

**BY-LAWS**

**OF**

**THE McGINNIS POINT**  
**HOMEOWNERS ASSOCIATION, INC.**

**PURSUANT TO THE PROVISIONS OF THE WEST VIRGINIA UNIFORM COMMON  
INTEREST OWNERSHIP ACT, WEST VIRGINIA CODE § 36B-1-101 et. seq.**

**TABLE OF CONTENTS**

**ARTICLE I**

INTRODUCTORY PROVISIONS .....4  
    Section 1.1 Applicability .....4  
    Section 1.2 Definition .....4  
    Section 1.3 Compliance .....4  
    Section 1.4 Office .....4  
    Section 1.5 Incorporation of Statutory Law .....4

**ARTICLE II**

THE PLANNED COMMUNITY ASSOCIATION .....4  
    Section 2.1 Composition .....4  
    Section 2.2 Annual Meetings .....5  
    Section 2.3 Place of Meetings .....5  
    Section 2.4 Special Meetings .....5  
    Section 2.5 Notice of Meetings .....6  
    Section 2.6 Adjournment of Meetings .....6  
    Section 2.7 Voting .....6  
    Section 2.8 Proxies .....7  
    Section 2.9 Quorum .....7  
    Section 2.10 Conduct of Meetings .....7

**ARTICLE III**

EXECUTIVE BOARD .....8  
    Section 3.1 Number and Qualification .....8  
    Section 3.2 Delegation of Powers; Managing Agent .....8  
    Section 3.3 Election and Term of Office .....8  
    Section 3.4 Removal or Resignation of Members  
        of the Executive Board .....9  
    Section 3.5 Vacancies .....9  
    Section 3.6 Organization Meetings .....10  
    Section 3.7 Regular Meetings .....10  
    Section 3.8 Special Meetings .....10  
    Section 3.9 Waiver of Notice .....10  
    Section 3.10 Quorum of the Executive Board .....10  
    Section 3.11 Compensation .....10  
    Section 3.12 Conduct of Meetings .....11  
    Section 3.13 Action Without Meetings .....11  
    Section 3.14 Validity of Contracts with Interested  
        Executive Board Members .....11  
    Section 3.15 Inclusion of Interested Board Members in the Quorum .....11

**ARTICLE IV**

OFFICERS .....11

    Section 4.1 Designation.....11

    Section 4.2 Election of Officers.....12

    Section 4.3 Removal of Officers.....12

    Section 4.4 President.....12

    Section 4.5 Vice President.....12

    Section 4.6 Secretary .....12

    Section 4.7 Treasurer .....12

    Section 4.8 Execution of Documents.....13

    Section 4.9 Compensation of Officers.....13

    Section 4.10 Vacancies.....13

**ARTICLE V**

COMMON EXPENSES; BUDGETS .....13

    Section 5.1 Fiscal Year.....13

    Section 5.2 Preparation and Approval of Budget .....13

    Section 5.3 Assessment and Payment of Common Expenses.....14

    Section 5.4 Further Assessments .....15

    Section 5.5 Initial Budget .....15

    Section 5.6 Delivery of Approved Budget and Notice of Capital Expenditure;  
        Effect of Failure to Prepare and Adopt Budget .....15

    Section 5.7 Accounts; Audits.....16

    Section 5.8 Payment of Common Expenses .....16

    Section 5.9 Collection of Assessments .....16

    Section 5.10 Statement of Unpaid Assessments .....16

**ARTICLE VI**

COMPLIANCE AND DEFAULT .....17

    Section 6.1 Relief.....17

**ARTICLE VII**

AMENDMENTS .....18

    Section 7.1 Amendments to By-Laws .....18

    Section 7.2 Approval of Mortgages.....18

    Section 7.3 Amendments to the Declaration.....19

    Section 7.4 HUD/VA Rights.....19

**ARTICLE VIII**

MISCELLANEOUS .....19

    Section 8.1 Notices.....19

    Section 8.2 Captions .....19

    Section 8.3 Gender.....19

**BY-LAWS OF  
THE MCGINNIS POINT HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I  
INTRODUCTORY PROVISIONS**

- Section 1.1 Applicability. These By-Laws provide for the governance of the incorporated non-stock, non-profit association pursuant to the provisions of Section 120, Article of the Act with respect to the Common Interest Community, the Certificate of Incorporation for which the Association was issued by the Secretary of the State of West Virginia created by the recording of the Declaration among the land records in the office of the Clerk of the County Commission of Berkeley County, West Virginia.
- Section 1.2 Definitions. Capitalized terms used herein without definition shall have the meanings specified for such terms in the Declaration to which these By-Laws pertain, or if not defined therein, the meanings specified or used for such terms in the Act.
- Section 1.3 Compliance. Pursuant to the provisions of the Act, every Unit Owner and all persons entitled to occupy a Unit shall comply with these By-Laws.
- Section 1.4 Office. The office of the Common Interest Community, 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 1.5 Incorporation of Statutory Law. The Common Interest Community shall be an incorporated non-stock, non-profit Association pursuant to the laws of the State of West Virginia. The Board of Directors described therein shall be referred herein and in the Declaration as the Executive Board.

**ARTICLE II  
THE PLANNED COMMUNITY**

- Section 2.1 Composition. The Common Interest Community is organized as an incorporated, non-stock, non-profit Association, and shall be known as The McGinnis Point Homeowners Association, Inc. (hereinafter "Association"). The Association shall consist of all of the Unit Owners acting as a group in accordance with the Act, the Declaration and these By-Laws. The Association shall have the responsibility of administering the Common Interest Community, establishing the means and methods of collecting assessments and charges, arranging for the management of the Common Interest Community and performing all of the other acts that may be required or permitted to be performed by the Association pursuant to the Act and the Declaration. The foregoing responsibilities shall be performed by the Executive Board as more particularly set forth in these By-Laws.

Section 2.2 Annual Meetings. The annual meetings of the Association shall be held on the first Thursday of October of each year or such other date as the Board may decide. If such dates shall occur on a holiday, then the meetings shall be held on the succeeding Thursday, or such alternate date as the Executive Board shall decide. At such annual meetings, the Executive Board shall be elected by ballot of the Unit Owners in accordance with the requirements of Section 3.3 of these By-Laws and such other business as may properly come before the meeting may be transacted.

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.

2.4.1 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 entitled to cast at least twenty-five (25%) percent of the votes in the Association. The notice of any special meeting shall state the time, place and purpose thereof. Such meeting shall be held within forty-five (45) days after receipt by the President of such resolution or petition; provided, however, if the purpose includes the consideration of the rejection of a budget or capital expenditure pursuant to Section 5.2 below, such meeting shall be held within fifteen (15) days after receipt by the President of such resolution or petition. No business shall be transacted at a special meeting except as stated in the notice.

2.4.2 No later than sixty (60) days after conveyance of twenty-five (25%) percent of the Units to Unit Owners other than the Declarant, a special meeting of the Association shall be held at which at least one (1) additional member shall be elected by Unit Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty (50%) percent of the Units which may be created to Unit Owners other than the Declarant, at least two (2) members and not less than thirty-three percent (33%) of the members of the Executive Board, shall be elected by Unit Owners other than Declarant.

2.4.3 Such successor members shall serve until the annual meeting of the Association following the meeting at which they were elected.

2.4.4 Notwithstanding the foregoing, if any meeting required pursuant to Sections 2.4.2 and 2.4.3 above could be held on the date an annual meeting of the Association is scheduled, than such meetings shall be held concurrently with such annual meeting.

Section 2.5 Notice of Meetings. The Secretary shall give to each Unit Owner a notice of each annual or regularly-scheduled meeting of the Association at least ten (10) but not more than sixty (60) days, prior to the date of such meeting and of each special meeting of the Unit Owners at least ten (10) but not more than forty-five (45) days, prior to such meeting, stating the time, place and purpose thereof, including without limitation, any proposed budget or assessment change, the general nature of any proposed amendment to these By-Laws or Declaration and any proposal to remove an Executive Board member or officer. The giving of a notice of meeting in the manner provided in this Section 2.5 and Section 8.1 of these By-Laws shall be considered service of notice.

Section 2.6 Adjournment of Meetings. If at any meeting of the Association a quorum is not present, Unit Owners entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time not less than forty-eight (48) hours after the time lot which the original meeting was called.

Section 2.7 Voting. Voting at all meetings of the Association shall be on per Unit basis with each Unit Owner holding one vote per Unit owned. If the Owner of a Unit is a joint venture, partnership or association, the natural person who shall be entitled to cast the vote for such Units shall be the natural person named in a certificate executed by such entity pursuant to its governing documents. If the Owner of a Unit is a trust, the trustee or trustees shall be deemed to be the owners for voting purposes. Where the ownership of a Unit is in more than one person, the person who shall be entitled to cast the vote of such Unit shall be the natural person named in a certificate executed by all of the owners of such Unit and filed with the Secretary or, in the absence of such named person from the meeting, the natural person who shall be entitled to cast the vote of such Unit shall be the natural person owning such Unit who is present. If more than one of the multiple owners is present, then such votes shall be cast only in accordance with their unanimous agreement pursuant to Section 5310(a) of the Act. There shall be deemed to be agreement if any one of the multiple owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the Owners of the Unit. Such certificates shall be called until revoked by a subsequent certificate similarly executed. Subject to the requirements of the Act, wherever the approval or disapproval of Unit Owner is required by the Act, the Declaration or these By-Laws, such approval or disapproval shall be made only by the natural person who would be entitled to cast the vote for such Unit at any meeting of the Association. Except with respect to election of members of the Executive Board and except where a greater number is required by the Act, the Declaration or these By-Laws, the owners of more than fifty (50%) percent of the aggregate Percentage Interests in the Common Interest Community voting in person or by proxy at one time at a duly convened meeting at which a quorum is present is required to adopt decisions at any meeting of the Association. Any specified percentage of the Unit Owners means the Unit Owners owning such Percentage Interests in the aggregate. In all elections for Executive Board members, each Unit Owner shall be entitled to cast for each

vacancy to be filled at such election the number of votes allocated to the Unit or Units owned by such Unit Owner as provided in the Declaration. Those candidates for election receiving the greatest number of votes cast to unequal terms, the candidates receiving the highest number of votes shall be elected to the longest terms. Except as set forth in Section 2.4.2, if the Declarant owns or holds title to one or more Units, the Declarant shall have the right at any meeting of the Association to cast the votes to which such Unit or Units are entitled. No votes allocated to a Unit owned by the Association may be cast. There shall be no cumulative or class voting.

Section 2.8 Proxies. A vote may be cast in person or by proxy. If a Unit is owned by more than one person, each Owner of the Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. Such proxy may be granted by any Unit Owner in favor of another Unit Owner, a holder of a mortgage on a Unit or the Declarant. Proxies shall be duly executed in writing, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt of the person presiding over the meeting of written notice of revocation from the grantors of the proxy. No proxy shall be valid for a period in excess of one year after the execution thereof. A proxy is void if it is not dated or purports to be revocable without notice.

Section 2.9 Quorum. Except as set forth below, the presence in person or by a proxy of Unit Owners of fifty (50%) percent or more of the aggregate Percentage Interests at the commencement of all meetings shall constitute a quorum at all meetings of the Association. If a meeting is adjourned pursuant to Section 2.6 above, the quorum at such second meeting shall be deemed present throughout any meeting of the Association if persons entitled to cast fifty (50%) percent of the votes which may be cast for the election of the Executive Board are present in person or by proxy at the beginning of the meeting.

Section 2.10 Conduct of Meetings. The President (or in the President's absence, one of the Vice Presidents) shall preside over all meetings of the Association and the Secretary, or such other person as the President may designate to perform the role of the Secretary in the temporary absence of 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. 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 By-Laws or the Act. All votes shall be tallied by tellers appointed by the President.

**ARTICLE III**  
**EXECUTIVE BOARD**

Section 3.1 Number and Qualification. The affairs of the Association shall be governed by an Executive Board (hereinafter referred to as the "Board"). The Board shall be composed of five (5) natural persons, all of whom shall be Unit Owners or designees of the Declarant.

Section 3.2 Delegation of Powers; Managing Agent. The Board may employ for the Common Interest Community a Managing Agent at the compensation established by the Board. The Managing Agent shall perform such duties and services as the Board shall authorize, including but not limited to, all of the duties listed in the Act, the Declaration and these By-Laws; provided, however, where a Managing Agent does not have the power to act under the Act, the Declaration or these By-Laws, such duties shall be performed as advisory to the Board. The Board may delegate to the Managing Agent all of the powers granted to the Board by the Act, the Declaration and these By-Laws as well as the following other powers:

- 3.2.1 To adopt the annual budget and any amendment thereto or to assess any Common Expenses and Limited Common Expenses as outlined in the Declaration;
- 3.2.2 To adopt, repeal or amend the Rules and Regulations;
- 3.2.3 To designate signatories on the Association bank accounts;
- 3.2.4 To borrow money on behalf of the Association;
- 3.2.5 To acquire and mortgage Units;
- 3.2.6 To designate Reserved Common Elements; and
- 3.2.7 To allocate Limited Common Elements.

Any contract with the Managing Agent must provide that it may be terminated with cause on no more than thirty (30) days written notice and without cause on no more than ninety (90) days written notice. The term of any such contract may not exceed one (1) year.

Section 3.3 Election and Term of Office.

- 3.3.1 At the annual meeting of the Association, the election of members of the Board shall be held. The term of office of any Board member to be elected (except as set forth in Sections 2.4.2, 2.4.3 and 3.5 hereof) shall be fixed at three (3) years. The members of the Board shall hold office until the earlier to occur of the election of their respective successors, their



death, adjudication of incompetency, removal or resignation. Any Board member may serve an unlimited number of terms and may succeed himself.

3.3.2 Persons qualified to be members of the Board may be nominated for election only as follows:

- A. Any Unit Owner may submit to the Secretary at least thirty (30) days before the meeting at which the election is to be held, a nominating petition signed by the Unit Owners owning at least ten (10) Units in the aggregate, together with a statement that the person nominated is willing to serve on the Board and a biographical sketch of the nominee. The Secretary shall deliver in writing the submitted items to every Unit Owner along with the notice of such meeting; and
- B. Nominations may be submitted from the Floor at a meeting at which the election is held for each vacancy on the Board for which no more than one person has been nominated by petition.

Section 3.4 Removal or Resignation of Members of the Executive Board. Except with respect to members designated by the Declarant, at any regular or special meeting of the Association duly called, any one or more of the members of the Board may be removed with or without cause by Unit Owners entitled to cast a majority of all votes in the Association and a successor may then and there be elected to fill the vacancy thus created. Any Unit Owner proposing removal of a Board member shall give notice thereof to the Secretary. Any member whose removal has been proposed by a Unit Owner shall be given at least ten (10) days notice by the Secretary of the time, place and purpose of the meeting and they shall be given an opportunity to be heard at the meeting. A member of the Board may resign at any time and shall be deemed to have resigned upon transfer of title of his Unit (unless member contemporaneously purchases another Unit). The Declarant shall have the right to remove and replace any or all members appointed by the Declarant in accordance with the Act.

Section 3.5 Vacancies. Except as set forth in Section 3.4 above with respect to members appointed by the Declarant, vacancies in the Board caused by any reason other than the removal of a member by vote of Unit Owners shall be filled by a vote of majority of the remaining members at a special meeting of the 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 Board for the remainder of term of the member being replaced and until a successor shall be elected at the next annual meeting of the Association at which such seat is to be filled upon expiration of the term of his predecessor. In case of multiple vacancies, the member receiving the greatest number of votes shall be elected for the longest term.

- Section 3.6 Organization Meeting. The first meeting of the Board following each annual meeting of the Association shall be held within ten (10) days thereafter at such time and place as shall be fixed by the President (even if he is the outgoing President) at the meeting at which such Board shall have been elected and no notice shall be necessary to the newly elected members of the Board in order legally to constitute such meeting if a majority of the Board members shall be present at such meeting.
- Section 3.7 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the members, but such meetings shall be held at least every four (4) months during each fiscal year. Notice of regular meetings of the Board shall be given to each member, in writing, at least three (3) business days prior to the day named for such meeting.
- Section 3.8 Special Meetings. Special meetings of the Board may be called by the President on at least three (3) business days notice to each member, given in writing, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President, or Secretary in like manner, and on like notice of the written request of at least two (2) members of the Board.
- Section 3.9 Waiver of Notice. Any member may at any time, in writing, waive notice of any meeting of the Board and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Board shall constitute a waiver of notice by him of the time, place and purpose of such meeting. If all members are present at any meeting of the Board, no notice shall be required and any business may be transacted at the meeting.
- Section 3.10 Quorum of the Executive Board. A quorum is deemed present throughout any meeting of the Board if persons entitled to cast fifty (50%) percent of the votes on the Board are present at the beginning of the meeting. The votes of a majority of the members present at a meeting at which a quorum is present shall constitute the decision of the Board. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. Any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice. One or more members of the Board may participate in and be counted for quorum purposes at any meeting by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other.
- Section 3.11 Compensation. No member of the Board shall receive any compensation from the Association for acting as such, but may be reimbursed for any expenses incurred in the performance of his duties.

Section 3.12 Conduct of Meetings. The President shall preside over all meetings of the Board and the Secretary, or such other person as the President may designate to perform the role of the Secretary in the temporary absence of the Secretary, shall keep a minute book of the Board meetings, recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. The then current edition of Robert's Rules of Order shall govern the conduct of the meeting of the Board if and to the extent not in conflict with the Declaration, these By-Laws or the Act.

Section 3.13 Action Without Meetings. Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board shall individually or collectively consent in writing to such action. Any written consent shall be filed with the minutes of the proceedings of the Board.

Section 3.14 Validity of Contracts with Interested Executive Board Members. No contract or other transaction between the Association and one or more of its Board members or between the Association and any corporation, firm or association in which one or more of the Board members are directors or officers or are financially interested, shall be void or voidable because such Board member or members are present at any meeting of the Board which authorized or approved the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

3.14.1 The fact that a Board member is also such, a director or officer or has such financial interest is disclosed or known to the Board and is noted in the minutes thereof and the Board authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Board member or members; or

3.14.2 The contract or transaction is made in good faith and is not unconscionable to the Association at the time it is authorized, approved or ratified.

Section 3.15 Inclusion of Interested Board Members in the Quorum. Any Board member holding such director or officer position or having such financial interest in another corporation, firm or association may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction of the type described in Section 3.14 hereof.

#### ARTICLE IV OFFICERS

Section 4.1 Designation. The principal officers of the Association shall be the President, Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board. The Board may appoint an assistant treasurer, an assistant secretary and

such other officers as in its judgment may be necessary. The President and Vice President shall be Unit Owners members of the Board. Any other officers may, but not need to, be Unit Owners or members of the board. An officer other than the President may hold more than one office.

Section 4.2 Election of Officers. The officers of the Association shall be elected annually by the Board at the organization meeting of each new Board and shall hold office at the pleasure of the Board.

Section 4.3 Removal of Officers. Upon the affirmative vote of a majority of all members of the Board, any officer may be removed, either with or without cause, and a successor may be elected at any meeting of the 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 Board and have all of the general powers and duties which are incident to the office of President of an incorporated Association organized under the laws of West Virginia, including without limitation, the power to appoint committees from among the Unit Owners from time to time, as the President may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall cease holding such office at such time as the President ceases to be a member of the Board.

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 Board shall appoint some other member of the 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 delegated or assigned to the Vice President by the Board or by the President. The Vice President shall cease holding such office at such time as the Vice President ceases to be a member of the Board.

Section 4.6 Secretary. The Secretary, or such other person as the President may designate, shall keep the minutes of all meetings of the Association and of the Board, have charge of such books and papers as the Board may direct, maintain a register setting forth the place to which all notices to Unit Owners and holders of mortgages on any Units hereunder shall be delivered and, in general, perform all the duties incident to the office of secretary of an incorporated association organized under the laws of West Virginia. The Secretary shall, upon request, provide any person or cause to be provided to any person entitled thereto, a written statement or certification of the information required to be provided by the Association pursuant to Sections 109(b), Article 4 of the Act, and Sections 5.6 and 5.10 below.

Section 4.7 Treasurer. The Treasurer shall have the responsibility for the safekeeping of the Association funds and securities, be responsible for keeping full and accurate

financial records and books of account showing all receipts and disbursements and for preparation of all required financial data and be responsible for the deposit of all monies in the name of the Board, the Association or the Managing Agent, in such depositories as may from time to time be designated by the Board and, in general, perform all the duties incident to the office of Treasurer of an incorporated Association organized under the laws of West Virginia.

Section 4.8 Execution of Documents. Upon authorization of the Board, all agreements, contracts, deeds, leases, checks and other instruments of the Association, for expenditures or obligations in excess of \$5,000.00, shall be executed by any two (2) officers of the Association. All such instruments for expenditures or obligations of \$5,000.00 or less may be executed by any one (1) officer of the Association.

Section 4.9 Compensation of Officers. No officer who is also a member of the Board shall receive any compensation from the Association for acting as such officer, but may be reimbursed for any out-of-pocket expenses incurred in performing such officer's duties; provided, however, the Secretary and Treasurer may be compensated for their services if the Board determines such compensation to be appropriate.

Section 4.10 Vacancies. A vacancy in any office may be filled by appointment by the Executive Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

## **ARTICLE V** **COMMON EXPENSES; BUDGETS**

Section 5.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board; provided, however, that the first fiscal year shall begin upon the recordation of the Declaration.

Section 5.2 Preparation and Approval of Budget.

5.2.1 On or before the first day of November of each year (or sixty (60) days before the beginning of the fiscal year if the fiscal year is other than the calendar year), the Board shall adopt an annual budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units as to which it is the responsibility of the Association to maintain, repair and replace and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Act, the Declaration, these By-Laws or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the

Unit Owners of all related services. Such budget shall also include such reasonable amounts as the Board considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. The budget shall segregate General Common Expenses and Limited Common Expenses.

- 5.2.2 On or before the next succeeding 5<sup>th</sup> day of November (or fifty-five (55) days before the beginning of the fiscal year if the fiscal year is other than the calendar year), the Board shall make the budget available for inspection at the Association office and shall send to each Unit Owner a copy of the budget in a reasonably itemized form that sets forth the amount of the Common Expenses. Such budget shall constitute the basis for determining each Unit Owner's assessments for General Common Expenses and Limited Common Expenses for the Association and shall automatically take effect at the beginning of the fiscal year for which it is adopted, subject to Section 5.8 below.
- 5.2.3 The Board shall make reasonable efforts to meet the deadlines set forth above, but compliance with such deadlines shall not be a condition precedent to the effectiveness of any budget.

Section 5.3 Assessment and Payment of Common Expenses. The Board shall calculate the yearly assessments for General Common Expenses, as defined in the Declaration, against each Unit by:

- A. Multiplying the total amount of the estimated funds required for the operation of the Property set forth in the budget adopted by the Board for the fiscal year in question, after deducting any Limited Common Expenses and income expected to be received from sources other than Common Expense assessments and the operation of the Limited or Reserved Common Elements to which the Limited Common Expenses pertain, by
- B. The Percentage Interest (expressed in decimal form) allocated to such Unit.

- 5.3.1 Such assessments shall be deemed to have been adopted and assessed annually on a calendar year basis and shall be due and payable annually. The first annual payment shall be due and payable to the Association no later than January 31st of each year and shall be a lien against each Unit Owner's Unit as provided in the Act and Declaration. Within ninety (90) days after the end of each fiscal year, the Board shall prepare and deliver to each Unit Owner and to each record holder of a mortgage on a Unit, who has registered an address with the Secretary, an itemized accounting of the Common Expenses and the funds received during such fiscal year less expenditures actually incurred and sums paid unto reserves. Any net shortage with regard to General Common Expenses, after application of

such reserves as the Board may determine, shall be assessed promptly against the Unit Owners in accordance with their Percentage Interests and shall be payable in one or more monthly assessments, as the Board may determine.

Assessments for the first year shall be prorated from the date of settlement, utilizing the annual budget assessment schedule for the current year, which shall be established by the Board and used in the computation of the first year assessment amount due.

5.3.2 Reserves. The Board shall build up and maintain reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget, which may become necessary during the fiscal year, may be charged first against such reserves. If the reserves are deemed to be inadequate for any reason, including non-payment of any Unit Owner's assessments, the Board may at any time levy further assessments for General Common Expenses and/or Limited Common Expenses which shall be assessed against the Unit Owners either according to their respective Percentage Interests with regard to General Common Expenses or in accordance with allocable shares of Limited Common Expenses with regard to Limited Expenses (whichever is appropriate) and shall be payable in one or more monthly assessments as the Board may determine.

Section 5.4 Further Assessments. The Board shall serve notice on all Unit Owners of any further assessments pursuant to Sections 5.3, 5.3.1 and 5.3.2, or otherwise as permitted or required by the Act, the Declaration and these By-Laws by a statement in writing giving the amount and reasons therefore and such further assessments shall, unless otherwise specified in the notice, become effective with the next annual assessment which is due more than ten (10) days after the delivery of such notice of further assessments. All Unit Owners so assessed shall be obligated to pay the amount of such assessments. Such assessments shall be a lien as of the effective date as set forth in the preceding Sections 5.3, 5.3.1 and 5.3.2.

Section 5.5 Initial Budget. At or prior to the time assessment of Common Expenses commences, the Board shall adopt the budget, as described in this Article, for a period commencing on the date the Board determines that assessments shall begin and ending on the last day of the fiscal year during which such commencement date occurs. Assessments shall be levied and become a lien against the Unit Owners during such period as is provided in Section 5.3 above.

Section 5.6 Delivery of Approved Budget and Notice of Capital Expenditure; Effect of Failure to Prepare or Adopt a Budget. The Board shall deliver to all Unit Owners copies of each budget approved by the Board and notice of any capital expenditure approved by the Board promptly after each such approval. The

failure or delay of the Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay such Unit Owner's allocable share of the Common Expenses as herein provided whenever the same shall be determined, and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each assessment at the rate established for the previous fiscal year until the new annual or adjusted budget shall have been adopted.

Section 5.7 Accounts; Audits. All sums collected by the Board with respect to assessments against the Unit Owners or from any other source may be commingled into a single fund. All books and records of the Association shall be kept in accordance with good and accepted accounting practices and may be audited by an independent accountant retained by the Board, at such time as the Board decides.

Section 5.8 Payment of Common Expenses. Each Unit Owner shall pay the Common Expenses assessed by the Board pursuant to the provisions of this Article. No Unit Owner may exempt himself from the liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any Common Elements or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to the date of recordation of a conveyance by him in fee of such Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of such recordation, without prejudice for the purchaser's right to recover from the selling Unit Owner amounts paid by the purchaser therefore; provided, however, that any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Unit Owner within ten (10) days following a written request thereof to the Board or Managing Agent and such purchaser shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments with respect to the time period covered by such statement, in excess of the amount therein set forth.

Section 5.9 Collection of Assessments. The Board or the Managing Agent, at the request of the Board, shall take prompt action to collect any assessments for Common Expenses due from any Unit Owner which remain unpaid for more than thirty (30) days from the due date for payment thereof. Any assessment not paid within ten (10) days after its due date shall accrue interest charges of fifteen percent (15%) of the overdue assessment. In Addition, a late fee of Five Dollars (\$5.00) per day will be assessed, plus attorney's fees equal to fifteen percent (15%) of the total due and payable shall be assessed.

Section 5.10 Statement of Unpaid Assessments. The Board shall promptly provide any Unit Owner, contract purchaser or proposed mortgagee so requesting the same in writing, with a written statement of all unpaid assessments for Common Expenses due from such Unit Owner. The Board may impose a reasonable charge for the



preparation of such statement to cover the cost of its preparation, to the extent permitted by the Act.

## ARTICLE VI **COMPLIANCE AND DEFAULT**

### Section 6.1 Relief.

Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Declaration, these By-Laws, the Rules and Regulations and the Act, as any of the same may be amended from time to time. In addition to the remedies provided in the Act and the Declaration, a default by a Unit Owner shall entitle the Association, acting through its Board or through the Managing Agent, to the following relief:

- 6.1.1 Additional Liability. Each Unit Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or the act, neglect or carelessness of his tenants, guests, invitees or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board. Such liability shall include any increase in casualty insurance premiums occasioned by improper use, misuse, occupancy or abandonment of any Units or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.
- 6.1.2 Costs and Attorneys Fees. In any proceeding arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be determined by the court.
- 6.1.3 No Waiver of Rights. The failure of the Association, the Board or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration, these By-Laws, the Rules and Regulations or the Act shall not constitute a waiver of the right of the Association, the Board or the Unit Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board or any Unit Owner pursuant to any term, provision, covenant or condition of the Declaration, these By-Laws, the Rules and Regulations or the Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Declaration, these By-Laws, the Rules and Regulations or the Act or at law or in equity.

6.1.4 Abating and Enjoining Violation of Unit Owners. The violation of any Rules and Regulations adopted by the Board, the breach of any By-Law contained herein, or the breach of any provision of the Declaration or the Act shall give the Board the right, in addition to any other rights:

- A. To enter the Unit in which, or as to which, such violation or breach exists and summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof and the Board shall not thereby be deemed guilty in any manner of trespass; or
- B. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; or
- C. To fine the Unit Owner for any amount stated in the Declaration or Rules and Regulations as adopted by the Board.

## **ARTICLE VII** **AMENDMENTS**

Section 7.1 Amendments to By-Laws. These By-Laws may be modified or amended only by vote of Unit Owners entitled to cast a majority of the votes in the Association, except as otherwise expressly set forth herein or in the Declaration or in the Act; provided, however, that until the date on which Declarant-appointed Board members voluntarily resign or are required to resign pursuant to Article XII of the Declaration, Section 2.4 and Section 3.1 of the By-Laws and this Section may not be amended without the consent in writing of the Declarant. Additionally, if any amendment is necessary in the judgment of the Board to cure any ambiguity or to correct or supplement any provision of these By-Laws that is defective, missing or inconsistent with any other provision hereof or with the Act or the Declaration or if such amendment is necessary to conform to the requirements of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with respect to Common Interest Community projects, then at any time and from time to time the Board may effect an appropriate corrective amendment without the approval of the Unit Owners or the holders of any liens on all or any part of the Property, upon receipt by the Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence.

Section 7.2 Approval of Mortgages. These By-Laws contain provisions concerning various rights and interests of record holders of mortgages on Units. Such provisions of these By-Laws are to be construed as covenants for the protection of such holders on which they may rely in making loans secured by such mortgages. Accordingly, no amendment or modification of these By-Laws impairing or affecting such rights, priorities, remedies or interests of such a holder shall be

adopted without the prior written consent of such holders who have registered an address with the Secretary.

Section 7.3 Amendments to the Declaration. Any two (2) officers or Board members of the Association may prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

Section 7.4 HUD/VA Rights. HUD/VA has the right to veto amendments while there is a Special Declarant.

## ARTICLE VIII MISCELLANEOUS

Section 8.1 Notices. All notices, demands, bills, statements or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt, postage prepaid or otherwise as the Act may permit if:

8.1.1 To a Unit Owner, at the single address which the Unit Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Unit of such Owner, or

8.1.2 If to the Association, the Board or the Managing Agent, at the principal office of the Managing Agent or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section.

If a Unit is owned by more than one person, each such person who so designates a single address in writing to the Secretary, shall be entitled to receive all notices hereunder.

Section 8.2 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way defines, limits or describes the scope of these By-Laws or the intent of any provision thereof.

Section 8.3 Gender. The use of the masculine gender in these By-Laws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural and vice versa, whenever the context so requires.

IN WITNESS WHEREOF, we, being the Initial Non-Stock Officers of The McGinnis Point Homeowners Association, Inc., a West Virginia Incorporated Non-Profit Association, have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

WITNESS:

[Signature]

By: [Signature]  
President

[Signature]

By: [Signature]  
Vice President

[Signature]

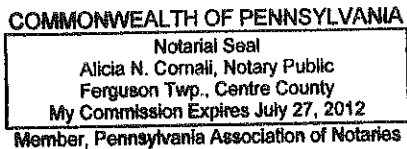
By: [Signature]  
Secretary/ Treasurer

State of PENNSYLVANIA :

County of CENTRE :

On this, the 2<sup>nd</sup> day of AUGUST, 2008, before me, the undersigned officer, personally appeared ROD FRAZIER, STEVE BISBEE, GLENN ROTH, who acknowledged themselves to be the Initial Officers of The McGinnis Point Homeowners Association, Inc., and that they as such Initial Officers of The McGinnis Point Homeowners Association, Inc. being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of The McGinnis Point Homeowners Association, Inc., by themselves as Initial Officers.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



[Signature]  
Notary Public

My Commission Expires: