

THIS IS THE OFFICIAL SET OF BY-LAWS WHICH HAS BEEN RECORDED.
All Moody Point Community Association members will receive a copy, that shows the stamps,
at the September 9, 2006, Annual Meeting

The following "2006 Amended and Restated By-Laws of Moody Point Community Association, Inc." completely amend and restate the previous By-Laws of Moody Point Community Association, Inc. dated August, 26, 1987 and recorded in the Rockingham County Registry of Deeds at Book 2700 Page 0358 and all amendments thereto recorded prior to the date hereof. Upon recording of the within new By-Laws of Moody Point Community Association, the aforementioned 1987 By-Laws of the Moody Point Community Association, Inc. are hereby repealed and shall no longer have any force or effect.

2006 AMENDED AND RESTATED BY-LAWS OF
MOODY POINT COMMUNITY ASSOCIATION, INC.

THESE AMENDED AND RESTATED BY-LAWS, dated this **10th day of June, 2006**, shall govern the entity known as Moody Point Community Association, Inc. (the "Association"), as described and created under its Articles of Agreement, dated August 26, 1987, as amended and in effect from time to time, and shall be binding upon all present and future owners, tenants, and occupants of any lots or units in the Moody Point on Great Bay development (the "Development"), and to all other persons who shall at any time use the Development or any portion thereof. The acquisition or rental of any lot or unit, or the act of occupancy or use of any lot or unit, will signify that the party acquiring, renting, occupying or using such lot or unit has accepted and ratified the terms and conditions of these By-Laws and agrees to comply therewith. The covenant to abide by these By-Laws shall run with the land and each lot and unit comprising the Development and shall be binding thereon.

ARTICLE I

INTRODUCTORY PROVISIONS

(A) Definitions. The terms used herein shall have the same meaning as given to them in the New Hampshire Revised Statutes Annotated, except as expressly otherwise provided herein, or in the deeds to the property owned by the Association, or the application of such meaning would be contrary to the clear intent of the statement. The term "rules and regulations" refers to the rules and regulations for the conduct of the occupants of the Development, adopted by the Association as hereafter provided:

- 1) "**Assessments**" shall mean amounts due from Members for the payment of common expenses incurred in promoting the interests of the Members, as provided for herein, including, but not limited to, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the owners of the Residential Lots and Units and of maintaining

and improving the Common Land, and any improvements located thereon, all as may be specifically authorized from time to time by the Board of Directors in accordance with these By-Laws;

- 2) **“Drainage”** shall mean the drainage control structures and improvements on the Property, including the fire pond and related overflow piping, culverts, ditches, swales, and catch basins, which are provided for the adequate removal of storm water and to prevent flooding of the road or erosion of adjacent surfaces or adjacent properties and which provide for retention and gradual release of storm water and for the removal of any standing water from ditches, culverts, or catch basins.”
- 3) **“Good Standing”** shall mean that all Assessments, fines, and penalties levied against a Member’s property by the Association have been paid;
- 4) **“Lessee”** shall mean a party that has rented a Lot or Unit from an Owner.
- 5) **“Lot”** shall mean any lot of real property described in Article II hereof;
- 6) **“Member”** shall mean and refer to an Owner entitled to membership in the Association, as provided in Article II hereof;
- 7) **“Owner”** shall mean and refer to the record owner of a property interest, whether one or more persons or entities, but excluding in all cases any party holding an interest merely as security for the performance of an obligation, a nominee, a custodian or other title holder, or any person who is unable to hold title to such property pursuant to applicable law;
- 8) **“Property”** shall mean the Open Space Land identified as Lots #4 and #11 as recorded on August 26, 1987 at the Rockingham County Registry of Deeds, Book 2700, Page 0367; Lot #6 as recorded on May 3, 2000 at the Rockingham County Registry of Deeds, Book 3477, Page 0025; and any and all additional land or easements which have been or may be granted to the Association; and all improvements thereon (the “Common Land”).
- 9) **“Unit”** shall mean any tenable residential dwelling located on property subject to these By-Laws;
- 10) **“Water and Sewer System”** shall mean the community water wells, pump house and lift station, building, water tanks, related mechanical components, and related piping servicing units in the Development and any expansion of the same as may subsequently be approved by the appropriate agencies of the State of New Hampshire and the Town of Newmarket.

(B) Conflicts. These By-Laws are intended to comply with the requirements of New Hampshire Revised Statutes Annotated and the deeds to property owned by the Association. If there is a conflict between the provisions of these By-Laws and the deeds, the provisions of the deeds shall control.

ARTICLE II

MEMBERS

(A) Membership: Each and every Owner of any of the following Lots, Units and Building Space Easement areas shall be a “Member” of the Association and subject to these By-Laws:

- 1) **The Moody Point Condominium (Waterfront):** The eight (8) owners of condominiums shown on the plan entitled “As-Built Site Plan, Lot #3..... Moody Point Condominium”, (Sheet 1) dated July 7, 2003 by Doucet Survey, Inc. recorded as Plan #D-30897 in the

Rockingham County Registry of Deeds, **and** the eight (8) owners of condominiums shown on the plan entitled “As-Built Site Plan, Lot #5 Moody Point Condominium,” (Sheet 1) dated August 17, 2001 by Doucet Survey, Inc. recorded as Plan #D-29189 in the Rockingham County Registry of Deeds;

- 2) **The Hill at Moody Point:** The twenty (20) single family lot owners of the Lots #9 & 10 as shown on a plan entitled “The Hill at Moody Point”, dated May 25, 1990 by Lamprey River Survey company, recorded as Plan #D-21471 in the Rockingham county Registry of Deeds;
- 3) **Lubberland Creek at Moody Point:** The eleven (11) single family lot owners in Lot #6 as shown on a plan entitled “Lubberland Creek at Moody Point” dated November 17, 1994 by Doucet Survey, Inc. recorded as Plan #D-23691 in the Rockingham County Registry of Deeds;
- 4) **The Moody Point Condominium II (The Ridge at Moody Point):** The twenty six (26) owners of condominiums in Lots #7 & 8 as shown on a plan entitled “ As-Built Site Plan Moody Point Condominium II” (Sheet 1) dated February 17, 2005 by Doucet Survey, Inc., recorded as Plan #D-32436 in the Rockingham County Registry of Deeds;
- 5) **The Meadow at Moody Point:** Each and every easement owner of the following nineteen (19) single family home or duplex building space easement areas: Lot #2, building spaces 1 through 7 inclusive, as shown on a plan entitled “The Meadow at Moody Point Lot #2” dated January 6, 1998 by Doucet Survey, Inc. recorded as Plan #D-26113 in the Rockingham County Registry of Deeds, **and** Lot #5, building spaces 1 through 12, inclusive as shown on a plan entitled “The Meadow at Moody Lot #5”, (sheet 2) dated May 21, 1997 by Doucet Survey, Inc. recorded as Plan #D-25510 in the Rockingham County Registry of Deeds. Notwithstanding the above dedication of said Meadow building spaces, nine (9) of the above nineteen (19) spaces may be duplex units thereon, and therefore, there shall exist a minimum of nineteen (19) Members of the Association and a maximum of twenty-eight (28) Members of the Association pursuant to this subsection (there shall be two Members for each duplex building, i.e., one Member for each of the two portions of the duplex unit);
- 6) **The owners of the single-family house Lots #1 and #12** as shown on a plan entitled “Revised Final Site Plan, Moody Point”, Owners: Moody’s Point Company, 76 Exeter Street, Newmarket, N.H., revised April 1987 by Frederick E. Drew Associates, recorded in the Rockingham County Registry of Deeds said Moody Point plan D-17107;

(B) Class of Members: The Association shall have one class of Members.

(C) Covenants. All Members are required to comply with and be bound by the terms and condition of the deed of the owned property upon which a membership is based, these By-Laws, as amended and in effect from time to time, and the policies, rules, and regulations adopted by the Association in accordance with these By-Laws;

(D) Voting Rights. Each Member in Good Standing shall be entitled to vote on each matter submitted to a vote of the Members, provided, however, that where two or more Owners share ownership of a property, only one vote for such property shall be allowed, and such joint Owners shall designate and register with the Secretary of the Association the name of the Owner entitled to cast such single vote.

- (E) **Assignment of Rights:** A Member of the Association may assign his/her non-voting membership rights to a Lessee without the consent of the Board of Directors. Such assignment of rights shall be effected by filing with the Secretary of the Association a written notice of assignment signed by the Owner, together with a copy of the Lease Agreement executed by and between the Owner and the Lessee. Membership rights shall not be assignable to any Sub-Lessee.
- (F) **Termination.** Membership in the Association shall automatically terminate when a Member ceases to be an Owner of a property interest described above in Section (A).
- (G) **Withdrawal from Association.** Provided that Lot #12 in Section A.6 as described above is not tied into the Water and Sewer Systems, an Owner may, following receipt of a written approval by the Board of Directors, rescind its membership in the Association by recording a NOTICE OF WITHDRAWAL at the Rockingham County Registry of Deeds and providing a copy of said recorded notice to the Association by certified mail. All outstanding fees and assessments due by the Owner shall be paid in full prior to the Board of Directors granting such approval. Recording of the Notice of Withdrawal by the Owner shall be done within 30-days of notice of receipt of Board approval, failing which, such approval shall automatically terminate.

ARTICLE III

MEETINGS OF MEMBERS

- (A) **Annual Meeting:** The Annual Meeting of the Members for the purpose of hearing reports from all officers and standing committees, for electing directors, and for conducting any further business that comes before the Members shall be held in Newmarket, County of Rockingham, State of New Hampshire in September on the 1st Saturday following Labor Day of each year. The time and place shall be fixed by the Board of Directors each year.
- (B) **Special Meetings:** A special meeting of the Members may be called by the Board of Directors. A special meeting of the Members must be called within fifteen (15) days by the President, or the Board of Directors, if requested in writing by not less than **twenty-five percent (25%)** of the Members having voting rights.
- (C) **Notice of Meetings:** It shall be the duty of the Secretary or other duly authorized agent to mail by United States mail, or to personally deliver a written notice of each annual meeting or special meeting of the Members, at least twenty-one (21) days in advance of each annual meeting and at least ten (10) days in advance of each special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member at the address of their respective property or at such other address as each Member may have designated by notice in writing to the Secretary. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice.
- (D) **Quorum:** The presence of Members holding an aggregate of twenty-five (25%) percent of the voting membership at that time shall constitute a quorum at any meeting of the Members. In the absence of a quorum, a majority of the Members present may adjourn the meeting from time to time without further notice.
- (E) **Proxies:** At any meeting of the Members, a Member entitled to vote may vote by proxy executed in writing by the Member and given to the Secretary prior to the start of the meeting.

No proxy shall be valid after six (6) months from the date of its execution, unless otherwise provided in the proxy.

- (F) Voting by Mail:** When Directors or Officers are to be elected by Members, or when there is an act requiring the vote of the Members, such election or vote on such proposed action may be conducted by mail in such a manner as the Board of Directors shall determine.
- (G) Order of Business:** The order of business at all meetings of the Association may be as follows: (a) roll call and certification of a quorum; (b) recitation of the proof of notice of meeting; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) report of Board of Directors; (f) reports of committees; (g) election of directors, if applicable; (h) unfinished business; and (i) new business, any of which may be waived.
- (H) Conduct of Meetings:** The rules contained in the current edition of **The Standard Code of Parliamentary Procedure** by Alice Sturgis shall govern the Association in all cases to which they are applicable and in which they are not inconsistent with these bylaws, New Hampshire law, or any special rules of order the Association may adopt.

ARTICLE IV

BOARD OF DIRECTORS

- (A) General Powers:** The affairs and the Property of the Association, pursuant to the Association's Articles of Agreement, shall be managed by the Board of Directors (the "Board"), as outlined under Article VI of these By-Laws. The Board shall be empowered to examine and resolve any issues that are beneficial to the Members, including but not limited to, drainage, water and sewer systems, irrigation, refuse pick-up, supplier services, community safety, and issues requiring interface with Federal, State, County and Town Governments and their representatives, committees and commissions. Upon the affirmative vote of at least five (5) members of the Board, the Board may undertake any action within the scope of its powers, including, but not limited to, the expenditure of funds in furtherance of any approved objective, subject to Article VIII of these By-Laws.
- (B) Number, Tenure, and Qualifications:** The Directors of the Board shall consist of the following:
 - 1) Five (5) appointed Directors, one from each of the five (5) subdivisions at Moody Point (Moody Point Condominium Association, Inc; Moody Point Condominium II Association, Inc; The Hill at Moody Point Homeowners Association, Inc; Lubberland Creek at Moody Point Homeowners Association, Inc; The Meadow at Moody Point Homeowners Association, Inc.). Each appointed Director must be a Member, and shall hold office until such time as he or she is replaced by a vote of the applicable subdivision association;
 - 2) Two (2) at-large Directors elected by the Members of the Association. Each at-large Director must be a Member, and shall hold office for a period commencing on the date of his or her election and ending on date of the third (3rd) annual meetings of the Members following Director's election, or until his/her successor shall have been duly elected and qualified.

- (C) **Regular Meetings:** The Board of Directors shall meet regularly, at a time and place it shall select.
- (D) **Special Meetings:** A special meeting of the Board may be called at the request of the President or of any three (3) Directors.
- (E) **Notices:** Notice of any Special Meeting of the Board shall be given at least five (5) days prior thereto, by written notice delivered personally or sent by mail (postal or electronic) to each Director. Any Director may waive notice of any meeting.
- (F) **Quorum:** The presence of a majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, but if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time, and without further notice.
- (G) **Manner of Acting:** The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by law or these By-Laws.
- (H) **Removal of Directors:** At any duly called regular or special meeting of the Members , any one of the At-large Directors may be removed with or without cause by a vote of the majority of the Members, and a successor may then be elected in accordance with Article IV-B hereof. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting.
- (I) **Vacancies:** A vacancy of an At-large Director, caused by any reason other than the removal of a Director by a vote of the Members, shall be filled by election by the Board of Directors and so shall serve until a successor is duly elected by the Members at the next Annual or Special Meeting of the Members to serve for the remainder of the unexpired term.

ARTICLE V

OFFICERS

- (A) **Officers:** The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer.
- (B) **Qualifications and Method of Election:** The officers shall be Members of the Association, shall be elected by the Board, and shall serve for a term of one (1) year. The President and Vice-President shall be Members of the Board.
- (C) **President:** The President shall preside at the meetings of the Members and at any meeting of the Board which is attended by the President, shall exercise general supervision of the affairs and activities of the Association, and shall serve as a member ex officio of all standing committees.
- (D) **Vice-President:** The Vice President shall preside at the meetings of the Members and of the Board when the President is absent and shall exercise the powers of the President when the President is absent or disabled.

- (E) **Secretary:** The Secretary or duly authorized agent shall keep the minutes of all meetings of the Members and of the Board, which shall be accurate and official record of all business transacted. The Secretary or duly authorized agent shall be custodian of all corporate records and responsible for the timely distribution (approximately fourteen (14) days) of all Board and Association meeting minutes to the Members.
- (F) **Treasurer:** The Treasurer or duly authorized agent shall receive all Association funds, keep them in a bank approved by the Board, and pay out funds as authorized by the Board. The Treasurer shall be the Chair of the Budget Committee.
- (G) **Vacancy:** A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board for the unexpired portion of the term.

ARTICLE VI

POWERS AND DUTIES

- (A) **Powers and Duties.** The Association will have all of the powers and duties necessary for the administration of the affairs of the Association and of the Property and the improvements located thereon which it owns, over which it has been or may be granted easements, or which it otherwise controls. Such power and duties shall include, but not be limited to, the following:
 - 1) Operation, care, upkeep and maintenance of the Open Space Land identified as Lots #4 and #11 as recorded on August 26, 1987 at the Rockingham County Registry of Deeds, Book 2700, Page 0367; Lot #6 as recorded on May 3, 2000 at the Rockingham County Registry of Deeds, Book 3477, Page 0025; and any and all additional land or easements which have been or may be granted to the Association; and all improvements thereon (the "Common Land"). The Common Land is intended to be used as open space, as a visual and noise barrier, a wildlife habitat, access to Great Bay for boating, an area for peaceful enjoyment of nature by all, and to supply water and sewer utilities for the Moody Point on Great Bay subdivisions. Its Enjoyment shall be limited to Members and their guests;
 - 2) Operation, care and enforcement of any restrictions, reservations and other provisions and conditions imposed upon the Association by deed or by law;
 - 3) Establishment and enforcement of reasonable rules and regulations as it shall from time to time deem necessary to strictly enforce its obligations and requirements as set forth in the deeds to the Association from the Moody's Point Company and other provisions as outlined in these By-Laws, and to do all things necessary to assure that the property conveyed to the Association is continually managed and maintained by it in accordance with said provisions;
 - 4) Governing the use and maintenance of the walking trails, ponds, open space, environmentally sensitive areas, observation decks, recreation facility and buildings, mailboxes, and other jointly owned facilities and shall continually monitor said use and maintenance in order to insure at all times that the Property and improvements are always used and maintained in accordance with the provisions in said Moody's Point Company deed(s);
 - 5) The employment, dismissal and replacement of agents and employees to facilitate the operation, care, upkeep and maintenance of the Common Land, the Water and Sewer Systems, and the enforcement of any deed and conservation or deed restrictions;

- 6) To make or cause to be made additional improvements on and as part of the Common Land;
- 7) To acquire, hold, manage, convey and encumber title to real property (including but not limited to development lots that may be conveyed to or acquired by the Association) in the name of and on behalf of the Association;
- 8) The assessment and collection of the common expenses from the Members, and the enforcement of liens to secure unpaid Assessments;
- 9) The adoption and amendment of rules and regulations covering the details of the operation and use of the Common Land or any portions thereof, the improvements thereon, and the Water and Sewer Systems;
- 10) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;
- 11) In accordance with Article IX, obtaining necessary directors' and officers' liability insurance, property and casualty insurance, and liability insurance for the association and its Members;
- 12) Repairing, restoring or replacing Common Land and associated structures after damage or destruction by fire or other casualty, or as a result of eminent domain proceedings, as provided in the By-Laws;
- 13) Procuring legal and accounting services necessary or proper in the operation of the Association, the land and improvements which it owns, and the enforcement of these By-Laws;
- 14) The assessment of costs or damages against any person(s) whose actions have proximately caused damages to the Common Land or improvements thereon;
- 15) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire Common Area or any part thereof which may in the opinion of the Association constitute a lien against the Common Land, rather than merely against the interests of particular Members (where one or more Members are responsible for the existence of such a lien, they shall be jointly and severally liable for the cost of discharging it and the costs incurred by the Association by reason of said lien or liens);
- 16) Obtaining Workmen's Compensation Insurance, to the extent necessary to comply with any applicable laws;
- 17) Enforcement of the By-Laws;
- 18) All other powers granted by deeds to Association Property, these By-Laws, permitted by law or enjoyed by associations of this kind;
- 19) For so long as the Association owns and operates the Water and Sewer Systems, the Association shall maintain said systems to assure compliance with all applicable federal, state and local rules and regulations for such systems of this nature. For so long as the Association owns or operates said systems, all costs associated with any maintenance of said systems shall be specifically assessed against all Members using said systems. With respect to any charges for using said systems, all Members using said said systems shall be charged at rates established by the Association, or a third-party system manager, in accordance with applicable law;
- 20) Applying for and securing any grant funding, government or bank loans for the purposes of capital expansion and capital improvements under Sections E and F of Article VIII herein;

- 21) The Board shall be responsible for the enforcement of all rules, regulations, restrictions, and requirements as provided in any deeds to the Common Land or the Environmental Management Program, or as established by the Association. The Board may at its discretion, assess fines and penalties against a Member or a Lessee as provided under Section A of Article XI and prohibit or terminate the use of lands under the control of the Association by any Member or Lessee who violates any of the rules, regulations and restrictions.

(B) Managing Agent. The Board may employ or contract with a professional manager or managing agent (“Manager”) for a fee or compensation established by the Board.

- 1) **Requirements.** The Manager shall have a minimum of two (2) years experience in real estate community management and shall possess or employ persons who possess a high level of competence in the technical skills necessary to the proper management of the Association. The Manager must be able to advise the Board regarding the administrative operation of the Association and shall be knowledgeable or employ persons who are knowledgeable in the areas of association insurance, accounting, contract negotiation, labor relations and association regulation.
- 2) **Duties.** The Manager shall perform such duties and services as the Board shall authorize, including, but not limited to, the duties listed in Section A of this Article VI. The Board may delegate to the Manager all of the powers granted to the Board by these By-Laws, provided that any actions by the Manager with respect to the powers set forth in paragraphs 3, 7, 8, 9, 11, 12, 14, 20, and 21 of Section A of this Article VI shall require the written consent of the Board.
- 3) **Terms.** The term of any employment contract for a Manager may not exceed two (2) years, and shall be terminable for cause upon thirty (30) days notice.
- 4) **Standards.** The Board shall impose appropriate standards of performance upon the Manager. Unless the Manager is instructed otherwise by the Board, the following financial standards shall apply:
 - a) the cash method of accounting shall be employed and expenses required by these By-laws to be charged to more than one but less than all Members shall be accounted for separately;
 - b) two or more persons shall be responsible for handling cash to maintain adequate financial control procedures;
 - c) cash accounts of the Association shall not be commingled with any other accounts;
 - d) no gifts or remuneration shall be accepted by the Manager from vendors, independent contractors or others providing goods or services to the Association, whether in the form of commissions, finders fees, service fees or otherwise; any discounts received shall benefit the Association;
 - e) any financial or other interest which the Manager may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
 - f) a financial report shall be prepared at least quarterly for the Association and distributed to the Board and made available upon request by a Member. Said report shall contain:
 - i. An Income Statement reflecting all income and expense activity for the preceding quarter on a cash basis;

- ii. An Account Activity Statement reflecting all receipt and disbursement activity for the preceding quarter on a cash basis;
- iii. An Account Status Report reflecting the status of all accounts in an “actual” versus “projected” (budget) format;
- iv. A Balance Sheet reflecting the financial condition of the Association on an unaudited basis;
- v. A Budget Report reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or ten percent of a major budget category (as distinct from a specific line item in an expanded chart of accounts); and
- vi. A Delinquency Report listing all Members who are delinquent in paying Assessments and describing the status of any actions to collect such Assessments.

(C) Fidelity Bonds. The Board shall require that all officers, agents (including the Manager) and employees of the Association holding or responsible for funds furnish adequate fidelity bonds. The amounts of such bonds shall not be less than 150% of the estimated annual operating expenses of the association, plus reserve funds. The fidelity bonds shall meet all other requirements of the Federal National Mortgage Association pertinent to fidelity bonds for condominium officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. Premiums on such bonds required for any member of the Board shall constitute a Common Expense of the Association (as defined in Article VIII).

ARTICLE VII

COMMITTEES

(A) Committee Purpose and Structure: To assist the Board in the orderly conduct of the Association's business and proper enforcement of its By-Laws, the Association authorizes the following organizational structure for all named standing committees under this Article:

- 1) **Operating Year:** August 1 to July 31;
- 2) **Membership:** The committee will consist of at least five (5) members, one appointed by each Association. Acceptance of a nomination to the group implies regular attendance at meetings and a willingness to assume responsibility for sub-committee assignments. The Board will appoint a liaison to the committee who will participate as appropriate;
- 3) **Term of Office:** Each committee member will serve for two years. A committee member may be reappointed by the Association that he or she represents;
- 4) **Officers:** A chairperson will be elected by a majority vote of those committee member present at the first committee meeting of each operating year. The chairperson will be responsible to:
 - a) Schedule committee meetings as required. Notification and an agenda will be provided to all committee members at least seven days prior to any meeting. Any committee member may waive notice of any meeting;
 - b) Distribute minutes of any meeting within a timely manner (approximately fourteen (14) days);
 - c) Control expenditures to budget and report on the financial status at each meeting;
 - d) Issue and update a calendar of events and an open issues list annually;

- e) Ensure that Committee's records and procedures are up to date;
- 5) **Meetings:** The committee members will determine the frequency, time, and place of meetings.

(B) Standing Committees of the Association:

- 1) **Environmental Committee:** The Committee shall be responsible for the following:
 - a) The promotion of the education of new and existing Members about the rules and regulations governing the use of the Moody Point site area in accordance with all of the restrictions placed thereon and the approved uses thereof;
 - b) To review and propose revisions of the Environmental Management Program to insure use of the Property at all times in the future for purposes intended;
 - c) To make recommendations to the Association and to the Budget Committee as to the operation of the Environmental Management Program and the preservation and protection of said area and the expenses associated therewith;
 - d) To assist and advise the Board in formulating rules, regulations, restrictions and requirements relative to the use of all Property controlled by the Association;
- 2) **Budget Committee:** The Treasurer of the Association will serve as the chair of the Budget Committee. This committee shall be responsible for drafting the proposed annual budget for the Association, reviewing all proposed expenses, and making recommendations to the Board with respect to fixing the Assessments and the method of collecting same so that the Association can best operate in an efficient and orderly manner. It shall be the responsibility of the Budget Committee, or the Board, should there be no committee appointed, to provide for an adequate reserve fund in the current and any future budgets. Said assessments should be set to include an amount for said reserve fund.
- 3) **Water Systems Committee:** This committee will have oversight responsibility for the Water and Sewer Systems. All fiscal and fiduciary responsibility remains with the Board. One of the members will audit the financial performance of the systems and keep the treasurer of the Association informed. The chairperson will keep the Board informed as appropriate and submit an annual status report to the Board in June of each year. This report will include the performance to budget on operating expenses and any recommendations that may be relative to the coming year as well as any long-term capital requirements. The committee will exercise oversight responsibility and make recommendations to the Board for (but not limited to) the following:
 - a) Ensure that Water and Sewer Systems conform to Town of Newmarket and State of New Hampshire regulations and meet the current and future needs of the residents;
 - b) Submit a budget to the Board each year and monitor the budget monthly for performance. The Board will be informed of any current or projected variations;
 - c) Monitor the performance of the water, sewer, and irrigation contractors and keep the Board informed on a regular basis of the status of the Water and Sewer Systems.

ARTICLE VIII

ASSESSMENTS

- (A) **Payment.** Assessments shall be paid in such manner and on such dates as may be fixed by the Board which may include, without limitations, acceleration of the annual Assessment for delinquents; unless the Board otherwise provides, the Assessments shall be paid in annual installments.
- (B) **Computation of Assessments.** The Board shall prepare annual budgets for Common Expenses (as defined below) and capital reserves, and the following provisions shall apply:
- 1) It shall be the duty of the Board at least thirty (30) days prior to the annual meeting at which the budgets shall be presented to the membership to prepare a budget covering the estimated costs of operating the Association during the current year and a budget for any anticipated capital expenditures. The budget may include a capital contribution to the Capital Reserve Fund, in accordance with a capital budget separately prepared. The Board shall cause a copy of the budgets, and the amount of the assessments to be levied against each Owner for the following year, to be delivered to each Member at least ten business (10) days prior to the meeting. The budgets and the assessments shall become effective unless disapproved at the meeting by a majority vote of the Members in attendance;
 - 2) Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budgets or the Board fails for any reason so to determine the budgets for the succeeding year, then and until such time as the budgets shall have been determined, as provided herein, the budgets in effect for the then current year shall continue for the succeeding year.
- (C) **Common Expenses.** Each Member shall be liable for and shall pay as and when assessed an equal share of Common Expenses. Exempted from such liability are any untenable units or unsold building space easement areas owned by The Moody's Point Company, its successors and assigns (with the exception of building space easement areas owned by said Company which requires him to be a Member of the Association and pay all assessments by virtue of the deed to the property). Common Expenses shall include all charges, costs and expenses of every kind incurred by or on behalf of the Association for and in connection with the administration of the Development, including without limitation all charges for taxes (except real property taxes or other such taxes which are or may hereafter be assessed separately on each lot and the common interest appurtenant thereto or the personal property or any other interest of a Member), assessments, insurance, liability for loss or damage arising out of or in connection with the Common Land including enforcement of conservation restrictions or any fire, accident or nuisance thereon, the cost of repair, reinstatement, rebuilding and replacement of facilities and improvements in the Common Land, enforcement of conservation and deed restrictions, maintenance, trash disposal and similar services, wages, accounting and legal fees, management fees and all other necessary expenses of upkeep, maintenance, improvements, management and operation incurred on or for the Common Land, and the cost of all utility services to the Common Land and construction of any improvements including recreational facilities. The common expenses may also include such amounts as the Association may deem proper to make up any deficit in the Capital Reserve Fund. Common expenses also specifically include all expenses relating to the enforcement of any conservation or deed restrictions granted to the Association. Common expenses incurred by the Association for the daily operations of the community water supply and sewer lift station shall be accounted for separately and shall be equally assessed to all Members whose units are tied into the community water system.

- (D) Special Assessments.** In addition to the Assessments authorized herein, the Association may levy a special Assessment in any fiscal year for non-budgeted emergency operating expenses. So long as the total Assessment per Member authorized under this Article does not exceed Two Hundred Fifty Dollars (\$250.00) in any one (1) year, the Board, by majority vote, may impose such a special Assessment. This number shall be adjusted either upward or downward in a manner equal to the percentage change in the 2006 United States Department of Labor Consumer Price Index (CPI) between April 2006 (which was 201.5) and the date of the special Assessment. Any additional or other special Assessment shall be effective only with the approval of a majority of the Members.
- (E) Capital Budget and Contribution.** The Association shall assess as a Common Expense an amount or amounts on an annual basis for the purpose of establishing and maintaining a general capital reserve against anticipated future outlays for replacement or expansion of existing facilities and infrastructure within the Common Land or equipment or other property held by the Association in connection with the Development. The proportionate interest of each Member in said Capital Reserve Fund shall not be withdrawn or assigned separately but shall be deemed to be transferred with each lot even though not mentioned or described expressly in the instrument of transfer. The Board shall prepare a capital budget annually which shall take into account the number and nature of replaceable assets, if any, the expected life of each asset, and the expected repair or replacement cost and any proposed expansion of existing facilities and existing infrastructure. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment, as provided in herein. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget. Non-emergency capital expenditures by the Board not accounted for in the annual capital budget shall require a majority approval of the Members at a special meeting held for such purpose.
- (F) Capital Improvements.** Whenever in the judgment of the Board or membership the Common Land should be improved by new construction of a non-existing facility or infrastructure, including, but not limited to tennis courts, swimming pools, clubhouse, additional pier and dock systems, storage buildings, etc. any such new construction may be made by the Association only after obtaining approval of sixty-seven percent (67%) of the Members entitled to vote and all appropriate governmental approvals, if necessary. If such approval is so obtained, the cost thereof shall constitute a part of the common expenses.
- (G) Books.** The Association will maintain books of account for common expenses for the Common Land, general operating account(s) and capital reserve account(s), in accordance with generally recognized accounting practices. Prior to the annual meeting, the Association will render or cause to be rendered to each Member year-end financial statements, including an income and expense statement and balance sheet, for the preceding fiscal year. The current copies of the Deeds to all land under the control of the Association, the Articles of Incorporation, the By-Laws, the Rules and Regulations, as well as books, records and financial statements shall be available for inspection by Members or by holders, insurers and guarantors of first mortgages that are secured by units in the Development. These documents shall be available at the management company during normal daytime business hours.
- (H) Audit.** Any Member may at any time at his/her own expense cause an audit or inspection to be made of the books and records of the Association. The Board at its discretion and as a common expense may obtain an audit of all books and records pertaining to the Association

and furnish copies thereof to the Members. At a minimum the Board shall initiate an audit at least once every three years and upon change of the Managing Agent.

(I) Enforcement. The Association shall have a lien on every Lot, Unit and Building Space Easement for unpaid Assessments levied against the Lot, Unit or Building Space Easement. Each periodic Assessment and each special Assessment shall be a separate, distinct and personal debt and obligation of the Member against whom the same are assessed. If a Member shall fail to pay this assessment within ten days after its due date, then the Member shall pay an additional assessment of \$50.00 for each such failure, and all delinquent Assessments shall bear interest at the lower of (i) eighteen percent (18%) per year, or (ii) the maximum rate allowed by law, from the Assessment due date, plus all costs of collection and reasonable attorney's fees actually incurred in attempts to collect such unpaid Assessments, which shall also be liens on such Lot, Unit or Building Space Easement. The Association, in order to perfect a lien granted by this section, shall file, before the expiration of 6 months from the time such Assessment became due and payable, in the Rockingham County Registry of Deeds, a memorandum, verified by the oath of the President of the Association, which contains the following:

- 1) A description of the property subject to the lien;
- 2) The name or names of the persons constituting the legal Owner(s) of said property;
- 3) The amount of unpaid Assessments currently due or past due together with the date when each fell due; and
- 4) The date of issuance of the memorandum.

When payment or satisfaction is made of a debt secured by the lien perfected herein, said lien shall be released in the same manner as required by RSA 479:7 for mortgages. For the purposes of this section, the President of the Association shall be deemed the duly authorized agent of the lien creditor and shall discharge said lien. Nothing in this section shall be construed to prohibit actions at law to recover sums for which action creates a lien. Any Member or purchaser of a lot or unit, having executed a contract for the disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the President of the Association by registered mail. Failure to furnish or make available such a statement within 10 business days from the receipt of such request shall extinguish the lien created herein as to the lot or unit involved. Such statement shall be binding on the Association, the Board, and every Member. Payment of a fee not exceeding \$10, or the maximum allowed by law, may be required as a prerequisite to the issuance of such a statement. Notwithstanding any law, rule, or provision of Association by-laws, or rules to the contrary, the Board, after 30 days' prior written notice to the delinquent Member and said Member's first mortgagee of nonpayment of an Assessments, terminate the delinquent Member's and or lessee's common privileges and cease supplying a delinquent Member's Lot, Building Space Easement area or Unit with any and all services normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all assessments and charges then due.

ARTICLE IX

INSURANCE

- (A) **Property and Casualty Insurance.** The Board or its duly authorized agent shall obtain insurance for all insurable improvements on the Common Land against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Premiums for all insurance on the Common Land shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. All such insurance coverage obtained by the Board shall be written in the name of the Association, as Trustee, for the respective benefited parties, as further identified in paragraph C-2 below.
- (B) **Liability Insurance.** The Board or its duly authorized agent shall obtain and administer insurance for the Board and the Members against any liability to the public or to the Members (and their invitees or tenants) incident to the ownership and/or use of the Property, and including the personal liability exposure of the Members, incident to the ownership and/or use of the Property. Limits of liability under such insurance shall not be less than Five Hundred Thousand (\$500,000) Dollars for any one (1) accident per person limit, Two Million (\$2,000,000.00) Dollar limit per occurrence, and shall not be less than Two Million (\$2,000,000) Dollars for property damage each occurrence (such limits and coverage to be reviewed at least annually by the Board and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis, and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his/her or their action against another named insured.
- (C) All insurance obtained and maintained by the Association shall be governed by the provisions hereinafter set forth:
- 1) All policies shall be written with a company licensed to do business in New Hampshire and holding a rating of XI or better in the Financial category as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating;
 - 2) All policies on the Common Land shall be for the benefit of the Members and their mortgagees as their interests may appear;
 - 3) Exclusive authority to adjust losses under policies in force on the Property obtained by the Association shall be vested in the Board; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;
 - 4) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with the insurance purchased by individual Members, occupants or their mortgagees, and the insurance carried by the Association shall be primary;
 - 5) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - a) A waiver of subrogation by the insurer as to any claims against the Board, the Members and their respective tenants, servants, agents and guests;
 - b) A waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

- c) No policy may be canceled, invalidated, or suspended on account of any one or more individual Members;
- d) No policy may be canceled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association or its duly authorized Manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Manager, any Member or mortgagee; and
- e) Any “other insurance” clause in any policy exclude individual Members' policies from consideration.

(D) Disbursements of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

- 1) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction, as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Land, or in the event no repair or reconstruction is made after making such settlement as is necessary and appropriate with the affected Member or Lessee and their mortgagee(s), as their interests may appear, if any Lot or Unit is involved, shall be retained by and for the benefit of the Association. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee;
- 2) If it is determined, as provided for in Section C of this Article, that the damage or destruction to the Common Land for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Section D hereof;
- 3) If any funds should be turned over to the Association as compensation for damage or destruction to the residential lots or unit or the improvements thereon, said proceeds should be turned over to the Member of said lot or unit and/or its mortgagee in proportion to the damage to said lot or unit and the improvements thereon.

(E) Damage and Destruction.

- 1) Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty.
- 2) Any damage or destruction to the Common Land shall be repaired or reconstructed unless waived by at least seventy-five (75%) percent of the total vote of the Members. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within nine months, then the period shall be extended until such information shall be made available; provided, however, that such extension shall not exceed sixty (60) days.
- 3) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Land shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event, the

property shall be restored to its natural state and maintained as an undeveloped portion of the Common Land by the Association in a neat and attractive condition.

- (F) **Repair and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a special Assessment against all Members in proportion to the number of Lots and Units owned by such Members. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

ARTICLE X

FISCAL YEAR

- (A) The fiscal year of the Association shall be from August 1 to July 31.

ARTICLE XI

GENERAL PROVISIONS

- (A) **Abatement of Violations.** The violation of any rule or regulation adopted by the Association, the breach of any By-Law contained herein, or the breach of any provision in the Deeds to Association land shall give the Association the right, in addition to any other rights set forth in these By-Laws or in the Deeds, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity the continuance of any such breach, and all costs thereof, including attorney's fees, shall be borne by the defaulting Member. The Association shall have the ability to assess a penalty up to the amount of One Hundred Dollars (\$100.00) per day for any such violation, upon failure of a Member to cure such violation within fourteen (14) days after notice by certified mail to the Member's last known address. The Association shall have a lien on every Lot, Unit or Building Space Easement, as the case may be, for any abatement of violations as herein described which may be applicable to said property and shall have all rights of enforcement as defined under Article VIII, Section I of these By-Laws. A Member shall have the right to appeal to the Board any notice of violation within said fourteen (14) day period. Any such appeal shall be submitted in writing to the Board and upon receipt a Special Meeting of the Board shall be convened within five (5) to ten (10) days thereafter. A copy of the notice of the meeting shall be delivered to the Member who shall have the right to appear before the Board and present their case for reconsideration.
- (B) **Indemnification.** The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or director to the fullest extent of New Hampshire. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other

commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

- (C) **Waiver.** The failure of the Association to insist in any one or more instances upon strict performance of or compliance with any of the covenants of the Member hereunder, or to exercise any right or option herein contained or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect.
- (D) **Notices.** All notices to Members shall be deemed given if hand delivered or sent by Registered or Certified Mail, Return Receipt Requested, to the Member, addressed to the Member's address appearing on the records of the Association. Any notice given or mailed to one co-Owner shall be presumed to have been properly given to any other co-Owner, regardless of whether a separate notice was given or sent to said other co-Owner.
- (E) **Amendment.** These By-Laws may be amended, at any time, by an instrument in writing executed with all the formalities of a deed and recorded at the Rockingham County Registry of Deeds by the then Members of a two-thirds majority of the Members entitled to vote as defined in Article II-C.
- (F) **Notices to Prospective Purchasers of Lots or Units.** In the event of any resale of a Lot or any interest therein by any person the prospective Member shall have the right to obtain from the Association, prior to the contract date of the disposition, the following:
 - 1) A statement of any capital expenditures and major maintenance expenditures anticipated by the Association within the current fiscal year;
 - 2) 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 Association;
 - 3) A copy of the income statement and balance sheet of the Association for the last fiscal year for which such statement is available;
 - 4) A statement of the status of any pending suits or judgments in which the Association is a litigant; and
 - 5) A statement setting forth what insurance coverage is provided by the Association;

The President of the Association or any other Officer of the Association shall furnish such statements upon written request of any prospective lot Owner within ten (10) days of the receipt of such request. The Association may establish a fee to be charged to the lot Owner in consideration of issuing said statement.

- (G) **Renting or Leasing of Residential Units.** All Lease Agreements by an Owner of property subject to these By-Laws shall include a provision in which the Lessee(s) acknowledges receipt of the By-Laws and rules and regulations of the Association and Lessee's agreement to abide

by same. In the event that a Lessee, occupant or person living with the Lessee violates a provision of these By-Laws or rules and regulations adopted pursuant thereto, the Board shall have the power to bring an action or suit against both the Owner and Lessee, jointly and severally, to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity, including, but not limited to, all remedies available to a landlord upon the breach or default of the Lease Agreement by the Lessee. An Owner leasing property subject to these By-Laws shall provide a written statement to the Association signed by the Lessee stating that they acknowledge receipt of the By-Laws and rules and regulations of the Association and Lessee's agreement to abide by same. Any violation by a lessee, tenant or a guest thereof, shall also be considered a violation by the Owner of the property and the Association shall have rights of abatement of violations as provided by these by-laws.

(H) Severability. Invalidation of any one of these By-Laws by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Executed as of the date and year first above written.

THE MOODY POINT COMMUNITY ASSOCIATION, INC.

Witness:

By: _____
Its: President

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this, the _____ of _____, 2006, before me, personally appeared _____, who acknowledged himself to a be the President of The Moody Point Community Association, Inc., a New Hampshire corporation, and that he, as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

Notary Public
My commission expires: _____

