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Will County Recorder Page 1 of 37

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## DECLARATION FOR THE FIELDS OF SHOREWOOD

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## DECLARATION FOR THE FIELDS OF SHOREWOOD

This Declaration is made by Richmond American Homes of Illinois, Inc., a Colorado corporation ("Declarant").

### RECITALS

Declarant is the record title holder of a portion of the Development Area which is legally described in Exhibit A hereto. Some or all of the Development Area shall be the subject of a phased development called the "Fields of Shorewood" (the "Development").

Initially, the Declarant shall subject the real estate which is legally described in Exhibit B hereto to the provisions of this Declaration as the Premises. From time to time the Declarant may subject additional portions of the Development Area to the provisions of this Declaration as Added Premises, as more fully described in Article Twelve. Nothing in this Declaration shall be construed to require the Declarant to subject additional portions of the Development Area to the provisions of this Declaration. Those portions of the Development Area which are not made subject to the provisions of this Declaration as Premises may be used for any purposes not prohibited by law.

Certain portions of the Premises are designated as Lots and other portions are designated as Community Area. The Declarant has formed (or will form) the Association under the Illinois General Not-For-Profit Corporation Act. The Association shall have the responsibility for administering and maintaining the Community Area and shall set budgets and fix assessments to pay the expenses incurred in connection with such responsibility. Each Owner of a Lot shall be a member of the Association and shall be responsible for paying assessments with respect to the Lot owned by such Owner. It is not intended that the Community Association shall be a "master association" as defined in Section 605/18.5 of the Illinois Condominium Property Act or a "common interest community association" as defined in Section 9-102(a)(8) of the Code of Civil Procedure (735 ILCS 5/9-102(a)(8)).

If all of the Community Area is dedicated or conveyed to governmental agencies, then the Association may be dissolved as provided in Section 5.07 hereof.

During the construction and marketing of the Development, the Declarant shall retain certain rights set forth in this Declaration, which rights shall include, without limitation, the right, prior to the Turnover Date, to appoint all members of the Board, as more fully described in Article Nine, and the right for itself and each Designated Builder, to come upon the Premises in connection with Declarant's efforts to sell Lots and other rights reserved in Article Nine.

NOW, THEREFORE, the Declarant hereby declares as follows:

### ARTICLE ONE Definitions

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.01 ANNEXATION AGREEMENT: That certain Annexation Between the Village of Shorewood, Will County, Illinois, and First Midwest Bank/Illinois, as Trustee Under the Provisions of a Trust Agreement Dated January 4, 2989, and known as Trust No. 5222 and Kennedy Real Estate Development, LP, dated January 14, 2003, Recorded on April 30, 2003, as Document No. R2003098656.

1.02 ASSOCIATION: The Fields of Shorewood Homeowners Association, an Illinois not-for-profit corporation, its successors and assigns.

1.03 BOARD: The board of directors of the Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article Five.

1.04 BY-LAWS: The By-Laws of the Association.

1.05 CHARGES: The Community Assessment, any special assessment levied by the Association and/or any other charges or payments which an Owner is required to pay or for which an Owner is liable under this Declaration or the By-Laws.

1.06 COMMERCIAL LOT: Lot 170 in the Subdivision.

1.07 COMMERCIAL OWNER: The owner, from time to time, of the Commercial Lot.

1.08 COMMUNITY AREA: Those portions of the Premises which are described and designated as "Community Area" in Exhibit B hereto, as amended from time to time, together with all improvements located above and below the ground and rights appurtenant thereto. The Community Area shall generally include a detention area and open space within the Development, together with improvements thereon.

1.09 COMMUNITY ASSESSMENT: The amounts which the Association shall assess and collect from the Owners to pay the Community Expenses and accumulate reserves for such expenses, as more fully described in Article Six.

1.10 COMMUNITY EXPENSES: The expenses of administration (including management and professional services), operation, maintenance, repair, replacement and landscaping and other improvements located on the Community Area and Landscape Easement; the cost of insurance for the Community Area; the cost of, and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Association in connection with the maintenance of the Community Area; if not separately metered or charged to the Owners, the cost of garbage removal from the Premises and the cost of necessary utility services to the Premises; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners. Notwithstanding the foregoing, Community Expenses shall not include any payments made out of Capital Reserves.

1.11 COUNTY: Will County, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the County as of the Recording of this Declaration.

1.12 DECLARANT: Richmond American Homes of Illinois, Inc., a Colorado corporation, its successors and assigns.

1.13 DECLARANT'S DEVELOPMENT PLAN: Declarant's current plan for the Development. Declarant's Development Plan shall be maintained by the Declarant at its principal place of business and may be changed at any time or from time to time without notice.

1.14 DECLARATION: This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.15 DESIGNATED BUILDER: Kennedy Homes Limited Partnership, an Illinois limited partnership, Armor Homes Limited Partnership, an Illinois limited partnership, and any legal entity which is designated, from time to time, by the Declarant as a "Designated Builder" in a Special Amendment as permitted under Section 10.01.

1.16 DEVELOPMENT AREA: The real estate described in Exhibit A hereto with all improvements thereon and rights appurtenant thereto. Exhibit A is attached hereto for informational purposes only and no covenants, conditions, restrictions, easements, liens or changes shall attach to any part of the real estate described therein, except to the extent that portions thereof are described in Exhibit B and expressly made subject to the provisions of this Declaration as part of the Premises. Any portions of the Development Area which are not made subject to the provisions of this Declaration as part of the Premises may be developed and used for any purposes not prohibited by law, including, without limitation, as a residential development which is administered separate from the Development.

1.17 FIRST MORTGAGEE: The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Lot.

1.18 HOME: That portion of a Lot which is improved with a single family home.

1.19 LANDSCAPE EASEMENT: Those portions of Lots 1 through 8, both inclusive, and that portion of Lot 50, which are designated on the Unit One Plat as "25' Landscape Restriction", and those portions of Lots 121 through 133, both inclusive, which are designated on the Unit Two Plat as "20' Landscape Restriction".

1.20 LOT: Each subdivided lot designated in Exhibit B hereto as a Lot, together with all improvements thereon and thereto.

1.21 MONUMENT SIGN AREA: That portion of Lot 50, if any, which is improved with a monument sign and related landscaping.

1.22 MUNICIPALITY: The Village of Shorewood, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the Municipality as of the Recording of this Declaration.

1.23 OWNER: A Record owner, whether one or more persons, of fee simple title to a Lot, including contract seller, but excluding those having such interest merely as security for the performance of an obligation. The Declarant shall be deemed to be an Owner with respect to each Lot owned by the Declarant.

1.24 PERSON: A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.25 PREMISES: The real estate which is legally described in Exhibit B hereto and designated as being the Premises, as Exhibit B may be amended or supplemented from time to time, with all improvements thereon and rights appurtenant thereto.

1.26 RECIPROCAL EASEMENT AGREEMENT: That certain Reciprocal Drainage Easement and Retention/Detention Maintenance Agreement, dated October 18, 2004 and Recorded on November 4, 2004, as Document No.R2004201918.

1.27 RECORD: To record in the office of the Recorder of Deeds for the County.

1.28 RESIDENT: An individual who resides in a Home.

1.29 SPECIAL DEVELOPMENT RIGHTS. Any one or more of the rights which may be granted by Declarant to a Special Development Rights Holder with respect to a Special Development Rights Area, as more fully provided in Article Thirteen hereof.

1.30 SPECIAL DEVELOPMENT RIGHTS AREA. A portion of the Premises which is subject to Special Development Rights granted by the Declarant to a Special Development Rights Holder.

1.31 SPECIAL DEVELOPMENT RIGHTS HOLDER. A Person which acquires title to a Special Development Rights Area and to which Declarant grants Special Development Rights with respect to such Special Development Rights Area.

1.32 SUBDIVISION: The Fields of Shorewood Unit One, a subdivision of Part of the East Half of the Southeast Quarter of Section 5, Township 35 North, Range 9 East of the Third Principal Meridian, pursuant to the plat thereof recorded December 3, 2003, as Document No. R2003-293807, all in the Village of Shorewood, Will County, Illinois.

1.33 TURNOVER DATE: The date on which the rights of the Declarant to designate the members of the Board are terminated under Section 9.04.

1.34 UNIT ONE PLAT: That certain Plat of Subdivision of the Fields of Shorewood Unit One, Recorded on December 3, 2003, as Document No. R2003-293807.

1.35 UNIT TWO PLAT: That certain Plat of Subdivision of the Fields of Shorewood Unit One, Recorded on February 28, 2005, as Document No. R2005033953.

1.36 VOTING MEMBER: The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article Five.

## ARTICLE TWO Scope of Declaration

2.01 PROPERTY SUBJECT TO DECLARATION: Declarant, as the owner of fee simple title to the Premises, expressly intends to and by Recording this Declaration, does hereby



subject the Premises to the provisions of this Declaration. Declarant reserves the right to add additional real estate to the terms of this Declaration as more fully provided in Article Twelve.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in the premises, and their respective heirs, successors, personal representatives or assigns, regardless of whether the deed or other instrument which creates or conveys the interest makes reference to this Declaration.

2.03 DURATION: Except as otherwise specifically provided herein the covenants, conditions, restrictions, easements, reservations, liens, and charges, which are granted, created, reserved or declared by this Declaration shall be appurtenant to and shall run with and bind the land for a period of forty (40) years from the date of Recording of this Declaration and for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part by a Recorded instrument executed by the Owner of not less than seventy-five percent (75%) of the Lots then subject to the Declaration.

2.04 LOT CONVEYANCE: Once a Lot has been conveyed by the Declarant or a Designated Builder to a bona fide purchaser (other than Declarant or a Designated Builder) for value, then any subsequent conveyance or transfer of ownership of the Lot shall be of the entire Lot and there shall be no conveyance or transfer of a portion of the Lot without the prior written consent of the Board.

2.05 ACCESS EASEMENT: Each Owner of a Lot shall have a non-exclusive perpetual easement for ingress to and egress from his Lot to public streets and roads over and across the roads, driveways and walkways, if any, located on the Community Area, which easement shall run with the land, be appurtenant to and pass with title to every Lot. The Municipality or any other governmental authority which has jurisdiction over the Premises shall have a non-exclusive easement of access over roads and driveways located on the Community Area for police, fire, ambulance, waste removal, snow removal, or for the purpose of furnishing municipal or emergency services to the Premises. The Association, its employees, agents and contractors, shall have the right of ingress to, egress from, the Community Area and Landscape Easement and the right to store equipment on the Community Area, for the purpose of furnishing any maintenance, repairs or replacements required or permitted to be furnished by the Association hereunder. A non-exclusive, perpetual easement is hereby granted to the public for access over and across that portion of the public bike path system which is located at the northeast corner of Lot 171, which portion is designated on the Plat as a "Bike Path Maintenance Easement".

2.06 EASEMENTS IN FAVOR OF COMMERCIAL LOT OWNER: The Commercial Lot Owner is hereby granted a non-exclusive, perpetual easement for (a) the flow of and retention of storm water run off from the Commercial Lot, over, across and into the detention area located on Lot 171 in the Subdivision; and (b) fulfilling any warranty work on the detention area located on Lot 171 in the Subdivision, all as more fully provided in the Reciprocal Easement Agreement.

2.07 RIGHT OF ENJOYMENT: Each Owner shall have the non-exclusive right and easement to use and enjoy the Community Area and the exclusive right to use and enjoy the

Owner's Lot. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Lot, and shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association, including the right of the Association to come upon a Lot to furnish services hereunder.

2.08 DELEGATION OF USE: Subject to the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association, any Owner may delegate his right to use and enjoy the Community Area and the Owner's Home to Residents of the Owner's Home. An Owner shall delegate such rights to tenants and contract purchasers of the Owner's Home who are Residents.

2.09 RULES AND REGULATIONS: The use and enjoyment of the Community Area shall at all times be subject to reasonable rules and regulations duly adopted by the Association from time to time.

2.10 UTILITY EASEMENTS: The Municipality and all public and private utilities (including cable companies) serving the Premises are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Community Area for the purpose of providing utility services to the Premises or any other portion of the Development Area.

2.11 EASEMENTS, LEASES, LICENSES AND CONCESSIONS: The Association shall have the right and authority from time to time to lease or grant easements, licenses, or concessions with regard to any portions or all of the Community Area for such uses and purposes as the Board deems to be in the best interests of the Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities or any other purpose which the Board deems to be in the best interests of the Owners. Any and all proceeds from leases, easements, licenses or concessions with respect to the Community Area shall be used to pay the Community Expenses. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Home, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Association and duly Recorded.

2.12 ASSOCIATION'S ACCESS: The Association shall have the right and power to come onto any Lot for the purpose of furnishing the services required to be furnished hereunder or enforcing its rights and powers hereunder, including, without limitation, to maintain the Monument Sign Areas or make alterations or additions thereto.

2.13 NO DEDICATION TO PUBLIC USE: Except for easements granted or dedications made as permitted in Section 2.11, nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Community Area to or for any public use or purpose whatsoever.

2.14 OWNERSHIP OF COMMUNITY AREA: The Community Area shall be conveyed to the Association free of mortgages no later than the Turnover Date, provided, that if

Community Area is made subject hereto after the Turnover Date, it shall be conveyed to the Association no later than ninety (90) days after such portion is made subject hereto.

2.15 REAL ESTATE TAXES FOR COMMUNITY AREA: If a tax bill is issued with respect to Community Area which is made subject to this Declaration in the middle of a tax year (regardless of when it is conveyed to the Association), then the tax bill shall be prorated so that the Declarant shall be responsible for the payment of that portion of the tax bill from January 1<sup>st</sup> of the tax year to the date that such Community Area is made subject to this Declaration, and the Association shall be responsible for the balance of the tax bill.

### ARTICLE THREE Community Area/Association Maintenance

3.01 IN GENERAL: The restrictions and limitations contained in this Article shall be subject to the rights of the Declarant and each Designated Builder set forth in Article Nine.

3.02 MAINTENANCE, REPAIR AND REPLACEMENT BY ASSOCIATION: The following maintenance, repairs and replacements shall be furnished by the Association:

- (a) added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the Community Area;
- (b) maintenance, repair and replacement of the improvements located on the Community Area, including, without limitation, the detention area;
- (c) maintenance, repair and replacement of monument sign and other improvements located on Monument Sign Area, if any;
- (d) maintenance, repair and replacement of landscaping and improvements located on the Landscape Easement; and
- (e) maintenance, of wetlands, if any, located on the Community Area, which maintenance shall follow guidelines, if any, from time to time issued by any governmental authority which has jurisdiction over maintenance of the wetlands.

The cost of any maintenance, repairs and replacement furnished by the Association pursuant to this Section shall be a Community Expense.

3.03 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMUNITY AREA AND LANDSCAPE EASEMENT: No alterations, additions or improvements shall be made by any party to the Community Area or Landscape Easement without the prior approval of the Board. The Association may cause alterations, additions or improvements to be made to Community Area and Landscape Easement, and the cost thereof shall be paid from a special assessment, as more fully described in Section 6.05; except, that, any such alteration, addition or improvement which shall cost more than four (4) months assessments then in effect under the then current budget shall be approved in advance at a special meeting of the Owners.

3.04 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO LOTS: With respect to a Lot which has been improved with a Home, no additions, alterations or improvements,

including, without limitation, (i) installation of a fence which is permitted under 8.13 or a flagpole (ii) changes in the exterior color of a Home, (iii) construction of awnings, antenna or satellite dish, (iii) changes or additions to patio or deck, (iv) installation of a play set which is permitted under Section 8.14, a swimming pool, jacuzzi, gazebo or basketball hoop, or (v) other similar improvements, shall be made to any Lot or any part of the Home which is visible from outside the Home by an Owner without the prior written consent of the Board and, until the Declarant no longer owns or controls title to any portion of the Development Area, the Declarant, and compliance with applicable ordinances of the Municipality. If an addition, alteration or improvement which requires the consent of the Board and/or Declarant hereunder is made to a Lot by an Owner without the prior written consent of the Board or Declarant, or both, as applicable, then (i) the Board may, in its discretion, take either of the following actions; and (ii) until such time as the Declarant no longer owns or controls title to any portion of the Development Area, the Declarant may, in its discretion take either of the following actions:

(a) Require the Owner to remove the addition, alteration or improvement and restore the Lot to its original condition, all at the Owner's expense;

(b) If the Owner refuses or fails to properly perform the work required under (a), may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board or the Declarant, as applicable;

(c) Ratify the action taken by the Owner, and the Board may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section; and/or

(d) Levy a fine which shall become a Charge hereunder.

3.05 CERTAIN UTILITY COSTS: Certain utility costs incurred in connection with the use, operation and maintenance of the Community Area may not be separately metered and billed to the Association. If the cost for any such utility is metered and charged to individual Homes rather than being separately metered and charged to the Association, then the following shall apply:

(a) If in the opinion of the Board, each Owner is sharing in a fair and equitable manner the cost for such service, then no adjustment shall be made and each Owner shall pay his own bill; or

(b) If in the opinion of the Board, the Owner of a Home is being charged disproportionately for costs allocable to the Community Area, then the Association shall pay, or reimburse such Owner, an amount equal to the portion of the costs which in the reasonable determination of the Board is properly allocable to the Community Area and the amount thereof shall be Community Expenses hereunder.

Any determinations or allocations made hereunder by the Board shall be final and binding on all parties.

3.06 DAMAGE BY RESIDENT: If, due to the act or omission of a Resident of a Home, or of a household pet or guest or other authorized occupant or invitee of the Owner of a Lot, damage shall be caused to the Community Area and maintenance, repairs or replacements shall

be required thereby, which would otherwise be a Community Expense, then the Owner of the Lot shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance carried by the Association.

ARTICLE FOUR  
Insurance/Condemnation

4.01 COMMUNITY AREA INSURANCE:

(a) The Association shall have the authority to and shall obtain fire and all risk coverage insurance covering the improvements, if any, to the Community Area and other improvements required to be maintained by the Association (based on current replacement cost for the full insurable replacement value) of such improvements.

(b) The Association shall have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, its directors and officers, the Declarant, each Designated Builder, the managing agent, if any, and their respective employees and agents, as their interests may appear, from liability resulting from an occurrence on or in connection with, the Community Area and adjacent dedicated rights of way or detention areas. The Board may, in its discretion, obtain any other insurance which it deems advisable including, without limitation, insurance covering the directors and officers from liability for good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 5.06. Such insurance coverage shall include cross liability claims of one or more insured parties.

(c) Fidelity bonds indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling funds of the Association may be obtained by the Association in such amounts as the Board may deem desirable.

The premiums for any insurance obtained under this Section shall be Community Expenses.

4.02 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Community Area, the proceeds awarded in such condemnation shall be paid to the Association and such proceeds, together with any Community Area Capital Reserve being held for such part of the Community Area, shall, in the discretion of the Board, either (i) be applied to pay the Community Expenses, (ii) be distributed to the Owners and their respective mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Community Area under this Declaration. Any acquisition by the Association pursuant to this Section of real estate which shall become Community Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this Section and legally describes the real estate affected, is executed by the President of the Association and Recorded.

ARTICLE FIVE  
The Association

5.01 IN GENERAL: Declarant has caused or shall cause the Association to be incorporated as a not-for-profit corporation under Illinois law. The Association shall be the governing body for all of the Owners for the administration and operation of the Community Area. The Association shall be responsible for the maintenance, repair and replacement of the Community Area and Landscape Easement.

5.02 MEMBERSHIP Each Owner shall be a member of the Association. There shall be one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Association shall be given written notice of the change of ownership of a Lot within ten (10) days after such change.

5.03 VOTING MEMBERS: Subject to the provisions of Section 9.04, voting rights of the members of the Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Lot. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the Record ownership of a Lot shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Lot shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Lot as the Voting Member for such Lot.

5.04 BOARD: Subject to the rights retained by the Declarant under Section 9.04, the Board shall consist of that number of members provided for in the By-Laws, each of whom shall be an Owner or Voting Member.

5.05 VOTING RIGHTS: Prior to the Turnover Date, all of the voting rights at each meeting of the Association shall be vested exclusively in the Declarant and the Owners shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Association shall be vested in the Voting Members and each Voting Member shall have one vote for each Lot which the Voting Member represents. From and after the Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

5.06 DIRECTOR AND OFFICER LIABILITY: Neither the directors nor the officers of the Association shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the Declarant and each of the directors and officers, his heirs, executors or administrators, against all contractual and other liabilities to the Owners, the Association or others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association or arising out of their status as directors or officers unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to,

counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other in which any such director may be involved by virtue of such person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer.

5.07 DISSOLUTION. Although it is currently anticipated that the Association will own and maintain the Community Area and will maintain the Landscape Easement, it is possible that a governmental agency may accept a dedication or conveyance of all of the Community Area and accept responsibility for maintenance of the Community Area and the Landscape Easement. If that occurs and the Association has no maintenance responsibilities, then at the option of the Declarant (which may be exercised at any time prior to the Turnover Date) or at the option of the members of the Association (which may be exercised by action of the members after the Turnover Date), the Association shall be dissolved and liquidated and thereafter the provisions of this Declaration which deal with the powers and duties of the Association shall be null and void and of no further force and effect. Any distribution of assets of the Association shall be made to the Owners of Lots in equal amounts for each Lot owned.

5.08 LITIGATION: Except as otherwise provided under Section 5.09 below, no judicial or administrative proceedings shall be commenced or prosecuted by the Association without first holding a special meeting of the members and obtaining the affirmative vote of Voting Members representing at least seventy-five percent (75%) of the Lots to the commencement and prosecution of the proposed action. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration, the By-Laws or rules and regulations adopted by the Board (including, without limitation, an action to recover Charges or to foreclose a lien for unpaid Charges) or (b) counterclaims brought by the Association in proceedings instituted against it. Until the expiration of ten (10) years after the Recording hereof, this Section may only be amended with the written consent of Declarant.

5.09 CLAIMS INVOLVING DECLARANT:

(a) Mediation of Disputes. Any dispute, claim and/or controversy in law or equity between an Owner and/or the Association (the "Claimant") against the Declarant arising out of, related to or in any way connected with the Premises, shall be sent to mediation before resorting to arbitration or court action. Mediation is a process in which parties attempt to resolve a dispute by submitting it to an impartial, neutral mediator who is authorized to facilitate the resolution of the dispute but who is not empowered to impose a settlement on the parties. Mediation fees, if any, shall be divided equally among the parties involved. Before the mediation begins, the parties agree to sign a document limiting the admissibility in arbitration or any civil action of anything said, any admission made, and any documents prepared, in the course of the mediation, consistent with Illinois law. Declarant shall submit to Claimant, the names of three (3) certified mediators and Claimant shall designate one (1) to be the mediator. If the Claimant fails to