

**DECLARATION OF PROTECTIVE COVENANTS**  
**FOR THE CLIFFS OF COLINGTON**

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**TABLE OF CONTENTS**

**ARTICLE I - STATEMENT OF SUBMISSION**

Section 1.01 Submission of Property

**ARTICLE II - DEFINITIONS**

Section 2.01 Definitions

**ARTICLE III - PLAN OF DEVELOPMENT**

Section 3.01 Property  
Section 3.02 Reservation of Declarant's Rights  
Section 3.04 Interest Subject to Plan of Development  
Section 3.05 Declarant Control Period

**ARTICLE IV - PROPERTY RIGHTS**

Section 4.01 General  
Section 4.02 Owner's Easement of Enjoyment  
Section 4.03 Recreational Amenities  
Section 4.04 Easements for Declarant  
Section 4.05 Changes in Boundaries; Additions to Common Areas  
Section 4.06 Easements for Utilities and Drainage  
Section 4.07 Easements for Association  
Section 4.08 Sales and Construction Offices  
Section 4.09 Maintenance Easement  
Section 4.10 Environmental Easement  
Section 4.11 Wells  
Section 4.12 Title to Common Areas

**ARTICLE V - MEMBERSHIP**

Section 5.01 Membership  
Section 5.02 Classes of Membership  
Section 5.03 Requirement of Membership  
Section 5.04 Control of the Board of Directors of the Association

**ARTICLE VI - MAINTENANCE**

Section 6.01 Responsibilities of Owners  
Section 6.02 Association's Responsibility  
Section 6.03 Association's Powers

**ARTICLE VII - ASSESSMENTS**

- Section 7.01 Purpose of Assessments
- Section 7.02 Creation of Lien and Personal Obligation of Assessments
- Section 7.03 Computation of Annual Assessments
- Section 7.04 Special Assessments
- Section 7.05 Individual Assessments
- Section 7.06 Notice of Meeting and Quorum
- Section 7.07 Liens
- Section 7.08 Effect of Nonpayment; Remedies of the Association
- Section 7.09 Exempt Property

#### **ARTICLE VIII - ADMINISTRATION**

- Section 8.01 Common Areas
- Section 8.02 Duties and Powers
- Section 8.03 Rules and Regulations

#### **ARTICLE IX - ARCHITECTURAL STANDARDS AND USE RESTRICTIONS**

- Section 9.01 Purpose
- Section 9.02 Architectural Standards Committee
- Section 9.03 Permitted Improvements
- Section 9.04 Construction of Improvements
- Section 9.05 Architectural Approval
- Section 9.06 Landscaping Approval
- Section 9.07 Approval Not a Guarantee
- Section 9.08 Building Restrictions
- Section 9.09 Use of Lots and Dwellings
- Section 9.10 Boats and Watercrafts
- Section 9.11 Exterior Appearance
- Section 9.12 Signs
- Section 9.13 Antennas
- Section 9.14 Security Systems
- Section 9.15 Water Wells and Septic Tanks
- Section 9.16 Pets
- Section 9.17 Nuisances
- Section 9.18 Motor Vehicles, Trailers, Boats, Etc.
- Section 9.19 Sales and Construction Activities

#### **ARTICLE X - GENERAL PROVISIONS**

- Section 10.01 Duration
- Section 10.02 Notices
- Section 10.03 Enforcement
- Section 10.04 Interpretation
- Section 10.05 Severability
- Section 10.06 Notice of Sale, Lease, or Mortgage
- Section 10.07 No Trespass
- Section 10.08 Amendment to Declaration

**Exhibit A - Copy of Plat**

**Exhibit B - WWDF Agreement**

This is a copy that represents original

## **DECLARATION OF PROTECTIVE COVENANTS FOR THE CLIFFS OF COLINGTON**

THIS DECLARATION OF PROTECTIVE COVENANTS, made this 11th day of September, 1989 by WAHL Partnership, a North Carolina General Partnership, d/b/a/ The Cliffs of Colington, hereinafter called "Declarant";

### **WITNESSETH:**

WHEREAS, the Declarant is the owner of certain real property located on the big island of Colington, Dare County, North Carolina, more particularly described in Article I herein and said property being hereinafter referred to as "The Cliffs of Colington"; and

WHEREAS, Declarant wishes to insure that any improvements to the property be in confirmation with a standard of architectural guidelines for the purpose of protecting the value and desirability of The Cliffs of Colington and has made provisions for an Architectural Standards Committee which would administer those architectural guidelines for The Cliffs of Colington as more particularly set forth in Article IX; and

WHEREAS, Declarant has caused to be incorporated The Cliffs of Colington Homeowner's Association, Inc., a North Carolina Non-Profit Corporation for the purpose of administering and enforcing the Covenants hereinafter created;

NOW, THEREFORE, the Declarant hereby declared all that property described in Section 1.01 herein to be held, conveyed hypothecated or encumbered, leased, rented, used, occupied, and improved subject to this Declaration of Protective Covenants, easements, liens and charges, all of which are declared and agreed to be in furtherance of enhancing and protecting the value, desirability, and attractiveness of The Cliffs of Colington and any part thereof, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described The Cliffs of Colington or any part thereof.

### **ARTICLE I STATEMENT OF SUBMISSION**

**Section 1.01 Submission of Property.** The Declarant is the owner in fee simple of certain real property situated on the big island of Colington, Dare County, North Carolina, said property referred to as "The Cliffs of Colington", and being more particularly described as follows:

All that real property shown on map or plat entitled in part "The Cliffs of Colington" by Bissell Associates, Engineers, Architects and Surveyors recorded in Plat Cabinet C, Slide 94 D,E,F Dare county Registry. It is the intention of the Declarant to submit by this Declaration all property described in the Plat, with the exception of Lot 1 and Lot 30 (hereinafter referred to as "the Property") together with all improvements, easements, rights and appurtenances thereunto belonging.

### **ARTICLE II DEFINITIONS**

**Section 2.01 Definitions.** When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meaning and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Architectural Standards Committee" shall mean and refer to the committee who shall be initially appointed by the Declarant and later subject to appointments by the Association's Board of Directors to approve exterior and structural improvements, additions, and changes within The Cliffs of Colington as provided in Article IX.

(b) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of The Cliffs of Colington Homeowner's Association, Inc.

(c) "Assessment" shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(d) "Association" shall mean and refer to The Cliffs of Colington Homeowner's Association, Inc., a North Carolina Non-Profit corporation.

(e) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(f) "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of The Cliffs of Colington Homeowner's Association, as the same may be amended from time to time.

(g) "Commercial Site" shall mean the unimproved parcel of land designated on the Plat as "Lot 1 - Commercial", intended for use as a site for improvements designated to accommodate commercial or business enterprises, provided, however, that a "Commercial Site", until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designated such property as a public or commercial site is placed of record, shall be deemed to be unimproved until an occupancy permit is granted by Dare County.

(h) "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owner. Included within the Common Areas are the Recreation Amenities, maintenance areas, road, streets, parking lots, walkways, sidewalks, jogging trails, bike paths, street lighting, tennis court, tennis court lighting, signage, ponds and Sound Access Easements as designated on the Plat. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein.

(i) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of the Declaration.

(j) "Declarant" shall mean WAHL Partnership, a North Carolina General Partnership and any successor in interest.

(k) "Declarant Control Period" shall mean the period of commencing on the date of the filing of the Plat of The Cliffs of Colington in the Office of the Register of Deeds of Dare County, North Carolina and continuing until the earlier of: (1) the date five (5) years after the date of the first conveyance of the Lot in The Cliffs of Colington, or; (2) the date Declarant has conveyed One Hundred Percent (100%) of the Lots in The Cliffs of Colington to owners other than the Declarant.

(l) "Declarant" shall mean and refer to this Declaration of Covenants and all amendments thereof filed for record in the Office of the Register of Deeds of Dare County, North Carolina.

(m) "Dwelling" shall mean and refer to any improved property for a single family residential occupancy use located within The Cliffs of Colington.

- (n) "Improvements" shall mean and refer to any additions to a Lot including a dwelling, garage, carports, porches, terraces, balconies, decks, patios, courtyards, piers bulkheads, boat houses, swimming pools, tennis courts and any other construction which has been approved by the Architectural Standards Committee of The Cliffs of Colington.
- (o) "Living Area" shall mean and refer to enclosed heated covered areas within a Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.
- (p) "Lot" shall mean and refer to any unimproved portion of The Cliffs of Colington on which it is intended that a single family dwelling shall be constructed as such Lots are shown on the Plat. A parcel of land shall be deemed unimproved and is considered to be a Lot, rather than a Dwelling until the improvements constructed thereon are sufficiently complete to reasonable permit habitation thereof.
- (q) "Owner" shall mean and refer to the record owner, whether one or more persons or entity, of the fee simple title to any Lot situated within The Cliffs of Colington, but withstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgage or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosures.
- (r) "Plat" shall mean and refer to that plat identified in Section 1.01; a copy of which is attached hereto as exhibit A.
- (s) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust, or other legal entity, or any combination thereof.
- (t) "Recreational Amenities" shall include such recreational facilities and improvements as are from time to time located within the Common Areas and the easement areas of "The Cliffs of Colington" including, without limitation the tennis court, jogging trails, bike paths, and ponds.
- (u) "Sound Access Easement" shall mean a perpetual easement in favor of all lot owners situated within The Cliffs of Colington for ingress, egress, and access to the sound over the lot of owners as such Sound Access Easement is described on the plat.
- (v) "WWDF" shall mean a low-pressure waste water disposal facility to be constructed by Declarant, in accordance with the current rules and regulations of the State, County and local authorities having jurisdiction thereover, to service the WWDF Lots.
- (w) "WWDF Agreement" shall mean that agreement which will be executed by Declarant, Association and each WWDF Lot Owner at the time of closing on a WWDF Lot; a copy of which is attached to this declaration as Exhibit B.
- (x) "WWDF Lots" shall mean those lots designated on the Plat as lots 16 through 20.
- (y) "WWDF Lot Owners" shall mean such owners who have purchased a WWDF Lot.

### ARTICLE III PLAN OF DEVELOPMENT

**Section 3.01 Property** The Property subject to this Declaration shall be that property shown on the Plat with the exception of the areas designated as "Lot 1 " and "Lot 30". Declarant, at its option, may elect to deed Lot 30 to the Association shall accept such conveyance. All Lots, except Lot 1 and Lot 30 shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in Article IX hereof.

**Section 3.02 Reservation of Declarant's Rights** Declarant shall have the right, but not the obligation, for so long as Declarant owns any of the property described in "Exhibit A" to add portions of said properties described in the Plat to this Declaration, to make improvements and changes to all Common Areas including, without limitation, installation and maintenance of any improvements unto the Common Areas, including the Recreational Amenities, changes in the location of the boundaries of any Lots owned by the Declarant or of the Common boundaries of any Lots owned by the Declarant or of the Common Areas, installation and maintenance of any water, sewer, and other utility systems and facilities, and installation of fresh water refuse facilities including the right to change portions of Common Areas amenities. Nothing contained in this Declaration shall obligate the Declarant to improve or develop that area designated on the plat as "Easement Retained By Owner For Possible Future Recreational Amenity".

**Section 3.04 Interest Subject to Plan of Development** Every purchaser of a Lot shall purchase such Lot and every Mortgagee and lien holder holding an interest therein shall take title, or hold such security interest with respect thereto with notice of Declarant's plan of development as herein set forth, and Declarant shall have and does hereby specifically reserve the right to add any additional property shown on the Plat not heretofore submitted. Any provision of the Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article III may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

**Section 3.05 Declarant Control Period** In accordance with Section 5.04, and notwithstanding anything contained herein to the contract, the Declarant shall have the right to appoint and designate at least two-thirds (2/3) of the members of the Board of Directors of The Cliffs of Colington Homeowner's Association, Inc. or four (4) such directors whichever is greater during the Declarant Control Period.

**Section 4.01 General** Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of the Declaration, may be conveyed, transferred, encumbered the same as any other real property. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established thereunder which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot.

**Section 4.02 Owner's Easement of Enjoyment** Subject to the provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board of Directors in accordance with the By-Laws and the terms hereof, every Owner, his family, tenants, and guests shall have a non-exclusive right, privilege and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass and run with title to each Lot, subject to the following provisions:

(a) The right of the Association to

borrow money for (i) the purpose of improving The Cliffs of Colington, or any portion thereof, (ii) acquiring additional Common Areas, (iii) constructing, repairing, maintaining or improving any facilities located or to be located within The Cliffs of Colington, or (iv) providing the services authorized hereby,

give as security for the payment of any such loan, a mortgage, or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interests, options, licenses, easements and privileges herein reserved to established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such mortgage is executed or given.

(b) The rights and easements reserved to Declarant in Article IV hereof.

(c) The right of the Association to grant and accept easements as provided in Section 4.06 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to any additional property or any portion thereof to The Cliffs of Colington.

(d) The rights and easements reserved in Section 4.07 hereof for the benefit of the Association, its directors, officers, agents, and employees.

**Section 4.03 Recreational Amenities.** Subject to the terms and provisions of this Declarant and the rules and regulations, fees and charges from time to time established by the Board of Directors, every Owner and his family, tenants, and guests shall have the non-exclusive right, privilege, and easement of access to and the use and enjoy easement of the Recreational Amenities.

**Section 4.04 Easements for Declarant.** During the Declarant Control Period, Declarant shall have an alienable and transferable right and easement on, over, through, under and across Common Areas for the purpose of construction Dwellings and other improvements in and to the Lots and for installing, maintaining, repairing, and replacing such other improvements to the property (including the Recreational Amenities and other portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without any limitation, any improvements or changes permitted and described by Article III hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

**Section 4.05 Changes in Boundaries; Additions to Common Areas.** Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Areas, and any Lots, including the realignment of boundaries between adjacent Lots owned by Declarant, provided that any such change or realignment of boundaries shall not materially decrease the acreage of the Common Areas. Such revisions shall be evidenced by a revision of or an addition to those plats of The Cliffs of Colington which shall be recorder in the Plat Records of the Register of Deeds of Dare County, North Carolina.

**Section 4.06 Easements for Utilities and Drainage.** The Declarant will provide each lot utility connections for water, electricity, telephone, and cable services; however, all connect fees shall be at the cost and expense of the owner. Declarant has paid on behalf of each Lot the water impact fee. Declarant will not provide Lots 1 through 15 and 21 through 30 with any sewer or waste water facilities. Declarant will construct a low-pressure waster water disposal facility ("WWDF"), in accordance with the current rules and regulations of the State, County and local authorities having jurisdiction thereover, to service Lots 16 through 20 (the WWDF Lots).

**Section 4.06.01** Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric and telephone systems, cable television service, and any other public or private utility service, and conduits for

the purpose of bringing public services to the Cliffs of Colington, on, in, or over an area within fifteen (15) feet of each Lot line fronting on a street or where a Lot line abuts a right of way boundary line, fifteen (15) feet along the sidelines of each Lot, and fifteen (15) feet along the rear line, and such other areas as are shown on any recorded plats of the properties.

**Section 4.06.02** Declarant reserves unto itself, its successors and assigns, perpetual, alienable and releasable easements within the Cliffs of Colington and the right on, over and under the ground to cut drainways for surface water deemed by the Declarant to be necessary to maintain reasonable standard of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, take or add any soil, or take any other similar action reasonable necessary to provide economical and utility installation or to maintain reasonable standards of health, safety and appearance. Declarant reserves unto itself, in its sole discretion, the right to grant easement rights to any other public or private utility.

**Section 4.06.03** In addition to the rights of Declarant as set forth in section 4.06.02 above, Declarant shall have the right to install the WWDF for the benefit of the WWDF Lot Owners and shall have the right to (i) locate the drain field and related facilities on that portion of the Common Areas as designated on the Plat and (ii) locate pipes and related facilities in, on or over WWDF Lots and Common Areas in such places as Declarant shall determine in its sole discretion, provided that such installation shall not be constructed in such a way as to render a WWDF Lot unbuildable.

**Section 4.07 Easements for Association.** There is hereby reserved a general right of easement for the benefit of the Association, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner.

**Section 4.08 Sales and Construction Offices.** Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns the alienable and transferable right and easement in and to the Property for the maintenance of signs, sales offices, construction offices, business offices and model dwellings, together with such other facilities as in the sole option of Declarant may be reasonable required, convenient, or incidental to the completion and improvement of Common Areas, and/or Common Spaces, and/or sale of Lots, or any Additional Property, for so long as Declarant owns any Lot primarily for the purpose of sale during the Declarant Control Period.

**Section 4.09 Maintenance Easement.** Subject to the terms of Section 4.02, hereof, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, the right to enter upon any Lot, such entry to be made by personnel with tractors or other suitable devices, for the purposes of mowing, removing, clearing, cutting, or pruning underbrush, weeds or unsightly growth for the purpose of building or repairing any land contour or other earth work which in opinion of the Declarant or its agents detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed trespass. Declarant, the Association and their successors and/or assigns may likewise enter upon any Lot to remove any trash which is collected without entrance and removal deemed trespass. The provisions of this paragraph shall not be construed as an obligation on the part of the Declarant and/or the Association to undertake any of the foregoing.

**Section 4.10 Environmental Easement.** There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assign, an alienable, transferable, and perpetual right and easement on, over and across all Lots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

**Section 4.11 Wells.** There is hereby reserved for the benefit of Declarant, the Association, and their respective affiliates, agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement (i) to pump water from lagoons, marinas, and other bodies of water located within The Cliffs of Colington for the purpose of irrigating any portions of the Development, (ii) to drill, install, locate, maintain and use wells, pumping stations, and water towers, within the Common Areas, including within any portion of the Recreational Amenities. Nothing contained herein shall obligate Declarant to irrigate any portion of The Cliffs of Colington.

**Section 4.12 Title to Common Areas.** Declarant shall retain ownership of the Common Areas until it has completed improvements thereon, but in no event beyond Declarant's Control Period. Thereafter, title to Common Areas shall be conveyed to The Cliffs of Colington Homeowner's Association, subject to the easements herein disclosed, including, but not limited to a perpetual easement for the purposes of ingress and egress to the sound across that area designated on the plat as Sound Access Easement. This perpetual Sound Access Easement is restricted to the right of ingress and egress and there shall be no construction of any structures thereon by the Association. Any lot owner of a soundfront lot shall have the right to construct bulk heading to prevent erosion of the lot, build a pier or such other structure with subsequent approval of any governmental agency having jurisdiction thereof, on the lot owner's ground provided that such structure does not impede the ingress, egress, and access of the Association granted under this Sound Access Easement. If walkways are constructed by adjoining lot owners to the Sound, across the Sound Access Easement, such construction shall not unreasonably impede ingress, egress, and access of the Lot Owners to the Sound. Steps or ramps may be required where, in the opinion of the Architectural Standards Committee such steps or ramps are reasonable necessary to carry out this intention.

## **ARTICLE V MEMBERSHIP**

**Section 5.01 Membership.** The membership of the Association shall consist of the Lot Owners in The Cliffs of Colington subdivision, Declarant, and the owners of any other lands which may be added thereto by the Declarant.

**Section 5.01.02.** Membership shall be established by acquisition of fee title to a Lot in The Cliffs of Colington subdivision whether by conveyance, devise, descent, or judicial decree. A new owner designated in such deed or other instrument shall thereupon become member of the Association, and the membership of the prior owner as to a Lot designated shall be terminated. Each new Lot Owner shall deliver to the Association a true copy of such deed or instrument of acquisition of title.

**Section 5.01.03** Neither membership in the Association nor a member's share in the funds and assets of the Association may be assigned, hypothecated or transferred in any manner except as an appurtenance to a Lot in The Cliffs of Colington subdivision.

**Section 5.02 Classes of Membership.** There are two classes of membership in the Association. The classes of membership and the respective voting rights of each class shall be as follows:

**Section 5.02.01** Type A Members shall be all Lot Owners (including the Declarant) of Lots. An Owner of a Lot shall be entitled to one vote for each Lot that he owns.

**Section 5.02.2** The Type B Member shall be the Declarant. The Type B Member shall be entitled to cast ten (10) votes for each vote cast by a Lot Owner, but only during the time of the Declarant Control Period. Type B Membership shall terminate automatically and Declarant shall have no voting rights other than as set forth in Section 5.02.02 above.

**Section 5.02.3** No lien holder shall be considered as a Member unless such lien holder shall have foreclosed on such lien and acquired the fee simple title to the Lot.

**Section 5.03 Requirement of Membership.** The requirement of membership shall apply to any mortgagee or trustee beneficiary acquired title by foreclosure or otherwise pursuant to the mortgage or Deed of Trust instrument.

**Section 5.04 Control of the Board of Directors of the Association.** During the Declarant Control Period, the Declarant shall have the right to appoint at least four (4) directors or two-thirds (2/3) of the Board of Directors, whichever is greater.

## ARTICLE VI MAINTENANCE

**Section 6.01 Responsibilities of Owners.** Each lot Owner shall be responsible of all maintenance and repair of their Lot together with all other improvements thereon or therein and all lawns, landscaping of grounds on and within the Lot shall be the responsibility of the owner of such Lot. Each owner shall be responsible for maintaining its Lot in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all improvements and other structures and all lawns, trees, shrubs, hedges, grass, walkways, driveways and other landscaping. As provided in Section 6.02 hereof, each owner shall be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such owner but which responsibility such owner fails or refuses to discharge. No owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of any improvements within a Lot, except when traditional seasonal ornamental decorations are appropriate and which are in the opinion of the Architectural Standards Committee appropriate, unless such decorations, changes or alterations are first approved in writing by the Architectural Standards Committee as provided in Article IX hereof or do any work which, in the reasonable opinion of the Architectural Standards Committee would jeopardize the soundness and safety of The Cliffs of Colington, reduce the value thereof, or impair any easement thereto without in every such case obtaining the written approval of the Architectural Standards Committee.

**Section 6.01.01** Additionally, WWDF Lot Owners shall be subject to those charges and costs for the WWDF as are set forth in the WWDF Agreement and as may be specially assessed by the Association from time to time.

**Section 6.02 Association's Responsibility.** Except as maybe herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas which responsibility shall include the maintenance, repair, and replacement of the Recreational Amenities, all roads, walks, trails, ponds, parking lots, landscaped areas and other improvements situated in the Common Areas or within easements encumbering Lots pursuant to Section 4.07 hereof, utility lines, pipes, plumbing, wires, conduits, and related systems which are part of the Common Areas and which are not maintained by public utilities or other persons, and lawns, trees, shrubs, hedges, grass, walkways, driveways and other landscaping situated within or upon the Common Areas. No diminution or abatement of assessments or recreational charges shall be claimed or allowed by reason of alleged failure of the Association to take some action to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or obligation to pay such assessments being a separate authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

**Section 6.02.01** The Association shall have such additional authority and responsibilities as set forth in the WWDF Agreement.

**Section 6.03 Association's Powers.** In the event that the Declarant or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of any emergency situation, shall give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. In such event, the Owner shall have twenty (20) days within which to complete the same in a good, workmanlike manner or in the event that such maintenance, cleaning, repairs, or replacement is not capable of completion within twenty (20) days, to commence said maintenance, cleaning, repairs, or replacement and diligently proceed to complete the same in a good, workmanlike manner within a reasonable time frame. In the event of the failure of any owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to provide) any such maintenance, cleaning, repairs, or replacement, the sole costs and expense of which shall be added to and become a part of the assessment to which the Owner and his lot shall be subject and shall become a lien against such Lot. In the event that the Declarant undertakes such maintenance, cleaning, repairs, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

## ARTICLE VII ASSESSMENT

**Section 7.01 Purpose of Assessments.** The assessment for Common Expenses provided for herein shall be used for the general purposes of maintenance of roads and improvements, promoting the recreation, health, safety, welfare, common benefit, and enjoyment for the Owners of The Cliffs of Colington and maintaining the Development and improvements therein, as may be more specifically authorized from time to time by the Board of Directors.

**Section 7.02 Creation of Lien and Personal Obligation of Assessments.** Each Owner of a Lot, by acceptance of a Deed or other conveyance thereof, whether or not it shall be so expressed in such Deed or conveyance, is deemed to covenant and agree to pay the Association: (a) annual assessments, such assessments to be established and collected as provided in Section 7.03 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 7.04 hereof, (c) individual or specific assessments against any Lot established pursuant to the terms of this Declaration. Any such assessments, together with the late charges, simple interest at the rate of eighteen percent (18%) per annum, and court costs and reasonable attorney's fees incurred to enforce or collect such assessments shall be a lien on the Lot pursuant to the provisions of Section 7.07 herein. In the event of co-ownership of any Lot, all of such assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, provided that unless otherwise provided by the Board, the annual assessments shall be paid in one lump sum.

**Section 7.03 Computation of Annual Assessments.** It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The Board shall cause the budget and the proposed total of the annual assessments to be levied against Lots for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The total annual assessments shall be divided among the Lots equally, so that each Lot shall be subject to equal annual assessments. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 7.04 hereof. The Common expenses to be funded by the annual assessments may include, but shall not necessarily be limited to the following:

- (a) management fees and expenses of administration, including legal and accounting fees;
- (b) utility charges for utilities serving the Common Areas and charges for other common services for The Cliffs of Colington, including trash collection and security services, if any such services or charges are provided or paid by the Association;
- (c) the cost of any policies of insurance purchased for all benefit of all the Owners of the Association as required or permitted by the Declaration, including fire, flood, and other hazard coverage, public liability coverage, Officers and Directors liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners.
- (d) the expenses of maintenance, operation, and repair of those portions of the Common Areas which are the responsibility of the Association under the provisions of this Declaration;
- (e) the expenses of maintenance, operation, and repair of other amenities and facilities serving The Cliffs of Colington, the maintenance, operation, and repair of which the Board from time to time determines to be in the best interest of the Association;
- (f) the expenses of the Architectural Standards Committee which are not defrayed by plan review charges;
- (g) ad valorem real and personal property taxes assessed and levied against the Common Areas;
- (h) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, tenants, guests, and invitees;
- (i) such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots; and
- (j) the establishment and maintenance of a reasonable reserve fund or funds (A) for maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired or replaced on a periodic basis, (B) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and, (C) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, as may be authorized from time to time by the Board of Directors.

**Section 7.04 Special Assessments.** In addition to the annual assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that except as otherwise permitted in the By-Laws of the Association, any such assessment shall be approved by (i) Declarant during the Declarant Control Period and, (ii) by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 7.06 hereof, the Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be prorated among the Lots equally as provided with respect to annual assessments.

**Section 7.05 Individual Assessments.** Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests, or invitees of any Owner or occasioned as a result of the performance of duties or responsibilities under the WWDF Agreement, shall be specially assessed against such Owners and their respective Lots. The individual assessment provided for in

this Section 7.05 shall be levied by the Board of Directors and the amount and due date of such assessment so levied by the Board shall be as specified by the Board.

**Section 7.06 Notice of Meeting and Quorum.** Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 7.03 and 7.04 hereof, shall be sent to all members not less than fifteen (15) days nor more than forty five (45) days in advance of such meetings. With respect to annual meetings, the presence of members or proxies entitled to cast over forty (40%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the presence in person or by proxy of members having one-fourth (1/4) of the total votes of the Association.

**Section 7.07 Liens.** All sums assessed against any Lot pursuant to this Declaration, together with court costs, reasonable attorney's fees, late charges, and interests as provided herein, shall be a lien upon Lot, which lien may be claimed by notice and enforced by civil action in the nature of and enforcement of laborer's and materialsmen's lien against real property pursuant to the provisions of Chapter 44 (A) of the North Carolina General Statutes or in the discretion of the Association by civil action in the nature of the foreclosure of the lien.

**Section 7.08 Effect of Nonpayment; Remedies of the Association.** Any assessments of an Owner or any portions thereof which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days after the date when due, shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may as the Board shall determine institute suit to collect such amounts or enforce its lien pursuant to the provisions of Section 7.07 herein. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner shall remain personally liable for assessments, interest, and late charges which accrue prior to sale, transfer, or other conveyance of his Lot.

**Section 7.09 Exempt Property.** Declarant may in its discretion exempt from the assessments provided herein any charges and liens which may be created herein against any commercial areas of The Cliffs of Colington. All properties owned by Declarant including Lots within The Cliffs of Colington shall be liable for all assessments as provided in Article VII herein.

## ARTICLE VIII ADMINISTRATION

**Section 8.01 Common Areas.** The Association, subject to the rights of Declarant and the right and duties of the Owners set forth in this Declaration, shall be responsible for the management and control of the Common Areas and all improvements thereof (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. As provided in Section 3.07 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing The Cliffs of Colington. Declarant shall have the right to appoint or remove any member or member of the Board of Directors or any officer or officers of the Association during the Declarant Control Period.

**Section 8.02 Duties and Powers.** The duties and powers of the Association shall be those set forth in this Declaration, the By-Laws of the Association and the Article of Incorporation, together with those reasonable implied to effect the purposes of the Association.

**Section 8.03 Rules and Regulations.** As provided in the By-Laws of the Association, the Board of Directors may make and enforce reasonable rules and regulations governing the use of the Lots and

Common Areas which rules and regulations shall be consistent with the rights and duties established by this Declaration.

## ARTICLE IX ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

**Section 9.01 Purpose.** In order to preserve the natural setting and beauty of The Cliffs of Colington, to establish and preserve a harmonious and aesthetically pleasing design for The Cliffs of Colington and to protect and promote the value of The Cliffs of Colington, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article IX. Every grantee of any interest in The Cliffs of Colington, by acceptance of a Deed or other conveyance of such interest, agrees to be bound by the provisions of this Article IX.

**Section 9.02 Architectural Standards Committee.** The Board of Directors shall establish the Architectural Standards Committee which shall consist of up to five (5) but not less than three (3) members, all of whom shall be Owners and who may or may not be members of the Board of Directors, provided that prior to the termination of Declarant's right to appoint and remove officers and directors of the Association, such members do not have to be Owners. The regular term of office for each member shall be for one (1) year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the Architectural Standards Committee by the Board shall be subject to the prior approval of Declarant until that date which is three (3) years from and after the date on which Declarant's right to appoint and remove officers and directors of the Association is terminated. The Architectural Standards Committee shall meet as often as required, but not less than every six (6) months, as well as call upon the chairman, and all meetings shall be held at such places as may be designated by the chairman. Three (3) members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Architectural Standards Committee shall constitute the action of the Architectural Standards Committee on any matter before it. The Architectural Standards Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Standards Committee in performing its functions set forth herein. Each member of the Architectural Standards Committee may be paid a stipend or honorarium as from time to time determined by the Board.

The Architectural Standards Committee shall be responsible for preparing a set of Architectural Guidelines and all Owners shall be responsible for obtaining a set of the Architectural Guidelines from the Architectural Standards Committee prior to commencing any design for any improvements within the Cliffs of Colington.

**Section 9.03 Permitted Improvements.** No improvements of any nature whatsoever shall be constructed, altered, added to, or maintained upon any part of The Cliffs of Colington, except (i) for Dwellings and other improvements as are approved by the Declarant, (ii) such improvements as are approved by the Architectural Standards Committee in accordance within Article IX, or (iii) improvements which pursuant to this Article IX do not require the consent of the Architectural Standards Committee.

**Section 9.04 Construction of Improvements.** All buildings, structures, or other improvements on or with respect to any Lots shall be in compliance with the building restrictions set forth in Section 9.08 herein, provided the Architectural Standards Committee shall be empowered to grant variances with respect to such set-back lines subject to confirmation with the ordinances of Dare County. To assure that Dwellings and other structures will be located so that the maximum view, privacy, and breeze will be available to each dwelling or structure, dwellings and structures will be located with regard to the topography of each Lot taking into consideration the location of trees and vegetation and other aesthetic and environmental

considerations, as well as the precise site and location of any other dwellings or structures within The Cliffs of Colington.

**Section 9.04.01** The Architectural Standards Committee, in its sole discretion, may require that any contractor and/or subcontractor for any planned improvements within The Cliffs of Colington post payment and/or performance bonds with the Architectural Standards Committee to assure that such contractor or subcontractor shall satisfactorily complete such improvements, such bonds to be in the name of the Association and to be in form and amount satisfactory to the Architectural Standards Committee. Furthermore, the Architectural Standards Committee, in its sole discretion, may require that an Owner place in escrow with the Architectural Standards Committee a sum of no more than \$1,000.00 in order to assure completion of all improvements, including landscaping, within the time periods provided in this Section 9.04 and in Section 9.06 hereof. The exterior of any improvement permitted by this Declaration shall be completed within one year after the construction of same shall have been commenced, except where the Architectural Standards Committee allows for an extension of time because such completion with such time is impossible or would result in great hardship to the Owner or builder thereof due to strikes, national emergencies, fires floods, lightening, hurricanes, or other casualties. In the event that such improvements or landscaping are not completed within the provided periods, the Architectural Standards Committee shall be entitled to collect on or enforce any payment or performance bonds required hereunder so as to ensure proper completion of any such improvements. Furthermore, the Architectural Standards Committee shall be entitled to retain any sums so held in escrow as a penalty for such failure to complete, and such sums shall be remitted to and shall be the property of the Association. Any such sums so held in such escrow shall, at the discretion of the Architectural Standards Committee, be invested so as to earn interest, and any interest earned thereon shall be paid to the Owner making such escrow deposit, if his escrow deposit is refunded, or, if remitted to the Association, shall be the property of the Association.

**Section 9.04.02** Dwellings may not be temporarily or permanently occupied until an occupancy permit has been obtained from appropriate County authorities.

**Section 9.05 Architectural Approval.** To preserve the architectural and aesthetic appearance of The Cliffs of Colington, no construction or improvements of any nature whatsoever shall be commenced or maintained by any Owner other than Declarant, with respect to the construction or exterior of any dwelling or with respect to any other portions of The Cliffs of Colington including, without limitation, the construction or installation of sidewalks, driveways, parking lots, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, docks, wharves, bulkheads, boat slips, boat houses, exterior lights, garages, guest or servants quarters, or other out buildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until three (3) copies of the plans and specifications and related data, showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external designs, location, and appearance in relation to surrounding and topography by the Architectural Standards Committee.

**Section 9.05.01** The Architectural Standards Committee shall determine for each Lot which trees and other significant vegetation on such Lot shall be disturbed or removed. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Standards Committee, and the other copies shall be returned to the Owner or Association marked "approved" or "disapproved". The Architectural Standards Committee shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, inspectors, or attorneys retained in accordance with the terms hereof. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his dwelling or alterations within any building or structures which he owns or maintains, without the necessity of approval or review by the Architectural Standards Committee.

**Section 9.05.02** The Architectural Standards Committee shall have the right to establish a maximum percentage coverage of a Lot.

**Section 9.05.03** Following approval of any plans and specifications by the Architectural Standards Committee, representatives of the Architectural Standards Committee shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which construction is underway, to determine whether or not the plans and specifications therefor have been approved and area being complied with. In the event the Architectural Standards Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural Standards Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.

**Section 9.05.04** In the event the Architectural Standards Committee fails to approve or disapprove in writing any proposed plans and specifications within twenty (20) days after their submission, such plans and specifications will be deemed to have been expressly approved. Upon approval of plans and specifications, no further approval under this Article IX shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed.

**Section 9.05.05** Refusal of approval of plans and specifications may be based by the Architectural Standards Committee upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, so long as such ground is not arbitrary or capricious.

**Section 9.06 Landscape Approval.** To preserve the aesthetic appearance of The Cliffs of Colington, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner, other than Declarant, unless and until the plans therefor have been submitted to and approved in writing by the Architectural Standards Committee. The provisions of Section 9.05 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation or filling. Such plans shall include a calculation of the ratio of the area to be covered by grass lawns versus the area to be left in a natural state, and the Architectural Standards Committee shall be entitled to promulgate standards with respect to such ratios. All of the landscaping of Lots and Dwellings must be completed within ninety (90) days of occupancy or substantial completion of the Dwelling, whichever date shall first occur.

**Section 9.07 Approval Not a Guarantee.** No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the Architectural Standards Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to the terms of this Article IX, nor any defects in construction undertaken pursuant to such plans and specifications.

**Section 9.08 Building Restrictions.** All Dwellings constructed on interior Lots shall have a minimum of 1,200 square feet of "heated space" for any one story or one and one-half (1-1/2) story Dwelling and a minimum of 1,280 square feet of "heated space" for any two story Dwelling. No building, including porches, eaves, steps and similar fixtures shall be located on any Lot within twenty-five feet (25) of the front line not closer than ten (10) feet from the side lines thereof, nor closer than twenty-five (25) feet from the rear property line; corner lots shall have a side setback of fifteen (15) feet. Side setbacks on any street shall be ten (10) feet. No dwelling or structure shall occupy more than forty percent (40 %) of the

buildable area of a Lot. Detached garages, storage shed, boat houses, and similar structures are permitted of the Lots, but will be required to have the same exterior siding as the Dwelling.

**Section 9.09 Use of Lots and Dwellings.** Each Lot and Dwelling shall be used for residential purposes. An office in the home is permitted use provided that the vehicular traffic generated thereby does not unreasonable interfere with the use and enjoyment of the adjacent properties. In no event shall manufacturing or repair services of any nature be allowed. No lot shall be used for access to any adjoining Lot or other property. When any Owner acquires two or more Lots then, and in that event, the adjoining one or more Lots may be used as one (1) building site and the side Lot Lines and easements referred to therein shall apply to the outside perimeter line of the combined Lots.

**Section 9.10 Boats and Watercraft.** No persons shall be entitled to live or reside on any yacht, boat, or other watercraft from time to time docked, moored, or otherwise located within The Cliffs of Colington, provided that the Board of Directors may establish rules and regulations permitting the temporary occupancy of any such yachts, boats, or other watercraft. In addition, no sewage effluent, treated or otherwise, shall be discarded from any yacht, boat, or other watercraft into any waters within or abutting The Cliffs of Colington.

**Section 9.11 Exterior Appearance.** No chain link fences shall be permitted within The Cliffs of Colington, except with regard to maintenance areas within the Common Areas. Also, any unenclosed garages or carports must be adequately screened from street views. Further, no foil or other reflective materials shall be used on any windows for sun screens, blinds, shades, or other purposes, nor shall any window-mounted heating or air-conditioning units be permitted. Except within screened services yards (or so located so as not to be visible from the main thoroughfare of the Association or other Lot Owner's homes), outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed, or maintained, nor shall any clothing, rugs, or other items be hung on any railing, fence, hedge, or wall.

**Section 9.12 Signs.** Except as may be required by legal proceedings, no signs or advertised posters of any kind shall be maintained or permitted within any windows or on the exterior of any improvements located within The Cliffs of Colington, without the express written permission of the Architectural Standards Committee. The approval of any signs and posters, including, without limitation, name and address signs shall be upon such conditions as may be from time to time determined by the Architectural Standards Committee and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 9.12 shall not apply to Declarant. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas and within those easement areas established in Section 4.06 hereof.

**Section 9.13 Antennas.** No television antenna, radio receiver, or other similar device shall be attached to or installed on any portion of The Cliffs of Colington, unless contained entirely within the interior of a building or other structure, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot, which may unreasonably interfere with the reception of television or radio signals within The Cliffs of Colington; provided however, that the Declarant and the Association shall not be prohibited from installing equipment necessary for master antennas, security, cable television, mobile radio, or other similar systems within The Cliffs of Colington, and should cable television services be unavailable and adequate television reception not be otherwise available, than an Owner may make written application to the Architectural Standards Committee for permission to install a television antenna.

**Section 9.14 Security Systems.** In the event that either Declarant or the Association shall install a central security system within The Cliffs of Colington, with the capability of providing security services to each Dwelling within The Cliffs of Colington, than no Owner shall be entitled to install or maintain any alternative security systems within a Dwelling other than security systems which are appurtenant to and

connected with such central security systems, without obtaining the prior written consent and approval of the Board of Directors.

**Section 9.15 Water Wells and Septic Tanks.** No private water wells may be drilled or maintained on any Lot so long as Declarant or an affiliate of the Association, a public service district, any governmental unit or any public or private utility shall have installed a water distribution line within 100 feet of such Lot. Notwithstanding these restrictions, wells may be approved by the Architectural Standards Committee for the use of irrigation and watering of landscaping. Each Lot Owner shall install and thereafter maintain at his cost and expense a septic tank or similar sewage facility on the Lot in compliance with the then current regulations of the Dare County Health Department.

**Section 9.15.01** Lots designated as numbers 16, 17, 18, 19 and 20 (the WWDF Lots) shall have a common drain filed located as specified on the Plat and there shall be a common easement in favor of those Lot Owners to repair, maintain, and utilize said drain filed and those facilities appurtenant thereto. Each Lot Owner utilizing the common drain field shall be liable for the cost of installation and maintenance of his prorata share of the cost of this facility, as set forth in the WWDF Agreement attached to this Declaration. The Association (and in default thereof), each WWDF Lot Owner shall have the right to enforce by all lawful means the collection of the prorata assessments for the WWDF.

**Section 9.16 Pets.** No animals, livestock, birds, or poultry of any kind shall be raised, bred, or kept by any Owners upon any portion of The Cliffs of Colington, provided that a reasonable number of generally recognized house pets may be kept in Dwellings, subject to the rules and regulations adopted by the Association, through its Board of Directors, and further provided that such pet or pets are kept and maintained solely as domestic pets and not for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Area. Pets shall be under leash at all times when walked or exercised in any portion of the Common Areas, and no pet shall be permitted to leave its excrement on any portion of the Common Areas, or Lots and the Owner of such pet shall immediately remove the same. Upon the written request of any Owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 9.16, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the Owner of a particular pet to remove such pet from The Cliffs of Colington if such pet is found to be a nuisance or to be in violation of these restrictions.

**Section 9.17 Nuisances.** No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of The Cliffs of Colington, nor shall any nuisance or odors be permitted to exist or operate upon or arise from The Cliffs of Colington, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of The Cliffs of Colington. Noxious or offensive activities shall not be carried on in any Lot.

**Section 9.18 Motor Vehicles, Trailers, Boats, Etc.** Each Owner shall provide for parking of automobiles and towed boats off streets and roads within The Cliffs of Colington prior to occupancy of any Dwellings and maintained by such Owner. The off street parking is not to be used as a repair area for automobiles or boats. However routine maintenance and repair on the Lot shall be permitted. There shall be no outside storage or parking upon any Lot, or within any portion of the Common Areas, of any commercial vehicles, tractors, motorcycles, motorized bicycles, motorized go-carts, or any other related forms of transportation devices, provided however that such storage of boats and cars may be permitted provided they are not visible from the main thoroughfare or from the homes of other Lot Owners. Furthermore, although not expressly prohibited hereby, the Board of Directors may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, and other similar vehicles, or any of them, from being kept, placed, stored, maintained, or operated upon any portion of The Cliffs of Colington if in the opinion of the Board of Directors such prohibition shall be in the best interest of The Cliffs of Colington. No owners or other occupants of any portion of the Cliffs

of Colington shall repair or restore any vehicle of any kind upon or within any Lot, Dwelling or within any portion of the Common Areas, except (i) within enclosed garages or workshops or, (ii) for emergency repairs, and then only to the extent necessary to enable the movement to a proper repair facility.

**Section 9.19 Sales and Construction Activities.** Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonable required for the sale of Lots and/or Dwellings or the developing of Lots, Dwellings, Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, provided that the location of any construction trailer of any assignees of Declarant's rights under this Section 9.19 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and/or Dwellings and other related activities.

## ARTICLE X GENERAL PROVISIONS

**Section 10.01 Duration.** All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, Declarant for a period of fifty (50) years from the date of this Declaration, after which time, all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a two-thirds (2/3) majority of then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part, provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

**Section 10.02 Notices.** Any notices required to be sent to Owner, under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post paid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing. Notice to anyone of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of a Lot.

**Section 10.03 Enforcement.** In the event of any violation or breach of any of the restrictions contained herein by any property owner or agent of such owner, Declarant, its successors or assigns, or the Owners of Lots within The Cliffs of Colington, or any of them, jointly or severally, shall have the right to proceed in law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach of any of the restrictions set out above, but before litigation may be instituted ten (10) days written notice of such violation shall be given to the Owner or his agent. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction contained in this Declaration shall in no way affect any of the other restrictions, but they and each of them shall remain in full force and affect.

**Section 10.04 Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive.

**Section 10.05 Severability.** Whenever possible, each provisions of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity

shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

**Section 10.06 Notice of Sale, Lease, or Mortgage.** In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, leasee, mortgagee, or transferee.

**Section 10.07 No Trespass.** Whenever the Association, Declarant, the Architectural Standards Committee, and the irrespctive successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of The Cliffs of Colington, the entering thereon and the taking of such action shall not be deemed to be trespass.

**Section 10.08 Amendment of Declaration.** This Declaration may be amended by Declarant individually during Declarant Control Period, if in the sole discretion of Declarant, such amendment is the best interests of The Cliffs of Colington. Thereafter, this Declaration may be amended by a majority vote of the Owners including the Declarant. If any amendment to the Declaration creates an inconsistency in the By-Laws to the extent such inconsistency exists, the Declaration shall control. No amendment to this Declaration shall be effective until recorded in the Office of the Registrar of Deeds of Dare County, North Carolina.

**ATTACH COPY OF PLAT**

**Exhibit -A-**

**ATTACH COPY OF WWDF AGREEMENT**

**Exhibit -B-**

# WWDF AGREEMENT

THIS TRI-PARTY AGREEMENT ("WWDF Agreement"), made this day of \_\_\_\_\_, 1989 between WAHL PARTNERSHIP, A North Carolina General Partnership, d/b/a The Cliffs of Colington, hereinafter regarded to as "Declarant", THE CLIFFS OF COLINGTON HOMEOWNER'S ASSOCIATION, INC., hereinafter referred to as "Association"; and the undersigned, hereinafter referred to as "Purchaser".

## WITNESSETH:

WHEREAS, the Declarant has created the Association and submitted the real property, as identified and shown on that certain Plat recorded in Plat Cabinet \_\_\_\_\_, Slide \_\_\_\_\_, Dare County Public Registry (the "Plat"), to be subject to a recorded Declaration of Protective Covenants (the "Declaration"); and,

WHEREAS, Purchaser has acquired ownership of one or more of the lots designated on the Plat as Lots 16 through 20 (hereinafter, the "WWDF Lots"), such persons hereinafter referred to collectively as "WWDF Lot Owners".

WHEREAS, the terms, conditions, for the benefit of the WWDF Lot Owners, has agreed to install a low-pressure waste water disposal facility, ("WWDF"), in accordance with the current rules and regulations of the State, County and local authorities (the "Authorities"), having jurisdiction thereover to services the WWDF Lots; and,

WHEREAS, Declarant and Association believe it is in the mutual best interest of the Association, Declarant and WWDF Lot Owners to expressly set for the rights, duties and obligations assumed by the WWDF Lot Owners at the time they acquire ownership of their WWDF Lots relative to the repair, maintenance and eventual replacement of the WWDF; and,

WHEREAS, the Declaration requires that each purchaser of a WWDF Lot, Declarant and Association execute this Agreement at the time Purchaser closes on a WWDF Lot.

NOW, THEREFORE, in consideration of the mutual covenants and representations hereinafter made and intending to be legally bound hereby, the parties hereto agree as follows:

### 1. Declarant agrees:

- 1.1 to construct, at developer's cost and expense, low-pressure waste water disposal facility (WWDF) on, over, through and under the WWDF Lots and Common Areas of the Association where indicated on the Plat.
- 1.2 to install all pipes, pumps, tanks, drain fields and related support facilities for the WWDF in accordance with the applicable rules and regulations of the Authorities then prevailing at the time of installation.
- 1.3 to pay, while any WWDF Lots remain unsold to WWDF Lot Owners, a fractional portion of the costs assessed by the Association from time to time incidental to the repair, maintenance and eventual replacement of the WWDF servicing the WWDF Lots, said fractional portion being equal to one-sixth ( $\frac{1}{6}$ ) of said costs for each Lot owner by Declarant.

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2. Purchaser agrees to upon purchase of a WWDF Lot:

- 2.1 to utilize the WWDF system and construct or install no other waste disposal system upon a WWDF Lot.
- 2.2 to pay the sum of \$250.00 to the Association at the time of the closing on each WWDF Lot.
- 2.3 to pay the sum of \$100.00 per year thereafter to the Association, which sum shall be payable in addition to any payable annual dues of the Association.
- 2.4 to pay, when requested, the individual assessments assessed by the Association pursuant to 7.05 of the Declaration as determined by the Association from time to time, such assessment being for the purpose of repair, maintenance, and eventual replacement of the WWDF servicing

3. In addition to the powers, rights, and duties granted to the Association in the Declaration, the Association shall have the right and obligation:

- 3.1 to establish an annual budget for the operation, maintenance, and timely replacement of the WWDF
- 3.2 To establish and administer separate Bank accounts into which shall be deposited that portion of funds collected from Purchaser and other WWDF Lot Owners collect for the purpose of repair, maintenance, and eventual replacement of the WWDF.
- 3.3 To make special assessments against the Purchaser and other WWDF Lot Owners in accordance with the terms of the Declaration for the purpose of repair, maintenance, and eventual replacement of the WWDF.
- 3.4 to collect all sums which are due and owing from the Purchaser and other WWDF Lot Owners and to use all lawful means granted in the Declaration to enforce said collection.
- 3.5 to establish operational standards for the WWDF and to make determinations as to whether the WWDF is operation at those standards.
- 3.6 to repair, modify, maintain, and replace when required, the WWDF and to arrange for the continued uninterrupted operation of the system.

4. The Declarant (but only during the period of time any WWDF Lots remain unsold to WWDF Lot Owners), Association, Purchaser and each WWDF Lot Owner, shall have a perpetual easement across, under, through, and upon the WWDF Lot owned by any WWDF Lot Owner, the Declarant and the Common Areas owned by the Association, for the purpose of repair, maintenance, replacement, or modification of the WWDF, to insure its continued and uninterrupted present and future operation and use in conformity with the laws, rules and regulations of the Authorities having jurisdiction thereover.

- 4.1 Such entry upon a WWDF Lot or the Common Areas utilized by the WWDF shall not be deemed as trespass.

5. The parties hereto agree that in all respects not inconsistent with this Agreement, the terms, conditions and definitions of the Declaration shall be incorporated herein.