

NORTH CAROLINA  
CRAVEN COUNTY

**DECLARATION OF PROTECTIVE COVENANTS OF MITCHELL HARBOUR**

THIS DECLARATION OF PROTECTIVE COVENANTS, made and entered into this the 6<sup>th</sup> day of November, 1998, by COASTAL MARKETING AND DEVELOPMENT COMPANY, a North Carolina partnership, (hereinafter referred to as "DEVELOPER").

WITNESSETH:

WHEREAS, DEVELOPER is the owner of lots 1 through 9, MITCHELL HARBOUR, SECTION ONE subdivision located in Craven County, North Carolina, which is more particularly shown and described on that map recorded in Plat Cabinet G, Slides 63G & H, Craven County Registry; and

WHEREAS, it is the desire of the DEVELOPER to insure the use of said property for attractive residential purposes only, to prevent the impairment of the attractiveness of the property, to maintain the desired tone of the community, and thereby to secure to each lot owner the full benefit and enjoyment of each lot owner's home with no greater restriction upon the free and undisturbed use of each lot than is necessary to insure the same advantages to the other lot owners;

NOW, THEREFORE, the undersigned does hereby covenant, agree and declare to and with all persons, firms or corporations now owning or hereafter acquiring any property in MITCHELL HARBOUR, SECTION ONE subdivision, that all of the above lots in said subdivision as shown on map recorded in Plat Cabinet G, Slides 63G & H, of the Craven County Registry, are hereby made subject to the following PROTECTIVE COVENANTS (hereinafter "PROTECTIVE COVENANTS"). These PROTECTIVE COVENANTS shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to this DECLARATION OF PROTECTIVE COVENANTS.

ARTICLE 1  
Definitions

As used herein,

- A. "Articles" means the Articles of the Incorporation of the MITCHELL HARBOUR PROPERTY OWNERS' ASSOCIATION, INC., which are attached hereto as Exhibit A and incorporated herein by reference.
- B. "Association" means and refers to the MITCHELL HARBOUR PROPERTY OWNERS' ASSOCIATION, INC., a nonprofit North Carolina corporation.
- C. The "Board of Directors" or "Board" shall be the elected board governing the Association and managing the affairs of the Association.
- D. "By-laws" means the Bylaws of the MITCHELL HARBOUR PROPERTY OWNERS'

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E. "Community Use Areas" means all real and personal property, together with those areas within dedicated portions of the subdivision, which may be deeded to or acquired by the Association or not, for the common use and enjoyment of the members of the Association or in which the owners have a partial or common right or privilege to use and enjoy as provided by these PROTECTIVE COVENANTS as well as amendments hereto. Community Use Areas specifically include, but are not limited to, parking spaces, boat dock facility (if any), and streets and roads within the subdivision.

F. "Common Expenses" means and includes actual and estimated expenses of maintaining and operating the Community Use Areas and operating the Association for general purposes, including any reasonable reserve, as may be found necessary and appropriate by the Board of Directors pursuant to these PROTECTIVE COVENANTS, the Bylaws and the Articles of Incorporation of the Association.

G. "Developer" means COASTAL MARKETING AND DEVELOPMENT COMPANY, a North Carolina general partnership, his heirs, successors and assigns or any legal entity acquiring ownership of portions of the Development Area heretofore not dedicated with the intent and for the purpose of further development.

H. "Development Area" shall mean that property described by that map recorded in Plat Cabinet G, Slides 63G & H, in the Office of the Register of Deeds of Craven County, North Carolina.

I. "Lot" shall mean and refer to any one of those numbered parcels of real property which have been subdivided from the hereinabove described real property known as MITCHELL HARBOUR, SECTION ONE subdivision and which are intended for single family residential purposes only, as set forth herein below.

J. "Member" shall mean and refer to each and every person and entity who or which owns a lot in MITCHELL HARBOUR, SECTION ONE subdivision subject to this

K. "Owner" shall mean and refer to the owner or holder (by purchase, devise, inheritance, decree or otherwise) whether one or more persons or entities, of a fee simple title to or interest in any Lot(s), including DEVELOPER, and contract sellers, but excluding those having such interest merely as security for the performance of an obligation or the payment of an indebtedness.

L. "Subdivision" means all of that real property known collectively as MITCHELL HARBOUR, SECTION ONE subdivision as shown on the map recorded in Plat Cabinet G, Slides 63G & H, Craven County Registry, together with additional phases or sections as the same shall be shown on the maps to be recorded in the Craven County Registry and the properties shown thereon made subject to this Declaration of Protective Covenants.

ARTICLE 2  
APPLICABILITY

These PROTECTIVE COVENANTS shall apply to all subdivision numbered lots and other real property shown on the aforesaid referenced plat or map, together with such additional phases or sections as may hereinafter be added, which lots and property are for residential purposes only, except as otherwise provided herein.

ARTICLE 3  
RESTRICTIONS ON USE AND OCCUPANCY

A. No Lot shall be used except for single family residential purposes. No structure shall be erected, placed or permitted to remain on any Lot other than one (1) detached, single family residence dwelling not to exceed two and one-half stories in height above floor or piling level and such outbuilding as are usually accessory to a single family residence dwelling, including a private enclosed garage.

B. Any dwelling constructed on the Lots subject to these PROTECTIVE COVENANTS shall contain not less than 1600 square feet for one story house and 1800 square feet for any house in excess of one story. The minimum square footage herein provided shall be measured by using the fully enclosed and heated floor space all devoted to general living purposes and be exclusive of roofed or unroofed porches, breezeways, decks, terraces, garages, and any outbuildings. Any dwellings in excess of one story shall contain not less than 1000 square feet on the first level of such structures which shall be fully enclosed and heated floor space all devoted to living purposes exclusive of roofed or unroofed porches, breezeways, decks, terraces, garages, and any outbuildings. In addition the total built-upon area on each lot shall not exceed the requirements of the Title 1 NCAC 2H.1003 Coastal Stormwater Regulations The State of North Carolina shall be a beneficiary of this provision entitled to enforce the same by any available action or remedy against any lot owner who violates the terms of this provision.

C. No above-grade structure (except approved fences or walls) may be constructed or placed on any Lot except within the minimum building setback lines as set forth herein:

1. Thirty (30) feet from the Lot front line.
2. Ten (10) feet from the Lot side line.
3. Fifteen (15) feet from the Lot rear line or in the case of waterfront lots, construction cannot occur within 100 feet from the highwater mark of Mitchell Creek unless permitted by CAMA; provided, however, no residential dwellings may be located any closer than 100 feet from the highwater mark of Mitchell Creek.
4. Twenty (20) feet from any corner Lot side line.

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Hardship variances from these requirements may be granted by DEVELOPER or its designated representative or the Committee in its sole discretion.

An Owner of a lot and a portion or all of an adjoining and contiguous Lot or Lots may construct a dwelling and/or other structures permitted hereunder upon and across the dividing line of such adjoining and contiguous Lots, all such structures shall comply with the minimum building setback lines from the actual boundary lines of the subject Owner's property, and thereafter such combinations of lots or portions thereof shall be treated for all purposes under these PROTECTIVE COVENANTS as a single Lot.

D. 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.

E. All plumbing fixtures and sources of sewerage located on a Lot shall be connected to an individual septic tank or other sewer system located upon such Lot and approved by the appropriate governmental authorities and the DEVELOPER. Each such approved individual septic tank or sewer system shall be maintained in good and proper working order and condition by the Owner in accordance with the requirements of governmental authorities having jurisdiction. No outside toilet shall be constructed or permitted on any Lot except during construction as herein expressly provided.

F. The building setback requirements set forth herein are not applicable with respect to the construction of bulkheads, docks, piers or similar structures placed upon those Lots which adjoin navigable waterways so long as such structures do not encroach on easements set forth in these PROTECTIVE COVENANTS or on the recorded maps for MITCHELL HARBOUR, SECTION ONE subdivision and otherwise are in compliance with the terms and conditions of these MITCHELL HARBOUR, SECTION ONE PROTECTIVE COVENANTS.

The Owner or Owners of the property on which bulkheads, jetties or other artificial stabilization devices are to be constructed must, prior to construction, obtain written approval from the appropriate Federal, State, County and local authorities, and the DEVELOPER, its duly designated representative or the Committee.

Piers and docks 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 local authorities, and the DEVELOPER, its duly designated representative or the Committee.

G. Construction activity on a Lot shall be confined within the boundaries of said Lot. Each Lot Owner shall have the obligation to collect and dispose of all rubbish and trash resulting from construction on his Lot.

H. All Lots shall be well maintained and no accumulation of rubbish or debris shall be permitted. The Owners of all not-built upon Lots in the Subdivision shall clear their Lots of underbrush or mow as follows:

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1. Lots in open fields must mow at least four (4) times each year;
2. Wooded Lots must clear underbrush at least twice a year;
3. Lots with open and wooded areas must mow the open area at least four (4) times each year and clear underbrush from the wooded area at least twice a year.

If the Owners do not clear their Lot as required by this paragraph, the Association shall have the authority to clear any such Lot of underbrush and separately assess the cost of such work against each Owner. Such charge shall be a special assessment against the Owner and his Lot(s) and may be enforced in accordance with the provisions of Article 7 herein.

I. Owners shall be responsible for any damage done to any streets, roadways, accessways, Community Use Areas, bulkheads, or property of other Owners within the Subdivision which may be caused by any Owner, his agents, employees, guests, licensees or invitee & the Association shall have the authority to assess any Owner for such damage and such charge shall be a special assessment against the Owner and his Lot(s) and may be enforced in accordance with the provisions of Article 7 herein.

J. The following general prohibitions and requirements shall apply and control the improvements, maintenance and use of all Lots:

1. No mobile home, trailer, tent, or temporary house, temporary garage or other temporary outbuildings shall be placed or erected on any Lot, provided, however, that the committee or DEVELOPER may grant permission for temporary structures for storage of materials during construction.

2. Once construction of a dwelling or other improvements are started on any Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12) months from commencement.

3. 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 a week.

4. All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of grade, quality and appearance, and all the construction shall be performed in good workmanship manner and quality. The covering for all roofs shall be materials approved by the Committee Materials and colors for the exterior of all dwellings and permitted structures must be approved by the Committee. No used structures shall be relocated or placed on any Lot and no structures shall have an exterior constructed of concrete blocks, asbestos or asphalt siding. Any permitted outbuilding shall be of the same material, quality, general appearance and workmanship as the dwelling on the Lot. All outbuildings exclusive of garages are to be placed in the rear portion of the

Lot.

5. Except structures erected by the DEVELOPERS, no structure erected upon any Lot may be used as a model exhibit or house unless prior written permission to do so shall have been obtained from the Committee.

6. Any dwelling or improvement on any Lot that is destroyed in whole or in part by fire or other casualty may be rebuilt or all debris removed and the Lot restored to a slightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three months.

7. No stripped, partially wrecked, unregistered or junk motor vehicle, or part thereof, shall be permitted to be parked or kept on any Lot in a manner so as to not be visible from any subdivision street or neighboring Lot owner(s).

8. No vehicle of any type shall be parked on any street in the subdivision. No truck nor other vehicle in excess of a one-ton load capacity nor any mobile home, trailer or similar vehicle, including boats, shall be parked or kept overnight or longer, on any Lot, in such a manner as to be visible to the occupants of other Lots or the users of a street or recreation area.

9. All outdoor poles, clotheslines and similar equipment shall be screened or so placed as not to be visible by the occupants of other Lots or the users of any street or recreation area.

10. No advertising signs or billboards or other advertising structure(s) of any kind shall be erected on any Lot or displayed to the public on any Lot subject to these restrictions except that one sign of not more than four square feet in area may be used to advertise a completed dwelling for sale or rent. This covenant shall not apply to signs erected by the DEVELOPER used to identify and advertise the subdivision as a whole, or construction identification signs approved by the Committee showing Lot numbers and name of builder, or by a homeowner for the purposes of identifying the homeowner as the resident on said Lot. Said identification sign shall not exceed in size a total of four square feet.

11. No satellite dish antennas larger than 20 inches in diameter are permitted to be installed on any Lot in that portion of the Lot lying between the plane of the front wall of the house and the right of way of any roadway which adjoins the Lot; any satellite dish installed shall be screened from view from the roadway which adjoins the Lot on which the satellite dish is located and also screened from view by adjoining property owners. The design and location of the screening of the satellite dish larger than 20 inches in diameter shall be approved by the Committee antenna is installed.

All radio antenna installations shall be approved in writing by the Committee before the antenna is installed.

12. All dwelling connections for all utilities, including but not limited to, water, electricity, gas, telephone, and television shall be run underground from the proper connecting points to the dwelling structure in such manner as may be acceptable to the appropriate utility authority. The cost for such underground service shall be shared by the Owner and utility company in conformity with existing utility company policy, if any. In no event shall DEVELOPER be responsible for such costs DEVELOPER may, however, in its sole discretion waive the provisions of this paragraph if, in the opinion of DEVELOPER, federal flood insurance regulations or the ordinance regulations of Craven County make the underground service impractical.

13. No animals shall be permitted to remain on any Lot other than dogs, cats, or other small household pets, always in reasonable numbers and subject to reasonable rules and regulations as may be promulgated from time to time by the Association.

14. The erection of fences shall require approval of the Committee or DEVELOPER, along the side line of any Lot that adjoins a street except a split, wooden fence of not more than (2) horizontal rails. No fence of chain link type construction or in excess of four feet in height shall be approved by the Committee, except that the Committee or DEVELOPER, in its sole discretion, may approve fences of chain link construction and up to six feet in height for the purpose of confining pets provided same does not extend more than twenty-five (25) feet in any direction and are constructed within the minimum building setback lines in the rear portion of the Lot. All fences must be of a decorative nature which do not interfere with adjoining property Owners' views of adjacent bodies of water.

15. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof tending to cause embarrassment, discomfort, annoyance or nuisance to the DEVELOPER or any Owners. There shall not be maintained any plants or animals, or device or anything of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the Owners thereof.

16. In order to maintain the rural, wooded character of the Subdivision, the following restrictions on the cutting and removal of trees shall apply to all Lots:

(a) Fallen trees, dead trees and live trees less than six (6) inches in diameter may be removed from any Lot at any time without the written approval of the DEVELOPER or the Committee.

(b) All trees exceeding six (6) inches in diameter may only be removed from any Lot with the written approval of the DEVELOPER or the Committee, said approval being based upon a site plan, landscaping plan, or planting plan submitted to the

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DEVELOPER or the Committee by the Owner or his agent.

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(c) Trees may be removed without written approval of the DEVELOPER or the Committee within the area of proposed construction for any dwelling and the surrounding fifteen (15) feet.

17. Burning as a means of clearing brush shall not be permitted. Burning may be allowed under appropriate circumstances if approved by the DEVELOPER or the Committee and the Owner has obtained all necessary government permits.

18. No inoperable, or submerged or sunk, or partially submerged or partially sunk, boat may be docked or moored at any private or common dock or pier in MITCHELL HARBOUR, SECTION ONE subdivision nor may any boat be used for any other purpose than recreational.

19. No mail or paperbox or other receptacle of any kind for use in the delivery of mail, newspapers or magazines or similar material shall be erected or located upon any Lot except such receptacle of standard design as shall have been approved by the committee,

K. This Article and these PROTECTIVE COVENANTS shall not apply to any sales office which may be maintained by the DEVELOPER within MITCHELL HARBOUR, SECTION ONE subdivision.

#### ARTICLE 4

#### ASSOCIATION

A. An Association named the MITCHELL HARBOUR PROPERTY OWNERS' ASSOCIATION, INC. has been or will be formed pursuant to the rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina as an association of the Owners of Lots. Its purposes are to own, manage, maintain, and operate the Community Use Areas and facilities located upon the Community Use Areas; to enforce the restrictions contained herein; and to make and enforce rules and regulations governing the Owners use and occupation of Lots.

B. Each Owner of each Lot within the Subdivision shall be a Member of the Association. The DEVELOPER, by the Declaration, and the Owners of individual Lots by their acceptance of individual deeds thereto, and by the recording of these PROTECTIVE COVENANTS, covenant and agree with respect to the Association;

1. That for so long as each is an Owner of a Lot within the Subdivision, each will perform all acts necessary to remain in good and current standing as a Member of the Association; and ownership of a Lot; and

2. That each shall be subject to the rules and regulations of the Association with regard to ownership of a Lot; and

3. That any unpaid assessment, whether general or special, levied by the

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Association in accordance with these PROTECTIVE COVENANTS, the Articles of the Bylaws shall be a lien upon the Lot upon which such assessment was levied, and shall be the personal obligation of the Owner of the Lot at the time the assessment fell due.

C. Each membership in the Association shall relate to and have a unity of interest with an individual Lot which may not be separated from ownership of said Lot.

D. The qualifications for membership in the Association, the manner of admission to membership in the Association, the manner of termination of such membership, and the voting rights of the members of the Association shall be as set forth in Article IV of the Articles of Incorporation of the Association, the provisions of such Article being incorporated herein by reference.

E. The affairs of the Association shall be managed by a Board of Directors, the number, qualifications, term and method of election of which shall be as provided from time to time by the Bylaws of the Association; and provided, further that the number of members of the first Board of Directors shall be three (3); and, provided, finally, that, notwithstanding any of the foregoing, so long as the DEVELOPER, owns twenty (20) percent or more of the residential lots in the development, but in any event, not longer than December 31, 2000, said DEVELOPER shall have the right to designate and select a majority of the persons who shall serve as members of each Board of Directors of the Association who need not meet the qualifications for directors as provided by said Bylaws or herein.

F. After the DEVELOPER has relinquished control of the Association as set forth in E. above, there shall be a special meeting of the membership for the purpose of electing a Board of Directors to serve until the next annual meeting and until new directors are elected and qualified.

ARTICLE 5

MANAGEMENT AND ADMINISTRATION

The management and administration of the affairs of the Community Use Areas of the Subdivision shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of these PROTECTIVE COVENANTS, the Articles and the Bylaws of the Association, but may be delegated or contracted to managers or a management service.

ARTICLE 6

COMMON EXPENSES

The Common Expenses of the Subdivision include:

All amounts expended by the Association operating, administering, managing, maintaining, repairing, replacing and improving the Community Use Areas of the Subdivision; and amounts expended by the Association in insuring the Community Use Areas in the Subdivision; all amounts expended by the Association in legal, engineering, or

architectural fees; and similar fees which may be incurred by the Association from time to time in performing the functions delegated to the Association by these PROTECTIVE COVENANTS, Articles or Bylaws; and all amounts expended in any form by the Association in enforcing these PROTECTIVE COVENANTS, the Articles and the Bylaws.

ARTICLE 7

ASSESSMENTS, LIABILITY, LIEN AND ENFORCEMENT

A. The Association has heretofore been given the authority to administer the operation and management of the Community Use Areas of the property. To properly administer the operation and management of the Community Use Areas, the Association will incur, for the mutual benefit of all the Owners of Lots, costs and expenses sometimes herein referred to as "Common Expenses". In furtherance of the grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation of, the management of, and for capital improvements to the Community Use Areas, the following shall be operative and binding upon the Owners of all Lots.

B. Creation of the Lien and Personal Obligation of Assessments: The DEVELOPER for each Lot owned within the Development Area and each Owner for any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed and by the recording of these PROTECTIVE COVENANTS is deemed to covenant and agree to pay the Association:

- (1) annual assessments or charges, and
- (2) special assessments for capital improvements or special assessments as established by the Board of Directors of the Association, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with the interest, costs and reasonable attorney's fees, if any, shall be a charge on the Lots and shall be a continual lien upon each Lot against which they are levied. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person or entity who is the Owner of such Lot at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to any successor in title unless expressly assumed by him.

PROVIDED, the DEVELOPER shall be exempt from the payment of the yearly assessment fee for any unsold Lots which are platted of record in the Office of the Register of Deeds of Craven County.

C. Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and in particular for the improvements, maintenance, repair to the Community Use Areas above provided, the maintenance of all roads and streets of the

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property, as have been mapped or constructed within the overall tract of MITCHELL HARBOUR, SECTION ONE subdivision, until such time as they are taken over by the State of North Carolina, as well as the acquisition and maintenance of any and all other Community Use Areas of the Subdivision, including but not limited to, the cost of repairs, repaving, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payments of fees assessed against the easement areas and Community Use Areas, utility services and the procurement and maintenance of insurance as may be deemed necessary by the Board of Directors.

PROVIDED, HOWEVER, that those Lot Owners who shall purchase from the DEVELOPER an individual boat slip within the docking facility as an appurtenance to their Lot shall be assessed an annual fee for the maintenance of said dock area as an additional annual assessment payable to the Association, being an additional sum payable over and above the amount, required as the general assessment payable by each Lot Owner. This additional assessment pertaining to the owners of boat slips shall be payable to the Association for the maintenance, repair, replacements and additions, utility services, ad valorem property taxes, procurement of insurance and future dredging, if any, payable by the "boat slip owners" to the Association. The assessment amount shall be established by the Board of Directors annually and shall be separately accounted for from the general association assessments and expenditures.

D. Initial and Maximum Annual Assessment: The initial assessment, payable to the Association shall be prorated and paid at the time of closing of the purchase of a Lot, so that all payments thereafter shall be due on January 1 of that year. The initial assessment payable to the MITCHELL HARBOUR PROPERTY OWNERS' ASSOCIATION is to be \$350.00 per annum, and the maximum annual assessment for each calendar year thereafter shall be established by the Board of Directors of the Association and may be increased by the Board of Directors for any calendar year without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year. The initial annual assessment for the owners of boat slips shall be \$250.00 per annum in addition to the general assessment for all Lot owners

The maximum annual assessment for any calendar year may be increased without limit by a vote of two-thirds of the Members who are voting in person or by proxy at a meeting called for this purpose.

Excess amounts collected through assessments for any particular calendar year shall be carried over to the next budget year, and said sums carried over shall be considered by the Board of Directors of the Association in formulating the budget for the approaching year and arriving at the assessments required of the Lot Owners for the approaching year.

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E. Special Assessments for Capital Improvement: In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair, replacement or repaving of a capital improvement to the roads and streets of the property, the easement areas described above, or any other Community Use Areas of the property, including fixtures and personal property related thereto, provided that any such assessments shall have the assent of two-thirds of the vote of the Members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed to the uniform rate for all Lots and may be collected on a schedule determined by the vote of the Members at said meeting.

PROVIDED, HOWEVER, special assessments required for capital improvements to the docking facility shall be assessed only to those Lot Owners who also own a boat slip

F. Date and Commencement of Annual Assessments; Due Dates: The annual assessments provided for herein shall be collected on an annual basis and shall commence as to all Lots on the first day of July, 1996, and thereafter as to Owners other than DEVELOPER, on the first day of each calendar year following the conveyance of a Lot to any such Owner. At least thirty (30) days in advance of each annual assessment, the Board of Directors shall fix the amount of the annual assessment to every Owner subject thereto. If no notice is given of a new assessment, then the previous year's assessment will apply.

G. Effect of Nonpayment of Assessments; Remedies of the Association: Any general or special assessment, if not paid within thirty (30) days after the date of such assessment is due, together with interest at the rate of twelve percent (12%) per annum, costs of collection, court costs, and reasonable attorney's fees shall constitute a lien against the Lot upon which such assessments are levied. The Association may record notice of the same in the Office of the Clerk of Superior Court of Craven County or file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

H. Sale or Transfer of Property: The sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer. No such sale or transfer shall release such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE 8

COMPLIANCE WITH THIS DECLARATION, THE ARTICLES AND THE BYLAWS OF THE CORPORATION

In the case of failure of an Owner to comply with the terms and provisions contained in this Declaration, the Article, the Bylaws or Rules and Regulations of the Association, the following relief shall be available:

A. The Association, the DEVELOPER and any Owner, an aggrieved Owner within the Subdivision on behalf of the Association or any Owner on behalf of all the Owners within the Subdivision shall have the right to enforce by any proceeding at law or in equity, all of the conditions, covenants and restrictions of these PROTECTIVE COVENANTS and the Articles, Bylaws and rules and regulations of the Association and any and all laws hereinafter imposed pursuant to the terms of these PROTECTIVE COVENANTS. The prevailing party shall be entitled to collect all costs thereof, including reasonable attorney's fees.

B. The Association shall have the right to remedy the violation and assess the costs of remedying same against the offending Owner as a special assessment as provided in Article 6 herein.

C. For any violation by an Owner, including, but not limited to, the nonpayment of any general or special assessment, the Association shall have the right to suspend the offending Owner's voting rights and the use by such Owner, his agents, employees, licenses and invitees of the Community Use Areas in the Subdivision for any period during which a violation continues except that such penalties may not be for more than sixty (60) days for violation of any of the Associations published rules and regulations. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

E. The failure of the Association or any person or Owner to enforce any restriction contained in these PROTECTIVE COVENANTS, the Articles, by Bylaws or the rules and regulations shall not be deemed a waiver of the right to do so thereafter.

ARTICLE 9

PROPERTY RIGHTS OF LOT OWNER, CROSS-EASEMENTS, AND EXCEPTIONS AND RESERVATIONS BY DECLARANT

A. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Community Use Areas within the Subdivision, except the boat docking facility, for each and every purpose or use to which such Community Use Areas were intended as determined by their type, or for which such Community Use Areas generally are used, including, but not limited to, easement of access, maintenance, repair or replacement of the Community Use Areas. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Subdivision,

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whether or not specifically included in a deed thereto, subject to the following provisions:

1. The Association shall have the right to make reasonable rules and regulations respecting the use of same.

2. An easement for future dredging of the areas adjacent to the boat docking facility for the purpose of maintaining the dock as may be necessary is granted to those Lot Owners who shall also purchase a boat slip within the dock.

3. An easement for the docking of boats, privately owned by the Owners, along said docking facility within one of the slips of said docking facility and an easement over and across the boat docking facilities is granted to those Lot Owners who shall also purchase a boat slip within the dock. Each Owner's slip shall be designated by the DEVELOPER, which slip number shall be affixed to the slip of the docking facility to be used by the Owner thereof.

B. The Association hereinafter may grant easements for utility purposes for the benefit of the Subdivision and the Lots now or hereafter located thereon, over, under, along and through the Community Use Areas. Provided, however, that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any Lot.

C. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment of the Community Use Areas, and facilities to the Members of his family, his tenants, and contract purchasers who reside on the property.

D. Easements and rights of way over and upon each Lot for drainage and the installation and maintenance of utilities and services are reserved to DEVELOPER and its successors and assigns for such purposes as DEVELOPER may deem incident and appropriate to its overall development plan, such easements and rights of way being shown or noted on the aforesaid recorded plat of the Subdivision. The easements and right of way areas reserved by DEVELOPER on each Lot pursuant hereto shall be maintained continuously by the Owner but no structures or plantings or other material shall be placed or permitted or remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soils, or to take any other similar action reasonably necessary in the opinion of the DEVELOPER to provide an economical and safe installation.

E. The DEVELOPER and the Owners, by these presents, hereby establishes, grants, gives and conveys to each and every Owner or future Owners of a Lot in MITCHELL

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HARBOUR, SECTION ONE subdivision an easement of ingress, egress and regress over and across all of the roads and streets of MITCHELL HARBOUR, SECTION ONE subdivision shown on map of record in Plat Cabinet G, Slides 63G & H, Craven County Registry. It is the intent of the DEVELOPER that this grant of easement be deemed hereinafter as an appurtenance to each and every Lot within MITCHELL HARBOUR, SECTION ONE subdivision, and any conveyance or transfer of the title to any Lot in MITCHELL HARBOUR, SECTION ONE subdivision shall be deemed to include this easement, whether expressly stated therein or not.

F. Every Owner shall have a right and easement of enjoyment in and to any and all other Community Use Areas which are owned or leased by the Association for the enjoyment of the Owners; this right and easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot.

G. There is granted to Carolina Power and Light Company, its successors and assigns, a blanket easement to go upon the property that is the subject of these PROTECTIVE COVENANTS for the purpose of installing and maintaining the appropriate electrical transmission wires and equipment; provided, however, this easement is subordinate to and is expressly subject to any and all existing structures, including septic tanks, located on the property at the time Carolina Power and Light Company, its successors and assigns, seeks to place electrical transmission wires and equipment on the property.

H. DEVELOPER reserves the right to complete the development of MITCHELL HARBOUR, SECTION ONE subdivision and further DEVELOPER reserves the right to add additional properties to MITCHELL HARBOUR, SECTION ONE subdivision and the Owners of which properties shall be entitled to use the Common Areas and facilities of the subdivision the same as other MITCHELL HARBOUR, SECTION ONE subdivision Owners. The additional properties and Owners thereof shall be subject to the same dues and assessments as MITCHELL HARBOUR, SECTION ONE subdivision Owners, be members of the Association, and such additional properties shall be subjected to restrictive covenants comparable to those of MITCHELL HARBOUR, SECTION ONE subdivision.

ARTICLE 10  
ARCHITECTURAL CONTROL COMMITTEE  
AND PROCEDURES

A. 1. The DEVELOPER, in conjunction with the Association, shall create and establish an Architectural Control Committee (hereinafter referred to as the "Committee") for the purpose of reviewing and approving any and all proposed structures, buildings and improvements as to conformity and harmony of external design and consistency with plans of existing residences or other buildings and site locations.

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2. In addition to its duties of review and approval of external harmony and design, the Committee shall monitor the compliance with all use restrictions, design and architectural control provisions and conditions and other restrictions. The Committee shall report such violations as may come to its attention to the DEVELOPER or the Association for appropriate actions of enforcement.

3. The Committee shall be composed of a minimum of three (3) members of the Association. Until such time as the Committee has been established, the DEVELOPER shall perform the functions as outlined above and elsewhere herein. Where the term "The Developer" or "The Committee" have been used, this term shall be construed to mean that only one of the two entities will perform the duties and function, and when the Committee is established, that Committee will perform the duties and functions as outlined above. Upon the appointment and organization of the Committee, the Committee shall adopt such administrative procedures as will insure the submission, review and approval of any and all buildings and/or improvements constructed.

B. No construction, which term shall include within its definition clearing, excavation, grading and other site work, shall take place except in strict compliance with this Article, and until the approval of the Committee or DEVELOPER has been obtained.

C. The Committee or DEVELOPER shall have jurisdiction over all original construction on any Lot and later changes or additions after initial approval thereof together with any modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements initially approved.

D. The Committee or DEVELOPER shall bane the right to disapprove any plans, specifications and details submitted to it in the event the same are not in accordance with any of the provisions of these PROTECTIVE COVENANTS and the guidelines.

Disapproval of plans, location, specifications or details may be based upon any grounds, including purely aesthetic considerations which the Committee or DEVELOPER, in its sole and uncontrolled discretion, shall deem sufficient, however, approval of plans shall not be unreasonably withheld.

An Owner shall have the right to appeal disapproval of plans, location, specification and details to the Board of Directors. The decision by the Board of Directors shall be final and not subject to appeal or review.

E. The Committee or DEVELOPER shall approve or disapprove plans, specifications and details submitted in accordance with its procedures within thirty (30) days from the receipt thereof. In the event that the Committee or DEVELOPER fails to approve or disapprove plans, specifications and details within thirty (30) days after submission of the same to the Committee or DEVELOPER approval, for the purposes of this Article, shall be deemed to have been given by the Committee or DEVELOPER.

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F. The Committee, or its agent, or the DEVELOPER shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans, specifications and details.

G. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of any residence or permitted pertinent structures, or to paint the interior of the same any color desired.

H. Neither the DEVELOPER nor the Committee nor the Board of Directors or any architecture agent thereof shall be responsible in any way for any defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein or in the guidelines, nor for any structural or other defect in any construction.

#### ARTICLE 11

##### AMENITIES AND FACILITIES

Every park, recreation area, recreation facility dedicated access and other amenities appurtenant to the Subdivision, whether or not shown and delineated on any recorded plat of the Subdivision, shall be considered private and for the sole and exclusive use of the Member Owners of Lots within the Subdivision. Neither DEVELOPER'S execution nor the recording of any plat nor any other act of DEVELOPER with respect to such areas is, or is intended to be, or shall be construed as a dedication to the public of any such areas, facilities or amenities. The roads as shown on the maps of MITCHELL HARBOUR, SECTION ONE subdivision were constructed in accordance with the then existing standards specifications of the North Carolina Department of Transportation and will be dedicated to the State of North Carolina. The roads shall be maintained by the Association until such time as they are accepted by the State of North Carolina.

#### ARTICLE 12

##### WAIVER

No provision contained in these PROTECTIVE COVENANTS, the Articles or the Bylaws, shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

#### ARTICLE 13

##### VARIANCES

The Board of Directors in its discretion may allow reasonable variances and adjustments of these PROTECTIVE COVENANTS in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various persons with each such Owner having an easement upon areas owned by the Association.

## DURATION, AMENDMENT AND TERMINATION

A. All covenants, conditions restrictions and affirmative obligations set forth in these PROTECTIVE COVENANTS shall run with the property and Development Area and all portions thereof, and be binding on all parties having any right, title or interest in the property and Development Area, or any portion thereof, their heirs, devisees, successors and assigns, and shall inure to the benefit of the same, for a term of twenty (20) years from the date these PROTECTIVE COVENANTS are recorded in the Craven County Registry, after which time these PROTECTIVE COVENANTS shall be automatically extended for successive periods of twenty years, unless a majority of the then Owners agree to revoke the same. These Articles may be amended at any time by a vote of not less than a majority of the Owners and an instrument must be recorded in the Craven County Registry for such an amendment to be effective.

B. Invalidity of any one of the covenants, conditions or restrictions contained in these PROTECTIVE COVENANTS by any court, agency or legislative order shall in no way affect any other covenants, conditions or restrictions contained in these PROTECTIVE COVENANTS which shall remain in full force and effect.

## ARTICLE 15

## CAPTIONS

The captions preceding the various Articles of these PROTECTIVE COVENANTS are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these PROTECTIVE COVENANTS. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and feminine.

## ARTICLE 16

## ASSIGNABILITY OF RIGHTS AND LIABILITIES

DEVELOPER shall have the right to sell, lease, transfer, assign, license and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing and reserved to it by these PROTECTIVE COVENANTS. Following any such disposition, DEVELOPER in no way shall be liable or responsible to any party with regard to any such right, interest, or liability or any claim or claims arising out of same in any manner.

## ARTICLE 17

## LIBERAL CONSTRUCTION

The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a subdivision of fee simple ownership of Lots and buildings governed

and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements by an Owners' Association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners.

IN WITNESS WHEREOF, COASTAL MARKETING AND DEVELOPMENT COMPANY, a North Carolina General Partnership, has executed this instrument by and through its General Partners by authority duly given and has adopted as its seal the typewritten word "SEAL" appearing after its name hereinbelow and its managers have adopted as their seal the typewritten word "SEAL" appearing after their signatures hereinbelow on this the day and year first above written.

COASTAL MARKETING AND DEVELOPMENT COMPANY,  
a North Carolina General Partnership (SEAL)

Duncan Harrison (SEAL)  
DUNCAN HARRISON, General Partner

J. Michael Sanders (SEAL)  
J. MICHAEL SANDERS, General Partner

STATE OF North Carolina

COUNTY OF CRAVEN

I, Yvonne E Shockney a Notary Public in and for the State and County above, do hereby certify that DUNCAN HARRISON, a General Partner of Coastal Marketing and Development Company, personally appeared before me this day and acknowledged the due execution of the foregoing document.

WITNESS my hand and notarial seal, this the 9<sup>th</sup> day of November, 1998.

Yvonne E Shockney  
NOTARY PUBLIC

My Commission Expires:

4-30-2000

HENDERSON, BAXTER, ALFORD & TAYLOR, P.A., ATTORNEYS-AT-LAW, P.O. DRAWER U, NEW BERN, NC 28563

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I, Yvonne E Shockley, a Notary Public in and for the State and County above, do hereby certify that J. MICHAEL SANDERS, a General Partner of Coastal Marketing and Development Company, personally appeared before me this day and acknowledged the due execution of the foregoing document.

WITNESS my hand and notarial seal, this the 6<sup>th</sup> day of November, 1998.

Yvonne E Shockley  
NOTARY PUBLIC

My Commission Expires:

4-30-2000

NORTH CAROLINA

Craven COUNTY

The foregoing certificate of Yvonne E Shockley certified to be correct. This instrument was presented for registration this day and hour, and duly recorded in the office of the Register of Deeds of Craven County, North Carolina, in Book 1661, at Page 275.

This the 10 day of November 1998, at 11:00 o'clock A.m.

Becky Thomas  
REGISTER OF DEEDS

BY: Alice Tucker  
DEPUTY REGISTER OF DEEDS

HENDERSON, BAXTER, ALFORD & TAYLOR, P.A., ATTORNEYS-AT-LAW, P.O. DRAWER U, NEW BERN, NC 28563