



BayCliff Homeowners' Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS (INCLUDING FIFTH AMENDMENT)

Current as of 1/1/2006

NOTE: This copy of the Covenants incorporates all changes through Amendment Five. Copies of the original Covenants may be obtained from the Dare County Office of Register of Deeds in Manteo, NC.

In the event of a conflict between the provisions of the BayCliff Homeowners' Association Covenants and the North Carolina Planned Community Act, the Act shall prevail.

THIS FIFTH AMENDMENT to DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this the 13th day of April, 2000, by BAYCLIFF HOMEOWNERS' ASSOCIATION, INC., a North Carolina Non-Profit Corporation, a North Carolina Corporation, hereinafter referred to as "Association".

ARTICLE I-A

DEFINITIONS

Section 1. "Homeowners' Association" or "Association" shall mean and refer to BAYCLIFF HOMEOWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors or assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding contract purchasers and those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the property set forth in Exhibit A and any other property added pursuant to Article II, Section 2 herein. Same shall further include plats thereof as filed for record in the Office of the Dare County Register of Deeds.

Section 4. Common Area. Common Elements and Limited Common Area.

4.1. Except for that portion of the Common Area hereinafter defined as Limited Common Area, "**Common Area**" and "**Common Elements**" shall mean all the real property, fixtures,

equipment and appurtenances designated for the common use and enjoyment of the Owners, including but not limited to open space, recreational facilities, clubhouse, pool, street lights, streets, driveways and the wastewater collection system for "Baycliff" with all pumps, wastewater treatment works and/or disposal facilities (hereinafter "Disposal System").

4.2 "**Limited Common Area**" shall mean that portion of the Common Area open space which has been designated as such on the plat of BayCliff which is of record in the Register of Deeds of Dare County, said limited common area having been described in the Second Amendment to Declaration of Covenants, Conditions and Restrictions for BayCliff. recorded in Book 782. page 826, Dare County Register of Deeds, said descriptions being incorporated herein as it set out in full: neither the size, location or the definition of the limited common area is effected by this re-declaration of restrictive covenants.

4.3 Any Common Area, Common Elements, including expressly the Disposal System, and Limited Common Areas shall be maintained and operated in conformity with law and the provisions of any applicable permit for construction, operation. repair and maintenance of the system or facilities constituting all or a portion of the Common Area, Common Elements and Limited Common Area.

4.4 It is specifically understood that certain Common Area and Common Elements (excluding the Limited Common Area) are subject to easements in common with other parties as defined in this Declaration and the rights of other parties set forth and described in this Declaration to the joint and mutual use of such properties.

4.5 Streets and driveways included in the Common Area shall be private.

Section 5. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, appearing on any recorded subdivision map or maps of the Properties, with the exception of the Common Area. Same shall generally delineate the maximum footprint or foundation of any dwelling constructed thereon.

Section 6. "Declarant" shall mean and refer to the Baycliff Homeowners' Association, Inc., its successors and assigns.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Homeowners' Association.

Section 8. "Dwelling" shall mean any residential structure and secondary structures, if any, situated on an owner's lot.

Section 9. "Subdivision" or "Development" shall mean and refer to the Baycliff lands and properties.

Section 10. "Bylaws" shall mean the bylaws of the BayCliff Homeowners' Association.

Section 11. "Executive Board" or "Board" shall mean the Board of Directors of the Homeowners' Association.

Section 12. "Act" shall mean The North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes.

ARTICLE I

NORTH CAROLINA PLANNED COMMUNITY ACT

Section 1. The North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes, as amended from time to time (the "Act"), shall be applicable in its entirety to the Subdivision. If any provision of the Declaration or Bylaws, as amended, is in conflict or inconsistent with any provision of the Act, the provision of the Act shall control.

Section 2. Any provision of the Declaration or Bylaws, as amended, which is not inconsistent with the Act, shall continue to remain in full force and effect.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Atlantic Township, Dare County, North Carolina, and described fully in an attachment to this Declaration labeled "Exhibit A", incorporated herein by reference as if set out in full.

Section 2. Addition of Properties. Additional and contiguous lands may become subject to, but not limited to, this Declaration by the filing of a Supplementary Declaration with respect to the additional property which shall extend the operation of this Declaration and all terms and provisions hereof to the additional property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Each owner of a lot shall be a member of the Association. As a member of the Association, the member shall have all rights, privileges, duties and obligations as expressed in these covenants. Membership in the Association shall be appurtenant to and may not be separated from ownership of a lot. Membership shall include each owner of a lot who shall be entitled to one vote for each lot owned.

Section 2. Each vote shall be expressed by the owner, in person or by proxy, who would cast the vote for each lot. When any lot is owned as a tenancy in common, or as a tenancy by the entirety, or any other form of multiple ownership, said tenants or owners shall determine between or among themselves how the vote to which they are entitled shall be cast. In no event shall more than one vote be cast with respect to any single lot. Cumulative voting shall not be permitted.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owner's Right of Enjoyment. Every Owner shall have a right of enjoyment in and to the Common Area and each Owner of a Lot shall have the exclusive right of enjoyment in and to Limited Common Area, which is contiguous with and surrounding his lot, which right shall be appurtenant to and pass with the title to every lot, subject to the following rights of the Association to:

(a) Suspend an owner's right to vote and right to use of the recreational facilities, for any period during which any assessment against his lot remains unpaid, and for a period not to exceed sixty days for any infraction of the Association's published rules and regulations.

(b) 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 Members. No such dedication or transfer shall be effective unless a majority of the Members entitled to vote agree to such dedication or transfer and signify their agreement by a signed and recorded written instrument. However, this subsection shall not preclude the Executive Board of the Association from granting easements to public authorities or others for the installation and maintenance of sewerage, utilities, drainage facilities, television, and other communication services, upon, over, under and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not interfere with the use and enjoyment of the Properties and are necessary for the convenient use and enjoyment of the Properties.

(c) Mortgage, pledge, deed in trust, or hypothecate any or all of the Association's real or personal property as security for money borrowed or debts incurred by the Association, with the written assent of a majority of the Members entitled to vote. The Association's right to borrow money shall exist for the purpose of improving the Common Area, but the rights of the mortgagee in and to the Association's properties shall be subordinate to the rights of the owners as set out in these covenants.

(d) Take such steps as are reasonably necessary to protect the Common Area against foreclosure.

(e) Charge reasonable admission fees, guest fees, and other fees for special uses that might be made of certain parts of the Common Area by members of the Association or persons outside the development.

(f) Limit the number of guests of owners using the Common Area and recreational facilities.

(g) Grant and reserve easements and rights of way through, under, over, and across the Common Area for the installation, maintenance, and inspection of the lines and appurtenances for public or private water, sewer, drainage, electricity, telephone, cable television, communications, security devices, and other utilities and services.

(h) Provide each Lot owner with the exclusive right of possession, use, benefit and enjoyment of the Limited Common Area which is contiguous with and surrounds each Lot owner's Lot.

Section 2. Conveyance of Common Area. Upon transfer, assignment or conveyance of the Disposal System, the transferee, assignee or grantee thereof shall in all respects be subject to the conditions stated in Section 1 through 8, inclusive, of Exhibit B from the original Baycliff covenants. If at any time during Declarant's, its successor's, or Association's ownership and/or control of the Disposal System a city, town, village, county or water/sewer authorities wastewater collection system and wastewater treatment and/or

disposal facility becomes available to serve BayCliff, Declarant, its successor or Association shall take such action as is necessary to cause the existing and future wastewater of BayCliff to be accepted and discharged into said governmental system; and shall convey or transfer as much of the Disposal System, and such necessary easements as the government unit may require as a condition of accepting BayCliff's wastewater.

Section 3. Delegation of Use. The Rights of others in the Common Area not designated as Limited Common Area are set out as follows:

(a) **Family.** The right of enjoyment granted to every owner in Section 1 of this Article IV may be exercised by members of the Owner's family.

(b) **Tenants or contract purchasers.** The right of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy the property during the terms of their lease or contract.

(c) **Guests.** Recreational facilities situated on the Properties may be utilized by guests of Owners, tenants, or contract purchasers subject to the rules and regulations of the Association, as may be established by its Board of Directors, governing said use. "Guests" shall include licensees and invitees of either the Owners, tenants, or contract purchasers.

Section 4. Parking Rights.

(a) **Parking Areas.** Each lot owner shall be entitled to the use of the driveway to his lot for parking purposes for those entitled thereby under Section 3 of this Article. Subject to the prior written approval of the Association, the Owner's Limited Common Area may also be used for parking. The Association shall be entitled to make reasonable rules and regulations as it may elect with respect to the parking of vehicles.

(b) **Recreational Vehicles.** No campers, trailers (other than boat trailers), motorcycles, off the road vehicles including go-carts and All Terrain Vehicles or similar vehicles, may be parked, stored or kept on an Owner's Lot or Limited Common Area except as may be provided by such reasonable rules and regulations of the Association. However, motorbikes (not motorcycles) and golf carts shall be allowed. No trucks shall be permitted except for standard two (2) ton pickups or small sized trucks. Boats and boat trailers can be kept on an owner's lot so long as they are parked under the dwelling unit. No boats or boat trailers may be parked in the Common Area or Limited Common Area. Boats and/or boat trailers may be parked in driveways on Limited Common Area temporarily (not to exceed 5 days), with Board permission.

(c) **Commercial Vehicles.** No commercial vehicle with commercial signs printed on said vehicle will be allowed to be parked overnight in the Common Area.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations of Assessments. Except for the Declarant, each Owner of any lot by acceptance of a deed thereof, or acceptance of title by devise, descent or otherwise, whether or not it shall be so expressed in such deed or other instrument, is deemed to covenant and agree to pay the Association the following: (1) annual assessments or charges and (2) special

assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorney's fees shall be a charge on the lot and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fee shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. This section shall not apply to property owned by Declarant.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and for the acquisition, improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including, but not limited to, the cost of labor, equipment, materials, management and supervision thereof. The Association shall also use the assessments to maintain the private streets and driveways in the subdivision, to landscape and maintain the other Common Area, and to erect and maintain signs approved by the Association to be located in the Common Area. The assessments shall also be used for the payment of taxes assessed against the Common Area, the Limited Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise, including, but not limited to, maintenance and operation of the Disposal System.

Section 3. Annual Assessment. Effective January 1, 1994, annual assessments shall be due and payable on a calendar year basis and shall be due beginning the first day of each calendar year. Each purchaser of a lot is required to pay the Association at the time of closing the pro rata share of the Assessment owing for the rest of the year in which closing occurs. The Executive Board of the Association shall fix the amount of the annual assessment against each lot, and at least fifteen (15) days before January 1 of each year, shall send written notice of each assessment subject thereto. Annual assessments shall be due on January 1 of each year in advance for the entire year or in such installments and upon such dates as the Executive Board may decide from time to time. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment, if any, has been paid.

The annual assessment and fund provided thereby shall be expended in the following priority: First, for federal; state and local taxes; Second, for insurance; Third, for the operation, maintenance and repair of the Disposal System; and .Fourth, any other expenses associated with the purposes for which assessments are levied. Further, a portion. of the annual assessment on each lot shall be set aside annually into a separate fund maintained by the Association for the express purpose of creating and maintaining a reserve adequate to cover anticipated costs, of construction, replacement or repair of the Disposal System beyond the routine and annual operation and maintenance expenses associated- herewith. Allocation of the annual assessments to this reserve fund shall be included in the Association's yearly budget.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may at any time levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including Common Elements, fixtures and personal property related thereto, including but not limited to the cost of construction, repair and maintenance of the Disposal System, or to make up deficits in the annual assessments. The due dates for the payment of any special assessments shall be established by the Executive Board.

Pursuant to Section 5. Notice and Quorum for Any Action Authorized this Article. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than ten (10) days and no more than fifty (50) days in advance of the meeting. At such

meeting, the presence of members or of proxies entitled to cast ten percent (10%) or more of the vote of the membership of the Association shall constitute a Quorum. If the required quorum is not present, a second meeting may be called subject to the giving of proper notice.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate set by the Executive Board of the Association, but said rate is to be no more than the maximum interest rate permitted to be charged under the laws of the State of North Carolina at the time of such delinquency. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Executive Board of the Association to defray the costs of collecting such late payment. Said assessment, interest, late fees and costs of collection become a charge and continuing lien on the Owner's land and all improvements thereon. The Association may bring a legal action against the Owner personally obligated to pay the same, or foreclose the charge and lien so arising hereunder and sell the owner's land and improvements to pay same, interest, late payment fees, costs and reasonable attorney fees for such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot. These rights and remedies are in addition to the other rights and remedies to collect unpaid assessments, including termination of the Owner's right to use and enjoy any Common Area.

Section 7. Subordination of the Lien to Mortgages. The liens provided herein shall be subordinate to the lien of any first mortgage, mortgages, first deed of trust or deeds of trust on a lot. Sale or transfer of any lot shall not affect any assessment lien except as provided in Section 1 herein. However, the sale or transfer of any lot which is subject to any proceeding for the foreclosure thereof, shall extinguish the lien of such assessments against the lot which became due prior to such sale or transfer, but the personal obligation of the owner of the lot when the assessment became due shall not be extinguished by such proceeding, sale, or transfer. No such sale or transfer shall relieve the new lot from the liability for any assessment thereafter becoming due or from the Owner lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. Architectural Committee. The Architectural Committee of the Association shall consist of the Executive Board of the Association.

Section 2. Architectural Control. No building, fence, wall or other structure shall be commenced, erected, or maintained upon the Properties or any lot in the subdivision until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Committee. No builder or contractor shall be permitted to construct any building, fence, wall or other structure upon the Properties or any lot in the subdivision unless first approved in writing by the Architectural Committee. No lot in the subdivision may be cleared or otherwise prepared for construction thereon unless the plan and method with respect thereto shall first be submitted and approved in writing by the Architectural Committee. No exterior addition, exterior alteration, exterior color change, or any other exterior change shall be made to the Properties, or any lot in the subdivision, including the erection of antennas, aerials, awnings, or the placement of reflective or other material in the windows of a dwelling, until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing by the Architectural Committee as to harmony of external design and location in relation to surrounding

structures and topography. The Architectural Committee shall determine the adequacy of any and all screening requirements contained in this Declaration. In the event said Architectural Committee fails to approve or disapprove submitted plans and specifications of the builder or contractor within sixty (60) days after said plans and specifications of builder have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. The Architectural Committee shall have the right to inspect any dwelling and structure, including lot and Limited Common Area, during construction and upon its completion and prior to occupancy to ensure compliance with this Declaration and the plans and specifications for same previously approved.

ARTICLE VII

EXTERIOR MAINTENANCE

Section 1. Each subdivision lot owner shall provide exterior maintenance upon his lot and of the Limited Common Area contiguous with an Owners Lot in addition to any structure thereon, including paint, walkways, roofs, gutters downspouts, exterior building surfaces, trees, shrubs, and other exterior improvements, and other vegetation in those portions of each lot lying outside of the dwelling and being in the Limited Common Area for each Lot. Absolutely no trees may be cut down or removed except with prior written consent of the Executive Board of the Association.

Section 2. In order to enable the Association to enforce the provisions of this Declaration and Article VII hereof, there is hereby reserved to the Association the right to unobstructed access over, under, and upon each lot and the Lot Owners Limited Common Area appurtenant thereto at all reasonable times to perform exterior maintenance as provided in this Article to the extent any lot owner defaults under said obligation.

Section 3. In the event that the need for maintenance, repair or replacement (including removal of dangerous trees or limbs) is caused through the willful or negligent act or failure to act of or by the Owner, his family, guests, licensees, or invitees, the cost of such maintenance, replacement, or Association shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE VIII

USE RESTRICTIONS

Section 1. Land Use. All lots shall be used for residential purposes only.

Section 2. Nuisance. No noxious or offensive activity, including noise, shall be conducted on any lot or in any dwelling, and nothing shall be done thereof or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided they are not kept for commercial purposes and provided that no such pet is allowed to run at large. All dogs not on his owner's lot or in a Limited Common Area must be kept on a short leash.

Section 4. Temporary Structures. Except for construction trailers and structures and associated dumpsters and port-a-john facilities used during construction, no structure of a temporary nature shall be erected or allowed to remain on any lot unless and until permission for the same has been granted by the

Association, or by its designated agent or representative. This provision shall likewise be deemed to prevent sleeping or otherwise living in any vehicle upon a lot.

Section 5. Use of Common Area. The Common Area as well as the Limited Common Area appurtenant to each Lot shall not be used in any manner except as shall be approved by the Association.

Section 6. Access to Lot. The Association, its agents or employees shall have access to all lots from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Area, or facilities situated upon such lot which serve another Owner's lot. The Association or its agent shall also have access to each lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another lot.

Section 7. Clothes Drying. Any outdoor clotheslines must be mounted beneath the dwelling and screened from view. No drying or airing of any clothing or bedding or other items shall be permitted on the grounds or outside the unit (including porches or decks).

Section 8. Garbage Disposal. All garbage shall be stored within the residence of each Owner or in the screened storage facilities on the owner's lot. Any such screened storage facilities must not be generally visible from any road in the subdivision. However, if the public health authorities, or other public agency, shall require a specific method of garbage disposal, nothing contained herein shall prevent the compliance by Owners with obligatory public rules and regulations.

Section 9. Antennas and Fences. No masts, towers, poles or antennas, included but not limited to antennas used for amateur radios radio reception on any wavelength, and over-the-air or satellite television, shall be erected or maintained upon the properties except such antennas as are approved by the Architectural Committee. Further excepted are such community and antenna systems which are built and installed by the Association. No fences, hedges, or walls shall be erected or maintained on an Owner's Lot or an Owner's Limited Common Area unless approved by the Architectural Committee.

Section 10. Signs. No signs are to be placed on the owner's dwelling unless it is a small wooden sign of dimensions of 18" x 12" or less attached directly onto the building. There shall be no signs mounted on posts, poles or otherwise in the owner's yard without the prior written consent of the Architectural Committee.

Section 11. Setbacks. No lot line of any lot shall be finally located, placed or platted by Declarant closer than twenty (20) feet from a lot line of any other lot, nor closer than twenty five (25) feet from the exterior boundary lines encompassing the entire BayCliff Subdivision. Further, any alignment, location, relocation and realignment may not increase the number of lots in excess of 72 lots for BayCliff's Subdivision as located upon the property described in Exhibit A attached.

Section 12. Resubdivision. No lots shown on any plat and map of BayCliff Subdivision may be re-subdivided for the purpose of creating additional lots.

Section 13. Dwelling Unit Size. The maximum square footage of any dwelling unit or structure (including porches and decks) shall be the area of the applicable lot as defined in Article I-A, Section 5. The minimum square footage of any dwelling unit or structure shall be 1,600 square feet of heated living area (excluding porches, decks and storage rooms).

Section 14. Roofs. Roof lines shall be strong and varied in lines. Flat roofs are prohibited. Main roof slopes shall be a minimum of 6: 12. Any stack, exhaust fan, plumbing vents and the line existing the roof

shall be located for minimum visibility. Any chimney extending above the roof line shall be enclosed with wood siding.

Section 15. Permissible Siding. All exterior siding, soffits, trim and fascia boards shall be of individual wood boards and be of an earth tone or natural color.

Section 16. Construction. During any construction care shall be taken to prevent any disturbance to trees and vegetation off the actual lot site. Construction materials shall be placed in the driveway or on the lot site only. All trash and debris during construction shall be gathered and collected daily and hauled away on a weekly basis.

Section 17. Driveways. Driveways shall be paved in asphalt or natural concrete.

Section 18. Miscellaneous Restrictions.

(a) With respect to exteriors, there shall not be any metal or plastic buildings, or structures on any owner's lot or Limited Common Area.

(b) No yard sales or similar types of outdoor sale shall be allowed.

(c) Any fuel tanks or similar storage receptacles, air conditioning or heating units shall be screened and must not be visible from any street in the subdivision.

(d) Any outside lights erected on a dwelling shall not be directed toward any other dwelling unit so said lights will not shine on any adjoining property. This shall not apply to street lights included in the Common Area.

Section 19. Regulations. Reasonable regulations governing the use of the Common Area and external appearance of the owners' dwellings may be made and amended from time to time by the Executive Board of the Association. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request. Specifically, and without limiting the power to make reasonable regulations, the Executive Board of the Association shall have authority to do the following:

(a) Regulate the use of the Common Area;

(b) Regulate the placement and use of personal property outside of the dwelling;

(c) Require Owners to make repairs to and maintain the exterior of each owner's dwelling, including the power to require replacement of a deck if the same becomes unsafe, deteriorated or not reasonably repairable;

(d) Require the cleaning and maintenance of outside glass surfaces associated with the dwelling;
and

(e) Establish maximum occupancy of the units.

Section 20. Remedies Upon Breach or Violation of Restrictions. Rules or Regulations. In the event of a violation or breach of any of the restrictions contained herein by any Owner, or agent of such Owner, the Owners of other lots or anyone of them, jointly or severally, shall have the right to proceed in a legal action to compel compliance with the terms of these restrictions and any reasonable Rules and Regulations made pursuant to these Restrictions. In addition to the foregoing, the Association shall have the right to proceed

in a legal action to compel compliance with the terms hereof or to prevent the violation or breach of these Restrictions or the Rules and Regulations made pursuant thereto. In addition, the Association shall have the right, whenever there exists a condition in violation of these Restrictions and the Rules and Regulations adopted pursuant thereto, to enter upon such property where the violation exists and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation. the Owner has not corrected said violation. Any person entitled to file a legal action for the violation of these Restrictions and the Rules and Regulations adopted pursuant thereto shall be entitled to recover reasonable attorney's fees as permitted by law as a part of such action. Any entry and abatement or removal of a violating condition shall not be deemed a trespass or other tort. The failure to enforce any rights, reservations, or Restrictions contained in this Declaration or in the Rules and Regulations adopted pursuant thereto, however long continued, shall not be deemed a waiver of the right to enforce these covenants or abate a violating condition.

Section 21. Firearms. Firearms, including BB guns and pellet guns, shall not be discharged at any time in BayCliff.

ARTICLE IX

EASEMENTS

Section 1. Perpetual Nonexclusive Easement in Common Area. Except for that portion of the Common Area which is designated as a Limited Common Area, the Common Elements and Common Area shall be, and they are hereby declared to be subject to a perpetual non-exclusive easement created hereby in favor of all of the Owners for their use and for the use of their families, guests, invitees, and licensees, for all proper and normal purposes.

Section 2. Perpetual Exclusive Easements in Limited Common Area. There is hereby created a perpetual exclusive easement in the Limited Common Area contiguous with and surrounding each Owner's Lot in favor of that Lot Owner for his use and for the use of his family, guests, invitees, and licensees, for all proper and normal purposes.

Section 3. Perpetual Easement in Common Area and Limited Common Area. The Common Elements and Common Area shall be, and they are hereby declared to be subject to a perpetual easement created hereby in favor of the Declarant, their successors and assigns for the furnishing of services and facilities reasonably required to carry out these covenants. This easement may be used for ingress and egress for the providing of electric power, telephone, television, sewer, security, water, lighting and other utility services and facilities. Said easement may be used for construction, operation and maintenance of all utility lines, pipes treatment and other facilities associated therewith. The Declarant, for itself, its successors and assigns, reserves the right to impose upon the Common Area and Limited Common Areas henceforth and from time to time such easements and cross-easements for any of the foregoing purposes as it deems to be in the best interest of, and necessary and proper for, the Owners.

Section 4. Encroachment Easement. The entire Properties, including Common Area, Limited Common Area and individual lots, shall be subject to easements of encroachments which now exist or hereinafter may exist, caused by the settlement or movement of the building, or caused by minor inaccuracies in construction or reconstruction, which encroachments shall be permitted to remain undisturbed and which said easement shall run in favor of each individual owner and the Declarant.

ARTICLE X

INSURANCE

Section 1. General. Upon taking title to a lot and in the BayCliff subdivision, the Owner shall have in effect, a fully paid fire and extended coverage insurance policy or homeowner's insurance policy, upon any residential dwelling unit thereon, and the Owner shall, upon request, furnish evidence of the insurance as well as the payment of the premium to the Association within ten (10) days of the title transfer date. Said insurance shall be in the amount of the highest percent of the insurable replacement cost of the residential dwelling unit which can be reasonably obtained. Thereinafter, each Owner shall obtain and maintain in force such an insurance coverage on his dwelling as the Executive Board of the Association may determine or require but not in any amounts which are greater than the replacement costs. Each Owner of a lot shall furnish to the Executive Board of the Association such evidence of insurance coverage as the Board may require. In the event an Owner fails to maintain such coverage or furnish evidence thereof, the Association may obtain policies providing such coverage and pay the premiums therefore, which premiums shall be chargeable against the Owner of the lot failing to maintain such coverage or to furnish evidence thereof. The premium shall constitute and continue as a lien on the lot and also shall be a personal obligation of the Owner and enforced as provided in Article V of this Declaration. In the event a dwelling is partially or totally destroyed, or totally destroyed, the Owner covenants and agrees to rebuild, repair or restore the dwelling to essentially the same condition and appearance, including using the same or similar building materials, as existed prior to the partial or total destruction within twelve (12) months. No replacement dwelling shall have a footprint and foundation in excess of the original footprint and foundation.

Section 2. Homeowner's Association Insurance. The Homeowner's Association shall maintain insurance policies in such amounts and with such coverage as follows:

(a) All buildings and improvements in the Common Area and all personal property included in the Common Elements shall be insured in an amount equal to the highest percentage of the insurable replacement value which can be reasonably obtained, as determined annually by the Executive Board of the Association. In the event such insurance is not available, the Association shall obtain insurance in the amount of the highest percent of insurable value which can reasonably be obtained. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, including flood insurance and such other risks as are customarily covered with respect to buildings on the land, such as vandalism and malicious mischief. The premiums on insurance policies purchased by the Association shall be paid by the Association as a common expense.

(b) Public liability insurance in such amounts and with such coverage as shall be required by the Executive Board of the Association, and with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner.

(c) Workmen's compensation as required by law.

(d) Such other insurance as the Executive Board of the Association may determine from time to time to be desirable.

Section 3. Insurance Prohibition. The Association will not purchase or obtain insurance to cover the personal property of an Owner, and the Association will not purchase or obtain insurance to cover the individual liability of an Owner for injuries and damages suffered by anyone or anything within a lot if said injuries or damages are not a liability of the Association.

ARTICLE XI

FINANCING PROVISIONS

Section 1. Approval of Owners and Holders of First Deeds of Trust. Unless a majority of the Owners and holders of notes secured by first deeds of trust on lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon if owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes as provided herein shall not be deemed a transfer within the meaning of this clause.

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner.

(c) By act of omission change, waive, or abandon any plan of regulation, or enforcement thereof pertaining to architectural design or the exterior appearance of residences located on lots, or the maintenance of Common Area.

(d) Fail to maintain fire and extended coverage insurance on insurable improvements in the Common Area of the most favorable replacement cost basis in the amount of the highest percent of the insurable value which can be reasonably obtained.

(e) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than repair, replacement, or reconstruction of the damaged improvements.

Section 2. Books and Records. Any Owner and holder of a note secured by a first deed of trust on any lot will have the right to examine the books and records of the Association during reasonable business hours.

Section 3. Payment of Taxes and Insurance Premiums. The Owners and holders of notes secured by first deeds of trust on lots may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association. The persons, firms, or corporations making such payments shall be owed immediate reimbursement therefore by the Association.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by a legal proceeding, all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date the Declaration is recorded after which time they shall automatically be extended for successive periods of ten (10) years unless modified by a majority vote of the Owners entitled to vote. This Declaration may be amended during the first thirty (30) year period in accordance with the terms of the Act. Any amendment must be properly recorded in the Dare County Registry before becoming effective.

Section 3.1. No change in the legal description setting forth the size and location of each Limited Common Area circumscribing each lot in the BayCliff Subdivision shall be made an Amendment to this Declaration except upon the additional requirement that (1) the lot Owner and (2) the holder of any deed of trust or mortgage acting as a lien thereon, consent in writing thereto. This subsection 3.1 shall not apply if scrivener other clerical errors are discovered in which case the Association is authorized to make such corrections without the necessity of obtaining such consent, but with notice of the proposed correction to the affected owner and lien-holder.

IN WITNESS WHEREOF, the Association has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors.

BAYCLIFF HOMEOWNERS' ASSOCIATION, INC.
A North Carolina non-profit corporation

(AFFIX CORPORATE SEAL)

by: _____
President

ATTEST: _____
Secretary

EXHIBIT A

BEGINNING at a concrete marker at the Southeast corner of the now or formerly H. P. Bramble Tract and on the West line of the Liberty Christian Fellowship Tract as described in Deed Book 331, Page 29, Dare County Registry; thence from the beginning point South 33 deg. 24 min. 34 sec. East 170.32 feet to a concrete marker; proceeding along the same course 67.14 feet to a concrete marker; thence South 33 deg. 24 min. 34 sec. East 436.19 feet to a concrete marker; thence South 33 deg. 24 min. 34 sec. East 212.75 feet to a concrete marker; thence South 33 deg. 24 min. 34 sec. East 58.5 feet to a concrete marker; thence South 33 deg. 24 min. 34 sec. East 297.21 feet to a concrete marker marking the Southeast corner of the described tract; same also being located in the North line of the now or formerly David Stick Tract; thence South 51 deg. 32 min. 26 sec. West 445.78 feet to an iron pipe; thence South 49 deg. 06 min. 31 sec. West 318.32 feet to an iron pipe located on the shoreline of the Roanoke Sound, same being the Southwest corner of the herein described tract and the Northwest corner of the now or formerly David Stick Tract; thence along the meanderings of the Roanoke Sound North 39 deg. 56 min. 32 sec. West 187.71 feet to a point; thence continuing along the meanderings of the Roanoke Sound the following courses and distances: North 18 deg. 08 min. 55 sec. West 147.39 feet; thence North 56 deg. 03 min. 54 sec. West 101.26 feet, thence North 26 deg. 30 min. 07 sec. West 133.76 feet; thence North 34 deg. 27 min. 01 sec. West 249.21 feet; thence North 46 deg. 02 min. 10 sec. West 355.43 feet; thence North 02 deg. 25 min. 34 sec. East 63.42 feet to an iron pipe, same being the Northwest corner of the herein described tract and the Southwest corner of the now or formerly H. B. Bramble Tract; thence proceeding along the South line of the aforementioned Bramble Tract North 47 deg. 06 min. 56 sec. East 252.10 feet to an iron pipe; thence North 55 deg. 42 min. 13 sec. East 359.82 feet to a concrete marker; thence North 36 deg. 35 min. 58 sec. East 214.75 feet to a concrete marker, same being the point and place of beginning. This tract contains 21.68 acres, as calculated by D.M.D.

There is also conveyed with this tract a 60-foot easement of right of way from Williams Drive across the lands of Liberty Christian Fellowship to the East line of the herein described tract, and being more particularly described as follows:

BEGINNING at a concrete marker located on the East line of the aforescribed tract and the West line of the lands of Liberty Christian Fellowship, said point of beginning being South 33 deg. 24 min. 34 sec. East 170.32 feet from a concrete marker located in the Northeast corner of the above described tract; thence from the point of beginning North 29 deg. 49 min. 00 sec. East 491.35 feet to a point; thence North 55 deg. 50 min. 00 sec. East 34.75 feet to an iron pipe located in the West line of Lot 19 of the Williams Colington Estates, recorded in Map Book 4, Page 41, Dare County Registry thence continuing along Lot 19 North 55 deg. 50 min. 00 sec. East 150 feet to an iron pipe located in the West line of Williams Drive; thence along the West margin or right of way of Williams Drive South 33 deg. 58 min. 03 sec. East 60 feet to an iron pipe, same being the Northeast corner of Lot 18 of the aforementioned Williams Colington Estates; thence along the North line of Lot 18 South 55 deg. 50 min. 00 sec. West 170.87 feet to a concrete marker; thence South 29 deg. 49 min. 00 sec. West 507.61 feet to a concrete marker located on the East line of the above described tract; thence North 33 deg. 24 min. 34 sec. West 67.14 feet to the point of beginning.

See deed to First Pioneer Investment Company, now Pioneer Capital Corporation in Book 544, Page 464 of the Dare County Registry.

Being the same property shown on Map or Plat entitled "Bay Cliff, A Group Housing Development" dated July 24, 1989 prepared by Quible & Associates, P. C. as recorded in Plat Cabinet C, Slides 91D to 91H in the office of the Register of Deeds of Dare County, North Carolina, reference to which is hereby made for a more particular description.