

# Timber Hawk Owners' Association

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## **BY-LAWS OF THE TIMBER HAWK OWNERS' ASSOCIATION**

### **ARTICLE I - GENERAL**

Section 1. Name: The name of the Association shall be the Timber Hawk Owners' Association, Inc.

Section 2. Principal Office: The principal office of the Association shall be located in the Town of Stockbridge, State of Vermont, or at such other place within the State as may from time to time be designated by the Board of Directors.

Section 3. Books and Records: The books and records of the Association shall be kept at said principal office and shall at all times during reasonable business hours be open to inspection by any member. Copies of the Association's By-Laws may be purchased at the principal office by any member at reasonable cost.

Section 4. Force and Effect: The use and enjoyment of the common land by all present and future members, their tenants, invitees, employees and agents and any other persons using said land in any manner is subject to compliance with these By-Laws and regulations adopted hereunder as from time to time amended.

### **ARTICLE II - DEFINITIONS**

Section 1. "Association" shall mean and refer to Timber Hawk Owners' Association, Inc., a Vermont non-profit corporation, its successors and

assigns.

Section 2. "Lot(s)" shall mean and refer to any one or more of the lots described in the Articles of Association.

Section 3. "Plan" shall mean and refer to those plans of the Lots that are described in Section 2 hereof.

Section 4. "Property Owner" shall mean and refer to those owners (whether individually or concurrently, as joint tenants, tenants by the entirety or tenants in common) of any of the lots described in Section 2 hereof.

Section 5. "Member" shall mean and refer to any Property Owner, his successors and assigns.

Section 6. "Agreement to Comply" refers to that entitled document which evidences the membership of a Property Owner in the Association as a Member and as subject to the provisions of these By-Laws and all rules and regulations promulgated thereunder.

Section 7. "Common Land" shall mean and refer to all real property owned by the Association for the common use and enjoyment of its members.

### ARTICLE III - MEMBERSHIP

Section 1. Rights and Privileges: All Members shall have the same rights and privileges with respect to the use and enjoyment of any property owned or operated by the Association. The said rights and privileges shall extend to and be enjoyed by any lawful occupant, lessee or guest of a lot owned by a Member and may be withdrawn at any time by a two-thirds (2/3) vote of the Board of Directors or the Members.

Section 2. < Deleted >

Section 3. Assessments. Each Member is obligated to pay, in accordance with the rules and regulations of the Association, to the Association annual and special

assessments representing his pro-rata share of the total operational and capital costs of the Association. No Member may waive or otherwise escape liability for the assessments provided for herein by nonuse of the common land or abandonment of his lot, including taxes, maintenance of common land, roads and water systems, etc.

#### Section 4. Delinquent Assessments:

a) Any assessments which are not paid when due shall be delinquent. Any assessment remaining delinquent for a period of thirty (30) days shall bear interest from the date of delinquency at the highest rate permitted by law. Any assessments delinquent for a period of ninety (90) days shall become a lien upon any lot(s) owned by a Member owing such assessment. Such lien may be enforced, at the discretion of the Board, either by suit against the delinquent Property Owner or by foreclosure proceedings, and shall be discharged only upon full payment of the amount due. Any costs of litigation reasonable and necessary to the enforcement of such lien, including attorney's fees, shall be added to the amount of such lien at the discretion of the Board.

Any owner who is delinquent with respect to any assessments (Association and service fees) in excess of 90 days shall be subject to termination of any and all services including, but not limited to, water, sewer, roads and TV.

(b) The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage(s), now or hereafter placed upon the lot(s) subject to fees or assessments, running to a bank, savings and loan institution, insurance company or other institutional lender; provided however, such subordination shall apply only to the assessments which become due and payable prior to the transfer of such property pursuant to decree of foreclosure or any other proceeding in lieu of foreclosure. Such transfer shall not relieve such

property from liability for any assessment thereafter becoming due nor from lien of any subsequent assessments.

Section 5. Duration and Termination of Membership:

(a) Membership shall continue as such until death or until terminated as hereinafter provided.

(b) Membership may be terminated for conduct deemed prejudicial to the Association or for a repeated failure to comply with the requirements of these By-Laws and/or rules and regulations promulgated thereunder. Such a termination can be effected only by an affirmative vote of three-fourths (3/4) of the members entitled to voting rights in the Association at the annual meeting or special meeting called for that purpose.

(c) Membership shall automatically terminate upon the sale conveyance or transfer by any Member of all his right, title and interest in and to all lot(s) which prior thereto had been owned by him.

(d) Upon termination of the Membership of any individual for any cause whatsoever, such individual shall forfeit all rights and privileges of membership and all rights and claims in and to the property of the Association, and all his interest in such property shall vest in the Association absolutely. However, such individual may have the rights and privileges of a lawful occupant or lessee of a lot owned by a Member as provided in Section 1 of this Article.

Section 6. Suspension of Voting and Use Rights: The voting rights and the right to use common land for a Member whose assessment payments have been delinquent for a period of ninety (90) days may be suspended by the Board until such delinquency is cured. Such rights may also be suspended after notice and hearing for a period not to exceed sixty (60) days for infractions of published rules and regulations.

## Section 7. Transfer of Membership:

(a) Membership in the Association may be transferred only as part of and as an incident to the conveyance of title to Lot(s). Membership in the Association cannot exist apart from ownership of the real property.

(b) A sale, conveyance or transfer of an interest in a Lot by a Member automatically transfers all of the rights, privileges and obligations of Association membership to the transferee.

Section 8. Notice to the Association: Immediately upon the conveyance of the right, title and interest to a Lot, a Member shall notify the Secretary of the effective date of the transfer and the name and the mailing address of the transferee.

Section 9. Septic Tanks. Every homeowner shall bear the responsibility and obligation of properly maintaining their septic tank to ensure the integrity of shared and private leach fields as well as the safety of the groundwater and the surrounding environment.

(a) Cleaning and Inspection Requirement. All septic tanks in the community shall be pumped and inspected at least once every five years. Owners shall provide documentation to the Association proving or establishing that the tank has been pumped and advising of its condition. Members who have not complied with these requirements upon sixty (60) days notice by the Association will be subject to enforcement of this rule, including, but not limited to:

(i) a penalty fine of \$400 each year that the maintenance requirement is not met;

(ii) termination of connection, if any, to a community leach field;

(iii) authority of the Board of Directors, upon thirty (30) days notice to the homeowner, to enter the property and cause the septic tank to be cleaned and inspected

at the homeowner's sole expense;

(iv) such other legal action the Board deems necessary to enforce cleaning and inspection of the tank.

(b) Tank Replacement: Any tank that shows evidence of failure, including, but not limited to, corrosion, breach, or leakage and is determined to be in need of replacement by application of professional, municipal or State standards shall be replaced immediately by the homeowner. Members who fail to replace their tank will be subject to enforcement including, but not limited to:

(i) a penalty fine of \$1000;

(ii) termination of connection, if any, to a community leach field;

(iii) authority of the Board of Directors, upon thirty (30) days notice to the homeowner, to enter the property and cause the septic tank to be replaced at the homeowner's sole expense;

(iv) such other legal action the Board deems necessary to enforce replacement of the tank

Any replacement tank, consistent with the requirement for all new construction, must hold a minimum of 1000 gallons.

(c) Costs of Enforcement: All costs of enforcement shall be borne by the homeowner and shall become a lien on the property until paid. Costs of enforcement of such lien, including attorney's fees, shall be borne by the homeowner.

(d) The Board is specifically authorized to establish rules and standards for implementation of and compliance with the requirements of this section.

#### ARTICLE IV - MEETINGS OF MEMBERS

## Section 1. Annual Meetings:

(a) The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association. Each subsequent annual meeting of the members shall be held on the same day of the same month each year thereafter. If the day for the annual meeting of the members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday. Such annual meetings shall be general meetings for the election of directors and open to the transaction of any business within the powers of the corporation.

(b) If for any reason the annual meeting of the members shall not be held on the day hereinbefore designated, such meeting shall be called and held as a special meeting as soon thereafter as is practical and convenient, and the same proceedings may be held thereat as at an annual meeting.

## Section 2. Special Meetings:

(a) Special meetings of the Members may be called at any time by the Secretary of the Association upon the request of the President, upon resolution of the Board of Directors, or upon written request of members who are entitled to vote one-third (1/3) of all of the votes of the membership as of the date of the request.

(b) Special meetings of Members may be called at any time by the Secretary of the Association upon the request of the President, upon resolution of the Board of Directors, or upon written request of the members who are entitled to vote one-third (1/3) of all votes as of the date of the request. Matters to be considered by any such special meeting of Members shall be limited to those matters specified herein as subject to decision by the Members.

Section 3. Place of Meeting: All meetings, annual or special, shall be held at such places in the State of Vermont as shall be specified in the respective notices

of such meetings or waivers thereof.

#### Section 4. Notice of Meetings:

(a) Notice of every annual meeting and of every special meeting shall be served personally or by mail on each member entitled to vote at such meeting not less than 10 nor more than 40 days before the meeting.

(b) Such notice shall state the purpose or purposes for which the meeting is called and the time when and the place where the meeting is to be held. If mailed, such notice shall be directed to each member at his address as it appears on the books or records of the Association.

(c) Notice of the time, place or purposes of any meeting need not be given to any member who attends such meeting or to any member who in writing executed and filed with the records of the Association either before or after such meetings, waives such notice.

Section 5. Quorum: At all the meetings of the members, the presence in the person or by proxy of members representing one-third (1/3) of the voting rights of all members shall be necessary and sufficient to constitute quorum. At all special meeting of Members the presence in person or by proxy members representing one-third (1/3) of the voting rights shall be necessary and sufficient to constitute a quorum. If, however, such quorum shall not be present, then those present in person or by proxy shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present. At such adjourned meeting, there shall be no quorum requirement and any business may be transacted which might have been transacted at the meeting originally called.

Section 6. Voting: Unless otherwise provided by law or specifically by these By-Laws, only Members, as



herein defined, shall be entitled to vote. At each meeting of the members of the Association and at each special meeting of Members, each member shall be entitled to one vote for each lot owned by said member as on the date of said meeting. Any Member who shall be joint tenant, a tenant by entirety or a tenant in common with respect to a Lot, shall be entitled to a fraction of a vote which is equal to the number of tenants having ownership rights in said Lot.

Section 7. Proxies: Each member entitled to vote may vote either in person or by proxy in writing. No proxy shall be deemed operative unless and until signed by the member and filed with the Association. Every proxy shall be revocable and shall automatically cease upon termination of the membership status. Each proxy shall only be valid for one meeting or subsequent adjourned meetings thereof.

Section 8. Voting Procedures:

(a) When a quorum is present at any meeting of the members, a majority of votes cast by all members present in person or by proxy shall decide any matter brought before the meeting unless the matter is one upon which by the express provisions of the Vermont statutes, the Articles of Association, or these By-Laws, a different vote by number is required, in which case such express provisions shall govern and control the decisions of such matter.

(b) Unless demanded by a person present in person or by proxy at such meeting and entitled to vote thereat, or determined by the chairman of the meeting to be advisable, the vote on any matter need not be by ballot. A vote by ballot taken upon the by any such member or determination by chairman of the meeting, shall be signed by the member voting or by said member's proxy and shall state the number of votes cast by such member or proxy.

(c) The chairman of the meeting may appoint one or more tellers or inspectors of election to determine the

qualifications of voters, the validity of proxies and the results of ballots.

## ARTICLE V - BOARD OF DIRECTORS

Section 1. Number: The property and affairs of the Association shall be managed by a board of three Directors who are members of the Association.

Section 2. Term: Each Director shall be elected at the annual meeting of members. Unless he resigns, dies or is removed prior thereto, each director shall continue to hold office until the annual meeting of members next following his election and until his successor has been elected and qualified.

Section 3. Resignation and Removal: Resignation of directors must be in writing and shall be effective upon the date of receipt thereof by the Secretary or upon an effective date specified therein, whichever date is later. Any Director may be removed at any time with or without cause by the affirmative vote of a majority of the Members of the Association.

Section 4. Vacancy: If the offices of any Director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining directors, though less than a quorum, at a special meeting of directors duly called for this purpose, shall choose a successor or successors who shall hold office for the unexpired term in respect to which such vacancy occurred.

Section 5. Compensation: No Director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties. Any such reimbursement must be authorized by affirmative majority vote of the Board of Directors.

Section 6. Nomination:

(a) Nomination for election 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 Director, and two or more Members of the Association. The nominating committee shall be appointed by the Board of Directors prior to each annual meeting of the members. The nominating committee shall make as many nominations as it shall in its discretion determine, but not less than three.

Section 7. Election: Election of the Board of Directors shall be by secret written ballot. The three persons receiving the largest number of votes cast by the Members shall be elected Directors. Cumulative voting shall not be permitted.

Section 8. Meetings:

(a) The first meeting of each Board newly elected by the members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable.

(b) The annual meeting of the Board of Directors shall be held at the same place as the annual members' meeting and immediately after the adjournment thereof.

(c) Special meetings of the Board of Directors may be called by the President of the Association. Special meetings shall be called by the President or Secretary in like manner upon the written request of the Directors.

(d) Unless otherwise specified herein, all meetings of the Board shall be held at such places within or without the State of Vermont as shall be specified in the respective notices of such meetings or waivers thereof.

(e) Unless otherwise specified herein, notice of every

annual meeting and of every special meeting of the Board shall be served in writing on each director not less than 3 nor more than 15 days before the meeting. In the case of special meetings, such notice shall state the purpose or purposes for which the meeting is called and the time when and the place where it is to be held. If mailed, such notice shall be directed to each director entitled to notice at his address as it appears on the books or records of the Association.

(f) No notice of a Board of Directors meeting need be given to any director who, in writing, executed and filed with the records of the Association, either before or after the holding of such meeting, waives such notice. The directors may also, by resolution duly adopted, establish regularly scheduled meetings, whether monthly or otherwise. If such resolution is adopted, no notice of such regular meetings shall be required.

(g) At all meetings of the Board, a majority of the number of directors shall be necessary to constitute a quorum for the transaction of business. The act or decision of a majority of the directors present at any duly held meeting at which a quorum is present shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Articles of Association or these By-Laws. If a quorum shall not be present in any meeting of directors, the directors then present may adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present.

(h) Members of the Board of Directors and members of any committee designated by the Board may participate in a meeting of such Board or committee by means of conference telephone or similar communication device, by which all persons participating in the meeting can hear each other. Participation in a hearing in such manner shall constitute presence in person at such meeting.

(i) Any action which may be taken at a meeting of the

Directors may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all of the directors. Such consent shall have the same force and effect as a unanimous vote.

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

(a) Roll call (b) Reading of minutes of last meeting (c) Consideration of communication (d) Resignation and elections (e) Reports of officers and employees (f) Reports of committees (g) Unfinished business (h) Original resolutions and new business (i) Adjournment

Section 10. Annual Statement: The Board of Directors present, at each annual meeting of the members and when called for by a vote of the members at any special meeting of the members, a full and clear statement of the condition and affairs of the Association.

Section 11. Powers: The Board, in addition to the powers conferred by these By-Laws, shall have the right to exercise such power and to do such acts as may be exercised by the Association, subject to the statutes of the State of Vermont and to the provisions of the Articles of Association.

Without prejudice to the general powers conferred and other powers conferred by statute and by the Articles of Association and these By-Laws, the powers of the Board shall include the following:

(a) To appoint, retain and employ, and at its discretion to remove and suspend permanently or temporarily, such attorneys, accountants, auditors, assistants, clerks, employees, and agents as it may from time to time choose, and to determine their retainers, salaries, commissions, and emoluments, and to confer by resolution upon any officer of the Association the right to choose and remove or suspend all assistants, clerks, employees and agents to fix and change their

salaries.

(b) To authorize any officer, employee or agent, in the name of and on behalf of the Association, to enter into any contract or execute and deliver any bill, check, draft or other order for payment of money out of funds of the Association, note or other evidence of indebtedness, receipt, endorsement, release or other instrument, and such authority may be general or confined to specific instances.

(c) To adopt and publish rules and regulations governing the use of the common land and facilities and personal conduct of the members, guests, invitees, tenants, employees and agents and any other person thereon and to establish penalties for infraction thereof.

(d) To make and collect assessments and establish the time within which payment of same is due.

(e) To suspend the voting rights and right to use common land by a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. The Board may also suspend such rights after notice of hearing for a period not to exceed sixty (60) days for infraction of published rules and regulations.

(f) To collect delinquent assessments by suit or otherwise abate nuisances and enjoin or seek damages from Property Owners and members for violations of these By-Laws.

(g) To use and expend the assessments collected to maintain care for preserve and develop the common land facilities.

(h) To acquire develop maintain and operate common utility systems for the benefit of some or all of the members.

(i) To acquire maintain develop and alter roads and

driveways for the common benefit of the members.

(j) To erect, develop, maintain and alter improvements of any kind and nature of the common land for the benefit of the members, subject to the provisions and limitations set forth herein.

(k) To procure and maintain adequate liability and hazard insurance on property owned by the Association.

## ARTICLE VI - OFFICERS

Section 1. Enumeration of Officers: The officers of the Association shall be a President, Vice President, Treasurer and Secretary and such other officers as the Board may from time to time by resolution create. Any two of said officers may be united in one person except that the President shall not also be the Secretary or an Assistant Secretary of the Association. If the Board so determines there may be more than one Vice President.

Section 2. Election: The election of officers shall take place at the annual meeting of the Board of Directors.

Section 3. Term: The officers shall be elected annually by the Board and each shall hold office until their successors are chosen and qualify in their stead.

Section 4. Special Appointments: The Board of Directors may appoint such other officers or agents as it deems necessary, each of whom shall hold office at the pleasure of the Board and have such authority and perform such duties as the Board may from time to time prescribe.

Section 5. Resignation and Removal: Any officer, whether elected or appointed, may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect upon receipt or upon an effective date specified therein, whichever date is later. Any officer, elected or

appointed, may be removed from office, with or without cause and with or without notice by the Board.

Section 6. Vacancies: A vacancy in any office, whether by reason of death, resignation, removal, disqualification or otherwise, may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the officer he replaces.

Section 7. Compensation: Any salaries for officers, employees or agents of the Association shall be established by the Board of Directors. Although no salary may be provided, an officer, agent or employee may, at the discretion of the Board be reimbursed for actual expenses incurred by him in the performance of his duties.

Section 8. The President:

(a) The President shall be the chief executive officer of the Association, shall preside at all meetings of the members and directors, shall be ex officio member of the Board of Directors and all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried out.

(b) The President may be authorized by resolution to co-sign all checks and promissory notes.

Section 9. The 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 perform such other duties as shall from time to time be assigned to him by the Board or President.

Section 10. The Secretary:

(a) The Secretary shall record the votes and keep accurate and adequate minutes of all meetings of the Board and of their members in one or more books



provided for that purpose and, whenever required by the President, shall perform the like duties for any committee.

(b) He shall keep a list with names and addresses of members together with the date they became members or date membership was terminated, and shall see that all notices are duly given in accordance with these By- Laws and as required by laws.

(c) He shall be custodian of the Association records and of the seal of the Association, shall affix and attest the seal of the Association to any and all documents the execution of which on behalf of the Association under its seal has been duly authorized in accordance with the provisions of these By-Laws, and shall see that all reports, statements and other documents required by law are properly filed by the Treasurer.

#### Section 11. Treasurer:

(a) The Treasurer shall have charge and custody of, and be responsible for, all the funds of the corporation and shall keep and shall be responsible for the keeping of full and accurate accounts of the receipts and disbursements in books belonging to the Association.

(b) He shall deposit all monies and other valuable effects of the Association in the name of and to the credit of the Association in such depositories as may be designated by the Board of Directors, the Articles of Association or these By-Laws.

(c) He shall disburse the funds of the Association as authorized by the Board, taking proper voucher for disbursements, and shall render to the President and Directors at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association.

(d) In general, he shall perform all the duties incident

to the office of Treasurer and such other duties as may from time to time be assigned to him by the Board of Directors or the President.

(e) If required by the Board, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board may determine. The expense of such bond shall be paid by the Association.

## ARTICLE VII - COMMITTEES

Section 1. Authority to Establish: The Board of Directors may by resolution appoint and constitute such committees of directors, officers, employees, members or nonmembers, with such functions, powers and duties not inconsistent with these By-Laws, as the Board shall from time to time deem appropriate.

Unless the Board shall provide otherwise, each such committee shall enact rules and regulations for its government.

## ARTICLE VIII - COMMON LAND DEVELOPMENT

No building or part thereof shall be erected nor any construction or improvement of any kind initiated upon the common land until architectural site and general landscape plans and specifications have been approved by the Members. Such approval shall issue upon careful consideration of the impact such construction may have upon the aesthetic integrity of the common land and lots and the existing character of the community. The approval required herein can be circumvented only as provided in Article III Section 2(b).

## ARTICLE IX - MISCELLANEOUS

Section 1. Notices in general: Except as may otherwise be required by law or these By-Laws, any notice required to be given under these By-Laws shall be in writing and signed by the President or the Secretary. Such notice shall be deemed sufficient if

mailed to the person entitled thereto at his last post office address appearing on the records of the Association, and shall be deemed to have been given on the day of such mailing. Such notice need not be given to any person entitled thereto who may in writing waive such notice either before or after the meeting or other matter concerning which such notice is to be given.

Section 2. Indemnification: Any person made a party to any action, suit or proceeding by reason of the fact that he is or was a director, officer or employee of the Association or for which he served at the request of the Association, shall be indemnified by the Association against the reasonable expenses including attorney's fees actually and necessarily incurred by him in conjunction with the defense of such action, suit or proceeding, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit negligence or misconduct in the performance of his duties.

The foregoing right of indemnification shall not be deemed exclusive or any other rights to which any such director, officer or employee may be entitled as matter of law.

Section 3. Fiscal Year: The fiscal year of the Association shall begin on the first day of January and terminated on the thirty-first day of December every year except that the first fiscal year shall begin on the date of incorporation.

Section 4. Corporate Seal: The seal of the Association shall have inscribed thereon the words "TIMBER HAWK Owners Association Inc." and the word "nonprofit" .

## ARTICLE X - AMENDMENT OF BY-LAWS

The By-Laws of the Association may be altered, amended or repealed at any regular or special meeting of the members by an affirmative vote of members

entitled to two-thirds (2/3) of the total voting rights of all members of the Association, unless specifically prohibited herein or unless a greater percentage number vote is required by particular articles or sections herein, in which case those provisions requiring a greater percentage number vote shall control.

[The most recent revisions to this document were adopted at the THOA annual meeting of September 4, 2004]

[By-Laws.pdf](#)

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