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**BYLAWS OF MOUNTAIN LODGE HOME OWNERS ASSOCIATION**

A West Virginia Unit Owners Association governing Mountain Lodge, a Condominium

Amended and Restated as of **June 30, 2019**

**RECITALS:**

A. The Mountain Lodge Homeowners Association, a West Virginia unincorporated condominium with its principal place of business at 10 Snowshoe Rd., Snowshoe, WV 26209, is the unit owners association of the condominium known as Mountain Lodge at Snowshoe, a Condominium, established and created by the Declaration (as hereinafter defined)

B. The Executive Board held a duly noticed meeting on June 13, 2019 to review and consider these Amended and Restated Bylaws (the “Amended and Restated Bylaws” or “Bylaws”);

C. The Executive Board approved and adopted these Amended and Restated Bylaws at the aforementioned meeting and elected to submit them to the Unit Owners for ratification;

D. On June 30, 2019, the Executive Board presented these Amended and Restated Bylaws at a duly noticed meeting of the Unit Owners whereat Unit Owners representing a majority of the Allocated Interests voted in the affirmative to ratify these Amended and Restated Bylaws;

E. The Executive Board and the Unit Owners desire and intend these Amended and Restated Bylaws to supersede, control, and replace any and all other bylaws as may have been adopted or used by Association;

NOW, THEREFORE, WITNESSETH, the following Amended and Restated Bylaws are hereby adopted and replace any and all other bylaws in their entirety:

**ARTICLE 1: General Provisions; Definitions**

**Section 1.1. Applicability.** These Amended and Restated Bylaws provide for the governance of Mountain Lodge at Snowshoe, a Condominium.

**Section 1.2. Office.** The office of the Association and the Executive Board shall be located at the Property or at such other place as may be designated from time to time by the Executive Board.

**Section 1.3. Definitions.** Terms used herein without definition shall have the meanings specified for such terms in the Declaration or, if not defined therein, the meanings specified for such terms in the Uniform Common Interest Ownership Act (UCIOA). The following terms have the following meanings in these Amended and Restated Bylaws:

(a) “Allocated Interests” or “Percentage Interest” shall mean the undivided interest in the Common Elements, the Common Expense Liability, and votes in the Association, as further described in the Declaration.

(b) “Articles” means the Articles of Incorporation of the Association.

(c) “Building” means the central improvement on the Land containing the Units.

(d) “Common Elements” means all portions of the Condominium other than the Units.

(e) “Common Expense(s)” means expenditure(s) made by, or financial liabilities of, the Association, together with any allocations to reserves (if any), for the general benefit of all Unit Owners (or in the instance of the Limited Common Elements, the applicable Unit Owners).

(f) “Condominium” means the common interest community created by the Declaration, in which portions of the Property are designated for separate ownership and the remainder of the Property is designated for common ownership solely by the Unit Owners.

(g) “Condominium Documents” means the Declaration, the Declaration Plan, these Amended and Restated Bylaws, and the Association Rules, as the foregoing may be amended from time to time.

(h) “Corporate Person” means a Person that is not an individual.

(i) “Declaration” means that certain “Declaration Establishing a Plan for Condominium Ownership of a Tract of 5.01 Acres and Certain Improvements Thereon and Appurtenances Thereunto Belonging Situate at Snowshoe Ski Resort, Edray Tax District, Pocahontas County, West Virginia Pursuant to Chapter 36B of the Code of West Virginia of 1931, as Amended,” together with certain maps and plans referenced therein and all amendments thereto subsequently recorded in said County Clerk’s Office, and recorded in the office of the Clerk of the County Commission of Pocahontas County, West Virginia, in Deed Book\_\_\_\_, at page \_\_\_\_\_.

(j) “Managing Agent” means a Person or firm engaged by the Association, through the affirmative action of the Executive Board and under the terms of a written agreement, to fulfill the responsibilities of the Managing Agent under the UCIOA, the Condominium Documents and the Managing Agent’s written agreement. The term Managing Agent, as used in these Amended and Restated Bylaws, shall include the authorized employees, contractors, officers and agents of the Managing Agent, as they may be empowered by the Managing Agent to satisfy the requirements of the Managing Agent from time to time.

(k) “Mortgage” means a first lien deed of trust encumbering a Unit.

(l) “Mortgagee” means a Lender holding a Mortgage.

(m) “Officer” means any person holding office pursuant to Article 4 of these Amended and Restated Bylaws, but shall not mean members of the Executive Board unless such members are also officers pursuant to Article 4.

(n) “Person” means an individual, partnership, joint venture, Association, trust, limited liability company, unincorporated organization, corporation, joint stock company or any other form of corporation or entity.

(o) “Policies” shall refer to those policies of the Association attached to these Amended and Restated Bylaws as Exhibits.

(p) “Property” means the Land and all improvements and appurtenances, including but not limited to the Building.

(q) “Rules” means the Association Rules, as promulgated and amended pursuant to the terms of the Declaration and these Amended and Restated Bylaws from time to time by the Executive Board.

(r) “UCIOA” means Chapter 36B of the West Virginia Code of 1931, as amended from time to time, or more typically known as the “Uniform Common Interest Ownership Act.”

(s) “Unit” means a physical portion of the Condominium, located in the Building, designated for separate ownership or occupancy, the boundaries of which are described in the Declaration and in the individual deeds to each Unit.

(t) “Unit Owner” means any Person, including the Association, who owns a Unit or a present possessory interest in the legal title to the Unit. The term ‘Unit Owner’ does not include (i) any Person having a future, springing, reversionary, contingent or otherwise non-present possessory interest in the Unit; (ii) any Person having any interest in a Unit solely as security for an obligation; (iii) any Person having a leasehold interest in the Unit; or (iv) any Person who owns an interest in any entity, trust or other non-human Person that holds legal title, or a portion thereof, to a Unit (the Corporate Person being the Unit Owner in that instance).

(u) “Unit Owners Association” or “Association” means the non-profit corporation, the members of which consist of all the Unit Owners owning Units in the Building, that is the Association governing the Building as contemplated by the UCIOA and the Declaration.

## **ARTICLE 2: Unit Owners Association**

**Section 2.1. Composition.** The members of the Association shall consist of all the Unit Owners. The name of the Association shall be the name as set forth in the Articles, as the same may be amended from time to time. The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium and performing all the other acts that may be required or permitted to be performed by the Association, by the UCIOA, and by the Declaration. Except as to those matters which the UCIOA specifically requires to be performed by the vote of the Association, the foregoing responsibilities shall be performed by the Executive Board or Managing Agent as more particularly set forth in Article 3 of these Amended and Restated Bylaws.

**Section 2.2. Annual Meeting.** The Association shall have an annual meeting that shall be scheduled each year by the Executive Board. At the annual meetings, members of the Executive Board shall be elected by ballot of the Unit Owners in accordance with the requirements of these Amended and Restated Bylaws.

**Section 2.3. Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Unit Owners as may be designated by the Executive Board.

**Section 2.4. Special Meetings.** The President may, in the exercise of his discretion and for any reason, call a special meeting of the Association. The President shall call a special meeting of the Association if so directed by resolution of the Executive Board or upon a petition signed and presented to the Secretary by Unit Owners holding not less than twenty percent of the aggregate Allocated Interests on the date the Secretary receives the petition. The notice of any special meeting shall state the time, place, and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 2.5. Notice of Meetings.** The Secretary, or any other officer, shall give to each Unit Owner a notice of each meeting of the Unit Owners at least thirty, but not more than sixty, days before such meeting. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Executive Board.

**Section 2.6. Adjournment of Meetings.** If at any meeting of the Association a quorum is not present, Unit Owners holding a majority of the Allocated Interests represented at such meeting in person, or by proxy, may adjourn the meeting to a time after the time the original meeting was called.

**Section 2.7. Voting.**

(a) Unless otherwise specifically provided for in these Amended and Restated Bylaws or otherwise required by the UCIOA, voting at all meetings of the Association shall be conducted on the basis of the Allocated Interests of each Unit. Unless otherwise specifically provided in these Amended and Restated Bylaws or otherwise required by the UCIOA, a majority of the Allocated Interests represented (in person or by proxy) at any duly noticed meeting at which a quorum is present, shall constitute the affirmative act of the Unit Owners of the Association.

(b) Each Unit's vote is indivisible and may not be cast in portions or split in any manner. Where the ownership of a Unit is held by more than one Person, the Person who shall be entitled to cast the vote of all of the Allocated Interests or votes assigned to that Unit shall be the Person present at the meeting. If more than one of the owners is present at the meeting, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority of the owners thereof. There is majority agreement if any one of the owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

(c) Subject to the requirements of Section 36B-3-110 of the UCIOA, wherever the approval or disapproval of a Unit Owner is required by the UCIOA, the Declaration or these Amended and Restated Bylaws, such approval or disapproval shall be made only by the Person who would be entitled to cast the vote of such Unit at any meeting of the Association.

(d) No votes allocated to a Unit owned by the Association may be cast.

(e) No votes allocated to a Unit may be cast by lessees or tenants thereof.

(f) For the purpose of voting, unless the Managing Agent, the President of the Executive Board, or the Secretary of the Association has actual knowledge that an individual Person is not authorized to vote on behalf of a Corporate Person that is a Unit Owner, the Association (and the chairman of the meeting) may rely on the authority of the Person purporting to cast an authorized vote on behalf of a Corporate Person Unit Owner. It shall be the sole responsibility of Corporate Person Unit Owners to notify the Managing Agent, the President and the Secretary if such Unit Owner desires to specifically exclude Persons from casting the votes retained by the Person as a Unit Owner.

(g) No Unit Owner may vote at any meeting of the Association or be elected to or serve on the Executive Board if payment of the assessment on his Unit is delinquent more than thirty days and the amount necessary to bring his account current has not been paid by such meeting or election.

(h) There shall be no cumulative voting.

**Section 2.8. Proxies.** Votes allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. Proxies may only be granted to Persons who are Unit Owners, of familial relation to the Unit Owner, or the Unit Owner's attorney or agent. If a Unit is owned by more than one Person, each Unit Owner of the Unit may vote, or register a protest to the casting of votes by the other Unit Owners of their Unit, or their proxies, through a duly executed proxy. Proxies shall be duly executed in writing (although they may be received by means of electronic transmission that bear the handwritten signature of the Unit Owner [e.g., facsimile transmissions or PDF documents], but shall not be in the form of an email message, text message or other informal means of electronic communication), and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of a notice of revocation from any of the Persons owning such Unit. A proxy shall be void if it is not dated or purports to be revocable without notice. No proxy shall in any event be valid for a period in excess of one year after the execution thereof.

**Section 2.9. Quorum.** Except as otherwise provided in the Declaration or these Amended and Restated Bylaws, the presence in person, or by proxy, of Unit Owners entitled to cast votes representing twenty percent (20%) of the aggregate Allocated Interests shall constitute a quorum at all meetings of the Association. For the purposes of determining whether a quorum is present (i) Units owned by the Association shall not be counted in the determination of present Units or the determination of the aggregate Allocated Interests; and (ii) Units owned by Corporate Persons shall be deemed "present" if an officer or agent of that Person, authorized to vote the interests of that Person is physically present, or the Person is represented by proxy, at the meeting.

**Section 2.10. Conduct of Meetings.** The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring thereat. In the absence of the President, the Vice President will preside over the meeting. The President may appoint a person to serve as parliamentarian at any meeting of the Association. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these Amended and Restated Bylaws or the UCIOA.

### **ARTICLE 3: Executive Board**

**Section 3.1. Powers and Duties.** As provided for in the Declaration and subject to the limitations set forth therein, the Executive Board may act in all instances on behalf of the Association and shall have all of the powers and duties set forth in the Declaration and any other powers necessary for the administration of the affairs of the Association, including but not limited to the following:

(a) Prepare and adopt an annual budget, in which there shall be expressed the assessments of each Unit Owner for the Common Expenses;

(b) Make assessments against Unit Owners to defray the cost and expenses of the Condominium, establish the means and methods of collecting such assessments from the Unit Owners, and establish the period of the installment payment of the annual assessment for Common Expenses;

(c) Provide for the operation, care, upkeep and maintenance of all Property and services of the Condominium;

(d) Designate, hire, and dismiss the personnel necessary for the maintenance, operations, repair, and replacement of the Common Elements and provide services for the Property and, where appropriate, provide for the compensations of such personnel and for the purchase of equipment, supplies,

and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed part of the Property;

(e) Open bank accounts on behalf of the Association and designate the signatories thereon;

(f) Collect the assessments against the Unit Owners, deposit the proceeds thereof in bank depositories designated by the Executive Board in a manner to ensure all deposits are covered by the FDIC, and use the proceeds to carry out the administration of the Property;

(g) Make and amend the Association Rules;

(h) Make and amend the Association Policies;

(i) Make, or contract for the making of, repairs, additions, and improvements to or alterations of the Property, and repairs to and restoration of the Property, in accordance with these Amended and Restated Bylaws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(j) Regulate the external design, appearance, use, and maintenance of the Common Elements;

(k) In its sole discretion, impose reasonable fines upon and issue a cease and desist request to a Unit Owner, his/her guests, invitees, or lessees whose actions are inconsistent with the provisions of the Uniform Condominium Act, the Condominium Documents, the Association Rules, or the resolutions of the Executive Board (upon petition of any Unit Owner or upon its own motion);

(l) As required, provide interpretations of the Condominium Documents, Association Rules, and resolutions pursuant to the intents, provisions, and qualifications thereof when requested to do so by a Unit Owner or the Executive Board;

(m) Enforce by legal means the provisions of the Declaration, these Amended and Restated Bylaws, and the Association Rules; act on behalf of the Unit Owners with respect to all matters arising out of any eminent domain proceeding; and notify the Unit Owners of any litigation against the Association involving a claim in excess of ten percent of the amount of the annual budget;

(n) Obtain and carry insurance against casualties and liabilities, as provided in W. Va. Code § 36B-3-113, pay the premiums therefore, and adjust and settle any claims thereunder;

(o) Pay the cost of all authorized services rendered to the Association and not billed to Unit Owners or otherwise provided for in these Amended and Restated Bylaws;

(p) Keep books with detailed accounts in chronological order of the receipts and expenditures affecting the Property and the administration of the Condominium, specifying the expenses of maintenance and repair of the Common Elements and any other expenses incurred. Such books and vouchers accrediting the entries therein shall be available for examination by the Unit Owners, their attorneys, accountants, and authorized agents during general business hours on business days at the times and in the manner set and announced by the Executive Board for the general knowledge of the Unit Owners. All books and records shall be kept in accordance with generally accepted accounting principles, and the same shall be audited at least once each year by an independent auditor retained by the Executive Board who shall not be a resident of the Condominium or a Unit Owner. The cost of such audit shall be a Common Expense;

(q) Notify a Mortgagee of any default hereunder by the Unit Owner of the Unit subject to such Mortgage, if such default continues for a period exceeding thirty days;

(r) Borrow money on behalf of the Condominium when required in connection with any one instance relating to the operation, care, upkeep and maintenance of the Common Elements;

(s) Acquire, hold, and dispose of Units and mortgage the same if such expenditures and hypothecations are included in the budget adopted by the Association;

(t) In its sole discretion, designate from time to time, and on a temporary basis, the use of certain Common Elements by less than all the Unit Owners and impose such restrictions and conditions on the use thereof as the Executive Board deems appropriate;

(u) Furnish the "Certificate for Resale" statement required by section 36B-4-109 of the Uniform Condominium Act., within ten days after the receipt of a written request therefore from any Unit Owner; and

(v) Do such other things and acts not inconsistent with the Uniform Condominium Act, the Declaration, or these Amended and Restated Bylaws which the Executive Board may be authorized to do by a resolution of the Association.

**Section 3.2. Managing Agent.** The Executive Board may employ for the Condominium a Managing Agent, upon terms and conditions, and for compensation, to be established by the Executive Board pursuant to the Declaration. The Managing Agent shall have the authority, duties, and obligations as may be determined by the Executive Board including, but not limited to, those stated in the Managing Agent Policy attached hereto as Exhibit 3.2.

### **Section 3.3. Executive Board; Composition, Election, and Term Limits**

(a) Number. The Executive Board shall be comprised of not fewer than five (5) nor more than seven (7) persons, all of whom must be Unit Owners or be a representative of Corporate Person Unit Owner as an authorized officer. As of the date of these Amended and Restate Bylaws, the Executive Board shall be comprised of five (5) persons.

(b) Term. Except for resignation or removal, the members of the Executive Board shall hold office for a term of three years or until their respective successors shall have been elected by the Association. Members shall be limited to two consecutive three year terms, then must leave the Executive Board for at least one year before returning to the Executive Board via election unless no one steps up to run for the open seat.

(c) Executive Board Seats; Board Groupings.

i. The members of the Executive Board in office as of the date of these Amended and Restated Bylaws (the "Current Executive Board") shall continue to serve until an election for all seats on the Executive Board is held (the "New Board Election"); *provided, however,* notwithstanding anything stated herein, the New Board Election shall be held no later than March 31, 2021. The Current Executive Board has the express duty and obligation to hold the New Board Election on or before March 31, 2021, during the annual meeting of the members.

ii. Beginning with the New Board Election, the terms of the members of the Executive Board shall be classified into three groups identified as groups A, B, and C, with groups A and

B consisting of a total of two members of the Executive Board, and group C each consisting of one member of the Executive Board. At the New Board Election, Group A shall be elected for an initial term of one (1) year, Group B shall be elected for an initial term of two (2) years, and Group C shall be elected for an initial term of three (3) years; *provided, however*, each subsequent election for Groups A, B, and C shall be for a term of three (3) years.

iii. At the New Board Election, the Current Executive Board, in its sole discretion and by majority vote, shall place nominees to the Executive Board into Group A, Group B, or Group C.

iv. Nothing in this Section 3.3(c) shall prevent a member of the Current Executive Board from resigning or being removed from office pursuant to the Condominium Documents or applicable law.

v. If the number of members of the Executive Board is increased to seven (7), the board groupings shall be classified as group A consisting of a total of three members of the Executive Board, and groups B and C each consisting of a total of two members of the Executive Board.

(d) Election. The election of Executive Board members shall be conducted according to the process set forth in Sub-Section (f) below with one of the three groups (*i.e.*, A, B, or C) to be elected each year in successive alphabetical order, repeating a complete cycle every three years.

(e) Successors to Serve Unexpired Terms. Successors who are elected or selected to replace a removed, resigning, or otherwise unavailable member of the Executive Board shall serve for the remainder of the unexpired term of the member of the Executive Board that they are replacing and shall be considered a part of the same alphabetical group as the member that they are replacing.

(f) Election and Term Limits of Executive Board Members.

i. Elections Committee. At least ninety (90) days before each annual meeting of the Association, the Executive Board shall appoint an elections committee consisting of two members of the Executive Board whose terms will not expire during that year and at least one other Unit Owner; *provided, however*, if the Executive Board is unable to find a non-Executive Board member to fill the third position on the elections committee after a reasonable search, the Executive Board may appoint a third Executive Board member to the committee whose term will not expire during that year.

ii. The Elections committee shall develop election procedures consistent with these Amended and Restated Bylaws and administer such procedures as are approved by the Executive Board.

iii. Nominations; Notice of Candidates; and Elections.

(A) Persons qualified to be Executive Board members must be nominated for election through the Elections Committee according to the following process in order to be eligible to serve on the Executive Board. The Elections Committee shall receive nominations from the Unit Owners generally. Unit Owners may nominate themselves.

(B) All nominations shall be submitted to the Elections Committee at least forty (40) days before the meeting at which the election is to be held; *provided, however*, nominations may be made from the floor at the meeting if no more than one (1) person has been nominated to that seat pursuant to the foregoing; *provided, further*, the Secretary must certify at the meeting that the floor nominee(s) meet the qualifications in Section 3.3(g).



(C) All nominations shall be accompanied by a document signed by the nominee indicating their willingness to serve as a member of the Executive Board.

(D) The Elections Committee shall determine which nominees are qualified to serve on the Executive Board under the terms of Sub-Section (g) of this Section 3.3.

(E) A list of all qualified nominees (including only the nominee's name, unit number, telephone number, primary mailing address and email address) shall be submitted by the Elections Committee to the Secretary of the Association to be included with the required notice of the meeting to be delivered to the Unit Owners in accordance with these Amended and Restated Bylaws.

(F) Nominations from the floor on the day of the elections are valid.

(G) No nominated candidate may include any personal or other information about themselves in the notice other than what is required to be submitted by the Elections Committee to the Secretary.

(H) When appropriately raised during the meeting at which the election of the Executive Board is to occur, the chairperson of the Elections Committee shall present a list of all qualified nominees (including only the nominee's name, unit number, telephone number, primary mailing address and email address (if any)) to the Unit Owners present at the meeting.

(I) Following the presentation of the list of qualified nominees to the Unit Owners, the chairperson of the meeting of Unit Owners may open the floor for orderly debate with each speaker to be recognized by the chairperson. Debate and deliberation shall continue only so long as the chairperson deems appropriate.

(J) Following any debate and deliberation, the election of the Executive Board shall occur in the following manner:

1. Unit Owners may cast one vote (that is one expression of the Allocated Interest of their Unit) for each open seat on the Executive Board during the then current election;

2. No Unit Owner may cast more than one vote (that is one expression of the Allocated Interest of their Unit) for any individual qualified nominee;

3. The qualified nominees receiving the greatest percentage of the Allocated Interests represented, respectively, shall fill the open seats on the Executive Board then up for election until all the seats to be filled have been filled;

4. In the event of a tie between two qualified candidates where there is only one open seat on the Executive Board, the two qualified candidates who tied shall be the subject of a second vote, without any additional participants, and the qualified nominee with the most votes between the two shall be selected for the open seat (and in the event of a tie in the run-off vote, this run-off process shall be repeated indefinitely until such time as one candidate retains more votes than the other);

5. There shall be no majority requirement or threshold for elections conducted in this manner and the winners may win with only a plurality of the vote cast.

(g) Qualifications. The following rules shall define the qualifications for eligibility to serve on the Executive Board:

1. No person shall be eligible for election as a member of the Executive Board unless he is (alone or together with one or more other Persons) a Unit Owner or is a representative of a Corporate Person Unit Owner as an authorized officer.

2. No Person shall be eligible for election to the Executive Board if a joint tenant, tenant in common, or other co-owner of title to the Unit that the potential candidate is a Unit Owner of, is presently serving on the Executive Board. No person shall be eligible for election to the Executive Board if he is an authorized representative of a Corporate Person who has another authorized representative already serving on the Executive Board.

3. No person shall be eligible for election to the Executive Board who has not yet attained the age of eighteen (18) years.

4. No Person shall be eligible for election as a member of the Executive Board who is more than thirty (30) days delinquent on any financial obligations to the Association, has any unpaid or outstanding assessments, has any unpaid or outstanding fees, or has a lien filed against his/her Unit and that has not been released.

#### **Section 3.4. Removal or Resignation of Executive Board Members.**

(a) At any regular or special meeting duly called, and at which a quorum is present, any one or more of the members of the Executive Board may be removed, with or without cause, by affirmative vote of at least two thirds of the Allocated Interests present or represented by proxy and entitled to vote at the meeting. In case of such a removal, a successor may then and there be elected, by vote of the majority of the Allocated Interests present or represented by proxy and entitled to vote at the meeting, to fill the vacancy thus created; *provided, however*, that any Person so elected by the Unit Owners must meet the qualifications under Section 3.3(g).

(b) Notwithstanding the terms of Sub-Section (a) of this Section 3.4, no Executive Board member may be removed unless he or she has been given at least seven (7) days' notice of the time, place, and purpose of the meeting whereby the removal will be discussed and has been given an opportunity to be heard at the meeting. Notice of the planned discussion of removal will be transmitted to the Executive Board member by the Secretary if the Executive Board is informed of the proposed action in time for the Secretary to send the notice. The burden of establishing that such notice has been provided falls to the movant calling for removal.

(c) A member of the Executive Board may resign at any time or shall be deemed to have resigned (i) upon the disposition of his/her Unit, (ii) if he or she is more than sixty (60) days delinquent in his/her financial obligations to the Association; or (iii) if lien has been filed against his/her Unit and has not been released. Vacancies created by resignations under this subsection (c) shall be filled in the manner provided for in Section 3.5 of these Amended and Restated Bylaws.

**Section 3.5. Vacancies.** Vacancies in the Executive Board caused by any reason other than the removal of a member of the Executive Board by a vote of the Association shall be filled by a vote of a majority of the remaining Executive Board members at a special meeting of the Executive Board held for such purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each Person so elected shall be a member of the Executive board and shall serve the unexpired term of the vacant position, with this period of service not counting toward the term limitation outlined in Section 3.3(b) above. No Person shall be selected by the

Executive Board to fill a vacancy and complete an unexpired term under this Section unless that Person meets the qualifications for membership on the Executive Board set forth in Section 3.3(g).

**Section 3.6. Regular Meetings.** Regular meetings of the Executive Board may be held at such time and place as shall be determined from time to time by a majority of the Executive Board members. Notice of regular meetings of the Executive board shall be given in writing to each Executive Board member, by hand delivery, mail, or electronic delivery, which notice shall state the time, place, and purpose of the meeting.

**Section 3.7. Special Meetings.** Special meetings of the Executive Board may be called by the President or at least three (3) members of the Executive Board with at least three (3) business days' notice to each Executive Board member, given in writing by hand delivery, mail, or electronic delivery, which notice shall state the time, place, and purpose of the meeting.

**Section 3.8. Waiver of Notice.** Any Executive Board member may at any time, in writing, waive notice of any meeting of the Executive Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by an Executive Board member, in person or by electronic communication, at any meeting of the Executive Board shall constitute a waiver of the required notice by him as to such meeting. If all Executive Board members are present at any meeting of the Executive Board, no notice shall be required, and any business may be transacted at such meeting.

**Section 3.9. Votes; Quorum of Executive Board.** At all meetings of the Executive Board, not fewer than four (4) board members shall constitute a quorum for the transaction of business, and the votes of a majority of the board members present at a meeting at which a quorum is present shall constitute the decision of the Executive Board; *provided*, each member of the Executive Board shall have one (1) vote on matters voted upon by the Executive Board. If, at any meeting of the Executive Board, there shall be less than a quorum present, a majority of those present may adjourn the meeting. A member of the Executive board who participates in a meeting by means that allow real-time, two-way electronic audio (at a minimum) shall be deemed present at the meeting for all purposes.

**Section 3.10. Fidelity Bonds.** There shall be obtained fidelity bonds in an amount not less than one-half (1/2) the total annual assessments for the year (in such form and such greater amounts as may be required by the Mortgagees) for all officers, Executive Board members and employees of the Association, including without limitation, the Managing Agent, handling or responsible for Association funds. The premiums on such bonds shall constitute a Common Expense.

**Section 3.11. Compensation.** The members of the Executive Board shall not receive any compensation from the Association for acting as such, other than actual expenses reasonably incurred in the performance of their office, and then only when said members provide receipts for claimed expenses.

**Section 3.12. Action Without Meeting.** Any action by the Executive Board required or permitted to be taken at any meeting may be taken without a meeting if all the members of the Executive Board shall individually or collectively consent unanimously in writing, or by electronic writing, to such action. Any such writing (including writings submitted electronically) shall be filed with the minutes of the proceedings of the Executive Board.

**Section 3.13. Conflicts of Interest Policy.** The members of the Executive Board shall abide by the Association's conflicts of interest policy, attached hereto as Exhibit 3.13. Any interested Executive Board member may be counted in determining the presence of a quorum of any meeting of the Executive Board or committee thereof.

**Section 3.14. Advisory Committee.** The Executive Board may, but is not required to, establish one or more advisory committees for the purpose of assisting and making recommendations to the Executive Board on any area in which the Executive Board would be, or may be, required to render decisions for the Association. Members of any advisory committee shall serve at the sufferance of the Executive Board and may consist of any persons appointed by the Executive Board.

**Section 3.15. Annual Budget.** The Executive Board shall prepare and adopt an annual budget for the Association. Within thirty days after adoption of any proposed budget for the Association by the Executive Board, the Executive Board shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than (14) fourteen nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners, present or by proxy, reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

#### **ARTICLE 4: Officers**

**Section 4.1. Designation.** The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Executive Board. The Executive Board may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its judgment may be necessary. Any and all officers shall be Unit Owners in good financial standing with the Association.

**Section 4.2. Election of Officers.** Each of the officers of the Association shall be elected annually by the Executive Board and shall hold office at the pleasure of the Executive Board.

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

**Section 4.4. President.** The President shall be the chief executive officer of the Association, preside at all meetings of the Association and of the Executive Board, have general and active management of the business of the Association subject to the control of the Executive Board, see that all orders and resolutions of the Executive Board are carried into effect, and appoint committees from among the Unit Owners from time to time as the President may in his/her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

**Section 4.5. Vice President.** The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Executive Board shall appoint some other member of the Executive Board to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Executive Board or by the President.

**Section 4.6. Secretary.** The Secretary shall keep the minutes of all meetings of the Association and of the Executive Board; have charge of such books and papers as the Executive Board may direct; give or cause to be given all notices required to be given by the Association; maintain a register setting forth the place to which all notices to Unit Owners and Mortgagees hereunder, or under the Declaration, shall be delivered; and perform all the duties incident to the office of Secretary.

**Section 4.7. Treasurer.** The Treasurer or designated representative shall be responsible for Association funds and securities; keep full and accurate financial records and books of account showing all receipts and disbursements; prepare all required financial data; deposit all monies and other valuable effects in the name of the Executive Board and the Association, in such depositories as may from time to time be designated by the Executive Board; and, in general, perform all the duties incident to the office of Treasurer. The Association may employ a bookkeeper to assist the Treasurer in duties and obligations.

**Section 4.8. Execution of Documents and Instruments.** The Executive Board and the officers of the Association shall abide by the terms of the Signature Authorization Policy, attached hereto as Exhibit 4.8, governing the appropriate execution of agreements, contracts, deeds, leases, checks and other instruments of the Association and the authority of officers regarding the same.

**Section 4.9. Compensation of Officers.** The officers shall not receive any compensation from the Association for acting as such, other than actual expenses reasonably incurred in the performance of their office, and then only when said members provide receipts for claimed expenses.

#### **ARTICLE 5: Special Assessments; Building Committee.**

**Section 5.1. Projects Requiring Unit Owner Approval.** Whenever, in the judgment of the Executive Board, the Common Elements shall require additions, alterations, or improvements, or when any part of the Common Elements needs to be replaced, and the costs of such additions, alterations, improvements or replacements (i) were not planned for or considered in the annual budget for the Association then in effect (the "Effective Budget"); and (ii) would exceed fifteen percent (15%) of the total Effective Budget during any period of twelve (12) consecutive months, the Executive Board shall follow the procedures set forth in Subsection (b) of this Section to obtain Unit Owner consent. The costs associated with the foregoing shall constitute a Common Expense or Limited Common Expense, depending on the nature of the additions, alterations or improvements, and shall be made by special assessment. These special assessments may not be used to circumvent the notice and membership approval requirements for budgets under these Amended and Restated Bylaws and West Virginia law.

**Section 5.2. When Unit Owner Approval Required.** When the approval of the Unit Owners is required by Section 5.1 of this Section, such requests shall require a vote of the majority of the Unit Owners pursuant to their Allocated Interest present in person or by proxy at a duly called meeting of the Association at which a quorum is present to approve such requests from the Executive Board. Notwithstanding any other provision of these Amended and Restated Bylaws, written notice of any meeting called for the purpose of approving the establishment of any Special Assessment under Section 5.1 hereof shall be sent to all Unit Owners not fewer than ten (10) days nor more than sixty (60) days before the date of said meeting.

(a) **Section 5.3 When Unit Owner Approval Not Required.** Any additions, alterations or improvements costing less than fifteen percent (15%) of the total Effective Budget during any period of twelve (12) consecutive months may be made by the Executive Board without approval of the Unit Owners, even in the event that the same were not planned for in Effective Budget or in projected annual budgets and the cost thereof shall constitute a Common Expense or Limited Common Expense, depending on the nature of the additions, alterations or improvements.

**Section 5.4. Specific Assessment.** The Association shall have the power to levy Specific Assessments against a particular Unit or Units, either periodically or in lump sums, as follows:

i. to cover the costs, including overhead and administrative costs, of providing benefits, items, or services that the Association may from time to time offer to Unit Owners upon request (which might include janitorial services, garbage collection, pest control services, cable, digital, satellite or similar television service, internet, intranet, and other computer-related services, security, caretaker, fire protection, utilities, and similar services and facilities), which Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Unit Owner;

ii. to cover any outstanding or unpaid costs owed by a Unit Owner associated with maintenance, repair, and replacement of any improvements to the Common Elements;

iii. to cover all costs incurred by the Executive Board to maintain the Unit during the period of time when the Unit does not contain an Occupant or other required maintenance; and

iv. to cover any and all additional costs incurred in fulfilling the obligations and responsibilities of the Executive Board with regard to the maintenance, repair, improvement, or replacement of the Common Elements.

**Section 5.5. Unit Owner Liability.** Notwithstanding anything herein to the contrary, all costs and expenses of the maintenance, repair and replacement of any of the Common Elements caused by unreasonable negligence or misuse by any Occupant or invitee of a Unit or the construction or reconstruction of a Unit shall be borne solely by that Unit Owner. The Executive Board shall assess such Unit Owner for such costs and expenses as a Specific Assessment under this Declaration.

**Section 5.6. Building and Grounds Committee.** The Executive Board may establish a Building and Grounds Committee (“Building Committee”), the members of which shall be appointed by the Executive Board. The members of the Building Committee shall serve at the will and pleasure of the Executive Board. The Building Committee shall have jurisdiction over architectural controls and modifications as described in Article X of the Declaration.

**Section 5.7. Modifications Policy.** The Modifications Policy is attached hereto as Exhibit 5.7. The Modifications Policy may be amended at any time by the Executive Board, provided amendments to the Modifications Policy may not be used to invalidate prior approved projects, *ex post facto*, unless such project represents a structural threat to the Condominium.

## **ARTICLE 6: Amendments**

### **Section 6.1. Amendments to Bylaws.**

(a) These Amended and Restated Bylaws may be modified or amended by (i) an affirmative vote of the majority of the members of the Executive Board, or (ii) a majority vote of the Unit Owners pursuant to their Allocated Interest present and represented by proxy at a duly called meeting of the Association where there is a quorum.

(b) All amendments to the Bylaws shall be prepared, executed, certified, and recorded in the Association’s records by the Secretary, and the Executive Board shall notify the Unit Owners of any amendments or modifications made to these Amended and Restated Bylaws within five days of such amendment or modification.

**Section 6.2. Amendments to Rules.** The Association Rules may be amended by the Executive Board at its exclusive discretion. Amendments shall be reported to the Unit Owners at the next meeting of the Unit Owners following the amendments.

**Section 6.4. Amendments to Policies.** The Policies attached to these Amended and Restated Bylaws may be amended by the Executive Board at its exclusive discretion, notwithstanding the stipulations on amending the Modifications Policy as mentioned in Section 5.7 above. Amendments shall be reported to the Members at the next meeting of the Unit Owners following the amendments.

**Section 6.5. Periodic Review.** The Executive Board shall periodically review these Amended and Restated Bylaws and the Policies.

## **ARTICLE 7: Miscellany**

### **Section 7.1. Mortgages; Insurance.**

(a) The Unit Owners shall abide by the Mortgage Policy attached hereto as Exhibit 7.1(a).

(b) The Association shall maintain insurance pursuant to the Insurance Policy attached hereto as Exhibit 7.1(b).

### **Section 7.2. Notices.**

(a) Except as otherwise permitted in the Declaration, all notices required by the Declaration shall be sent in writing by prepaid postal mail or hand-delivered to the Unit, or to such other address as the Unit Owner shall have designated in writing to the Executive Board (the "Notice Address").

(b) All notices, demands, bills, statements, or other communications with Unit Owners required or permitted under the Bylaws, but not required by the Declaration, shall be in writing and be deemed to have been duly given if delivered (i) personally, (ii) via facsimile transmission, (iii) via courier, (iv) via formal means of electronic delivery (*e.g.*, electronic mail), or (v) sent by postal mail, postage prepaid to the Notice Address.

(c) Notwithstanding anything to the contrary in these Amended and Restated Bylaws, all notices notifying Unit Owners of a default with regard to any obligation of the Unit Owner or notice notifying Unit Owners of the existence of lien on a unit, shall be in writing and shall be delivered by registered or certified United States mail, return receipt requested, postage prepaid, to the Notice Address.

(d) If notice is to be delivered to a Unit Owner, it shall be deemed to be properly delivered if delivered by permitted means according to subsections (a) through (c) above, to the physical address which the Unit Owner shall designate in writing and file with the Association, to the email or electronic address or facsimile transmission number as requested by the Owner or, if no such address is provided, then to the Unit itself. It shall be the responsibility of the Unit Owner to maintain the Unit Owner's correct and up to date address and contact information with the Association.

(e) If notice is to be delivered to the Association, the Executive Board, or to the Managing Agent, the notice shall be delivered to the principal office of the Executive Board or at such other physical address, facsimile transmission number or electronic delivery address as shall be designated by notice in writing to the Unit Owners pursuant to this Section.

(f) If a Unit is owned by more than one Person, each such Person who so designates an address in writing, according to subsection (d) above shall be entitled to receive all notices hereunder.

(g) The costs of all permitted and required notices shall be an Association Common Expense.

**Section 7.3. Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Amended and Restated Bylaws or the intent of any provision thereof.

**Section 7.4. Pronoun Use is Non-Specific.** The use of pronouns when referring to Unit Owners or Persons in these Amended and Restated Bylaws shall not necessarily reflect gender nor whether or not the Unit Owner or Person referred to is an individual or a Corporate Person. All such pronouns may be used interchangeably.

**Section 7.5. Books and Records Generally.**

(a) The Association shall keep complete and correct books and records of account and shall also keep minutes of the proceedings of its Board at the registered or principal office of the Association.

(b) All books, records, and minutes of the Association may be inspected by any member of the Executive Board or his/her agent or attorney, for any proper purpose at any reasonable time.

(c) Books, records, and minutes of the Association may be inspected by any Unit Owner according to the terms of the Records Review Policy, attached hereto as Exhibit 7.5.

**Section 7.6. Review of Records.** The records of the Association may be reviewed by members of the Executive Board and Unit Owners according to the terms and conditions of the Records Review Policy, attached hereto as Exhibit 7.5

**Section 7.7. Interpretation.** The provisions of these Amended and Restated Bylaws shall be liberally construed to effectuate their purpose of facilitating the operation of a residential condominium and for the maintenance of the Common Elements. Except for judicial construction, the Executive Board shall have the exclusive right to construe and interpret the provisions of these Amended and Restated Bylaws, in the absence of any adjudication to the contrary by a court of competent jurisdiction, the Executive Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by these Amended and Restated Bylaws.

**Section 7.8. Effective Date.** These Amended and Restated Bylaws shall become effective immediately upon adoption by the Members. Any amendments hereto shall become effective as set forth in the amendment, provided that no *ex post facto* amendments shall be permitted.

**Section 7.9. Priority and Inconsistencies.** If conflicts and inconsistencies exist between or among the Bylaws, the Declaration, the Rules, and the Policies, the inconsistencies shall be resolved as follows: (i) If there are inconsistencies between these Amended and Restated Bylaws and the Declaration, the Declaration shall prevail; (ii) if there are inconsistencies between these Amended and Restated Bylaws and the Rules, these Amended and Restated Bylaws shall prevail; (iii) if there are inconsistencies between these Amended and Restated Bylaws and the Policies, these Amended and Restated Bylaws shall prevail; in all instances, both documents shall continue to apply with the prevailing document controlling to the extent of the inconsistency.



**Section 7.10. Control.** These Amended and Restated Bylaws shall supersede, control, and replace any and all other bylaws as may have been adopted or used by Association.

### **Exhibit 3.13**

#### **Conflict of Interest Policy**

##### **ARTICLE 1: Purpose**

The purpose of this conflict of interest policy is to protect the Association's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Association or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit corporations or Homeowners Associations.

##### **ARTICLE 2: Definitions**

**Section 2.1 Interested Person.** Any director, principal officer, or member of a committee with Executive Board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

**Section 2.2 Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

(a) An ownership or investment interest in any entity with which the Association has a transaction or arrangement,

(b) A compensation arrangement with the Association or with any entity or individual with which the Association has a transaction or arrangement, or

(c) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Association is negotiating a transaction or arrangement.

**Section 2.3** Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

**Section 2.4** A financial interest is not necessarily a conflict of interest. Under Section 3.2, a person who has a financial interest may have a conflict of interest only if the appropriate Executive Board or committee decides that a conflict of interest exists.

##### **ARTICLE 3: Procedures**

**Section 3.1 Duty to Disclose.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with Executive Board delegated powers considering the proposed transaction or arrangement.

**Section 3.2 Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Executive Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

**Section 3.3 Procedures for Addressing the Conflict of Interest.**

(a) An interested person may make a presentation at the Executive Board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

(b) The chairperson of the Executive Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

(c) After exercising due diligence, the Executive Board or committee shall determine whether the Association can obtain, with reasonable efforts, a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

(d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Executive Board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Association's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

### **Section 3.4 Violations of the Conflicts of Interest Policy.**

(a) If the Executive Board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Executive Board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate corrective actions.

## **ARTICLE 4: Records of Procedures**

**Section 4.1** The minutes of the Executive Board and all committees with Executive Board delegated powers discussing potential conflicts of interest shall contain:

(a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Executive Board's or committee's decision as to whether a conflict of interest in fact existed.

(b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

## **ARTICLE 5: Compensation**

**Section 5.1** A voting member of the Executive Board who receives compensation, directly or indirectly, from the Association for services is precluded from voting on matters pertaining to that member's compensation; *provided, however*, the member of the Executive Board precluded from voting pursuant to the foregoing may provide information to the Executive Board or any committee related to compensation.

**Section 5.2** A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Association for services is precluded from voting on matters pertaining to that member's compensation; *provided, however*, the member of the committee precluded from voting pursuant to the foregoing may provide information to the Executive Board or any committee related to compensation.

#### **ARTICLE 6: Annual Statements**

**Section 6.1** Each director, principal officer and member of a committee with Executive Board delegated powers shall annually sign a statement which affirms such person:

- (a) Has received a copy of the conflicts of interest policy,
- (b) Has read and understands the policy, and
- (c) Has agreed to comply with the policy.

**Section 6.2** Notwithstanding the foregoing Section 6.1, the failure of the Association to have statements called for in this paragraph signed by any director, principal officer and member of a committee with Executive Board delegated powers shall not prejudice or invalidate any decision or action of any director, principal officer, member of a committee with Executive Board delegated powers, or any committee or the Executive Board itself.

#### **ARTICLE 7: Periodic Reviews**

**Section 7.1** To ensure the Association operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic review shall, at a minimum, include the following subjects:

- (a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- (b) Whether partnerships, joint ventures, and arrangement with management Associations conform to the Association's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in excess benefit transaction.

#### **ARTICLE 8: Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the Association may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Executive Board of its responsibility for ensuring periodic reviews are conducted.

## Exhibit 3.2

### Managing Agent Policy

1. Managing Agent Agreement. The Association shall memorialize any agreement or engagement of a Managing Agent in a written Managing Agent Agreement.
2. Requirements. The Managing Agent shall be a person or a bona fide business enterprise which manages common interest residential communities. The Managing Agent shall be a person, or shall employ persons, possessing a high level of competence in the technical skills necessary to proper management of the Condominium. The Managing Agent must be able to advise the Executive Board regarding the administrative operation of the Condominium and shall employ personnel knowledgeable in the areas of condominium insurance, accounting, contract negotiation, labor relations and condominium regulations.
3. Duties. The Managing Agent shall perform such duties and services as the Executive Board shall direct. Such duties and services may include, without limitation, the duties listed in subsections 3.1 (a), (c), (d), (e), (h), (i), (j), (k), (l), (m), (q), and of these Amended and Restated Bylaws. The Executive Board may delegate to the Managing Agent all of the powers granted to the Executive Board by these Amended and Restated Bylaws, except the powers set forth in subsections 3.1 (b), (f), (g), (n), (o), and (p) of these Amended and Restated Bylaws.
4. Standards. Unless otherwise stated in the managing agent agreement, or unless otherwise directed by the Executive Board, the Managing Agent shall perform and follow the following practices and services:
  - (a) the accrual method of accounting shall be employed and expenses required by these Amended and Restated Bylaws to be charged to more than one but less than all Unit Owners 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 Unit Owners Association shall not be commingled with any other accounts;
  - (d) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Unit Owners Association whether in the form of commissions, finders fees, service fees or otherwise; and discounts received shall benefit the Unit Owners Association;
  - (e) any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Unit Owners Association shall be disclosed promptly to the Executive Board; and
  - (f) a monthly financial report shall be prepared for the Unit Owners Association containing:
    - (i) an income statement reflecting all income and expense activity for the preceding month on an accrual basis;
    - (ii) an account activity statement reflecting all receipt and disbursement activity for the preceding month 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 Unit Owners Association on an un-audited 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 Unit Owners who are delinquent in paying condominium assessments and describing the status of any actions to collect such assessments.

## Exhibit 4.8

### Signature Authorization Policy

1. *Monetary Obligations in Excess of \$10,000.* All agreements, contracts, checks, loans, notes, releases, and other instruments of the Association that represent obligations or expenditures in excess of Ten Thousand Dollars (\$10,000.00), shall be executed by any two persons designated by the Executive Board from time to time as authorized signatories; *provided*, in the event of an emergency that requires the unanticipated and immediate use of Association funds, Managing Agent is to immediately notify the Executive Board by email for permission to expend Association funds to mitigate damages caused by the emergency situation. If within a reasonable amount of time, not to exceed twelve (12) hours, the Managing Agent has not received a response from the Executive Board, the Managing Agent shall have the authority to incur expenses up to a maximum amount of \$2,000 per each 24 hour period without a response from the Executive Board. This exception applies to emergency situations – defined as a serious, unexpected and potentially dangerous situation requiring immediate action.
2. *Reserve Account Draws.* Any and all checks drawn upon reserve accounts, regardless of the amount, shall be executed by any two persons designated by the Executive Board from time to time as authorized signatories.
3. *Monetary Obligations of Less Than \$10,000.* All agreements, contracts, leases, checks, loans, notes, releases and other instruments of the Association that represent obligations or expenditures of less than Ten Thousand Dollars (\$10,000.00), except from reserve accounts, may be executed by any one person designated by the Executive Board from time to time as an authorized signatory.
4. *Conveyance of Real Property Interests.* Any deeds, leases, deeds of trust, easements, rights of way, licenses or any other instrument conveying or purporting to convey an interest in real property, whether or not held by the Association and whether or not an interest in the Property, shall be executed by any two persons designated by the Executive Board from time to time as authorized signatories.
5. *No Authorization Conferred by this Policy.* Notwithstanding anything to the contrary in this Signature Authorization Policy, nothing herein shall be interpreted to confer or delegate any authority of the Executive Board to any authorized signatory, officer or agent of the Association to obligate, bind or act on behalf of the Association. The Executive Board retains the exclusive authority (unless otherwise delegated) to authorize actions of the Association and this policy only provides a quality control measure on the execution of those actions by requiring multiple signatures in certain circumstances.

## Exhibit 5.7

### Modifications Policy

No Unit Owner shall make any Modification to his Unit, except in conformity with the following Modifications Policy and with the prior written consent of the Executive Board or the Building Committee, as provided for herein.

1. Modification. Certain alterations of the structural elements of a Unit, or to the Limited Common Elements that are associated with that Unit, or any changes to a Unit that would be visible from the exterior of the Unit, are permitted under the Condominium Documents (“Modification”)

2. Submission of Modification Applications. All Unit Owners seeking a Modification of their Unit shall submit a request in writing to the Building Committee that fully sets forth at least the following information:

i. Detailed plans for the proposed alteration (including the nature, kind, shape, size, materials, and location of all proposed Modifications) that include a certification from a licensed engineer or architect that the proposed plans will not impact any structural elements of the Building;

ii. If the Modification involves the alteration of the boundary line between two Units, the applicant Unit Owners shall submit (A) a draft restatement of the Declaration Plan that identifies the Units involved and reflects the relocated boundaries, the dimensions of the Units, and their identifying numbers, and (B) a draft restatement of the Allocated Interests as altered by the relocation of the boundary (the draft restatement must be executed by the applicant Unit Owners and contain words of conveyance between them);

iii. Copies of licenses and certificates of insurance for any contractors that will be performing work if the Modification is approved;

iv. Any further information reasonably requested by the Building Committee; and

v. An agreement by each Owner submitting such application to hold the members of the Building Committee, the Association, and the Executive Board harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process.

3. Specifically Burdened Units. If the proposed Modification will affect another Unit in a manner that is greater than or disproportionate to the impact on all of the other affected Units, the Building Committee may submit notice to the affected Unit Owner of the proposed Modification. The notice shall state generally what the proposed Modification includes, the proposed timeframe for accomplishing the Modification and the anticipated specific burden on the affected Unit. The Building Committee shall offer the affected Unit Owner an opportunity to be heard.

4. Hearing. If the Building Committee determines, in its discretion, that a hearing is necessary to adequately consider the proposed Modification application, the Building Committee may schedule a hearing on the matter and shall provide the applicant Owner(s), the Owner(s) of any specifically burdened Unit(s) and the Executive Board with at least three (3) days advance notice of the hearing. Notice of the hearing shall also be generally posted in a manner that permits all Unit Owners to be aware of the hearing. Any Unit Owner may appear, in person or by phone or other electronic means, at the hearing of the Building Committee.



5. Recommendations. The Building Committee shall make a recommendation to the Executive Board following its review of the application and the Executive Board shall, within thirty (30) days after submission of all information and materials reasonably requested by the Building Committee (which date shall be stated in the recommendation to the Executive Board from the Building Committee), determine whether the Modification shall be approved (provided that Modifications shall not be denied in certain instances except on the grounds set forth in the Declaration). In the event that the Building Committee fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with this Modification Policies unless a variance has been granted in writing by the Building Committee.
6. Decisions. Decisions of the Building Committee shall be made by majority vote thereof and shall be issued in writing upon request of the Unit Owner.
7. Modified Plans. Materially modified plans relative to a previously approved Modification project under this policy shall require the submission of a revised Modification approval request.
8. Costs. Applicant Unit Owners shall bear all costs of the preparation, recording, and review of the necessary plans, application materials, restated Declaration Plans and restated statements of Allocated Interests and any other information necessary to apply for and finalize a Modification.
9. Duration. The proposed work plan for the Modification must include a projected completion date. If, for any reason, the work on the Modification is not complete by thirty (30) days after the projected completion date in the original proposal, the Applicant Unit Owner shall submit a revised Modification approval request with a new projected completion date for approval by the Building Committee. This process repeats indefinitely if the project is still unfinished on the new completion date.
10. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any Modification shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval to the Building Committee.
11. Limitation of Liability. Neither the Association, the Executive Board, the Building Committee, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or Modifications.
12. Enforcement. Any member of the Building Committee or the Executive Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether any Modification is in violation of these Guidelines. Any Modification made in violation of these Guidelines or the Declaration shall be deemed to be nonconforming. Upon written notice from the MC, Owners shall, at their own cost and expense, cure any violation or nonconformance and restore the Unit to substantially the same condition as existed prior to the nonconforming work. Should a Unit Owner fail to cure as required, the Executive Board shall have the right to enter the Unit, cure or remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with the Modification requirements shall not constitute a trespass. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

**Exhibit 7.5**

**Records Review Policy**

**Mountain Lodge Home Owners Association**

Mountain Lodge Home Owners Association has adopted this records review policy to provide a uniform standard to make the records of the Association reasonably available for review by the Unit Owners and available on equal terms to all members. This policy is intended to provide consistent access, prevent special treatment and ensure compliance by the Association with the requirements of the Uniform Common Interest Ownership Act, the West Virginia Non-Profit Corporation Act and other applicable law.

**i. Definitions.** For the purposes of this policy the following terms shall have the meanings assigned below:

*Accounting records* shall include, at least, (i) a statement of any capital expenditures anticipated by the association for the current fiscal year; (ii) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the Association for any specified projects; (iii) the most recent regularly prepared balance sheet and income and expense statement of the Association; (iv) a current copy of the operating budget of the Association required to be maintained by Article II hereof; (v) a statement of any unsatisfied judgments against the Association and a list of any pending suits in which the Association is a defendant; and (vi) a statement describing any insurance coverage provided for the benefit of Unit Owners, *provided that* (A) personally identifying information of employees, (B) items or information subject to confidentiality agreements of the Association, (C) items or information that are privileged communications or work product related to legal counsel provided to the Association, (D) items or information that may subject the Association to a competitive disadvantage and (E) any other material that the Association is permitted or required to keep confidential shall not be included in this definition of *Accounting Records*.

*Business days* shall mean any days that the government offices of Pocahontas County, West Virginia are open to the public for the conduct of business.

*Association* shall mean Mountain Lodge Home Owners Association.

*Executive board* shall refer to the officers and directors of the Association.

*Governing documents* shall mean the declaration of covenants governing the common interest community, the Articles of Association and the Bylaws of the Association.

*Members* shall mean the Unit Owners of the Association and, for the purposes of this policy, in the event that a Unit is owned by more than one person, both owners may exercise the rights of a member under this policy.

*Minutes* shall mean any records of a meeting that have been approved as an accurate representation of the meeting by the group that held the meeting.

*Policy* shall mean this records review policy.

*Principal office* shall mean the Association's principal office.

**ARTICLE I. Rights of Access For Members to Records.**

(a) A member of the Association is entitled to inspect, upon reasonable request and a time reasonably convenient for the Executive Board or the Managing Agent and at a reasonable location specified by the Association, any of the following records of the Association if the member meets the requirements of subsection (b) of this Article I of the Policy and gives the Association written notice of his or her demand at least five business days before the date on which he or she wishes to inspect and copy:

(i) Excerpts from minutes of any meeting of the Executive Board, records of any action of a committee of the Executive Board while acting in place of the Executive Board on behalf of the Association, minutes (or draft minutes) of any meeting of the members, and records of action taken by the members or Executive Board without a meeting, to the extent not subject to inspection under other Articles of this Policy, *provided however*, that information that may be included in these records that (A) might subject the Association to a competitive disadvantage, (B) may compromise attorney-client privilege or (C) may divulge personally identifiable information or other information protected by law may be redacted or otherwise excluded from the records available for review;

(ii) Accounting Records of the Association; and

(iii) A record of members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order.

(b) A member may inspect and copy the records described in subdivisions (i) and (ii), subsection (a) of this Article I, and may inspect the records described in subdivision (3), subsection (a) of this Article I of this section only if:

(i) His or her demand is made in good faith and for a proper purpose;

(ii) He or she describes with reasonable particularity his or her purpose and the records he or she desires to inspect; and

(iii) The records are directly connected with his or her purpose and the member has agreed, in writing, not to use the records for any purpose other than the proper purpose for which he, she, or it requested them.

(c) This section does not affect:

(i) The right of a member to inspect records under the remainder of this Policy or, if the member is in litigation with the Association, to the same extent as any other litigant; or

(ii) The power of a circuit court, independent of this Policy, to compel the production of corporate records for examination.

(d) The right to copy records under this Article I includes, the right to receive copies by xerographic or other means, including copies through an electronic transmission, if readily available and requested by the member under the terms of this paragraph.

(i) Members may receive electronic copies of records to which they are entitled under Article I only in the event that they have been otherwise granted access to those records under the requirements of Article I;

(ii) If the member desires to receive a copy of these records by electronic means and the Association has the records electronically available, then following the physical inspection

of the records by the member the member shall (A) complete an electronic records copy request stating the date of their personal inspection of the records, the facsimile number or email address where the requesting member would like to receive delivery and (B) provide the electronic records copy request to the senior staff person in the principal office at the time of the inspection of the records.

(iii) Proper electronic requests will be matched by the Association with the proper request from Article I and, assuming the requirements of this paragraph have been met, will be processed within 5-7 business days.

(e) The term "inspect" for purposes of this Article I includes the making of extracts from the records reviewed.

(f) The Association may comply at its expense with a member's demand to inspect the record of members under subdivision (iii), subsection (a), Article I of this Policy by providing the member with a list of members that was compiled no earlier than the date of the member's demand.

## **ARTICLE II. Financial Statements and Budgets.**

(a) Pursuant to the W. Va. Code § 36B-3-303, within thirty days after adoption of any proposed budget for the Association, the executive board shall provide a summary of the budget to all the members, and shall set a date for a meeting of the members to consider ratification of the budget, by a vote of the Unit Owners, not less than fourteen nor more than thirty days after mailing of the summary.

(b) The Association shall furnish its members annual financial statements, which may be consolidated or combined statements of the Association and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, and an income statement for that year. If financial statements are prepared for the Association on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(c) If the annual financial statements are reported upon by a public accountant, his or her report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the Association's accounting records: (1) Stating his or her reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and (2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(d) The Association shall mail the annual financial statements to each member within sixty (60) after the close of each fiscal year. On written request from a member who was not mailed the statements, the Association shall mail him or her the latest financial statements.

## **ARTICLE III. Rights of Access for Members to Article III Records**

(a) A member of the Association is entitled to inspect, during regular business hours at the Association's principal office, any of the records of the Association described in subsection (b) of this Article III of this Policy if he or she gives the Association written notice of his or her demand at least five business days before the date on which he or she wishes to inspect.

(b) The Association shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of Association and all amendments to them currently in effect;

- (2) Its Bylaws and all amendments to them currently in effect;
- (3) Resolutions adopted by its Executive Board;
- (4) The minutes of all members' meetings, and records of all action taken by members without a meeting, from the past three years;
- (5) All written communications to members generally within the past three years, including the financial statements furnished for the past three years under Article II of this Policy; and
- (6) A list of the names and business addresses of its current directors and officers.

**ARTICLE IV. Inspection of Records by Directors.** A director of an Association is entitled to inspect and copy the books, records and documents of the Association at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the Association.

**ARTICLE V. Fees and Costs**

(a) The Association may impose a reasonable charge, covering the costs of labor and material, for copies and postage of any documents provided to the member under this policy. The charge shall not exceed the estimated cost of production, reproduction or transmission of the records.

(b) As of the date of this policy and until otherwise altered, the executive board has determined that the actual costs of labor, materials, copies and postage shall be determined as follows, and that these costs shall be charged to members requesting copies pursuant to this policy:

(1) the cost for the reproduction of hard copies of records by the Association shall be \$0.10 / page of regular copy paper;

(2) the cost for the postage required, if any, shall be the cost actually incurred or to be incurred by the Association (and unless otherwise requested, the Association shall use the United States Postal Service regular delivery service).

(c) The executive board may charge reasonable fees or costs for labor related to assembling the records requested, including any formatting or collection of records for electronic transmission, and such hourly rate as may be charged by a third party (e.g., accountants or attorneys), provided however that (i) requests that take thirty minutes or less of the time of a compiling staff member shall be provided without cost and that (ii) the total cost of labor shall be rounded down to the nearest ¼ hour.

(d) All costs shall be paid by the member to the Association in advance if practical and within ten days following the delivery of the documents requested if impractical.

**ARTICLE VI. Miscellaneous**

(a) Notice Exception. Whenever notice is required to be given under any provision of this Policy to any member, notice may not be required to be given if notice of two consecutive annual meetings, and all notices of meetings during the period between two consecutive annual meetings, have been sent to the member at the member's address as shown on the records of the Association and have

been returned undeliverable. If a member delivers to the Association a written notice setting forth the member's then-current address, the requirement that notice be given to the member is to be reinstated.

(b) Business Hours Variance. The regular business hours of the Association are subject to change on a day to day basis and such changes due to temporary circumstances shall not be deemed to be a violation of this policy. Members are encouraged to call ahead to confirm that the principal office is open.

(c) Scope of Member's Right. A member's designee or attorney has the same inspection and copying rights (and the same obligations and responsibilities) as the member represented, *provided that*, any designee or attorney claiming to represent a member shall provide written evidence, bearing a signature of the referenced member, of their authorization by the member to act on their behalf in connection with the inspection of corporate records.

(d) Responses Limited to Production. Nothing in this policy shall create any obligation on the part of the officers or employees of the Association to answer any questions regarding the substance of the retained records.

(e) Inadvertent Disclosures. Members who discover information in the records of the Association available for inspection by the members that should not have been disclosed shall report the inadvertent disclosures to the senior management of the Association as soon as possible.

(f) Addresses. Members shall be responsible for updating their current mailing addresses with the Association's principal office for the Association's official records. The Association shall have no independent duty to investigate the accuracy of addresses provided by members. In the event that a single unit has more than one owner and the owners thereof do not cohabitate, the Association will maintain multiple addresses only when informed to do so by the owners sharing the membership.

(g) Additional Disclosures. Nothing in this policy shall preclude the Association from making records available for review by the members in additional ways, provided that each of the members has an equal opportunity to access those records. (For example, the Executive Board may cause certain records to be posted on the Association's website, thereby making them available in a manner that provides greater access than that which would otherwise be available under the terms of this policy. In the event that the Association has made records widely available, and it receives a subsequent request for the same records, the Association shall inform the requesting member that some or all of the requested records are also available through other means, *provided* that making records available in another manner does not relieve the Association of its responsibility to comply with this policy.

(h) Notice Requirements. Nothing in this policy shall limit or otherwise define the requirements in applicable law for the preparation and delivery of notices of meetings or other corporate actions required by the West Virginia Non-Profit Corporation Act or the Uniform Common Interest Ownership Act.

(i) Proxies, Liens, and Member Communications. Nothing in this policy shall interfere with or alter the Association's policies on proxies, liens, notice of liens, notices to members or any other communications between the Association and the members individually.

## **ARTICLE VII. Conflicts with the Governing Documents; Governing Law**

(a) To the extent that this policy is inconsistent with the requirements of the governing documents of the Association, the terms of the governing documents shall control.

(b) To the extent that this policy conflicts with applicable law, the provisions of applicable law shall control. Nothing in this policy shall limit the requirements of the association to provide certificates to unit owners who are planning to sell their unit as required by W.Va. Code § 36B-4-109.

(c) The Association reserves the right to alter its compliance practices in response to individual requests for records if it believes that this policy is subservient to the governing documents of the Association or to applicable law.

**Exhibit 7.1(a)**

**Mortgage Policy**

1. Notice to Executive Board. A Unit Owner who mortgages his Unit shall notify the Executive Board of the name and address of his Mortgagee and shall file a conformed copy of the note and Mortgage with the Executive Board.
  
2. Mortgagees. Whether or not they explicitly so state, all Unit Mortgages and obligations secured thereby shall be deemed to provide that the Mortgage and the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act, the Declaration and the Declaration Plan, and shall be deemed to provide specifically, but without limitations, that the obligations secured by the Mortgage shall be pre-payable, without premium or penalty, upon the happening of a termination of the Condominium form of ownership of the Property or determination not to restore or replace the affected Unit, and that no Mortgagee shall have any right to (i) participate in the adjustment of losses with insurers or in the decisions as to whether or not or how to repair or restore damage to or destruction of the Property; (ii) receive or apply the proceeds of insurance to the reduction of the Mortgage debt or otherwise, except in the event and to the extent either of a distribution of such proceeds to Unit Owners or of insurance proceeds in excess of the cost or repair or restoration being received by the Owner of the Unit encumbered by a Mortgage; or (iii) accelerate the Mortgage debt or be entitled to exercise any other remedies by virtue of waste or alleged waste or other conditions occurring anywhere in the Property other than within the Unit that the Mortgage encumbers.
  
3. Compliance with Mortgage. Each Unit Owner shall be responsible for complying with the terms of their agreements with their Mortgagees including but not limited to giving notice to any Mortgagees of a default in paying an assessment for Common Expenses, or any other default and giving notice to Mortgagees of any casualty, any taking in condemnation or by eminent domain and actions of the Association, and all other matters.



**Exhibit 7.1(b)**

**Insurance Policy**

1. **Types and Amounts.** The Association shall maintain and keep in force the following types of insurances in the corresponding amounts of coverage to the extent reasonably available:

(a) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles must be not less than eighty percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units.

2. The Association shall take the reasonable steps necessary to obtain the insurance described in subsection (a); however, if the insurance described in subsections (a) is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners. The Association may carry any other insurance it considers appropriate to protect the association or the unit owners.

3. **Required Provisions.** Insurance obtained by the Executive Board shall be in accordance with the following provisions:

(a) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or Membership in the Association;

(b) The insurer waives its right to subrogation under the policy against any Unit Owner or member of his household;

(c) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and

(e) Despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such options shall not be exercisable (A) without the written approval of the Executive Board or an insurance trustee; or (B) when in conflict with the provisions of any insurance trust agreement to which the Executive Board might be a party or as West Virginia law requires.

4. Coverage may not be prejudiced by:

(i) Any act or negligence of one or more Unit Owners when such act or negligence is not within the control of the Executive Board; or

(ii) Any failure of the Executive Board to comply with any warranty or condition regarding any portion or the Condominium over which the Executive Board has no control.

6. Each policy required under this Policy shall contain a standard Mortgagee clause, or equivalent endorsement, without contribution.

7. Insurance coverage obtained and maintained under this Policy may not be brought into contribution without insurance purchased by Unit Owners or their Mortgagees. Policy shall not provide that contributions or assessments may be made against any Unit Owners, Mortgagees or the Executive Board.

9. Unit Owners shall obtain a homeowners insurance policy covering their Unit the amount of which after application of any deductibles must be not less than eighty percent of the actual cash value of the Unit at the time the insurance is purchased and at each renewal date. Unit Owners shall provide the Association a copy of their homeowners insurance policy. The Executive Board may fine and take any other action provided for under law against a Unit Owner that fails to obtain homeowners insurance and provide a copy thereof to the Association.

10. Executive Board as Attorney-in-Fact. The Executive Board is hereby irrevocably appointed as attorney-in-fact for the Unit Owners of all of the Units and for each of them, for the limited purpose of managing, controlling and dealing with the interests of such Unit Owners in the Common Elements of the Property to permit the Executive Board to fulfill all of its powers, rights, functions and duties. The Executive Board is hereby irrevocably appointed as attorney-in-fact for each Unit Owner, each Mortgagee, other named insureds and their beneficiaries and any other holder of a lien or other interest in the Property for the limited purpose of adjusting and settling all claims arising under insurance policies purchased by the Executive Board and to execute and deliver releases upon the payment of claims.

11. When Repair and Reconstruction Are Required. Except as otherwise provided in this Policy, in the event of damage to or destruction of all or any part of the Property as a result of fire or other casualty, the Executive Board, unless it otherwise is not obligated to do so by operation of law or formal action of the Unit Owners shall arrange for and supervise the prompt repair and restoration of the Property (including any damaged Units, and the floor coverings, kitchen or bathroom fixtures and appliances initially installed therein, and replacements thereof, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the Unit Owners in the Units). Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the redecorating of his own Unit.

12. Procedure for Reconstruction and Repair.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of the Property, the Executive board shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion (including any damaged Units and any floor coverings and kitchen and bathroom fixtures and appliances and the replacements thereof, but not including any other furniture, furnishings, fixtures or equipment installed by the Unit Owner in the Unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Executive Board as Insurance Trustee determines to be necessary.

(b) Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the general funds for replacement reconstruction and/or shall be deemed a Common Expense and a special assessment therefore shall be levied.

13. Disbursements of Construction Funds

(a) Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the Executive Board as Insurance Trustee from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(i) If the estimated cost of reconstruction and repair is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Executive Board; *provided however*, that upon request of twenty percent of the Mortgagees (based upon one vote for each Mortgage owned), such fund shall be disbursed pursuant to paragraph (2).

(ii) If the estimated cost of reconstruction and repair is \$50,000.00 or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in West Virginia (if necessary) and employed by the Executive Board as Insurance Trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of those services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(b) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all Unit Owners in proportion to their Allocated Interests and shall be distributed in accordance with the priority of interests at law or in equity in each Unit.

(c) Common Elements. When the damage is to both Common Elements and Units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements which enclose and service the Units, then to the cost of repairing the other Common Elements and thereafter to the cost of repairing the Units.

(d) Certificate. The Executive Board as Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary, certifying: (i) whether the damaged Property is required to be reconstructed and repaired; (ii) the name of the payee and the amount to be paid with respect to disbursement from any construction fund whether surplus funds to be distributed are less than the assessments paid by the Unit Owners; and (iii) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the Executive Board as Insurance Trustee promptly after request.

14. When Reconstruction Is Not Required. Any portion of the Condominium for which insurance is required under this Policy which is damaged or destroyed must be repaired or replaced promptly by the Association unless (i) the Condominium is terminated (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (iii) eighty percent of the Unit Owners vote not to rebuild; *provided*, that one hundred percent of the Unit Owners with an interest in an Limited Common Element must vote not to rebuild the Limited Common Element.