

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS FOR
CLAYBROOKE SUBDIVISION

This declaration is made this 2nd day of April, 1998, by Ridgeline-Claybrooke LLC, a North Carolina limited company, referred to in this instrument as “Developer” and Niblock Development Corp., a North Carolina corporation, referred to in this instrument as “Niblock.”

STATEMENT OF PURPOSE

Developer is the owner of that certain parcel of land which is known as Claybrooke Subdivision located in Mecklenburg County, North Carolina, more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “Submitted Property”), except for Lot 70 of Claybrooke as the same is shown in Map Book 29 at Page 6, which lot is owned by Niblock. Niblock joins in this Declaration in order to consent to this Declaration and submit any lots which it owns within the Submitted Property to the effect and operation of this Declaration.

It is in the best interest of Developer, as well as to the benefit, interest and advantage of each person or other entity later acquiring any property in Claybrooke that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the same be established, fixed and set forth and declared to be covenants running with the land.

Developer desires to provide for the preservation of the values and attractiveness of the real property in Claybrooke and for the continued maintenance and operation of such common areas as may be provided.

Developer further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created, in order to sufficiently preserve, protect and enhance the values and amenities in the Development, to ensure the residents’ enjoyment of the specific rights, privileges and easements in the Common Area, and to provide for the maintenance and upkeep of the Common Areas and amenities. To that end, the Developer has or will cause to be incorporated under North Carolina law, pursuant to the Articles of Incorporation attached hereto as Exhibit “B” and incorporated herein by reference, Claybrooke Homeowners Association, Inc., as a

nonprofit corporation for the purpose of exercising and performing the aforesaid functions, said corporation to be governed by the bylaws attached hereto as Exhibit “C” and incorporated herein by reference.

In consideration of the premises and for the purposes stated, Developer hereby declares that all of the Submitted Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions (all of which are collectively referred to in this instrument as “restrictions”), which restrictions shall be construed as covenants running with the land and shall be binding upon all parties having any right, title or interest in the described real property or any part thereof, and to their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (1.1) “Additional Property” shall mean additional real estate other than the submitted property which may be subject to the terms of this declaration in accordance with the provisions of Section 2.2 of this declaration.
- (1.2) “Annual Assessments” shall mean the assessments established pursuant to paragraph 5.2 of the Declaration.
- (1.3) “Association” shall mean Claybrooke Homeowners Association, Inc., a nonprofit corporation organized and existing under the laws of the State of North Carolina and its successors and assigns.
- (1.4) “Board of Directors” shall mean and refer to the Board of Directors of the Association, which shall be elected and serve pursuant to the Bylaws.
- (1.5) “Bylaws” shall mean the Bylaws for the Association attached as Exhibit “C” hereto and incorporated herein by reference.
- (1.6) “Common Area” shall mean all real property owned by the Association in Claybrooke for the common use and enjoyment of members of the Association lying within the boundaries of the Properties. Common Areas, with respect to the Properties subject to this Declaration, shall be shown on the plats of Claybrooke recorded in the Mecklenburg County Registry and designated thereon as “Common Area” or “Common Open Space.”
- (1.7) “Developer” shall mean and refer to Ridgeline-Claybrooke LLC and its successors and assigns and to any person, firm or corporation which shall hereafter become vested with title, at any given time, to five or more undeveloped lots for the purpose of causing residence building(s) to be constructed thereon,

and any such successor in title to Ridgeline-Claybrooke LLC shall be a Developer during such period of time as said party is vested with title to five or more lots so long as said lots are undeveloped, developed but un conveyed, or improvements constructed thereon are unoccupied; but only during such period.

(1.8) “FHA and VA” shall mean and refer to the Federal Housing Administration, U.S. Department of Housing and Urban Development, and the Veteran’s Administration, respectively. If either or both of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to FHA or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.

(1.9) “Lot” shall mean any numbered plot of land to be used for residential purposes shown upon any recorded subdivision plat of the Properties subject to this Declaration.

(1.10) “Owner” shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of Claybrooke, but excluding those having such interest merely as security for the performance of an obligation.

(1.11) “Person” shall mean a natural person, as well as a corporation, partnership, limited liability company, firm, association, trust or other legal entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

(1.12) “Property” or “Properties” shall mean the Submitted Property described in Exhibit “A” together with such additions thereto as may from time to time be designated by Developer in accordance with Article II hereof, whether or not such additions are contiguous with or adjoining the boundary line of the Submitted Property. “Property” or “properties” may sometimes be referred to herein as “Claybrooke.”

(1.13) “Special Assessments” shall mean the assessments established pursuant to paragraph 5.6 of the declaration.

(1.14) “Submitted Property” shall mean that certain parcel of real property described on Exhibit “A” attached hereto.

ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION

(2.1) The Submitted Property shall be held, transferred, sold, conveyed and occupied subject to this Declaration. Only the Submitted Property is hereby made

subject to this Declaration; provided, however, Developer shall have the right to subject other real property to these restrictions as provided in Section 2.2.

(2.2) Without further assent or permit, Developer shall have the right from time to time to subject other real property to the terms and scheme of this Declaration said property to be developed as part of Claybrooke and thereby bringing such additional properties within the jurisdiction of the Association by filing a Supplemental Declaration in the office of the Register of Deeds for Mecklenburg County, North Carolina, containing a description of the additional property and a statement by the Developer of its intent to extend the operation and effect of this Declaration to the additional property.

(2.3) Any addition of real property shall be made by filing of record one or more Supplemental Declarations in respect to the property to be then made subject to this Declaration, and the jurisdiction of the Association shall thereby then extend to such property and subject such addition to the assessments provided in this instrument for a just and proportionate share of the Association's expenses. Each supplemental Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained herein as may be necessary to reflect the different character of the added properties.

(2.4) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of Developer to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Submitted Property, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for Amendment set forth in Section 8.3 of this Declaration.

ARTICLE III: PROPERTY RIGHTS

(3.1) **Owner's Easements of Enjoyment.** Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the provision of this Declaration, including but not limited to the following:

- (a) The right of the Association to limit the use of the Common Area to Owners, their families and guests;
- (b) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his lot remains unpaid, or for any infraction of the Association's published rules and regulations, if any;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association members. No such dedication or transfer shall be effective after the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B membership unless the members entitled to at least two-thirds (2/3) of the vote appurtenant to Class A Lots and Class B Lots agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this paragraph shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage utilities and drainage facilities upon, over, under and across the Common Area without the assent of the membership.

(d) The right of the Developer or the Association to grant utility, drainage and other easements across the Common Areas;

(e) The Board of Directors of the Association shall have the right to dedicate or transfer all or any part of the Common Area to third parties provided the Association acquires in return other Common Area of equal or greater value.

(3.2) **Delegation and Use**. The right and easement of enjoyment granted to every Owner in Section 3.1 of this Article may be exercised by members of Owner's family and guests thereof. An Owner may delegate to his tenants his rights of enjoyment in and to the Common Area and such facilities thereon as may be provided, in accordance with the Association's bylaws and rules and regulations, if any.

ARTICLE IV: ASSOCIATION

(4.1) **Membership**. Every Owner of a Lot which is subject to assessment shall be a member of the Association which shall be activated no later than January 1, 1999. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(4.2) **Voting and Voting Rights**. The Association shall have two classes of voting membership:

(a) **Class A**. Class A members shall be all Owners with the exception of Developer and shall be entitled to one vote for each Lot owned. When more than one person holds an 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 vote be cast with respect to any Lot.

(b) **Class B.** The Class B member shall be Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided that the Class B Lots shall be reinstated with all rights, privileges and responsibilities, if after conversion of the Class B Lots to Class A Lots hereunder, additional land containing Lots is annexed to the existing property pursuant to Section 2.2 hereof; or

(ii) Seven (7) years from the date of this Declaration.

(4.3) **Suspension of Rights.** During any period in which a member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights of such member may be suspended by the Board of Directors until such assessment is paid. In the event of violation by a member of any rules and regulations established by the Board of Directors, such member's voting rights may be suspended by the Board after a hearing. Such hearing shall be held by the Board or a committee thereof after giving a member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of the violation shall be made by a majority vote of the Board or the committee thereof. During any period in which a member shall be in default in the payment of any month, special or other periodic assessment levied by the Association or in violation of any rules or regulations established by the Board of Directors, such member shall be subject to a fine imposed by the Board of Directors which shall be the personal obligation of the person who is the Owner of such Lot at the time when the fine was levied.

(4.4) **Management Contracts.** The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board of Directors and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days prior written notice to the manager without payment of a termination fee.

(4.5) **Insurance.** (1) Public Liability: The Association shall be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use to the development, covering each member of the Board of Directors, the Managing Agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance or repair of the Common Areas; provided, however, that in no event shall the amounts of such public liability insurance ever be less than a million dollars per occurrence against liability for bodily injury, including death resulting there from, 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. Such insurance shall include endorsements covering cross-liability claims of one insured against another, including the liability of the Owners as a single group to a single owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than one million dollars per occurrence for claims for bodily injury and property damage; (2) The Association shall be required to obtain and maintain to the extent obtainable hazard insurance on the common areas, including, but not limited to, the swimming pool and clubhouse.

(4.6) **Pool.** Niblock Development Corp. shall construct and the Association shall maintain the Pool over a portion of the Common Area. The Pool shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant and its assigns and the Owners, their families, guests and invitees.

ARTICLE V: COVENANT FOR MAINTENANCE ASSESSMENTS

(5.1) **Purpose of Assessment.** The assessments levied by the Association shall be used: (a) to provide funds for maintenance, operation, landscaping, beautification, utilities of the Common Area and improvements in Claybrooke; (b) to provide services for the Association members to promote the health, safety and welfare of the residents of Claybrooke, and in particular for the acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Swimming Pool and Common Areas, including but not limited to the cost of repair, replacement and additions thereto; (c) for the payment of taxes assessed against the Common Area, for insurance related to the Common Area, for the employment of attorneys, accountants, and other professionals to represent the Association when necessary or useful, the employment of security personnel; and (d) the provision of any service which is not readily available from any governmental authority related to the use, occupancy and enjoyment of the properties and which the Association shall decide to provide. The purposes for which assessments may be levied shall include payment for utilities necessary to accomplish the foregoing purposes.

(5.2) **Budgeting and Allocating Common Expenses.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated expenses for the operation of the Association and the operation and maintenance of the Common Areas for the coming year. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Annual Assessments and Special Assessments against the Lots, as authorized in Section 5.6.

The Association is hereby authorized to levy Annual Assessments equally against all Lots subject to assessments to fund the Common Expenses. In determining the Annual Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

The Developer may, but shall not be obligated to, reduce the Annual Assessment for any fiscal year by payment of a subsidy (in addition to any amount paid by Developer under Section 5.3), which may, in the Developer's discretion, either be a contribution, an advance against future assessments due from the Developer, or a loan. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate the Developer to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Developer.

The Board shall send a copy of the final budget and notice of the amount of the Annual Assessment to be levied to each Owner at least 30 days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by members holding at least 75% of the total Class "A" votes and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purposes of considering the budget except on petition of the members as provided for special meetings in the Bylaws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Annual Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

(5.3) **Creation of the Lien and Personal Obligation of Assessments.** The Developer, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in said Deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments (“Annual Assessments”) as established in Section 5.2 for the purposes specified in Section 5.1 which shall be paid in two equal semi-annual installments due on February 28 and August 31 of each year; and

(b) Special assessments (“Special Assessments”) as may be established in Section 5.6 for the purposes specified in Section 5.1 as may be approved by the members, to be established, and collected as provided herein.

In order to secure payment of the Annual and Special Assessments, such charges as may be levied by the Association against any lot, together with interest, costs of collection and reasonable attorneys’ fees, shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment, together with interest, fines, late charges, costs of collection and reasonable attorneys’ fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner’s successor in title unless expressly assumed by them. Such assumption shall not relieve an Owner of his obligations.

(5.4) **Exempt Property.** The assessments, charges and liens created under this Article shall not apply to the Common Area, nor shall they apply to any lot the title to which is vested either in any first mortgage subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Veterans Affairs or any other state or federal governmental agency which acquired title by reason of such agency’s guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such property by such first mortgage or such governmental agency the assessment shall again accrue on such lot. Any lot which Developer may hereinafter designate for common use as part of the Common Areas shall also be exempt by a local public authority, and all land granted to or used by a utility company shall be exempt from the assessments created herein.

(5.5) **Maximum Annual Assessments.** For the calendar year beginning January 1, 1999 the maximum Annual Assessment shall be \$600.00 on each Lot. Annual Assessments may only be increased in accordance with the following:

(a) From and after January 1, 2000, the maximum Annual Assessment may be increased each year not more than ten percent (10%) above the maximum Annual Assessment for the previous year without a vote of the membership.

(b) From and after January 1, 2000, the maximum Annual Assessment may be increased above ten percent (10%) of the previous year's Annual Assessment by a total vote of two-thirds (2/3) of Class A and Class B members combined.

(c) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum herein provided.

The Annual Assessments shall be paid as provided in Subparagraph 5.3 (a).

(5.6) **Special Assessments.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Class A and Class B members combined.

(5.7) **Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment.** The Annual Assessments shall commence as to all Lots on the first day of the month following the date such property is submitted to the provisions of this Declaration. From the date on which the Annual Assessments commence on a Lot until the date on which the Lot is sold by the Developer to a purchaser, the Developer shall be liable for Annual Assessments at a rate which is one-third (1/3) of the rate otherwise payable. The first Annual Assessment shall be adjusted according to the number of days remaining in the calendar year when filed. The Association shall, upon demand 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 to date.

(5.8) **Effect of Non-Payment of Assessment; Remedies of the Association.** Notwithstanding Section 5.7 hereof, the Developer may, at its election, postpone in whole or in part the date on which the assessment shall commence provided that the Developer maintains the Common Area for which no assessment is being collected during the period of such postponement. Any assessment not paid within fifteen (15) days after the due date shall be assessed a late charge as determined by the Board of Directors and bear interest from the due date at an annual rate of twelve percent (12%) but in no event above the then maximum legal rate, and to the extent allowed by law. The association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interest, costs and reasonable attorneys' fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law.

No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area, abandonment of his Lot or for any other reason.

(5.9) **Subordination of the Lien to First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first priority deed of trust or first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage pursuant to a foreclosure thereof or under a power of sale or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

ARTICLE VI: USE RESTRICTIONS

(6.1) **Use of Common Areas.** No planting or gardening by individual Owners shall be done upon any Common Area. Except for the right of easement of enjoyment in and to the Common Areas herein given to each Owner, Owners are hereby prohibited and restricted from using any of the Common Area except as may be allowed and prescribed by the Association's Board of Directors or as expressly provided for herein. It is Developer's intent that this paragraph inure to the mutual benefit of all owners within the properties, and each Owner shall have a nonexclusive easement right to use and enjoy the Common Areas which shall be appurtenant to and shall pass with the title to his Lot, subject to the following:

- (a) The right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to ensure the availability of the right to use the Common Areas to the Owners and the safety of all Owners on the Common Areas;
- (b) The right of the Association to suspend the voting rights of an Owner in the Association and the right of the association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Developer or the Association to grant utility, drainage or other easements across the Common Areas; and
- (d) The right of the Developer or the Association to permit use of any recreational facility situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Developer or the Association.

(6.2) **Use of Lots**. Each Lot now or hereafter subjected to this Declaration is subjected to the following restrictions as to the use thereof running with said property by whomsoever owned:

(a) **Residential Lots Only**. All lots in the tract shall be known and described as residential lots. No structure shall be erected, altered, placed or permitted to remain on any lot other than a single-family dwelling not to exceed two and one-half (2-1/2) stories in height excluding basement and one other accessory structure customarily incidental to the use of the lot. All accessory structures shall be constructed in harmony with the dwelling house and consist of no greater than 160 SF. It is Owner's responsibility to obtain necessary Mecklenburg County zoning permit for construction of an accessory structure.

(b) **Setbacks**. No building shall be located nearer to the front property line or any side street line than the building setback line as shown on the recorded map. No building shall be located nearer any side lot than the applicable zoning ordinance shall allow. In the event of the unintentional violation of any minimum setback requirements herein set forth, Developer, for itself and for its successors and assigns, reserves the right, by and with the mutual consent of the owner of the lot in question, to change the restrictions set forth in this instrument, provided, however, that such changes shall not exceed ten percent (10%) of the marginal requirements of such restrictions.

(c) **Minimum Square Footage**. The total heated area of each dwelling unit shall be not less than 1,800 square feet under roof.

(d) **Limitation of Subdivision of Lots**. No Lot shall be subdivided so as to increase the total number of lots shown on said recorded plat.

(e) **Driveway**. Any driveway constructed or used in or on any lot in the subdivision shall have either an asphalt, brick or concrete surface which shall be kept and maintained in good condition and repair.

(f) **Maintenance**. Exterior maintenance, upkeep and repair to the yard, fence, walkways, shrubbery, dwelling and other improvements on each lot shall be the sole responsibility and expense of the owner of the lot. The owner of each lot shall maintain his lot or lots in a neat and clean condition, free of all trash, debris, weeds and vines. The yard, grounds, shrubbery and trees shall be maintained in a neat and trim condition at all times.

(g) **Nuisances**. No obnoxious or offensive trade or activity shall be carried on or upon any lot nor shall anything be done thereof which may be or become any annoyance or nuisances to the neighborhood.

(h) **Other Structures**. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on the tract shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence. No above-ground swimming pools shall be permitted on any lot. No accessory structure shall be moved onto any lot unless it shall conform to and be in harmony with the existing structures in the tract as to design and color. No metal buildings shall be allowed to remain on any lot, and all accessory structures must be situated on a permanent foundation. Nothing contained herein shall prevent a construction trailer or sales trailer from being located temporarily on a lot during the construction of improvements within the subdivision.

(i) **Utility and Drainage Easements**. A perpetual easement is reserved over the rear ten (10) feet of each lot for utility installation and maintenance, and public drainage, and/or as shown on the recorded map. A perpetual easement is reserved over the side five (5) feet of each lot line for utility installation and maintenance, and public drainage, and/or as shown on the recorded map. A perpetual easement is reserved over the side five (5) feet of each lot line for utility installation, and/or as shown on the recorded map.

(j) **Signs**. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, or a sign used by a builder or Developer to advertise the property during the construction and sales period. Developer shall have the right to place permanent signs for Claybrooke within the development.

(k) **Animals and Pets**. No animals, livestock or poultry of any kind shall be raised, bred, pastured or maintained on any lot, except household pets which may be kept thereon for the sole pleasure and use of the occupants, but not for any commercial use or purpose and no more than three (3) pets over the age of six (6) months which stay primarily outside the residence shall be permitted at any time.

(l) **Rubbish and Garbage**. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or waste shall not be kept except in sanitary containers.

(m) **Fences and Walls**. No fence or wall shall be erected on a Lot closer to the street right-of-way line than the front of the house. In the case of a

corner Lot, no fence or wall shall be erected within the side yard setback adjoining the road right-of-way, except for split rail fences. Solid or privacy fences shall be erected entirely to the rear of the residence exclusive of decks and porches. "Solid" is defined for purposes of this Declaration as fencing with more than 60% of any of its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence.

The following types offences or walls shall not be erected on any Lot:

- A. Chain link or other metal fencing is not permitted, except that 2 inch by 4 inch metal mesh may be used with split rail fencing to contain animals or children.
- B. Any fence or wall in excess of six (6) feet in height.
- C. Any fence or wall located within the road right-of-way.
- D. Dog runs or animal cages.

The location restrictions set forth above shall not pertain to any fencing erected within the Common Area or as part of the permanent entryways to Claybrooke.

(n) **Clotheslines. Garbage Cans. Etc.** All garbage cans, lawnmowers and similar equipment shall be kept in an enclosed structure or screened by adequate planting or fencing as to conceal same from the view of neighboring owners and streets. Clotheslines shall not be used nor permitted to be erected or placed on any lot.

(o) **Radio and Television Antennas.** No freestanding radio or television transmission or reception towers, antennas, dishes or discs shall be erected on a lot. Only one radio and one television antenna attached to the residence not exceeding five (5) feet in height above the roofline of the residence and only one (1) dish attached to the house not exceeding two (2) feet in diameter.

(p) **Commercial Vehicles. Buses, Etc.** No commercial vehicle in excess of one (1) ton capacity or buses, including, but not limited to, school buses, shall be parked within the property shown on the above- described recorded plats. In addition, no boats and trailers or campers shall be parked in front of the residence on any lot, or within the front or side setback of any lot. Only one (1) boat and trailer, one (1) camper, or one (1) trailer may be parked on any lot at any one time. No tag less or junk vehicles shall be

parked on the street in front of the residence or on any lot unless in an enclosed garage.

(q) **Sight Lines**. No fence, wall, hedge or shrub planting which obstructs sight lines shall be placed or permitted to remain on any corner lot within the triangle area formed by the street property lines and a line connecting them at points thirty-five (35) feet from the intersection of the street property lines extended or within any sight easement shown on any recorded plat.

(r) **Basketball Goals Within Road Right-of-Way**. No basketball goal shall be erected or allowed to remain within the right-of-way of any street located within the Submitted Property.

(s) **Mailboxes**. No brick or stone mailboxes shall be erected or allowed to remain within the right-of-way of any street located within the Submitted Property.

(t) **Seasonal Decorations**: Seasonal house and yard decorations shall be removed within thirty (30) days following the holiday period.

(u) **Covenants Independent of One Another**. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

(v) **Limitations**. It is distinctly understood and agreed that nothing herein contained shall be taken and construed as imposing any conditions or restrictions upon any land not specifically covered by these restrictions.

(6.3) **Architectural Control**. After completion of the construction of the principal residence located on any Lot, no building, fence, wall, or other structure shall be commenced or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made, including the erection of antennas, aerials, awnings, the replacement of reflective or other material in the windows of a house or other exterior attachment, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures, topography and compliance with the restrictions by an Architectural Control Committee composed of three or more representatives appointed by Developer or by the Board of Directors, once Developer assigns to it the right of appointment hereunder. The right to appoint will automatically switch to the Board when the Class B membership converts to Class A. In the event said committee fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it, approval will not be required, and this paragraph 6.3 will be deemed to have been fully complied with. The

Architectural Control Committee shall have the right to charge a reasonable fee for receiving such application in an amount not to exceed \$25.00. The Architectural Control Committee shall not approve any alterations, decorations or modifications which would jeopardize or impair the soundness, safety or appearance of any Lot. Refusal or approval of plans, specifications, builder or location may be based upon any grounds including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Architectural Control Committee shall be deemed sufficient. Provided that nothing contained herein shall be construed to permit interference with the development of the properties by the Developer in accordance with its general plan of development.

ARTICLE VII: EASEMENTS

(7.1) **General**. Each Lot now or hereafter subjected to this Declaration shall be subject to all easements shown or set forth on the recorded plat or plats of survey upon which such Lot is shown. No structure of any type shall be erected or placed upon any part of a Lot or the Common Area which shall interfere with rights and use of any and all easements shown on said recorded plat.

(7.2) **Control of Signs**. Developer shall have the right to place permanent and temporary directional and advertising signs for Claybrooke on the Common Area and unsold Lots and within street rights-of-way until one hundred percent (100%) of the Lots have been sold.

(7.3) **Emergency**. There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, policemen and security guards employed by Developer and all similar persons to enter upon the Properties or any portion thereof, in the performance of their respective duties.

(7.4) **Municipal Easement**. A general easement of access is granted to all utility providers, into, over and through each Lot for the purpose of maintaining, repairing and servicing the utility lines located on said Lot and for providing municipal services to which said Lot is entitled.

ARTICLE VIII: GENERAL PROVISIONS

(8.1) **Covenants Running with the Land**. All provisions of this Declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein, and every Owner or any other person or legal entity claiming an interest in any lot, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of this Declaration.

(8.2) **Duration**. The covenants, conditions and restrictions of this Declaration shall be binding for a term of twenty (20) years from the date this Declaration is

recorded, after which time they shall be automatically extended for successive and additional periods of ten (10) years each.

(8.3) **Amendment**. This Declaration may be amended or terminated during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Owners, and thereafter may be amended or terminated by an instrument signed by not less than seventy-five percent (75%) of the Owners subject to the following conditions:

- (a) All additions or amendments must be consented to by Developer in writing so long as Developer is the owner of any lot in the development:
- (b) Notwithstanding anything in this Section 8.3 to the contrary, Developer may, at Developer's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of the FHA, VA, the Federal National Mortgage Association or other similar agency;
- (c) No Amendment shall become effective until the instrument evidencing such change has been filed of record in the Mecklenburg County Public Registry.

(8.4) **FHA/VA Approval**. In the event the Developer, its successors or assigns, has arranged for and provided purchaser of Lots with FHA insured or VA mortgage loans, then as long as any Class B lot exists, as provided in Article VI hereof, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, other than as provided in Article II hereof, deeding, mortgaging or dedication of Common Area to persons other than the Association and amendment of this Declaration.

(8.5) **Enforcement**. If any Owner shall violate or attempt to violate any of these restrictions, failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Association, or, in proper case, by an aggrieved owner. Any failure by Association or any other Owner to enforce any of the foregoing restrictions or other provisions shall in no event be deemed a waiver of their right to do so thereafter. Invalidation of any covenant, condition or restriction or other provision of this Declaration shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

(8.6) **Headings**. Headings are inserted only for convenience and are in no way to be constructed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

(8.7) **Unintentional Violation of Restrictions.** In the event of unintentional violation of any of the foregoing restrictions with respect to any Lot, the Developer or its successors reserves the right (by and with the mutual written consent of the then Owner or Owners of such Lot) to change, amend or release any of the foregoing restrictions as the same may apply to that particular Lot.

(8.8) **Severability.** The provisions of this Declaration are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder hereof.

(8.9) **Joinder of Development Lender.** Substitute Trustee and Branch Banking and Trust Company, owner and holder, join in the execution of these Restrictive Covenants solely for the purpose of subordinating the lien of the following recorded deed of trust to these Restrictive Covenants: Deed of Trust from Ridgeline-Claybrooke LLC, a North Carolina limited liability company to Jerone C. Herring, Trustee for Branch Banking and Trust company dated July 22, 1997 recorded in the Mecklenburg Public Registry in the original principal amount of \$1,225,000.