

**AMENDED AND RESTATED  
BY-LAWS OF  
ASHTON PROPERTY OWNERS ASSOCIATION, INC.**

## **Amended and Restated Bylaws of Ashton Property Owners Association Inc.**

*PREFACE: These bylaws are revised and amendment to reflect changes in the West Virginia Non-Profit Corporations Act subsequent to the original 1994 bylaws, recent amendments to the bylaws of Master Association and recent amendments to the Declaration made for the purposes of reflecting the final completed structure and character of the Subdivision, incorporating additional provisions of governing law and modifying the mechanism of governance and administration of the Subdivision to conform to the desires and expectations of a majority of the Unit Owners.*

### **Article 1: Definitions**

**Section 1.1. Definitions.** All defined terms used and employed in these bylaws which are not specifically defined in these bylaws shall have the same meanings and definitions as set forth and provided for in that declaration dated December 15, 1994 made by Jamestowne Construction, Inc., recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1100 at Page 308, as the same has been or may be amended from time to time (“Declaration”). in relation to Ashton Estates, a planned common interest community located and situate in Clinton District, Monongalia County, West Virginia (“Subdivision”),

### **Article 2: Purpose and Priority**

**Section 2.1. Purpose.** The primary purposes of the Association shall be to (a) exercise those powers delegated to it in the Declaration or by the laws of the State, (b) to own, manage and maintain all of the Common Elements of the Subdivision, (c) assess and collect assessments, dues, and/or fees from Unit Owners necessary to permit the Association to own, manage, and maintain the Common Elements of the Subdivision and the improvements located thereon, (d) generally govern the use and operation of the Common Elements, (e) be a member of The Ashton Estates and Ashton Townhouses Estates Master Association Inc., a West Virginia nonprofit corporation (“Master Association”), and (f) take and/or perform all actions related to, incidental to, and/or ancillary to all of the foregoing.

**Section 2.2. Priority.** In the event of a conflict or inconsistency between the provisions of these bylaws and the Declaration, the provisions of the Declaration shall prevail, control, and dominate. In the event of any conflict between these bylaws and the Association’s articles of incorporation, the articles of incorporation shall prevail, control and dominate.

### **Article 3: Membership**

**Section 3.1. Membership.** Membership in the Association shall be determined under, governed by, and controlled by the provisions of the Declaration. Membership shall be comprised exclusively of “Unit Owners” as defined in West Virginia Code § 36B-1-103(34).

**Section 3.2. Class of Members.** The Association shall have and be comprised of a single class of Members.

**Section 3.3. Voting Allocation Among Members.** The allocation of votes among the Members shall generally be formulated on the principle of “one (1) vote for one (1) Unit,” notwithstanding that a single Unit may be owned by multiple Members. In the event a Unit shall be owned by one (1) Member, such Member shall have one (1) vote. In the event a Unit shall be owned by more than one (1) Member, those Members shall collectively have one (1) vote. The allocation of votes among such multiple Members owning a Unit shall be as follows: In the event only one (1) of such Members shall be present at a meeting of the Members, such Member shall be entitled to cast the vote allocated to such Unit. In the event that more than one (1) of such Members shall be present, the vote allocated to such Unit shall be cast only under, in accordance with, and pursuant to the agreement of a majority in interest of such Members. There shall be an agreement of a majority in interest in the event that any one (1) of such Members shall cast the vote allocated to such Unit without protest being made promptly to the person presiding over the meeting of the Members by any of the other present Members owning such Unit. In the absence of an agreement of a majority in interest among such Members, each of such Members shall be entitled to cast a fractional vote attributable to such Unit, such fractional vote being based upon each such Member’s fractional ownership of such Unit.

**Section 3.4. Members which are not Natural Persons.** Any corporation, business trust, estate, trust, partnership, association, limited liability company, joint venture, government, governmental subdivision or agency, or other legal or commercial entity (“Entity”) which is a Member by virtue of its ownership of an interest in a Unit may designate a representative to exercise its Membership privileges including, but not limited to, participation in Association meetings and serving as an officer or director of the Association. Provided, however, that the Entity shall first provide the Association with a written designation identifying: (a) the representative and the Unit or Units owned by the Entity for which the representative is appointed, (b) whether the representative is authorized to serve as an officer or director of Association, (c) the expiration of the designation, and (d) any other limitation on the representative’s authority. Entities may appoint no more than one (1) representative per Unit owned by the Entity but may authorize any representative to act in relation to multiple Units.

**Section 3.5. Evidence of Membership.** The Association shall not issue certificates evidencing membership in the Association. However, the Association may issue certificates of good standing and other evidence of membership and compliance with the Declaration and these bylaws as may be necessary for the conduct of a Member’s business.

**Section 3.6. Membership Rules.** The Members of the Association may adopt rules for membership in the Association in addition to and/or supplementing the provisions of these bylaws and the Declaration which are reasonable, germane to the purposes of the Association, and equally enforced as to all of the Members. Provided, however, that no such rule may conflict with the Declaration or West Virginia Code §§ 36B-1-101, et seq. Rules of Membership may limit or restrict the use and occupancy of Common Elements or Units in the Subdivision owned by the Association but shall not impose restrictive or protective covenants or limitations on Units not owned by the Association.

#### **Article 4: Association Powers**

**Section 4.1. Association Powers.** The Association shall have the express powers set forth, contained, and provided for in the Declaration and West Virginia Code § 36B-3-102, as the same may be amended from time to time, which powers are incorporated and integrated into these bylaws by this reference.

#### **Article 5: Directors**

**Section 5.1. Number of Directors Comprising the Board of Directors.** The Association shall at all times have not less than a three (3) member board of directors. An increase in the number of members of the board of directors shall require the affirmative majority vote of the members of the Association.

**Section 5.2. Election or Appointment of Directors.** The three (3) members of the initial board of directors were appointed by Declarant and the Declarant's control of the Association expired not later than sixty (60) days after Declarant ceased to own at least seventy-five (75%) percent of all Units in the Subdivision. All members of the board of directors shall at all times thereafter be elected by the Members at least annually at a meeting to be held for that purpose. Each director's term expires, at a subsequent annual meeting of the Members.

**Section 5.3. Terms of Directors.** Except as otherwise provided in this section, all directors shall serve two (2) year staggered terms with no fewer than two (2) and no more than three (3) director positions to be filled by election or appointment at any annual meeting of the Members. The term of a director elected or appointed to fill a vacancy shall expire at the next annual meeting of the Members at which directors shall be elected. Notwithstanding the expiration of a director's term, such director shall continue to serve as a director until his or her successor shall be elected and qualified or until there shall be a decrease in the number of directors.

**Section 5.4. Resignation of a Director.** A director may resign at any time by delivering written notice of his or her resignation to the chairperson of the board of directors; provided, however, that no director shall resign at a time when any other director position shall be vacant. A resignation shall be effective when the notice is delivered unless: (a) the board of directors shall agree to a later effective date or (b) there is a current vacancy on the board of directors, other than in relation to the director position being resigned, in which case the resignation shall be effective when the vacancy shall be filled.

**Section 5.5. Removal of a Director.** A director may be removed by the Members with or without cause by a two-thirds (2/3) vote of all Members present and entitled to vote at any meeting of the Unit Owners at which a quorum is present.

**Section 5.6. Vacancy on the Board of Directors.** If a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, such vacancy shall be filled: (a) if the vacancy resulted from the removal of a director by the Members, by a vote of the Members at a special meeting of the Members called for that purpose, or (b) if the vacancy did not result from the removal of a director by the Members, the vacancy shall be filled by the remaining directors. A vacancy that will occur at a specific later date, by reason of a resignation effective at a specific later date, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

**Section 5.7. Compensation of Directors.** Directors shall not be compensated for service on the board of directors except upon an affirmative, unanimous vote of all Members.

**Section 5.8. Directors' Meetings.** The board of directors may hold regular or special meetings at any location in or out of the State of West Virginia. Any or all directors may participate in a regular or special meeting of the board of directors by, or conduct the meeting through the use of, any means of communication by which all directors participating in the meeting may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting .

**Section 5.9. Action Without Meeting.** Any action to be taken at a board of directors' meeting may be taken without a meeting if the action shall be taken by all members of the board of directors. The action must be evidenced by one or more written consents describing the action taken, executed by each director, and included in the minutes or filed with the corporate records reflecting the action taken effective when the last director shall execute the consent, unless the consent shall specify a different effective date. A consent executed as aforesaid shall have the effect of a meeting vote and may be described as having the effect of a meeting vote in any document.

**Section 5.10. Notice of Meeting.** Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting. Special meetings of the board of directors must be preceded by at least two (2) days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting.

**Section 5.11. Waiver of Notice.** A director may waive any notice required by these bylaws before or after the date and time stated in the notice. The waiver must be in writing, executed by the director entitled to the notice, and filed with the minutes or corporate records. A director's attendance at or participation in a meeting waives any required notice to such director of the meeting unless such director at the beginning of the meeting or promptly upon such director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

**Section 5.12. Quorum and Voting.** The participation of at least two (2) directors at any meeting shall constitute a quorum of the board of directors when the board is comprised of three (3) directors. If the board of directors shall increase in number, a simple majority shall constitute a quorum. If a quorum shall be present when a vote is taken, the affirmative vote of a majority of the directors present shall be the act of the board of directors. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken shall be deemed to have assented to the action taken unless: (a) such director objects at the beginning of the meeting or promptly upon such director's arrival to holding the meeting or transacting business at the meeting, (b) such director's dissent or abstention from the action taken is entered in the minutes of the meeting, or (c) such director delivers written notice of such director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the Association immediately after adjournment of the meeting. The right of dissent or abstention shall not be available to a director who votes in favor of the action taken.

**Section 5.13. Standards of Conduct for Directors.** Each member of the board of directors, when discharging the duties of a director, shall act: (a) in good faith and (b) in a manner the director reasonably believes to be in the best interests of the Association. The members of the board of directors or a committee of the board of directors, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances. In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on the performance by any officer, employee, legal counsel, public accountant, committee appointed by the Association, or other persons retained by the Association as to matters involving skills or expertise the director reasonably believes are material, but only to the extent the director has confidence in such person.

**Section 5.14. Directors' Conflicting Interest Transactions.** No contract or transaction between the Association and one (1) or more of its directors or officers, or between the Association and any other

corporation, partnership, association, or other organization in which one (1) or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer shall be present at or participate in the meeting of the board of directors or committee thereof which authorizes the contract or transaction, or solely because any director's or officer's votes shall be counted for the purpose, if: (a) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction shall be disclosed or shall be known to the board of directors or the committee, and the board of directors or committee in good faith shall authorize the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors shall be less than a quorum, or (b) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction shall be disclosed or shall be known to the members entitled to vote on the contract or transaction, and the contract or transaction shall be specifically approved in good faith by vote of the members entitled to vote, or (c) the contract or transaction shall be fair as to the Association as of the time it is authorized, approved, or ratified by the board of directors, a committee of the board of directors, or the members. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

**Section 5.15. Qualifications of Directors.** A director shall be a Member, an appointed representative of Declarant, or an appointed representative of any Entity. Provided, however, that no two (2) directors shall serve simultaneously if their sole basis for membership in the Association shall be co-ownership of only one (1) Unit.

**Section 5.16. Powers of Board of Directors.** The board of directors may act in all instances on behalf of the Association, except for: (a) amendments to the Declaration, (b) termination of the Subdivision as a common interest community, or (c) electing members of the board of directors or determining the qualifications, powers, and/or duties or terms of office of board members, but the board may fill vacancies in its membership for the unexpired portion of any term as provided for in Section 5.6.

**Section 5.17. Delegation of Powers.** The board of directors may delegate any power or authority to committees or officers of the Association or other persons, except for: (a) the power and authority to bind the Association for any obligation or indebtedness exceeding Five Thousand Dollars (\$5,000.00) (as calculated based on present dollar values effective August 1, 2015), (b) the power and authority to prepare, execute, certify, and record amendments to the Declaration on behalf of the Association which may only be delegated to the President and Secretary of the Association, (c) any power or authority not delegable pursuant to Section 7.1, and (d) any power or authority vested exclusively in the board of directors by law.

**Section 5.18. Participation in Master Association.** The board of directors shall appoint representatives to act on its behalf as directors of Master Association. At least one (1) of such appointed representatives shall be a director of the Association, and the remaining appointed representative(s) may be an officer or director of the Association or a Member. The number of appointed representatives will be determined by the bylaws of Master Association.

## **Article 6: Officers**

**Section 6.1. Required Officers.** The Association shall have a president, vice-president, secretary, and treasurer, all of whom shall be appointed by the board of directors. The president shall be charged with day to day operation of the Association. The treasurer shall be charged with the financial operation of the

Association. The secretary shall be charged with preparing minutes of the directors' and members' meetings and for authenticating records of the Association. The same individual may simultaneously hold more than one office in the Association, except that the offices of president and secretary shall be held by two (2) different individuals.

**Section 6.2. Duties of Officers.** Each officer shall have the power, capacity, and authority to and shall perform the duties set forth in these bylaws or otherwise prescribed by the board of directors. Provided, however, that the President and Secretary of the Association are and shall be authorized to prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

**Section 6.3. Standards of Conduct for Officers.** An officer, when performing in his or her official capacity, shall act: (a) in good faith, (b) with the care that a person in a like position would reasonably exercise under similar circumstances, and (c) in a manner the officer reasonably believes to be in the best interests of the Association.

**Section 6.4. Resignation and Removal of Officers.** An officer may resign at any time by delivering notice to the Association. A resignation shall be effective when the notice is delivered unless the board of directors shall agree to a later effective date. If a resignation shall be made effective at a later date and the Association accepts the future effective date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor shall not take office until the effective date. The board of directors may remove any officer at any time with or without cause.

**Section 6.5. Qualifications of Officers.** An officer shall be a Member, an appointed representative of Declarant, or an appointed representative of any Entity. Provided, however, that no two (2) officers shall serve simultaneously if their sole basis for membership in the Association shall be co-ownership of only one (1) Unit.

## **Article 7: Committees**

**Section 7.1. Committees.** The board of directors may create one or more standing or interim committees and appoint members of the board of directors or other persons to serve on such committees. Each committee shall have at least two (2) or more committee members, who shall serve at the pleasure of the board of directors. All provisions of these bylaws which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors shall apply to committees and committee members. Subject to the provisions of Section 5.17, a committee may exercise the authority delegated to it by the board of directors but may not, however: (a) approve or propose to Members action that requires approval by Members, (b) fill vacancies on the board of directors or on any of its committees, (c) amend the articles of incorporation of the Association, (d) adopt, amend, modify, or repeal these bylaws, (e) approve a plan of merger, (f) approve a sale, lease, exchange, or other disposition of all, or substantially all, of the property of the Association, or (g) approve a proposal to dissolve.

## **Article 8: Member Meetings**

**Section 8.1. Annual Meeting.** The Association shall hold a meeting of its Members at least once each year. Annual meetings of the Members may be held at any place in Monongalia County, West Virginia. The failure to hold an annual meeting of the Members at the time stated in or fixed in accordance with these bylaws shall not affect the validity of any corporate action.

**Section 8.2. Special Meetings.** The Association shall hold a special meeting of the Members: (a) on call of its board of directors, (b) on call of its president, or (c) if the Members holding at least five percent (5%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the Association one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held. If a call for a special meeting shall not be issued within fifteen (15) days after the Association's receipt of a Members' request, the Members requesting the special meeting may call the meeting. The record date for determining Members entitled to demand a special meeting shall be the date the first (1<sup>st</sup>) Member shall sign the demand. Special meetings of Members shall be held in Monongalia County, West Virginia. Only business within the purpose or purposes described in the notice shall be conducted at a special meeting of the Members.

**Section 8.3. Meaning of "Entitled to Vote".** Notwithstanding any inference to the contrary, the term "entitled to vote" does not and shall not be construed to imply that voting rights or privileges may ever be suspended for any reason. Rather, voting privileges are allocated on a per Unit basis and may only re-allocated or suspended by amendment to the Declaration made by 100% of all Unit Owners. References to "entitled to vote" relate to the subject matter presented and contemplate the possibility that less than all Unit Owners may have a vested voting interest in matters such as limited common elements, if any.

**Section 8.4. Notice of Meeting.** The Association shall not notify all Members of the date, time, and place of each annual, regular, and special meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including, without limitation, the general nature of any proposed amendment to the Declaration or these bylaws, any budget changes, and any proposal to remove an officer or a member of the board of directors. The record date for determining Members entitled to notice of and to vote at an annual, regular, or special meeting shall be the day before the first notice shall be delivered to Members.

**Section 8.5. Adjournment of Meeting.** If an annual, regular, or special meeting of Members shall be adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place shall be announced at the meeting before adjournment. If a new record date for the adjourned meeting shall be or must be fixed, notice of the adjourned meeting shall be given to Members entitled to vote as of the new record date.

**Section 8.6. Participation in Meeting.** Any Member may participate in a regular or special meeting by any means of communication by which all Members participating may simultaneously hear each other during the meeting. A Member participating in a meeting by this means shall be deemed to be present in person at the meeting.

**Section 8.7. Waiver of Notice.** A Member may waive any notice of a meeting before or after the date and time stated in the notice. The waiver shall be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes or filing with the corporate records. A Member's attendance at any meeting: (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

**Section 8.8. Conduct of the Meeting.** At each meeting of Members, a chairperson shall preside. The chairperson shall be appointed by the board of directors. The chairperson shall determine the order of



business and shall have the authority to establish rules for the conduct of the meeting. Any rules adopted for, and the conduct of, the meeting shall be fair to all Members. The chairperson of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes, nor any revocations or changes to a ballot, proxy, or vote, shall be accepted. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Members may simultaneously hear each other during the meeting.

**Section 8.9. Members' List for Meeting.** After fixing a record date for a meeting, the Association shall prepare an alphabetical list of the names of all its Members who are entitled to notice of the meeting. The list shall show the address of and number of votes to which each Member is entitled. The Members' list shall be available for inspection by any Member entitled to vote at the meeting, beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the Association's principal office. A Member entitled to vote at the meeting or his, her, or its agent or attorney shall be entitled on written demand to inspect and to copy the list, during regular business hours and at such Member's expense, during the period it is available for inspection. The Association shall make the Members' list available at the meeting, and any Member entitled to vote at the meeting or his, her, or its agent or attorney shall be entitled to inspect the list at any time during the meeting or any adjournment. Refusal or failure to prepare or make available the Members' list shall not affect the validity of action taken at the meeting.

**Section 8.10. Members' Voting Rights.** Each member shall be entitled to vote on each matter voted on at a meeting of Members. The exact and precise number of votes allocated to each Member is set forth in the Declaration and shall be determined under, controlled by, and governed by the Declaration. Members otherwise entitled to vote, but disqualified from voting for any reason, may not be considered for the purpose of a quorum or of computing the voting power of the Association. A corporate Member's vote may be cast by the president of the Member corporation or by any other officer of the Member corporation in the absence of express notice of the designation of some other person by the board of directors or bylaws of the Member corporation. A limited liability company Member's vote may be cast by the manager of the Member limited liability company or by any member of the Member limited liability company in the absence of express notice of the designation of some other person by the members or operating agreement of the Member limited liability company.

**Section 8.11. Proxies.** A Member entitled to vote may vote in person or by proxy. A Member entitled to vote by proxy or his or her agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the Member by signing an appointment form or by an electronic transmission of the appointment. An electronic transmission shall contain or be accompanied by information from which one can determine that the Member, the Member's agent, or the Member's attorney-in-fact authorized the electronic transmission. An appointment of a proxy shall be effective when a signed appointment form or an electronic transmission of the appointment shall be received by the inspector of election or the officer or agent of the Association authorized to tabulate votes. A photographic or similar reproduction of an appointment, or a telegram, cablegram, facsimile transmission, wireless or similar transmission of an appointment received by the inspector of election or the officer or agent of the Association authorized to tabulate votes shall be sufficient to effect an appointment. An appointment shall be valid for eleven (11) months unless a longer period shall be expressly provided in the appointment form. An appointment of a proxy shall be revocable by the Member. The death or incapacity of the Member appointing a proxy shall

not affect the right of the Association to accept the proxy's authority unless notice of the death or incapacity shall be received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment. Subject to any express limitation on the proxy's authority stated in the appointment form or electronic transmission of the appointment, the Association shall be entitled to accept the proxy's vote or other action as that of the Member making the appointment.

**Section 8.12. Association's Acceptance or Rejection of Votes.** If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a Member, the Association, if acting in good faith, shall be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the Member. If the name signed on a vote, consent, waiver, or proxy appointment shall not correspond to the name of a Member, the Association, if acting in good faith, shall be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the Member if: (a) the Member is an entity and the name signed purports to be that of an officer or agent of the entity, (b) the name signed purports to be that of an attorney-in-fact, administrator, executor, guardian, or conservator representing the Member and, if the Association requests, evidence of this status acceptable to the Association has been presented with respect to the vote, consent, waiver, or proxy appointment, (c) the name signed purports to be that of a receiver or trustee in bankruptcy of the Member and, if the Master Association requests, evidence of this status acceptable to the Association has been presented with respect to the vote, consent, waiver, or proxy appointment, or (d) two (2) or more persons are co-members or fiduciaries and the name signed purports to be the name of at least one (1) of the co-members or fiduciaries and the person signing appears to be acting on behalf of all of the co-members or fiduciaries. The Association shall be entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, shall have reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Member. The Association and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section and the standards of care otherwise applicable shall not be liable in damages to the Member for the consequences of the acceptance or rejection. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section shall be valid unless a court of competent jurisdiction shall determine otherwise.

**Section 8.13. Quorum and Voting Requirements.** Members entitled to vote on a matter may take action on the matter at a meeting only if a quorum of those Members exists with respect to that matter. A quorum for the purposes of any meeting of the Members shall be twenty (20%) percent of all votes allocated to all Units. The Members entitled to vote on the matter who are present at the meeting, either in person or by proxy, shall be included in determination of a quorum for action on the matter. Once a Member shall be represented for any purpose at a meeting, the Member shall be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date shall be or must be set for that adjourned meeting. Where these bylaws require for any purpose the vote of a designated proportion of the voting power of Members entitled to vote on a matter, if a quorum exists, action on the matter, other than the election of directors, by such Members shall be approved if the votes cast favoring the action by the Members voting are in a designated proportion of the total votes cast by the Members. Where the provisions of the foregoing sentence shall not be applicable, if a quorum exists, action on a matter, other than the election of directors, by the Members entitled to vote on the matter shall be approved if the votes cast by the Members voting favoring the action exceed the votes cast by the Members opposing the action. Notwithstanding any provision herein to the contrary, all

voting shall be conducted on a per Unit basis with one (1) vote per Unit regardless of the number of Members representing a Unit at any meeting.

**Section 8.14. Voting for Directors and Cumulative Voting.** Directors shall be elected by a plurality of the votes cast by the Members entitled to vote in the election at a meeting at which a quorum shall be present, or if voting by mail is permitted, in an election in which the total number of Members who vote shall not be less than the number required for a quorum. Members shall not have a right to cumulate their votes for directors.

**Section 8.15. Inspectors of Election.** The Association may appoint one (1) or more inspectors to act at a meeting of Members and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. The inspectors shall: (a) ascertain the number of Members entitled to vote and the voting power of each, (b) determine the Members represented at a meeting, (c) determine the validity of proxies and ballots, (d) count all votes, and (e) determine the result. An inspector may be an officer or employee of the Association.

## **Article 9: Emergency Provisions**

**Section 9.1. Emergencies.** For the purpose of this article, an emergency shall exist if a quorum of the Association's directors cannot readily be assembled because of some catastrophic event. The board of directors of the Association may adopt bylaws to be effective only in an emergency. The emergency bylaws, which shall be subject to amendment or repeal by the Members, may make all provisions necessary for managing the Association during the emergency, including: (a) procedures for calling a meeting of the board of directors, (b) quorum requirements for the meeting, and (c) designation of additional or substitute directors. All provisions of the regular bylaws consistent with the emergency bylaws shall remain effective during the emergency. The emergency bylaws shall not be effective after the emergency ends. Corporate action taken in good faith in accordance with the emergency bylaws: (a) shall bind the Association and (b) may not be used to impose liability on a director, officer, employee, or agent of the Association.

**Section 9.2. Emergency Powers.** In anticipation of or during an emergency the board of directors of the Association may: (a) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent and (b) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

**Section 9.3. During an Emergency.** (a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio and (b) one (1) or more officers of the Association present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum. Corporate action taken in good faith during an emergency under this article to further the ordinary affairs of the Association: (a) shall bind the Association and (2) may not be used to impose liability on a director, officer, employee, or agent of the Association.

## **Article 10: Amendment**

**Section 10.1. Amendment of Articles of Incorporation and Bylaws.** The board of directors may propose one (1) or more amendments to the articles of incorporation of the Association or these bylaws for submission to the Members who are entitled to vote on amendments. For the amendment to be adopted: (a) at least fifty-one percent (51%) of the members of the board of directors shall approve the amendment, (b) at least fifty-one percent (51%) of the members of the board of directors shall recommend the amendment to the Members entitled to vote on the amendment, unless the board of directors shall determine that because of a conflict of interest or other special circumstances it should make no recommendation and shall communicate the basis for its determination to the Members entitled to vote on the amendment with the submission of the amendment, and (c) the Members entitled to vote on the amendment shall approve the amendment by at least fifty-one percent (51%) of the votes cast by the Members entitled to vote on the amendment. The board of directors may condition its submission of the proposed amendment on any basis. The Association shall notify each Member entitled to vote on the amendment of the proposed meeting of the Members no fewer than ten (10) nor more than sixty (60) days before the meeting date. The notice of meeting shall also state that the purpose, or one of the purposes, of the meeting shall be to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

**Section 10.2. Amendments Inconsistent with Declaration.** No provision of the articles of incorporation of the Association or these bylaws shall be adopted, amended, modified, or repealed that shall be inconsistent with or contradictory to any provision of the Declaration absent an affirmative, unanimous vote of all Members.

#### **Article 11: Financial Matters**

**Section 11.1. Imposition of Fines and Penalties.** The Association may impose fines or penalties on and against Members to the extent permitted by the Declaration.

**Section 11.2. Assessment of Annual and Special Assessments.** The Association shall assess and allocate its common expense liability in the form of annual assessments and special assessments as set forth and provided for in the Declaration.

**Section 11.3. Budget.** The board of directors shall annually, not later than the 1<sup>st</sup> day of November of each calendar year: (a) adopt a proposed budget for the succeeding calendar year which shall be reasonably calculated to meet the anticipated costs and expenses of the Association for the succeeding calendar year ("Annual Costs") and annualized costs of long-term, reasonably anticipated capital expenditures for items such as comprehensive future paving or resurfacing of roads and streets ("Annualized Future Costs"), (b) publish a summary of the proposed budget to the Members, and (c) set a date for a meeting of the Members to consider ratification of the proposed budget, which meeting shall be not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Members reject the proposed budget, the proposed budget shall be ratified, whether or not a quorum shall be present. In the event the proposed budget shall be rejected, the periodic budget last ratified by the Members must be continued until such time as the Members shall ratify a subsequent budget proposed by the board or directors. Notwithstanding the foregoing, if the proposed budget shall be rejected and the periodic budget last ratified by the Members shall be insufficient to satisfy the Association's financial obligations to Master Association, Inc., the last ratified periodic budget shall be increased to the minimum amount necessary for the Association to meet such financial obligations.

**Section 11.4. Budget Requirements.** For the purpose of the Association's annual budget, Annual Costs shall include, without limitation, premiums relative to insurance covering the Common Elements, premiums relative to officers and directors errors and omissions insurance, the cost and expense of utilities, mailings, governmental filings, and annual Common Element repairs, snow removal, maintenance, and improvements, the cost and expense of inspection of the storm water systems within the Subdivision, the Association's budgeted obligations to Master Association, Inc., and all other annual operating expenses of the Association. Each proposed budget shall be sufficiently detailed and include, without limitation, an accounting of all actual expenditures during the preceding calendar year, estimates for anticipated or proposed Annual Costs and Annualized Future Costs for the succeeding calendar year, a statement of all reserves held by the Association for the same, and the proposed formula by which all budgeted costs and expenses shall be allocated and invoiced.

**Section 11.4. Accounts.** The Association shall deposit and maintain all monies collected for budgeted Annual Costs in one (1) account and all monies collected for budgeted Annualized Future Costs in one or more separate and distinct accounts.

**Section 11.5. Surplus.** Any monies remaining in the account maintained for budgeted Annual Costs at the end of any calendar year for which the same were budgeted and collected shall be paid into the account maintained for budgeted Annualized Future Costs and credited in favor of the Members on behalf of which the same were collected.

## **Article 12: Corporate Records**

**Section 12.1. Corporate Records.** The Association shall keep and maintain: (a) as permanent records minutes of all meetings of its Members and the board of directors, a record of all actions taken by the Members and board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the Association, (b) appropriate accounting records, including records sufficient to permit the Association to comply with the requirements of West Virginia Code Chapter 36B, and (c) a record of its Members in a form that permits preparation of a list of the names and addresses of all Members, in alphabetical order.

**Section 12.2. Records Maintained in the Association's Office.** The Association shall at all times keep and maintain a copy of the following records at its principal office: (a) its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect, (b) these bylaws or restated bylaws and all amendments to them currently in effect, (c) resolutions adopted by its board of directors, (d) the minutes of all Members' meetings and records of all action taken by Members without a meeting, for the past three (3) years, (e) all written communications to Members generally within the past three (3) years, including the financial statements furnished for the past three (3) years, and (f) a list of the names and addresses of its current directors and officers.

**Section 12.3. Members' Right to Inspect.** Any Member of the Association shall be entitled to inspect any of the records which must be maintained at the Association's principal office during regular business hours if the Member shall give the Association at least five (5) days advance written notice specifying the date and time of inspection. Any Member of the Association shall be entitled to inspect, during regular business hours at a reasonable location specified by the Association, any of the following records of the Association if the Member shall give the Association written notice of such Member's demand at least five (5) business days before the date on which such Member wishes to inspect and copy: (a) excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board

of directors while acting in place of the board of directors on behalf of the Association, minutes of any meeting of the Members, and records of action taken by the Members or board of directors without a meeting, (b) accounting records of the Master Association, and (c) the record of Members. A Member's right to inspect corporate records shall be conditioned that: (a) the Member's demand shall be made in good faith and for a proper purpose, (b) the Member shall describe with reasonable particularity the Member's purpose and the records the Member desires to inspect, and (c) the records shall be directly connected with the Member's purpose.

Adopted and Affirmed: \_\_\_\_\_, 2015, by affirmative vote of the requisite majority of members of the Association.

Ashton Property Owners Association, Inc.,

By: \_\_\_\_\_

Name:

Title: Director

By: \_\_\_\_\_

Name:

Title: Director

By: \_\_\_\_\_

Name:

Title: Director