

RIDGES AT ROCK CREEK, LLC

STATE OF NORTH CAROLINA
COUNTY OF MITCHELL

DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS

RIDGES AT ROCK CREEK, LLC, Owner of the lands shown at Plat Book ___, Page ___, Mitchell County Registry, does by these presents declare that said lands are subject to the following terms and conditions, restrictions and limitations, and shall be accepted as covenants running with the land and which shall be binding upon the Owners and all persons hereafter purchasing lots in said subdivision.

ARTICLE ONE **RESTRICTIONS**

1. All lots shall be used as single-family residential lots and no part of any lot shall be used for any commercial or business use, including apartment house purposes. No house trailers, mobile homes, tents, camping trailers, or other temporary structures shall be erected or used as a residence on the restricted property, except as needed during the construction of a permanent residence on said property, not to exceed twelve months. Once construction of a residence begins, it must be completed within twelve months. This includes porches, decks and patios. Any fallen trees or storm damage must be removed within one month of damage.

2. Each dwelling constructed or placed on each lot shall contain a minimum of 1500 square feet of heated floor space if a single-story dwelling, or 2200 square feet of heated floor space if a two-story dwelling, unless prior approval is obtained by Ridges at Rock Creek, LLC or the Homeowner's Association. Heated floor space is exclusive of enclosed or unenclosed porches, breezeways, and is also exclusive of attics, garage, storage areas, and any unfinished basement areas. All garages shall accommodate at least two motor vehicles, shall be attached to the residence, and shall be fully enclosed with garage doors.

3. All plans and specifications for such residences, including any outbuildings, shall be submitted to Ridges at Rock Creek, LLC, or the Homeowner's Association, or its duly appointed Architectural Committee for approval. The plans shall include, as a minimum, the following:

architectural drawings for all improvements to be constructed which will include front, side and rear elevations of the proposed improvement; site plan which will indicate the nature and location of all improvements; and the specifications detailing the nature, quality and location of all materials to be used in the construction of the improvements. Improvements include, but are not limited to, dwelling house, guest house, any outbuildings, walkways, swimming pools, garages, driveways, mailboxes, fences, enclosures for trash, etc. The exterior of all dwelling houses shall be constructed of wood, logs, stone or siding [excluding vinyl] approved by Ridges at Rock Creek, LLC, or the Homeowner's Association, or the architectural committee, and no cement blocks, cinder blocks or poured concrete shall appear above ground level.

4. Lot owners shall prevent unclean, unsightly, and unkempt conditions on their premises, and shall conduct no activity within the subdivision which would be a nuisance to other lot owners.

5. All lots shall have a 25-foot setback from the street and no structure shall be located less than 15 feet from the side and back property lines.

6. Off-street parking for at least two automobiles shall be provided on each lot on which a dwelling is to be constructed. All driveways shall be constructed of asphalt, concrete, or gravel. All walkways shall be constructed of flagstone, brick, concrete, or similar material. All driveways shall be completely installed prior to the occupancy of any residence.

7. No signs larger than three square feet advertising the property for sale or rent, or used by Realtors or builders advertising construction, shall be permitted. Ridges at Rock Creek, LLC may use signs and flags at its discretion.

8. No fence shall be erected closer to the front property line than the rear line of the home constructed on said lot. The Association must approve all fences. No chain link wire fences will be allowed.

9. All storage tanks shall be underground or surrounded by an enclosure at least one foot higher than the tank installed.

10. Satellite dishes, radio or TV antennas or other similar structures shall not be visible from the street, and shall not extend greater than 5' above the highest point of the residence. Satellite dishes shall not be greater than 30" in diameter.

11. No livestock or poultry or other animals, except household pets, may be kept on any lot.

12. No commercial activity shall be permitted except those by artisans.

13. No trash, garbage, construction debris or other unsightly or offensive material shall be placed upon any portion of Ridges at Rock Creek subdivision except as temporary and incidental to improvement of property. All trash, garbage and/or refuse shall be kept in sanitary containers and stored out of view by an enclosure at least 12" higher than the container(s). No junk cars shall be allowed to remain on any lot or roadway. Assembly or disassembly of a motor vehicle is not allowed.

14. Each lot shall have its own well and sewage system to be provided by lot owner.

15. No owner shall permit trees to grow so as to obstruct any other lot owner's view as it exists at time of purchase. Trimming and/or removal of trees shall be at the expense of the obstructed owner.

16. Ridges at Rock Creek, LLC reserves the right to subdivide lots. Lots may be subdivided with the consent of Ridges at Rock Creek, LLC. Only one residential dwelling per lot is permitted unless approved by Ridges at Rock Creek, LLC.

17. Waiver of any of the terms and conditions herein shall be by written advice of Counsel and the Homeowner's Association.

ARTICLE TWO
HOMEOWNER'S ASSOCIATION

1. By acceptance of a deed conveying a lot or lots in Ridges at Rock Creek subdivision, as evidenced by recordation in the Mitchell County Deed Registry, the Grantee(s) therein named shall become members in Ridges at Rock Creek Homeowner's Association, a North Carolina non-profit corporation created for the purpose of maintaining roads and common areas within the development. The corporation shall maintain the common areas and facilities within the development, which shall include roads, streets, and areas designated as "common area" upon maps and plats of the various subdivision units in the development.

2. The Association shall have the power to levy annual and special assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the lot owners and for the improvement and maintenance of roads, streets, and common areas, and the performance of the obligations of the Association, including the cost of operation of the Association. The Board of Directors of the Association shall fix an annual assessment to defray the expense of the aforesaid maintenance, and in addition to the annual assessment herein authorized, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of at least two-thirds [2/3] of the votes of members who are voting in person or by proxy at a meeting called for that purpose. Both annual and special assessment of the capital improvement must be fixed at the uniform rate for all members. The Board may authorize, at its discretion, that special assessments be paid on a monthly basis. Written notice of any meeting called for the purpose of levying a special assessment shall be sent to all members not less than ten [10] nor more than sixty [60] days in advance of the meeting. The presence of the members of proxies entitled to cast sixty percent [60%] of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, the continued meeting shall be adjourned to day certain. At any such adjourned date, or meeting held thereafter, a quorum shall consist of not less than fifty-one percent [51%] of the total number of votes that may be cast by all classes combined in person or by proxy at a meeting duly called for this purpose.

3. The annual assessments provided for herein shall become due and payable on July 1 of each calendar year. The Board of Directors shall

fix the amount of the annual assessment at least thirty [30] days in advance of the due date. Written notice of the annual assessment shall be sent to every lot owner subject thereto

4. Any assessment not paid within thirty [30] days from the due date shall bear interest from due date at the rate of ten percent [10%] per annum. The Association may bring an action at law against the member(s) who shall be personally obligated to pay the same, or foreclose the lien against the lot of the member(s) as hereinafter provided. No member or owner may waive or otherwise escape liability of the assessment provided for herein by non-use of the common areas or abandonment of his lot or for any other reason. Each member and lot owner shall be deemed to covenant and agree to the enforcement of all assessments in the manner specified in this document. Each owner agrees to pay reasonable attorney fees as established from time to time by the Board and the costs incurred in the collection of any assessment against such owner or member and/or his lot, whether by suit or otherwise, or in enforcing compliance with or specific performance of the terms and conditions of this declaration or other governing documents by such member/owner and/or his lot. Annual and special assessments, together with interest and costs and reasonable attorney fees, shall be a charge on the lot and shall be a continuing lien upon the property against which assessment is made. The assessment shall also be the personal obligation of the member(s) who were owner(s) of the lot at the time when the assessment fell due. The Association may commence and maintain a lawsuit against any member(s) for such delinquent assessment as to which they were obligated. Any judgment rendered in any such action shall include the amount of delinquency, together with interest thereon at the rate of ten percent [10%] per annum from the date of delinquency, cost of collection, court costs and reasonable attorney fees in such amount as the Board has by resolution established from time to time. Suits to recover money judgment for unpaid assessment shall be maintainable without foreclosing or waiving the lien herein provided for.

5. There is created hereby a claim of lien, Chapter 47F-3-116, North Carolina General Statutes, with power of sale, on each and every lot to secure payment to the Association for any and all assessments levied against any and all lots pursuant to this Declaration, together with interest thereon, as provided for by this section and all costs of collection which may be paid or incurred by the Association in connection therewith, including a reasonable attorney's fee, as may from time to time be established by resolution of the Board. At any time after the occurrence of any delinquency in payment of any such assessment, the demand for payment to the delinquent member or members. Said demand shall constitute a separate basis for a demand or claim of lien, but any number of default may be included with a single demand or claim of lien or lien,

and any demand for claim of lien on account of prior delinquency shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within ten [10] days after delivery of such demand, the Association, or its duly authorized representative, may thereafter elect to file and record a claim of lien on behalf of the Association against the lot of the defaulting member/owner in the Office of the Clerk of Court and the Register of Deeds for Yancey County, North Carolina, or both. Such claims of lien shall be executed and acknowledged by any officer of the Association.

Upon such recordation of a duly executed claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the land against which the assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except for tax liens for real property and assessment on any lot in favor of any governmental assessing unit, and the lien of any first mortgage. Any such lien may be foreclosed in the manner provided by law for the foreclosure of mortgages and Deeds of Trust. The Board is hereby authorized to appoint any attorney or any officer or director of the Association for the purpose of conducting such proceeding.

6. The Board of Directors shall be appointed by the Declarant until eight (8) lots have been sold.

ARTICLE THREE **EASEMENTS**

1. The 30-foot road-rights-of way are private roads for the use of the purchasers of any lot in the subdivision, and right-of-way for said roads is hereby reserved unto Ridges at Rock Creek, LLC, its successors and assigns. By acceptance of a deed or other conveyance to a lot in said subdivision, all Grantees shall be deemed to have been conveyed a non-exclusive and perpetual right-of-way for the use of said roads, and shall have agreed to become responsible for their pro rata share of road maintenance costs for the said subdivision roads.

2. There is reserved unto Ridges at Rock Creek, LLC, with further assent or permit, the right, title and privilege of a perpetual, alienable and releasable easement to construct, install, maintain and repair utilities, including, but not limited to, water, sewer, telephone and electric utilities, with the right of entry for the purpose of installation, construction, inspection and repair, over, through, upon, across and under each and every lot in this subdivision. This easement shall run to and even with or ten [10] feet along sidelines of all such lots and thirty [30] feet on the road side of the property. By acceptance of a deed or other conveyance to any

such lot in respect to which this easement is reserved, the purchaser, for himself, his heirs, legal representatives, successors and assigns, shall be deemed to have waived any and all claims for damages, if any, by virtue of construction, installation, maintenance and repair thereof, on or account of temporary or other inconvenience caused thereby. The exercise of this easement for the construction and installation of any given utility shall not bar the further exercise of this easement for the construction and installation of any other utility.

ARTICLE FOUR **ENFORCEMENT, INVALIDATION, AND MODIFICATION**

1. No lot shall be conveyed, devised, leased or demised at any time hereafter, except as being subject to the covenants, terms, obligations, restrictions, and limitations herein contained; and the obligation to observe and perform the same; and whether or not it be so expressed in the deed or other instruments of conveyance of the property, the same shall be absolutely subject to the covenants, terms, conditions, restrictions and limitations herein contained, which shall run with and be appurtenant to the lands and every part thereof, as fully as if expressly contained in proper and obligatory covenants or conditions, in each and every contract and conveyance of, or concerning any part of the land or improvements to be made thereon.

2. These covenants, conditions, and restrictions shall run with the lands and shall be binding on the Grantors and their successors in title until January 1, 2026, at which time they shall automatically extend for successive periods of ten years unless a majority of the lot owners at the time of renewal agree to terminate these covenants, conditions and restrictions.

3. If the parties hereto or any of them, or any of their heirs, executors, administrators, or assigns, or any such future owner(s) of any lot or lots within Ridges at Rock Creek subdivision or any of their heirs, executors, administrators, or assigns, shall violate or attempt to violate any of the covenants, terms, conditions, restrictions or limitations herein contained, it shall be lawful for any person(s) owning real property situated in said subdivision to prosecute any proceeding at law or in equity against the person(s) violating or attempting to violate the same to prevent such person(s) from doing so or to recover damage for such violation or attempted violation. Attorney's fees may be awarded in accordance with NCGS 47F-3-120.

4. Invalidation of any one of these covenants, terms, conditions, and/or limitations, or any part thereof, by judgment or court shall not

effect any of the other provisions which shall remain in full force and effect.

5. Any one or all of the covenants, terms, conditions, restrictions and/or limitations, herein above set forth may be annulled, waived, amended, or modified at any time by an instrument duly executed by the Owner prior to the sale of any of said lots. Subsequent to the sale, by owners of not less than two-thirds [2/3] of the lots in said Ridges at Rock Creek subdivision, which instrument shall be acknowledged by each person signing the same and shall be filed of record in the Office of the Register of Deeds, Mitchell County, North Carolina. Provided, however, that no annulment, amendment, or modification shall place an additional burden or restriction on any lot in said subdivision, the owner of which does not join in said instrument. Provided further that the provisions of this paragraph shall not be construed to alter, amend, or in any way affect the powers and duties of Ridges at Rock Creek, LLC, as herein set forth. Ridges at Rock Creek, LLC, may amend these covenants, if necessary, to comply with Chapter 47F of the North Carolina General Statutes.

IN WITNESS WHEREOF, RIDGES AT ROCK CREEK, LLC, has caused this instrument to be executed this ____ day of JULY, 2006.

RIDGES AT ROCK CREEK, LLC

BY: _____

STATE OF NORTH CAROLINA
COUNTY OF MITCHELL

I, _____, a Notary Public in and for the above County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that he is a member and manager of Ridges at Rock Creek, LLC, a North Carolina Limited Liability Company, and that he, being authorized to do so, executed the foregoing instrument.

WITNESS my hand and notarial seal this ____ day of July, 2006.

Notary Public
My commission expires: