

BY-LAWS OF TROUT VALLEY ASSOCIATION

(Adopted May 17, 1964)

(Amended July 29, 2010)

(Amended April 16, 2012)

ARTICLE I - PURPOSES

The purposes of the Corporation as stated in its certificate of incorporation are:

To acquire by grant, gift, purchase, devise or bequest and to hold or dispose of such property as the purposes of the corporation shall require, subject to such limitations as may be prescribed by law for the benefit of the members and not for pecuniary profit.

To promote good will and mutual benefit, to maintain good social and moral environment and to have general power and jurisdiction over all community matters among the residents and property owners of subdivisions in Trout Valley, McHenry County, Illinois.

To receive from Chicago Title and Trust Company, a corporation of Illinois, as Trustee under provisions of a Trust Agreement dated January 17, 1955, and known as Trust No. 37308, title to such park areas as will be shown on subdivisions of Trout Valley as said subdivisions are recorded from time to time.

To manage, maintain, improve and preserve said park areas for civic purposes.

To levy and collect dues and assessments from all property owners in subdivisions of Trout

Valley as may be necessary for the management, maintenance, and preservation of said real estate and easements, as provided for in the covenants, restrictions and easements of record and to enforce said restrictions.

To promote, encourage and assist in any lawful manner the carrying out of the obligations, reservations, easements, building liens, setbacks, building restrictions, conditions, rights and powers and agreements binding upon and in force against all property in subdivisions of Trout Valley as contained in the covenants, restrictions and easements of record.

The corporation also has such powers as are now or may hereafter be granted by the General Not-for-Profit Corporation Act of the State of Illinois and the Illinois Common Interest Community Association Act.

ARTICLE II - MEMBERSHIPS

Section I: Class of Memberships: The Corporation shall have two classes of membership requiring the payment of regular dues and assessments as follows:

Regular Membership - Ownership of one or more lots in that community known as Trout Valley shall carry with it one regular membership in the Association.

2

Special Membership - Ownership of one or more lots in that section of East Curtiss Farm, commonly known as Brigadoon, shall entitle the owner to apply for one special membership, provided however, that such special memberships are limited to fifty (50).

Section II: Transfer of Membership: Regular membership shall be transferable to succeeding owners of lots in Trout Valley.

Special memberships shall be transferable to succeeding owners of lots in Brigadoon, but if a succeeding owner does not assume said special membership, then said membership may be granted to another lot owner in Brigadoon.

Section III: Termination of Special Membership: Provision for new special memberships or for the transfer of special memberships shall terminate ten (10) years from the date of that certain agreement entered into by and between Northwest Development Corporation and Trout Valley Association (January 23, 1959), relating to transfer of certain properties to the Association provided, however, that when a special member of the Association is at the end of said ten (10) years, still the owner of and residing in the Brigadoon section, such member may continue to be a member of the Association thereafter during the period that such member shall live and reside in the Brigadoon section and shall comply with the rules of the Association applicable to all members. At no time shall more than fifty (50) special memberships be outstanding during the ten (10) year period from the date of the aforementioned agreement.

Section IV: Voting Rights: Each regular membership shall entitle the owner or owners to one vote on each matter submitted to a vote of the membership of Trout Valley Association. Special memberships shall have no voting rights. If a Lot is owned by more than one person and only one of the owners is present at the meeting, that person shall be entitled to cast the votes allocated to the Unit.

Section V: Privileges of Memberships: Each regular and special membership in the Association shall qualify one owner and his immediate resident family as members. All members are equally privileged in the use of all Trout Valley Association facilities subject to such regulations as may be established from time to time by the Board of Directors.

ARTICLE III - MEETINGS

Section I: Annual Meeting: The annual meeting of this Association one of the purposes of which shall be to elect members of the Board of Directors and shall be held on the third Sunday in September of each and every year.

Section II: Notice of Annual Meeting: Notice of Annual Meeting shall be transmitted in writing to owners holding regular or special membership mailed or delivered via a prescribed delivery method to each member entitled to vote at such meeting not less than ten (10), nor more than thirty (30), days prior to the date of such Annual meeting.

Section III: Special Meetings: Special meetings of the Association may be called by the President of the Association and shall be called by the President upon the direction of the Board 3 of Directors or more than one-fifth by twenty percent (20%) of the owners having regular memberships.

Section IV: Place of Meeting: The notice of the Annual or Special meetings shall designate the place at which the meeting shall be held, which place shall be within the boundaries of Trout Valley.

Section V: Notice of Meeting: Notice of Special meetings shall be transmitted in writing to owners holding regular or special membership mailed or delivered via a prescribed delivery method to each member entitled to vote at such meeting not less than ten (10) days or more than fifteen (15) thirty (30) days prior to the date of such meeting. The meeting notice shall contain a specific statement of purpose or purposes of the meeting which will be confined to only such purpose or purposes.

Section VI: Quorum: At all meetings, not less than forty (40) qualified voters shall constitute a quorum for the transaction of business provided, however, that this section shall not apply to meetings called for special assessments against certain lots as provided in Section III of Article VII.

Section VII: Action at Meetings: The act of a majority of the voters present at a meeting at which a quorum is present shall be the act of the Association, except as otherwise provided.

Section VIII: Rules of Order: Unless otherwise provided herein, Roberts' Rules of Order shall govern at all meetings.

Section IX: Voting. At any meeting of members, a member entitled to vote may vote in person, by submitting an association-issued ballot to the association or its designated agent by mail or by proxy, executed in writing by the member or by his or her duly authorized attorney-in-fact.

ARTICLE IV - BOARD OF DIRECTORS

Section I: General Powers: The affairs of the Corporation shall be managed by its Board of Directors.

Section II: Tenure, Number and Qualification: The Board of Directors shall consist of nine (9) Directors. The Directors shall be members of the Association and shall be classified with respect to the time for which they shall severally hold office by dividing them into three (3) classes, each consisting of one-third of the whole number of the Board of Directors, and all Directors of the Corporation shall hold office until their successors are elected and qualified.

At each annual election, the successors to the class of Directors whose term shall expire that year shall be elected to hold office for the term of three (3) years, so that the term of office of one class of directors shall expire each year. No member of the Board shall be elected for a term of more than three (3) years, but officers and board members may succeed themselves.

4

Section III: Nomination of Directors: The President shall appoint a Nominating Committee not less than six (6) weeks prior to the annual meeting for the purpose of nominating three (3) Directors. It shall consist of three (3) members of the Association, one of whom may be an Officer or Director, and of whom no more than one shall have been a member of the committee of the preceding year.

Section IV: Report of the Nominating Committee: The Nominating Committee shall report directly to the President the names of three candidates for Directors not later than four (4) weeks prior to the Annual meeting, and the President shall, not less than three (3) weeks prior to the Annual meeting, cause written notice to be transmitted to the membership showing the names of

the three candidates so nominated.

Section V: Additional Nominations: Additional nominations may be made for Directors by submitting such nominations in writing, signed by five (5) voting members of the Association, to the President, or additional nominations may be made from the floor.

Section VI: Election: The election shall take place at the Annual meeting. A plurality vote shall elect.

Section VII: Vacancies: Any vacancy occurring in the Board of Directors caused by death or resignation may be filled by the Board of Directors. A director selected to fill a vacancy shall serve for the unexpired term of his predecessor. If there is a vacancy on the board, the remaining members of the board may fill the vacancy by a two-thirds vote of the remaining board members until the next annual meeting of the membership or until members holding 20% of the votes of the association request a meeting of the members to fill the vacancy for the balance of the term. A meeting of the members shall be called for purposes of filling a vacancy on the board no later than 30 days following the filing of a petition signed by membership holding 20% of the votes of the association requesting such a meeting.

Section VIII: Meetings: The Board shall meet at least four (4) times annually. A regular Annual meeting of the Board of Directors will be held within ten (10) days after the Annual meeting of this Association. The Board of Directors may provide by resolution the time and place for the holding of additional meetings of the Board without other notice than such resolution.

Section IX: Special Meetings: Special meetings of the Board may be called by the president or

by 25% of the members of the Board.

Section X: Notice of Board Meetings: Except to the extent otherwise provided by these By-laws, the Board shall give the members notice of all Board Meetings at least 48 hours prior to the meeting via mail, personal delivery or other proscribed delivery method. The Board shall give members notice of any Board Meeting concerning the adoption of (i) the proposed annual budget, (ii) regular assessments, or (iii) a separate or special assessment within 10 to 30 days prior to the meeting.

Section XI: Open Meetings: Meetings of the board shall be open to any unit owner, except for the portion of any meeting held (i) to discuss litigation when an action against or on behalf of the 5 particular association has been filed and is pending in a court or administrative tribunal, or when the common interest community association finds that such an action is probable or imminent, (ii) to consider information regarding appointment, employment, or dismissal of an employee, or (iii) to discuss violations of rules and regulations of the association or a unit owner's unpaid share of common expenses. Any vote on these matters shall be taken at a meeting or portion thereof open to any unit owner.

Section XII: Quorum: A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, provided that if less than a majority of the Directors are present, a majority of those present may adjourn the meeting.

Section XIII: Action at Meetings: The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section XIV: Suggestions or Recommendations for Board Consideration: Suggestions or recommendations may be made in writing to the Board of Directors by any member of the Association.

Section XV: Removal. Any member of the Board may be removed from office by the affirmative vote of two-thirds of all the members of the Association at a special meeting called for that purpose.

Section XVI: General Duties, Powers, etc., of the Board. The Board shall exercise for the Association all powers, duties, and authority vested in the Association by the Act and the Declarations and By-Laws and Corporate Instruments, including but not limited to the following:

- a. To provide for the maintenance, repair, and replacement of the Common Elements;
- b. To prepare, adopt, and distribute the annual budget for the Association;
- c. To levy and expend assessments;
- d. To collect assessments from Owners;
- e. To provide for the employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements;
- f. To obtain adequate and appropriate kinds of insurance;

g. To adopt and amend rules and regulations covering the details of the operation and use of the Property and the Association;

h. To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property;

6

i. To levying and collect reasonable fines from members for violation of the Declaration, By-laws, and Rules and Regulations of the Association after notice and an opportunity to be heard; and

j. To engage the services of a manager or management company.

In the performance of their duties, the officers and members of the Board shall exercise, the care required of a fiduciary of the members.

ARTICLE V - OFFICERS AND COMMITEES

Section I: Officers: The officers of the Corporation shall be a president, a vice-president, a treasurer and a secretary. The President, and Vice-President, Secretary and Treasurer shall be members of the Board of Directors.

Section II: Election and Term of Office: The officers of the Corporation shall be elected annually by the Board of Directors at a regular annual meeting of the Board of Directors.

Section III: Removal: Any officer or agent elected or appointed by the Board of Directors may be removed by a majority vote of the Board of Directors whenever, in its judgment, the best interests of the Corporation would be served thereby.

Section IV: Vacancies: A vacancy in any office for any cause may be filled by the Board of Directors for the unexpired portion of the term.

Section V: President: It shall be the duty of the President to preside at all meetings of the Association and Board of Directors. He shall, with the approval of the Board of Directors, appoint all committees, call special meetings, and be ex-officio member of all committees.

Section VI: Vice-President: The Vice-President shall perform the duties of the President in his absence, and shall perform such other duties as the President or the Board of Directors may direct.

Section VII: Treasurer: The Treasurer shall have charge and custody and be responsible for all funds of the corporation. He shall keep a full and correct account of all monies due to the Association and of all monies received and paid out and make full report at the annual meeting, and at such times as called upon by the President. He shall payout funds only upon voucher signed by the Treasurer and any other officer approved by the Board of Directors.

Section VIII: Secretary: The Secretary shall keep the minutes of the meetings of the Association and the Board of Directors, see that all notices are given in accordance with the provisions of these by-laws, be custodian of the Corporate Seal, keep a membership record, and perform such

other duties as may be prescribed by the President or Board of Directors.

Section IX: Committees: All committee appointments shall expire on the date of the Annual meeting of the Board of Directors. 7

ARTICLE VI - CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section I. Contracts: The Board of Directors may authorize any officer or officers, agent or agents of the corporation to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Corporation. Prior to execution of any contract with duration greater than one year or requiring use of Restoration Funds, the officer/agent shall require submission of at least three bids from unrelated, independent sources, covering like parameters or specifications. After reviewing the bids and the officer/agent's recommendation, the Board of Directors may accept a bid and authorize execution of contract documents, require additional information prior to accepting and authorizing contract execution, or reject the proposal. In no case shall a contract be executed on behalf of the Corporation without the approval of the Board of Directors. (Restoration projects, by their nature, are restricted to major infrastructure undertakings, authorized by the Board of Directors, with a minimum cost of \$4,000 or five times the annual per member standard Restoration Assessment whichever is greater.)

Section II: Checks, Drafts, Etc: All checks, drafts or other orders for the payment of monies, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by any two of the following officers of the Association: President; Vice-president; Treasurer.

Section IV: All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such bank or banks as the Board of Directors may select.

ARTICLE VII - ANNUAL ASSESSMENTS

Section I: Semi-annual Assessments: Commencing on September 1, 2010, the semi-annual assessment for each membership shall be \$600.00 for the first lot owned in Trout Valley, and \$270.00 for each additional vacant lot in Trout Valley under the same ownership. These assessments shall be payable and due on September 1st

and March 1st

for the ensuing six months.

Previously vacant additional lots will become subject to the first lot fee schedule at the time the first semi-annual assessment comes due following the beginning of construction on such lots.

Section II: Limited Special Assessments: The Board of Directors shall have the power to levy a special assessment against certain lots for a particular matter which affects only certain lots. Provided, however, that no such special assessment shall be levied unless, (1) the Board of Directors has received a written request for such special assessment signed by a majority of the lot owners affected, (2) a special meeting has been called by the Board of Directors pursuant to such a request after a ten (10) day written notice has been given by mail to all affected lot owners, and (3) a majority of the lot owners affected vote in favor of such special assessment at said special meeting. The directors shall designate the due date for such limited special assessments.

Section III: Delinquent Accounts: A member whose assessments (whether such assessments are

annual assessments, special assessments or any other assessments properly made by the Board of Directors of the Association) are not paid within ninety (90) days of the prescribed due date shall be considered in default. Any time after such default, the Association may file a lien against any 8 lot or lots owned by such delinquent member, may initiate proceedings to collect such unpaid dues and any accrued interest, fees and costs in a court of competent jurisdiction against such member and/or may take such other or further action as the Association deems necessary to collect all sums due the Association. The Association may bring suit for and on behalf of itself, and as representative of all Owners, to enforce collection thereof or to foreclose the lien therefore as provided by law; and there shall be added to the amount due the costs of the suit, together with legal interest and reasonable attorneys' fees to be fixed by the court. In addition, the Association may also take possession of the defaulting Owner's interest in the Property and maintain an action for possession of the Property in the manner provided by law.

Section IV: Expenses of Collection: Any and all expenses incurred by the Association in connection with the collection of delinquent accounts including but not limited to attorney fees, costs, court costs and filing fees, shall be paid to the Association by such member and be included in any judgment rendered against him.

Section V: Penalty on Delinquent Dues: A member whose assessments are not paid by the prescribed due date shall, in addition to any other costs or expenses set forth herein, pay to the Association interest on the then unpaid amount of such assessment at the rate of nine percent (9%) per annum, or such other interest rate as may, from time to time, be approved by the Board of Directors and authorized by law, from and including the prescribed due date to and including the date upon which such assessments are paid in full.

ARTICLE VIII - BONDS FIDELITY INSURANCE

A bond shall be required of the treasurer, which amount shall be determined by the Board of Directors, the expense to be paid by the Association. The secretary shall hold the bond.

The Board shall obtain and maintain fidelity insurance covering persons who control or disburse funds of the Association for the maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody or control of the Association. If the Association employs a management company to be responsible for the funds held or administered by the Association, then the management company shall maintain and furnish to the Association a fidelity bond for the maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody of the management company at any time. The Association shall bear the cost of the fidelity insurance and fidelity bond, unless otherwise provided by contract between the Association and a management company.

ARTICLE IX - LONG TERM INDEBTEDNESS

No long term indebtedness shall be incurred without the approval of two-thirds of the entire membership.

ARTICLE X - AMENDMENTS TO BY-LAWS

The by-laws may be modified, altered or amended by secret written ballot at any Annual or Special Meeting of the members either at the direction of the Board of Directors or upon written 9

petition signed by twenty (20) members by members with 20% of the votes of the Association .

If any such proposed amendment is pursuant to a petition signed by twenty (20) members such petition must be presented to the Board of Directors at least ninety (90) days prior to the Annual or Special Meeting. The Secretary of the corporation shall include in the notice of such meeting sent to the members the proposed amendment and a summary of the changes to be made and a ballot for the purpose of voting on such proposed amendment. The notice and ballot must be mailed at least sixty (60) not less than ten (10), nor more than thirty (30), days prior to the Annual or Special Meeting.

Any amendment to correct an omission or error necessary to conform to the Illinois Common Interest Community Association Act, other applicable statute or the declaration shall be adopted by vote of two-thirds of the members of the board of directors or by a majority vote of the members at a special meeting called for that purpose. If adopted by vote of two-thirds of the members of the board, the board, upon written petition by members with 20% of the votes of the association received within 30 days of the board action, shall call a meeting of the members within 30 days of the filing of the petition to consider the board action. Unless a majority of the votes of the members of the association are cast at the meeting to reject the action, it is ratified whether or not a quorum is present. Any other amendment must be approved by two-thirds of those members who vote. However, no proposed amendment other than those necessary to correct an omission or error necessary to conform to the Illinois Common Interest Community Association Act, other applicable statute or the declaration shall be approved unless at least fifty (50) percent of all members approve such proposed amendment.

All ballots for such changes shall be returned to the Secretary prior to the Annual or Special

Meeting or personally cast at such meeting. The ballots shall be accumulated in sealed envelopes and opened and tallied by the Secretary at the meeting.

ARTICLE XI - BOOKS AND RECORDS

Section I. Maintaining Books and Records. The Association shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of its members, the Board, and committees having any of the authority of the Board.

Section II. Availability for Examination. The Board shall maintain the following records of the Association available for examination and copying at convenient hours of weekdays by the Owners or their mortgagees and their duly authorized agents or attorneys:

a. Copies of the recorded declaration, other community instruments, other duly recorded covenants and bylaws and any amendments, articles of incorporation, annual reports, and any rules and regulations adopted by the board shall be available. Prior to the organization of the board, the developer shall maintain and make available the records set forth in this paragraph (i) for examination and copying.

b. Detailed and accurate records in chronological order of the receipts and expenditures affecting the common areas, specifying and itemizing the maintenance and repair expenses of the common areas and any other expenses incurred, and copies of all 10 contracts, leases, or other agreements entered into by the board shall be maintained.

c. The minutes of all meetings of the board which shall be maintained for not less than 7 years.

d. With a written statement of a proper purpose, ballots and proxies related thereto, if any, for any election held for the board and for any other matters voted on by the unit owners, which shall be maintained for not less than one year.

e. With a written statement of a proper purpose, such other records of the board as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the General Not For Profit Corporation Act of 1986 shall be maintained.

f. With respect to units owned by a land trust, a living trust, or other legal entity, the trustee, officer, or manager of the entity may designate, in writing, a person to cast votes on behalf of the unit owner and a designation shall remain in effect until a subsequent document is filed with the association.

In order to exercise this right, a member must submit a written request to the Board or its authorized agent, stating with particularity the records sought to be examined. Failure of the Board to make available all records so requested within 30 days of receipt of the member's written request shall be deemed a denial.

Any member who prevails in an enforcement action to compel examination of records described in Paragraph a of this Section shall be entitled to recover reasonable attorneys' fees and costs from the Association if the court finds that such failure is due to the acts or omissions of the Board of Directors.

The actual cost to the Association of retrieving and making requested records available for inspection and examination under this Section shall be charged by the Association to the requesting Owner. If an Owner requests copies of records requested under this Section, the actual costs to the Association of reproducing the records shall also be charged by the Association to the requesting Owner.

Section III. Annual Budget.

a. Each Owner shall receive through a prescribed delivery method, at least 30 days but not more than 60 days prior to the adoption thereof by the Board, a copy of the proposed annual budget together with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes.

b. The Board shall provide all Owners with a reasonably detailed summary of the receipts, common expenses, and reserves for the preceding budget year. The Board shall (i) make available for review to all Owners an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payment of real estate taxes and with 11

a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves or (ii) provide a consolidated annual independent audit report of the financial status of all fund accounts within the association.

c. If an adopted budget or any separate assessment adopted by the Board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding 115% of the sum of all regular and separate assessments payable during the preceding fiscal year, the Association, upon written petition by Owners with 20% of the votes of the Association delivered to the Board within 14 days of the Board action, shall call a meeting of the Owners within 30 days of the date of delivery of the petition to consider the budget or separate assessment; unless a majority of the total votes of the Owners are cast at the meeting to reject the budget or separate assessment, it shall be deemed ratified.

d. Any common expense not set forth in the budget or any increase in assessments over the amount adopted in the budget shall be separately assessed against all Owners.

e. Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Owner approval or the provisions of subsection (c) or (f) of this Section. As used herein, "emergency" means an immediate danger to the structural integrity of the common areas or to the life, health, safety, or property of the Owners.

f. Assessments for additions and alterations to the common areas or to Association-owned property not included in the adopted annual budget, shall be separately assessed and are subject to approval of two-thirds of the total members at a meeting called for that purpose.

g. The Board may adopt separate assessments payable over more than one fiscal year. With respect to multi-year assessments not governed by subsections (e) and (f) of this Section,

the entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.

h. The Board shall have the authority to establish and maintain a system of master metering of public utility services to collect payments in conjunction therewith, subject to the requirements of the Tenant Utility Payment Disclosure Act.

ARTICLE XII - LIABILITY OF BOARD MEMBERS AND OFFICERS; INDEMNIFICATION

No director or officer of the Association shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director or officer unless the act or omission involved willful or wanton conduct.

The Association may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, 12 administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a director or officer of the Association against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if that person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo

contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

The Association may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that such person is or was a director or officer against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Association, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

To the extent that a present or former director or officer of the Association has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in this Article, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, if that person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association.

Any indemnification under this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case, upon a determination that indemnification of the present or former director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in this Article. Such determination shall be made with respect to a person who is a director or officer at the time of the determination: (1) by the majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (2) by a committee of the directors designated by a majority vote of the directors, even though less than a quorum, (3) if there are no such directors, or if the directors so direct, by independent legal counsel in a written opinion, or (4) by the members entitled to vote.

Expenses (including attorney's fees) incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized by the Board in the specific case, upon receipt of an undertaking by or on behalf of the director or officer to repay such amount, unless it shall ultimately be determined that such person is entitled to be indemnified by the Association as authorized in this Article. Such expenses (including attorney's fees) incurred by former directors and officers may be so paid on such terms and conditions, if any, as the Association deems appropriate.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall

continue as to a person who has ceased to be a director or officer of the Association.

The Association may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Association against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify such person against such liability under the provisions of this Article.