Memo

To: Hot Springs Village Board of Directors
From: Governance Committee
Date: November 15, 2017
Re: Proposed Revision to Bylaws Article IX, Section 3. Board Accountability

The Governance Committee recommends expanding Bylaws Article IX, Section 3 to include the following:

ARTICLE IX

Board Responsibilities, Authority, and Accountability

Section 3. Board Accountability

The Board is accountable to the property owners and to one another for enforcing all rights, covenants, restrictions, and agreements applicable to the Properties and the owners thereof, and to Common Properties, as provided for in the Declaration or which now or may hereafter be contained in or authorized by the Articles of Incorporation, the Bylaws, or laws of the state of Arkansas.

I. Duty of Loyalty

Among the fiduciary obligations of an officer, director, staff member, or committee member of a community association and not for profit corporation is a duty of loyalty. This includes supporting, and not opposing directly or indirectly or taking any other stance against the policies and positions duly adopted by HSVPOA’s Board of Directors. As representatives of HSVPOA, officers, directors, staff, and committee members are obligated to maintain this duty of loyalty in all manner of activities during their terms of office.

This duty of loyalty is not intended to, nor should it, discourage debate. Informed debate is encouraged and is part of the individual’s responsibility in the deliberation process.

II. Duty of Care

The duty of care requires performing responsibilities, in a manner each director, officer, staff member, or committee member believes to be in the best interest of the association and with such care, including reasonable inquiry, as a prudent person in a like position would ordinarily use
under similar circumstances. This standard of care has also been adopted in most jurisdictions and is often cited as the "prudent person standard" or the "business judgment rule." Stated succinctly directors owe a duty of care to the association and its members and will not be liable for mere mistakes in judgment so long as they were acting in good faith and had a rational basis for their decision.

a) Conflicts of Interest. A “conflicting interest transaction” could be a contract, transaction or other financial relationship between the association and (a) a board member, (b) a party related to a board member, or (c) an individual or entity in which the board member has an interest. A board member need not own a company or receive direct benefit for there to be a conflicting interest transaction and should therefore exercise their powers for the good of all members rather than individual gain.

Board members are expected to disclose any conflict, or appearance of a conflict of interest to fellow board members. If the board then determines that a board member has a conflict of interest, the association may still enter into arrangement if the details between the association and the conflicted board member are disclosed to the board, a majority of the disinterested board members vote in good faith to accept the arrangement, and all of the following criteria are met:

1. The conflict of interest results in better overall value when weighted against competitive bidding submitted by like contractors for the same work.
2. The Board shall disclose all the details and carefully document the conflict disclosure in the minutes.
3. Once the conflict has been disclosed and while the board is discussing whether the contract should be adopted, the conflicted board member shall be available to answer questions about the conflict and the contract.
4. The conflicted board member shall recuse him/herself from voting, and the conflicted board member shall leave the meeting during the remaining discussion and vote.

b) Confidentiality and Transparency. As further described in Chapter 8, Article 3 of the Board of Directors policies, both confidentiality and transparency must be balanced to prevent harm to HSVPOA or frustrate the deliberations of those individuals elected to govern the organization.

1. Private board deliberations are permitted and their confidentiality required in these matters:
   i. Discussions regarding employment, appointment, promotion, demotion, disciplining, or resignation of the CEO, as well as all other personnel authority delegated to the CEO;
   ii. Discussions regarding board member conduct and conflicts of interest;
   iii. Discussions regarding legal matters;
   iv. Discussions regarding the purchase, lease, exchange, or value of real property;
v. Discussions regarding prospective gifts to HSVPOA;
vi. Discussions regarding security issues;
vii. Discussions regarding economic development negotiations;
viii. Discussions of other confidential matters as reasonably expected to protect the organization and its interests.

2. Public deliberation is otherwise recommended to build property owner trust and support. Board members should not use private deliberations for the sole purpose of circumventing prudent transparency.

3. A Board vote, whether taken privately or publicly and as documented and allowed within these bylaws, shall be binding on the organization. Board actions taken privately shall be communicated during the next public board meeting.

Individual board members shall use their professional experiences and personal circles of influence to equip themselves prior to deliberations and refrain from undermining board actions following a vote. Each individual shall uphold the spirit of Board member deliberation and decision-making processes, along with their resulting duties of care and loyalty.