public sufficient to provide access to a Lot or portion of the Property, every Lot shall be conveyed with (and each Owner is hereby conveyed) a perpetual, non-exclusive right to use any Roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot.

**Section 4. Title to the Common Area.**

a. Declarant or Drovers Road Partners, LLC, shall dedicate and convey (by deed without warranty except as provided below) the fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default, restrictive covenants and utility easements, and any other encumbrances and mineral interests outstanding and of record. The conveyance of any portion of the Common Area shall occur within thirty (30) days after the Declarant no longer owns any part of the Property. Common Area may be conveyed by Declarant or Drovers Road Partners, LLC, to the Association in whole or in part from time to time. Provided, that if Declarant shall not own the fee interest in an area outside of the Property but Declarant has the right to include such area in the Common Area of the Association by granting an easement, then the conveyance contemplated by this Section 4(a) may be by an easement.

b. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas, including the Roadways, shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public; the Roadways may, in the sole discretion of the Association, be dedicated to the use and enjoyment of the public and offered to an appropriate public body for maintenance by an appropriate public body.

**Section 5. Control of Common Areas.** The Board shall have sole and exclusive control and authority over the usage of, and guidelines with respect to, the Common Areas, within the limitations imposed by the Conservation Easement. Provided, however, that the Board, in its sole discretion, may by resolution or guideline permit an association, the property under the jurisdiction of which shall include or be adjacent to a Common Area, to either (a) maintain or improve, in whole or in part, the Common Area or (b) promulgate regulations with respect to its Members' usage of the Common Area. Provided further, that any such authority delegated by the Association may be revoked, rescinded, or otherwise terminated at any time by the Association. Provided further, that the Board shall not have the right or authority to limit in any manner the use by persons granted the right to use the Common Area pursuant to Article II, Section 5, unless the same limitations shall apply to all Association Members.

**Section 6. Extent of Owners' Easements.** The rights and easements of enjoyment of the Common Areas created hereby shall be subject to the following:

- a. The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Area (including limiting the number of guests of Owners who may use such Common Area) subject to limitations established by the Conservation Easement, Declarant or the Association, as applicable, on such right to impose regulations;
- b. Subject to the affirmative vote of no less than eighty percent (80%) of all votes entitled to be cast by Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws, the right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities thereon (in accordance with the requirements of the Conservation Easement) and in aid thereof to mortgage the Common Area, provided the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners hereunder with regard to the Common Area, and further provided that until such time as Declarant no longer owns any portion of the Property, the Association may not mortgage any portion of the Common Area without the prior written approval of Declarant;
- c. The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and
- d. The right of the Board to grant easements upon, over, under and across all or any part of the Common Area in accordance with the provisions of the Conservation Easement when in its sole discretion it deems such an action to be necessary and appropriate; provided, however, that until such time as Declarant no longer owns any portion of the Property, the Board may not grant easements upon, over, under and across any part of the Common Area without the prior written approval of Declarant.

**Section 7. Roadways.** Pursuant to the provisions of this Declaration, the Roadways will be maintained by the Association until the time that the Roadways are dedicated to and accepted for maintenance by an appropriate governmental unit. Until dedicated to and accepted for maintenance by an appropriate governmental unit, the Roadways shall be maintained so that they are passable in all ordinary weather conditions (excluding hazardous weather conditions such as blizzards or ice storms) and to the standard of maintenance as determined by the Board. Such maintenance shall include, but shall not be limited to, repair of potholes, repair of damage caused by movement of construction equipment or materials and paying the costs of all bonds, bond premiums, service agreements in connection therewith and, if the Association elects to dedicate the Roadways, performance of all governmental requirements in connection with acceptance of all Roadways for maintenance by an appropriate governmental unit, including without limitation sedimentation, storm drainage and erosion requirements.

## **ARTICLE VIII INSURANCE; REPAIR AND RESTORATION; CONDEMNATION**

**Section 1. Insurance.** The Board shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below unless such insurance shall not be available at a competitive rate. If the insurance described in this Section 1 is not reasonably available, the

Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

a. **Fire and Casualty.** All improvements and all fixtures and personal property included in the Common Areas and Maintenance Areas and all personal property and supplies belonging to the Association shall be insured in an amount equal to the current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance company providing coverage. The Board shall, at least annually, review the insurance coverage required herein and determine the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water damage, vandalism and malicious damage and all perils covered by a standard "all risk" endorsement. In addition to the provisions and endorsements set forth in Sections 3 and 4, the fire and casualty insurance described herein shall contain the following provisions:

- (i) standard "Agreed Amount" and "Inflation Guard" endorsements;
- (ii) construction code endorsements if the Common Area becomes subject to a construction code provision which would require changes to undamaged portions of any building thereby imposing significant costs in the event of partial destruction of such building by an insured peril;
- (iii) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and
- (iv) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The fire and casualty insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association, the Owners or Mortgagees; (2) loss payments are contingent upon action by the carriers, directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

b. **Public Liability.** The Board shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use as Drovers Road Preserve covering each member of the Board, the managing agent, if any, and each Owner with respect to his or her liability arising out of the ownership, maintenance, or repair of the Common Areas and Maintenance Areas, or from service on the Board; provided, however, that in no event shall the amounts of such public liability insurance ever be less than

\$2,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof, nor shall the amount of such officer's and director's insurance be less than \$2,000,000 unless such coverage is determined by the Board to be unreasonably expensive. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board shall review such limits annually. Until the first meeting of the Board following the initial meeting of the Association Members, such public liability insurance shall be in amounts of not less than \$2,000,000 per occurrence for claims for bodily injury and property damage and such officer's and director's liability insurance shall be in amounts not less than \$2,000,000.

c. **Fidelity Coverage.** The Board shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

d. **Other.** Such other insurance coverages, including flood insurance and worker's compensation, as the Board shall determine from time to time desirable.

**Section 2. Premium Expense.** Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a common expense to be collected from the Members pursuant to Article V hereof.

**Section 3. Special Endorsements.** The Board shall make diligent efforts to secure insurance policies that will provide for the following:

- a. recognition of any insurance trust agreement entered into by the Association;
- b. coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured, any insurance trustee and all Mortgagees; and
- c. coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner or any Mortgagee.

**Section 4. General Guidelines.** All insurance policies purchased by the Board shall be with a company or companies approved to do business in the State of North Carolina and holding a rating of not less than "A-" by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing

provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Provided however, that to the extent any Owner owns an insurable interest in Common Areas, all insurance policies purchased by the Board shall provide that each Owner shall be named as an insured to the extent of his or her insurable interest in the Common Areas and if at the time of a loss under the policy, there is other insurance in the name of a Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

**Section 5. Insurance Proceeds.** Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance carried by it to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid the Association remaining after satisfactory completion of repair and replacement shall be paid to any Owner or Mortgagee who has an insurable interest and any remaining balance shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area and/or Maintenance Areas.

**Section 6. Insufficient Proceeds.** If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or to replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

**Section 7. Owners' Personal Property.** The Association or the Declarant shall not be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his or her family, guests or invitees, located on or used at the Common Areas. Further, neither the Association nor the Declarant shall be responsible or liable for any damage or loss to or of any personal property of any Owner, his or her family, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

**Section 8. No Obligation to Insure Owners' Property.** By virtue of taking title to a Lot, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or any dwelling, improvement or other property located thereon.

**Section 9. Security.** The Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures and maintain or support certain other activities within Drovers Road Preserve designed to make Drovers Road Preserve safer than it might otherwise be. Provided, however, that should the Association provide, maintain, or support any such measures or activities, then neither the Association, Board, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within Drovers Road Preserve, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason or failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot or dwelling and their tenants, guests and invitees acknowledge and understand that neither the Association, Board, Declarant nor any successor of Declarant are insurers, and each

such Owner and Occupant of a Lot or dwelling and their tenants, guests and invitees hereby assume all risks for loss or damage to persons, property or contents belonging to any such persons.

**Section 10. Condemnation.** Whenever all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for and on account of such taking shall be paid to the Association. The Association, acting through the Board, shall have the right to negotiate and litigate the issues with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his or her acceptance of a deed to a Lot hereby appoints the Association as his or her attorney-in-fact to negotiate, litigate or settle on his or her behalf all claims arising from the condemnation of the Common Area. All compensation and damages paid to the Association on account of such a taking shall be used to restore the Common Area, provided such restoration is possible, with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board, in its sole discretion. Nothing herein is to prevent Owners whose Lots or other property are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots or other property, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Common Area or Lots without such allocation, the award shall be divided between affected Owners and the Board, as their interests may appear, by the Board in its sole discretion. Provided, however, this Section 10 shall not apply to those portions of the Common Area which are not in the Property but are included in the Common Area by easement from the Declarant. As to those portions of the Common Area not located in the Property, neither the Association nor any Lot Owner shall have any interest in any condemnation award except to the extent that the award shall be specifically for improvements located on the Common Area Easement by the Association.

## **ARTICLE IX RESTRICTIONS**

By Additional Declarations, Declarant may impose and file in regard to various subdivisions, phases, and/or sections of the Property, controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens relating to, without limitation, types of permissible uses, types of improvements, general development and improvement standards and other matters. Without limiting the provisions that may be included in such Additional Declarations, the Property and each Lot situated therein and Common Areas therein shall be occupied and/or used subject to the following:

**Section 1. Restricted Actions on Common Areas.** No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Areas. There shall be no obstruction of the Common Areas, nor shall anything be kept or stored in the Common Areas, nor shall anything be altered or constructed or planted in or removed from the Common Areas, without the prior written consent of the Association. Each Lot Owner shall be liable to the Association and/or Declarant for any damage to any Common Area caused by the negligence or willful misconduct of the Lot Owner or Occupant or his or her family, tenants, guests, agents, employees,

or invitees. Provided, however, that the provisions of this Section 1 shall not apply to Declarant in connection with Declarant's construction activities on the Property.

**Section 2. Restricted Actions by Lot Owners and on Lots.**

a. **Compliance.** Each Lot Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances) and other governmental rules and restrictions in regard to the Lot(s), construction of homes on the Lot(s), and the use of public facilities (roads, utilities and other facilities or properties) within the Property.

b. **Residential Use.** With the exception of community facilities or other uses developed by Declarant or the Association for use by the Association, all Lots shall be used, improved, and devoted exclusively to residential use. No buildings shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling with approved ancillary structures such as garages, guest houses, or other improvements that are for the benefit of the principal single-family dwelling. All approved Improvements shall be built within the areas and to a standard specified by the Board of Directors and in the Design Guidelines. All approved ancillary structures shall be built within the areas and to a standard specified by the Board of Directors and in the Design Guidelines and in accordance with the restrictions for ancillary structures set forth in the Design Guidelines. No rental of less than the entire single-family dwelling or for less than six months is permitted. Separate rental of an ancillary structure to a single family is allowed for residential purposes as follows: (i) if the rental is on a daily or weekend basis, the ancillary structure may not be rented for more than fourteen (14) days in any calendar year and (ii) if the rental is on a weekly or monthly basis, the rental period shall be at least six months. For purposes of this Section, the term “rental” includes any sublease or assignment of a lease and all minimum requirements for a rental apply to any such sublease or assignment.

c. **Design and Location of Improvements.** The Design Guidelines set out the height and minimum and maximum size requirements for the principal single-family dwelling, architectural style requirements, site disturbance zones and Lot setback lines. It is Declarant’s intention to minimize the disruption of the Property and in furtherance of this goal, the Design Guidelines show the Zero Disturbance Zone (no removal of vegetation), Limited Disturbance Zone (removal of trees with Design Review Committee approval), Construction Disturbance Zone (clearing as required for construction), Driveway Disturbance Zone, and Landscape Zone. In addition, all Improvements shall be located no closer to the Lot boundary line than the front, rear and side setback lines shown on the Plat and set forth below. The Declarant has considered the size, topography and location of each Lot in determining the setback lines. The unique setback lines, as measured from the Lot boundary line, for each Lot are shown on the Plat and set forth below:

<u>Lot Number</u>	<u>Front Setback Line</u>	<u>Rear Setback Line</u>	<u>Side Setback Line</u>
1	50 feet	20 feet	20 feet
2	40 feet	20 feet	40 feet
3	50 feet	20 feet	20 feet
4	60 feet	40 feet	20 feet
5	50 feet	40 feet	20 feet

<u>Lot Number</u>	<u>Front Setback Line</u>	<u>Rear Setback Line</u>	<u>Side Setback Line</u>
6	60 feet	20 feet	60 feet
7	60 feet	20 feet	60 feet
8	100 feet	40 feet	40 feet
9	50 feet	110 feet	60 feet
10	130 feet	100 feet	20 feet
11	170 feet	150 feet	20 feet
12	160 feet	160 feet	20 feet
13	60 feet	160 feet	20 feet
14	50 feet	150 feet	20 feet
15	60 feet	110 feet	25 feet
16	40 feet	20 feet	50 feet
17	50 feet	50 feet	50 feet
18	250 feet	200 feet	50 feet
19	60 feet	20 feet	100 feet
20	60 feet	20 feet	100 feet
21	60 feet	100 feet	100 feet
22	100 feet	100 feet	60 feet
23	40 feet	20 feet	20 feet

d. **Restriction on Further Subdivision.** With the exception of Lots owned by Declarant or Lots owned by others for which the Declarant has given its express written consent for subdivision, no Lot may be subdivided by sale or otherwise as to reduce the total area of the Lot as shown on the recorded plat of the subdivision. Where a residence has been erected on a plot consisting of two or more Lots and the residence and improvements (including ancillary structures) are located on both or all Lots, the Lots shall thereafter be considered for all purposes as one Lot and the side setback lines shall be measured from the outside lines of the combined Lot. Notwithstanding the foregoing, the Declarant reserves the absolute right to replat, divide, or reconfigure Lots belonging to the Declarant in order to facilitate the overall development objectives of Drovers Road Preserve, including, where deemed appropriate, the division of Lots into two or more lots for residential use.

e. **Waste.** No Lot shall be used or maintained as a dumping ground for rubbish, grass clippings, leaves, landscape trimmings, trash or garbage, and no such materials shall be kept on any part of a Lot except on a temporary basis or for composting in sanitary containers which containers shall be screened from public view.

f. **Signs.** No sign of any kind shall be displayed on any Lot except for sign(s) provided by the Declarant, or approved in writing by the Design Review Committee. The Design Review Committee shall have the power but not the obligation to adopt and issue from time to time sign guidelines, as part of the Design Guidelines, to assist the Design Review Committee in reviewing and approving proposed signs to be erected on the Property. Provided, however, that the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property or portions thereof, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas, or to restrict or prohibit the Association from posting signs in the Common Areas

designed to aid in vehicular or pedestrian access and control and containing related information.

g. **Nuisances.** It shall be the responsibility of each Owner and Occupant of a Lot to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No Lot shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupancy of surrounding property. No noxious or offensive activity shall be carried on any Lot, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any portion of the Property. There shall not be maintained on any Lot any plants or animals or device or thing of any sort whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

h. **Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot other than in enclosed garages.

i. **Rules of the Board.** All Owners and Occupants of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner or Occupant determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the Declarant for all damages and costs, including attorneys' fees.

j. **New Construction.** Construction of new buildings only shall be permitted on Lots, it being the intent of this covenant to prohibit the moving of any existing new or used building onto a Lot. Provided, however, that nothing herein shall prohibit Declarant from moving an existing new or used building or trailer onto a Lot to be used for storage or for use as construction or sales offices.

k. **Diligent Construction.** All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other improvements shall be permitted to exist of any Lot, except during such reasonable time period as is necessary for completion. All construction must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by the Design Review Committee. Any damage to the streets, curbs or any part of any Common Area, or any utility system caused by an Owner or Owner's builder or his or her subcontractors, suppliers, or vendors shall be repaired by such

responsible Owner. The payment of any fees required in this Declaration, the Design Guidelines, or the Schedule of Fees shall not release the responsible Owner from the obligation in this section to repair damage to the streets, curbs, or any part of any Common Area. Any builder of Improvements and his or her subcontractors on any portion of the Property shall keep such portion of the Property free of unsightly construction debris in accordance with the construction rules established by the Design Review Committee (or, in the absence of such rules, in accordance with standard construction practices), and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property to pay for the cost of repairing any damage to streets, curbs or any part of any Roadway, Common Area, or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in Drivers Road Preserve and to pay for the costs of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or his or her subcontractors during the construction of Improvements.

**1. Parking.**

- (1) No vehicles, trucks, vans, cars, trailers, construction equipment, etc., may be parked overnight on any street within the Property.
- (2) Commercial-use vehicles and trucks not involved with construction activity on a Lot and with carrying capacity and/or size designation greater than or equal to three-fourths (3/4th) ton shall not be permitted to park overnight on the streets, driveways or otherwise within the Property unless stored in an enclosed garage. No vehicle of any size which transports inflammatory or explosive cargo may be kept on the Property at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on any Lot for more than thirty (30) days unless stored in an enclosed garage.
- (3) The Owner of each Lot will be responsible for providing on each Lot sufficient paved parking area for all vehicles normally parked and/or situated on or in regard to such lot.
- (4) No recreational vehicles or related equipment, including any boat, houseboat, trailer, motor home or "camper" vehicle may be maintained, stored or kept on any portion of the Property except in enclosed garages or in an enclosure specifically approved for such maintenance or storage by the Design Review Committee.
- (5) All vehicles must be parked so as not to impede traffic or damage vegetation.
- (6) No construction office trailers may be placed, erected, or allowed to remain on any Lots during construction, except as approved in writing by the Design Review Committee. Provided, however, that nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used as construction or sales offices. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight on the

Property (including any Lot or street) only in accordance with such rules as may be established by the Design Review Committee.

m. **Governmental Requirements.** Nothing contained herein shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot or other part of the Property and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot or portion of the Property shall continue to be applicable and shall be complied with in regard to each Lot or portion of the Property.

n. **Occupants Bound.** All provisions of this Declaration, and any Additional Declaration, the Bylaws, and of any rules and regulations, use restrictions or Design Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

## **ARTICLE X DESIGN REVIEW AND CONTROL**

**Section 1. Preservation Objective.** In order to preserve the natural state of Drovers Road Preserve and to establish a long-term, unifying design for Drovers Road Preserve to assist in the preservation of the natural state, the Declarant or its designee shall review proposed Improvements and changes to Improvements and natural areas within Lots. In this review, the Declarant or its designee shall strive to attain the following objectives for Drovers Road Preserve:

- a. Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, or removal of trees and vegetation;
- b. Ensuring that the location and configuration of Improvements are visually harmonious with the terrain and vegetation of the Lot and the surrounding Lots and Improvements and does not tend to dominate unacceptably any area of Drovers Road Preserve;
- c. Ensuring that the architectural design of Improvements and their massing, materials and colors are harmonious with Drovers Road Preserve;
- d. Ensuring that plans for landscaping blend or co-exist harmoniously with the natural landscape; and
- e. Promoting sustainable building design and construction techniques that promote energy conservation and environmental quality considerations such as light pollution, air emissions and runoff water quality.

**Section 2. General.** Notwithstanding anything contained in this Declaration to the contrary, no Improvements (as defined in Section 5), including without limitation site preparation on any Lot, change in grade or slope of any Lot, or erection of buildings or exterior additions or alterations to any buildings situated upon any Lot, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot, shall be commenced, erected or

maintained on any Lot, subject to the provisions of Section 7 hereof, until: (a) the Design Review Committee (herein called the "Design Review Committee"), appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements and has given its written approval for commencement of construction; (b) the fees set forth in this Article X have been paid; and (c) the agreements set forth in this Article X have been executed. In addition to any standards established pursuant to this Declaration, Declarant may establish, by Additional Declarations, architectural and landscaping control standards, guidelines and restrictions in regard to various Subdivisions, phases or sections of the Property. The provisions of this Article X shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas.

The Board may delegate to the Design Review Committee any powers or authority reserved or granted to the Board under this Article X.

**Section 3. Composition of Design Review Committee.** So long as Declarant owns any Lot or other portion of the Property, the members of the Design Review Committee shall be appointed by Declarant. At such time as Declarant no longer owns any Lot or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the Design Review Committee, the members of the Design Review Committee shall thereafter be appointed annually by the Board. The Design Review Committee shall be composed of at least three (3) individuals, the exact number of members of the Design Review Committee to be designated from time to time by the body then having the authority to appoint such members (Declarant or the Board, as the case may be). The members of the Design Review Committee need not be Owners of property in Drovers Road Preserve. In the event of the death or resignation of any member of the Design Review Committee, the body then having the authority to appoint members to the Design Review Committee shall have full authority to designate and appoint a successor. Members of the Design Review Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the body then having the authority to appoint such members. Notwithstanding anything contained herein to the contrary, the Design Review Committee shall have the right, power and authority to employ and/or use the services of any architects, engineers or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Design Review Committee as described in this Article X.

#### **Section 4. Design Guidelines.**

a. The Design Review Committee shall, from time to time, publish and promulgate architectural, design and landscape guidelines. Such architectural, design and landscape guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended to guide Lot Owners and their home designers and builders and to assist the Design Review Committee in reviewing plans and specifications for Improvements. Such architectural, design and landscape guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications to the Design Review Committee and the fees to be imposed by the Design Review Committee, as more specifically described in Section 10 hereof, and the Approved Builders as more specifically described in Section 11 hereof. In any event, such architectural, design and landscape guidelines shall not be binding upon the Design Review Committee, may be revised and amended at any time by the Design Review Committee, in its sole discretion, and shall not

constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials submitted to the Design Review Committee for approval.

b. The architectural, design and landscape guidelines described in (a) above shall herein collectively be referred to as the "Design Guidelines." The Design Review Committee may publish and promulgate different Guidelines for different subdivisions, phases, sections or portions of the Property.

**Section 5. Definition of "Improvements."** The term "Improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot, including but not limited to the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes and clothes lines) storage sheds or areas, roofed structures, parking areas, fences, "invisible" pet fencing, pet "runs," lines and similar tethers or enclosures, walls, landscaping (including cutting of trees), hedges, mass plantings, poles, driveways, changes in grade or slope, site preparation, swimming pools, hot tubs, jacuzzis, tennis courts, treehouses, basketball goals, skateboard ramps, and other sports or play apparatus, signs, exterior illumination and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Design Review Committee, provided that such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Design Review Committee.

**Section 6. Enforcement.**

a. It is Declarant's intent that the Design Review provisions of this Declaration and any Additional Declarations are to permit control of the architectural design and landscaping and to establish quality standards for construction and construction activity on the Property and to help preserve values of Lots in Drovers Road Preserve. All Owners by purchasing property subject to this Declaration acknowledge that a violation of any such provisions could result in irreparable harm and damage to Owners of property in Drovers Road Preserve and Declarant, and to the values of their properties, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but no obligation) to enforce and/or to prevent any violation of the provisions contained in this Article X by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the Design Review Committee, the Board and any agent or member thereof, the right of entry and inspection upon any Lot or portion of the Property for the purpose of determination by the Design Review Committee or the Board whether there exists any construction of any Improvement which violates the terms of any approval by the Design Review Committee, the terms of the Design Guidelines, the terms of this Declaration or any Additional Declaration, or any amendments hereto or thereto.

b. As to nonconforming or unapproved Improvements, the Association may require any Lot Owner to restore such Owner's Lot or Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvement) if such Improvements were commenced or constructed in

violation of this Article X. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal and levy the amount of the cost thereof as a Special Individual Assessment against the Lot upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Design Guidelines, the Association shall be entitled to the recovery of court costs, attorneys' fees and expenses incurred by the Association and/or the Design Review Committee in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot upon which such Improvement was commenced or constructed.

**Section 7. Maintenance.** As set forth in Section 1 of Article XII of this Declaration, the maintenance of Lots and the exterior maintenance of dwellings and other Improvements constructed on Lots shall be the duty of the Owners of such Lots (except where specifically provided otherwise) and shall not normally be interfered with by the Association or the Design Review Committee. However, if any Owner shall fail to maintain any dwelling, Improvements or Lot, the Association or the Declarant shall have the right to enforce the maintenance obligation as set forth in Section 2 of Article XII of this Declaration.

**Section 8. Failure of the Design Review Committee to Act.** If the Design Review Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, and provided such submittal was a full and complete submittal, in accordance with the Design Guidelines, of all items that were to have been submitted to the Design Review Committee, it shall be conclusively presumed that the Design Review Committee has approved such conforming plans and specifications and other submittals, EXCEPT that the Design Review Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration or any Additional Declaration, and EXCEPT FURTHER, that the Design Review Committee shall not be deemed to have waived any of the requirements set forth in Sections 10, 11 and 12 below. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Design Review Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance. The Design Review Committee is authorized to request the submission of samples of proposed construction materials for the Committee's review and approval.

**Section 9. Variances.** Upon submission of a written request for same by Lot Owners which shall include all maps, drawings or other information required by the Design Review Committee, the Design Review Committee may, from time to time, in its sole discretion, permit Lot Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Design Review Committee has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Design Review Committee shall be liable to any

Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Lot Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Lot Owner shall not constitute a waiver of the Design Review Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration, against any other Lot Owner.

**Section 10. Fees Required by Design Review Committee.** The Design Review Committee is expressly authorized to collect a Road Impact Fee in an amount specified in the Schedule of Fees or the Design Guidelines as a condition to approval of all plans and related data, to ensure the restoration of all affected Roadways within Drivers Road Preserve to their condition immediately preceding the commencement of the work described in such plans and compliance with any requirements contained in this Declaration and the Design Guidelines. From time to time, the Board may raise or lower the Road Impact Fee by resolution, but such fee may not be waived.

The Board may, in its discretion, establish a separate escrow account into which all Road Impact Fees are deposited and the Design Review Committee shall administer such escrow account. Should the Road Impact Fee be insufficient to restore private rights-of-way or ensure compliance with this Declaration and the Design Guidelines, the Owner shall remain liable for the deficiency, in addition to any and all remedies available to the Association pursuant to this Declaration and the By-laws at law or in equity.

In addition, the Design Review Committee, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the Design Review Committee pay one or more additional fees to the Design Review Committee or to Declarant as a condition to commencement or construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established and set forth in the Design Guidelines.

**Section 11. Approved Builders.** The Design Review Committee may require, in its sole discretion, that each Person submitting plans and specifications for Improvements to the Design Review Committee shall submit a contract with a builder who is approved by the Board or the Design Review Committee, in their sole discretion (hereinafter, the "Approved Builder") as a condition to commencement of construction of any Improvements. The Design Review Committee shall provide a list of Approved Builders in accordance with the provisions of the Design Guidelines.

**Section 12. No Construction Without Payment of Fees and Use of an Approved Builder.** Notwithstanding anything contained in this Article X to the contrary, plans and specifications for Improvements to be constructed on a Lot shall not be deemed to have been properly submitted unless and until any and all fees required by the Design Review Committee to be paid in connection with such Improvements, as provided in Section 10 above, shall have been paid to the Design Review Committee or Declarant as required. In addition, such plans and specifications shall not be deemed to have been properly submitted unless a contract with an Approved Builder for construction of such Improvements (if required by the Design Review Committee) as provided in Section 11 above, shall have been submitted to the Design Review Committee.

**Section 13. Notices and Submittals.** Notices and submittals to the Design Review Committee shall be in accordance with the notice provisions set forth from time to time in the Design Guidelines.

**Section 14. Limitation of Liability.** The standards and procedures established by this Article are a mechanism for maintaining and enhancing the aesthetics of Drovers Road Preserve. They do not create a duty to any person.

a. Submission of plans, designs, specifications and materials by Lot Owners to the Design Review Committee or the Board and the approval of these submissions by the Design Review Committee or the Board are for the sole purpose of adherence with this Declaration and the Design Guidelines. Design Review Committee's or Board's review and approval is not for the purpose of, nor shall it be construed as, a review of the adequacy of structural or utility design, construction, operation or performance or to indicate compliance with any codes or other laws or regulations of any municipality, state, federal, or other governmental agency.

b. No member of the Design Review Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article X.

c. Neither the Design Review Committee, nor the members thereof, nor the Master Association nor Declarant, nor any officers, directors, members, managers, employees, agents or affiliates of any of them, shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Lot Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

d. Every person who submits plans or specifications, and every Lot Owner, agrees that he or she will not bring any action or suit against Declarant, the Association, the Design Review Committee, the Board, or the officers, directors, members, managers, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

e. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

## **ARTICLE XI EASEMENTS AND OTHER RIGHTS**

Declarant, in addition to any other easements granted or reserved herein, hereby reserves unto itself, its successors and assigns, and grants to the Association and any other persons or entities hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Property. Drovers Road Partners, LLC, hereby grants to Declarant, its successors and assigns, and to the Association and any other persons or entities hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Common Areas. In addition, Drovers Road Partners, LLC, hereby grants to Declarant, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through, and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for Drovers Road Preserve including but not limited to, easements in favor of Declarant, the Association, any designees of the foregoing, the Owners, and all their family members, guests, invitees and lessees and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified and to the individuals or entities referred to in Article II, Section 5.

**Section 1. Easements and Cross Easements on Common Areas.** Drovers Road Partners, LLC, grants to Declarant, for itself, its designees and the Association, the right to impose upon the Common Areas henceforth and from time to time such easements and cross-easements for:

- a. Ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, gas, drainage, irrigation, lake/pond/creek maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for the Property or any portion thereof.
- b. Landscaping and maintaining entryways and erecting and maintaining entrance monument(s) and signage over, across, and under those portions of the Property shown and designated as "Common Areas." Declarant and/or the Association shall have the right to landscape and maintain the areas of the Property designated as entryways to Drovers Road Preserve, to erect and maintain entrance monument(s) and signage thereon bearing the name of Drovers Road Preserve, and to erect and maintain lighting for such monument(s), plantings, landscaping and other improvements typically used for entryways.
- c. Installation, maintenance, repair and removal of trailways, stream and wet area crossings and other facilities and improvements typically used in trailways over, across and under those portions of the Property and subdivisions shown and designated as "Common Areas" on the Plat.

**Section 2. Use of Common Areas.** Drovers Road Partners, LLC, declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Owners and all their family members, guests, invitees and lessees and others granted the right pursuant to Article II, Section 5 and appropriate governmental and quasi-governmental agencies to use the Common Areas (in accordance with the requirements of the Conservation Easement) for all proper and normal purposes including, but not limited to, ingress,

egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration and any Additional Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

**Section 3. Right-of-Way over Roadways.** Drovers Road Partners, LLC, hereby grants to Declarant, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and to the Association, its agents, employees, lessees, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, guests, invitees, successors and assigns, and to each Occupant of a Lot and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between areas of the Property.

**Section 4. Right of the Association and Declarant to Enter Upon the Common Areas.** Drovers Road Partners, LLC, hereby grants to Declarant for the benefit of itself, its successors in interest and assigns, and to the Association and all agents, employees or other designees of Declarant or the Association an easement for ingress, egress and access to enter upon or over the Common Areas for the purposes of inspecting any construction, proposed construction, or improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they hereafter may be redesignated or as Declarant otherwise determines them to be reasonably suited.

Notwithstanding the foregoing, nothing contained herein shall be interpreted as imposing any obligation upon the Association or Declarant to maintain, repair, or construct improvements which an Owner is required to maintain, construct or repair.

**Section 5. Easement for Encroachments.** Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, and to the Occupants of Lots, easements for encroachments, to the extent necessary, in the event any portion of the Improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching improvements in favor of Declarant, the Association, the Owners and all their designees.

**Section 6. Maintenance Areas.**

a. By Right-of-Way and Maintenance Agreement recorded in Book \_\_\_\_ at Page \_\_\_\_ in the Office of the Register of Deeds for Buncombe County, North Carolina, the Trustees have granted to

Declarant the Association, and their successors and assigns, the following nonexclusive perpetual easements (hereinafter referred to as the "Ager Agreement") as hereinafter described for the purposes hereinafter described:

(i) Easement for ingress, egress and regress across the forty-five (45) foot wide Entrance Road Easement shown on the Plat of Drovers Road Preserve and more particularly described in the Ager Agreement.

(ii) Easements for the purposes of landscaping and maintaining entryways and erecting and maintaining entrance monuments for Drovers Road Preserve, over, across and under the Entrance Road Easement and the Entry Monument Easement described in the Ager Agreement. Declarant and/or the Association shall have the right to landscape and maintain the Entrance Road Easement and Entrance Monument Easement as the entryway to Drovers Road Preserve and to erect and maintain entrance monument(s) thereon bearing the name of Drovers Road Preserve, and to erect and maintain lighting for such monument(s), plantings, landscaping and other improvements typically used for entryways.

(ii) Easements for the installation, maintenance, repair and removal of the fence and landscaping over, across and under the Fence Easements described in the Ager Agreement (herein referred to as "Fence Easements").

b. The Association will be responsible for maintaining the following areas in the Property unless they are dedicated to and accepted for maintenance by a public authority:

(i) Entrance Road Easement;

(ii) Entrance Monument Easements;

(iii) Fence Easements;

(iv) Any street medians, shoulders and other unpaved areas within the rights-of-way of Roadways which are not otherwise maintained by a public authority; and

(v) Any signage and street lighting located on the Property.

All of the above-described areas and items shall herein be referred to as the "Maintenance Areas." The Association shall maintain the Maintenance Areas to a consistent standard of maintenance typical of a first-class development.

**Section 7. Private Streets and Limited Common Areas.** Private streets and Limited Common Areas may be created upon any Lot or Lots to serve the needs of multiple Lots. Such private streets and Limited Common Areas shall be subject to an easement in favor of every Lot which they are designed to serve and shall be deemed appurtenant to each Lot whereby the Owner of such Lot shall be entitled to use them as a means of ingress, egress and regress, and such other uses as shall have been designated. Each easement for such private street and Limited Common Area

shall be specific for that street and Area and shall contain specific rights and responsibilities for use and maintenance of that street and Area by the designated Owners.

**Section 8. Utility and Drainage Easements.** The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the plats of the Property including but not limited to those certain easements shown and designated on said plats as:

- a. "Utility Easement;"
- b. "Public Storm Drainage Easement;" and
- c. "Cable TV and Other Communication Lines."

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, its successors and assigns,

Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along a 10-foot strip of land adjacent to the front, side and rear boundary lines on all Lots for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone services, cable service, water, sanitary sewer and drainage facilities, storm drainage and/or other utilities or services. Within the above-described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Design Review Committee, over such easements.

**Section 9. Declarant's Right to Assign Easements; Maintenance of Easement Areas.** Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property pursuant hereto, including any improvements in such areas, which are not to be maintained by the Association, or a public authority or utility, shall be maintained continuously by each Owner of such Lot, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Declarant and/or the Association may exercise the rights reserved in Article XII Section 2 hereof for the purpose of enforcing the provisions of this Article XI Section 9. Notwithstanding the above, the Association, and/or Declarant shall have the right but not the obligation to maintain the landscaping in the easement areas on any Lot.

**Section 10. Easement Reserved for the Association and Declarant.** Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Association at all times over and upon any Lot or other portion of the Property for the exercise of the easement rights described in this Article XI as well as the maintenance and repair rights described in Article XII below and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Association upon any Lot or

portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association as the case may be.

**Section 11. Additional Easements.** Except as prohibited by the Conservation Easement, Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and after the Common Areas have been conveyed to the Association, the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of this Declaration or as may otherwise be desirable for the development of the Property by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Association Members or Owners. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Common Areas as may be desirable to Declarant for the development of the Property and the preservation and enhancement of Declarant's interest therein.

**Section 12. No Merger of Easements.** The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

## **ARTICLE XII MAINTENANCE BY OWNERS**

**Section 1. Duty of Maintenance.** Except for those portions, if any, of a Lot which the Association may elect to maintain or repair hereunder or under any applicable Additional Declaration, the Owner of any Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot(s) owned by such Owner, including Improvements thereon and ground and drainage easements or other rights-of-way incident thereto, in compliance with the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in any applicable Additional Declaration, in accordance with the provisions of the Design Guidelines, and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance, as to unimproved and improved Lots, shall include, but shall not be limited to, the following:

- (1) Prompt removal of all litter, trash, refuse and waste;
- (2) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;
- (3) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and
- (4) Complying with all governmental health and police requirements.

In addition, such maintenance, as to improved Lots, shall include, but shall not be limited to, the following:

- (1) Lawn mowing on a regular basis;
- (2) Tree and shrub pruning;
- (3) Watering by means of a lawn sprinkler system and/or hand watering as needed;
- (4) Keeping exterior lighting and mechanical facilities in working order;
- (5) Keeping lawn and garden areas alive;
- (6) Removing and replacing any dead plant material;
- (7) Maintenance of natural areas and landscaping in accordance with the Design Guidelines;
- (8) Keeping parking areas and driveways in good repair;
- (9) Repainting of Improvements; and
- (10) Repair of damage and deterioration to Improvements, it being understood and agreed that if any Improvements are damaged or destroyed by fire or other casualty, then within six (6) months following the date such damage or destruction occurs, the Owner of the Lot on which such Improvements are situated, must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the Design Review Committee and otherwise in accordance with the terms and provisions of this Declaration and of each Additional Declaration applicable thereto) or remove such damaged Improvements and restore the Lot to its condition existing prior to the construction of such Improvements.

Notwithstanding anything contained herein to the contrary, the above-described maintenance responsibilities as to any Lot shall commence only upon the conveyance of such Lot by Declarant.

**Section 2. Enforcement.** If an Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth in this Article XII, then the Board and Declarant, jointly and severally, may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described in this Article XII. Provided, however, that this cure period shall be extended for a time not to exceed sixty (60) days so long as Owner shall have commenced to cure such nonconformity and shall diligently prosecute the same. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or Declarant (so long as it owns any portion of the Property), acting through its authorized agent or agents, jointly or severally, shall have the right and power, but not the obligation, to enter onto the

premises of such Owner and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Association or Declarant in performing such work computed at the highest lawful rate as shall be permitted by law from the date(s) such amounts are expended until repayment to the Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his or her duties and responsibilities hereunder including an administration fee not to exceed twenty (20%) percent, and such Owner shall reimburse the Association or Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse the Association or Declarant, as the case may be, within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association or Declarant, the Association may impose a Special Individual Assessment against such Owner. Declarant has the right to assign to the Association the rights of Declarant under this Section 2.

### **ARTICLE XIII MISCELLANEOUS PROVISIONS**

**Section 1. Duration.** This 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 this Declaration is recorded in the Office of the Register of Deeds of Buncombe County, North Carolina. At the end of such thirty (30) year period, the easements, 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 (2/3) vote of the Association Members, there shall be adopted a resolution to terminate these covenants and restrictions. 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. The foregoing shall not limit the right of Declarant to amend and/or supersede, in whole or in part, the terms and provisions hereof, as such right in favor of Declarant is described in Section 2 below.

**Section 2. Amendment.** Subject to the limitations hereinafter contained, this Declaration may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. Provided, however, that if sixty-seven percent (67%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then this Declaration may be amended by obtaining the vote of sixty-seven percent (67%) of all votes present at a duly held meeting of the Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of sixty-seven percent (67%) of all votes entitled to be cast by Association Members. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its

sole discretion. Any amendment or modification upon which the vote of Association Members is required pursuant to this Section 2 shall become effective when an instrument executed by the Association Members voting for such amendment or modification is filed of record in the Office of the Register of Deeds of Buncombe County, North Carolina; provided, however, that such an amendment or modification, in lieu of being executed by the Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members, as provided in this Section 2. In addition, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, may make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially affects the rights, duties or obligations specified herein. In addition to the foregoing rights, Declarant may, at Declarant's option, amend and modify this Declaration and any additional Declaration without obtaining the consent or approval of any other person or entity if such amendment or modification is necessary to cause this Declaration or any such Additional Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association or other similar agency.

**Section 3. Enforcement.** The Association, Declarant or any Owner shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Declaration or any Additional Declaration. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this 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 any such control, covenant, condition, restriction, easement, development guideline, charge or lien, 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 Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charge or lien 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 4. Agreement to Encourage Resolution of Disputes Without Litigation.** It is in the best interest of the Declarant, the Owners, the Association and its officers, directors, and committee members (the "Parties") to encourage the amicable resolution of disputes involving Drovers Road Preserve without the emotional and financial costs of litigation.

- (a) **Applicability:** Each Party agrees that before it files suit in any court, it will first submit to the alternative dispute resolution procedures set forth below with respect to any claim, grievance or dispute arising out of or relating to the following:
- (i) the interpretation, application, or enforcement of the Association Documents;
  - (ii) the rights, obligations, and duties of any Party under the Association Documents; or
  - (iii) the design or construction of improvements within Drovers Road Preserve, other than matters of aesthetic judgment under Article X, which shall not be subject to review;

The alternative dispute resolution procedures shall not be required for the following unless all parties to the matter agree to submit the matter to the alternative dispute resolution procedures:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX, Article X or Article XII of this Declaration;
- (iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Association Documents;
- (iv) any suit in which any indispensable party is not bound by this Section; and
- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by the alternative dispute resolution procedures, unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such claim for such period as may reasonably, be necessary to comply with this Section.

b. **Dispute Resolution Procedures.**

- (i) **Notice.** The Party asserting a claim ("Claimant") against another Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely (1) the nature of the claim, including the parties involved and the Respondent's role in the claim; (2) the legal basis of the claim; (3) the Claimant's proposed resolution or remedy; and (4) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the claim.
- (ii) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by good faith negotiation.
- (iii) **Mediation.** If the parties have not resolved the claim through negotiation within thirty (30) days of the date of the notice described in subsection (i) of this Section (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the claim to mediation with an independent agency providing dispute resolution services in Buncombe County, North Carolina. If the Claimant does not submit the claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) an account of such claim. If the Parties do not settle the claim within 30 days after submission of the matter to mediation, or within

such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the claim, as appropriate, subject to the provisions of Article IV, Section 3. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(iv) **Settlement.** Any settlement of the claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the noncomplying party (or if more than one noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees, and court costs.

The Parties acknowledge that this Section 4 is subject to the provisions of Article IV, Section 3. The provisions of Article IV, Section 3 shall control over any inconsistent provision of this Section 4.

**Section 5. Severability of Provisions.** If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

**Section 6. Notice.** Except as otherwise set forth herein expressly, whenever written notice to an Owner or Member (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner or Association Member appearing on the records of Declarant or the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. Declarant's address as of the date of recording of this Declaration is 196 Sugar Hollow Road, Fairview, North Carolina 28730.

**Section 7. Titles.** The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used on construing this Declaration or any part thereof

**Section 8. 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.

**Section 9. Changes to Plans for Drovers Road Preserve.** Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of Drovers Road Preserve, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration, reserves the right to change any plans for Drovers Road Preserve at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions, and any plans for Drovers Road Preserve shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration applicable to the Property.

**ARTICLE XIV  
ACKNOWLEDGMENT OF ASSOCIATION  
INFORMATION**

This Article requires that any Owner who is selling his or her Lot must provide notice to prospective Lot purchasers about certain unique requirements of Drovers Road Preserve and that such prospective Lot purchasers must obtain certain documents and information from the Association in order to ensure that they understand the unique nature of Drovers Road Preserve and their specific obligations relating to ownership of the Lot being acquired before they commit to those standards, requirements, and obligations.

**Section 1. Association Documents.** The Declarant and the Association agree that any prospective Lot purchaser should be informed of the governance structure and standards applicable to Lots within Drovers Road Preserve. Each purchaser also should be informed about the status of assessment payments applicable to the Lot being acquired and any other unresolved issues with Declarant or the Association burdening the Lot, including compliance with the design review process or issues involving governance or rules.

In furtherance of this goal any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board written notice at least ten business days prior to the closing of the transfer. The notice must include the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Owner shall likewise inform the prospective purchaser or transferee in writing that there is an established procedure by which the Association seeks to assure that the purchaser is fully informed of the key requirements and obligations contained in the Association Documents relating to ownership in Drovers Road Preserve as well as any obligation relating specifically to the Lot being transferred.

Upon receipt of notice from the transferring Owner, or upon request from the prospective purchaser, the Association must deliver to the prospective purchaser or transferee a set of the Association Documents, including a current copy of the Community Rules, and any additional explanatory information about Drovers Road Preserve generally or about the status of the specific Lot being acquired as it deems appropriate. The materials provided by the Association shall include the name and number of a contact person who can assist the prospective purchaser with questions he or she may have about the Association Documents or the Association. The Association shall deliver

such documentation to the prospective Lot purchaser at the address provided in the notice within five days of the Association's receipt of the Owner's notice or purchaser's request.

**Section 2. Acknowledgment.** With the documentation discussed above, the Association also shall deliver an Acknowledgment form that must be executed by the Lot purchaser as a part of the closing process. The Acknowledgment shall include an express acknowledgment by the purchaser of receipt of copies of the Association Documents and a statement of account from the Association applicable to the Lot being conveyed. The prospective purchaser shall execute the Acknowledgment, which shall act as evidence of full compliance with the requirements of this Article XIV. It also shall serve as a release, as of the date of the transfer of title, of all claims by the Association as to delinquent assessments and as to the existence of any violations of the Association Documents.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized officers and Drovers Road Partners, LLC, has caused this Declaration to be executed by its duly authorized managers the day and year first above written.

FLYING CLOUD PROPERTIES, LIMITED  
A North Carolina Corporation

[Corporate Seal]

By: \_\_\_\_\_  
Cameron Smail, President

Attest:

\_\_\_\_\_  
Robert E. Pyeatt, Secretary

DROVERS ROAD PARTNERS, LLC  
A North Carolina Limited Liability Company

By: \_\_\_\_\_  
Cameron Smail, Manager

By: \_\_\_\_\_  
John C. Ager, Jr., Manager

By: \_\_\_\_\_  
Robert E. Pyeatt, Manager

\_\_\_\_\_(Seal)  
Annie McClure Clarke Ager, Trustee  
STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

\_\_\_\_\_(Seal)  
John Curtis Ager, Jr., Trustee

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 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 \_\_\_\_ day of \_\_\_\_\_, 2004.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My commission expires:

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STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that CAMERON SMAIL, JOHN C. AGER, JR., and ROBERT E. PYEATT, managers of DROVERS ROAD PARTNERS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2004.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My commission expires:

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STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that Annie McClure Clarke Ager and John Curtis Ager, Jr., Trustees of the Annie McClure Clarke Ager Living Trust dated August 30, 2000, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this \_\_\_\_ day of February, 2004.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My commission expires:

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