

BY-LAWS OF  
DUCK LANDING PROPERTY OWNERS ASSOCIATION, INC.

A NORTH CAROLINA NON-PROFIT CORPORATION  
UNDER THE LAWS OF THE  
STATE OF NORTH CAROLINA

ARTICLE I  
NAME, PURPOSE AND APPLICABILITY

1.1 Name. The name of this non-profit, non-stock membership corporation shall be Duck Landing Property Owners Association, Inc., hereinafter referred to as "Association".

1.2 Purpose. The purpose of the Association shall be to administer, manage, and operate the Common Areas, Open Spaces and Recreational Amenities, in accordance with that Declaration of Covenants, Conditions and Restrictions of Duck Landing, hereinafter referred to as "Declaration" in accordance with the Declaration, the Non-profit Corporation Act of North Carolina, this Declaration, and the Articles of Incorporation and these By-Laws, as may be amended from time to time. The Association shall not engage in any activities other than those directly related to administration of Duck Landing.

1.3 Applicability. These By-Laws are applicable to the property known as Duck Landing. These By-Laws are binding on all present or future Owners, tenants, guests, residents, or other persons occupying or using the facilities of Duck Landing. The mere acquisition, rental, or act of occupancy of any part of properties located within Duck Landing will signify that these By-laws are accepted, ratified, and will be complied with. The provisions of the Declaration regarding the governing and administration of the Association are incorporated herein by reference.

ARTICLE II  
DEFINITIONS

The definition of words contained in the Declaration, Article Two shall apply to those words and terms as used in these By-Laws.

ARTICLE III  
OFFICES, REGISTERED AGENT, SEAL, FISCAL YEAR

3.1 Principal Office; Registered Office. The principal office and the registered office of the Association shall be located at 1177 Duck Road, Duck, NC, 27949, or such places as the Board of Directors may designate from time to time.

3.2 Registered Agent. The initial Registered Agent for the Association is Furman O. Clark, Jr., whose address is 1177 Duck Road, Duck, NC 27949 . The individual serving as Registered Agent may be removed from office and replaced at any time by vote of the Board of Directors of the Association.

3.3 Seal. The seal of the Association shall contain the name of the Association, the word "Seal", and such other words and figures as desired by the Board of Directors. When obtained, the seal shall be impressed in the margin of the minutes of the initial meeting of the Board of Directors.

3.4 Fiscal Year. The fiscal year of the Association shall be January 1 through December 31.

#### ARTICLE IV MEMBERSHIP

##### 4.1 Membership.

A. The membership of the Association shall consist of all of the owners of lots in the Duck Landing Subdivision. A Member shall mean and refer to the Record Owner, whether one or more persons or entities, of the fee simple title to any lot situated upon Duck Landing, but notwithstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. Membership shall be established by acquisition of fee title to a platted lot, whether by conveyance, devise, or judicial decree. Membership shall be appurtenant to and inseparable from lot ownership. No lot owner shall be required to pay any consideration for his membership except for payment of assessments as called for herein.

B. The share of a member in the funds and assets of the Association, and membership in the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the lot ownership.

C. The Association shall have two (2) classes of voting memberships:

(a) Class I. Class I Members shall be all Owners of Homesites within Duck Landing, other than the Declarant. In the case of multiple ownership of any property, those multiple Owners shall be treated collectively as one Owner. Any Class I Members shall be entitled to two votes for each Dwelling owned. The Owner of a Homesite in Duck Landing upon which a Dwelling has not been constructed, shall be entitled to one (1) vote for each Homesite owned.

(b) Class II. The Class II Member shall be the Declarant, who shall be entitled to five (5) votes for each Homesite or Dwelling owned by it within Duck Landing. The Class II Membership shall cease and be converted to Class I Membership on the happening of the first to occur of the following events:

(i) Declarant has sold and closed the sale of 30 Homesites within Duck Landing;  
or

(ii) December 31, 2008, whichever occurs first.

D. Declarant shall be defined to be the Duck Landing, LLC and any person or entity who is specifically assigned the rights and interest of the Declarant.

E. The date of acquisition of the conveyance in the Dare County Public Registry of the lot in question shall govern the date of ownership of each particular lot. However, in the case of death, the transfer of ownership shall occur as of the date of death in the case of intestacy, or date of probate of Will in case of Testacea. Until a decedent's Will is probated, the Association may rely on the assumption that a deceased owner died intestate.

4.2 Annual Meetings. The annual meetings of the Lot Owners Association shall be held on a day in the month of February (other than Sunday or a legal holiday) as may be established by the Board of Directors. At such annual meetings, members of the Board of Directors shall be elected by the Lot Owners in accordance with the requirements of Section 5.3 of these By-Laws. The first annual meeting of the Association shall occur in February, 2000.

4.3 Place of Meetings. Meetings of the Association shall be held at the business office or at such other suitable place as may be designated by the Board of Directors.

4.4 Special Meetings. Special meetings of the Association may be called by the President, a majority of the Board, or by lot owners having ten (10%) percent of the votes in the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

4.5 Notice of Meetings. The Secretary shall give to each Lot Owner a notice of each annual or regularly scheduled meeting or of any special meeting of the Lot Owners at least ten (10) days but not more than sixty (60) days in advance of any meeting. The notice of any meeting shall state the time and place of the meeting, and the items on the agenda, including the general nature of any proposed Amendment to the Declaration or the Bylaw, any budget changes and any proposal to remove a Director or Officer.

4.6 Quorum: Adjournment if No Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least fifty percent (50%) of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned and the required quorum requirement shall be as set forth in North Carolina General Statute Section 47F-3-109.

4.7 Voting:

- A. The votes allocated to a lot may be cast by the lot owner of that lot. When there is more than one lot owner of a lot, the vote of the lot shall be cast as they shall determine. When there is more than one lot owner, and the owners of the lot are not able to agree, then the vote shall be by those owners who own fifty percent (50%) or more of the interest of said lot. Majority agreement is conclusively presumed if any one of the multiple owners cast the votes allocated to that lot without protest being made promptly to the person presiding over the meeting by any one of the other owners of the lot. The vote allocated to a lot shall not be split but shall be voted as a single whole.
- B. No Lot Owner may vote at any meeting of the Association or be elected to or serve on the Board of Directors if payment of the assessment on his Lot is delinquent more than thirty days and the amount necessary to bring his account current has not been paid at the time of such meeting or election.

4.8 Proxies. A vote may be cast in person or by proxy. Such proxy may be granted by any Lot Owner in favor of only another Lot Owner, the Secretary of the Association, the Declarant or his Mortgagee, or in the case of a non-resident Lot Owner, the lessee of such Lot Owner, his attorney or management agent. Proxies shall be duly executed in writing, shall be witnessed, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning such Lot. Except with respect to proxies in favor of a Mortgagee, no proxy shall in any event be valid for a period in excess of one hundred eighty days after the execution thereof.

4.9 Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereto. The President may appoint a person to serve as parliamentarian at the meeting of the Association. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these By-Laws or the Articles of Incorporation. All votes shall be tallied by tellers appointed by the President or other officer presiding over the meeting.

4.10 Prohibition of Cumulative Voting. There shall be no cumulative voting.

## ARTICLE V DIRECTORS

5.1 Initial Board. The first Board shall consist of five (5) persons selected by the Declarant whose names are set forth in the Articles of Incorporation and successors to any thereof elected by the members.

5.2 Number and Qualifications of Directors. The Board shall consist of not less than three (3) nor more than five (5) natural persons, as determined at any annual meeting by the members. Except for Directors elected by the Declarant, a majority of Directors shall be lot Owners.

5.3 Election of Directors. At the first annual meeting of the members, and at each subsequent annual meeting, the members shall elect the Directors by a majority of the votes cast in the election.

5.4 Term. The terms of the Directors shall be staggered so that at least one (1) but not more than three (3) Directors are elected at any one meeting and so that no Director's term is less than one (1) year nor more than three (3) years. The Directors shall establish rules to implement the provisions of this section. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

5.5 Removal. The Lot Owners, by a majority vote of all persons present and entitled to vote at any meeting of the Lot Owners at which a quorum is present, may remove any Director of the Board with or without cause, other than a member appointed by the Declarant.

5.6 Vacancies. Any vacancy on the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

5.7 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, or telegraph, at least seventy-two (72) hours prior to the meeting.

5.8 Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request therefor signed by two (2) Directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours notice of such special meeting shall be given personally or by mail, telephone, or telegraph to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

5.9 Quorum: Adjournment if No Quorum. Two-thirds of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a director of the minutes of a meeting shall verify the presence of such Director at that meeting.

5.10 Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration or these By-Laws.

5.11 Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

5.12 Compensation of Directors Restricted. Directors shall receive no compensation for their services, but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

5.13 Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the Declaration, the Articles of Incorporation, and these By-Laws, as any thereof may from time to time be amended, which such powers, except for those dealing with the budget, may be delegated to a managing agent. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles of Incorporation, and these By-Laws, and shall include, but not be limited to, the following:

- (a) To prepare and provide to members annually, a report containing at least the following:
  - (i) A statement of any capital expenditures in excess of five percent (5%) of the current budget or Fifteen Thousand Dollars (\$15,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.
  - (ii) A statement of the status and amount to any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.

- (iii) A statement of the financial condition of the Association for the last fiscal year.
  - (iv) A statement of the status of any pending suits or judgement in which the Association is a party.
  - (v) A statement of the insurance coverage provided by the Association as contemplated by Section of the Declaration.
  - (vi) A statement of any unpaid assessments payable to the Association, identifying the Lot and the amount of the unpaid assessment.
- (b) To adopt and amend budgets, and to determine and collect assessments to pay the Common Expenses.
  - (c) To regulate the use of, and to maintain, repair, replace, modify and improve the Common Areas, Open Spaces and Recreational Amenities.
  - (d) To adopt and amend rules and regulation and to establish reasonable penalties for infraction thereof for the general welfare and safety of .
  - (e) To enforce the provisions of the Declaration, the Articles of Incorporation, these By-Laws, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.
  - (f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine.
  - (g) To hire and terminate agents and independent contractors.
  - (h) To institute, defend, intervene in, or settle any litigation or administration proceedings in its own name on behalf of itself.
  - (i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.
  - (j) To borrow money for the maintenance, repair, replacement, modification or improvement of Common Areas, Open Spaces and Recreational Amenities.
  - (k) To provide for indemnification of the Association's officers and Directors and maintain officers' and Directors' liability insurance.
  - (l) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these By-Laws, or the rules and regulations.
  - (m) To levy assessments as provided in Article Eight of the Declaration and to administer all assessments including the enforcement for non-compliance.

- (n) To exercise all rights and perform all duties called for pursuant to the Declaration.

## ARTICLE VI OFFICERS

6.1 Designation of Officer. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. Each officer shall be a Lot Owner or the individual nominee of a Lot Owner which is other than an individual.

6.2 Election of Officers. Officers of the Association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the members, except that the first Board shall elect officers as soon as practicable after filing of the Declaration.

6.3 Term. Each officer shall serve until his successor has been duly elected and has qualified.

6.4 Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

6.5 Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

### 6.6 Powers and Duties of Officers.

- (a) President. The President shall be the chief executive officer of the Association; shall have all of the powers and duties incident to the office of a president of a corporation, including, but not limited to, the duty to preside at all meetings of the Board and of the members, and the general supervision of officers in the management of the business and affairs of the Association; and shall see that all actions and resolutions of the Board are carried into effect.
- (b) Vice President. The Vice President shall perform such duties of the President as shall be assigned to him or her by the President, and in the absence of the President shall perform the duties and functions of the President.
- (c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board of the President.
- (d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance

with good accounting practices and principles, and, upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all moneys and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

6.7 Execution of Agreements, etc. All agreements, deeds, mortgages, or other instruments shall be executed by any two (2) officers, or by such other person or persons as may be designated by the Board.

6.8 Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

## ARTICLE VII ARCHITECTURAL REVIEW COMMITTEE

7.1 Membership The Committee shall be composed of five (5) persons (who need not be Members of the Association) appointed by the Board. A majority of the Committee may designate a representative to act for it. In the event of death, resignation, or removal by the Board of any member of the Committee, the Board shall have full authority to designate a successor. Unless otherwise approved by the Association, neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the Committee and a list of the names and address of any designated representatives of the Committee, and such a list shall be available to any owner.

7.2 Procedure The Architectural Control Committee shall establish its internal procedures subject to those procedures as established by the Declaration.

7.3 Architectural Control Guidelines The Architectural Review Committee shall at least annually review the Architectural Control Guidelines and shall make suggestions of any changes, additions or deletions that they deem appropriate to the Declarant and/or the Board of Directors, as appropriate.

## ARTICLE EIGHT INDEMNIFICATION OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the appropriate sections of the North Carolina General Statutes, as now enacted or hereafter amended.

## ARTICLE IX COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES

9.1 Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, these By-Laws, the Articles of Incorporation or the rules and regulations, as the same may be amended from time to time, by any Lot Owner or Occupant, shall be



grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Lot Owner, or by any person or class of persons adversely affected. Also, if any member fails to perform an obligation under the Declaration, these By-Laws, the Articles of Incorporation or such rules and regulations, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Lot, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Lot owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Lot Owner to vote as a member of the Association until the default is cured.

9.2 Notice of Default and Failure to Cure. Except for non-payment of an assessment, which shall be controlled by the provisions of the Declaration, in the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, and to each first mortgagee of that member's Lot a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limited specified in the notice, the defaulting member may cure the default specified, or service upon or mail a written notice to the Board of Directors requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each such first mortgagee as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting member and each such first mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member, and to each such first mortgagee as above provided, a copy of its determination. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section 9.02, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after the hearing, then the Board shall serve upon or mail to the defaulting member, and to each such first mortgagee as above provided, a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

9.3 Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Section 9.2 hereof, whichever is applicable, where the default is a structure, thing, or condition existing in or on the premises of the member's Lot, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's Lot in which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefor as provided in Section 9.01 hereof), the structure, thing or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

9.4 Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure

established by Section 9.2 hereof, if such default or failure created an emergency or a situation dangerous to persons or property.

9.5 Recovery of Attorney's Fees and Costs. In any matter or proceeding arising because of an alleged default by a member, and in the event it is established that the member is in default, then the Association shall be entitled to recover the costs of any such proceeding as well as reasonable attorney's fees and interest, interest being the highest rate of interest allowed by law from the date the Association incurs said costs through the date the Association is paid.

9.6 Nonwaiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these By-Laws, the Articles of Incorporation, the rules and regulations as the same may time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provisions, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

9.7 Assessment Liens. Assessment liens shall be enforced pursuant to Article Eight of the Declaration.

## ARTICLE X AMENDMENT

An amendment to these By-Laws shall be made and approved in the following manner:

Any proposed amendment to the By-Laws must be approved by the Board of Directors and submitted to the membership at either a special or annual meeting. Notice of any proposed change to the By-Laws must be submitted in writing to all such members. The membership may approve an amendment to the By-Laws by a majority vote.

## ARTICLE XI GENERAL PROVISIONS

### 11.1 Rules and Regulations.

- (a) By the Board. The Board, including the first Board, may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of the Common Areas, Open Spaces and Recreational Amenities so as to promote the common use and enjoyment thereof by Lot Owners and occupants and for the protection and preservation thereof. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Lots to provide for the common good and enjoyment of all Lot Owners and occupants, including, without limitation, the right to adopt such rules and regulations with reference to tenants and leases.

- (b) By the Association. Any such rules or regulations adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by members at an annual or special meeting of the members. Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.
- (c) Copies Furnished. Copies of all such rules and regulations and any amendments thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office of the Association. However, failure to furnish, or post, or make available, such rules and regulations shall not affect in any way their validity or enforce ability.

IN WITNESS WHEREOF, the Declarant has caused these By-Laws to be signed and sealed by its duly authorized officers, as its act and deed, on that date set forth within the acknowledgment hereof.

Duck Landing Property Owners Association, Inc.

(Corporate Seal)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is \_\_\_\_\_ Secretary of Duck Landing Property Owners Association, Inc., a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_ President, sealed with its corporate seal and attested by \_\_\_\_\_ as its \_\_\_\_\_ Secretary.

Witness my hand and official stamp or seal, this \_\_\_ day of \_\_\_\_\_, 1999.

(seal)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

