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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Duck Landing

In The Village of Duck, Dare County, North Carolina

KNOW ALL MEN BY THESE PRESENTS, that this Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made and entered into on this the 1<sup>st</sup> day of FEBRUARY, 1999, by Duck Landing LLC, a North Carolina Limited Liability Company (hereinafter referred to as the "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of the real property described in Article One of this Declaration and desires to create thereon a residential community (the "Community") together with streets, roads, footways, open spaces, landscaping, entrances, drainage facilities, access easements, site lighting and signage, and any recreation area(s) and any other common facilities shown on any recorded plat of the real property or a portion thereof (hereinafter sometimes referred to collectively as the "Facilities") for the benefit of the Community; and,

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in the Community and for the maintenance of the Facilities and, to this end, desires to subject the real property described in Article One to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is, and are, for the benefit of said real property and each owner thereof; and,

WHEREAS, the Declarant's present intention, stated here for information of present intent only and not as a warranty or representation of a future fact, is to develop the Community with single-family residential units which acknowledge the Old Nag's Head Style of design; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Community, to create an agency to which should be delegated and assigned the powers of maintaining, administering, operating and replacing the Community properties and Facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of North Carolina a non-profit corporation, The Duck Landing Property Owners Association, Inc. (the "Association") for the purpose of exercising the functions aforesaid;

NOW THEREFORE, the Declarant declares that the real property described in Article One, is and shall be held, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, charges and liens (sometimes referred to herein as "covenants and restrictions" or "Declaration") as hereinafter set forth.

#### ARTICLE ONE: PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration (the "Existing Property") is located in Dare County, North Carolina, and is commonly known as Duck Landing as depicted on the maps and plats prepared for Declarant by Bissell Professional Group, Registered Land Surveyors; said real property being more particularly described in Exhibit A attached hereto and by reference hereby made a part hereof.

Section 2. Access Easement Reserved. The Declarant reserves unto itself for the benefit of Declarant, its successors and/or assigns, a perpetual, non-exclusive and alienable easement and right of ingress, egress and regress over and across all streets and roads within Duck Landing.

#### ARTICLE TWO: DEFINITIONS

The following words when used in this Declaration or any amended or Supplemental Declaration (unless the context shall require otherwise) shall have the following meanings:

"Assessment(s)" shall mean and refer to the assessment(s) and charges levied by the Association against Members who are the Owners of Homesites or Dwellings in Duck Landing. The words Assessment(s) or assessment(s) shall have the same meaning as Common Charges, unless the context requires otherwise.

"Association" shall mean and refer to The Duck Landing Property Owners Association, Inc., and "Bylaws" shall mean and refer to the Bylaws of the Association and all amendments thereto.

"Beach Access" shall mean an access way to the ocean at the point shown on the approved Master Plan, dated the 4<sup>th</sup> day of January, 1999; and

"Beach Club" shall mean and refer to the proposed "Duck Landing Beach Club" being a proposed recreational facility for the Duck Landing development.

"Board" shall mean and refer to the Board of Directors of the Association.

"Common Expenses" shall mean and refer to:

- (a) expenses of administration, operation, maintenance, repair or replacement of the Common Properties.
- (b) expenses declared Common Expenses by the provisions of this Declaration or the Bylaws.
- (c) expenses agreed upon from time to time as Common Expenses by the Association and lawfully assessed against Members who are Owners of Homesites or Dwellings in Duck Landing, as applicable, in accordance with the Bylaws or this Declaration; and
- (d) any valid charge against the Association or against the Common Properties as a whole.

"Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of Duck Landing (or any other real property described or referred to in any declaration of covenants, conditions and restrictions to which Duck Landing are submitted or subjected) labeled as "Common Properties" or shown as Recreational Facilities, open space, Beach Access, streets, roads, or pedestrian walking easements (together with all improvements located thereon) which are a part of Duck Landing, and as such intended to be devoted to the common use and enjoyment of the Members, subject to special rights and limitations, if any, granted to or imposed on Owners of particular Homesites or Dwellings.

The "Declarant" shall mean and refer to Duck Landing LLC, and any person or entity who is specifically assigned the rights and interests of Declarant hereunder.

"Duck Landing" or "Duck Landing Development" shall mean and refer to that community consisting of single family Homesites and residences, and recreational and supporting facilities in the Village of Duck, situated on an approximately 22 acre tract of land.

"Dwelling" or "Dwelling Unit" shall mean and refer to any improved property intended for use and occupancy as one (1) single family dwelling, irrespective of the number of Owners thereof (or the form of ownership) located within the Duck Landing.

"Homesite" shall mean and refer to any unimproved parcel of land within Duck Landing which is intended for use as a site for a single family detached dwelling, as shown upon any recorded subdivision map, with the exception of Common Properties or Limited Common Properties. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved property, i.e., a Dwelling.

"Limited Common Expense" shall mean and refer to the expense of administration, operation, maintenance, repair or replacement of Limited Common Properties or Limited Common Areas which shall be assessed against those Homesites or Dwellings having the exclusive or special rights in the use or enjoyment thereof.

"Limited Common Properties" or "Limited Common Areas" shall mean and refer to those areas of land (including without limitation any joint driveways) and improvements (including without limitation any common entrances to a Dwelling) shown on or designated as Limited Common Properties or Limited Common Areas on any recorded subdivision map of Duck Landing, and intended for the use of the Owners of Duck Landing Homesites or Dwellings.

"Living Area" shall mean and refer to those heated and/or air-conditioned areas within a Dwelling which shall not include garages, carports, porches, patios, breeze ways, terraces, or basements.

"Member" shall mean a member of the Association and shall refer to all Owners in Duck Landing.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Homesite or Dwelling 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. (Note: the words "Member" and "Owner" are meant to describe all Duck Landing owners interchangeably as semantics dictate throughout this Declaration.)

"Recreational Facilities" shall mean and refer to the area(s), if any, shown and designated as such on any recorded subdivision map of Duck Landing, and any improvements erected or to be erected upon any such area(s).

### ARTICLE THREE: GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of, and be enforceable by, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by two-thirds (2/3) of the Members of the Association has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless proper written notice of the proposed agreement is sent to every Member at least fifty (50) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration or the By-Laws, shall be deemed to have been

properly sent when hand-delivered or mailed, postage prepaid, registered or certified mail, return receipt requested, or deposited with an overnight courier (such as, but not limited to, Federal Express) and addressed to the person at the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Notice to any one of the Owners, if title to a Homesite or Dwelling is held by more than one, shall constitute notice to all Owners of the Homesite or Dwelling.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by these covenants and restrictions; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants and restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

#### ARTICLE FOUR: ARCHITECTURAL CONTROL

Section 1. Purposes. The Declarant desires to provide for the preservation of the values in Duck Landing with respect to any Dwelling to be constructed on any Homesite in Duck Landing, and to that end, will establish an Architectural Control Committee in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the improvements on the Homesite in relation to surrounding structures, natural features and topography.

Section 2. Architectural Control. Unless expressly authorized in writing by the Architectural Control Committee (the "Committee"), no Dwelling, fence, wall, driveway, patio, building or other structure or improvement whatsoever may be constructed, nor any exterior addition or alteration to any Dwelling, fence, wall, driveway, patio, building or other structure or improvement be started, nor any clearing or site work shall be commenced, or maintained upon any Homesite in Duck Landing, until plans and specifications therefor showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, decorative landscape planting, floor plans and elevations therefor (all of which is hereinafter referred to collectively as the "Plans"), shall have been submitted in triplicate to, and approved in writing, as to harmony of external design and location in relation to any surrounding structures, natural features and topography, by the Committee.

The Committee shall have the absolute and exclusive right to refuse to approve any such Plans which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons, which in the sole and uncontrolled discretion of the Committee shall be deemed sufficient; provided that the Committee shall not refuse to approve any Plans which are substantially similar to any other plans and specifications which previously have been approved for any Dwellings. The Committee, in the exercise of its discretion, shall not approve the location of a Dwelling or garage or carport on any

Homesite intended for use as a site for a single family detached dwelling within 25 feet of the front line of such Homesite, within 10 feet of the side lines of such Homesite, and within 25 feet of the rear line of such Homesite. Notwithstanding the application of these setbacks, the Committee shall have complete authority to determine the appropriate building site and location for the Dwellings on each and every Homesite.

Anything herein to the contrary notwithstanding, the Committee may, when concurred in by the Board (before or after transfer of control by Declarant), or the Declarant may unilaterally, vary the building setback lines recited herein, so long as such variance does not cause the revised setback requirement to be less than that set by Dare County at that time. Any such variance shall be evidenced by a certificate of variance or compliance signed by two (2) of the officers of the Association, or by the Declarant, in recordable form and filed in the Office of the Register of Deeds of Dare County.

### Section 3. Architectural Control Committee

(a) 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.

(b) Procedure. At least forty-five (45) days prior to the commencement of any construction, the Plans shall be submitted to the Committee. In addition, at that time the Owner shall also provide to the Committee a completed Residential Building Application, Landscaping Plan, Exterior Color Schedule, a Client/Builder Registration Form and the appropriate application fee. The Owner shall include with the name of the contractor a statement as to the classification of contractor's license held by such contractor, the address and telephone number of the contractor, the names and telephone numbers of two (2) owners of comparable properties previously constructed by such contractor, and a minimum of two financial references.

Approval shall be subject to such regulations, and architectural standards as may from time to time be promulgated by the Committee. Within thirty (30) days after receipt of the Plans and all other required information, the Committee shall notify the Owner of the Homesite or Dwelling in writing as to whether the Plans and the contractor have been approved. The response of the Association may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) day time period for further Committee response shall only commence upon receipt of the requested additional information. If approval with conditions

is granted, and construction then begins, the conditions shall be deemed accepted by the Owner of the Homesite or Dwelling and the conditions imposed shall become fully a part of the approved Plans. If a response is not given by the Committee within thirty (30) days, the Plans shall be deemed approved.

Prior to any ground-disturbing activities commencing on any Homesite for construction of an approved Dwellings thereon, the Committee, on behalf of Declarant or the Association (in event control has been transferred to the Association by Declarant) will collect from the Owner or Contractor, a Twenty Five Hundred Dollar (\$2,500.00) Infrastructure Protection Fee, such fees to be pooled, held in a proper escrow account, and used by Declarant or the Association, at its unilateral discretion, to replace or repair damage done to any Duck Landing improvement or infrastructure during construction of the Dwellings, or for any other purpose whatsoever related to residential construction impact on, or for the general benefit of, the community. The balance of the \$2,500 Infrastructure Protection Fee shall be returned to the Owner within sixty (60) days after the date of completion of the construction.

The Committee may also from time to time, at its sole discretion, require of any contractor a cash or insurance performance bond to guarantee final site clean up and/or extraordinary road repairs necessitated by the actions of the contractor and his workers and subcontractors during the construction of any improvements in Duck Landing.

Any Owner of any Homesite or Dwellings disagreeing with the finding of the Committee may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of notice of denial. The Board shall then review the Plans, giving the Chairman of the Committee the opportunity to present to the Board specific reasons why the Plans were denied, in the presence of the Owner of the Homesite or Dwelling or his agent, and the Owner of the Homesite or Dwelling or his agent may present information challenging the findings of the Committee. The decision of the Committee shall only be overridden by a vote to override by 4/5ths of the Board.

The Committee may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and other documents are submitted to the Committee. The initial approval application fee will be Two Hundred Fifty Dollars (\$250.00). The payment of such fees, as well as other expenses of the Committee required to be paid, shall be deemed to be an individual Assessment, enforceable against the Owner of the Homesite or Dwelling as provided hereinabove. The Committee expressly reserves the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Committee in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Homesite or Dwelling.

All notices required to be given herein shall be given in writing, hand-delivered or mailed postage prepaid, certified or registered mail, return receipt requested or deposited with an overnight carrier (such as, but not limited to, Federal Express), and the Committee shall be obligated to specify the particular grounds upon which denial of any application is founded. One set of Plans denoted as approved (or approved with specified conditions) shall be retained by the Committee and the other two shall be returned to the applicant.

#### ARTICLE FIVE: RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION. DECLARANT AND OWNERS

Section 1. Permissible Uses - Homesite(s) shall be used exclusively for residential purposes (with the exception of any sales center, office, building or model home constructed or used by the Declarant or his agent). Specifically no "Model Home" or "Open House" type of operation shall be allowed within the Duck Landing Development other than with the Declarant's express written permission, notwithstanding Declarant's right to operate such "Model Home" or "Open House" at its discretion anywhere within the Development at any time. No building of any type shall be erected, altered, placed or permitted to remain on any lot other than the Dwelling Unit and its accessory buildings, which shall comply with all applicable zoning regulations and the requirements of Architectural Review as set forth within this Declaration. No lot may be used as an access to lands outside the Duck Landing Development except for pedestrian access to the Atlantic Ocean.

#### Section 2. Division of Homesites: No Time Sharing.

(a) No Homesite shall be further divided, except that any two Owners may divide a Homesite between them if such Homesite is adjacent to the Homesites owned by such Owners and provided further that no more than two (2) Dwellings may be constructed on the three (3) combined Homesites. In event of such a recombination, the sideline setbacks and sideline easements shall be released as to the old interior common sidelines and become applicable to the new common sideline created within the old shared Homesite.

(b) No Homesite, unit of ownership or ownership interest may be subdivided to permit time sharing or other devices to effect interval ownership. For purposes of this section "time sharing" or "other devices to effect interval ownership" shall include, but not be limited to, ownership arrangements, including uses of corporations, trusts, partnerships or tenancies in common, in which five or more persons or entities, not members of a single household, have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Dwelling and such owners have a formal or informal right-to-use or similar agreement

Section 3. Utilities and Other Easements: All utility lines of every type, including but not limited to water, electricity, telephone and television cables running from the main



trunk line or service location to any Homesite must be underground. The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, telephone and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to Duck Landing on, in, under and over the streets or roads and over any Homesite, shown on any recorded plat of Duck Landing within twenty-five (25) feet of each Homesite line fronting on a street, within ten (10) feet along the side lines of each Homesite, within twenty-five (25) feet along the rear line of each site, and over such other areas as are so identified on any recorded plats of Duck Landing. In addition, the Developer may cut, in the above described easements, as well as any where else that such may be required, at its own expense, drain ways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along street fronting property lines, in the twenty-five (25) foot easement hereby reserved, Declarant shall also reserve the right for installation, maintenance and repair of bike and pedestrian paths, street lights and/or street-side landscaping. In the event of any additions to Duck Landing, as provided in Article One, by the Declarant or others, the easements created hereby shall exist on the Homesites in such additions to Duck Landing. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

Section 4. Minimum Square Feet in Dwelling. Each Dwellings shall contain a minimum of 2,250 square feet of Living Area. Measurements shall be made to exterior walls.

Section 5. Temporary Structures. No structure of a temporary character shall be placed upon any portion of Duck Landing at any time, provided, however, that this prohibition shall not apply to shelters or sheds used by contractors during the construction of Dwellings, or improvements or additions thereto, on any Homesite. Temporary shelters, tents, recreational vehicles, trailers (whether attached or unattached to the realty) may not, at any time, be used as a temporary or permanent residence or, except as provided for in Section 16 of this Article Five, be permitted to remain on any portion of Duck Landing.

Section 6. Committee Approval of Plans and Other Prohibitions.

(a) As provided in this Declaration, no Dwellings, fence, structure, patio, building, appurtenance, attachment, improvement or addition shall be built, constructed or maintained nor shall any alteration, rebuilding or reconstruction commence, unless the Plans, including colors, therefor have been approved in writing by the Committee and such building or construction is completed in strict accordance with said Plans. In addition, any such Dwellings shall comply with all applicable building, plumbing, electrical and other codes.

(b) No detached garage, storage shed, or carport shall be permitted unless architecturally compatible with the primary Dwelling on the Homesite.

(c) No vent or other pipes or appendages, including skylights, solar collectors, etc. may extend from the front as it faces the roadway of any Dwelling, unless screened from public view by a screening material or shrubbery approved by the Committee.

(d) Any exterior air-conditioning or heating equipment and any natural gas storage facility must be screened from public view by a screening material or shrubbery approved by the Committee.

(e) Down spouts and gutters must be constructed so as not to promote the erosion of the soil of any Homesite or Dwelling.

(f) Exterior lighting shall be restrained and subtle and must be directed so as not to shine directly on another Homesite or Dwelling or interfere with the quality of the night environment. No exterior lighting other than at entrance ways, driveways or stairways will be allowed after 11 p.m.

Section 7. Trash and Storage Receptacles: Except as required by any appropriate governmental authority, each Owner shall provide a minimum of two Dare County-approved receptacles for trash (and recyclables, if such a program is in place in Dare County). Dwellings of more than four bedrooms shall be required to have one Dare County-Approved trash receptacle for every two bedrooms. All trash receptacles, tools and equipment for use on a Homesite or Dwelling by any Owner, shall be placed in a screened area in accordance with reasonable standards established by the Committee to shield same from general visibility, from roads and neighbors abutting the Homesite or Dwellings. No fuel tanks or similar storage receptacles or related storage facilities, may be exposed to view. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other mineral or toxic product will be allowed anywhere in Duck Landing.

Section 8. Debris. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of the Duck Landing, except as is temporary and incidental to the bona fide improvement of any portion of Duck Landing. Job site debris shall be removed from the Homesite at least weekly.

Section 9. Antennas. No television antenna, radio receiver or sender antenna or other similar device shall be attached to or installed on the exterior portion of any Dwelling or structure, or placed on any Homesite or Common Properties within Duck Landing, provided, however, that the provisions of this paragraph shall not apply to the installation by the Association of equipment necessary for a CATV and/or mobile radio system within Duck Landing. A satellite dish not to exceed eighteen (18) inches in diameter may be

installed so long as it is appropriately screened from view (as determined by the Committee).

Section 10. Landscape Plan. As part of the Plans package submitted by a Homesite Owner to the Committee for approval of such Owner's Plans for building, there shall be included a comprehensive landscape plan (the "Landscape Plan"). Shown thereon, in addition to the scheme for decorative plantings, shall be all of the planned site improvements and modifications, including, but not limited to, major topographic changes and plans for revegetation and restabilization thereof, the location and specifications for all terraces, walkways, driveways, paths, fences, bulkheading, walls, pools, outdoor lighting and the specifications for other fixtures and structures envisioned to be constructed as part of the Landscape Plan.

The mounding up of sand to create berms is encouraged, to reinforce the natural dune configuration. Some form of irrigation system is encouraged in order to help plants get established. Low cost "drip" systems will be considered.

Section 11. Trees and Foliage. Trees measuring three (3) inches or more in diameter, at a point two (2) feet above ground level, and any flowering trees or shrubs above five (5) feet in height may not be removed from Duck Landing without the written approval of the Committee, unless located within ten (10) feet of a Dwelling, or site for such Dwelling, or in the path of driveways and walkways located or to be located on any Homesite. Excepted herefrom shall be damaged trees or trees which must be removed because of an emergency.

Section 12. Unightly Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly or unkempt conditions to exist on his Homesite, Dwelling, or grounds, which shall tend to decrease the beauty of Duck Landing, specifically or as a whole. During the construction of any improvement to a Homesite in Duck Landing, the Homesite, road, bike paths, landscaping and Common Areas adjacent thereto shall be kept in a neat and orderly condition so as not to cause an unsightly condition to exist or damage to occur. In the event the Owner or his agent or employee (including, without limitation, any contractor or subcontractor) shall fail to maintain the Homesite and adjoining areas as specified herein or allow damage to occur and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or the Association, Declarant or the Association shall have the right, but not the obligation, exercisable in its sole discretion, to summarily abate any unsightliness, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Homesite and adjoining area. In the event the Declarant or the Association, after such notice, causes the subject work to be done, the costs of such shall be a summary charge to be reimbursed by the Owner to the Association and will become a continuing lien on the Homesite until paid. ***For the duration of any such recorded lien, access by the owner, guests or lessees of such property to Duck Landing Beach Club will be denied.***

Section 13. No Offensive Activity or Fires. No noxious or offensive activity or excessive noise shall be carried on upon any portion of Duck Landing, nor shall anything

be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, in any portion of Duck Landing. Fires on any Homesite or Dwelling or on any portion of the Common Properties are prohibited.

Section 14. Certain Plants, Animals and Pets. Except as otherwise permitted herein, or in any amended Declaration, no plants, animals, devices or things of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may tend to diminish or destroy the enjoyment of any other Homesite or Dwelling Owners or tenants and guests thereof, may be maintained on a Homesite or in a Dwelling. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Homesite or in any Dwelling, except that a reasonable number, but no more than three, dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. At no time will any household pets be allowed to run free, and at all times when off the Owner's Homesite, such household pets will be on a leash.

Section 15. Discharge of Firearms: Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within Duck Landing is prohibited unless required for public safety.

Section 16. Motorized Vehicles, Prohibited Parking: All motorized vehicles operating within Duck Landing must be properly muffled so as to eliminate noise which might be offensive to others. All motorized vehicles and motorized bicycles are prohibited from being used or operated anywhere other than on the roads within Duck Landing. No boat, boat trailer, other trailer, camper, recreational vehicle, utility vehicle or truck (to the extent that a truck is rated as larger than a one ton truck) shall be allowed to remain on any street right-of-way or on any Homesite or on any portion of the Common Properties overnight unless it is enclosed within a carport or garage that has been constructed in accordance with the provisions of this Declaration. Notwithstanding the above, a boat of greater than 21 feet, which cannot be enclosed within a car port or garage, may be stored on its boat trailer in the side or rear yard of the home, provided said boat has an appropriate cover placed thereon.

Section 17. Signage: No "For Sale" or "For Rent" signs or other signs of any kind shall be displayed in public view on any Homesite, Dwellings, facility, appurtenance, short or long term parked vehicle, accessory building or structure unless approved by the Declarant, who shall also from time to time provide design criteria and color schemes for approved Signage. Notwithstanding the foregoing, the Declarant shall have the right to locate sign or signs indicating the location of sales and rental centers, identify model homes or living units and their builder, any Recreational Facilities and such other informational signs of any type as may be necessary or desirable, in Declarant's sole opinion, to facilitate Declarant's plans for development and sales at Duck Landing.

Section 18. Pavement of Joint Walkways: Any joint walkway (Limited Common Properties) shown on any recorded subdivision map of Duck Landing, if and when

improved, shall be improved and maintained by the Owners of the Homesites on which such joint walkway abuts.

Section 19. Vegetation. No existing vegetation or sand dunes shall be disturbed during construction without the express written consent of the Committee. The Committee shall require written proposals for the restabilization of any such disturbed area. Any vegetation disturbed during construction shall be repaired to the satisfaction of the Committee prior to the Owner applying for an occupancy permit from Dare County or the appropriate municipal body. This shall not prevent or limit in any way the Declarant from engaging in such earthmoving, clearing, mowing, and pruning activities as are necessary to affect the overall plan of development.

Section 20. Mail and Delivery Boxes. The Committee shall determine the standards and issue guidelines for the location, material, color and design for mail and newspaper boxes, if any, and the manner in which they shall be identified. All Owners must display the County-assigned street address on their mail boxes, or other appurtenance, pursuant to the then current regulations of Dare County.

Section 21. Residential Homesite Coverage. The total nonpervious surfaces to be placed upon the Homesite may not exceed the requirements of the Dare County zoning code. Furthermore, the Architectural Control Committee shall have the right, but not the obligation, to further restrict the total coverage, which in its sole discretion, as it deems advisable.

Section 22. Fences. Fences are subject to the complete jurisdiction of the Committee as to location, style, materials and height. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. Absent an extraordinary showing of need by the Owner of a Homesite or Dwelling, no fence shall be allowed along any Homesite or Dwellings property line. The Committee shall only approve the construction of a fence upon a determination that the fence is aesthetically pleasing, does not detract from the reasonable value of any Homesite or Dwellings and does not unreasonably impede the view of any attractive feature from any other Homesite or Dwelling.

Section 23. Docks and Piers. No elevated or suspended walkways of any kind, or any other manmade structure whatsoever, may be constructed in the Common Properties, or any other place, by any one other than the Declarant, except that the owners of Homesites 26, 27 and 28 may construct walkways over the dune, with the approval of the Committee. To the extent that any of such are constructed by the Declarant, the Declarant may limit the time or nature of the use of the same.

Section 24. Driveways. All driveways, guest parking and turnabouts will be built of non-porous materials; and special materials, surface treatments and/or accents may be required by the Architectural Review Committee.

Section 25. Certificate of Completion. Prior to occupancy of any Dwelling, the Owner must first notify the Committee in order that an inspection be made by a representative of the Committee to see that all aspects of the Plans have been completed. On inspection and finding that all aspects of the Plans have been completed, the Committee will issue to the Owner a "Certificate of Completion" and the owner may then occupy the Dwelling, subject to compliance with County Ordinances.

Section 26. Energy and Water Saver Construction: Every Dwelling should be built to meet a high level of energy and water saving standards.

Section 27. Timely Completion: When construction of any Dwelling, structure, improvement, or addition thereto has once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. It is a requirement that Dwellings under construction in Duck Landing be "dried-in" with exterior finishes installed (roofing, windows and finish siding and trim in place) within one hundred twenty (120) days of starting construction and that all phases of work, including execution of the Landscape Plan, be complete within one year of Committee approval. In the event that completion should be delayed beyond one year from Committee approval, then in that event, the Committee, may, so long as the Owner is notified within thirty days of the one year period expiring, by way of unanimous vote of its Members, rescind the existing approval and require that the Owner reapply and seek new approval.

Section 28. Architectural Guidelines: Architectural Guidelines have been adopted by the Declarant. These Guidelines are deemed a portion of this Declaration of Covenants as if set out herein word for word. Declarant reserves the right to alter, amend or revoke the Architectural Guidelines until the Declarant ceases to be a Class II member of the Association. Thereafter, the Architectural Guidelines may be altered, amended or revoked by a majority vote of both the Committee as well as the Board.

#### ARTICLE SIX: MEMBERSHIP, VOTING RIGHTS IN THE ASSOCIATION, RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

Section 1. Membership: Every person or entity that is a record Owner of a fee simple interest in any Homesite or Dwelling in Duck Landing is subject by this and any other declarations to all rights, responsibilities and assessments of the Association and shall be a Member of the Association; provided, however, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

Section 2. Voting Rights: 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.

Section 3. Rights and Responsibilities of the Association. Subject to the rights of Owners and Declarant as set forth in this Declaration, the Association has exclusive management and control of the Common Properties and all improvements thereon and all furnishings, equipment and other personal property relating thereto.

The Association's duties with respect to such Common Properties include, but are not limited to, the following:

- (a) maintenance of the Common Properties;
- (b) management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, equipment and personal property constituting part of the Common Properties or located upon the Common Properties so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair;
- (c) all landscaping of the Common Properties;
- (d) maintenance of adequate public liability, property casualty or hazard insurance for the benefit of the Association with respect to the Common Properties;
- (e) payment of all taxes and assessments validly levied, assessed or imposed with respect to the Common Properties;
- (f) management, operation, maintenance, repair, servicing, replacement and renewal of all streets and roads within Duck Landing and all improvements thereon; provided, however, that following any irrevocable acceptance of the streets and roads for maintenance as public rights of way by applicable governmental entities, the

maintenance obligations of the Association for the streets and roads shall only be to the extent such activities are not performed by the applicable governmental entities; and

- (g) maintenance of the Beach Access so long as it remains part of the Common Properties.

The Association may also provide other services such as, but not limited to, security services or devices, including overall traffic control as and to the extent the Association deems appropriate.

The Association may obtain and pay for the services of any personnel to manage its affairs to the extent the Board deems advisable, as well as such other personnel as the Board determines is necessary or desirable, whether such personnel are furnished or employed directly by the Association or by any person with whom it contracts. Without limitation, the Board may obtain and pay for legal, accounting, engineering or other professional services necessary or desirable in connection with the Common Properties or the enforcement of this Declaration, the Association's Articles of Incorporation, Bylaws, rules or regulations.

The Association may acquire, hold, and dispose of real property and tangible and intangible personal property, subject to such restrictions as from time to time may be contained in the Association's Articles of Incorporation and Bylaws.

The Association, from time to time, may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing use and operation of the Common Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The validity of the Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of Duck Landing.

## ARTICLE SEVEN: PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article Seven, every Member shall have a right and easement of enjoyment in and to all of the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Homesite or Dwelling in Duck Landing.

Section 2. Title to Common Properties. The Declarant may retain the legal title to any Common Properties shown on any recorded plat of Duck Landing, until such times as it has completed improvements, if any, thereon and until such times as Declarant so wishes and/or, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision to the contrary herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey, and upon such conveyance the Association shall accept, any such Common Properties to the Association not later than December 31, 2008. In addition, the Declarant may, but has no obligation to, transfer to



the Association any portion of or those rights retained by Declarant pursuant to this Declaration, or any Supplemental or Amended Declaration. The Association hereby agrees to accept any such transfer of rights from the Declarant.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created herein shall be subject to the following:

- (a) the right of the Declarant, in its sole discretion, to grade, pave, or otherwise improve, any road or street shown on any recorded plat of the Properties;
- (b) the right of the Association, as provided in its Articles of Incorporation or Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment of that Member remains unpaid, and for any period not to exceed thirty (30) days for any infraction of any published rules and regulations adopted by the Board;
- (c) the right of the Association or its assignee to charge reasonable admission and other fees for use of any of the Association's Recreational Facilities situated upon its Common Properties; and
- (d) the right of the Association to dedicate or transfer all or any part of the Common Properties (which includes streets and roads) to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication, transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless eighty percent (80%) of the votes of Members entitled to vote, at a Special Meeting of the Members called in accordance with the Bylaws (any consents in writing presented to the Secretary or other officer of the Association at or prior to such meeting shall constitute votes of Members), consent to and approve of such dedication, transfer, purpose or condition. (If so agreed to and approved by the Members, such dedication and transfer, specifying the purposes(s) and condition(s) thereof, shall be executed by the President and Secretary of the Association with the same formalities of a deed and recorded in the Office of the Register of Deeds of Dare County.)

Section 4. Driveway Culverts: Each Owner, if required by the Committee as a condition to approval of his Plans, when making a driveway connection to the street or to a cul-de-sac, will provide a suitable drainage culvert, or other appropriate method approved by the Committee, so as to allow for unimpeded water movement along the existing roadway swale, and will maintain that culvert, or other method, at all times in such a way that it does not become an eyesore or disturb the desired drainage patterns in the swale system.

Section 5. Storm water Management Improvements: The Association, after such time as the Declarant no longer owns any of the Common Properties in Duck Landing, will be responsible for maintenance of any storm water management swales, channels, and check dams and to see that each Owner installs and maintains his driveway culvert in accordance with Section 4 of this Article Seven. Such maintenance shall include removal of sediments within the swales and channels, restabilization of the swales and channels as needed, check dam repairs, flushing of driveway culverts and maintenance of the vegetation cover as necessary.

Section 6. Private Roads. In the development of Duck Landing, the Declarant may construct a private street or road within Duck Landing connecting parcels of Duck Landing to public rights of way. The Owners of Homesites and Dwellings shall have no more than an easement for ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private street or road, and there shall be no public rights of any kind therein, unless approved by the Members in accordance with the provisions of Section 3 of this Article Seven. Declarant reserves the right to name and revise from time to time the name or other designation given to such private street or road.

#### ARTICLE EIGHT: COVENANT FOR PAYMENT OF ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Member, other than the Declarant, who is the owner of any Homesite or Dwelling, by acceptance of a deed therefor, and all other Members, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay, as provided below, to the Association the following, all of which are hereby deemed to be assessments:

- (a) annual assessments or charges as herein or in the Bylaws provided;
- (b) special assessments for capital improvements (such annual and special assessments to be fixed, established and collected from time to time as herein or in the Bylaws provided); and
- (c) any liquidated damages or summary charges imposed under authority contained in the Bylaws, or as provided under this Declaration, or any Supplemental or Amended Declaration, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement of any rules and regulations, collection of assessments (both annual and special) or collection of damages or charges arising under the Bylaws, this Declaration or any Supplemental or Amended Declaration.

The annual and special assessments of any owner and any liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall

be a continuing lien upon the Homesite or Dwellings against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who is (are) the Owner(s) of such properties at the time when the Assessment fell due.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, access, maintenance of property values, security, safety and welfare of the residents of Duck Landing and other Members, and in particular for

(a) improvement, maintenance, and replacement of any of the Association's Common Properties including, without limitation, the Recreational Facilities and payment of the Common Expenses;

(b) maintenance of exteriors of Dwellings and related improvements on Homesites in Duck Landing, if necessary, subject to reimbursement by the Owner(s) of such property pursuant to Article Nine, Sections 1 and 2 of this Declaration;

(c) establishment of capital replacement reserves; and

(d) acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the Association's Common Properties, including but not limited to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against those Common Properties, the procurement and maintenance of insurance related to those Common Properties, its recreational facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association if necessary, and such other requirements as are necessary to perform all of the aforesaid functions and purposes.

Section 3. Assessment of Uniform Rates Within Different Categories or Forms of Ownership: Annual and special assessments shall be fixed at uniform rates for every Homesite or Dwelling within Duck Landing. There will be a difference between assessments as to unimproved Homesites and improved Homesites (Dwellings).

Section 4. Application of Minimum and Maximum Assessment.

(a) The minimum regular annual assessment, as set forth in the schedule below, shall be levied by the Association unless the Board, by majority vote, determines that the important and essential functions of the Association may be properly funded only by an assessment above the minimum but not more than the applicable maximum regular assessment, as set forth in the schedule below. If the Board shall levy the applicable minimum assessment for any assessment year and thereafter, during such assessment year, determine that the important and essential functions of the Association cannot be funded by the minimum assessment, the Board, by unanimous decision, may levy a supplemental assessment, but in no event shall the sum of the minimum regular and

supplemental annual assessment for the year exceed the applicable maximum regular annual assessment.

(b) Within thirty (30) days after adoption of the proposed budget by the Board, the Board shall provide to all of the lot Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There is no requirement that a quorum be present at such meeting. The budget will be deemed ratified unless at that meeting a majority of all of the lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot Owners shall be continued until such time as the lot Owners ratify a subsequent budget proposed by the Executive Board.

The regular annual assessment minimum and maximum amounts shall be the sums calculated in accordance with the following schedule as may be increased in each instance by an adjustment for inflation based on the consumer price index as of the first Monday of December for each year, as set forth below.

<u>Owner Members</u>	<u>Minimum Regular Annual Assessment</u>	<u>Maximum Regular Annual Assessment</u>
Per Homesite	\$500.00	\$1,000.00
Per Dwelling	\$1,000.00	\$2,000.00

Section 5. Special Assessments for Capital Improvements. In addition to the regular annual assessments authorized by Section 4 of this Article Eight, 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 professional or consulting fees, any construction or reconstruction, unexpected repairs or replacement of any capital improvement (including, without limiting the generality thereof, waterway, pond, beach or dune located upon the Association's Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of two thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws for Special Meetings.

Section 6. Change in Minimum and Maximum Amount of Annual Assessments. Subject to the limitations of Section 4 of this Article Eight and for the periods therein specified, the Association may change the maximum amount and the minimum amount of the regular annual assessments fixed by Section 4 of this Article Eight prospectively for such period provided that any such change shall have the consent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws for Special Meetings. provided further, that the limitations of

Section 4 of this Article Eight shall not apply to any change in the maximum amount and the minimum amount of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized by law to participate.

Section 7: Quorum for any Action Authorized under Sections 5 and 6. The quorum required for any action authorized by Sections 5 and 6 of this Article Eight shall be as follows.

At the first meeting called, as provided in Sections 5 and 6 of this Article Eight, the presence at the meeting of Members, or of proxies entitled to cast a majority of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at such meeting, another meeting may be called, subject to the notice requirement set forth in Sections 5 and 6 of this Article Eight, and the required quorum at any such subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than fifty (50) days following the preceding scheduled meeting.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The regular annual assessments provided for herein shall be paid (as determined by the Board) in quarterly, semiannual, or annual installments. The payment of the regular annual assessment by Owners shall commence as to each Homesite or Dwelling, on the first day of the month following the conveyance of that property by the Declarant, but no earlier than January, 2000. The first regular annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment at least fifteen (15) days in advance of each regular annual assessment period. Written notice of the regular annual assessment shall be sent to every Member subject thereto. The due dates shall be established by the Board. The Association, upon any qualified demand (as determined by the Board) at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether any specific assessment has been paid. Such properly executed certificate of the Association as to the status of the assessment is binding upon the Association as of the date of its issuance.

The due date of any special assessment under Section 5 of this Article Eight or any other assessments permitted by the Declaration shall be fixed in the resolution or resolutions authorizing such assessment.

The due date for any liquidated damages or summary charges shall be ten (10) days after notice of the same is forwarded to the Owner.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement, and the amount of the assessment or assessments against each Member, for each assessment period, at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Members and assessments applicable thereto which shall be kept in the office of the Association, or at any other place designated by the Board upon notice to the Members, and which shall

be open to inspection by any Member. Written notice of the assessment or assessments thereupon shall be sent to every Member subject thereto.

Section 10. Effect of Non-Payment of an Owner's Assessment: The Personal Obligation of the Owner. The Lien, Remedies of Association. If the assessments or summary charges or liquidated damages of an Owner are not paid within thirty (30) days following the date due (being the dates referred to in Section 8 of this Article Eight), then such assessments shall be delinquent. If the assessments are delinquent, the assessments shall bear interest from the date of delinquency at the rate of one and one-half percent (1½%) per month. Any delinquent assessment levied against a lot shall constitute a lien on that lot when a claim of lien is filed of record in the Office of the Clerk of Superior Court of Dare County. The Association may foreclose the claim of lien in a like manner as a mortgage on real estate under power of sale under Article 2(A) of Chapter 45 of the General Statutes. All fees, charges, late charges, finance, interest and other charges imposed pursuant to this Declaration or the By-Laws are enforceable as assessments under this section.

The personal obligation of the then-Owner to pay all such assessments shall remain their personal obligation for the statutory period, and, in addition, shall pass to their successors in title (as an encumbrance or lien against the Homesite or Dwelling, unless expressly waived by the Board). In addition to the right of foreclosure as set forth above, the Board, acting on behalf of the Association, may bring appropriate civil action against the Owner personally obligated to pay the same. Any foreclosure or civil litigation shall entitle the Association to collect, in addition to the Assessments, all costs of such action and reasonable attorneys' fees and other costs incurred. In the event a judgment is obtained against any owner for such assessments, such judgment shall include the interest on the assessment as set forth above and provide reasonable attorneys' fees and other costs incurred.

Section II. Subordination of the Lien on an Owner's Property to Mortgages or Deeds of Trust: The lien on an owner's property of the assessments provided for herein shall be prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien at the Office of Clerk of Superior Court of Dare County, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

- (a) all Common Properties as defined in Article Two of this Declaration; and
- (b) all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption. (Homestead exemptions shall not be considered an exemption.)

Notwithstanding any provisions of this Section 12, no Homesite or Dwelling shall be exempt from said assessments, charges or liens.

Section 13. Declarant's Obligations for Assessments. Prior to January 1, 2008, the Declarant's obligation for assessments on unsold Homesites or Dwellings subject to this Declaration will be limited to the difference between the actual operating costs of the Association, excluding reserves for the Common Properties, and the assessments levied on the existing Members other than the Declarant. In no event, however, will the Declarant be required to make a deficiency contribution in any amount greater than it would otherwise be liable for if it were paying assessments on unsold Homesite(s) or Dwellings(s) owned by Declarant. After December 31, 2007, Declarant shall pay assessments as would any other Owner for each Homesite or Dwelling owned by the Declarant.

## ARTICLE NINE: EXTERIOR MAINTENANCE AND INSURANCE

Section 1. Exterior Maintenance. After thirty (30) days written notice to an Owner specifying any required maintenance, the Association shall have the right but not the obligation to provide (a) maintenance upon any Homesite and (b) maintenance upon any Dwelling, which is subject to assessment under Article Eight hereof. Such maintenance includes (but is not limited to) painting, repairing, replacing and care of roofs, gutters, Down spouts, removal of signs in violation of this Declaration, and exterior improvements on any Dwelling. Such maintenance as to a vacant Homesite may include the mowing of grass and weeds, the trimming of shrubs, or the removal of trash and litter.

Section 2: Assessment of Cost on Exterior Maintenance. The cost of any such maintenance shall be assessed against the Homesite or Dwelling upon which such maintenance is done, and shall be added to and become part of the regular annual assessment or charge to which such Homesite or Dwelling is subject and, as part of such regular annual assessment or charge, it shall be a lien against any such Homesite or Dwelling, as heretofore defined and limited, and a personal obligation of the Owner and shall become due and payable in all respects as provided herein.

Section 3: Insurance on Dwelling: Each Owner of a Dwelling within Duck Landing, by acceptance of a deed therefor, whether or not it shall be expressed in said deed or by exercise of any act of ownership, is deemed to covenant:

(a) to keep each Dwelling insured against loss by fire or other casualty, with extended coverage insurance, in an amount equal to at least ninety percent of the replacement cost of such Dwelling;

(b) to name the Association as an additional insured "as its interest may appear," so that the Association shall be entitled to receive notice of cancellation of such insurance policy;

(c) to build or restore such Dwelling in the event of damage thereof and to apply, the full amount, to the extent necessary, of any insurance proceeds to the restoration or

repair of such Dwelling, or to remove a destroyed dwelling and restore the lot in a manner acceptable to the Association;

(d) to keep the Dwelling in good repair as required by this Declaration or by the Bylaws; and

(e) to maintain public liability coverage of at least One Hundred Thousand Dollars (\$100,000) on each Homesite or Dwelling;

In the event of non-payment of any premium for insurance required under this Article Nine, the Association is authorized, but not obligated or required, to pay such premium and the sum so paid shall become a summary charge upon the Homesite or Dwelling, enforceable in the same manner and to the same extent as provided for enforcement of liens for assessments hereunder.

#### ARTICLE TEN: RECREATIONAL FACILITIES

The Declarant intends to construct one (1) swimming pool and one (1) tennis court within the Common Properties (Recreational Facilities) constituting a portion of Duck Landing, as shown on a recorded plat of Duck Landing (the "Present Recreational Facilities"). These Present Recreational Facilities will be provided for the benefit of all Owners of Homesites or Dwellings, their tenants and guests within Duck Landing, and, at the sole option of Declarant, to owners of Homesites or Dwellings outside of Duck Landing. Nevertheless, the Board shall have the right to form an affiliated association (the "Operator") which may be a separate corporation or a division of the Association and assign to it the responsibilities of maintenance and operation of the Present Recreational Facilities, and any other Recreational Facilities upon such terms and conditions, not inconsistent herewith, as the Board may deem reasonably necessary. The Operator shall maintain and operate such portions of all Recreational Facilities as are designated to be maintained and operated by such Operator for the benefit of every Owner in good standing with the Association. The Association (by action of its Board) or the Operator, as the case may be, may charge dues and membership fees sufficient to defray operating costs and require that all payments be current in order for any Owner, their tenants and guests to enjoy the use of the present Recreational Facilities and any other Recreational Facilities. Furthermore, no Owner or their tenants or guest may use the Recreational Facilities if there exists a recorded lien by the Association for non-payment on any Homesite owned by Owner. The Operator or the Board, as the case may be, may also permit use of any such Recreational Facilities by non-owners and non-residents of Duck Landing upon payment of required dues or membership fees, including without limitation an initiation fee. The Operator may impose reasonable regulations regarding the use of any such Recreational Facilities to insure accessibility, safety, harmony and preservation of any such Recreational Facilities. The Association reserves the right to revoke an assignment made by it to an Operator and to assume the operation of any such Recreational Facilities, on a membership basis, and to impose special fees, charges or assessments against the Owners with respect thereto. The cost of the management, operation, maintenance, repair, servicing, replacement and renewal of the Recreational Facilities shall be deemed



Common Expenses as to all Owners who have the right of access to and use of said Recreational Facilities.

## ARTICLE ELEVEN: AMENDMENT TO DECLARATION

Section 1. Owner/Member Initiated. An amendment to this Declaration may be proposed upon a vote of a majority of the Owners (not a majority vote) whether meeting as Owners or by instrument in writing signed by them or by a majority of the Board. It shall be required that each Owner be given written notice of a Special Meeting, stating the time and place, and reciting the proposed amendment in reasonably detailed form, which notice, if mailed, shall be mailed not less than ten (10) days nor more than fifty (50) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail, certified with return receipt requested, addressed to the Owner at his address as it appears on the records of the Association, the postage thereon prepaid. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such Owner. At the meeting, the amendment proposed must be approved by an affirmative vote of sixty-seven percent (67%) of the votes (with the votes being calculated as provided in Article Six, Section 2) of Owners (including the Declarant) entitled to vote in order for such amendment to become effective. At any meeting held to consider such amendment, the written vote of any Owner shall be recognized and counted even if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to or at such meeting. In order for such amendment to be binding upon all the holders of mortgages or deeds of trust against any Homesite or Dwellings, written consent must be obtained from the then existing (as of the date of the meeting of Owners which approved such amendment) holders of First Lien Mortgages or Deeds of Trust encumbering fifty-one percent (51%) of the Homesites or Dwellings in Duck Landing. If so approved, such amendment of the Declaration shall be properly transcribed and certified by two (2) officers of the Association as having been duly adopted and approved by requisite percentages of Owners and/or lenders. The original or an executed copy of such amendment, properly executed with the same formalities as a deed, shall be recorded in the Office of the Register of Deeds of Dare County, and no such amendment to this Declaration shall be effective until so recorded. If any amendment to the Declaration creates an inconsistency in the Bylaws, to the extent such inconsistency exists, the Declaration shall control.

Section 2. Declarant Initiated: Declarant, or its successor or assigns, shall be allowed to make minor (non-substantial) amendments to this Declaration, notwithstanding any other provision contained herein, and without joinder of any other party, for the purposes of correcting any discovered typographical error contained herein, clarifying and ambiguity continued herein, or adding or deleting any incidental provisions deems in the sole discretion of Declarant onto be in the best interest of the Duck Landing, and the Owners therein. This right may be exercised, and shall be effective only upon the recordation of a "Corrected Declaration" in the Office of the Register of Deeds of Dare

County, which Corrected Declaration shall specifically reference this document, and the provision impacted.

#### ARTICLE FIFTEEN. CAPTIONS, INTRODUCTIONS AND GENDER

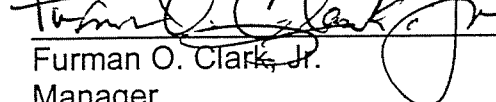
The captions and introductory material herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and neuter genders and the use of the singular shall be deemed to refer to the plural, and the use of the plural shall be deemed to include the singular whenever the context so requires.

#### ARTICLE SIXTEEN: SEVERABILITY AND GOVERNING LAW

If any provision of this Declaration is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants as contained herein shall be deemed to be severable each from each other without qualification. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed under seal as of the date first above written.

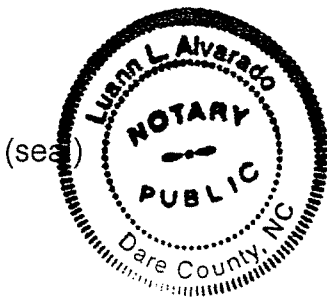
Duck Landing LLC,  
a North Carolina Limited Liability Corporation

By:  (SEAL)  
Furman O. Clark, Jr.  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF DARE

I, Luann L. Alvarado, a Notary Public, hereby certify that Furman O. Clark, Jr. personally came before me this day and acknowledged the execution of the foregoing instrument, all in his capacity as a manager in, and in the name and for and on behalf of Duck Landing, LLC, a limited liability company organized under the laws of the State of North Carolina.

Witness my hand and official seal this the 10th day of February, 1999.



Luann L. Alvarado  
Notary Public  
My Commission Expires: 2/22/2001

NORTH CAROLINA  
DARE COUNTY

The foregoing Certificate of Luann L. Alvarado a Notary Public  
of Dare Co., NC is certified to be correct.

This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Barbara M. Gray  
REGISTER OF DEEDS

BY: Karell M. Walcott  
ASSISTANT REGISTER OF DEEDS