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FOR REGISTRATION REGISTER OF DEEDS
REBECCA T CHRISTIAN
NEW HANOVER COUNTY, NC
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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
HIDDEN POINTE ON THE LAKE,
SECTION ONE

THIS DECLARATION, made on the date hereinafter set forth by COASTAL CAROLINA DEVELOPERS, INC., hereinafter referred to as "Declarant" or "Developer".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in New Hanover County, North Carolina, which is more particularly described as HIDDEN POINTE ON THE LAKE, SECTION ONE, as shown on map of same recorded in Map Book 44 at Page 331 in the New Hanover County Registry (hereinafter sometimes referred to as "HIDDEN POINTE").

NOW, THEREFORE, Declarant hereby declares that all of the properties, including all lots, described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to HIDDEN POINTE HOME OWNERS ASSOCIATION, or its successors and assigns, a non-profit corporation formed or to be formed by the Declarant primarily as an association for the lot owners of HIDDEN POINTE, all sections.

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, known as HIDDEN POINTE and such additional property thereto as may hereafter be brought within the jurisdiction of the Association.

DRAWN BY JACKSON MILLS & CARTER **RETURNED TO** JACKSON, MILLS & CARTER

Section 4. "Additional Property" shall mean and refer to any lands which are now owned or may be hereafter acquired or developed by Declarant, in addition to the above described Property, and annexed to and made a part of the HIDDEN POINTE (as hereinafter defined).

Section 5. "Common Area" shall mean all real property or interests in real property, to include, but not limited to, private roads, pool and pool house access gate to be constructed prior to completion of all homes, and any other amenities owned or maintained (subject to the authority of the Declarant) by the Association for the common use, benefit and enjoyment of the owners. The Common Area to be owned or maintained by the Association may be shown on a recorded plat recorded in the New Hanover County Registry.

Section 6. "Lot" shall mean and refer to those enumerated parcels of land upon which single family residences may be built as shown upon that map recorded in Map Book 44 at Page 331 in the New Hanover County Registry and any other recorded subdivision map of the Properties. As used herein, "Lot" does not include "common areas".

Section 7. "Declarant" shall be used interchangeably with "Developer" (which designations shall include singular, plural, masculine and other neuter as required by the context) and shall mean and refer to COASTAL CAROLINA DEVELOPERS, INC., its successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant or a Lot not previously disposed of for the purpose of development and reserves or succeeds to any Special Declarant Right. "Undeveloped Lot" shall mean a lot which has not been subdivided or platted for sale or building purposes.

Section 8. "Declaration" shall mean this instrument as it may be from time to time amended or supplemented.

Section 9. "Special Declarant Rights" means rights reserved for the benefit of a Declarant including without limitation the right (i) to complete improvements indicated on plats and plans filed with or referred to in this Declaration; (ii) to exercise any development right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain sales offices, management offices; signs advertising HIDDEN POINTE and models; (iv) to use easements through the common elements for the purpose of making improvements within the HIDDEN POINTE or within real estate which may be added to the HIDDEN POINTE; (v) to make HIDDEN POINTE part of a larger planned community or group of planned communities; (vi) to make the HIDDEN POINTE subject to a Master Association; or (vii) to appoint or remove any officer or Executive Board or Board of Director member of the Association or any Master Association up to the time the Declarant turns over control of the Association to the Owners.

Section 10. "The Act" shall mean and refer to the North Carolina Planned Community Act, N.C.G.S. 47-F.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area (if any) which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and right to use of the Common Areas by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3rds) vote of the members of the Association has been recorded;

(c) due to noise concerns, safety, liability and property damage reasons, no motorized or gas, including dirt bikes and all terrain vehicles (ATV's) are permitted on the common areas or grounds of the properties. Only maintenance equipment needed to maintain the grounds are exempt from this rule.

(d) the rights of the Declarant as set forth herein.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment 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.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, 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 determine, but in no event shall more than one vote be cast with respect to any Lot

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B member may appoint a majority of the Board of Directors during the Class B control period. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total vote outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or
- (b) on December 31, 2013.
- (c) when, in its discretion, the Class B members so determine and voluntarily relinquishes such right.

Section 3. Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with this Declaration and the By-Laws, PROVIDED, HOWEVER, that any powers and duties exercised by the Board of Directors shall not affect, reduce or impair the authority or power of the Declarant to exercise its rights as developer, including, but not limited to, matters pertaining to planning, drainage, grading and subdivision plans or any Special Declarant Rights as defined above.

ARTICLE IV

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The 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; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; (3) insurance assessments and ad valorem tax assessments; and (4) working capital assessments; and (5) such other assessments or charges as the Declarant or the Board of Directors shall determine, including penalties for late payments. The annual and special assessments, together with fines, penalties, interest, costs and reasonable attorney's fees as determined by the Declarant or Association, 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, costs and reasonable attorney's fees, 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.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Properties and for the improvement and maintenance of all common areas, amenities,

easements, and utilities, specifically including, but not limited to, the maintenance, repair and replacement of utility easements, stormwater drainage facilities and easements, delegated to the Association by the Declarant, and maintenance and repair of all other utility facilities and utility equipment not otherwise maintained and repaired by municipal, public or private utility authorities or by the Declarant. The assessments shall also be used for the maintenance and operation of all lighting facilities, if any, maintenance and repair of any amenities located upon the common areas, if any, maintenance of the entrance area and subdivision sign, maintenance and repair of private streets and roads, access gate at entrance to be installed and operational prior to the completion of all homes, pool and club house, the costs of enforcing this Declaration, and the payment of all other expenses associated with the Common Areas, including the prompt and full payment of all ad valorem property taxes and insurance for said common area(s). In addition, the assessments shall also be used for doing any other thing(s) necessary or desirable in the opinion of the Association to keep the property in neat and good order, and to provide for the health, welfare and safety of the Owners and residents of HIDDEN POINT. **The assessments provided for hereunder shall also be used to fund the necessary expenses for drainage and stormwater management (as well as other common areas) in conjunction with adjacent and/or neighboring subdivisions which are part of the same drainage network or system as determined by the Declarant to be necessary or appropriate. Necessary expenses shall be determined and assessed equally on a per lot basis unless otherwise agreed to by the subdivisions in the drainage network.**

Section 3. Annual Assessment. A lot shall not be subject to annual assessments until the lot is sold by the Declarant to an Owner other than the Declarant.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be determined by the Declarant.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% only by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum as desired.

(e) The Annual Assessment for each Lot shall be established based on the annual budget thus adopted provided, however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner. The due date for payment shall be established by the Executive Board. The Executive Board

shall have the authority to require the assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 4. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant. There shall be two classes of Assessment Commencement as follows:

- (a) Fifty percent (50%) assessments for homeowners for up to eight (8) months; and
- (b) upon certificate of occupancy by a lot owner, 100% of assessment.

Section 4. Special Assessments for Capital Improvements. 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 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 fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Insurance. The Board of Directors, on behalf of the Association, as a common expense, shall at all times keep the property, if any, of the Association insured against loss or damage by fire or other hazards and other such risks, including, but not limited to, directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Properties and Common Area, which insurance shall be payable in case of loss to the Association for all members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by members or their mortgagees. An individual lot owner's liability for damage to the common areas shall not be absolute, but rather only that determined in accordance with North Carolina law.

Section 6. Insurance Assessments. All insurance policy premiums on the Common Areas for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense, and the Association shall levy against the Owners equally as an additional annual assessment, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of all such insurance premiums.

Section 7. 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 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. No provision in this Section 7 shall operate to prevent the Declarant from enjoying and exercising the rights set forth in Article III above.

Section 8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots.

Section 9. 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 maximum legal rate in effect when due along with such other penalties, fines, costs, expenses and attorney's fees as determined by the Declarant or Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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. Failure to pay assessments does not constitute a default under any insured mortgage owed by an Owner.

Section 10. Subordination of the Lien to Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first 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 assessments as to payments which became 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. Mortgagees are not required to collect assessments.

Section 11. Working Capital Assessment. At the time title to a lot is conveyed from Declarant to the initial owner other than the Declarant, said owner shall contribute to the Association as a working capital fund the amount of Two Hundred Dollars (\$200.00). Such funds shall be used solely for initial operating and capital expenses of the association, including but not limited to insurance, supplies, furnishings and equipment. Amounts paid into the working capital fund are not to be considered as advance payments of regular assessments. Any working capital funds remaining at the end of the first full operating year may be transferred to and become part of the general funds of the Association in the discretion of the Declarant or Board of Directors, as appropriate.

Section 12. The Association formed pursuant to this Declaration shall become responsible for the stormwater management of the properties at such time as the Declarant/Developer turns

over control of said Association to the owners or buyers of lots. At such time the Association shall sign such documentation as may be required by the State of North Carolina Department of Environmental and Natural Resources, Division of Water Quality, including but not limited to a stormwater management permit application, a Curb Outlet System Supplement, Permit Name/Ownership Change Form. In addition, the Association shall enter into any other agreements or documentation required by the State of North Carolina or any agency or department thereunder as well as any agency or department of the County of New Hanover. Any person or entity purchasing a lot in this subdivision shall be subject to and shall be deemed to have agreed to comply with and cooperate with the requirements herein. By way of explanation and not limitation,

A. General. After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Development, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the HIDDEN POINTE with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association.

B. The Developer shall not be responsible for damages to stormwater retention ponds and related facilities caused by construction of residences or other activities by Owners, their agents and contractors, upon their Lots. If the Association fails to sign the documents required by this paragraph, the Developer shall be entitled to specific performance in the courts of North Carolina requiring that the appropriate Association officers sign all documents necessary for the stormwater permit(s) to be transferred to the Association. Failure of the officers to sign as provided herein shall not relieve the Association of its obligations under this section. In addition, each Owner for the Owner, the Owner's heirs, successors and assigns, by acceptance of a deed from the Declarant, for a Lot hereby irrevocably appoints **Robin G. Tinney** as the Owner's attorney in fact, on behalf of the Owner and the Association, to sign all documents required by DENR necessary for the stormwater permit(s) to be transferred to the Association; provided, however, that the Declarant shall first have requested as provided above that an officer of the Association execute such documents and any officer has failed to do so within the time provided.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. No dwelling, residence, building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding

structures and topography by the Declarant, or its designee, or if applicable, the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with provided that such addition, construction or alteration is in conformity with the overall plan, design and appearance of HIDDEN POINTE in general. Non-approval of any such plans, location or specification may be based upon any reasonable ground that in the discretion of the Declarant or Architectural Control Committee shall be deemed as inconsistent with the general development and the standards of quality of said subdivision and is materially detrimental to the value of the subdivided lots in said subdivision. One copy of all plans and related data shall be furnished to the Declarant or Architectural Control Committee, as the case may be, for its records. Neither the Declarant nor the Architectural Control Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

Section 2. Developer's Rights. All duties and responsibilities conferred upon the Board of the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any lot in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration. Declarant reserves all rights as to planning, installation and construction of all matters concerning grading and drainage and all matters involving or pertaining to engineering and architectural matters. In addition, the Declarant shall have sole authority as to matters requiring compliance or adherence to state or county planning, land use, drainage and stormwater requirements or regulations.

Section 3. Approval of Plans:

A. No house plans will be approved unless the proposed house shall have a minimum of 1500 square feet of finished (heated) area as defined by the National Association of Home Builders Accredited Standard Committee's Proposed Standards Approved Sept. 30, 1995. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches and like areas.

B. The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency, or natural calamities.

C. No improvement shall be erected, altered, placed upon, or permitted to remain on any lot other than one single family dwelling and two (2) car or passenger vehicles attached garage (or

garages). The construction or maintenance of so-called "garage-apartments" on any lot is expressly prohibited. Detached garages or other outbuildings shall not be allowed.

D. All service utilities, fuel tanks and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Declarant, the Board or the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. Design for mail and newspaper boxes shall be furnished by Declarant. Fences shall be permitted on any Lot; provided, however, that the design, placement and materials of any fence are approved by the Declarant, the Board or the Architectural Control Committee, as the case may be. Clothes lines are not permitted on any Lot

ARTICLE VI

EASEMENTS

Section 1. Easements are reserved and may be granted by Declarant (or the Association, once the Declarant has assigned or transferred management and control of the Association to the owners) as necessary in the Common Areas for installation and maintenance of underground utilities and drainage facilities.

Section 2. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the lots and Common Area in the performance of their duties.

Section 3. In case of an emergency originating in or threatening any lot or the common areas and facilities, regardless of whether any Lot Owner is present at the time of such emergency, the Board of Directors, or any other person authorized by it, shall have the right to enter upon any lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right of entry shall be immediate.

Section 4. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in, or over each lot and such other areas as are shown on the plat of the Properties recorded or to be recorded in the office of the Register of Deeds of New Hanover County; provided further, that the Declarant may cut drain ways for surface water whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. It further

