



# Holden Beach West Property Owners Association

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Bylaws

## BY-LAWS OF HOLDEN BEACH WEST PROPERTY OWNERS ASSOCIATION, INC.

### ARTICLE I GENERAL

1. **Name and Location.** The name of the Association is Holden Beach West Property Owners Association, Inc. The principal office of the Association shall be located at: 1254 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 Holden Beach West Subdivision (herein called "subdivision"), 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 Holden Beach West Subdivision, shown on a plat of the subdivision recorded in Map Cabinet J, at Page 338-340 and Map Cabinet L, at Page 367, may be a member of the Association and membership in the Association shall be limited to lot owners. Membership is voluntary for all lot owners until such time as when the restrictive covenants are amended to require lot owners be members.

### 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 hundred and fifty (150) days from the date on which the ownership of the common property is turned over by Holden Beach Enterprises to the Association. 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. **Membership List.** At least ten (10) days before every election of directors, a complete list of members entitled to vote at the election, showing the lot owned by the member and the residence address of each, shall be prepared by the Secretary. Such list shall be open to examination by any member throughout the ten (10) day period preceding the election, until the election is completed.

6. **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.

7. **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.

8. **Quorum.** The presence at a meeting of members entitled to cast, or of proxies entitled to cast, fifty (50) 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, 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.

**9. 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.

**10. 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.

**11. 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 Election;
- G. Approval of budget;
- H. Elections of directors and officers;
- I. Unfinished business;
- J. New business;
- K. Adjournment.

## **ARTICLE IV BOARD OF DIRECTORS**

**1. Number.** The affairs of the Association shall be managed by a Board of Directors consisting of not less than three (3) nor more than five (5) 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 shall be established by vote of the members of this Association at the annual meeting. The number of directors to be elected at the first annual meeting shall be five (5) directors.

**2. Term.** At the first annual meeting five directors shall be elected, two for terms of three years, two for terms of two years and one for a term of one year. All subsequently elected directors shall serve for a term of three 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 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 shall consist of those named in the Articles of Incorporation of the Association. The first Board of Directors shall serve until the first annual meeting.

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 (after Holden Beach Enterprises assigns the Association the right to enforce 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 owned 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, rent or lease any property in Holden Beach West Subdivision in the name of the Association or its designee or to exercise any easement over any property in the subdivision that may be assigned or conveyed to the Association by the 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 MEETINGS 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 conference telephone 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 from the membership. By majority vote, the directors may allow the officers to be elected by the members at the annual or special meeting. Any two offices may be held by the same person, except the offices of the President and Secretary.

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 shall, 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.

3. **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 approval. As approved, 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, not to exceed a fifteen percent (15%) increase over the previous year's assessment, without approval of the membership. Any increase in the annual assessments of greater than fifteen percent (15%) shall require approval of the membership.

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, which capital improvement and replacement fund (capital improvement fund) shall be subject to the approval of the membership at the annual meeting. 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 Board of Directors, in its discretion, may establish an assessment schedule based upon 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, hypothecate, 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 legal rate until paid. 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 voluntary until such time as when the restrictive covenants are amended to include a mandatory assessment provision. 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 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 Article 8 of Chapter 44 of the North Carolina General Statutes. The lien may be foreclosed in the manner provided by 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. Foreclosure.** The Association shall have the power to bid on the lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. If the Association becomes the owner of a lot by reason of foreclosure, it shall offer said lot for sale. At such time as a sale is consummated, the Association shall deduct from the proceeds of said sale all sums of money due it for assessments and charges; the 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 pay 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 necessary for the repairing the unit in question. All surplus monies remaining after deducting the foregoing items of expenses, costs and other deductions shall be returned to the former owner of the subject lot, or paid to the Clerk of Superior Court in accordance with

the general mortgage foreclosure laws of North Carolina.

**9. Liability of Purchaser at 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.

**10. 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 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.

**11. Notice of Unpaid Assessments to Prospective Purchaser, Tenant, or Mortgagee.** 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 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.

**12. Common Profits.** If, in any year, there is an excess of assessments and other income over common expenses, the excess (common profits) shall, unless otherwise determined by the Board of Directors, be applied to payment of the next year's assessments.

## **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 in chronological order 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 supercede the rights of Holden Beach Enterprises 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.

The foregoing were adopted as the By-Laws of the Holden Beach West Property Owners Association, Inc., a non-profit 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 \_\_\_\_\_ day of \_\_\_\_\_ 1988.

SECRETARY

Send mail to [webmaster@hbwpoa.org](mailto:webmaster@hbwpoa.org) with questions or comments about this web site.