

**BY-LAWS
OF
JACKEY'S CREEK PLANTATION HOA, INC.
(A NON-PROFIT CORPORATION)**

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BY-LAWS
OF
JACKEY'S CREEK PLANTATION HOA, INC.
(A NON-PROFIT CORPORATION)

ARTICLE I

GENERAL

- Section 1. **The Name.** The name of the corporation shall be Jackey's Creek Plantation HOA, Inc. hereinafter referred to as "Association".
- Section 2. **The Principal Office.** The principal office of the corporation shall be located at 3901 Oleander Drive, New Hanover County, Wilmington, NC 28403, or at such other place as may be subsequently designated by the Board of Directors.

ARTICLE II

DEFINITIONS

- Section 1. **"Association"** - shall mean and refer to Jackey's Creek Plantation HOA, Inc. Association, Inc., its successors and assigns.
- Section 2. **"Properties"** - shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- Section 3. **"Common Area"** - shall mean all property owned by the Association for the common use and enjoyment of the Owners.
- Section 4. **"Lot"** - shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

- Section 5. "**Owner**" - shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- Section 6. "**Declarant**" - shall mean and refer to **Jackey's Creek Development, Inc.**, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.
- Section 7. "**Declaration**" - shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Register of Deeds of Brunswick County, North Carolina.
- Section 8. "**Member**" - shall mean and refer to those persons entitled to membership as provided in the Declaration.
- Section 9. "**Other Definitions**" - shall mean that all definitions set forth in the Declaration shall be applicable herein, unless otherwise defined herein.

ARTICLE III

MEETINGS OF MEMBERSHIP

- Section 1. **Place.** All meetings of members shall be held at the office of the Association or such other place as may be stated in the notice.
- Section 2. **Annual Meetings.**
- a. The annual meeting of members shall be held at Wilmington, North Carolina, in each year commencing in **1998**; provided, however, that if the initial annual membership meeting has not occurred by the first week in Septmeber, **1998**, the first Board of Directors (the "Board") shall notify all members that such initial annual meeting has been postponed, and that it will be rescheduled at a later date. If same be rescheduled, the first directors and the officers will hold office until the initial annual meeting.
 - b. Regular annual meetings subsequent to **1998** shall be held on or before the fourth Saturday in **September** in each year, if not a legal holiday, and if a legal holiday, then on the next secular day following, unless otherwise determined by the Board.

c. All annual meetings shall be held at such hour as is determined by the Board.

d. At the annual meeting, the members shall elect the new members of the Board of Directors and transact such other business as may properly come before the meeting.

e. Written notices of the annual meeting shall be served upon or mailed to each member entitled to vote at such address as appears on the books of the Association at least ten (10) but not more than fifty (50) days prior to the meeting. Each member shall notify the Secretary of any address change, and the giving of said notice shall be in all respects sufficient, if sent to the address of the member which is then on file with the Secretary.

Section 3. **Membership List.** At least ten (10) but not more than fifty (50) days before every election of directors, a complete list of members entitled to vote at said election, with residence of each, shall be prepared by the Secretary. Such list shall be produced and kept for said ten (10) days prior to and throughout the election at the office of the corporation, and shall be open to examination by any member throughout such time.

Section 4. **Special Meetings.**

a. Special meetings of the members, for any purpose or purposes not prescribed by statute, the Certificate of Incorporation, or these By-Laws, may be called by the Board or at the request, in writing, of one-third of the members. Such request shall state the purpose or purposes of the proposed meeting.

b. Written notice of a Special Meeting of members, stating the time, place and object thereof, shall be served upon or mailed to each member entitled to vote thereat, at such address as appears on the books of the Association, at least ten (10) days before such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, postage prepaid, addressed to the member at such address as appears on the records of members of the Association.

c. Business transacted at all special meetings shall be confined to the object stated in the notice thereof, unless seventy-five percent (75%) of the members present at such meeting, in person, or by proxy, consent to the transaction of business not stated in the notice.

Section 5. **Quorum.** Over fifty percent (50%) of the total number of members of the Association, present in person or represented by written proxy, shall be requisite to and shall constitute a quorum at all meetings of the members for the transaction of business, except as otherwise provided by statute, by the Certificate of Incorporation or by these By-laws. If, however, such quorum shall not be present or represented at a meeting of the members, the members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called. If adjournment extends past thirty (30) days, notice of the date on which the adjourned meeting is to be reconvened shall be given as herein provided for regular meetings.

Section 6. **Vote Required to Transact Business.** When a quorum is present at any meeting, a majority of the votes cast, in person or represented by written proxy filed with the Secretary in advance of the meeting, shall decide any question brought before the meeting, unless the question is one upon which, by express provision of the statutes, the Declaration of which, by express provision of the statutes, the Declaration of Restrictions or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. There shall be no cumulative voting.

Section 7. **Right to Vote.** Each owner shall be entitled to one vote. At any meeting of the members, every member having the right to vote shall be entitled to vote in person or by proxy. Such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof. If more than one person or entity owns a lot, they shall file a certificate with the Secretary naming the person authorized to cast votes for said unit. If same is not on file, the vote of any co-owner present who is acceptable to other co-owners of that unit present shall be accepted as the vote of all co-owners. Any legal entity which is an owner shall have the right to membership in the Association.

Section 8. **Waiver and Consent.** Whenever the vote of members at a meeting is required or permitted by a provision of the statutes, the Declaration of Restrictions, or these By-Laws to be taken in connection with any action of the Association, the meeting and vote of members may be dispensed with if all members who would have been entitled to vote upon the action at such meeting if such meeting were held shall consent in writing to such action being taken.

Section 9. **Order of Business.** The order of business at annual members' meetings, and as far as practical at other members' meetings, will be:

- a. Roll call and certification of proxies;
- b. Proof of notice of meeting or waiver of notice;
- c. Reading of minutes of prior meeting;
- d. Officers' reports;
- e. Committee reports;
- f. Appointment by Chairman of Inspectors of Election;
- g. Approval of budget;
- h. Elections of directors and officers;
- i. Unfinished business;
- j. New business;
- k. Adjournment.

Robert's Rules of Order shall be applicable to the conduct of all meetings of members.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. **Number and Term.** The number of directors which shall constitute the Board of Directors (the "Board") shall be not less than three (3) and not more than seven (7), except that until the first annual meeting, the initial Board of Directors shall consist of five (5) members. Until succeeded by directors elected at the first annual meeting of members, directors need not be members; thereafter, at least three (3) directors shall be members. Within the limits above specified, the number of directors shall be determined by the members at the annual meeting; the directors shall initially be elected to serve staggered terms, i.e., two for three years, two for two years, one for one year, etc., and they shall serve until their successors shall be elected and shall qualify. Thereafter, each director shall be elected for a term of two years.

Section 2. **Vacancy and Replacement.** If the office of any director becomes vacant by reason of transfer of ownership, death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining directors, though less than a quorum, at a special meeting of directors duly called for this purpose, shall choose a successor or successors, who shall hold office for the unexpired term in respect to which such vacancy occurred.

- Section 3. **Removal.** Directors may be removed with or without cause by an affirmative vote of a majority of the total membership. No director shall serve on the Board after his membership in the Association shall be terminated for any reason whatsoever.
- Section 4. **First Board of Directors.** The first Board shall consist of Jack Stocks, A.V. Saffo and Jim Teachey who shall hold office and exercise all powers of the Board until the initial annual membership meeting, anything herein to the contrary notwithstanding; provided, however, any or all of said directors shall be subject to replacement in the event of resignation or death as above provided.
- Section 5. **Powers and Duties.** The property and business of the Association shall be managed by the Board, which may exercise all corporate powers not specifically prohibited by the statutes, the Articles of Incorporation or the Declaration. The powers of the Board shall specifically include, but not be limited to the following:
- a. To make and collect regular and special assessments and establish the time within which payment of same are due.
 - b. To adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.
 - c. To suspend the voting rights and right to use the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations.
 - d. To exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration.
 - e. To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

- f.** To purchase the necessary equipment and tools required in the maintenance, care and preservation of the property of the Association.
- g.** To insure and keep insured the property of the Association in the manner set forth in the Declaration against loss from fire and/or other casualty, and the Association against public liability, and to purchase such other insurance as the Board may deem advisable.
- h.** To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin or seek damages from members or any person for violation of these By-Laws and the terms and conditions of the Declaration.
- i.** To employ and compensate such personnel as may be required for the maintenance and preservation of the property.
- j.** To acquire, own, hold, pledge, sell or transfer a lot in the name of the Association or its designee.
- k.** To contract for management of the Association and to delegate to such other party all powers and duties of the Association except those specifically required by the Declaration to have specific approval of the Board or the members.
- l.** To impose a special assessment (against any owner), not to exceed Fifty Dollars (\$50.00) for each occurrence, for the violation by the owner or his guests of any rule or regulation adopted by the Board or the breach of any By-Law contained herein, or the breach of any provision of the Declaration. Such assessment shall be in addition to any costs incurred or to be incurred by the Association as a result of the violation of the rule, regulation, By-Law or provision.
- m.** To use and expend the assessments collected to maintain, care for and preserve the common elements and facilities, except those portions thereof which are required to be maintained, cared for and preserved by the owners.
- n.** To carry out the obligations of the Association under any restrictions and/or covenants running with any land submitted to the ownership of this Association or its members.

Section 9. **Order of Business.** The order of business at all meetings of the Board shall be as follows:

- a. Roll call;
- b. Proof of notice of meeting or waiver of notices;
- c. Reading of minutes of last meeting;
- d. Consideration of communications;
- e. Elections of necessary directors and officers;
- f. Reports of officers and employees;
- g. Reports of committees;
- h. Unfinished business;
- i. Original resolutions and new business;
- j. Adjournment.

Section 10. **Annual Statement.** The Board shall present, no less often than at the annual meeting a full and clear statement of the business and condition of the Association, including a report of the operating expenses of the Association and the assessments paid by each member.

ARTICLE V

OFFICERS

Section 1. **Executive Officers.** The executive officers of the Association shall be a President, Vice President, Secretary, and Treasurer; all of whom shall be elected annually by the Board from the membership. No two offices may be united in one person. If the Board so determines, there may be more than one Vice President. Any or all officers may also be directors of the Association.

Section 2. **Subordinate Officers.** The Board may appoint such other officers and agents from the membership as they may deem necessary, who shall have such authority and perform such duties as from time to time may be prescribed by said Board.

Section 3. **Tenure of Officers; Removal.** All officers shall be subject to removal, with or without cause, at any time by action of the Board. The Board may delegate powers of removal of subordinate officers and agents to any officer.

Section 4. **The President.**

- a. The President shall preside at all meetings of the members and directors; he shall have general and active management of the

business of the Association; he shall see that all orders and resolutions of the Board are carried into effect; he shall execute bonds, mortgages, deeds of trust and other contracts requiring a seal, under the seal of the Association.

b. He shall have general superintendence and direction of all the other officers of the Association, and shall see that their duties are performed properly.

c. He shall submit a report of the operations of the Association for the fiscal year to the directors whenever called for by them, and to the members at the annual meeting, and from time to time shall report to the Board all matters within his knowledge which the interest of the Association may require to be brought to their notice.

d. He shall be an ex-officio member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of the President of a corporation.

Section 5. The Vice President.

a. At the request of the President, or in his absence, or in the event of his death, disability, inability or refusal to act, the Vice-President shall preform the duties of the President, and when so acting shall have all powers of and be subject to all the restrictions upon the President. The Vice-President shall also perform such duties as from time to time may be assigned to him by the President or Board of Directors.

Section 6. The Secretary.

a. The Secretary shall keep the minutes of the members' and the Board's meetings in one or more books provided for that purpose.

b. He shall see that all notices are fully given in accordance with the provisions of these By-Laws or as required by law.

c. He shall be custodian of the corporate records and of the seal of the corporation and shall see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized with the provision of these By-Laws.

d. He shall keep a register of the post office address of each member, which shall be furnished to the Secretary by such member.

e. In general, he shall perform all duties incidental to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 7. **Treasurer.**

a. He shall keep full and accurate accounts or receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name and to the credit of the Association, in such depositories as may be designated by the Board.

b. He shall disburse the funds of the Association as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Such records shall be open to inspection by members at reasonable times.

c. He may be required to give the Association, at the Association's cost, a bond in a sum and with one or more sureties satisfactory to the Board, for the faithful performance of the duties of his office, and the restoration to the Association, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the Association.

d. He shall maintain a register for the names of any mortgage holders or lien holders on lots who have requested in writing that they be registered and to whom the Association will give notice of default in case of non-payment of assessments. No responsibility of the Association is assumed with respect to said

register except that it will give notice of default of any owner in his obligations to the Association to any registered mortgagee or lienor therein, if so requested by said mortgagee or lienor.

e. With the approval of the Board, he shall be authorized to delegate all or part of his responsibilities to competent accounting, collection or management personnel, pursuant to written definition of the responsibilities delegated to, and the condition of performance imposed upon such personnel; but, in such event, the Treasurer shall retain supervisory responsibilities.

Section 8. **Vacancies.** If the office of any director or officer becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining directors, by a majority vote of the remaining directors provided for in these By-Laws, may choose a successor or successors who shall hold office for the unexpired term. If the number of directors falls below three, a special members' meeting shall be called for the purpose of filling such vacancies in the Board of Directors.

Section 8. **Resignations.** Any director or officer may resign his office at any time, such resignation to be made in writing, and to take effect from the time of its receipt by the Board of Directors, unless some later time be fixed in the resignation, and then from that date. The acceptance of a resignation by the Board shall not be required to make it effective.

ARTICLE VI

NOTICES

Section 1. **Definition.** Whenever, under the provisions of the statutes, the Declaration of Restrictions, the Articles of Incorporation, or these By-Laws, notice is required to be given to any director or member, it shall not be construed to mean personal notice, but such notice may be given in writing by mail, by depositing the same in a post office or letter box in a postpaid, sealed envelope, addressed as appears on the books of the Association.

Section 2. **Service of Notice - Waiver.** Whenever any notice is required to be given under the provisions of the statutes, the Declaration of Restrictions, the Certificate of Incorporation, or these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

Section 3. **Address.** The address for notice of the Association shall be that of the Registered Agent for service of process of the Association.

ARTICLE VII

FINANCES

Section 1. **Fiscal Year.** The fiscal year shall be the calendar year.

Section 2. **Checks.** All checks or demands for money and notes of the Association shall be signed by any of the following officers: President, Secretary, or Vice President and Treasurer, or by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. **Determination of Assessments.**

a. The Board shall determine from time to time the sum or sums necessary and adequate for the common expense of the property. At the annual meeting of the Association, such budget shall be submitted to the members for approval. As approved, the budget shall constitute the basis for all regular assessments for common expenses against unit owners, which assessments shall be due and payable periodically as determined by the Board. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the common elements, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, and any other expenses designated as common expenses from time to time by the Board of Directors of the Association.

b. The Board is specifically empowered on behalf of the Association to make and collect assessments and to maintain repair, renovate and replace any of the property of the Association. Assessments shall be payable periodically as determined by the Board.

c. Special assessments as described in the Declaration may be imposed by the Board as authorized in and by the Declaration; and such special assessments shall be levied and paid by the members in the same manner as provided herein for regular annual assessments, subject to the provisions of the Declaration.

d. When the Board has determined the amount of any assessment, the Vice President and Treasurer of the Association (or the personnel to whom such authority has been delegated) shall mail or present a statement of the assessment to each of the assessed owners. All assessments shall be payable to the Association, and upon request, the Vice President-Treasurer or his designated agent shall give a receipt for each payment made.

e. The Board may enter into a management contract with third parties to whom the Board may delegate the power to levy and collect assessments approved by the Board of required by the Declaration of Restrictions.

f. All assessments not paid when due shall bear interest at such rate as is determined by the Board of Directors, not to exceed the maximum permissible rate allowed by law.

Section 4. **Excess of Assessments.** In any year in which there is an excess of assessments received over amounts actually used or payable for the purposes described in these By-Laws and in the Declaration, such excess shall, unless otherwise determined by the Board of Directors of the Association, be deposited in a capital reserve account for use in replacement, repair or maintenance of the common elements of the Association.

Section 5. **Non-Profit Corporation.** The seal of the corporation shall have inscribed thereon the name of the corporation and the words "Non-Profit". Said seal may be used by causing it or facsimile thereof to be impressed, affixed, reproduced or otherwise.

ARTICLE VIII

DEFAULT

Section 1. **Enforcement of Lien for Assessments.** In the event an owner does not pay any sums, charges, or assessments required to be paid to the Association by the due date, the Association, acting on its behalf or through its Board, may enforce its lien for assessments, or take such other action to recover the sums, charges or assessments to which it is entitled, in accordance with the Declaration and the statutes made and provided for both.

- Section 2. **Governmental Liens and Assessments.** In the event that an owner does not pay any sums, charges, or assessments required to be paid to the Association by the due date, the Association, acting on its behalf or through its Board, may enforce its lien for assessments, or take such other action to recover the sums, charges or assessments to which it is entitled, in accordance with the Declaration and the statutes made and provided for both.
- Section 3. **Foreclosure.** If the Association becomes the owner of a lot by reason of foreclosure, it shall offer said lot for sale and at such time as a sale is consummated, it shall deduct from the proceeds of said sale all sums of money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, funds necessary to discharge any liens or mortgages of record, and any and all expenses incurred in the resale of the lot, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses for the lot in question. All monies remaining after deducting the foregoing items of expenses, costs and other deductions shall be returned to the former owner of the subject lot.
- Section 4. **Other Remedies.** In the event of violation of the provisions of the Declaration of Restrictions as the same are defined in the Declaration, for thirty (30) days after notice from the Association to the lot owners to correct said violation, the corporation, on its behalf or by and through its board of Directors, may bring appropriate action to enjoin such violation or may enforce the provisions of said Declaration of Restrictions, or may sue for damages, or take such other courses of action, or other legal remedy as it or they may deem appropriate.
- Section 5. **Legal Costs.** In the event any legal action is brought against any owner and results in a judgment for the Association, the owner shall pay the Association's reasonable attorney's fees, costs of collection and court costs.
- Section 6. **Intent.** Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of nuisance, regardless of the availability of the other equally adequate legal procedures. It is the intent of all owners of lots to give the Association a method and procedure which will enable it at all times to operate on a business-like basis, to collect those monies due and owing it from the owners of lots, and to preserve each member's right to enjoy his membership, free from unreasonable restraint and nuisance.

ARTICLE IX

RULES AND REGULATIONS

In addition to the other provisions of these By-Laws, any Rules and Regulations (adopted by the Board), together with any subsequent changes shall govern, to the extent not inconsistent with these By-Laws and the Declaration, the use of the facilities and property of the Association and the conduct of all members, their assignees, lessees, and guests, such Rules and Regulations shall be in effect until the first elected Board of Directors meeting, at which time they shall be subject to such changes as may be deemed appropriate. Any further modifications in the Rules and Regulations may be made by the Board of Directors in accordance with Article IV, Section 5, of the By-Laws.

ARTICLE X

JOINT OWNERSHIP

Membership may be held in the name of more than one owner. In the event ownership is in more than one person, all of the joint or common owners shall be entitled collectively to only one vote or ballot in the management of the affairs of the Association, and the vote may not be divided between joint or common owners. The manner of determining who shall cast such vote shall be as set forth in Article III, Section 7.

ARTICLE XI

INDEMNIFICATION

The Association may indemnify any person made a party to an action by or in the right of the Association to procure a judgment in its favor by reason of his being or having been a director or officer of the Association, against the reasonable expenses including attorney's fees actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, except in relation to such matters as to which such director or officer is adjudged to have been guilty of gross negligence or misconduct in the performance of his duty to the association.

ARTICLE XII

AMENDMENT

These By-Laws may be amended at any time by the affirmative vote of two-thirds (2/3) of the members at a meeting duly called for that purpose at which a quorum of more than fifty percent (50%) is present in person or by proxy; provided that the notice of such meeting shall contain a copy of the proposed amendment verbatim which has been approved by a majority of the Directors.

ARTICLE XIII

CONSTRUCTION

Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so requires.

The foregoing were adopted as the By-Laws of Jackey's Creek Plantation HOA, Inc., by the initial board of directors under resolutions adopted by consent of the board without a meeting, effective as of this the 22nd day of Sept 1997.

Certified to be correct, this the 22nd day of Sept, 1997.

Jim Trachey
Acting Secretary, Board of Directors
Jackey's Creek Plantation HOA, Inc.

Jim Trachey
Director
av [signature]
Director
John C. Staker
Director