

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

PUBLIC DECLARATION OF COVENANTS, RESTRICTIONS, AND CONDITIONS  
FOR POINTE WEST SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS that Pointe West, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of North Carolina, herein sometimes referred to as Grantor or Developer, with an office in Holden Beach, North Carolina, does hereby dedicate and establish the following covenants, restrictions and conditions to be hereafter applicable to all conveyances of land by its successors or assigns in that certain development known as Pointe West Subdivision ("the subdivision"), as described in a survey plat of the same recorded in Map Cabinet 21 at Pages 221 and 222, Brunswick County Registry, said covenants, restrictions and conditions to run with said land by whomsoever owned, and which are expressly consented to by the grantee or grantees in said conveyance deed or deeds by the mere acceptance of said deed or deeds. Said covenants, restrictions and conditions are specifically listed as follows:

ARTICLE I

EASEMENTS

SECTION 1. Perpetual, alienable easements are reserved as necessary in the herein described lots for the installation and maintenance of all utilities including underground utilities and drainage facilities. Specifically included herein are easements for the location of underground and above-ground electric transmissions equipment and telephone equipment.

SECTION 2. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency service to enter upon the lot in the performance of their duties.

SECTION 3. There is specifically and in addition to the additional easements reserved hereby reserved unto the Grantor, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone poles, wires, cables, conduits, sewers, water mains, street lights and other suitable equipment for the conveyance and use of electricity, telephone equipment, sewer, water or other public convenience or utilities on, in or over the lot; provided, further, that the Grantor or its designee may cut drainways for surface water whenever action may appear to the Grantor to be necessary in order to maintain reasonable standards of health, safety and appearance. Those easements and rights expressly include the right to cut any trees, bushes, shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and maintenance and to maintain reasonable standards of health, safety and appearance.

SECTION 4. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Grantor, its successors and assigns, and the owner, purchaser, mortgagee and other person having an interest in said lot, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deed of conveyance, or in any mortgage or deed of trust or other evidence of obligation, to the easements and rights described in this Declaration.

## ARTICLE II

### ARCHITECTURAL CONTROL

SECTION 1. Grantor's Rights. All duties and responsibilities conferred by this Declaration shall be exercised and performed by the Grantor or its designee.

SECTION 2. Building and Site Improvements. No dwelling, fence, and/or other structure shall be commenced, erected, or maintained, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, architectural style, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor, or its designee. The Grantor, or its designee, will approve or disapprove such design, location, etc., within thirty (30) days after said plans and specifications have been properly submitted. Refusal of approval of any such plans, location or specification may be based upon any grounds, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Grantor shall seem sufficient. One copy of all plans and related data shall be furnished to the Grantor, as the case may be, for its records. The Grantor shall not be responsible for any structural or other defects in plans or specifications submitted to it or any structure erected according to such plans and specifications.

### SECTION 3. General Requirements for the Approval of Plans:

A. No house plans will be approved unless the proposed house shall have a minimum of 1,600 square feet of enclosed dwelling area provided that should Town of Holden Beach ordinances specify a lesser maximum square footage than 1,600 square feet the said proposed house shall contain at least the maximum square footage permitted by said ordinances. The term "enclosed dwelling area" as used in the general requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open or covered porches, and like areas.

B. No home, non-common area building or non-common area structure with the exception of streetside entry stairs, but including porches, open decks, exterior air condenser platforms, etc., shall be located within the street side setback lines as shown on the plat recorded in Map Cabinet 21 at Pages 221 and 222, Brunswick Registry, and then only as authorized by the ordinances of the Town of Holden Beach.

C. Front, rear and side property line setback requirements for the construction of the house, building or other structure to be erected on any lot are as set forth in the subdivision map of Pointe West recorded in Map Cabinet 21 at Pages 221 and 222, Brunswick Registry, which setback requirements, as shown on said map, are incorporated herein by reference.

D. In order to assure that the foregoing considerations are given maximum effect, the site and location of the house or building or other structure shall be controlled by and must be approved absolutely by the Grantor. Provided, however, the Grantor and the owner must adhere to guidelines for set backs as set forth by the Department of Natural Resources and Community Development, the Coastal Resources Commission, the Town of Holden Beach, and any other present or future governmental agency or entity having jurisdiction over such matters.

Notwithstanding the set back requirements set forth in paragraphs C and D, hereof,

Grantor reserves the right in favor of Grantor or Grantor's assignee to waive the construction set back requirements when Grantor or its assignee determines that such waiver is necessary to balance the interests of view, privacy, breeze, construction standards required under these restrictions and/or applicable zoning and building codes, septic tank and drain line placement or any other factor reasonably bearing on or affecting placement of improvements. Any such waiver must be granted in writing. No waiver shall be granted which contravenes set back requirements mandated by local, state or federal laws or regulations. The authority to grant such waivers may be assigned by Grantor to a lawful successor or to the property owner's association, once formed.

E. The exterior of the house and other structures must be completed within seven (7) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder, due to strikes, fires, national emergency or natural calamities.

F. No structure, except as hereinafter provided, shall be erected, altered, or permitted to remain on a lot other than residential dwellings. One or more small accessory buildings (which may include a detached private garage) may be erected, altered or permitted to remain on the lot, provided said building and the use of such accessory building together with the dwelling does not in the opinion of the Grantor overcrowd the site, and provided further that such accessory buildings are not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building. The location of all detached outbuildings shall be subject to architectural control as set forth in this article.

G. All service utilities, fuel tanks, clothes lines, wood piles and trash and garbage accumulations are not to be visible on any lot.

H. Off street parking for not less than two (2) passenger automobiles must be provided on the lot prior to the occupancy of the dwelling constructed on said lot. Parking on Tide Ridge Drive and Pointe West Drive shall be prohibited at all times.

I. No lot shall be subdivided, or its boundary line changed. It is permissible, however, for no more than two lots to be combined and for one residence to occupy a portion of both lots.

J. Wetlands Regulation. Grantor confirms the existence and applicability of an existing Restrictive Covenant and Condition recorded in Deed Book 1336 at Page 132, Brunswick Registry, pertaining to wetlands regulations of the State of North Carolina made applicable to lots 9 through 27 of Pointe West Subdivision as shown on the Map thereof recorded in Map Cabinet 21 at Pages 221 and 222, Brunswick Registry (the "wetlands restriction"). Grantor hereby ratifies and confirms the continued applicability of the wetlands restriction to the Subdivision and incorporates the same by reference in this Declaration of Covenants, Restrictions and Conditions the same as if set forth verbatim herein.

K. Impervious Coverage. In order to comply with the storm water runoff regulations of the State of North Carolina, the maximum impervious surface coverage allowed by lot is as set forth on the attached schedule A incorporated herein by reference.

L. Contractor. All residential construction in the Subdivision shall be performed by Coastal Development and Realty Builders, Inc., its lawful successors or assigns, unless otherwise specified in writing by developer.

## ARTICLE III

### USE RESTRICTIONS

SECTION 1. Land Use and Building Type. The lot shall not be used except for single family residential purposes. The operation of any business or commercial enterprise upon any lot is expressly prohibited. Provided, however, a lot may be used as a temporary sales office and/or model with the prior written consent of Grantor. Any structure erected or altered on a lot shall be subject to the provisions of Article II of this Declaration relating to architectural control. Only new construction shall be permitted on any lot and no home or other structure may be moved or relocated from any other property onto any lot.

SECTION 2. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of like nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof. It shall be the responsibility of the lot owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on a lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specified area.

SECTION 3. Lot Maintenance. In the event that the lot owner shall fail or refuse to keep such premises free from weeds, underbrush, refuse piles, unsightly growth or objects, then, after ten days' notice from the Grantor, or its designee, the Grantor may enter upon the lot and remove the same at the expense of the owner, and such entrance shall not be deemed a trespass, and in the event of such removal a lien shall arise and be created in favor of the Grantor for the full amount of the cost thereof chargeable to the lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens.

SECTION 4. Landscaping. Upon home completion, all yards shall be landscaped. Landscaping plans must be submitted and approved in writing by Grantor or its designee prior to commencement of landscaping activities. Grantor, or its designee, will approve or disapprove such design within fourteen (14) days after said plans have been properly submitted. Refusal of approval of any such plans, location or specification may be based upon any grounds, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Grantor shall seem sufficient. Landscaping shall include a thick growth of grass, shrubbery, bark, pine straw, etc., or any combination thereof of similar materials. It shall be completed within one hundred twenty (120) days after certification of compliance has been issued by the Town of Holden Beach. Failure to do so shall subject the owner to a \$20.00 per day penalty after the one hundred twenty (120) day period and such penalty shall be in addition to any legal expenses incurred by the Grantor or the Property Owners Association necessary to bring the lot into compliance, shall be a lien against the lot until collected and shall be enforceable by court proceedings as provided by law for enforcement of liens. Penalties so collected must be spent on the beautification of the subdivision. In performing landscaping or any other construction activity, existing landscaping and all developer placed landscaping, shall not be altered or disturbed without the prior written consent of the Grantor or its designee.

SECTION 5. Vehicles. Only personal passenger-type vehicles shall be visible on the premises of any lot except during construction or repairs. Buses, trailers, campers, etc. shall not be visible except boat trailers may be parked in the open ground floor area under

the heated area of the principal residence.

SECTION 6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be used on the lot any time as a residence, either temporarily or permanently.

SECTION 7. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on the lot or in any dwelling, except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further than they are not allowed to run free and are at all times properly restrained. No stable, poultry house or yard, exterior dog pen or other similar structure may be allowed on any property within the subdivision.

SECTION 8. Clothes Facilities. No outside clothes lines or clothes drying facilities shall be allowed within the subdivision.

SECTION 9. Outside Antennas. No outside radio or television antennas or satellite dishes shall be erected on the lot.

SECTION 10. Timing of Use. All lots will be left free of any vehicles, equipment, construction materials, etc. until the Grantor approves building plans and the Town of Holden Beach issues a building permit for said plans.

SECTION 11. Driveways. Driveways shall be constructed of concrete and shall be completed before occupancy of the home begins.

#### ARTICLE IV

##### PROPERTY OWNER'S ASSOCIATION

SECTION 1. A Property Owner's Association known as Pointe West Owner's Association, Inc. or by a similar name will be formed and shall be registered with the State of North Carolina ("the Association" or "Property Owner's Association"). Each lot owner shall have one vote and membership shall be mandatory. A majority of votes shall be required to make any legally binding decision. Until the Grantor has sold its lots, any decisions by the Property Owner's Association pertaining to covenants and restrictions shall not be binding unless agreed to by the Grantor.

SECTION 2. All common areas will be maintained by the Property Owner's Association as provided for in the Association bylaws. Assessments, as provided for in the Association bylaws, are mandatory and shall be required of each lot owner.

SECTION 3. The Property Owner's Association shall have the right to levy periodic assessments of members for the costs of common area maintenance and improvements and to levy and enforce liens for the collection of the same, as set forth in the bylaws of the association, in these restrictive covenants, or as otherwise provided by law.

#### ARTICLE V

##### ENFORCEMENT/AMENDMENT

SECTION 1. Servability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

SECTION 2. Lot Subject to Declaration. All present and future owners, tenants, and occupants of the lot and their guests or invitees, shall be subject to and shall comply with the provisions of the Declaration. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of the lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in the lot as though such provisions were made a part of each and every deed of conveyance or lease of any said lot.

SECTION 3. Changes. So long as Grantor should own any lot Grantor reserves the right to make additions or amendments to these covenants, restrictions and conditions provided the general integrity of said covenants is not violated. In addition these restrictions may be amended from time to time to either alter, rescind modify or add to the provisions herein contained or, to add additional provisions by majority vote of the property owners at a duly constituted meeting of the Association called for the purpose of making any said amendments or changes. So long as Grantor shall own any lot, Grantors prior consent to any said amendment, rescission, alteration or addition to these restrictions must be obtained.

SECTION 4. Violations. In the event of any violation or breach of any of the restrictions contained herein by any property owner or agent of such owner, Grantor, or its designee, successors or assigns or the owners of lots within the development or the Property Owner's Association, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach of any of the restrictions set out above, but before litigation may be instituted ten days written notice of such violation shall be given to the lot owner or his agent. The failure to enforce any right, reservation or condition contained in this declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

SECTION 5. Validity Period. All covenants, restrictions and conditions set forth in this Declaration shall be binding on all parties for a period of twenty-five (25) years from the date of recordation hereof in the office of the Register of Deeds for Brunswick County, North Carolina, after which time, all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part. Invalidation of any one or more of these restrictive covenants and conditions shall not result in invalidation or waiver in any respect of any remaining restrictive covenants and conditions which shall remain in full force and effect during the period hereof.

SECTION 6. Assignment of Easements and Enforcement Authority. Grantor shall have the right at anytime and no later than the time developer transfers and conveys title to the last lot owned by Grantor in Heron Landing Subdivision to transfer and convey all easements, streets and common areas to the property owners association which shall thereupon assume responsibility for the jurisdiction and control thereof. In addition, Grantor shall have the right to designate the Property Owner's Association as its designee to enforce all of the provisions of these covenants, restrictions and conditions in the place and stead of developers and as provided in the bylaws.

IN TESTIMONY WHEREOF, Grantor has caused this instrument to be signed in  
is name by its Managing Member as the act and deed of said limited liability company,  
this the 24<sup>th</sup> day of Feb., 2000.

POINTE WEST, LLC

By: Mark A. Saunders  
Managing Member

STATE OF NORTH CAROLINA

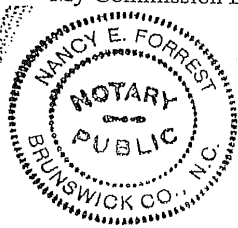
COUNTY OF BRUNSWICK

I, a Notary Public of the County and State aforesaid, do hereby certify that Mark  
A. Saunders personally appeared before me this day and acknowledged that he is  
Managing Member of POINTE WEST, LLC, a North Carolina limited liability company,  
and that by authority duly given and as the act of the company, the foregoing instrument  
was signed in its name by him as its Managing Member.

WITNESS my hand and official seal, this the 24<sup>th</sup> day of Feb., 2000.

Nancy E. Forrest  
NOTARY PUBLIC

My Commission Expires: 5-3-2003



## SCHEDULE A

LOT NUMBER	TOTAL AREA	MAXIMUM ALLOWABLE IMPERVIOUS AREA
Lot 1	10130 S.F./ .23 AC.	3350 S.F./ .08 AC.
Lot 2	8306 S.F./ .19 AC.	2200 S.F./ .05 AC.
Lot 3	7522 S.F./ .17 AC.	2315 S.F./ .05 AC.
Lot 4	7521 S.F./ .17 AC.	2315 S.F./ .05 AC.
Lot 5	7556 S.F./ .17 AC.	2315 S.F./ .05 AC.
Lot 6	7509 S.F./ .17 AC.	2500 S.F./ .06 AC.
Lot 7	7996 S.F./ .18 AC.	2500 S.F./ .06 AC.
Lot 8	8996 S.F./ .21 AC.	2500 S.F./ .06 AC.
Lot 9	10696 S.F./ .25 AC.	2500 S.F./ .06 AC.
Lot 10	10593 S.F./ .24 AC.	2500 S.F./ .06 AC.
Lot 11	12161 S.F./ .28 AC.	3250 S.F./ .07 AC.
Lot 12	11791 S.F./ .27 AC.	3500 S.F./ .08 AC.
Lot 13	12825 S.F./ .29 AC.	4000 S.F./ .09 AC.
Lot 14	14614 S.F./ .34 AC.	2200 S.F./ .05 AC.
Lot 15	15858 S.F./ .36 AC.	2750 S.F./ .06 AC.
Lot 16	14404 S.F./ .33 AC.	4000 S.F./ .09 AC.
Lot 17	12980 S.F./ .30 AC.	4000 S.F./ .09 AC.
Lot 18	12793 S.F./ .29 AC.	4000 S.F./ .09 AC.
Lot 19	12547 S.F./ .29 AC.	4000 S.F./ .09 AC.
Lot 20	13829 S.F./ .32 AC.	4000 S.F./ .09 AC.
Lot 21	10765 S.F./ .25 AC.	4000 S.F./ .09 AC.
Lot 22	11154 S.F./ .26 AC.	4000 S.F./ .09 AC.
Lot 23	15661 S.F./ .36 AC.	4000 S.F./ .09 AC.
Lot 24	21875 S.F./ .50 AC.	4000 S.F./ .09 AC.
Lot 25	32356 S.F./ .74 AC.	4000 S.F./ .09 AC.
Lot 26	28475 S.F./ .65 AC.	4000 S.F./ .09 AC.
Lot 27	26103 S.F./ .60 AC.	4000 S.F./ .09 AC.
Lot 28	8476 S.F./ .19 AC.	1920 S.F./ .04 AC.
Lot 29	8924 S.F./ .20 AC.	2700 S.F./ .06 AC.
Lot 30	9793 S.F./ .22 AC.	2700 S.F./ .06 AC.
Lot 31	100068 S.F./ .23 AC.	2700 S.F./ .06 AC.
Lot 32	100042 S.F./ .23 AC.	2700 S.F./ .06 AC.
Lot 33	9999 S.F./ .23 AC.	2700 S.F./ .06 AC.
Lot 34	11478 S.F./ .26 AC.	3350 S.F./ .08 AC.

**BY-LAWS  
OF  
POINTE WEST PROPERTY OWNERS' ASSOCIATION, INC.**

**ARTICLE I**

**GENERAL**

**1. Name and Location.** The name of the Association is Pointe West Property Owners' Association, Inc. The principal office of the Association shall be located at: 131 Ocean Boulevard West, Holden Beach, North Carolina, 28462, or at such other place as may be subsequently designated by the Board of Directors of the Association.

**2. Applicability.** The provisions of these By-Laws are binding on all owners of lots in Pointe West Development (herein called "subdivisions"), their tenants, guests, invitees, agents, employees, grantees, successors and assigns.

**3. Fiscal Year.** The fiscal year of the association shall be the calendar year.

**ARTICLE II**

**MEMBERSHIP**

Every owner of a lot in Pointe West Development, shown on a plat of the subdivision recorded in Map Cabinet 2-1 at Pages 221-222, shall be a member of the Association and membership in the Association shall be limited to lot owners. Membership is mandatory for all lot owners.

**ARTICLE III**

**MEETINGS OF MEMBERSHIP**

**1. Place.** All meetings of members shall be held at such place as may be designated in the notice of the meeting.

**2. Annual Meeting.** The first annual meeting of the members of the Association shall be held within one year from the date of the initial organizational meeting of the Board of Directors. Subsequent annual meetings shall be held at a date and time to be determined by the Board of Directors of the Association. 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.

**3. Special Meetings.** Special meetings of the members may be called at any time by the President of the Association or by the Board of Directors or at the written request of the members entitled to vote one-third (1/3) of all of the votes of the Association. Business transacted at all special meetings shall be confined to the objects stated in the notice of the meeting.

**4. Notice of Meetings.** Written notice of each annual and special meeting of the members 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, but no more than fifty (50) days, before the meeting. The notice shall specify the place, day, time and purpose of the meeting. Waiver in writing of the notice required herein, signed by the member before, at, or after such meeting, shall be equivalent to the giving of

such notice. Each member shall notify the Secretary of the Association of any address change, and the giving of notice shall be in all respects sufficient if sent to the address of the member which is then on file with the Secretary.

**5. Voting Rights.** Each lot owner shall be entitled to cast one (1) vote for each lot owned. If more than one person or entity owns a lot, the co-owner shall file a certificate with the Secretary naming the person authorized to cast the vote for the lot. If no certificate is filed, the co-owners must designate, at the time of the meeting, the person authorized to cast such vote.

**6. Proxies.** At all meetings of the members, every member shall have the right to vote in person or by proxy. All proxies shall be executed in writing by the members or by his duly authorized attorney in fact and shall be filed with the Secretary. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

**7. Quorum.** The presence at a meeting of members entitled to cast, or of proxies entitled to cast, twenty (20) percent of the votes of the Association shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation or these By-Laws. If, however, such quorum is not present or represented at any meeting, a majority of the members present and entitled to vote 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. If adjournment extends thirty (30) days past the originally scheduled meeting date, notice of the date on which the adjourned meeting is to be reconvened shall be given as herein provided.

**8. Voting Required to Transact Business.** When a quorum is present at any meeting, a majority of the votes entitled to be cast by the members present or represented by proxy shall decide any question brought before the meeting unless the question is one upon which, by express provision of the Articles of Incorporation or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

**9. Action Without a Meeting.** Any action which is required or permitted to be taken at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members entitled to vote with respect to the subject matter thereof and filed with the Secretary, whether done before or after the action so taken.

## ARTICLE IV

### BOARD OF DIRECTORS

**1. Number.** The affairs of the Association shall be managed by a Board of Directors consisting of three (3) directors, all of whom shall be members of the Association, except that none of the initial Board of Directors need be members. The number of directors to be elected at the first annual meeting shall be three (3) directors.

**2. Term.** At the first annual meeting three directors shall be elected, one for a term of two (2) years and two (2) for a term of one (1) year. All subsequently elected directors shall serve for a term of two years.

**3. Nomination and Election.** Nomination for election to the board of directors

shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors and two other members who shall be appointed by the President prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members only. Election to the Board of Directors shall be by voice vote unless secret written ballot is demanded by the owners of at least 20% of the votes of all Association members. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**4. Vacancy.** Any vacancy occurring in the Board of Directors by reason of transfer of ownership, death, resignation, retirement, disqualification, removal from office or other reason, may be filled by the remaining Board of Directors. A director appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

**5. Removal.** Any director may be removed from the Board of Directors, with or without cause, by a majority vote of the total membership of the Association.

**6. First Board of Directors.** The first Board of Directors until the organizational meeting of Directors shall consist of those named in the Articles of Incorporation of the Association. The first Board of Directors shall be appointed by the initial Director who is also the Declarant under those restrictive covenants recorded in Book 1361 at Page 286, Brunswick County Registry and as defined in Chapter 47F North Carolina General Statutes, to serve until the first annual meeting or until their successors shall be elected. The first Board of Directors may but need not be lot owners in Pointe West Development.

**7. Compensation.** No director shall receive compensation for any service he may render to the Association in his capacity as a director. However, each director shall be reimbursed for actual expenses incurred in the performance of his duties.

**8. Powers.** The Board of Directors may exercise all corporate powers not specifically prohibited by statute, the Articles of Incorporation or the Restrictive Covenants. 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 such assessments are due.
- b. To use and expend the assessments collected to maintain, care for, manage and preserve the common property owner by the Association.
- c. To insure the common areas and facilities of the subdivision against loss from fire and other casualty, and to insure the lot owners against public liability, and to purchase such other insurance as the Board may deem advisable.
- d. To employ and compensate such personnel as may be required for the

maintenance and preservation of the common property.

- e. To make and amend rules and regulations governing the use of the common areas and facilities and the conduct of the lot owners, their tenants and guests.
- f. To acquire in the name of the Association or its designee or to exercise any easement over any property in either subdivision that may be assigned or conveyed to the Association by any developer or any lot owner.
- g. To contract for management of the common property and to delegate to such manager, employee or contractor all powers and duties of the Association except those specifically required by the Restrictive Covenants to have specific approval of the Board of Directors or the membership of the Association.
- h. To enforce the provisions of these By-Laws, the Restrictive Covenants and the rules and regulations promulgated thereunder by any legal means, including the denial of a lot owner's right to use the common areas and facilities and assessment of penalties.
- i. To designate, as the Board deems appropriate, assigned parking spaces for visitors, service vehicles, and other vehicles.
- j. To propose and adopt an annual budget for the Association.

## ARTICLE V

### MEETING OF DIRECTORS

**1. Regular Meetings.** The first regular meeting of each newly elected Board of Directors shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum is present, or as soon thereafter as may be practicable. Subsequent regular meetings of the Board of Directors shall be held, at such place and hour as may be fixed from time to time by resolution of the Board, after not less than three (3) days notice to each director.

**2. Special Meetings.** Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days' notice to each director.

**3. Quorum.** A majority of the Board of Directors shall constitute a quorum for the transaction of business. The act of the majority of the Directors present at a meeting at which a quorum is present shall be regarded as the act of the Board.

**4. Waiver of Notice.** Attendance of a director at any meeting shall constitute waiver of notice of the meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If a meeting of directors otherwise valid is held without proper call or notice, action taken as such is deemed ratified by a director who did not attend unless promptly, after having knowledge of the action taken and the impropriety in question, he files with the Secretary of the Association a written objection to the holding of the meeting or to any specific action so taken.

5. **Action Without a Meeting.** Any action taken by a majority of directors without a meeting is nevertheless effective if written consent to the action is obtained from all the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

6. **Attendance by Telephone.** Any director may participate in a meeting of the Board, by means of a telephone conference or similar communications device which allows all persons participating in the meeting to hear each other. Such participation by a director in a meeting shall be deemed presence in person by the director at such meeting.

## ARTICLE VI

### **OFFICERS AND THEIR DUTIES**

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 of Directors. Any two offices may be held by the same person, except the offices of the President and Secretary or Vice President and Secretary may not be held by the same person.

2. **Special Officers.** The Board of Directors may from time to time elect such other officers as the affairs of the Association require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may prescribe.

3. **Term.** The executive officers shall hold office until the next annual meeting, unless they resign or are replaced.

4. **Removal or Resignation.** Any officer may be removed from office with or without cause, at any time, by a majority vote of the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of the notice, unless a later time is specified therein. The acceptance of the resignation shall not be required to make it effective.

5. **Vacancy.** A vacancy in any office may be filled by the Board of Directors. An officer appointed to fill a vacancy shall serve for the unexpired term of the officer he replaces.

6. **Duties.** The duties of the officers are as follows:

- a. **President.** The President shall preside at all meetings of the members and Board of Directors; shall have general and active management of the business of the Association; shall see that all orders and resolutions of the Board are carried into effect; shall have general superintendence and direction of all the other officers of the Association and shall see that their duties are performed properly; 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.
- b. **Vice-President.** The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and

shall exercise and discharge such other duties as may be prescribed by the Board.

- c. **Secretary.** The Secretary shall record the notes and keep the minutes of all meetings of the members and of the Board of Directors in one or more books provided for that purpose; shall see that all notices are fully given in accordance with the provisions of these By-Laws or as required by law; shall be custodian of the Association's records and of the seal of the Association and shall see that the seal of the Association is affixed to all documents requiring said seal; shall keep the records of the Association, except those of the Treasurer, and in general, shall perform all duties as from time to time may be assigned to him by the President or by the Board of Directors.
- d. **Treasurer.** The Treasurer shall receive and deposit all monies and other property of the Association in such depositories as may be designated by the Board; shall keep proper books of account; 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 Board of Directors, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association, which records shall be open to inspection by members at reasonable times; shall, if required, give the Association at the Association's cost, a bond 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; shall prepare an annual budget and a statement of income and expenditures to be presented to the members at their regular annual meeting; shall with the approval of the Board, be authorized to delegate all or part of his responsibilities to competent accounting, collection or management personnel, but in such event, the Treasurer shall retain supervisory responsibilities, and, in general, shall perform all duties incident to the office of Treasurer and assigned to him by the President or the Board.

**7. Indemnification.** Any person, who at any time serves or has served as a director, officer, employee or agent of the corporation, shall be indemnified by the corporation to the fullest extent permitted by law against (a) reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with any threatened or pending or completed action, suit or proceeding, whether criminal, administrative or investigative, and whether or not brought by or on behalf of the corporation, seeking to hold him liable by reason of the fact that he is or was acting in such capacity and (b) reasonable payments made by him in satisfaction of any judgment, money decree, fine, penalty, or settlement for which he may become liable in any such action, suit or proceeding.

The Board of Directors of the corporation shall take all such action as may be

necessary and appropriate to authorize the corporation to pay the indemnification required by this By-Law, including, without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him and giving notice to, and obtaining approval by, the members of the corporation.

Any person who at any time after the adoption of this By-Law serves or has served in any of the aforesaid capacities for or on behalf of the corporation shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this By-Law.

## ARTICLE VII

### COMMITTEES

The Board of Directors may appoint a Nominating Committee and such other committees, as they may from time to time deem appropriate.

## ARTICLE VIII

### MAINTENANCE

1. **Association's Maintenance Responsibility.** The Association, as a common expense, shall be responsible for the maintenance, repair and replacement of the common areas and facilities. The Association shall have the right to make alterations or improvements to the common areas and facilities and to assess lot owners for the same, provided these alterations are without prejudice to any lot owner and are approved by the Board of Directors; provided, further, that if any alterations or improvements are exclusively or substantially for the benefit of a small fraction of the lot owners who request the same, then the cost of such alterations or improvements shall be assessed against the lot owners benefitted in such proportion as the Board of Directors determine.

2. **Approval of Payment for Repairs.** The Board of Directors or the manager shall establish a mechanism for approving payment for the expenses of maintaining, repairing and replacing the common areas and facilities.

## ARTICLE IX

### ASSESSMENTS

1. **Annual Assessments.** The Board of Directors of the Association shall establish a proposed annual budget for each fiscal year in advance of the annual meeting. This budget shall project all common expenses for the forthcoming year required for the proper operation, management, and maintenance of the common property in the subdivision, including a reasonable allowance for contingencies and reserves. At least ten days prior to the annual meeting, copies of the proposed budget shall be delivered to each member of the Association, together with the proposed assessments against each lot owner. At the annual meeting, the budget shall be submitted to the membership for ratification by majority vote. As ratified, the budget shall constitute the basis for all regular assessments for common expenses against lot

owners. Should the Board of Directors at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the subdivision, the Board of Directors shall have the authority to levy such additional assessments as may be necessary.

**2. Capital Improvements.** The Board of Directors of the Association, in establishing the annual budget for operation, management and maintenance of the common property, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the common areas and facilities. The amount collected for the capital improvement fund shall be maintained in a separate account by the Association and shall be used only to make capital improvements to common areas and facilities. Any interest earned on monies in the capital improvement fund may, in the discretion of the Board of Directors, be expended for current operation and maintenance.

**3. Apportionment of Assessments.** Assessments shall be apportioned among the lot owners on a per lot basis. The assessment will be the same for all lot owners regardless of whether lots are undeveloped or improved.

**4. Lot Owner's Interest in Assessments.** All assessments collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expenses of operating and managing the common property owned by the Association. As monies for any assessment are paid unto the Association by any owner of a lot, the same may be co-mingled with monies paid to the Association by the other owners of lots. No member of the association shall have the right to assign, hypothecated, pledge or in any manner transfer his membership interest in the monies collected by the Association, except as an appurtenance to his lot. When the owner of a lot ceases to be a member of the Association by reason of transfer of ownership of the lot, the Association shall not be required to account to the owner for any share of the funds or assets of the Association, which may have been paid to the Association by such owner.

**5. Time of Payment.** Assessments shall be payable in annual, monthly or other installments, as determined by the Board of Directors.

**6. Default.** Assessments shall be in default if not paid within thirty (30) days of the due date. Delinquent assessments shall bear interest at the maximum permissible rate not to exceed eighteen percent (18%) until paid. In addition, the association may assess late fees for late payment of assessments not to exceed the greater of \$20.00 per month or ten percent (10%) of the unpaid installment. Any lot owner in default shall be obligated to pay such interest, together with all costs of collecting such assessments, including reasonable attorney's fees.

**7. Remedies for Default.** Payment of assessments by a lot owner shall be mandatory. Therefore, if an assessment against a lot owner is not paid when due, the unpaid assessment shall constitute a lien against the lot which lien shall secure the unpaid assessment, and interest, fees, charges and late charges thereon, any expenses incurred in collecting the assessment, and any advances for taxes, and payments on account of superior mortgages, liens or encumbrances required to be advanced by the Association in order to preserve and protect its lien. This lien shall be

enforceable from the time it is filed in the public records of Brunswick County, North Carolina, in the manner provided by Chapter 47F of the North Carolina General Statutes, for the enforcement of liens. The lien may be foreclosed in the manner provided by Chapter 47F of the North Carolina General Statutes. In addition, and without waiving its right to foreclosure, the Association shall have the right to maintain a suit to recover unpaid assessments or to exercise any other remedies provided at law.

**8. Liability of Purchaser at Mortgage Foreclosure Sale.** When the mortgagee of a first mortgage of record or other purchaser of a lot obtains title to the lot as a result of foreclosure of the first mortgage, such purchaser, his successors and assigns, shall not be liable for the share of common expenses or assessments chargeable to such lot which became due prior to the acquisition of title to the unit by such purchaser. The unpaid share of the common expenses or assessments shall be absorbed and paid by the owners of all the lots, including the purchaser, his successors and assigns, as common expenses.

**9. Liability of Grantee in Voluntary Conveyance.** In any voluntary conveyance of a lot, the purchaser shall be jointly and severally liable with the seller for all unpaid assessments, fees, charges or late charges against the seller up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser therefor.

**10. Notice of Unpaid Assessments to Prospective Purchaser, Tenant or Mortgage.** Whenever any lot is leased, sold or mortgaged by the owner thereof, the Board of Directors or the manager upon written request of the lot owner, shall furnish to the proposed purchaser, tenant or mortgagee, a statement verifying the amount of unpaid assessments, fees, charges or late charges chargeable to the lot. The purchaser, tenant or mortgagee may rely upon such statement in concluding the proposed purchase, lease or mortgage transaction, and the Association shall be bound by such statement.

## **ARTICLE X**

### **FINANCES**

**1. Checks.** All checks and notes of the Association shall be signed by the President, Vice-President, Secretary or Treasurer or by such other persons as the Board of Directors designate.

**2. Depository.** The Association shall deposit its monies in such bank or banks as the Board of Directors designate.

## **ARTICLE XI**

### **RECORDS**

**1. Receipts and Expenditures.** The Board of Directors or the manager shall keep detailed accurate records of the receipts and expenditures affecting the common areas and facilities and any other expenses incurred. Both said book and the vouchers accrediting the entries thereupon shall be available for examination by all lot owners, their duly authorized agents and attorneys, at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good and accepted accounting practices.

**2. Other Records.** The Board of Directors or the manager shall keep correct and complete books of account minutes of the proceedings, and a record of the names and addresses of the members entitled to vote, which latter records must be kept at the Association's principal office. Any member, his agent or attorney may examine these books and records for any proper purpose at any reasonable time.

**3. Inspection of Records.** The Association shall make available to lot owners, lenders, holders, insurers or guarantors of any first mortgage, current copies of the Declarations, By-Laws or other rules concerning the project and the books, records and financial statements of the Association. Available means available for inspection upon request during normal business hours and under reasonable circumstances. Furthermore, upon written notice, any holder of a first mortgage on any lot shall be entitled to a copy of the Association's financial statement for the immediately preceding fiscal year.

## **ARTICLE XII**

### **RULES AND REGULATIONS**

The Board of Directors shall have the right to enact administrative rules and regulations regarding the use of the common areas and facilities and conduct of the members.

## **ARTICLE XIII**

### **AMENDMENT**

These By-Laws may be amended at a duly called meeting of the members, following an affirmative vote on the amendment by a majority of the Board of Directors. The notice of the members' meeting shall contain a full statement of the proposed amendment. Amendments must be approved by an affirmative vote of a majority of the votes of all Association members. All lot owners shall be bound to abide by any amendment upon the same being passed and duly set forth in an amended declaration, duly recorded.

## **ARTICLE XIV**

### **DEVELOPERS RIGHTS**

Nothing herein shall supersede the rights of Pointe West Development to enforce the provisions of the Restrictive Covenants of record in Brunswick County until such time as when the Association is assigned the right to enforce any or all of said restrictions of record.

## **ARTICLE XV**

### **PLANNED COMMUNITY ACT**

These Bylaws are enacted subject to the provisions of Chapter 47F ("Planned Community Act") of the North Carolina General Statutes ("the Act"). Whenever there shall be any inconsistency or disagreement between the provisions of these Bylaws and the Act, not authorized by the Act, the Act shall control.

The foregoing were adopted as the By-Laws of the Pointe West Property Owners' Association, Inc., a non-profit and non-commercial corporation under the laws of the State of North Carolina, at the first meeting of the Board of Directors.

Certified to be correct, this the 1<sup>st</sup> day of February, 2011.

  
Secretary