

**DECLARATION
OF
RESTRICTIVE AND PROTECTIVE COVENANTS
FOR
BAILEY POINTE SUBDIVISION**

THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS is made pursuant to the to the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes and is entered this the 7th day of April 2003, between GREENVILLE TIMBERLINE, L.L.C., a Delaware¹ Limited Liability Company, acting by and through its Attorney-in-Fact, AUDDIE C, BROWN (hereafter “Declarant”), BAILEY POINTE HOMEOWNERS’ ASSOCIATION, a North Carolina Non-Profit Corporation (hereafter “Association”), and all parties hereafter acquiring any of the property described hereafter.

WITNESSETH:

WHEREAS, Declarant owns the real property described in Article 1 of this Declaration and desires to subject said real property to the restrictive and protective covenants set forth in order to provide for the preservation of values, amenities, desirability and attractiveness of said property, and for the continued maintenance and operation of any recreational and/or Common Areas.

WHEREAS, it is in the best interest, benefit, and advantage of the Declarant, each Owner of such property, and every party hereafter acquiring such property that these restrictive and protective covenants, which shall regulate the use and occupancy of the property, be established, which restrictive and protective covenants is and are for the benefit of the property as well as each Owner thereof, and shall inure to the benefit of and pass and run with said property, and each and every Lot or parcel thereof, and shall apply to and bind the successors in interest and any Owner thereof.

Now, THEREFORE, in consideration of the premises, Declarant hereby declares and agrees with all parties hereafter acquiring any of the property that the property hereinafter described is and shall be held, transferred, sold and conveyed subject to the restrictive and protective covenants herein set forth, which restrictive and protective covenants shall be binding on all parties

¹ Original document listed Declarant as a North Carolina Limited Liability Company, amended to read as Delaware Limited Liability Company on May 12, 2003

acquiring any right, title or interest in any of the property and which shall inure to the benefit of each Owner thereof, as well as their successors in interest.

ARTICLE 1

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to the restrictive and protective covenants set forth herein is located in the County of Beaufort, State of North Carolina, and is more particularly described as follows:

BEING ALL of that tract of real property known as BAILEY POINTE Subdivision as more fully shown upon those plats by Baldwin and Associates, recorded in Plat Cabinet G, Slides 12-6, 12-7, 12-8, 12-9, 12-10, 13-1, 13-2*, Beaufort County Registry and to any revisions of said plats made by Declarant and any additional property as may by subsequent amendment be added and subjected to this Declaration. Reference is herein made to said maps and the same are incorporated herein for a more complete and adequate description.

*13-3, 13-4, 13-5, and 13-6

Declarant hereby subjects the heretofore described property to this Declaration and the jurisdiction of the Association in order to provide enforceable standards of improvement and development whereby aesthetics, living conditions and property values may be enhanced.

ARTICLE II DEFINITIONS

Section 1. "**Association**" shall mean and refer to BAILEY POINTE HOMEOWNERS' ASSOCIATION, its successors and assigns.

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

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as hereafter may be brought within the jurisdiction of the Association, and specifically includes all of that subdivision known generally as BAILEY POINTE, Beaufort County, North Carolina.

Section 4. **"Common Area"** shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners, and specifically shall mean any storm water control or disposal improvements, piers, walkways, streets, if any, which may be constructed.

Section 5. "Lot" shall mean and refer to any plot of land designated for separate ownership and shown upon any recorded subdivision map of the Properties with the exception of the Common Area, and includes any improvements thereon, if any.

Section 6. "Declarant" shall mean and refer to GREENVILLE TIMBERLINE, L.L.C., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE III GENERAL RESTRICTIONS

Section 1. "Residential Use": No Lot shall be used except for residential or recreational purposes. No structure shall be erected, constructed, altered, maintained, used, placed or permitted to remain on any Lot other than one single-family dwelling. Each dwelling shall contain a minimum of 1,400 square feet. All residences must be approved by Declarant until such time as the Architectural Control Committee is elected. After which, all residences must be approved by said Committee. Lot appearance must be well maintained by the Homeowner.

Section 2. "Built Upon Area": Consistent with the Storm Water Management permit from DEHNR for BAILEY POINTE SUBDIVISION the following applies:

A: The allowable built upon area per lot in BAILEY POINTE SUBDIVISION is as listed: (See Attachment A).

Attachment "A"
Bailey Pointe Impervious Areas
April 08, 2003

Lot #	Square Feet	Lot #	Square Feet	Lot #	Square Feet
1	7,000	34	10,000	67	7,600
2	8,200	35	8,800	68	7,000
3	8,800	36	10,000	69	7,000
4	6,400	37	10,000	70	7,000
5	6,400	38	12,400	71	10,600
6	7,000	39	11,800	72	12,400
7	7,600	40	10,600	73	11,800
8	7,600	41	7,800	74	11,200
9	9,400	42	10,600	75	10,000
10	9,400	43	11,200	76	8,800
11	9,400	44	11,800	77	7,600
12	7,000	45	11,800	78	7,600
13	9,400	46	7,600	79	11,200
14	10,000	47	7,600	80	11,200
15	10,000	48	6,400	81	9,400
16	9,400	49	5,800	82	7,600
17	7,000	50	5,800	83	5,200
18	6,400	51	7,000	84	6,400
19	6,400	52	6,400	85	8,200
20	5,800	53	6,400	86	8,200
21	7,000	54	5,800	87	7,600
22	7,000	55	5,800	88	8,200
23	5,200	56	5,200	89	9,400
24	8,800	57	5,800	90	10,000
25	8,800	58	5,800	91	9,700
26	10,000	59	7,000	92	9,700
27	10,000	60	7,000	93	10,000
28	8,800	61	6,400	94	9,700
29	8,200	62	7,000	95	8,200
30	8,200	63	6,400	96	9,400
31	7,600	64	8,200	97	5,000
32	8,200	65	7,600	98	6,000
33	9,400	66	7,600	99	6,400
Total impervious area					816,500

All impervious surfaces including buildings, pavement, walkways of stone, brick and slate but excluding uncovered wood decking and swimming pools are subject to the square feet limit. This covenant is intended to ensure continued compliance with the storm water permit issued by the State of North Carolina.

Section 3. "Compliance with Wetlands Regulations, CAMA Regulations, and any other and all Governmental Setbacks and other Regulations": It shall be the responsibility of each Owner to determine what portions of their Lot are regulated by wetland regulations, CAMA regulations, or other governmental setbacks and other regulations. It shall also be the responsibility of each Owner, prior to alteration of any Lot, to determine if any Lot shall have been determined to meet the requirements for designation as a regulatory wetland and if any such Lot is subject to any of the regulations referred to above. Any subsequent fill or alteration of this wetland shall conform to the requirements of state wetland rules adopted by the State of North Carolina in force at the time of the proposed alteration. The intent of this restriction is to prevent additional wetland fill, so the property Owner should not assume that a future application for fill will be approved. The property Owner shall report the name of the subdivision in any application pertaining to wetland rules. This covenant is intended to insure the continued compliance with wetland rules adopted by the State of North Carolina; therefore, benefits may be enforced by the State of North Carolina. This covenant is to run with the land and shall be binding on all parties and all persons claiming under them.

Section 3a²: A portion of this property has been determined to meet the requirements for designation as a wetlands stream or protected stream buffer under the current rules and regulations of state and federal agencies that are in effect at the time of the recordation of this subdivision. Any subsequent impacts to these areas shall conform to the requirements of the state rules adopted by the State of North Carolina and in force at the time of the proposed impacts. Property owners should not assume that future application for impacts to these areas would be approved. The property

² Section 3a added by amendment on May 12, 2003

owner shall report the name of the subdivision in any application pertaining to said rules. This covenant is solely intended to insure compliance with the rules adopted by the State of North Carolina and therefore the State of North Carolina may enforce benefits. This covenant runs with the land and shall be binding on all parties and all persons claiming under them.

Section 3b³: Lots 1-14 are subject to the terms and conditions of that certain Permanent Conservation Easement dated April 24, 2003 between Greenville Timberline, LLC and the U.S. Army Corps of Engineers and being recorded in the Beaufort County Registry in Book 1325, Page 296, Beaufort County Registry.

Section 4. "On-site Sewage Systems": Each property Owner must understand that private on-site sewage systems are required. The costs of these systems will be the responsibility of the Lot Owner and may differ from Lot to Lot.

Section 5. "Roadside Swale": No one may fill-in, pipe, or alter any roadside swale except as necessary to provide a minimum driveway crossing.

Section 6. "Prohibited Structure": No more than one outbuilding may be constructed on any Lot without the expressed written approval of Declarant or the Architectural Control Committee. Said outbuilding shall be only for the purposes of housing boats, cars, RV's as well as lawn and garden equipment. In addition to any such outbuilding, a barn or stable may be constructed on any Lot that is three (3) acres or larger. Said buildings, including barns or stables, must be constructed in a workman-like manner, enclosed on at least three (3) sides as well as the top, with some sort of door, which would thus enclose all four (4) sides of the building. Buildings, including barns or stables, must be approved by Declarant until such time as the Architectural Control Committee is elected. After which, all buildings, including barns or stables, must be approved by said Committee.

³ Section 3b added by amendment on May 12, 2003

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. No trailer, single-wide or double-wide mobile home/manufactured home, other mobile home, camper, bus or like vehicle shall be situated on any Lot for any period of time or for any purpose, including, but not limited to as a residence or for storage, either temporarily or permanently. No structure with a roof pitch of less than 6-12 feet is permitted upon any Lot. However, modular homes are permitted, but their use must be approved in advance by Declarant until such time as the Architectural Control Committee is elected. After which, all modular homes must be approved in advance of their use by said Committee.

The Properties are not a campground. Camping will be permitted until such time as twenty-five percent (25%) of the Lots are developed or the Association, by majority vote, prohibits camping. Camping is only permitted in professionally manufactured equipment; which equipment may not be unoccupied for a period of twenty-four (24) hours or more and may not be placed on a Lot for a period of more than seven (7) consecutive days. Permanent residence in any type of camping equipment is strictly prohibited.

It is specifically the intention and purpose of this covenant to prohibit the location of trailers, single-wide or double-wide mobile homes/manufactured homes, other mobile homes, relocatable houses, or similar type structures on the Properties, including any Lot.

Section 7. "Structure Location": No structure, other than fence, may be built within ten (10) feet from any property line without written approval from Declarant or Bailey Pointe Architectural⁴ Control Committee.

Section 8. "Construction Time and Activity": Once construction of a dwelling or other improvement are started on any Lot, the exterior construction of the dwelling and other improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12)

⁴ The word "Agricultural" was deleted and the word "Architectural" was substituted by amendment on May 12, 2003

months from commencement. Construction activity shall be confined within the boundaries of each Lot. Each Owner shall be responsible for any damage done to any streets, roadways, accessway, Common Areas, or property of other Owners within the subdivision which may be caused by any Owner, his agents, employees, guests, licensees or invitees during construction and at any other time. The Association shall have the right to assess any Owner for such damage and such charge shall be an assessment against the Owner and the Lot and shall be subject to collection as any other regular assessment.

Section 9. "Construction Debris": During construction of improvements on any Lot, adequate portable sanitary toilets must be provided for the construction crew and the Lot must be cleaned of excess debris at least once per week. Each Lot Owner shall be obligated to collect and dispose of all rubbish and trash resulting from construction on his Lot.

Section 10. "Nuisances": No noxious, offensive, or illegal activity shall be carried on or conducted upon any Lot, nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood. No trade, commerce, or other activity, which may be considered a nuisance to the neighborhood, shall be carried on upon any Lot. No trade materials or inventories may be stored upon any Lot. No tractor-trailer type trucks, house trailers, or mobile homes may be stored or regularly parked on any Lot. No junk or unsightly vehicles of any type or description may be placed upon any Lot.

Section 11. "Animals": No animals, swine, livestock, or poultry of any kind shall be raised, kept, bred, or maintained on any Lot or in any dwelling except that household pets, such as dogs and cats, may be kept provided they are not kept for breeding or commercial purposes. Owners shall be solely and absolutely liable for the acts of any pet kept on their Lot.

Improvements constructed for the maintenance of animals shall be kept in good repair and must conform generally in appearance with any dwelling upon a Lot, although such improvements need not be constructed of materials identical to an existing dwelling. Each Lot Owner shall maintain any such

improvements placed upon any Lot, and no unsightly or dilapidated buildings or other structures shall be permitted on any Lot.

Horses will be allowed on any non-waterfront lot that is two (2) acres in size or larger. Horses will be allowed to be maintained on any waterfront lot that is four (4) acres in size or larger. No more than one horse per fenced in acre will be allowed. No fence may be constructed of barbed wire or similar material. Fences that are visible from the road must be made from wooden, vinyl, or wrought iron fencing material. All fences must be approved by Declarant until such time as the Architectural Control Committee is elected. After which, all fences must be approved by said Committee.

Section 12. "Signs": No sign or billboard of any kind shall be erected or allowed to remain on any Lot including a "For Sale" or "For Rent" sign without prior written approval of Declarant, until such time as at least seventy-five percent (75%) of the Lots are sold.

Section 13. "Subdivision": No Lot or Lots shall be subdivided except to enlarge an adjoining Lot, but any Lot so enlarged cannot be improved with more than one single-family dwelling. In no event shall any Lot be subdivided if the result of each subdivision is separate ownership of less than a whole Lot. However, Declarant, its successors or assigns, reserves the right to relocate any Lot boundary line and make major and minor boundary line adjustments between Lots so long as said relocation does not create an additional Lot and further provided that one Lot may be combined with another Lot or Lots or a portion thereof to create a larger Lot, in which cases these covenants shall be construed to apply to the larger Lot so created.

Section 14. "Piers and Bulkheads": Piers and bulkheads may be constructed on the property or adjacent thereto provided that, prior to construction, written approval has been obtained from the appropriate Federal, State, County, and/or local authority.

Section 15. "Roads, Rights of Way and Driveways": The roads and rights of way constructed throughout the Properties are for the common uses of

Declarant, Lot Owners, and Lot Owners of the future development of the Properties and their respective heirs, successor and assigns. There will be no on-street parking allowed within the Properties. All driveways constructed on any Lot shall be paved with either asphalt or concrete for a distance of at least 20 feet from the adjoining paved roadway. Concrete or HDPE plastic culvert pipes are to be used and the ends of the culvert pipes used for driveways must be capped to prevent erosion. All culvert pipe sizes must be a minimum of fifteen inches (15") and must be approved by Declarant or Architectural Review Board prior to installation. Any damage by driveway connections to the private road shown upon said plat, or to the ditches or shoulders of the road, or to the flow of drainage water along said road, shall be repaired at the expense of the Owners connecting such driveways, within thirty (30) days of notification.

Section 16. "Other": No Lot shall be used for ingress or egress to any Properties not part of this subdivision. Declarant hereby reserves unto itself the right to use any Lot, prior to it being sold to a third person, for ingress and egress to any other adjoining property.

Declarant reserves the right unto itself to extend any existing roadways shown on the recorded subdivision plats referred to above, to any additional property lying outside the subdivision.

ARTICLE IV ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS

Section 1. "Association": A non-profit corporation named BAILEY POINTE HOMEOWNERS' ASSOCIATION has been or will be chartered pursuant to the Nonprofit Corporation Act and the North Carolina Planned Community Act of the General Statutes of North Carolina. Its purposes are to enforce the restrictive and protective covenants herein, including but not limited to the architectural control standards established herein, maintain BAILEY POINTE in a clean and attractive condition; own, manage and maintain certain of the amenities as are more fully described herein; provide an

organization for the benefit of the Lot Owners within BAILEY POINTE and hold and administer funds derived from assessments. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The Association shall be comprised of all Lot Owners and Declarant.

Section 2. "Organization and Administration": The Association shall organize, elect officers, and operate freely within the restrictions herein contained. Declarant, either through its employees, agents of assigns, will administer the Association until seventy-five percent (75%) of all Lots have been sold in the subdivision. Following the sale of seventy-five percent (75%) of the Lots, the Association will elect its own administrators of the Association. When seventy-five percent (75%) of the Lots as shown on the above-mentioned plats have been sold, the Association shall take over any and all responsibilities and obligations of the Association, including but not limited to any and all maintenance of the roads and Common Areas.

Section 3. "Membership": The Association shall have two (2) classes of voting membership:

Class I: Class I members shall be all Owners of a Lot in BAILEY POINTE, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class II: The Class II member(s)⁵ shall be the Declarant and shall be entitled to ten (10) votes for each lot owned.

⁵ Original document entitled the Class II member(s) to two (2) votes for each Lot owned. By amendment of May 12, 2003 the number of votes for the Declarant was changed to ten (10) votes for each lot owned.

ARTICLE V
COVENANTS FOR ASSESSMENTS

Section 1. "Creation of the Lien and Personal Obligations of Assessment": Every Lot hereinbefore described shall be subject to assessment for maintenance and other expenditures hereinafter set forth. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges;
- (2) special assessments;
- (3) a pro rata share of ad valorem taxes levied against the Common Area if the Association shall default in the payment therefor for a period of six (6) months, all as hereinafter provided.

The annual and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorneys' fees incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner at the time when the assessment became due. The obligation of an Owner for delinquent assessments shall pass⁶ to his successors of assigns in title.

Section 2. "Purpose of Assessments": The assessments levied by the Association shall be used exclusively to promote the general health, safety, and welfare of the residents in the Properties, improve and maintain the Common Areas and specifically any storm water control or disposal improvements,

⁶ The original document stated that the obligation for delinquent assessments shall not pass to his successors.... But was amended by deleting "not" on May 12, 2003.

satisfy road maintenance expenses, administrative and enforcement costs hereof, and future developments.

Section 3. "Minimum Annual Assessment": The initial minimum and annual assessment for each Lot shall be \$250.00 per year. Declarant shall be exempt from any and all assessments for any Lot owned either now or in the future. The annual assessment may be increased or decreased at any time by an affirmative vote of seventy-five percent (75%) of all Lot Owners present at a duly called meeting therefor.

Section 4. "Special Assessments": In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for any purpose, provided that any such assessment shall have the assent of seventy-five percent (75%) of all Lot Owners present at a duly called meeting therefor.

Section 5. "Notice and Quorum for any Action authorized under Sections 3 and 4": Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 of this Article V shall be sent to all members not less than 30 days nor more than sixty (60) days in advance of the meeting. The presence of members or proxies entitled to cast fifty-one percent (51%) of all the votes shall constitute a quorum. Unless otherwise specified herein, all the decisions shall be made by a majority vote at a duly called meeting hereunder.

Section 6. "Remedies for Non-Payment of Assessments": Any assessments which are not paid when due shall be delinquent. The assessment shall bear interest from the due date at the rate established by the Board of Directors of the Association, or if not set by the Board, at the highest rate allowed by law, together with such late fees as may be set by the Board. The Association shall have the power to file a lien of record against any Lot where there remains an assessment unpaid for a period of thirty (30) days or longer. Said lien shall be filed in the office of the Clerk of Superior Court of Beaufort County in a manner provided therefor by Article 8 of Chapter 44 of the North Carolina General Statutes. No Owner may waive or otherwise escape liability

for the assessments provided for herein by the non-use of the Common Area or abandonment of his dwelling unit or site.

The Association may bring an action at law against the Owner personally obligated to pay any assessments and interest. Costs and reasonable attorneys' fees for the prosecution of any such action shall be added to the amount of such assessment. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Chapter 45 of the North Carolina General Statutes. All fees, charges, late charges, fines, and interest are enforceable as assessments.

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and Owner of the obligation secured by this Declaration. The Registered Agent of the Association shall be the Trustee for all purposes of the foreclosure proceeding and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the said substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the Trustee to sell the land subject to the lien at public auction for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon compliance with the law then relating to foreclosure proceedings and under power of sale to convey to the purchaser in as full and ample manner as authorized by Chapter 45. The Trustee shall be authorized to retain an attorney to represent him in such proceedings. The proceeds of the sale shall, after the Trustee retains his commission, together with any additional attorneys' fees incurred by the Trustee, be applied to the costs of the sale, including but not limited to costs of collection, taxes, assessments, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the

property, and any advancements made by the Association in the protection of the security.

Section 7. "Effect of Default in Payment of Ad Valorem Taxes of Assessments for Public Improvement by Association": Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien subject to the lien of the governmental authority levying said ad valorem taxes on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

Section 8. "Subordination of the Lien to Mortgages": The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI THE ARCHITECTURAL CONTROL COMMITTEE

Section 1. "Submission of Plans and Specifications": Except for original and initial construction and subsequent modification of improvements by the Declarant on any Lot, which construction is and shall be exempt from the

provisions of this section, no building, residence, modular home, or wall shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping have been approved by the Declarant until such time as the Architectural Control Committee is selected. After which, approval must be obtained from the Committee. Each building, residence, modular home, wall, or other structure or improvements of any nature shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved. Any change in the appearance of any building, residence, modular home or wall shall be deemed an alteration requiring approval.

The Architectural Control Committee shall have the power to promulgate reasonable rules and regulations designed to carry out the provisions and intent of these covenants. Any such rules and regulations shall be approved by the Board of Directors prior to implementation.

Section 2. "Procedure": In assessing a submission to it, the following shall be considered by the Declarant and/or Architectural Control Committee, whether:

1. The improvements sought to be constructed will have a negative economic impact on any other Lot within the subdivision,
2. A required specific buildings standard or other condition contained within the covenants has not been met,
3. The improvements are architecturally incompatible with proposed or constructed improvements on other Lots within the subdivision, and
4. The natural features of the Lot will be disturbed to an extent more than reasonably necessary to construct the proposed improvements.

Section 3. "Committee Membership": Until such time as seventy-five percent (75%) of all Lots have been sold in this subdivision as evidenced by

the recordation of a deed therefor, all rights, privileges, powers and authority granted herein to the initial Architectural Control Committee, to whom the specific power to act hereunder is expressly conveyed, shall be exercised by the Declarant, its successors or assigns. The Declarant may assign its power hereunder to an Architectural Control Committee, the majority of which, Declarant shall appoint. Thereafter, all representatives shall be appointed by the Board of Directors of the Association. Except as set out above, the Architectural Control Committee shall be composed of five (5) Owners appointed by the Board and shall serve at the pleasure of the Board.

Section 4. "Committee Procedure": A majority of the Architectural Control Committee may take any action said Committee is empowered to take, may designate a representative to act for the Committee, and with the approval of the Board, may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Committee, the Association shall designate a successor. The members of the Committee shall not be entitled to any compensation for services performed pursuant to this covenant. The Association may establish a fee to cover the expense of reviewing plans and related data at the time plans are submitted for review in order to compensate any consulting architects, landscape architects, urban designers or attorneys.

ARTICLE VII UTILITY AND DRAINAGE EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved ten (10) feet in width over all side Lot lines and twenty-five (25) feet along any road and as may be shown upon any recorded plats of the Properties. No building, residence, garage or other permitted accessory building may be constructed within said easements. In addition, the Properties are subject to easements, setbacks, and road right of ways as shown on the recorded plats referenced above. Declarant hereby reserves unto itself, its successors and/or assigns, the following:

- (1) The right to erect and maintain utilities and drainage facilities over the areas described in this Article VII; and
- (2) The right to grant Lot Owners easements within those areas and under subdivision roads for utilities including, but not limited to cable, electric, septic systems and water, and
- (3) The right to grant easements for the above purposes described in Article VI, paragraphs (1) and (2) over and across, any unsold Lot still owned by Declarant.

ARTICLE VIII OWNER'S EASEMENT OF ENJOYMENT

Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

1. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area,
2. The right of the Association to limit the number of guests of members,
3. The right of the Association to suspend the voting right and use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations, and
4. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

ARTICLE IX GENERAL PROVISIONS

Section 1. "Term": These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of

twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 2. "Enforcement": In the event of a violation or breach of any of these restrictions, covenants, agreements and conditions by any person or concern claiming by, through or under the undersigned, or by virtue of any judicial proceedings, the Association, its successors and assigns and the Owners of the Lots in the subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof, to prevent the violation or breach of any of them, and/or recover damages, if appropriate. Costs and reasonable attorney's fees shall be recoverable by the Association as part of any judgment or order to enforce these covenants. The failure to enforce any right, reservation, restriction or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

Section 3. "Modification of Restrictive Covenants": These restrictive and protective covenants are subject to being altered, modified, canceled or changed at any time as to said subdivision as a whole or as to any subdivided Lot or part thereof during the first twenty-five (25) year period from the date of recording hereof by written document executed by the Declarant or their successors in title after affirmative vote or written agreement signed by Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated Declarant, or its successors and assigns, shall be allowed to amend these restrictive and protective covenants, notwithstanding any other provision contained herein and without joinder of any other party, for the purpose of correcting any discovered error contained herein, clarifying any ambiguity contained herein, or adding or deleting any incidental provisions deemed in the sole discretion of Declarant to be in the best interest of BAILEY POINTE SUBDIVISION and the Owners therein. Further, Declarant reserves, in the sole discretion of Declarant, the right to amend, modify or add to these covenants and restrictions on an individual basis pursuant to individual

purchaser requests and requirements. Such modifications or amendments in accordance with this section will be accomplished by specific language in the individual deeds or supplementing these covenants by separate recorded instrument.

Section 4. "Severability": Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect and the failure of any person or persons to take action to restrain the violation of any of these covenants and restrictions shall not be construed as a waiver of any enforcement rights and shall not prevent the enforcement of such covenants.

Section 5. "Variances": The Association may allow reasonable variances and adjustments of the restrictions set forth in this Declaration in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided however, that any such variance granted must be done in conformity with the intent and purposes of the general development scheme and provided also that in every instance such variance or adjustment shall not materially be detrimental or injurious to other property or improvements within the Properties.

Disclaimer:

This copy of the Bailey Pointe Restrictive and Protective Covenants was translated from a photocopy of the original Covenants adopted April 16, 2003 and amended May 12, 2003. This document only serves as a copy of the original document. The original document resides with the HOA Secretary. Jerry Stubberfield, President, Bailey Pointe Homeowners' Association, August 17, 2019.