

**FIRST AMENDED AND RESTATED BY-LAWS OF  
NOTCH BROOK III PROPERTY OWNERS ASSOCIATION, INC.**

WHEREAS the nineteen lots comprising the Notch Brook III development are subject to the Notch Brook III Second Amended and Restated Protective Covenants, Conditions, Rights, and Restrictions (hereinafter "Protective Covenants") dated December \_\_\_, 2009 and recorded at Book 768, Page 328 of the Town of Stowe Land Records;

WHEREAS Section 21 of the Protective Covenants state that "By acceptance of a deed to a Lot, the owner of any Lot in the development accepts membership in the Association... organized... for the purpose of controlling and maintaining the development and administering and regulating the governance and affairs of Notch Brook III";

WHEREAS Notch Brook III Property Owners Association, Inc., a Vermont non-profit corporation, is governed the Bylaws of Notch Brook III Property Owners Association, Inc. (hereinafter "Bylaws");

WHEREAS Section XV of the Bylaws provide for amendment thereof upon approval by "two-thirds (2/3) of the members present or by proxy, at any regular or special meeting, provided that a quorum is present";

AND WHEREAS at a duly noticed regular meeting of the Association, with a quorum present in person or by proxy, not less than two-thirds (2/3) of the Members voted to approve the amendments to the Bylaws set forth below.

NOW, THEREFORE, the Notch Brook III Property Owners Association, Inc. does hereby publish and declare that the Bylaws of Notch Brook III Property Owners Association, Inc. shall be amended and restated as follows:

I. Name and Office.

A. Name.

The name of this corporation is Notch Brook III Property Owners Association, Inc. (hereinafter the Association).

B. Office.

The principal office of the corporation shall be at Notch Brook, Stowe, Vermont or at such other place as the Board of Directors may from time to time designate.

II. Definitions.

A. Those capitalized terms set forth below shall have the meaning respectively assigned to them unless the context clearly indicates a different meaning therefore:

1. "Association" shall mean Notch Brook III Property Owners Association, Inc., a nonprofit corporation.

2. "Common Land" shall mean those areas of land and roadways not set out as lots as shown upon a Map Plan entitled "Notch Brook III" and recorded in Map Book 3, pages 51-52 in the Town Clerk's office in the Town of Stowe, Vermont.

3. "Lot" shall mean one of the nineteen (19) lots in Notch Brook III as shown upon a Map Plan designated "Notch Brook III" and recorded, in Map Book 3, pages 51-52 in the Town Clerk's Office in the Town of Stowe, Vermont.

4. "Member" shall mean all those owners of any Lot in Notch Brook III.

5. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any of the nineteen Lots; however, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any person or entity who holds such an interest in one of the nineteen Lots merely as a security for the performance of an obligation, including a mortgage, unless and until such person has acquired fee simple title pursuant to foreclosure or any proceeding in lieu of foreclosure.

III. Membership.

A. Every Owner of a Lot or Lots subject by covenants of record to assessment by the Association shall be a Member of the Association. If a person shall own more than one Lot, he shall be entitled to one membership for each Lot owned.

B. The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessments is imposed against each Owner of the Lot against which such assessments are made as follows:

1. Personal Obligation of Assessments. Each Member covenants and agrees to pay to the Association: (1) annual assessments or charges; and (2) special assessments or charges. Such assessments shall be fixed, established, and collected from time to time as hereinafter provided and each such assessment, together with interest and penalties thereon and any cost of collection thereof, as hereinafter provided, shall be the obligation of the record Owner of the Lot against which the assessment was levied for the time period covered by the assessment.

2. Purpose of Assessments. The assessments and fees levied by the Association shall be

used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Members, and their guests and invitees, in particular, for the improvement and maintenance of the Common Land, services and facilities devoted to and related to the use and enjoyment of the Common Land, including but not limited to, the payment of taxes and insurance thereon, repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof. Nothing herein shall limit the charging of special fees for the use of facilities for limited purposes, over and above the assessments charged hereunder.

No assessments or fees hereunder shall be issued or used for capital improvements or expenditures unless approved by a vote of two-thirds (2/3) of the Members present in person or by proxy at a Meeting of Members held for such purpose.

3. Annual Budget and Assessments. The Board of Directors, after consideration of current costs and future needs, shall propose an annual budget and shall levy assessments equally against the Lots. The total assessments shall equal the proposed budget. Not less than thirty (30) days prior to the Annual Meeting, the Directors shall provide each Member a copy of the proposed budget, discussion and ratification of which shall be included on the agenda of the Annual Meeting.

No Member shall be excused from payment of assessments by abandonment of his Lot, nor shall any Member be excused from payment of assessments or entitled to any setoff as result of his disagreement with any purpose to which the assessment is to be put, including legal action taken against a Member for enforcement of these Bylaws, the Protective Covenants, or any other purpose.

4. Special Assessments. In addition to the annual assessments, the Board of Directors may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described improvement upon the Common Land including the necessary fixtures and personal property relating thereto, provided that any such assessments shall be approved by the Members at a meeting called for such purpose.

5. Quorum for Ratification of Proposed Budgets and Assessments. The quorum required for any action by the Members to ratify a budget or assessment proposed by the Board of Directors shall be as follows:

At any meeting called pursuant to Article III, Section B.3. or B. hereof, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the notice requirement set forth in Article III, Section B.3 or B.4. and the presence of Members, in person or by proxy, entitled to cast thirty percent (30%) of all the votes of the membership shall constitute a quorum, provided that no such subsequent meeting shall be held less than ten (10) nor more than sixty (60) days following the preceding meeting.

6. Date of Commencement of Annual Maintenance Assessments: Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a

month) fixed by the Board of Directors of the Association, payable monthly, quarterly, or annually, in advance, the first payment of which shall not be due less than thirty (30) days after billing date.

7. Certification of Assessment. The Association shall, upon demand at any time, furnish to any Owner or prospective Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

8. Effect of Nonpayment of Assessment; Obligation of Owners; Remedies of the Association. If an assessment is not paid on the date due, then such assessment together with interest thereon and any cost of collection, as hereinafter provided, shall be the obligation of the Owner. The obligation of the Owner to pay such assessment shall run with the land and be binding on the Owner and his heirs, successors, and assigns.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, compounded, and shall be subject to a 20% penalty if not paid within sixty (60) days after the due date. The Association may bring an action against the Owner obligated to pay the assessment and there shall be added to the amount of such assessment the legal fees and costs incurred in bringing and pursuing such action.

9. Exempt Property. The following property subject to these Bylaws shall be exempted from the obligation to pay assessments:

- a. All properties to the extent of any easement or any other interest therein dedicated and accepted by the local public authority and devoted to public use;
- b. All Common Land as defined in Article II hereof;
- c. All public utility easements.

#### IV. Meetings of Members.

##### A. Place of Meetings.

Meetings of the membership shall be held at the principal office or place of business of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

##### B. Annual Meetings.

The annual meetings of the Association shall be held on the last Saturday of December,

each year or on such other reasonably convenient date chosen by the Board of Directors. At such meeting, there shall be elected a Board of Directors in accordance with the requirements of Article VIII of these By-Laws. The Members may also transact such other business of the Association as may properly come before them.

C. Special Meetings.

The President shall call a special meeting of the Association as directed by the Board of Directors or upon a petition signed by not less than twenty-five percent (25%) of the Members, having been presented to the Secretary. The notice of any such special meeting shall state the time, place, and agenda of such meeting, which shall be reasonably adhered to.

D. Notice of Meetings.

The Secretary shall send notice of each annual or special meeting, stating the agenda thereof as well as the time and place where it is to be held, to each Member at the postal or email address such Member has designated in writing to the Secretary. If no such address has been given by the Member to the Secretary, the notice shall be delivered to the Owner's address in Notch Brook III. Notice of any meeting shall be provided at least ten (10) but no more than thirty (30) days prior to such meeting. The giving of the notice in the manner provided in this section shall be considered service of notice. No business shall be transacted at any meeting of the Members except as stated in the notice.

E. Quorum.

The presence in person or by proxy of twenty-five percent (25%) of the Members shall be required for, and shall constitute a quorum for, the transaction of business at all meetings of Members, except for ratification of the proposed Budget and Assessments pursuant to Section III(5).

F. Adjourned Meetings.

If any meeting of Members cannot be held because a quorum is not present, the Members who are present in person may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called, and those who attend such adjourned meeting, shall nevertheless constitute a quorum for the purpose or purposes of said meeting, provided at least twenty-five percent (25%) of the membership is present in person or by proxy.

G. Voting.

At every meeting of the Members each Member present in person or by proxy, shall have the right to cast one vote on each question for each Lot that Member owns. The vote of the majority of those present, in person or by proxy, shall be required to approve any question put to

the Members, unless the question is one upon which, by express provision of statute, the Articles of Association, or these By-Laws, a different percentage vote is required for approval, in which case such express provision shall govern and control.

The Association may conduct a vote without a meeting, provided it: (i) notifies the Members that the vote will be taken by ballot; (ii) delivers a paper or electronic ballot to every Member entitled to vote on the matter which sets forth each proposed action and provides an opportunity to vote for or against the action; (iii) states on the ballot the number of responses necessary to meet a quorum, the percent of votes needed for approval, a deadline for submission of ballots to the Association, which shall not be less than three (3) days following delivery of the ballot to the Members; and (iv) the time, date, and manner by which Members can provide information to one another concerning the subject matter of the vote.

H. Voting in the Event of Joint Ownership.

In the event any Lot is jointly owned, such joint owners shall only be entitled to cast one vote on behalf of their Lot; no partial or factional voting is allowed.

I. Participation at Meetings.

1. At each meeting of the Association, the Unit Owners shall be given a reasonable opportunity to comment regarding any matter affecting the Condominium or the Association.

2. Meetings may be conducted by telephonic, video, or other conferencing process if (i) the meeting notice states the conferencing method and provides information explaining how Unit Owners may participate; and (ii) the method provides all Unit Owners the opportunity to hear or perceive the discussion and to participate as provided for in this Section.

V. Property Rights and Rights of Enjoyment of Common Land.

A. Each Member, and his tenants and guests, shall be entitled to the use and enjoyment of the Common Land.

B. Any Member may delegate his rights of enjoyment in the Common Land to the members of his family who reside in Notch Brook III, or to any tenants, guests, or invitees. Such Member shall notify the Secretary in writing of the name of any such person and of the relationship of the Member to such person. The rights and privileges of such person are subject to suspension to the same extent as those of the Member.

VI. Purposes and Powers.

A. The Association has been organized for the purpose of promoting the health, safety, and

welfare of the residents of Notch Brook III, and for this purpose without the assumption of obligations under this Article to:

1. Own, acquire, build, operate, and maintain recreation parks, playgrounds, swimming pools, commons, streets, footways, and buildings, structures and personal properties incidental thereto;

2. Provide maintenance for the land and improvements within the Common Land;

3. Operate and maintain the water system;

4. Maintain unkempt lands or trees;

5. Supplement municipal services;

6. Fix assessments (or charges) to be levied against the Lots;

7. Enforce any and all covenants, restrictions, and agreements applicable to the Lots;

8. Pay taxes, if any, on the Common Land;

9. Insofar as permitted by law, to do any other thing that, in the opinion of the Board of Directors, will promote the common benefit and enjoyment of the Owners.

B. Subject to the provisions of the recorded covenants and restrictions applicable to the Lots, and to the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit associations organized for similar purposes, provided that any such merger or consolidation shall have the assent of not less than two-thirds (2/3) of the votes of the total membership in person or by proxy at a meeting duly called and noticed for this purpose.

C. The Association shall have the power to mortgage its Common Land only to the extent authorized under the recorded covenants and restrictions applicable to said properties.

The total debts of the Association including the principal amount of such mortgages, outstanding at any time, shall not exceed an amount equal to two (2) times the total annual budget of the Association, provided that authority to exceed said maximum in any particular case may be given by an affirmative vote of not less than two-thirds (2/3) of the votes of the total membership in person or by proxy at a meeting duly called and noticed for this purpose.

## VII. Board of Directors.

A. The affairs of the Association shall be managed by a Board of three (3) directors with

staggered terms so that the term of one Director expires each year and at each annual meeting one director is elected for a term of three (3) years. All Directors shall be Lot Owners in Notch Brook III.

B. Vacancies in the Board of Directors shall be filled by the majority of remaining Directors who shall appoint such a replacement Director to hold office until a successor is elected by the Members at the next annual meeting of the Members or at any special meeting duly called and noticed for that purpose.

VIII. Election of Directors.

A. Election to the Board of Directors shall be by vote of the Members at the Annual Meeting. The nominee or nominees, as the case may be in given year, receiving the largest number of votes shall be elected.

B. Nominations for election to the Board of Directors may be made by any Member at or prior to the Annual Meeting. There shall be no limit to the number of nominees put forth by the Members.

IX. Powers and Duties of the Board of Directors.

A. The Board of Directors shall have power:

1. To appoint and remove all officers, agents, and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as the Board may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Member, Officer, or Director of the Association in any capacity whatsoever, provided such employment is approved by the Members ;

2. To establish, levy and assess, and collect the assessments or charges as previously stated;

3. To adopt and publish rules and regulations governing the use of the Common Land and the personal conduct of all persons;

4. To exercise for the Association all powers, duties and authority vested in or delegated to this Association, except those reserved to the Members;

5. In the event that any Director of this Association shall be absent from three (3) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting at which said third absence occurs, declare the office of said absent Director to be vacant.

B. It shall be the duty of the Board of Directors:

1. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such is requested in writing by one-fourth (1/4) of the Members, and to make the records reasonably available for inspection by all Members of the Association;

2. To supervise all officers, agents and employees of the Association and to see that their duties are properly performed;

3. To fix the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period;

4. To prepare and maintain a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member;

5. To send notice of each assessment to every Owner responsible therefore as otherwise required by these Bylaws;

6. To issue, or to cause an appropriate officer to issue, upon demand by any person a certificate setting forth whether any assessment has been paid, which certificate shall be conclusive evidence of the payment of any assessment not therein stated to be outstanding;

7. Prepare and provide a Resale Certificate as required by Vermont law in advance of any transfer of any Lot having membership in the Association; and

8. To maintain the following documents relative to the operations of the Association: (i) detailed records of receipts and expenditures and other appropriate accounting records; (ii) minutes of all meetings of the Owners and the Board of Directors; (iii) records of all actions taken by the Owners and the Board of Directors without a meeting, if any; (iv) the names and addresses of all current Owners; (v) the names and addresses of all current Directors and Officers; (vi) copies of the original Protective Covenants and Bylaws for the Association, and all amendments thereto; (vii) all financial statements and tax returns for the Association for the past three years; (viii) the most recent Annual Report delivered to the Vermont Secretary of State; (ix) all document necessary to enable the Association to issue a Resale Certificate for the sale of Units; (x) copies of current contracts to which the Association is a party; and (xi) copies of ballots, proxies, and all other records relating to voting on matters of the Association.

C. Vacancies.

Vacancies on the Board of Directors caused by any reason other than the removal of a Director by a vote of the Members shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall

be a Director until a successor is elected by the Members at the next annual or special meeting called and noticed for that purpose.

D. Resignation.

Any Director may resign at any time by giving written notice of such resignation to the Board of Directors. It is required that any Director shall resign upon listing his Lot for sale; in the event such Director fails to so resign his term shall be deemed terminated by operation of these Bylaws without any further action required and the remaining Directors shall promptly fill such vacancy in the manner provided for herein.

E. Removal of Directors.

Any one or more of the Directors may be removed for cause at any time by a vote of the majority of the entire membership of the Association at any regular or special meeting duly called, and a successor shall then and there be elected to fill the vacancy thereby created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting.

F. Compensation.

No compensation may be paid to Directors for their duties as Directors. Remuneration may be paid to a Director for services performed by him for the Association in any other capacity, provided such payment has been approved by a vote of the Members.

G. Annual Meeting.

The Annual Meeting of the Board of Directors shall be held at the conclusion of the Annual Meeting of the Members, or at such other time determined by the Board of Directors.

H. Regular Meetings.

The Board of Directors may, but shall not be required, to meet during the fiscal year other than at the annual meeting, such times and places therefore shall be determined by the Board of Directors.

I. Special Meetings.

Special meetings of the Board of Directors may be called by the President on his own initiative and shall be called by the President or Secretary upon the written request of at least two (2) Directors.

J. Notice.

Notice of the time, place, and agenda of each meeting of the Board of Directors shall be given to each Director and each Member at least ten (10) days and not more than 40 (forty) days prior to the meeting, at the postal or email address such Owner has designated in writing to the Secretary. If no such address has been given by the Owner to the Secretary, the notice shall be delivered to the Owner's address in Notch Brook III. The giving of the notice in the manner provided in this section shall be considered service of notice. No business shall be transacted at any meeting of the Board of Directors except as stated in the notice.

K. Quorum.

At all meetings of the Board of Directors, two (2) of the members thereof shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present such meeting shall be postponed, renoticed, and rewarned.

L. Participation at Meetings of the Board of Directors.

1. Meetings of the Board of Directors shall be open to Owners except during executive session, which may be entered into only during a properly noticed regular or special meeting, and then only to (i) consult with the Association's attorney concerning legal matters; (ii) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings; (iii) discuss labor or personnel matters; (iv) discuss or negotiate contracts, leases, or other commercial transactions the public disclosure of which would place the Association at a competitive disadvantage; or (v) to discuss matters that would violate the privacy of any person, as determined by the Board of Directors.

2. At each meeting of the Board of Directors, the Owners shall be given a reasonable opportunity to comment regarding any matter affecting the Association. All materials distributed to the Board of Directors prior to or at a meeting shall be made reasonably available to Owners at the same time, with the exception of unapproved minutes or materials to be considered in executive session.

3. Meetings may be conducted by telephonic, video, or other conferencing process if (i) the meeting notice states the conferencing method and provides information explaining how Owners may participate; and (ii) the method provides all Owners the opportunity to hear or perceive the discussion and to participate as provided for in this Section.

M. Liability of the Board of Directors.

The members of the Board of Directors shall not be liable to Members for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith.

X. Officers.

A. Designation.

The officers of the Association shall be the President, Vice President, Secretary-Treasurer, and such other officers with such powers and duties not inconsistent with these By-Laws as may be appointed and determined by the Board of Directors.

B. Election of Officers.

The officers of the Association shall be elected annually by the Board of Directors at the Annual Meeting of the Board of Directors and shall hold office at the pleasure of the Board.

C. Removal of Officers.

Upon the affirmative vote of a majority of members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular or special meeting of the Board of Directors.

D. President.

The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all the general powers and duties which are usually vested in the office of President of an association, including but not limited to the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

E. Vice President.

The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall, from time to time, be assigned to him by the Board of Directors.

F. Secretary-Treasurer.

The Secretary-Treasurer shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Association; he shall have the custody of the seal of the Association; he shall have charge of the membership books and such other books and papers as the Board of Directors may direct; he shall give notices required by the Articles of

Association, By-Laws or resolution of the Association; he shall have the responsibility for association funds and securities and shall be responsible for keeping full and accurate records of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and credit of the Association in such depositories as may from time to time be designated by the Board of Directors; and he shall in general perform all of the duties incident to the office of Secretary-Treasurer.

XI. Fiscal Management.

A. Fiscal Year.

The fiscal year of the Association shall begin on the first day of January every year. The Board of Directors shall have the right to establish a different fiscal period upon their determination that such change would be to the best interests of the Association.

B. Financial Reports.

The Association will furnish each Member with an annual summary of the income and disbursements of the Association for each fiscal year.

XII. Books and Papers.

The books, records, and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any Member.

XIII. Execution of Association Documents.

All agreements, contracts, deeds, leases, checks and other documents of the Association shall be executed by the President of the Association or by such other person or persons as may be designated by the Board of Directors, including the Manager. Vouchers for the payment of Association funds shall be approved by the Secretary-Treasurer before payment.

XIV. Amendments.

These By-Laws may be amended by an affirmative vote of two-thirds (2/3) of the total membership, in person or by proxy, at any regular or special meeting duly called and noticed for this purpose. Amendments may be proposed by the Board of Directors or by a petition signed by at least twenty-five percent (25%) of the Members. A statement of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment shall be voted upon.

These First Amended and Restated Bylaws of Notch Brook III Property Owners Association, Inc. shall take effect upon recording in the Stowe Land Records.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this \_\_\_\_ day of December, 2011.

IN THE PRESENCE OF:

NOTCH BROOK III PROPERTY OWNERS ASSOCIATION, INC.

Daniel K. Mads  
Witness

BY: [Signature]  
President and Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF LAMOILLE

At STOWE, Vermont this 30<sup>th</sup> day of December, 2011, personally appeared BRIAN MULLIN, duly authorized agent of the Notch Brook III Property Owners Association, Inc., and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed, and the free act and deed of the Notch Brook III Property Owners Association, Inc.

Before me  
Notary Public

My Commission Expires: 2/10/12

Stowe, Vt. Record Received  
2-1-2012 at 2:35 PM  
Alison A. Kaiser, Town Clerk