

CONSTITUTION  
OF  
MASSACHUSETTS PROPERTY INSURANCE UNDERWRITING ASSOCIATION

It is the purpose of this Constitution to establish an organization to provide basic property insurance in accordance with G.L. c. 175C, as amended (hereinafter referred to as "the Statute"), and to define the rights and responsibilities of member insurance companies in that organization.

ARTICLE I

Name & Form of Organization

The name of the organization shall be Massachusetts Property Insurance Underwriting Association (hereinafter referred to as "the Association") and it shall be an unincorporated association with authority to act as agent of its member companies in carrying out their responsibilities under the Statute. The Association may use the trade name FAIR Plan.

ARTICLE II

Objects & Powers

A. The objects of the Association shall be (1) the administration of the Plan of Operation approved by the Commissioner of Insurance of Massachusetts (hereinafter referred to as "the Commissioner") pursuant to the Statute; (2) to act on behalf of its members in the issuance of policies of insurance

and the settlement of claims, on which each member shall be a direct insurer pursuant to the Plan of Operation; and (3) to equitably apportion and distribute the writings, expenses, profits if any, and losses of the Association among members in accordance with the Statute and the Plan of Operation.

B. The Association shall have the powers enumerated in section 4 of the Statute and all powers incidental thereto which are necessary or appropriate to carry out its functions.

### ARTICLE III

#### Membership

Every insurer licensed to write in the Commonwealth of Massachusetts, on a direct basis, basic property insurance as defined in the Statute, or any component thereof in multi-peril policies, shall be a member of the Association.

### ARTICLE IV

#### Member's Obligations

A. Each member shall be bound by the Plan of Operation and by all rules and regulations and actions of the Board of Directors pursuant to the Statute and Plan of Operation.

B. Each member shall participate in the Association's writings, expenses, profits if any, and losses, as provided in the Statute and Plan of Operation.

C. The Association shall provide members a report of the financial results of the Association annually in such form as the Board shall determine, and as may be required to permit companies

to report their share of the writings, expenses and profits or losses of the Association as may be required by law.

D. The Association may assess members from time to time for funds necessary to defray the expenses of the Association, including losses on policies issued by the Association on behalf of member companies. Such assessments shall be based on each member's participation ratio for the policy year to which the assessment relates. Members shall pay such assessment to the Association within thirty days of receipt of the assessment notice. Late payments shall be subject to interest at a rate equal to the current prime rate of interest plus one percent.

E. A member which has withdrawn from the Commonwealth or whose license has been revoked or which has been placed in liquidation shall remain liable for all obligations incurred prior to the date of such withdrawal, license revocation or liquidation. When a member has been merged or consolidated into another insurer, such member, or its successor in interest, shall remain liable for all obligations hereunder and shall continue to participate in the Association based upon the premiums written by it and by the other insurers with which it has been merged or consolidated, in accordance with the Plan of Operation, unless the one member which is merged into the other member is insolvent in which case the provisions of Article X herein shall apply.

#### ARTICLE V

#### Office

The principal office of the Association shall be in the City of Boston.

## ARTICLE VI

### Board of Directors

A. Number, Selection. The Association shall be governed by a board of 18 directors (hereinafter referred to as "the Board").

Ten member directors shall be elected annually by cumulative vote of the members, whose votes in such election shall be weighted in accordance with each member's proportionate share of aggregate Premiums Written, as defined in the Plan of Operation, by all members during the most recent calendar year as disclosed in the members' annual statements. Each member director shall designate in writing a representative and an alternate to act on its behalf on the Board. Two representatives of associations of insurance agents and brokers doing business in the Commonwealth and six public representatives not affiliated with the insurance industry shall be appointed annually by the Commissioner.

Directors shall serve without compensation for a period of one year or until their successors are elected or appointed. No more than one member of a group of insurers under the same management or ownership shall serve as a member director on the Board at the same time.

B. Powers. The Board shall have responsibility for the general direction and management of the Association and shall have all powers, not reserved to the members, as may be necessary

or appropriate to carry out the objects of the Association under the Statute and Plan of Operation. Without limiting the foregoing, the Board shall have authority to borrow money necessary or prudent to meet the obligations of the Association and to purchase reinsurance.

C. Place and Frequency of Meetings. Regular and special meetings of the Board shall be held in the Commonwealth of Massachusetts or, at the request of the Chairman, by teleconference. The Board shall have regular meetings at least two times a year or as often as may be required to perform its duties and shall meet upon the request of the Chairman or any two directors or of any ten members. Due notice of all meetings shall be furnished to the directors by the Secretary. Directors may waive notice of a meeting in a writing, which shall be filed with the minutes of the Board.

D. Quorum. Ten directors, at least six of whom shall be representatives of member companies, shall constitute a quorum.

E. Voting. Every director shall have one vote. Any matter submitted to the Board shall be carried if it is voted in the affirmative by a majority of the directors present at a meeting or attending by teleconferencing, provided at least a quorum is participating. Board voting shall be permitted only by the designated representatives or alternates of the member directors and by the public directors and agent or broker directors in person at a meeting of the Board, by teleconference or by mail, in accordance with this article. Voting by mail is permitted, provided that any matter submitted for a mail vote

shall carry only if it is voted in the affirmative by a majority of the whole number of directors and receives no negative vote.

F. Procedure. The Chairman, or in his absence the Vice Chairman, shall preside at meetings of the Board and at annual or special meetings of the Association. The Secretary, or in his absence a person appointed by the Chairman or Vice Chairman, shall act as secretary at such meetings.

G. Committees. The Chairman may appoint or the Board may elect such standing, temporary or special committees as may be deemed necessary for the transaction of the Board's business. The Chairman shall be a member ex officio of all committees of the Board, without the right to vote.

H. Audits and Inspections. The Board shall have the right, in person or through representatives, at all reasonable times, to audit and inspect the books and records of any member of the Association as to matters coming within the purview of this Constitution or the Plan of Operation.

## ARTICLE VII

### Meetings of the Members

A. Annual Meetings. There shall be an annual meeting of the members on a date fixed by the Board, for the election of directors and for such other business as may be necessary.

B. Special Meetings. Special meetings of the members may be called by the Board on its own motion or upon the written request to the Board by any ten members, not more than one of

which number shall be in a group of insurers under the same management or ownership.

C. Notice of Meetings. Written notice of the annual or any special meeting, stating the time and place thereof and the matters to be considered, shall be given to all members at least twenty days in advance of such meeting. Such notice, in the case of a special meeting, shall be accompanied by the agenda for such meeting and such supporting data and information as may conveniently be assembled by the Board. No matter may be considered at any special meeting which has not been included in the agenda thereof.

D. Quorum. At any annual or special meeting seventy-five members, representing in the aggregate at least 51% of the members' total Premiums Written, as defined in the Plan of Operation, shall constitute a quorum. Members may be represented by proxy.

E. Voting. The vote of each member on matters requiring a vote by the members, including election of directors and proposed amendments to this Constitution, shall be weighted in the proportion that the member's Premiums Written on property in Massachusetts, as defined in the Plan of Operation, bears to the aggregate of such Premiums Written by all members during the most recent calendar year as disclosed in the members' annual statements. A proposal other than to amend this Constitution or to terminate the Association shall be considered adopted by the members when approved by a majority of the votes cast on such weighted basis.

F. Mail Voting. Any matter subject to vote by the members, other than amendment of this Constitution, may be proposed and voted upon by mail, provided such procedure is authorized by at least nine directors. Notice of any proposal so authorized shall be mailed to the members not less than twenty days prior to the final date fixed by the Board for voting thereon.

## ARTICLE VIII

### Officers and Management

A. Board Officers. The Board shall elect from its membership a Chairman and a Vice Chairman. Additional officers, including a Secretary, who need not be a director, may be appointed by the Board.

B. Executive Officers. The Board shall appoint and arrange for the compensation of a President, Treasurer, and such other officers and employees as the Board may deem necessary, which persons shall serve at the pleasure of the Board and perform the duties provided in the Plan of Operation and such other duties as the Board may designate.



ARTICLE IX

Indemnification

A. The Association shall indemnify: (a) each director, each member of any committee or subcommittee of the Board, every officer and employee of the Association, and the estate, executor, administrator, heirs, legatees and devisees of any such person, and (b) every insurer member of the Association, both as a member and by reason of such insurer having one or more of its officers, employees or representatives serving in any of the capacities or positions specified in clause (a) hereinabove, against all judgments, including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorneys fees incurred in connection therewith, and any other liability that may be incurred as a result of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if such action was taken or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of the Association, and in addition, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or its conduct was unlawful, provided, however, that if any such claim, action, suit, or proceeding is compromised or settled, it shall be done with the prior and express approval of a majority of the Board of Directors who are

not parties to or do not represent members who are parties to such action, or if a quorum of such directors is not available, by a majority of the members of the Association, voting in accordance with Article VII E of this Constitution.

B. Such indemnification may include payment by the Association of expenses incurred in defending a civil or criminal action or other proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person or member indemnified to repay such payment if he or it shall be adjudicated not to be entitled to indemnification under this article. Such advance payments shall be made only if authorized by the Board of Directors.

C. Such indemnification shall not depend upon whether or not such insurer is a member of the Association, or such person is a member of the Board, or of any committee of the Board, or is an officer or employee of the Association, at the time such claim, action, suit or proceeding is begun, prosecuted or threatened, nor on whether or not the liability to be indemnified was incurred or the act or omission occurred prior to the adoption of this article.

D. The right of indemnification hereunder shall not be exclusive of other rights such person or insurer may have as a matter of law or otherwise, but shall be secondary and subordinate to any other protection provided by law or contract.

E. In each instance in which a question of indemnification hereunder arises, determination in the first instance of the

right to indemnification hereunder, and of the time, manner, and amount of payment thereof, shall be made by the Board of Directors. In the event that a majority of the directors are seeking indemnification hereunder as a result of the same occurrence, such determination in the first instance shall be made by a majority of the membership of the Association taken on a weighted basis as provided in Article VII E. Nothing in this paragraph is intended to make an adverse determination finally binding upon the person or insurer seeking indemnity under this article, or to preclude any such person or insurer from appealing an adverse determination against him or it, or from instituting legal proceedings to enforce a right of indemnification under this article.

F. The indemnification provided for in this article shall be deemed to be an expense of the Association to which all members of the Association shall contribute in the proportion that each member participates in the writings, expenses, profits and losses of the Association for the year or years in which such expenses are incurred.

#### ARTICLE X

##### Insolvency

A. In the event any member fails, by reason of insolvency, to pay its proportion of any loss or expense of the Association, such unpaid loss or expense shall be paid by the remaining members, each contributing in the manner provided for the distribution of expenses and losses under the Plan of Operation,

deleting therefrom the proportion of the defaulting member. The Association shall be subrogated to the rights of the remaining members in any liquidation proceeding and shall have full authority on their behalf to exercise their rights in any such action or proceeding.

B. If the Association elects to make a distribution of funds to its members, the Association may withhold funds otherwise owing to an insolvent member company subject to an order of receivership or liquidation, or to its liquidator, receiver or statutory successor, equal to the amount owed, if any, to the Association by such member.

#### ARTICLE XI

##### Amendments

This Constitution may be amended by the members at an annual meeting or at any special meeting called for the purpose, by a vote of two-thirds of the votes cast by the members on a weighted basis, as provided in Article VII E.

#### ARTICLE XII

##### Effective Date

This Constitution and any amendments thereto are subject to approval by the Commissioner and shall become effective on the date established by him or her.

ARTICLE XIII

Report to Commissioner

Failure of any member to comply with this Constitution or the Plan of Operation or to pay any assessment within 30 days after notice thereof shall be grounds for reporting of such member to the Commissioner.

ARTICLE XIV

Termination of Association

A. Upon the repeal of the Statute and by a two-thirds vote of the members on a weighted basis, as provided in Article VII E, and with the approval of the Commissioner, the Association may cease issuing new policies and terminate its operations, except to the extent necessary to adjust and pay claims on previously written policies and to take any other actions necessary or appropriate to wind up its affairs in an orderly manner. The Association may contract with a successor entity or one or more companies or other servicing organizations to perform such functions.

B. Distribution of any refund or allocation of any assessment to members entitled to participate therein shall be made within such reasonable period of time after termination of the activities of the Association as the Board shall determine. This Constitution shall remain in full force and effect until such final refund or assessment shall have been made. Distribution of any refund or apportionment of any assessment upon termination of the Association shall be made to each member

in the same manner as is provided in the Plan of Operation for the distribution of writings, expenses, profits and losses.

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