

# ROBBE FARM ROAD COMMUNITY ASSOCIATION

## BY-LAWS

### ARTICLE I

#### General

**1.1 Robbe Farm Road Community.** The property in Peterborough, Hillsborough County, New Hampshire, described in the Declaration of Covenants, Restrictions, Easements, Charges and Liens for Robbe Farm Road Community ("the Declaration") dated \_\_\_\_\_, 2002, and recorded in the Hillsborough County Registry of Deeds, by Robbe Farm Road LLC ("the Declarant").

**1.2 Definitions and Conflicts.** The words and phrases defined in the Declaration shall have the same meaning when used herein. In the event any of the provisions of these By-Laws conflict with the Declaration, the provisions of the Declaration shall control.

**1.3 The Association.** The Robbe Farm Road Community Association ("the Association") is a voluntary corporation formed by certain Articles of Agreement ("Articles") filed under Chapter 292 of the New Hampshire Revised Statutes Annotated for the purpose of holding, maintaining, and/or improving the Common Property and governing its use, and in general administering and enforcing the Declaration, these By-Laws, and the rules and regulations promulgated pursuant thereto.

**1.4 Members.** An owner of record of a Lot ("Lot Owner") shall automatically become a member of the Association, and the membership of an Owner shall terminate when he, she, or it ceases to be an Owner, with such membership automatically transferred to such member's successor in interest. All present and future Owners, mortgagees, lessees and occupants of Lots, their employees, and any other persons who may use the Common Properties in any manner, are subject to these By-Laws, the Declaration, the Articles, and the rules and regulations referred to in Section 5.9. The acceptance of a deed, and/or the conveyance, letting, or occupancy of a Lot, shall constitute an agreement that these By-Laws, the Declaration, the Articles, and the rules and regulations, as they may be amended from time to time, are accepted.

**1.5 Owners.** An Owner shall be any person who holds fee simple title to a Lot, without regard for whether said lot has been in any way improved or constructed upon.

### ARTICLE II

#### Board of Directors

**2.1. Number and Term.** Except as provided in Section 2.4, the Board of Directors (the "Board") shall be composed of three persons elected by the Lot Owners. Except as provided in Section 2.4, a Director shall be an individual who, alone or with other persons, is an Owner of record of a Lot or Lots, or an officer of or partner in an entity which is such an Owner, and shall serve for a term of one year and until his or her

successor is elected or appointed.

**2.2 Powers and Duties.** The Board shall act for and on behalf of the Association in all matters, unless otherwise required by the Declaration, Articles, or these By-Laws, to be decided by the Lot Owners. The Board shall have the powers and duties necessary for the administration of the affairs of the Association, and may do all things related thereto except those specifically restricted by law or by the Declaration, Articles, or by these By-Laws. Such powers and duties of the Board shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep, repair, and maintenance of the Common Property;
- (b) Exercising a right of entry upon any Lot to make emergency repairs and upon reasonable notice to do other work reasonably necessary for the proper maintenance or operation of the Community pursuant to Article IX of the Declaration;
- (c) Collection of assessments from the Owners;
- (d) Employment and dismissal of personnel and firms appropriate to the operation and affairs of the Community;
- (e) Obtaining insurance and bonds for the Association and Common Property as provided in Section 5.6;
- (f) Making replacements, additions, improvements, or alterations to the Common Property as provided herein;
- (g) Granting permits, licenses and easements over the Common Property for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Community and acquiring and relocating easements as necessary for such purposes;
- (h) Determining the Common Expenses appropriate to the affairs of the Community including, without limitation, the equitable apportionment of expenses incurred with respect to the Common Property and other property, and allocating items of income and expense;
- (i) Adoption, amendment, and administration (including waiver) of reasonable rules and regulations covering the operation and use of the Common Property, and levying or abating fines against Owners for violation thereof, which fines shall be additional Assessments constituting a lien on the Lot as provided in Section 5.5. No fine of more than \$50.00 may be levied for any one violation, but each day a violation continues after notice shall constitute a separate violation;
- (j) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;
- (k) Purchasing, owning, conveying, mortgaging, encumbering, leasing, and otherwise dealing with Lots;

(l) Incurring indebtedness to meet operating expenses;

(m) Bringing or compromising claims or conducting litigation as to any course of action involving the Association or Lots owned by the Association, or involving the Common Property, or arising out of the enforcement of the By-Laws, rules and regulations or restrictions in the Declaration; and

(n) Altering the layout, location, nature, and use of any Common Property, making installations therein, and moving and removing the same.

**2.3 Managing Agent.** The Board may employ for the Association a Managing Agent at a compensation rate established by the Board, to perform such duties and services as the Board shall authorize, including but not limited to those duties described in subparagraphs (a) through (f) of Section 2.2. The Board may delegate to the Managing Agent those powers granted to it by these By-Laws other than the powers set forth in subparagraph (g) through (n) of Section 2.2.

Any management agreement of the Association may not exceed three (3) years, but may be renewable by agreement of the parties for successive periods of up to three years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

**2.4 Original Board of Directors.** Notwithstanding Section 2.1, the first Board of Directors shall be designated by the Declarant and shall consist of three Directors. Until such time as the Declarant transfers control to the Lot Owners in accordance with the Declaration, Article V, the Declarant may from time to time change the designation of the persons who shall serve on the Board of Directors. Within a reasonable time after an event triggering transfer of control pursuant to Article V has occurred, the Board shall resign and the signed and acknowledged resignation of the Directors shall be recorded in the Hillsborough County Registry of Deeds. Thereupon, Directors elected in accordance with Section 2.1 shall take office and serve with one person designated by the Declarant. Within 30 days after the Declarant shall have conveyed all Lots, the Director designated by the Declarant shall resign.

Prior to transfer of control pursuant to this Section, any contract or lease entered into by the Declarant or the Board of Directors on behalf of the Association shall provide for a right of termination without cause or penalty upon no more than 90 days notice to the other party to such contract or lease.

**2.5 Removal.** At any regular or special meeting of the Association, a Director (other than Directors appointed by the Declarant pursuant to Section 2.4) may be removed for cause by an affirmative vote of a majority of Lot Owners, and a successor or successors shall thereafter be elected by the Lot Owners. The term of any Director, other than a Director designated by the Declarant under Section 2.4, shall automatically come to an end if, during his or her term of office, he or she shall cease to be an owner of a Lot as provided in Section 2.1.

**2.6 Vacancies.** Vacancies in the Board caused by reason other than removal of a member by vote of the Lot Owners shall be filled by vote of a majority of the remaining Directors at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall become a

member of the Board for the remainder of the term being filled and until a successor is elected.

**2.7 Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the members of the Board, but at least two such meetings of the Board shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each member of the Board by the Secretary by mail, telegraph, facsimile, or telephone, at least three business days prior to the day named for such meeting. Special meetings of the Board may be called by the President on twenty-four (24) hours notice to each member of the Board, given by mail, telegraph, facsimile or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner, and on like notice, on the written request of any two members of the Board. Any member of the Board may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board at any meeting of the Board shall constitute a waiver of notice by him or her of the time and place thereof. Members of the Board may participate in a meeting of the Board by means of a conference telephone or similar communications equipment which enables all persons participating in the meeting to hear each other at the same time, and participation by such means shall constitute presence in person at such meeting. If all the members of the Board are present at any meeting of the Board, no notice shall be required and any business may be transacted.

**2.8 Quorum and Voting.** At all meetings of the Board, a majority of the members thereof shall constitute a quorum for the transaction of business. Each Director shall have one vote. A majority of the votes cast by members of the Board present and voting at a meeting at which a quorum is present shall constitute a decision of the Board. Any action which might be taken at a meeting of the Board may be taken without a meeting if a written consent to the action is signed by all the Directors. Such a consent shall be treated for all purposes as a unanimous vote of the Board. If at any meeting there is less than a quorum present a majority of Directors present may adjourn the meeting from time to time; and at any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be then transacted without further notice.

**2.9 Compensation.** No member of the Board of Directors shall receive any compensation from the Association for acting as such.

**2.10 Liability of Board of Directors.** The members of the Board of Directors shall not be liable to the Lot Owners for any mistake in judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, and the Lot Owners shall indemnify and hold harmless each of the members of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association, unless any such contracts shall have been made in bad faith or contrary to the provisions of these By-Laws. It shall be permissible for the original Board of Directors, some members of which are stockholders or partners of or employed by the Declarant, to contract with the Declarant and affiliated corporations without liability for self-dealing. The liability of the Lot Owners arising out of any act or neglect of the Board, or of any Director, or out of the aforesaid indemnity in favor of the members of the Board of Directors, shall be a common expense. Every agreement made by the Board of Directors or by a Managing Agent, or by a Director on behalf of the

Association, shall provide that the party so contracting is acting only as agent for the Lot Owners and shall have no personal liability thereunder.

### ARTICLE III

#### Lot Owners

**3.1 Annual Meetings.** Annual meetings shall be held on the second Tuesday in May of each year. At such meetings the Lot Owners shall transact such business of the Association as may properly come before them.

**3.2 Place of Meetings.** Meetings of the Lot Owners shall be held at the principal office of the Association or at such other suitable place convenient to the Lot Owners as may be designated by the Board of Directors.

**3.3 Special Meetings.** It shall be the duty of the President to call a special meeting of the Lot Owners when so directed by the Board of Directors, or upon presentation to the Secretary of a petition signed by Owners of at least one-third of the Lots.

**3.4 Notice of Meetings.** It shall be the duty of the Secretary to give notice by mail, hand-delivery, telegraph, facsimile or telephone of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Lot Owner of record at least ten but not more than thirty business days prior to such meeting. The mailing of a notice in the manner provided in these By-Laws shall be considered notice served.

**3.5 Adjournment of Meetings.** If any meeting of Lot Owners cannot be held because a quorum (as defined in Section 3.10) has not attended, a majority of the Lot Owners who are present at such meeting, either in person or by proxy, shall adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called; and at any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may then be transacted without further notice.

**3.6 Consent in Lieu of Meeting.** Any action to be taken by the Lot Owners may be taken without a meeting if all Lot Owners entitled to vote on the matter consent to the action by a writing filed with the records of meeting of Lot Owners. Such consent shall be treated for all purposes as a vote at a meeting.

**3.7 Title to Lots.** Title to Lots may be taken in the name of an individual, or in the names of two or more persons as tenants in common or as joint tenants, or in the name of a corporation or partnership, or in the name of a fiduciary.

**3.8 Voting.** Each member who has paid all Assessments due on his or her Lot by ten (10) days prior to a meeting of the Lot Owners, and who is otherwise qualified under the Declaration and these By-Laws, shall be entitled to vote on each matter submitted to a vote at that meeting of members. When any Lot is owned by more than one person or entity in joint tenancy, tenancy in common, or any other manner of joint or common ownership or interest, such persons or entities collectively shall be entitled to cast only one (1) vote, and if such persons or entities cannot jointly agree as to how such vote be cast, no vote shall be allowed with respect to such Lot. Unless notified in writing to the contrary, the Association shall be allowed to assume that the vote of any

one owner is authorized by the other owner(s). An Owner may designate some other person to act as proxy on his or her behalf. The designation of any such proxy shall be made in writing to the Secretary, and shall be revocable at any time prior to the vote by written notice to the Secretary by the Owner or Owners so designating. In the case of Lots owned by more than one person or entity, the vote of such Lot may be cast, or the proxy therefor executed by any single owner (or duly authorized fiduciary of an Owner), and in such case the Association shall be entitled to assume that such vote or proxy represents the unanimous vote of the owners of such Lot. Except as specifically provided in Section 2.4, the Declarant shall be deemed the Lot Owner of any Lot or Lots then unsold and may vote accordingly. Any Lot or Lots owned by the Association or its designee shall not be entitled to a vote.

**3.9 Majority of Lot Owners.** The vote of a majority of Lot Owners at a meeting at which a quorum shall be present shall be binding upon all Lot Owners for all purposes except where in the Declaration or these By-Laws, or by law, a higher percentage vote is required.

**3.10 Quorum.** Except as otherwise provided in these By-Laws, the presence in person or by proxy of Owners of a majority of Lots shall constitute a quorum at all meetings of the Lot Owners.

## ARTICLE IV

### Officers

**4.1 Designation.** The principal officers of the Association shall be the President, the Secretary, and the Treasurer, all of whom shall be elected by the Board of Directors from among its membership. The Board of Directors may appoint an assistant treasurer, and/or an assistant secretary, and these other officers need not be members of the Board of Directors.

**4.2 Election of Officers.** The officers of the Association shall be elected annually by the Board of Directors and shall hold office at the pleasure of the Board of Directors and until their successors are elected.

**4.3 Removal of Officers.** Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board, or at any special meeting called for such purpose.

**4.4 President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Lot Owners and of the Board of Directors. He shall have all of the general powers and duties which are incident to the office of President of a stock corporation organized under the New Hampshire Business Corporation Act, including, but not limited to, the power to appoint committees from among the Lot Owners from time to time, as he may in his discretion decide are appropriate, to assist in the conduct of the affairs of the Association.

**4.5 Secretary.** The Secretary shall keep the minutes of all meetings of the Lot Owners and of the Board of Directors; shall have charge of such books and papers as the Board of Directors may direct; and shall, in general, perform all the duties incident to the office of Secretary of a stock corporation organized under the New Hampshire

Business Corporation Act.

**4.6 Treasurer.** The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. He shall be responsible for the deposit of all moneys and other valuable effects in the name of the Association, or the Managing Agent, in such depositories as may from time to time be designated by the Board of Directors, and he shall, in-general, perform all the duties incident to the office of Treasurer of a stock corporation organized under the New Hampshire Business Corporation Act. No payment vouchers shall be paid unless approved by the Treasurer. The Treasurer shall take the place of the President and perform his duties whenever he is absent or unable to act.

**4.7 Agreements, Contracts, Deeds, Checks, etc.** All agreements contracts, deeds, leases, or other instruments of the Association, and all checks for amounts in excess of \$1,000, shall be executed by any two officers of the Association, or by any one officer and such other person or persons as may be designed by the Board of Directors.

**4.8 Compensation of Officers.** No officer shall receive any compensation from the Association for acting as such.

**4.9 Certification.** It shall be the duty of the Board of Directors, or any officer or Director, as the case may be, when so requested by any Lot Owner, or any mortgagee of a Lot, to certify to matters relating to the Association. Any instrument signed by members of the Board, as they appear of record, representing a majority of the votes on the Board, and duly attested as the act of the Association, may be relied on as conclusively establishing that such instrument was the free act of the Association, and shall bind the Association. No purchaser, mortgagee, lender or other person dealing with the Board, as they appear of record, shall be bound to ascertain or inquire further as to the persons who are then members of the Board nor be affected by any notice, implied or actual, relative thereto, other than a recorded certificate thereof, and such recorded certificate shall be conclusive evidence of the members of the Board and of any changes therein.

**4.10 Liability of Officers.** The provisions of Section 2.10, with regard to liability of Directors, shall apply equally to officers of the Association.

## ARTICLE V

### Operation of the Association

**5.1 Determination of Common Expenses and Fixing of Common Charges.** The fiscal year of the Association shall be a calendar year. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association, determine the amount of the Common Expenses payable by the Owners to meet the expenses of the Association and, by majority vote, assess such Common Expenses among the Owners in equal shares. The Common Expenses shall include such amounts as the Board of Directors may deem proper for the operation and maintenance of the Common Properties including, without limitation, an amount for operating expenses

of the Association, and for a reserve fund for replacement or maintenance of Common Property, to pay any taxes or special assessments assessed against the Common Properties, to pay insurance premiums and to cover deductible amounts in any insurance policy, and to make up any deficit in the Common Expenses for any prior year. If during the course of any year, it appears to the Board that the Common Expenses previously assessed are insufficient, then the Board shall prepare a supplemental budget, and the expenses thereof shall likewise be assessed among the Owners. In the event a surplus exists, it may be refunded pro rata to the Owners or applied against future Common Expenses at the discretion of the Board. The Board of Directors shall advise all Owners promptly of the amount of the Common Expenses assessed to and payable by each of them, and shall furnish copies of each budget on which such Common Expenses are based to All Owners and to any of their mortgagees who so request in writing.

**5.2 Allocation of Common Expenses.** No assessments of Common Expenses shall be due until the first Lot is conveyed by the Declarant. Thereafter, Common Expenses shall be allocated as follows:

(a) For the initial year of operation, the Board of Directors shall determine the budget for the portion of the fiscal year remaining after the conveyance of the first Lot, and divide that amount by the number of months remaining in the fiscal year to determine the monthly Common Expenses;

(b) Thereafter, the total budgeted Common Expenses for each subsequent fiscal year shall be divided by twelve to determine the monthly Common Expenses;

(c) The monthly Common Expenses shall be divided by the number of Lots to determine the monthly assessments;

**5.3 Operating Capital Fund and Reserve Fund Contributions to the Association.** At the time of closing of the initial sale of each Lot to an Owner, the purchaser thereof shall pay an amount to the Association equal to two months' assessments of Common Expenses for that Association as determined by its Board of Directors for the operating fund of the Association; except that if this sum has earlier been paid by the Declarant then the purchaser shall instead reimburse Declarant therefor. In addition, the purchaser shall pay at closing the sum of \$50.00 for placement in the reserve fund ("the Reserve Fund Contribution"). Payment of this Reserve Fund Contribution shall excuse the Owner from the obligation to pay those portions of the annual assessment attributable to reserve or contingency fund contributions during the calendar year in which the Lot is purchased. For purposes of this paragraph, Lots purchased in 2002 shall be deemed purchased in 2003. In recognition of the subdivider's continuing construction of infrastructure, the subdivider shall also be exempt from assessment for contribution to reserve or contingency funds.

**5.4 Payment of Common Expenses.** Owners shall pay the assessed Common Expenses monthly in advance, or at such other times as the Board shall determine, without notice other than as provided in Section 5.1, and without any right of setoff or counterclaim. If any Owner fails to pay such Assessment when due, the amount thereof, with interest, costs, and reasonable attorney's fees, shall constitute a lien on such Owner's Lot. No person shall be liable for the payment of an Assessment of Common Expenses made after the person has conveyed his or her Lot to a new Owner. Such person shall, however, be personally liable for Common Expenses assessed prior to a conveyance. A conveyance for this purpose shall be deemed to occur when the deed is recorded. A purchaser of a Lot shall be liable for the payment of unpaid assessments



which constitute a lien against the Lot prior to its acquisition by him; however, a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for Assessments which became payable prior to such sale or transfer. The foregoing limitation shall not prevent the subsequent pro rata assessment among all Owners, including a new Owner who takes pursuant to a foreclosure of a first mortgage, of such unpaid assessment.

**5.5 Collection of Assessments.** The Board shall take prompt action to collect any assessments due from any Owner which remain unpaid for more than 30 days from the due date for payment thereof. If an Owner defaults in paying his or her Assessment, he or she shall pay interest at the rate of 1.5% per month on such Assessment from the due date thereof, together with all expenses, including reasonable attorney's fees, incurred by the Board in any collection proceeding. The Board may recover such assessment, together with interest thereon, and the expenses of the proceedings, including reasonable attorney's fees, in an action at law or in equity to recover the same brought against such Owner, or by foreclosure of the lien on such Lot. A suit to recover a money judgment for unpaid Assessments may be maintained without foreclosing or waiving the lien securing the same. In the event of foreclosure of the Association's lien, the Owner of the foreclosed Lot may be required to pay a reasonable rental for the Lot, and the Board of Directors shall be entitled to the appointment of a receiver to collect such rental.

**5.6 Insurance and Fidelity Bonds.** The Board shall obtain and maintain, to the extent obtainable, the following policies of insurance covering the interests of the Association, the Board, and all Lot Owners and their mortgagees (provided the Board is given written notice of such mortgagees), as their interests may appear:

(a) **Property Damage Insurance.** Property damage insurance covering all of the Common Property (except that land foundation, excavation, and other items normally excluded from coverage need not be covered), fixtures, building service equipment, and personal property and supplies belonging to the Association. Such property damage insurance shall cover 100% of the current replacement cost of all items listed herein, and shall, as a minimum, insure against loss or damage by all perils normally covered by the standard "all risk" endorsement. The Board shall redetermine the current replacement cost of such items annually.

The Board shall obtain the following endorsements, or their equivalent, to the extent available and applicable:

- (i) Agreed Amount and Inflation Guard Endorsements;
- (ii) Construction Code Endorsements, if any provision of applicable construction or building codes requires changes to undamaged portions of any insured building when only a portion of the Common Property is destroyed by an insured hazard; e.g., Demolition Cost Endorsement, Contingent Liability from Operation of Building Laws Endorsement, and Increased Costs of Construction Endorsement; and
- (iii) The maximum deductible for such policy shall be the lesser of \$10,000 or one percent (1%) of the policy face

amount.

(c) Workers' Compensation Insurance, if applicable.

(d) Comprehensive General Liability Insurance, covering all Common Property and public ways on Common Property, and any other areas that are under the Association's supervision, insuring the Association, the Board, the officers, the managing agent, if any, and the Lot Owners. Such policy shall provide for at least \$1,000,000 of coverage per occurrence for bodily injury, death, or property damage, with such higher limits as the Board deems prudent from time to time. Coverage under the policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and death of persons in connection with the operation, maintenance or use of the Common Property, and legal liability arising out of lawsuits related to employment contracts of the Association. The maximum deductible for such policy shall be the lesser of \$10,000 or one (1%) percent of the policy face amount.

(e) A Blanket Fidelity Bond for any officers, agents or employees of the Association handling or responsible for Association funds. The Association shall be named as the obligee on the bond. If the Association should employ a Managing Agent that handles funds for the Association, the Board shall require that such Managing Agent purchase a fidelity bond naming the Association as an additional obligee, and shall require deposit of a current certificate of coverage with the Board. Any fidelity bond provided in accordance with the Section shall cover the maximum amount of funds that will be in the custody of the Association or its Managing Agent during the period covered by the bond, but such coverage shall be for no lesser amount than the sum of three months' assessments on all lots, plus the amount in the Operating Capital Fund, if any. The maximum deductible for such bond shall be the lesser of \$10,000 or one (1%) percent of the policy face amount.

(f) Such other insurance as the Board may determine.

The premiums on all policies and bonds listed above shall constitute a common expense. Funds sufficient to cover the deductible amounts shall be included in the Association's Capital Reserve Fund.

Any such policies or bonds shall show the following named insured: "Robbe Farm Road Community Association, for the use and benefit of the individual Owners", and shall provide that adjustment of loss shall be made by the Board and that the net proceeds thereof shall be payable to the Association. The Board shall receive, hold, and dispose of any proceeds of insurance in trust for Lot Owners and their mortgagees, as their interest may appear. In the event proceeds are to be distributed pursuant to the provisions of applicable law, the Declaration, or these By-Laws, the Board shall distribute such proceeds to the Lot Owners or their mortgagees: as their interests may appear. Notwithstanding anything to the contrary contained therein, no provision of these By-Laws and rules and regulations hereto, the Declaration or the Lot Deeds shall give any Lot Owner, or any other party, priority over any rights of the first mortgagee of the Lot, pursuant to its mortgage, in the case of a distribution to such Lot Owner of insurance proceeds for losses to Lots and/or Common Property.

All policies of insurance obtained by the Board shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insureds, including all eligible holders. Certificates of such insurance and all renewals thereof, together with proof of payment of premiums: shall be delivered to Lot Owners and their mortgagees upon request.

In obtaining and maintaining the insurance coverage referred to in this Section, the Board shall be entitled to rely on the advice and/or judgment of any independent insurance broker or agent.

Owners may carry insurance for their own benefit insuring their individual Lots, furniture, furnishings and other personal property. Nothing shall be done by an Owner which will increase the rate of, or cause the cancellation of insurance on, all or any part of the Common Property, nor shall the liability of the carriers issuing insurance obtained by the Board be affected or diminished by reason of any such insurance carried by any Owner.

Any insurance obtained by the Board with respect to the Common Property or occurrences thereon shall include a clause or endorsement denying the insurer rights of subrogation against the Lot Owners to the extent rights have been waived by the insured hereunder prior to occurrence of injury and loss. Any insurance obtained by any Lot Owner insuring improvements on his or her Lot, furnishings or other personal property shall include a clause or endorsement denying to the insurer rights of subrogation against the Association and other Lot Owners to the extent rights have been similarly waived hereunder. Notwithstanding any provisions of the Declaration or these By-Laws to the contrary, the Association and each of the Lot Owners hereby waive any rights of recovery that each may have against any other for injury or loss due to hazards covered by such insurance to the extent of the indemnification received thereunder.

#### **5.7 Maintenance and Repairs.**

(a) All maintenance and replacement of and repairs to any Lot shall be performed by the Lot Owner at the Lot Owner's sole expense;

(b) All maintenance, repairs, and replacements to the Common Property including emergency works, shall be performed by the Board and shall be charged to all the Owners as a common expense, except to the extent that the same are necessitated by the negligence, misuse or neglect of a member, in which case such expense shall be charged to such member.

**5.8 Rules and Regulations.** The Board of Directors may from time to time adopt the Rules and Regulations governing the operation and use of the Common Property and may amend or rescind the same as they deem necessary or desirable. Copies of Rules and Regulations and any amendments thereto shall be furnished to each Owner prior to the time when the same shall become effective.

### **ARTICLE VI**

#### **Transfer**

**6.1 No Severance of Ownership.** No Lot Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his or her Lot,

without including therein the interest of such Lot Owner in the Common Property and other assets of the Association, it being the intention hereof to prevent any severance of such combined ownership; nor shall any Owner so convey his or her Lot without reference to the easements, restrictions, and covenants contained in the Declaration and any amendments thereto.

**6.2 Purchase of Lots by Board of Directors.** Acquisition of Lots by the Board on behalf of the Association may be made from the operating capital fund or the reserve fund of the Association, or if such funds are insufficient, the Board may levy an assessment against each Lot Owner as a common expense, or the Board, in its discretion, may borrow money to finance the acquisition of such Lot, provided, however, that no financing may be secured by an encumbrance of any property other than the Lot, together with the appurtenant interests, so to be acquired by the Board. The decision to acquire any Lot shall be by vote of at least seventy-five percent of all Lot Owners at a special meeting called for that purpose, such majority to be calculated by excluding the interest of any Lot which the Board is considering for purchase.

Any Lot or Lots owned by the Association shall not be Common Property, but shall be held of record in the name of the Association, or a nominee. Lots owned by the Association shall not be entitled to vote.

No right of first refusal or similar restriction in favor of the Association shall be imposed upon the right of the Lot Owners to sell, transfer, or otherwise convey their Lots.

**6.3 Payment of Assessments.** No Owner shall sell, mortgage, lease or otherwise convey his Lot until he shall have paid in full to the Board all unpaid assessments against his Lot.

## **ARTICLE VII**

### **Condemnation**

In the event of a total or partial taking of the Common Property by eminent domain, the Lot Owners shall be represented by the Board of Directors. Any resulting award (or proceeds of settlement) shall be payable to the Board. The award shall be allocated equally among the respective Lot Owners (or their mortgagees, as their interests may appear), except as to any portion or portions of the award attributable to direct or consequential damages suffered by particular Lots, which shall be payable to the owners of such Lots or their mortgagees, as their interests may appear. Allocations of such awards to Lot Owners shall be applied first to payment of any outstanding liens of the Association on such Owner's Lot prior to disbursement. Notwithstanding anything to the contrary contained therein, no provision of these By-Laws and rules and regulations hereto, the Declaration or the Lot Deeds shall give any Lot Owner, or any other party, priority over any rights of the first mortgagee of the Lot, pursuant to its mortgage, in the case of a distribution to such Lot Owner of condemnation awards for taking of Lots and/or Common Property.

## **ARTICLE VIII**

### **Records; Certification Upon Resale**

**8.1 Records.** The Board of Directors shall keep or cause to be kept minutes of the meetings of the Board of Directors, minutes of the meetings of the Lot Owners, and financial records and books of account of the Association, including a chronological listing of receipts and expenditures specifying and itemizing the maintenance and repair expenses relating to the Common Property, and any other expenses incurred, as well as a separate account for each Lot, which, among other things, shall contain the amount of each assessment of common charges against such Lot, the date when due, the amounts paid thereon, and the balance remaining unpaid. An annual report of the receipts and expenditures of the Association shall be rendered by the Board of Directors to all Lot Owners promptly after the end of each fiscal year. The Board shall also arrange for annual preparation of an audited financial statement. The minute books, financial records, and payment vouchers, as well as copies of the Declaration, these By-Laws, and any rules and regulations hereunder, (as the same may be amended from time to time), shall be maintained at the office of the Board of Directors and shall be available for inspection by Lot Owners, the holder, insurer, or guarantor of any first mortgage on a Lot, and the authorized agents of any of them during business hours. If any such holder, insurer, or guarantor so requests in writing, the Board of Directors shall provide it with an audited financial statement for the Association for the preceding fiscal year.

**8.2 Certification Upon Resale.** In the event of any resale of a Lot by any person other than the Declarant, the prospective purchaser shall have a right to obtain from the Association within 10 days of a written request therefor the following:

- (a) a statement of any capital expenditures and major maintenance expenditures anticipated by the Association within the current or succeeding 2 fiscal years;
- (b) a statement of the status and amount of any reserve for the major maintenance or replacement fund and any portion of such fund earmarked for any specified project by the Board;
- (c) a copy of the income statement and balance sheet of the Association for the last fiscal year for which such statement is available;
- (d) a statement of the status of any pending suits or judgments in which the Association is a party defendant;
- (e) a statement setting forth what insurance coverage is provided for all Lot Owners by the Association and what additional insurance coverage would normally be secured by each individual Lot Owner; and
- (f) a statement that any improvements or alterations made to the Lot by the prior Lot owner are not known to be in violation of any restrictions or covenants imposed on the Premises.

Robbe farm Road Association X