

**ARTICLES OF ASSOCIATION  
KENTUCKY FAIR PLAN REINSURANCE ASSOCIATION  
Amended and Restated Effective January 1, 2012**

**Article I**

**Creation, Continuous Operation, and Name of Association and Plan**

1. Creation. Property and casualty insurers writing coverage in Kentucky originally created the Kentucky Fair Access to Insurance Requirements (FAIR) Plan in 1968 in response to a request from the Commissioner of Insurance of Kentucky. They structured the Plan in accordance with a regulation, Kentucky Insurance Department Regulation I-F&C-43, which the Commissioner had promulgated on August 12, 1968. The insurers sought to make basic property insurance available to responsible Kentucky applicants when the applicants were unable to secure coverage through normal channels.
2. Continuous Operation and Amendments. Property and casualty insurers writing coverage in Kentucky have operated the Plan continuously since 1968. The association they formed for that purpose, the Kentucky FAIR Plan Reinsurance Association (the "Association"), and the Plan itself, have been subject to the provisions of KRS Chapter 304, Subtitle 35, (the "FAIR Plan Statutes") since 1972. The Association's Governing Committee has amended the Plan from time-to-time to meet changing conditions and to extend the types of coverage and geographic areas within which coverage is provided through the Association to all citizens of the Commonwealth of Kentucky, wherever they reside. The Governing Committee has made each such amendment with the approval of the Commissioner of Insurance of the Kentucky Department of Insurance, as required in the FAIR Plan Statutes and in earlier versions of these Amended and Restated Articles of Association.
3. Name. The entity governed by these Articles of Association shall be named the "Kentucky FAIR Plan Reinsurance Association." The insurance program operated by the Association shall be known as the "Kentucky FAIR Plan" or the "Plan." In accordance with the terminology used in other States, these Articles sometimes refer to the Kentucky FAIR Plan Reinsurance Association as either the "Association" or the "Plan."

**Article II**

**Plan Purpose and Association Authority**

1. Purpose. The basic purpose of the Association in operating the Plan is to provide a residual market mechanism whereby Property Insurance and Casualty Insurance can be made available to all worthy applicants and to distribute equitably the costs, losses, or gains, if any, arising therefrom

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among all members of the Association in accordance with the FAIR Plan Statutes and these Articles.

2. Statutory Authority. The authority for, and the requirements with respect to, the establishment and maintenance of the Plan and the Association are set forth in KRS 304.35-010(2) and other provisions of the FAIR Plan Statutes.
3. Association Status. The Association is a private unincorporated association of all insurers licensed to write property or casualty insurance on a direct basis in the Commonwealth of Kentucky. As stated in KRS 304.35-030(1), the Association shall have authority on behalf of its members, as their agent, to cause to be issued property and casualty insurance policies, to reinsure in whole or in part any such policies, and to cede any such reinsurance.
4. Association Assets and Liabilities. The members of the Association shall share on a fair and equitable basis all expenses, income, and losses incident to the operation of the Plan, as stated in KRS 304.35-010(2). Accordingly, the assets and liabilities of the Association shall be the assets and liabilities of the Association's respective members, which they shall share in accordance with their respective participations in the Association, as such participations change from year to year. The Commonwealth shall have no obligation to make payments into the Association.

**Article III**

**Definitions**

1. "Accounting Committee" means an advisory committee consisting of accounting personnel employed by Insurers appointed by the Governing Committee and serving at its pleasure.
2. "Association" means the private unincorporated association governed by the FAIR Plan Statutes and these Articles, the membership of which is made up of each and every insurer authorized to write Property Insurance or Casualty Insurance in this Commonwealth, as mandated by KRS 304.35-020, and as set forth in these Articles, created for the purpose of issuing on behalf of its members as their agent any and all Property Insurance and Casualty Insurance policies required by or issued on behalf of the Association.
3. "Casualty Insurance" means the insurance coverage against legal liability of the insured for the death, injury, or disability of any human being, or for

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damage to property of others, including the particular lines of such insurance described in KRS 304.5-070.

4. "Claims Committee" means an advisory committee consisting of claims personnel employed by Insurers appointed by the Governing Committee and serving at its pleasure. One or more subcommittees consisting of at least two members may be selected by the Governing Committee or its designee to meet at regular intervals to review and evaluate particular claims as necessary.
5. "Commercial" refers to Property Insurance not included under the Personal Lines Statistical Plan published from time to time by the Insurance Services Office.
6. "Commissioner" means the Commissioner of Insurance of the Commonwealth of Kentucky.
7. "Deemer Provision" means that element of the Plan under which eligible risks on original applications for approved lines and coverages written by the Association are automatically deemed insured after 20 calendar days from the date the application for insurance placement is received by the Association, for a period of 30 days, if, through no fault of the applicant, coverage has not been provided or declined, and the applicant pays the required initial minimum premium payment at the time of submission of the application.
8. "Executive Committee" means a committee consisting of the Chairperson, Vice Chairperson, any other members of the Governing Committee so designated by the Chairperson for the purpose of acting on matters assigned or designated by the Governing Committee in its absence, and the Executive Director. All such acts of the Executive Committee shall be approved or ratified by the Governing Committee.
9. "FAIR Plan Lines" means the lines of Property Insurance and Casualty Insurance written by the Association in the name of the Plan described in Article VI, Section 1, below.
10. "FAIR Plan Statutes" means KRS Chapter 304, Subsection 35, as now in effect, and as amended from time to time hereafter.
11. "Governing Committee," means the committee called for in KRS 304.35-040 for the purpose of administering the Plan and the Association described more fully in Article V below.

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12. "Habitational" refers to Property Insurance included under the Personal Lines Statistical Plan published from time to time by the Insurance Services Office.
13. "Inspection Service Organization" means an inspection company designated by the Plan to make such surveys as may be required under these Articles on either individually or class rated risks and to perform such other duties as may be requested by the Association.
14. "Inspector" means any person employed by an Inspection Service Organization or any other person or organization designated by the Association to make such surveys or inspections as may be required under these Articles.
15. "Insurer" means any insurance company or other organization licensed to write Property Insurance or Casualty Insurance business on a direct basis in the Commonwealth of Kentucky, where such Insurer is subject to the rate and form regulatory provisions of Chapter 304 of the Kentucky Revised Statutes.
16. "Plan" means the insurance program operated by the Kentucky FAIR Plan Reinsurance Association pursuant to the FAIR Plan Statutes and these Articles. In accordance with the terminology used in other States, these Articles sometimes refer to the Kentucky FAIR Plan Reinsurance Association as either the "Association" or the "Plan."
17. "Premiums Written" means direct premiums written during the preceding calendar year with respect to Property Insurance or Casualty Insurance risks located or to be performed in this Commonwealth as reported in the exhibit of premiums and losses of the Statutory Annual Statement form filed with the Commissioner by each Insurer.
18. "Producer" means a general lines agent holding an effective license from the Kentucky Department of Insurance or Office of Insurance.
19. "Property Insurance" means, as set forth in KRS 304.5-050, insurance on real or personal property of every kind and of every interest therein located in the Commonwealth of Kentucky against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage. The term "Property Insurance" does not include title insurance, as defined in KRS 304.5-090.
20. "Servicing Insurer" means any insurance company licensed by the Commonwealth of Kentucky and qualified with and approved by the

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Governing Committee to issue policies on behalf of the Association and cede the risk with respect to such policies to the Association. The Association used Servicing Insurers to carry out the Plan before January 1, 1997. On that date, the Association began operating on a syndicated basis without any Servicing Insurer providing services of any sort.

21. "Underwriting Committee" means any advisory committee appointed by the Governing Committee and serving at its pleasure consisting of underwriters employed by Insurers or their managing general agencies and carrying out the functions described in Article VI, Section 4, below.

**Article IV**

**Membership**

1. Mandatory Membership of Licensed Insurers. Each Insurer which applies for and is granted a license, renews a license, or voluntarily retains a license, pursuant to KRS Chapter 304, to write Property Insurance or Casualty Insurance in the Commonwealth of Kentucky on a direct basis shall become and remain, and is therefore deemed to be, a member of the Association as a condition of its authority to transact such business in Kentucky, and shall be subject to all of the provisions of these Articles.
2. Participation of Member. Each member shall participate in the writings, expenses, income, and losses of the Plan and the Association in any particular calendar year in the same proportions that the member's voluntary direct Premiums Written during the preceding calendar year bear to the total of such direct Premiums Written by all members during the preceding calendar year. The participation factors of all members shall be thus determined annually and shall be fixed for each separate calendar year based on the respective members' Premium Written in the preceding calendar year.
3. Accounting for Separate Policy Years. For purposes of the members' participation, there shall be deemed to be only one class of Plan business, despite the fact that the Plan is authorized to write separate lines of business under Article VI below. The general fiscal period of the Plan shall be the calendar year. At the end of each fiscal period, profit or loss for all of the Plan's business shall be determined separately for each policy year of the Plan. A policy year shall include all Plan policies written to be effective during that year. The Association shall keep a separate account for each policy year. Profit shall be credited to each entity which was a member at any time during that policy year, and loss shall be charged against each such entity, all in the proportion that that member's

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voluntary direct Premiums Written during the calendar year preceding that policy year bear to the total of such direct Premiums Written by all members during that preceding calendar year.

4. Surrender of License. If any member voluntarily surrenders its license to write Property Insurance or Casualty Insurance in Kentucky, it shall nevertheless remain a member of the Association and be subject to the requirements of these Articles and any assessments made hereunder until its participation factor as determined pursuant to Section 2 of this Article IV is reduced to zero.
5. Suspension or Revocation of License. If any member's authority to write Property Insurance or Casualty Insurance in Kentucky is eliminated because the Commissioner suspends or revokes its license, then its participation, for such year and any subsequent year during which such suspension or revocation remains in effect, shall be redistributed among and assumed by the remaining members in accordance with their respective participation factors for that year.
6. Failure to Pay Assessments. The Governing Committee may make assessments against the members in accordance with KRS 304.35-030(1) or 304.35-040(6) and Article IX below. Any member who fails to pay when due any lawful assessment shall be reported to the Commissioner by the Governing Committee for appropriate disciplinary action.
7. Ownership of Net Assets and Distributions. The members are the ultimate owners of the net assets of the Association. Article XIII provides for the distribution of any net assets of the Plan and the Association upon their dissolution. At any other time, the Governing Committee, with the prior consent of the Commissioner, may authorize and direct the distribution of cash, securities or other property to members and former members based on the experience of the Plan with respect to one or more particular policy years of the Plan's operation. Distributions may be made only with respect to policy years after 1996, in that 1997 was the first policy year the Plan operated on a syndicated basis and prepared annual audited statutory basis financial statements. Any such distributions shall be made to members, and to former members, based on their participation factor for the policy year with respect to which a distribution is made. Each distribution shall be based on the members' (and former members') net direct Premiums Written on a voluntary basis in Kentucky during the calendar year preceding the policy year with respect to which a distribution is made. The Plan shall not make any distribution of cash, securities, or any other property to members or former members prior to dissolution if, immediately after that distribution, the Plan would have less than \$5,000,000 in surplus. The term "surplus" shall mean all assets less all

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- liabilities, including, but not limited to, estimates for losses reported, estimates of incurred but unreported losses, and estimates of future expenses to be incurred in the settlement of losses, all as computed on a statutory basis for insurers, and thus shall have the same meaning as “members’ capital” in the Plan’s audited statutory basis financial statements.
8. Commissioner Certification for Distributions. No amount of money which could otherwise be distributed to members under this Article IV shall be so distributed unless the Commissioner shall first have certified that the proposed distributable funds represent members’ capital in excess of those amounts necessary to provide for all loss and expense reserves plus contingency reserve as the Commissioner deems appropriate and adequate for the type and amount of coverage then in force. No member, including those terminating their membership voluntarily or involuntarily, nor any successor, receiver, conservator or liquidator thereof may require any distribution except as a distribution to all members of excess members’ capital which meet the requirements of this Article IV to be distributable.
  9. Distributions to Former Members and Escheat Requirements. The Plan shall use its best efforts to locate any former member or the legal successor of any former member for the purposes of delivering any distribution which may be due that former member to the extent required by KRS 393.064, as then in effect, or any applicable successor statute or other statute of the Commonwealth of Kentucky. The Plan shall pay such distribution amount, without interest, to the Commonwealth of Kentucky if, despite the Plan’s best efforts to locate the former member or its applicable legal successor, the Plan is unable to identify the proper payee and make delivery within the time required by law after the date the Governing Committee, with the prior consent of the Commissioner, authorizes the distribution.
  10. No Fiduciary Duty. Nothing in this Article IV or in any other provision of these Articles shall make the Governing Committee, the Commissioner, the Plan, or the Association a fiduciary with respect to any member or former member.
  11. Reports to Members. The Plan shall cause a report to be sent, or be made available electronically, on an annual basis, which will contain all necessary data for the members to report their respective shares of the Plan’s premiums, losses, income and expenses. The report will include Schedule “P” information that may be properly included in the respective members’ annual statements as reinsurance assumed.

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**Article V**

**Plan Governance and Administration**

1. Governing Committee. The Plan and the Association shall be governed by a single Governing Committee of seven persons appointed by the Commissioner pursuant to the representation requirements of KRS 304.35-040(1). All such persons shall serve at the pleasure of the Commissioner. Vacancies which may occur in the Committee, whether due to termination or the person's eligibility to serve in their required representative capacity or otherwise, shall be filled by the Commissioner after consultation with and being advised by the Committee.
  
2. Governing Committee Powers and Duties. The Governing Committee shall have the following powers and duties:
  - (a) It shall elect from its membership to serve a period of one (1) year one of its members a Chairperson and one as Vice Chairperson. It may appoint such other officers as it deems necessary either from the Governing Committee or from staff personnel.
  
  - (b) The Chairperson shall preside at all Governing Committee meetings and shall be the Chairperson of the Executive Committee. He/she shall be empowered to appoint subcommittees necessary or convenient for the operation of the Plan.
  
  - (c) The Vice Chairperson shall act in place of the Chairperson in his/her absence and shall serve on the Executive Committee.
  
  - (d) The Governing Committee shall establish, maintain and exercise the general management and control of the Plan and the Association. It shall determine and implement all matters of policy consistent with goals and legislative intent as expressed in the pertinent statutes, subject only to the approval of the Commissioner.
  
  - (e) With the approval of the Governing Committee, the Executive Director may contract with third parties for the performance of any service or duties required under these Articles or in connection with the operation of the Plan and the Association, including but not limited to contracts for data processing and computing services, claims adjustment services and other services necessary for the efficient operation of the Plan.



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- (f) Each member of the Governing Committee shall have one vote on any matter coming before the Committee, and five members in attendance in person or by proxy shall constitute a quorum for the conduct of business. A simple majority of those present and voting at a lawful meeting of the Committee shall constitute an action of the Committee.
- (g) Upon request by the Commissioner or any member, the Plan shall provide, in such form and detail as the Plan may determine, reports of operations of the Plan and the Association, including such reports as may be necessary to permit members to be informed of their proportionate share of results of the Plan for inclusion in their own operational reports.

3. Governing Committee Meetings

- (a) The Governing Committee shall meet annually on the second Friday in May at 10:00 A.M. local time, in the Plan offices in Louisville, Kentucky, or at such other time and place as the Committee shall determine, for the purpose of reporting to the members and for receiving from them such recommendations as they may have for the improvement on the Plan and the Association and their administration. The Committee shall not be required to give written notice to members of the annual meeting.
- (b) The Governing Committee shall meet, as often as required to perform its duties, at any other time and place on the call of the Chairperson, the Vice Chairperson or four members acting jointly. The Committee shall also meet at any time and place upon order of the Commissioner.
- (c) Notice of meeting and the agenda therefor may be by mail or telephone and shall be given to the Governing Committee member at least seven days in advance thereof unless the person(s) calling the meeting limits it to a single subject which is declared to be an emergency matter, in which case notice may be limited to three days.
- (d) The Commissioner or his/her designee shall be notified of and invited to attend all meetings of the Governing Committee.

4. Plan Administration. The daily operations of the Plan and the Association shall be administered by an Executive Director appointed by the Governing Committee. The Executive Director shall submit an annual budget for approval by the Governing Committee that shall include

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expenses for the operation and staffing of the Plan. The Executive Director shall be empowered to execute on behalf of the Plan documents, contracts or other instruments necessary or convenient for the operation of the Plan subject to the approval of the Governing Committee. The Executive Director may promulgate, subject to the approval of the Governing Committee, procedures for the day-to-day conduct of the affairs of the Plan and the Association. Such procedures shall be in conformity with applicable law and these Articles.

5. Quarterly Reports. The Executive Director shall submit to the Governing Committee and the Commissioner quarterly reports setting forth the number of applications, the number of risks inspected, the number of risks accepted, the number of risks conditionally accepted, and the number of risks declined. The Governing Committee shall provide such other information as the Commissioner may from time to time request.
6. Education Programs. The Governing Committee, upon approval by the Commissioner may, from time to time, establish, operate and require member insurers and their agents to participate in continuing public awareness and educational programs to assure that the Plan receives adequate public attention.
7. Other Programs. The Governing Committee, upon approval by the Commissioner, is authorized on behalf of the Plan to participate in or contribute to public programs conducted by other non-profit or governmental organizations, which have as their principal purposes the advancement of insurance availability, loss control, or public protection of insurable hazards.

**Article VI**

**Plan Operations**

1. Lines to Be Written.
  - (a) The lines of Property Insurance and Casualty Insurance to be written by the Association in the name of the Plan (i.e. the "FAIR Plan Lines") shall be as follows.
    - i. Dwelling fire, extended coverage, vandalism and malicious mischief and broad form perils.
    - ii. Homeowners multi-peril.
    - iii. Commercial monoline fire, including farm fire.
    - iv. Earthquake coverages, limited to dwelling and homeowners coverages.

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- (b) The Governing Committee may authorize the writing of additional coverages only with the prior approval of the Commissioner. In addition, if the Commissioner orders that additional coverages should be written according to the standards set forth in KRS 304.35-030(2), then the Governing Committee shall promptly amend these Articles to include such coverages and shall cause the Plan and the Association promptly to commence offering them.

2. Application/Qualification.

- (a) Any person, firm or corporation desiring insurance coverage in any of the FAIR Plan Lines who is unable to obtain such coverage directly from an Insurer may apply to the Association through a Producer for such coverage. The application shall be on forms provided by the Association. A separate application shall be completed for each risk when coverage for multiple locations under common ownership is requested. Payment of the greater of \$100 or the initial premium installment must accompany each application. If \$100 exceeds the initial premium installment, the remaining installments shall be reduced by the excess.
- (b) Unless evidence accompanies the application (photographs, etc.) clearly demonstrating that the risk to be insured (other than household contents) meets the underwriting standards of the Plan, the Plan shall employ an Inspection Service Organization or an Inspector to conduct an inspection of that risk. The manner and scope of the inspection shall be prescribed by the Association. The Plan shall have no authority, however, to inspect property risks for factors of public safety, and all such inspections shall be solely with the jurisdiction of the office of the Fire Marshal. All inspections made on behalf of the Plan shall be limited to the likelihood of damage from covered perils to the insured property itself.
- (c) In the event the Underwriting Department is unable to either accept or reject the application within 20 days of the receipt thereof, because the inspection and its report have not been promptly completed, it shall activate a Deemer provision and shall issue, on behalf of the Plan, a binder providing coverage on eligible risks for the next 30 days unless sooner cancelled or replaced with a policy.
- (d) A minimum of \$100.00 in premium shall be deemed fully earned when any period of coverage is provided under a Deemer Provision or by the issuance of either a binder or a policy, but if the risk is

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rejected during the first 20 days following receipt of the application, the entire initial premium payment shall be returned.

- (e) When a risk is rejected or a binder cancelled, the Underwriting Department shall notify the producer or the applicant and, if applicable, include what requirements must be met before such risk can be resubmitted for further consideration.

3. Placement.

- (a) Upon approval by the Underwriting Department, the Association shall forthwith issue policies of insurance in the name of the Plan to such applicants, in such amounts, and upon such terms and conditions as the Underwriting Department may prescribe.

- (b) The maximum limits of liability at any one location shall be:

1. Homeowners HO-8:

- a. Dwelling (Coverage A): \$200,000.
- b. Other Structures: 10% of Coverage A.
- c. Personal Property: 40% of Coverage A.
- d. Loss of Use: 10% of Coverage A.
- e. Personal Liability: \$100,000 each Occurrence.
- f. Medical Payments: \$1,000 each Person.

2. Homeowners HO-2:

- a. Dwelling (Coverage A): \$200,000.
- b. Other Structures: 10% of Coverage A.
- c. Personal Property: 50% of Coverage A.
- d. Loss of Use: 30% of Coverage A.
- e. Personal Liability: \$100,000 each Occurrence.
- f. Medical Payments: \$1,000 each Person.

3. Homeowners HO-4:

- a. Personal Property (Coverage C) :\$25,000
- b. Loss of Use: 30% of Coverage C
- c. Personal Liability: \$100,000 each Occurrence
- d. Medical Payments: \$1,000 each Person

4. Homeowners HO-6:

- a. Building Coverage: \$200,000
- b. Personal Property (Coverage C): \$25,000
- c. Loss of Use: 50% of Coverage C
- d. Personal Liability: \$100,000 each Occurrence
- e. Medical Payments: \$1,000 each Person

5. Dwelling Fire:

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- a. Dwelling: \$200,000
  - b. Other Structures: 10% of dwelling coverage.
  - c. Personal Property: 40% of dwelling coverage.
6. Commercial Property, including all real property and contents consisting of and/or contained in contiguous buildings under common ownership; excluding Farm Fire as described in Section 4.
- a. Protection Class 1-9: \$1,000,000.
  - b. Protection Class 10: \$250,000.
7. Farm Fire: \$250,000 maximum limit for all farm dwellings and their household contents, barns, outbuildings, other qualified structures or equipment located on contiguous acreage under common ownership, lease or control.
- a. Farm dwellings, if any, are limited to the following;
    - i. Dwelling: \$150,000.
    - ii. Personal property: 40% of building coverage.
  - b. Farm Buildings are limited to \$150,000 per building.

In the event the insurable value of such property exceeds the maximum limits of the Plan, the producer shall provide evidence, if requested, of any other insurance written on the same property.

4. Underwriting.

- (a) Subject to the approval of the Governing Committee and the Commissioner, the Underwriting Committee shall adopt, and may from time to time amend, underwriting rules and standards applicable to each and every policy form which the Plan has authority to issue. During the time any such rule or standard is in effect, it shall have the same force and effect as if fully set forth in these Articles.
- (b) It shall be the duty of the Underwriting Committee to meet on call to conduct underwriting audits of applications and policies randomly selected and to assist the Plan's Underwriting Department by reviewing, and making recommendations for changes in, underwriting procedures and the Plans policies and forms. In determining such issues, the Underwriting Committee shall apply only those rules or standards prescribed by the Association and its Governing Committee. It shall also be ever mindful that the Association operates as a residual market mechanism for the placement of distressed business and as such is intended to serve a social need rather than provide a proprietary profit.

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- (c) The Underwriting Department shall review each application and determine if such risk is either:
1. acceptable as applied for;
  2. acceptable with lesser limits than applied for;
  3. acceptable with specified condition charges;
  4. not acceptable but may become so if specified improvements or repairs are made and confirmed; or
  5. not acceptable for reasons specified.
- (d) The Underwriting Department shall notify the applicant and the applicant's Producer when the Underwriting Department's review indicates the risk is unacceptable as applied for and, if applicable, shall include any requirements or corrections that must be made before such risk can be resubmitted for further consideration. Any such offer shall not serve to extend the Deemer Provision.

5. Policies.

- (a) Coverage for Property Insurance and Casualty Insurance in the FAIR Plan Lines shall be issued in the name of the Plan by the Association on policy forms, which have been approved for such use by the Governing Committee and the Kentucky Department of Insurance. Policies may be continuously renewable and may be issued and renewed only for annual terms. The policies may require that the premium be paid in full at inception or in approved installments plans. A billing service charge of \$4.00 shall be charged for each installment. All policies shall be coded pursuant to approved statistical plans.

6. Denial/Cancellation/Non-Renewal.

- (a) Denial, cancellation, or non-renewal of any applicant/insured must be authorized by the Underwriting Department. The Underwriting Department shall have authority to deny, cancel, or non-renew any application or policy based on any grounds in the reasonable discretion of the Underwriting Department, including, but not limited to, the existence of any one or more of the following conditions:
- (1) anticipated owner or occupant incendiarism;
  - (2) at least 65% of the rental units in the building are unoccupied, and the insured has not obtained prior approval from the Underwriting Department of a rehabilitation plan which necessitates a high degree of unoccupancy;

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- (3) property damage exists and more than 60 days have elapsed as to indicate that the damage will not be promptly repaired;
  - (4) following a loss, permanent repairs following satisfactory adjustment of loss have not commenced within 60 days;
  - (5) property has been apparently abandoned or there has been removal of undamaged salvageable items from the building and the insured can give no reasonable explanation for such removal;
  - (6) utilities such as electric, gas, or water services have been disconnected and, if for non-payment of service bills, the insured has failed to pay his account for such services within 60 days, or real estate taxes have not been paid for a two-year period after the taxes have become delinquent (real estate taxes shall not be deemed to be delinquent for this purpose even if they are due and constitute a lien, so long as a grace period remains under local law during which such taxes may be paid without penalty);
  - (7) conviction or unresolved indictment of a named insured or loss payee, or any other person having a financial interest in the property, of the crime of arson or crime involving a purpose to defraud an insurance company;
  - (8) where the building or the named insured has been subject to two or more fires, each loss amounting to at least \$500 or one percent of the insurance in force, whichever is greater, in any 12-month period; or three (3) such fires in any 24-month period, at the discretion of the underwriter.
  - (9) Material misrepresentation
  - (10) Non-payment of additional initial or increased hazard premium; or
  - (11) Failure of the insured or his/her agent to timely furnish when due additional primary or supplemental underwriting information requested by the facility.
  - (12) Other conditions proposed by the Underwriting Department and adopted by resolution by the Underwriting Committee as established herein.
- (b) After a policy has been in effect for more than 60 days, there shall be no cancellation or refusal to renew the policy without a 30-day written notice to the insured, except that a written notice of not less than five days before the effective date of cancellation or non-renewal may be used if one or more of the specific conditions set out in Section 6(a) above is present.
- (c) Each notice of denial, cancellation, or non-renewal shall contain a statement of the reason therefor. It shall be sent to the insured at

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- the last known address with copies sent to the mortgagee, if any, and the insured's Producer.
- (d) Any denial, cancellation, or non-renewal notice to the insured shall be accompanied by a statement that the insured has a right of appeal as provided in Article X below.
  - (e) The Underwriting Department shall reinstate, without lapse in coverage or additional charge, any policy cancelled solely because of non-payment of additional initial or increased hazard premium, if and when full and complete payment of all premiums due are received before the termination date contained in the notice of denial, cancellation or non-renewal. Such reinstatement of coverage is conditioned upon any check tendered for premium payment being honored when presented for payment.
  - (f) Non-payment of any renewal premium shall result in lapse of the policy as of the renewal date and only a notice of such lapse shall be sent to the insured within 15 days following the lapse in coverage.
  - (g) No coverage will be effective if the insured's premium remittance, which accompanies the application, is dishonored by the financial institution.
  - (h) A charge for checks returned by a bank or financial institution due to insufficient funds (NSF) may be made by the Plan.

**Article VII**

**Reinsurance**

1. Insurer Participation. Every Insurer shall, without further action, become and remain and be deemed a participating member in the Association, which participation is required by law. The Association shall be under the control of the Governing Committee. Every policy and/or binder of coverage issued in the name of the Plan shall be issued for and on behalf of the Association, and the Association shall accept all such policies and binders on behalf of its members, and as the agent of each member, collectively and individually, so that each Insurer shall participate in the writings, expenses gains and losses of the Association in the same proportion as its Premiums Written bear to the aggregate Premiums Written by all Insurer members as determined under Article IV, Section 2, above.
2. Servicing Insurer Policies. Every policy and/or binder of coverage issued by or on behalf of a Servicing Insurer for new business before November 1, 1996, or for renewal business before January 1, 1997, shall be ceded in toto (100% quota share) by such Servicing Insurer to the Association, and the Association shall accept, as agent for the member insurers, all such



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cessions. The Association shall accept such cessions on behalf of its members collectively and individually so that each Insurer shall participate as provided above. The reinsurance assumed by the Association shall, to the extent the direct insurance issued complies with the Plan as then in effect, be assumed by the Association on the same terms and conditions as those applicable to the primary contract of the Servicing Insurer and the ceding commissions allowed will be only those then in effect by contract between the Servicing Insurer and the Governing Committee. The Association may provide by contract for any and all terms of the transition to syndicated operations relating to Servicing Insurer policies and related matters.

**Article VIII**

**Producer Plan Participation**

1. Application Through Producers. The Association shall approve only applications, which are submitted through Producers licensed to do business in the Commonwealth of Kentucky.
2. Producer Authorization. Producers shall be authorized to submit applications on behalf of qualified applicants for coverage in the FAIR Plan Lines to the Underwriting Department for acceptance or declination. All producers shall be deemed to be the legal agent of the applicant/insured and under no circumstances shall ever be considered to be the legal agent of the Association or the Plan. No Producer shall have or exercise any binding authority on behalf of the Association or the Plan.
3. Information to Applicants. It shall be the duty of every Producer to inform applicants for coverage in any line of insurance included in the FAIR Plan Lines who do not qualify for coverage voluntarily written by Insurers, of the Plan and these Articles, the applicant's right to apply for such coverage from the Association under the Plan, and the Producer's willingness to complete and submit an application on the applicant's behalf.
4. Producer Compensation. On all of the FAIR Plan Lines except Homeowners, compensation of ten percent (10%) of policy premiums written shall be paid to the Producer of record, designated by the applicant/insured. Compensation of five percent (5%) of policy premiums written shall be paid on the Homeowners line. Each Producer to whom such compensation is paid shall be required to refund any unearned compensation so received in the event of policy cancellation.

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5. Regular Market Sampling. It is expected that each Producer shall utilize all of the Producer's normal markets for such coverage before making application to the Association.
6. Awareness Programs. All Producers and all recognized domestic associations of such Producers shall cooperate with and participate in any public awareness or educational programs conducted by or on behalf of the Association at the request of the Commissioner.

**Article IX**

**Plan Assessments**

1. Cost Determinations. The Governing Committee shall determine the cost of operating the Plan and the Association and of the cash reserves to be maintained subject to the approval of the Commissioner. Such determination may be based upon cash flow rather than statutory accounting principles.
2. Regular Assessments. When the Governing Committee determines that premiums written and received are insufficient to pay the cost of operating the Plan and the Association, and to maintain necessary cash reserves, it shall from time to time assess each member its share of such costs and reserves in accordance with its participation pursuant to Article IV Section 2, above and the laws of this Commonwealth, including the FAIR Plan Statutes. The Committee may set a minimum assessment to be paid by any member. Each member shall make payment of any assessment within 30 days of the mailing of the notice of the assessment.
3. Advance Assessments. If it appears that assessments, when levied at the maximum allowable rate of one percent (1%) of subject premium during any calendar year, will be insufficient to pay the cost, including losses, and maintain necessary cash reserves for at least on year, the Committee shall either levy an advance assessment against the next successive year's anticipated writing or borrow from its members or others an amount sufficient to cure such deficiency.

**Article X**

**Appeal**

1. Right of Appeal. Any (a) applicant for coverage under the Plan, (b) person or entity insured, lien holder or any other person or entity claiming entitlement to coverage or benefits provided under a policy issued on behalf of the Plan, or (c) insurer, adversely affected by any action or

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decision of the Association or any member of its staff shall have a right of appeal to the Governing Committee. Notice of appeal must be made in writing to the Executive Director within 30 days of such adverse action or decision, setting forth facts and circumstances, which are believed to be material.

2. Staff Review. The notice shall be reviewed by the Executive Director.
  - (a) If the basis of the appeal is not clear, the Executive Director within 10 days shall so inform the appellant and request clarification.
  - (b) If the basis of the appeal is clear, the Executive Director shall promptly, but not more than 30 days thereafter, prepare a response and recommendations and forward the same with the appeal papers and any other pertinent information from the Association's files to the Governing Committee.
3. Governing Committee Review. Promptly, but not more than 30 days after its receipt of all appeal documents from the Executive Director, the Governing Committee shall meet and review all such documents.
  - (a) If deemed desirable or necessary by the Governing Committee, it may request further information from either the appellant or the Executive Director or call a hearing at which each party may present further evidence.
  - (b) Such additional material shall be reviewed promptly by the Governing Committee.
4. Governing Committee Action. After review of all appeal documents and evidence, if any, the governing committee shall forthwith affirm or modify such action or decision in such manner as the Committee deems appropriate.
5. Written Notice of Action. The Executive Director shall reduce the determination of the Governing committee to writing and shall mail a copy of such determination to the appellant, with notification of the appellant's right to further appeal within 30 days to the Commissioner of Insurance and advising that any decision of the Commissioner is subject to judicial review as provided for by law.

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**Article XI**

**Indemnification**

1. Persons and Entities to be Indemnified. The Plan and the Association shall indemnify each of the following persons and entities according to the rules of this Article: (a) each member of the Governing Committee, each member of each other committee or subcommittee established by the Governing Committee, and each estate, executor, administrator, heir, legatee, and devisee of any such person; (b) each entity which is a member of the Association, both as a member of the Association and by reason of such member having one or more of its representatives or employees serving in any of the capacities or positions specified in clause (a) above; and (c) the Executive Director and each other officer and employee of the Association, and each estate, executor, administrator, heir, legatee or devisee of any such person. Each such person or entity is referred to hereafter in this Article as an "Indemnitee."
2. Acts and Omissions Covered by Indemnification Obligation. The Plan and the Association shall indemnify each Indemnitee against all judgments, settlement payments, assessments, fines, penalties, and other amounts, however designated, including all related interest and additions, and all related reasonable costs and expenses of investigation, defense, litigation, and settlement, including, but not limited to, all reasonable attorney's fees, and any and all other liabilities which may be reasonably incurred as a result of, or in connection with, any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, commenced or threatened to be commenced, for or on account of, any act performed or omitted by an Indemnitee, or obligation entered into by an Indemnitee, in connection with the governing, administration, management, or operation of the Association or the Plan, all subject to the further rules, conditions, and limitations set out in this Article.
3. Good Faith Requirement. Any act or omission which is the basis for any claim for indemnification must have been taken or committed in good faith, without intent to defraud, within what the Indemnitee reasonably believed to be the scope of such Indemnitee's authority or obligation in connection with the Association or the Plan, and for a purpose which the Indemnitee reasonably believed to be in the best interest of the Association or the Plan.
4. Criminal Proceedings. With respect to any criminal investigations or proceedings, the person or entity seeking indemnification must have had

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no reasonable cause to believe that the act or omission conduct was unlawful.

5. Settlements. With respect to any settlements short of a final adjudication, the person or entity seeking indemnification must obtain the prior approval of the Governing Committee to all material terms of the settlement.
6. Advances. In addition to indemnification payments after the final adjudication or settlement of any liability, the Association and the Plan shall pay as they come due each statement for reasonable legal services, defense costs, and other amounts reasonably incurred in connection with any matter for which indemnification is due, all subject to a right of recovery by the Association or the Plan if the person or entity indemnified is ultimately shown not to have satisfied the conditions for indemnification set forth in this Article.
7. Mitigation of Costs and Selection of Counsel. Each Indemnitee shall use reasonable efforts to mitigate the amount of costs and expenses, which the Association or the Plan shall have to pay under this Article. Notwithstanding the foregoing, each Indemnitee shall have the right to retain the services of separate legal counsel for such Indemnitee, and to be indemnified for the cost of such separate counsel, and receive advances with respect thereto, if the Governing Committee shall have determined that there is any reasonable basis for concluding that the position of the Association or the Plan may be adverse to that Indemnitee or the positions of that Indemnitee may be adverse to that of any other Indemnitee.
8. Procedure for Seeking Indemnification or Advances. Each person or entity seeking indemnification or advances under this Article shall initially submit a written claim to the Governing Committee setting forth in reasonable detail the basis for the claim and confirming the satisfaction of the particular conditions stated in this Article. Each such person or entity shall thereafter submit to the Governing Committee copies of all invoices for legal services, orders, judgments, and other documentation which the Governing Committee may reasonably request in order to verify any cost for which indemnification or advances are sought.
9. Time Not Determinative. The right to indemnification and advances under this Article shall not depend upon whether an individual Indemnitee is a member of the Governing Committee, or of any committee or subcommittee, or is an officer or employee of the Association, at the time the claim, action, suit, or proceeding is begun, prosecuted or threatened. The right to indemnification and advances under this Article shall not depend upon whether an entity is a member of Association at the time the

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claim, action, suit, or proceeding is begun, prosecuted or threatened. The right to indemnification and advances under this Article shall not depend upon whether the liability to be indemnified, or the potential liability with respect to which advances are to be paid, was incurred, or the act or omission occurred, prior to the adoption of this Article in its current form.

10. Governing Committee Determinations. In each instance in which a question of indemnification or advances arises, determination in the first instance of the right to indemnification or advances, and of the time, manner, and amount of payment thereof, shall be made by a majority of members of the Governing Committee other than any member of the Governing Committee seeking indemnification or advances with respect to the same act or omission. If the nature of the claim or related claims makes it impossible for the Governing Committee to make a determination according to this standard, then the Governing Committee shall appoint a special committee, consisting of not less than three and not more than seven persons employed by members of the Association, to make any and all such determinations on behalf of the Governing Committee under this Article with respect to the claims or related claims. Any person or entity aggrieved by a determination of the Governing Committee or any such committee may appeal the determination to the Commissioner of Insurance and after exhausting such appeal may institute legal proceedings to enforce a right to indemnification or advances under this Article.
11. Non-Exclusivity. The right to indemnification and advances hereunder shall not be exclusive of other rights any person or entity may have as a matter of law or equity.
12. Expenses of Association. All of the indemnification and advances provided for in this Article shall be deemed to be expenses of the Association to which all members of the Association shall contribute in the proportion that each member participates in the Association's writing, expenses, gains, and losses.

**Article XII**

**Amendments**

1. Governing Committee Amendments. These Articles of the Association may be amended or amended and restated, subject to the approval of the Commissioner, by a majority of the members of the Governing Committee present and voting at any meeting called solely or partially for such purpose.

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2. Commissioner Amendments. The Commissioner may at any time request amendment of these Articles by written direction to the Governing Committee. If the committee fails to submit for approval an amendment satisfactory to the commissioner within 30 days, the commissioner may issue an amendment by his/her Administrative Order.
3. Effective Date of Amendments. All amendments to or restatements of these Articles shall become effective when approved by the Commissioner unless a later date therefor has been established, in which case it shall be such later date.

**Article XIII**

**Dissolution**

1. Time of Dissolution. The Association and the Plan may be dissolved only after the requirements for their existence as set forth in KRS 304, Subtitle 35, are effectively repealed in their entirety and all rights, duties and obligations under all policies issued by or on behalf of the Association, or added to it, have been discharged and all claims thereunder have been settled by the Association.
2. Winding Up. Upon dissolution, the Governing Committee shall have the power and duty to:
  - (a) collect all accounts, assets or funds belonging to the Association or any of its members resulting from operations of the Plan;
  - (b) pay debts and obligations of the Association and the Plan or any of their members resulting from operations under the Plan;
  - (c) adjust, as between members, all rights, interests, duties and obligations in or under operations of the Association and in the proceeds thereof, if any, or the assessment therefor, if necessary, and
  - (d) take all other steps and actions necessary to fully effectuate the forgoing provisions and for liquidation and termination the affairs of the Plan and the Association.