

**DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS, RESERVATIONS, EQUITABLE  
SERVITUDES, GRANTS AND EASEMENTS OF  
FLAGSTONE SUBDIVISION, FRANKFORT, ILLINOIS**

The undersigned, **PALOS BANK AND TRUST**, as Trustee under Trust Agreement dated April 4, 2001 and known as Trust No. 1-5082 and **GANDER DEVELOPMENT, LLC** (hereinafter respectively referred to as "Owner" or "Declarant" and "Developer") are the Owner and Developer of the following described property:

LEGAL DESCRIPTION ATTACHED HERETO AS "EXHIBIT A"

Owner/Developer hereby incorporates this instrument into the Plat of Subdivision of Flagstone Subdivision, and makes the same a part hereof.

**WITNESSETH:**

A. The following covenants, restrictions, reservations, equitable servitudes, grants, easements and set back lines shall be considered as running with the land and shall be binding upon the respective Owners of said Lots, their heirs, executors, administrators, successors, mortgagors, grantees, leasees and assigns.

**1. SINGLE FAMILY RESIDENTIAL BUILDINGS ONLY**

No business or profession of any nature shall be conducted on any Lot or in any residence constructed on any Lot in this Subdivision, except the business of sale of houses in the Subdivision. None of said Lots as originally platted shall be divided or re-subdivided except for the purpose of combining portions thereof with adjoining Lots provided that no additional building site is created thereby. Any single ownership or single holding by any person or persons which composes the whole of one of said Lots (as originally platted and subdivided) and a part or parts of one or more adjoining Lots shall, for all purposes of this Declaration, be deemed to constitute a single Lot upon which only one residential building may be erected, constructed or allowed to exist. However, nothing herein contained shall prevent the construction of one house on each Lot.

No room or rooms in any residence or parts hereof may be rented or leased and no paying guests shall be quartered in any residence. Nothing contained in the paragraph, however, shall be constructed as preventing the renting or leasing of an entire residence as a single unit to a single family.

Anything to the contrary notwithstanding, nothing herein contained shall be construed so as to prevent a Lot Owner from erecting a single family residential building on any Lot or Lots in the Subdivision and using and maintaining, such building as a sales office, model home, business office, storage area, construction office, for the purpose of the development and sale of homes in

said Subdivision. Provided, however, that nothing herein shall preclude an Owner from (i) maintaining a personal professional library on his unit (ii) keeping his personal business records or accounts on his Unit or (iii) handling his personal business or professional calls or correspondence therefrom.

## **2. TWO AND A HALF (2 ½) CAR GARAGE REQUIRED**

As appurtenant to the residential building permitted by Paragraph (1) hereof and to be used exclusively in connection with such residential building, a private garage of sufficient size to house not less than two (2) standard size American made automobiles shall be constructed or erected, which garage must be attached to such residential buildings as an integral part thereof. Such garage shall not be used at any time as a residence, whether temporary or permanent. Such garage shall, in architectural design and in proportionate construction cost, conform to said residential building. Garages larger than three (3) car must be side loaded.

## **3. PERMITTED CONSTRUCTION MATERIALS**

All residences constructed upon any Lot in said Subdivision shall be of brick, stone, masonry or wood construction only. No prefabricated or modular homes shall be constructed on any Lot in said Subdivision, and no plywood, aluminum or vinyl siding shall be used on any structure erected on any Lot in said Subdivision. Each one-story home shall be constructed of brick, stone or masonry materials. All other one and one-half, two or multi-story structures shall have the entire first floor level constructed of brick, stone or masonry material. All driveways must be paved with either brick, concrete or asphalt from the garage to the street.

## **4. MINIMUM LIVING AREA**

In addition to all other requirements in this Declaration, the following shall be the minimum sizes for the home in this Subdivision:

- (a) A one story residence shall contain at least twenty-six hundred (2600) square feet living area, exclusive of garage, breezeway, porches and basement.
- (b) A one and one-half story residence shall contain at least twenty-eight hundred (2800) square feet of living area, not less than eighteen hundred (1800) square feet of which shall be on the first floor exclusive of garage, breezeway, porches and basement (for all the purposes of the Declaration, a one and one-half story residence shall be defined as a residence with a second floor above the first floor, which second floor is smaller in living area than the first floor but not to include those buildings commonly described as multi-level, spit-level, bi-level, or tri-level).

- (c) A two story residence shall contain at least twenty-eight hundred (2800) square feet of living space of which at least sixteen hundred (1600) square feet of living area on the first floor exclusive of garage, breezeway, porches and basement.
- (d) Residences which are commonly referred to as multi-level, bi-level, tri-level or split-level shall be discouraged in said Subdivision.

**5. NO TEMPORARY BUILDINGS, OUT BUILDINGS, CAMPERS, TRAILERS, ETC.**

No temporary house, campers, habitable motor vehicles, pet enclosures, batting cages, sheds, trailer, tent, stand, recreational appurtenances, shack, basement or other structure or building of a temporary character shall be constructed, placed, allowed to exist or used on any Lot at any time as a residence. No vehicles shall be repaired except inside a garage.

**6. SIGNS**

No Owner of a Lot may indicate that the Lot and/or residence thereon is for sale or for rent by posting a sign on the property. No other signs, banners or other manner of advertisement shall be permitted in the Subdivision without the express written consent of the Developer, or his successor or assigns. This provision shall not apply to any sign which the Developer may erect identifying or advertising the Subdivision. This provision shall not prohibit a home builder from advertising a model home or sales office in this Subdivision.

**7. LOT OWNER'S RESPONSIBILITY FOR SIDEWALKS AND DAMAGE TO SIDEWALKS & CURBS**

In the event the Village of Frankfort shall within two (2) years after the issuance of an occupancy permit for home on a Lot Owner's property require the replacement or repair of curbing or sidewalks in front of the Lot Owner's Lot, the Lot Owner shall at his own expense repair or replace such sidewalk or curb in accordance with the requirements of the Village of Frankfort. It shall be the responsibility of the Lot Owner to prevent such damage from occurring by adequately protecting the curb and sidewalk during the construction of his home. In the event of the failure of the Lot Owner to make such repairs, Developer shall have the right to make such repairs and to file a lien for any costs of repairs he incurs. In the event it becomes necessary for the Developer to sue to collect the amount of said repairs, Owner shall be responsible for the payment of Developer's court costs and legal fees.

Each Lot Owner shall, at his expense, install a sidewalk to Village of Frankfort specifications across the full width of Lots Owner's Lot prior to the Village of Frankfort issuing an occupancy permit for any residence built upon said Lot. In the event Lot Owner fails to install said sidewalk, Developer may install said sidewalk and lien Lot Owner's Lot for the cost of

materials and labor expended by Developer, including legal fees necessary to enforce said lien.

**8. NO TRUCKS, CAMPERS, ETC. TO BE KEPT ON ANY LOT OR ON ANY STREET**

No trucks, truck-mounted campers, motor homes, trailer, utility trailers, recreation vehicles (including but not limited to snowmobiles), house trailers, buses, boats, boat trailers, campers, junk automobiles, dilapidated or disabled vehicles of any kind shall be maintained, stored or parked on any dedicated or undedicated street or right-of-way in the Subdivision, and the dedication of any such right-of-way or street in the plat attached hereto shall be subject to this provision. No truck-mounted campers, motor homes, trailers, house trailers, buses, boats, boat trailers, campers, junk automobiles, dilapidated or disabled vehicles of any kind shall be maintained, stored or parked on any of the Lots in the Subdivision unless housed or garaged completely in a structure which complies with this Declaration.

**9. JUNK, MACHINERY AND MATERIALS**

No implements, machinery, lumber or building materials shall be permitted to remain exposed upon any Lot so they are visible from the streets or any neighboring Lot, except as necessary during the period of construction of a building thereon. No Lot in the Subdivision shall be used for storage of unsightly materials.

**10. ANIMALS**

No more than two (2) dogs, cats, or other bona fide household pets may be kept provided they are not kept, bred or maintained for any commercial purposes and provided they do not make any objectionable noises and do not otherwise create a nuisance or inconvenience to any of the residents of the Subdivision. Any pets which cause objectionable noises or otherwise constitute a nuisance or inconvenience shall be removed from the premises by the person having custody of the same.

**11. FENCES**

No fence shall be constructed on any Lot in the Subdivision except herein provided:

- (a) No fence shall be constructed without the prior written approval of the Architectural Review Committee (ARC).
- (b) All fences shall be of uniform style, height, color and construction material as established by the ARC.
- (c) No fence shall be located closer to the street than the rear of the dwelling unit, and, in the case of corner Lots, no fence shall be located closer to the street than the rear of the dwelling unit and the side of the dwelling unit closest to the street.

- (d) Fences will not be allowed except where such fence is required by Village of Frankfort Ordinance (i.e. swimming pools, etc.). In such case the ARC shall only allow the enclosure of an area of sufficient size to incorporate the intended use
- (e) No fence shall extend beyond the side and rear setback lines as established by Ordinances of the Village of Frankfort or the Plat of Flagstone Subdivision.
- (f) All fences shall be maintained by the Lot Owner in a condition that is comparable to the condition when new and shall not be permitted to deteriorate of become unsightly due to weathering or neglect.

## **12. DRIVEWAY REQUIREMENTS**

No residence or building erected or placed on any Lot in the Subdivision shall be occupied in any manner at any time prior to the installation and construction hereon by the Owner thereof (at the Owner's sole expense), of a concrete or brick, driveway from the street to the garage, provided, however, that this requirement may be extended for a period not to exceed one hundred twenty (120) days in the event such building shall be ready for occupancy during a time when inclement weather or labor strike shall prevent the construction and installation of such driveway.

## **13. EXTERIOR COLOR PLAN**

The ARC shall have final approval of all exterior color plans and each Owner must submit to the ARC a color plan showing the color of the roof, exterior walls, shutters, trim, etc. The ARC shall consider the extent to which the color plan is consistent with the homes in the surrounding areas and the extent to which the color plan conforms with the natural color scheme of and for the Flagstone Subdivision.

## **14. ROOFS**

Flat roofs shall not be permitted. No built-up roofs shall be permitted. The composition of all pitched roofs shall be of materials approved by the ARC.

## **15. CURBSIDE MAILBOXES**

In the event curbside mailboxes (boxes not attached to a residence) are required for delivery of the U.S. Mail in the Development, the Owner of each Lot upon which a residence shall be constructed shall install, erect or place on such lot or within any other Lot or any right-of-way in the Development only such a mailbox or receptacle as the ARC shall approve. Under no circumstances shall non-decorative, rural curbside mailboxes (sometimes referred to as U.S. 1, 1-1/2 or 2 etc.) be installed anywhere in the Development. The street number shall be affixed to the mailbox. In those cul-de-sacs where there are landscape islands, mailboxes for cul-de-sac lots shall

be clustered in the island. Landscaping to be located no closer than five (5) feet from the edge of the curb.

**16. ARTIFICIAL VEGETATION**

No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ARC.

**17. CLOTHES DRYING AREA**

No portion of any Lot shall be used as drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the building to be constructed on the Lot.

**18. RUBBISH, TRASH AND GARBAGE**

No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot, except in enclosed containers located in appropriate areas concealed from public view and trash receptacles shall not be placed curbside for pickup more than 12 hours prior to pickup.

**19. LAWN & LANDSCAPING**

Within sixty (60) days after the issuance of an occupancy permit, the Lot Owner shall establish a lawn and complete the landscape plan. Parkway, front and side yards shall be sodded. Rear yard shall be sodded or seeded.

A minimum of one (1) shade tree in a diameter of 2" to 3" shall be planted in the parkway for each thirty (30) linear feet of parkway. All trees shall be of a type as established by Ordinance of the Village of Frankfort.

Foundation landscaping shall be provided on the front and sides of each dwelling unit in accordance with Village of Frankfort Ordinances.

**20. NINETY DAYS TO COMPLETE SHELL AND SIX MONTHS TO COMPLETE FINISHED EXTERIOR**

The work of constructing, altering or remodeling any building on any said Lot shall be prosecuted diligently from its commencement and until the completion thereof. The complete exterior structure of shell, not including finished exterior wall materials (e.g. brick, stone, or other approved material), must be completed and erected and constructed within ninety (90) days after the date construction of any residence shall have been commenced. The completion (including the

roof and all exterior walls) on every building or residence commenced to be constructed in the Subdivision shall be completed within six (6) months after the date of commencement of such building. The effect of the provision shall be to require that on the exterior and from neighboring Lots each such residence shall appear completed within said six (6) months.

## **21. WEED CUTTING AND CLEAN UP**

Each Lot shall at all times be kept in a clean and sightly condition. No trash, litter, junk, boxes, containers, bottles, or cans shall be permitted to collect or remain exposed on any Lot, except as necessary during the period of construction and in approved containers. The Owner of each Lot shall be responsible for the cutting or removal of weeds periodically in such Lot so as to conform with the requirements, ordinances and regulations of Frankfort, Illinois.

## **22. ANTENNAE, SATELLITE DISHES, ABOVE-GROUND POOLS**

No antennae, towers or satellite dishes are allowed. Above-ground swimming pools are not allowed.

### **22.1 AIR CONDITIONERS**

Any central air conditioning unit shall not be located between the sidewalk and the front of a home and must be located in the side or rear yard.

### **22.2 OUTDOOR PLAY FACILITIES AND FURNITURE**

Outdoor play facilities and furniture shall be maintained in good condition and shall not be stored or maintained so as to create an eyesore or nuisance to neighbors.

### **22.3 VEHICLES**

Trucks, boats, recreational vehicles, commercial vehicles, mobile homes, trailers or other like vehicles (other than private automobiles or mini-vans) shall not be parked on the streets of the Subdivision or Lots and, if kept, shall be confined to the garage.

## **23. ARCHITECTURAL CONTROL TO PRESERVE THE BEAUTY, QUALITY AND VALUE OF THE DEVELOPMENT**

**Section 1. Necessity of Architectural Review and Approval.** No improvement or structure of any kind, including, without limitation, any building, fence, wall, swimming pool, tennis court, screen enclosure, decorative building, deck, gazebo, play structure, lighted recreational area, landscaping, landscape device or object structure or other improvement shall be

commenced, erected, placed or maintained upon any Lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same shall have been submitted to, and approved in writing by the Architectural Review Committee (ARC). All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography. No foundation shall be poured nor shall construction commence in any manner or respect until the layout for the structure is approved by the ARC.

**Section 2. Architectural Review Committee.** The Architectural Review Committee shall consist of one or more members appointed by the Developer. In the event Developer shall relinquish its authority to appoint the members of the ARC, or shall fail to appoint one or more members of the ARC, or upon the expiration of 10 years from the date of this Declaration, whichever comes first, the members of the ARC shall be appointed by the Flagstone Homeowner's Common Area Maintenance Association, as provided below.

**Section 3. Powers and duties of the ARC.** The ARC shall have the following powers and authorities.

A. To require submission to the ARC of (2) complete sets of all plans and specifications for any improvement or structure of any kind, including, without limitation, any building, swimming pool, tennis court, screen enclosure, decorative building, landscape device or object, structure or other improvement, the construction or placement of which is proposed upon any Lot in the Flagstone Subdivision. The ARC may review and pre-approve plans of a proposed Owner prior to the submission of plans and specifications from an architect with the final review and approval contingent upon submission of plans and specifications from a licensed architect provided for herein. The ARC may require submission of samples of building and construction materials proposed for use on any Lot and such additional information as reasonably may be necessary for the ARC to completely evaluate the proposed structure or improvements in accordance with this Declaration including but not limited to, a site plan showing location of the buildings, landscape plan, fences, gas or electric yard light and other structures upon the Lot. The ARC shall encourage the use of natural siding materials, such as brick, stone and wood. The use of aluminum, vinyl, plywood, pressboard or other similar materials as siding is prohibited.

B. The ARC shall have the unrestricted right to prevent the building and to disapprove of any construction plans submitted to it as aforesaid if, in the sole opinion of the ARC.

1. Such construction plans are not in accordance with all of the provisions of this Declaration; or
2. If the design, exterior and interior size, exterior shape, exterior construction materials or color scheme of the proposed building or other structure is not in harmony with the adjacent buildings, structures of the character of the Development; or



3. If such construction plans as submitted are incomplete; or
4. If the ARC deems the construction plans or any part thereof or any material used on the exterior of the building to be contrary to the spirit or intent of these conditions and restrictions, or contrary to the interest, welfare, or rights of all or any part of the real property, subject hereto, or the Owners thereof, or the adjacent property Owners, all in the sole and uncontrolled discretion of the ARC; or
5. If the ARC shall, within its sole and unlimited opinion and discretion, deem the construction plans or any part thereof of the building or structure to be unacceptable or of such design or proportions, or to be constructed of such unsuitable materials or exterior color schemes as shall depreciate; or adversely affect the values of other sites or buildings in the Development.
6. If the elevation, roof lines and color scheme are too monotonous when considered in the context of other existing homes within five lots of the proposed dwelling.

The decisions of the ARC shall be final. Neither the Developer nor any agent of the Developer nor any member of the ARC shall be responsible in any way for any defects in any construction plans submitted, revised or approved in accordance with the foregoing, not for any structural or other defects in any work done according to such construction plans. The ARC may require the deposit of a reasonable fee from the Lot Owner prior to review and approval of the plans or specifications.

C. If approved, the ARC shall furnish a certificate of approval or stamp the Owner's architectural plans. The Owner shall not present the plans for approval by the Village until such certificate or stamp of approval is given.

#### **24. ASSOCIATION/OUTLOT MAINTENANCE**

(A) **Creation and Purpose.** There shall be formed an Illinois Not-for-Profit Corporation to be known as Flagstone Homeowners Common Areas Maintenance Association (commonly referred to as the "Maintenance Association") whose purpose shall be to enforce the terms of this Declaration and to own and maintain Common Areas and landscape easements as referenced on the recorded plat in the Flagstone Subdivision for the common enjoyment of the Members of the Maintenance Association. The Maintenance Association shall be vested with fee simple ownership of said Common Areas and access rights to landscape easements. The Maintenance Association shall have the right and obligation to own and maintain said Common Areas and landscape easements for the exclusive benefit and enjoyment of the Members of the Maintenance Association in full compliance with the Ordinances of the Village of Frankfort and to be esthetically leasing to the Owners of Lots in the Flagstone Subdivision. The areas to be maintained shall include detention areas, landscape buffer easements, landscape islands, cul-de-sacs, etc., as depicted on the Plat of Subdivision.

**(B) Membership.** Every person or entity, including the Developer, its successors and assigns, who is a record Owner of a fee interest in Lots 1 to 48 inclusive of the Flagstone Subdivision shall be a Member of the Maintenance Association. Membership in the Maintenance Association shall be appurtenant to and may not be separated from Ownership of any aforementioned Lot. Ownership of said lot shall be the sole qualification for membership.

**(C) Voting Rights.** The Maintenance Association shall have only one class of voting membership. Each Lot, regardless of the number of Co-Owners, shall be entitled to one vote on any issue before the Maintenance Association; provided said voting rights shall accrue only after turnover of the association by the Developer, per paragraph 24(D)(8) below.

**(D) Powers of the Association.** The Association shall have the following powers:

1. To elect Directors, to appoint Officers, to hire employees or agents and to enter into Contracts as the Association deems necessary from time to time. The powers of the Maintenance Association shall be vested in its Board of Directors, which at all times shall be comprised of not less than three (3) Directors. The Directors shall have all powers of the Maintenance Association not specifically reserved to the Members of the Maintenance Association which are permitted by the Laws of the State of Illinois.
2. To own Common Areas in the Flagstone Subdivision and to pay as valorem taxes as may be assessed from time to time for said Common Areas.
3. To maintain all portions of Common Areas for the exclusive enjoyment of the Members of the Maintenance Association, including all rights of exclusive possession to Common Areas.
4. To enter and maintain the landscape buffer easements along Scheer Road, and all detention areas and outlots of the Flagstone Subdivision. The maintenance association is hereby granted a permanent easement to enter and maintain the aforesaid areas in accordance with these covenants. Maintenance shall include replacement of vegetation (as originally designated on approved landscape plans) lost or damaged after original warranty period.
5. To levy and collect assessments against the Members and Lots to pay expenses incurred by the Association in carrying out the terms of this Declaration and to this extent to lien any and all Lots 1 to 48 when necessary to enforce the collection of assessments.
6. To adopt reasonable by-laws, rules and regulations necessary and proper to carry out the powers and duties of the maintenance Association.

7. It shall be the obligation of the Maintenance Association to maintain the landscape areas and grass areas in a clean and orderly condition, all in accordance with the Ordinances of the Village of Frankfort.
8. Until such time as the Developer ceases to be the Owner of any Lot in the Flagstone Subdivision, the powers and duties of the Maintenance Association shall be under the exclusive control of the Developer. The Developer, however, shall have the right at any time to turn the control of the Maintenance Association over to the Members of the Maintenance Association upon not less than 30 days notice in writing addressed to each Member of the Maintenance Association.

**(E) Village of Frankfort Common Areas Lien Rights.** In the event the Association or an owner does not comply with the terms of these covenants, or any of the obligations set forth in any paragraph herein, (i.e., including, but not limited to, those provisions affecting the common areas) upon twenty-one (21) days' notice, the Village of Frankfort shall have the right, but not the obligation, to enforce these covenants. Any actual funds that the Village expends or costs that the Village incurs in enforcing or complying with the terms of these covenants, including but not limited to reasonable attorneys' fees, shall be reimbursed by the non-complying party. The Village shall have the right to lien the property of the non-complying party and enforce said lien to the full extent allowed by law, including but not limited to foreclosure of the same.

**(F) Maintenance Reserve Fund**

- (1) At the time of the initial closing of the sale of any lot or lots and/or the resale thereafter, the Lot Owner shall make a non-refundable non-transferable deposit of Three Hundred (\$300.00) Dollars into a maintenance reserve fund to be established at a banking institution with offices in the Village of Frankfort. Said bank shall agree to be bounded by the terms of this section of these covenants by voting the same, including the recorder's document number, in the account records. In addition to all rights set forth herein, the Village of Frankfort shall be entitled to be fully and immediately reimbursed for any and all costs incurred under any of the terms of these covenants including but not limited to those set forth in Section 24 hereof, by presenting the following to the banking institution:
  - (i) A letter setting forth the nature of the default of the Association, which includes an itemized list of the costs to be reimbursed.
  - (ii) A statement that a demand for payment has been made upon the Association and the Association has not paid the amount due.

Upon presentation of the foregoing, the banking institution shall treat this notice in the same fashion as a draw on a Letter of Credit (and this matter shall be governed by the rules applicable to a Letter of Credit) and shall promptly make payment to the Village in accordance herewith.

- (2) At no time shall the monies held in the maintenance reserve fund exceed the sum of Twenty Thousand (20,000.00) Dollars. In the event the fund reaches this sum, the excess shall be turned over to the Maintenance Association.
- (3) In the event the funds held in the maintenance reserve fund are insufficient to reimburse the Village for any and all of its costs associated with its required maintenance, each lot owner shall be liable and responsible for the shortfall. The Village shall have the right to place a lien on any or all of the lots in the subdivision, and to foreclose on said lien as if said lien is a mechanic's lien as defined by Illinois Statute; provided, such lien shall be subordinate to the lien of any mortgagees.
- (4) The Maintenance Association shall provide to the Village of Frankfort an annual report on the status of the Maintenance Reserve Fund.

(25) **ACCEPTANCE BY GRANTEES**

A. Each grantee of a Lot in this Subdivision, by the acceptance of a deed conveying any Lot in this Subdivision, shall accept title thereto upon and subject to each and all of the covenants, conditions, restrictions, reservations, equitable servitudes, grants and easements herein contained, and by such acceptance shall for himself, his heirs, personal representatives, successors, assigns, grantees and lessees, covenants and agree to and with the grantees and subsequent Owners of each said other Lots, to keep, observe, comply with and perform said covenants, conditions, restrictions, reservations, equitable servitudes and grants.

B. The covenants, conditions, restrictions, reservations, equitable servitudes, grants, easements and set back lines herein contained and created in Paragraph A (all of which may hereafter be referred to as the "restrictions") shall be considered as appurtenant to and running with the land and shall operate for the benefit of the Developer, its successors and assigns and all of the Lots in the Subdivision and may be enforced by the Owner or Owners of any Lot in said Subdivision, or the Village of Frankfort, or by the Developer, its successors or assigns. A violation of the restrictions herein contained shall warrant the Developer, its successors and assigns or any other Lot Owners(s) benefitting thereby to apply to a court of law or equity having jurisdiction for an injunction to prevent such violation or for damages or other proper relief, and if such relief be granted, the Owners shall pay all court costs and reasonable attorneys' fees of the Developer, or other Lot Owners, or the Village of Frankfort seeking relief. No delay or omission on the part of the developer, or their successors or assigns in interest, or the owners or

owners of any other lots in said subdivision, or the Village of Frankfort in exercising any right, power or remedy herein provided for in the event of any breach of any of the restrictions herein contained, shall be construed as a waiver thereof and acquiescence therein; and no right of action shall accrue nor shall any action be brought or maintained by or on account of the failure or neglect of the developer, its successors and assigns, to exercise any right, power or remedy herein provided for in the event of any such breach, or for imposing any of the restrictions herein on account of the failure or defect of the developer, or their successors or assigns to exercise any right, power or remedy herein provided for in the event of any such breach, or for imposing any of the restrictions herein. In the event any lawsuit is filed by an owner against the developer, the person so filing the lawsuit shall be liable for all costs and attorneys fees and other expenses of said case incurred by the developer including the expense of expert witnesses. The restrictions herein shall continue for twenty (20) years from the date of recording, at which time they shall continue for successive periods often (10) years unless by a two-thirds (2/3) vote of the owners of the lots in said subdivision at the beginning of each successive ten (10) year period they are amended or revoked.

C. At any time, and from time to time, while these restrictions are in effect, they may be amended or revoked by the recording (in the office of the Recorder of Will county, Illinois) of any instrument declaring such amendment or revocation, which instrument shall be signed by either the developer (or its successors assigns) or by the then owners of not less than two-thirds (2/3) of the lots in said subdivision, which declaration shall set forth such amendment or revocation and shall be effective from and after the date of its recording; provided, however, that if the Developer or its successors and assigns shall hold legal title to any Lot or Lots in the Subdivision, then an amendment or revocation signed by not less than two thirds of the Owners of such Lots must also be signed by Developer or such amendment or revocation shall not be valid. A certificate signed and acknowledged by the Recorder of Will County or by an abstractor or title company doing business in Will County that any such instrument of amendment or revocation shall have been signed by the then Owners of not less than two-thirds (2/3) of such Lots shall be deemed prima facie evidence that such instrument has been signed by the Owners of the required number of Lots. No certificate of any sort shall be required if such amendment or revocation shall be signed by the Developer or its successors and assigns. In the voting provided for herein and in making amendments and revocations to this Declaration, each of said originally platted Lots shall be deemed a unit and the Owner or Owners thereof shall be entitled to one vote and shall count as one Owner in determining the number of votes and Owners. Notwithstanding the above paragraph, the Owners shall not, in any case, amend or the provisions of this Declaration specifically including but not limited to Section 24, without the written consent of the Village provided, such Village approval shall not be required to amend provisions that relate to membership in the Homeowner's Association or internal opposition of the Association.

26. MISCELLANEOUS

26.1 Subordination to Mortgagees. The lien for unpaid charges and assessments provided for herein shall be subordinate to the lien of any Mortgage now or hereafter placed on the Lots. In the event of the issuance of a deed pursuant to the foreclosure of such prior Mortgage or in lieu of such foreclosure, the grantee of such deed shall take title free and clear of any lien for charges and assessments authorized by this Declaration so long as any such lien shall have arisen prior to the date of recording of any such deed.

26.1 Non-liability of Declarant and Developer. Owner and Developer shall not be personally or corporately liable to any Owner or to any others for any decision reasonably made pertaining to architectural control matters, for any mistake in judgment for its enforcement or failure to enforce the terms of this Declaration, or for other acts or omissions made pursuant to this Declaration in good faith.

26.3 Indemnification by Owners. Each Owner of a Lot shall indemnify and hold harmless the Declarant and the Developer against all liability relating to any matter in which they are not to be held liable as provided herein, and from and against any and all loss, cost or damage that may arise or be asserted against Declarant and/or Developer arising out of, or relating to, the activities of said Owner, Owner's agents, employees, contractors, sub-contractors, suppliers, licensees, or guests, anywhere upon or about the Subdivision, including reasonable attorney's fees incurred in connection with the defense of any such claim.

26.4 Severability. Invalidation of any one of the provisions of this Declaration by judgment or court order in no way shall affect any of the other provisions hereof, which shall remain in full force and effect.

26.5 Notices. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address. All Notices, except Notices of Default, given pursuant to this Declaration or in connection therewith, shall be in writing and shall be delivered either in person or by ordinary mail. Delivery of Notices to the Owner shall be made to such address as is furnished by the Owner or absent the Owner furnishing its address, to the address listed on the county assessors tax records for the particular Lot shall be sufficient. Unless and until a different address is furnished by the Developer to the sender of any notice, notices to Developer shall be sent to the registered agent of the Developer, as reflected on the records of the Secretary of State of Illinois. Notices to the Association shall be sent to the Developer prior to the Turnover Date and, afterwards, sent to the registered agent of the Association as reflected on the records of the Secretary of State of Illinois. Notices of Default under the terms of this Declaration shall be delivered in person or by certified or registered mail, with request of return receipt. Notices shall be deemed delivered on the date personal delivery is made or on the date of mailing.

26.6 Rule Against Perpetuities. Should any provision of this instrument be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, (c) or any other statutory or common law rules imposing time limits, then such provisions shall be deemed to be operative only until 21 years after the death of the last survivor of the now living lawful descendants of George Ryan, Governor of the State of Illinois.

26.7 Trustee's Exculpation. This Declaration is executed by PALOS BANK & TRUST as Trustee aforesaid, in the exercise of power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed by every Person, firm, or corporation hereafter claiming any interest under this Declaration that said Trustee as aforesaid, and not personally, has joined in the execution of this Declaration for the sole purpose of subjecting the title holding interest and the trust estate under said Trust No. 1-5082 to the terms of this Declaration; that any and all obligations, duties, covenants and agreements of every nature herein set forth by said Trustee as aforesaid, to be kept or performed, are intended to be kept, performed and discharged by the beneficiaries under said Trust or their successor, and not by said Trustee personally.

Dated: June \_\_, 2001

IN WITNESS WHEREOF, the said PALOS BANK & TRUST, as Trustee under Trust Agreement dated April 4, 2001 and known as Trust No. 1-5082, as Owner and not individually, has caused its corporate seal to be affixed hereunto and caused its name to be signed in these presents by its Trust Officers and attested by its Assistant Trust Officer, and has caused its corporate seal to be affixed hereunto and caused its name to be signed in these presents by its \_\_\_\_\_ and attested by its \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

OWNER:

**PALOS BANK & TRUST, not personally, but as trustee under trust agreement dated April 4, 2001 and known as Trust No. 1-5082**

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

Title: \_\_\_\_\_

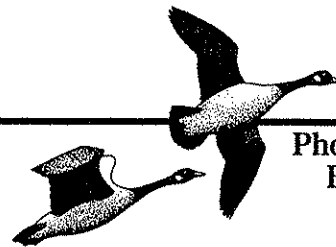
ATTEST:

\_\_\_\_\_  
Assistant Trust Officer

# GANDER Development L.L.C.

P.O. BOX 437  
Frankfort, Illinois 60423

Phone: 815.464.9580  
Fax: 815.464.9581



## BY-LAWS OF FLAGSTONE HOMEOWNERS' COMMON AREA MAINTENANCE ASSOCIATION

### ARTICLE I NAME OF CORPORATION

The name of this corporation is the FLAGSTONE HOMEOWNERS' COMMON AREA MAINTENANCE ASSOCIATION.

### ARTICLE II PURPOSE AND POWERS

2.01 Purposes. The purposes of this Association are to perform all the obligations of the Association as set forth in the Declaration, including without limitation, owning, maintaining and administering the Common Area and the facilities and improvements thereon and those portions of the Subdivision Lots or Outlots as designated therein; to promote the health, safety and welfare, and the common use and enjoyment thereof by its Members; and to exercise all the rights and powers granted the Association in the Declaration, all on a not-for-profit basis, subject to and in accordance with the terms and provisions of the Declaration.

2.02 Powers. The Association shall have and exercise all powers as are now or may hereafter be granted by the Illinois General Not-For-Profit Corporation Act of 1986 (the "Act"), the Declaration and these By-Laws.

2.03 Homeowners Declaration. All terms used herein shall have the meanings set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for the FLAGSTONE SUBDIVISION ("Declaration"), as recorded against the subdivision as part of Document No. R20011079871.

2.04 Personal Application. All present or future Owners and Occupants and their invitees, licensees, agents and employees, and any other Person that might use the Subdivision, in any manner, shall be subject to the provisions of the Declaration and these By-Laws. The mere acquisition of a Lot will signify that the Declaration and these By-Laws are accepted, ratified and will be complied with.



**ARTICLE III**  
**OFFICES**

3.01 Registered Office. The Association shall have and continuously maintain in this state a registered office and a registered agent whose office is identical with such registered office, and may have other offices within the State of Illinois as the Board may from time to time determine.

3.02 Principal Office. The Association's principal office shall be maintained in the Subdivision or at the office of a managing agent engaged by the Association or at such other place as the Board may determine.

**ARTICLE IV**  
**MEMBERS**

4.01 Membership. There shall be one class of membership in the Association, which shall consist of Lot Owners. Members shall not be Voting Members entitled to vote until the first meeting of Members following the Turnover Date. Thereafter, Members shall have one vote for each Lot they own. When more than one Person owns any Lot, all such persons shall constitute one member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

4.02 Voting. There shall be one voting Member per Lot. Such Voting Member shall be the Owner or one of the group composed of all the Owners of a Lot, or may be some person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board. Voting by the Member shall be on a one vote per Lot basis. The Developer shall exercise the voting rights with respect to any Lot owned by the Declarant or the Developer.

4.03 Initial meeting/annual meeting. The initial meeting of the members of the Association shall be held upon not less than thirty (30) days after the Turnover Date, as defined in the Declaration. Thereafter, there shall be an annual meeting of the Members on the first Monday of December following such initial meeting, and on the first Monday of December of each succeeding year thereafter, at 7:30 p.m., or at such other reasonable time or date as may be designated by written notice from the Board delivered to the Voting Members.

4.04 Regular Meetings. Meetings of the Members shall be held at the in the Subdivision or at such other place, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of Voting Members of the Association having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Members at which a quorum is present upon the affirmative vote of Voting Members having a majority of the total votes present at such meeting in person or by proxy. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.05 Special Meetings. Special meetings of the Members may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of the Voting Members or for any other reasonable purpose. Said meeting shall be called by written notice, and authorized by either the President, a majority of the members of the Board, or by at least 50% of the Voting Members of the Association. Quorum and voting requirements shall be the same as for Regular Meetings, unless otherwise provided herein.

4.06 Notices. Written notice of all annual and special meetings of the Members shall be delivered not less than three (3) days prior to the date of any such meeting. All notices shall include the time, place and purpose of such meeting. However any Member may waive notice by signing written consent to the convening of a meeting of the Members without the notice required hereunder.

## **ARTICLE V**

### **BOARD OF DIRECTORS**

5.01 Board. The Board of Directors is referred to in the Declaration and in these By-laws as the "Board". The direction and administration of the Association shall be vested in the Board. Prior to the Turnover Date and after the organization of the Association under the Act, the Board shall be comprised of three (3) persons who shall be appointed by the Developer, who shall serve such terms as are determined by the Developer until the Turnover Date. After the Turnover Date, the Board shall consist of three (3) persons who shall be elected by the Members; provided, anything to the contrary notwithstanding, at anytime that the Developer or Declarant is an Owner after the Turnover Date, the Developer shall have the right to appoint one of the three (3) members of the Board. After the Turnover Date, each elected member of the Board shall be one of the Owners; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then a designee of any officer or director of such corporation, partner of such partnership, beneficiary of such trust, or manager of such other legal entity, shall be eligible to serve as a member of the Board. Members of the Board shall receive no compensation for their services, but shall be entitled to reimbursement for receipted costs expended or advanced on behalf of the Association.

5.02 Election/Term of Office. At the initial meeting after the Turnover Date, the members of the Association shall elect a First Board. Members of the First Board elected at the initial meeting of Members shall serve until the next annual meeting of the Members, and at each successive annual meeting thereafter, a new Board shall be elected. Any member of the Board may be elected to succeed himself or herself. In all elections for members of the Board, each Voting Member shall be entitled to vote on a cumulative voting basis, and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. The Voting Members of the Association having at least two-thirds (2/3) of the total votes in the Association may from time to time increase the number of persons serving on the Board. In addition, any member of the Board may be removed from office by affirmative vote of not less than two-thirds (2/3) of the Voting Members. Vacancies on the Board, including vacancies due to any increases in the number of persons on the Board or removal of a Board member, shall be filled by election by the Voting Members present at the next annual meeting or a special meeting of the Voting Members called for such purpose.

5.03 Officers. The Board shall annually elect from among its members a **PRESIDENT** who shall preside over both its meetings and those of the Members and who shall be the chief executive officer of the Association and who shall execute all amendments to the Declaration, and these By-laws as provided in such instruments; a **SECRETARY** who shall keep the minutes of all meetings of the Board and of the Members and who shall, in general, perform all the duties incident to the office of Secretary including the mailing and receiving of all notices permitted or required under the Declaration and these By-laws, which are executed by the President as provided above; and a **TREASURER** who shall keep the financial records and books of account; and such additional officers as the Board shall see fit to elect. Any vacancy in any office may be filled by the Board at any regular or special meeting of the Board. Any officer elected may be removed from office by affirmative vote of not less than two-thirds (2/3) of the Board. Thereafter, a successor may be elected by the Board at the same meeting or any subsequent meeting of the Board called for that purpose. The officers shall serve without compensation, but shall be entitled to reimbursement for costs expended or advanced on behalf of the Association.

5.04 Meetings. After the initial meeting of the First Board, regular meetings of the Board shall be held not less than semi-annually, one of which shall be within ten (10) days following the annual meeting of the members of the Association. Special meetings of the Board shall be held upon a call either by (i) the President or (ii) a majority of the members of the Board. Notice of each regular and special meeting of the Board, setting forth the date, time, place and purpose of the meeting, shall be mailed or delivered to each member of the Board at least forty-eight (48) hours prior to such meeting, unless a waiver of written notice is signed by the person or persons entitled to such notice before the meeting is convened. In addition, each Voting Member of the Association shall be given notice, in the same manner as that provided in Paragraph 4.06 hereof for the semi-annual meetings of the Board, of any meeting of the Board concerning the adoption of the Annual Budget (as hereinafter defined) or any increase or establishment of assessments for Common Expenses. After the Turnover Date, and not before, all meetings of the Board shall be open to any



Member except the Board may, at its discretion, close meetings to the extent they involve discussion of threatened or pending litigation involving an Owner and the Board deems that the opening of such meeting would not be in the best interests of the Association. A majority of the total number of members of the Board shall constitute a quorum at any meeting of the Board. Except as otherwise provided in the Declaration or these By-laws, the Board shall act by majority vote of those present at a meeting at which quorum exists.

5.05 **Removal.** After the Turnover Date, any Board member may be removed from office by affirmative vote of the Voting Members having at least two-thirds (2/3) of the total votes in the Association, at any special meeting called for that purpose. A successor to fill the unexpired term of a Board member so removed may be elected by the members of the Association at the same meeting or any subsequent meeting of the members of the Association called for that purpose.

5.06 **Signatures.** All agreements, contracts, authorizations for payment of expenditures, deeds, easements, grants and other instruments shall be approved and signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be approved and signed by the President and attested or countersigned by the Secretary of the Association.

5.07 **Powers and Duties.** The Board shall have the following powers and duties in addition to those provided in the Declaration or elsewhere in these By-laws:

- a) to formulate policies for the administration, management, and operation of the Common Areas;
- b) to adopt administrative Rules and Regulations, with written notice thereof to all Owners, governing the administration, management, maintenance, operation, use, conservation and beautification of the Common Areas and for the health, comfort, safety and general welfare of the Owners, and to amend such Rules and Regulations from time to time, with written notice thereof to all Owners;
- c) to provide for any construction, alteration, installation, maintenance, repair, painting and replacement for or upon the Common Areas for which the Board is permitted or responsible to address under the Declaration and By-laws and, for such purposes, authorize entry into the Common Areas;
- d) to provide for the designation, hiring and removal of employees and other personnel, including attorneys and accountants, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, and operation of the Common Areas and to delegate any such powers to a Management Agent (and any such employees or other personnel as may be employees of any Management Agent);

- e) to estimate the amount of the Annual Budget and to provide the manner of levying assessments and collecting from the Owners their respective shares of such estimated expenses;
- f) to pay out of the funds of the Association the following:
  - (i) Water, waste removal, snow removal, electricity and telephone and other necessary utility services for the Common Areas;
  - (ii) The services of a Management Agent or any other person or firm employed by the Board;
  - (iii) Payment for the operation, maintenance, repair and replacement of the Common Area that the Declaration requires or permits the Association to maintain or repair.
- g) to the extent not inconsistent with the Declaration or these By-laws to comply with the instructions of a Majority of the Voting Members, as expressed in any resolution duly adopted at any annual or special meeting of the members of the Association; and
- h) to exercise all other powers and duties of the Board as referred to in the Declaration or these By-laws or as conferred by Act.

5.08 Architectural Review Committee (ARC). The Developer of the Subdivision may retain the right to appoint the Members of the ARC after the turnover date in accordance with Paragraph 23 of the Declaration.

## **ARTICLE VI ASSESSMENTS**

6.01 Initial Budget. When the First Board elected hereunder takes office, it shall prepare a budget for the period commencing thirty (30) days after said election and ending on December 31 of the year in which said election occurs. Monthly assessment shall be levied against all Lots subject to assessment during said period as provided in this Article.

6.02 Annual Budget. Thirty (30) days preceding the Association's first fiscal year following the initial meeting, the Board shall prepare an annual budget ("Annual Budget") for the Association for the ensuing fiscal year which shall include estimated Common Expenses and reasonable amounts as a reserve for repairs to and replacement of the improvements on the Common Area for which the Association is responsible, and for such other contingencies as the Board may deem proper, and shall, on or before 15 days preceding the start of the fiscal year, notify each Owner in writing of the amount of such estimate, with reasonable itemization thereof. The

budget shall also take into account the estimated net available cash income for the year, if any, that may be received by the Association. On or before the fifteenth (15<sup>th</sup>) day of the ensuing fiscal year, each Lot Owner, jointly and severally, shall be personally liable for and obligated to pay the Board or as it may direct, the assessment made pursuant to this Section for that Owner's Lot. Starting with the first fiscal year following the initial meeting, the Board shall supply to all Owners an itemized accounting of actual expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimate provided, and showing the net amount over or short of the actual expenditures plus reserves.

6.03 Shortfalls. If said annual assessments prove inadequate for any reason, including non-payment of any Owner's assessment, the Board may, subject to the limitations on the use of capital reserves, charge the deficiency against existing reserves, or may levy a special assessment which shall be assessed uniformly against all Lots subject to assessment. The Board shall serve notice of such special assessment on all Owners by a statement in writing showing the amount due and reasons therefor, and such special assessment shall become effective on the first of the next month following fifteen (15) days after delivery or mailing of such notice of special assessment. All Owners shall be personally liable for and obligated to pay their respective adjusted monthly assessment.

6.04 Capital Reserves. To the extent the Annual Budget includes an amount specifically designated as a capital reserve, each Owner shall, as to each installment of the annual assessment paid by him, be deemed to have made a non-refundable capital contribution to the Association. After the turnover date, such capital contribution paid to the Association shall be segregated and maintained by it in a special capital reserve account to be used solely for making major repairs and replacements to the Common Areas and the improvements thereon which the Association is obligated or permitted to repair and replace in accordance with the provisions of the Declaration and the By-laws, and for the purchase of equipment to be used by the Association in connection with its duties hereunder.

6.05 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of constructing or purchasing a specified capital improvement upon or to the Common Area, and for the necessary fixtures and personal property related thereto, provided that, unless otherwise provided in the By-laws, any such assessments which in one year exceed \$5,000.00 (in the aggregate for all Owners) shall first be approved by a majority of the Board and thereafter by a majority of the votes cast by Voting Members at a regular or special meeting of Voting Members duly called for that purpose or, in lieu of such member's meeting, by an instrument signed by a majority of the Voting Members. Special assessments levied hereunder shall be due and payable at such time or times and in such manner as shall be fixed by the Board, or, where applicable, as approved by the Members and shall be used only for the specific purpose for which such assessment was levied.

6.06 Notice and Quorum. Notice, quorum and voting requirements shall be as provided in Article IV of these By-laws.

6.07 No Waiver. The failure or delay of the Board to prepare or serve the Annual Budget or adjusted estimate on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the assessments and reserves. In the absence of any Annual Budget or adjusted estimate, the Owner shall continue to pay his annual assessment at the then existing rate established for the previous period until the new annual or adjusted estimate shall have been mailed or delivered.

6.08 No Exception of Liability. Except as otherwise provided herein, no Owner shall be excepted from liability for assessments provided for herein by any act or omission including, without limitation, non-use of the services provided by the Association, the Common Property or abandonment of his Lot.

6.09 Books and Records. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Common Area, specifying and itemizing the Common Expenses incurred. Such records and vouchers authorizing the payment shall be available for the reasonable inspection by any member of the Association, any representative of a member of the Association, or any Mortgagee. Upon ten (10) days notice to the Management Agent or the Board, any member of the Association shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such member.

6.10 Lien of Assessments: Enforcement. Unpaid assessments shall be a lien on the Lot to which they relate, as provided in the Declaration, and the Board shall have such other remedies to enforce the payment of unpaid assessments as are provided in the Declaration, as amended from time to time.

## **ARTICLE VII**

**This Article intentionally omitted**

## **ARTICLE VIII** **AMENDMENTS**

8.01 Prior to the Turnover Date, these Bylaws may be amended from time to time by action or approval solely by a majority vote of the members of the Board. After the Turnover Date, these By-Laws may be amended or modified from time to time by action or approval of at least



two-thirds 2/3) of the Voting Members present at a meeting of members duly called for that purpose.

## **ARTICLE IX INDEMNIFICATION**

### 9.01 General.

A. The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that he is or was a Board Member, an officer of the Association or a member of any committee appointed pursuant to these By-Laws, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or imposed on him in connection with such action, suit or proceeding provided said person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

B. The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Board Member, an officer of the Association or a member of any committee appointed pursuant to these By-Laws, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit provided said person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence, willful misconduct or fraud in the performance of his duty to the Association.

9.02 Success on Merits. To the extent that a Board Member, an officer of the Association or a member of any committee appointed pursuant to these By-Laws has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

9.03 Determination of Right to Indemnify. Any indemnification under this Article shall be made by the Association only as authorized in the specific case upon a determination that

indemnification of the Board Member or the officer or the member of such committee is proper in the circumstances because he has met the applicable standard of conduct set forth in this Article. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of those Directors who were not parties to such action, suit or proceeding, or (ii) if such quorum is not obtainable, or even if obtainable, if a quorum of disinterested Directors so direct, by independent legal counsel in a written opinion, or (iii) by a majority of the Owners.

9.04 Advance Payment. Expenses incurred in defending an action suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the Board Member, the officer or the member of such committee to be indemnified to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

9.05 Non-Exclusivity. The indemnification provided in this Article shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested Board Members or otherwise, both as to action in its official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Board Member, officer or member of such committee, and shall inure to the benefit of the heirs and legal representatives of any such persons.

9.06 Assessment. Cost of Indemnification shall be deemed a Common Expense. The Association may also obtain insurance to cover the acts or omissions of the Board or the officers, and the premium for such insurance shall also be a Common Expense.

## **ARTICLE X** **CONFLICT BETWEEN DECLARATION AND BY-LAWS**

10.01 In the event of any conflict between provisions of these By-Laws and a provision of the Declaration, the provision of the Declaration shall control. Any provision required by the Act to be contained in the Articles of Incorporation or Bylaws of the Association and which is instead actually contained in the Declaration shall be deemed incorporated in these Bylaws for purposes of the Act.

## **ARTICLE XI** **CORPORATE SEAL**

11.01 The Association may have a seal in circular form having within its circumference the words: Corporate Seal/Illinois.

**ARTICLE XII**  
**FISCAL YEAR**

12.01 Unless the Board adopts a resolution to the contrary, the fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

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