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STATE OF ILLINOIS  
ST. CLAIR COUNTY

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*Michael T. Costello*

RECORDER



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**FIRST AMENDED AND RESTATED  
SAVANNAH HILLS  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

THIS FIRST AMENDED AND RESTATED SAVANNAH HILLS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "First Amended Declaration") is made this \_\_\_\_\_ of \_\_\_\_\_ 2004, by H & L Builders, LLC, an Illinois limited liability company (hereinafter referred to as "Declarant").

**PREAMBLES:**

A. Declarant originally recorded the Savannah Hills Declaration of Covenants, Conditions, Restrictions and Easements in the St. Clair County, Illinois Recorder of Deeds Office on November 12, 2004, in Book 4106 on Page 1815 as Document No. A01877123 ("Declaration").

B. Declarant is recording this First Amended Declaration to correct certain legal descriptions and the Consent of Mortgagee.

C. Declarant is the fee simple owner of real estate in the County of St. Clair, State of Illinois, legally described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

D. Developer (hereinafter defined in Article I) desires to develop a single family residential development on the Property to be known as "Savannah Hills" (the "Development"); and

E. Declarant and Developer are desirous of submitting the Property to the provisions of this First Amended Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property is, and shall be held, transferred, sold, conveyed and occupied, subject to the covenants, conditions, restrictions and easements hereinafter set forth.

**ARTICLE I**  
**Definitions**

When used in this First Amended Declaration, the following words and terms shall have the following meanings:

1.1. "Association" shall mean and refer to Savannah Hills Homeowner's Association, Inc., (or similar entity by name) an Illinois not-for-profit corporation, its successors and assigns.

1.2. "Board" shall mean and refer to the Board of Directors of the Association.

1.3. "By-Laws" shall mean those by-laws duly enacted by the Association which govern the Association in the form attached hereto as Exhibit "B," and made a part hereof.

1.4. "Common Area" shall mean all real property owned, to be owned and maintained by the Association for the common use and enjoyment of the Owners. The Common Area shall be: (i) the decorative islands located in the cul-de-sacs and at the main entrance as shown on the Subdivision Plat, which shall be conveyed to the Association at any time after the recording of this First Amended Declaration but no later than the Turnover Date; (ii) any and all entrance monuments or signs depicting the name of the Subdivision at entry access points.

1.5. Intentionally omitted.

1.6. "Contingency and Replacement Reserve" shall have the meaning set forth in Section 6.4.

1.7. "Declarant" shall mean and refer to H & L Builders, LLC, an Illinois limited liability company, and its successors and assigns. Any such successor or assignee shall be deemed a Declarant and entitled to exercise all or any rights of Declarant provided herein if designated as such by Declarant in any instrument recorded for such purposes as provided in Section 8.12.

1.8. "Developer" shall mean and refer to H & L Builders, LLC, an Illinois limited liability company, and its successors and assigns. Any such successor or assignee shall be

deemed a Developer so long as H & L Builders, LLC, an Illinois limited liability company, specifically assigns its interest as a Developer to the successor or assignee in writing.

1.9. "Dwelling" shall mean any building located on a Lot and intended for the shelter and housing of a Single Family. Dwelling shall include any Improvement attached or adjacent to the Dwelling utilized for storage of personal property, tools and equipment.

1.10. "Estimated Cash Requirement" shall have the meaning set forth in Section 6.3.

1.11. "Improvement" or "Improvements" shall mean and include Dwellings, any and all buildings, outbuildings, driveways, pedestrian walkways, decks, patios, hedges, lawn, retaining walls, sidewalks, planted trees, shrubs and all other structures or landscaping improvements of every kind and description.

1.12. "Lot" shall mean those lots to be established pursuant to the Subdivision Plat or by an instrument in writing executed, acknowledged and recorded by Declarant or Developer, which designates a part of the Property as a Lot for the purposes of the First Amended Declaration, or on which a residential structure could be constructed, whether or not one has been constructed.

1.13. "Lake" shall mean the Lakes which are located in the Development.

1.14. "Lot Deed" shall mean the deed of Developer conveying a Lot to an Owner.

1.15. "Member" shall mean and refer to every Person who holds membership in the Association and "Members" shall mean and refer to all Persons who hold membership in the Association.

1.16. "Mortgage" shall mean either a mortgage or deed of trust creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

1.17. "County" shall mean the County of St. Clair or other municipality, if annexed.

1.18. "Owner" shall mean and refer to the record owner, whether one or more Persons, of the simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.19. "Person" or "Persons" shall mean all natural individuals, corporations, partnerships, limited liability companies, trustees or other legal entities capable of holding title to real property.

1.20. "Plans and Specifications" shall have the meaning set forth in Section 4.7.

1.21. "Annexation Agreement" shall mean the Pre-Annexation Agreement by and between O'Fallon Development Group, LLC, an Illinois limited liability company and City of O'Fallon dated August 3, 2003 and recorded August 22, 2003 in Book 3904 on Page 989 as Document No. A01784594.

1.22. "Property" shall mean and refer to the real estate legally described on Exhibit "A" attached hereto and made a part hereof.

1.23. "Sidewalks" shall mean and refer to sidewalk construction in compliance with Article IV. The Sidewalks shall be constructed at the time of the construction of the Improvements. If any Sidewalk is not completed on or before the completion of the Improvement, any Owner who has failed to comply with this may be fined ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00), and shall be fined ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00) every six (6) months thereafter until the Sidewalk is completed. In addition to the above, the Developer may but is not obligated to, install a Sidewalk on the Owner's behalf for which the Owner hereby grants the Developer an easement to accomplish the same. In the event the Developer chooses to construct the Sidewalk on behalf of the Owner, the owner shall pay to the Developer the amount of TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00), irrespective of whether this amount is reasonable or not.

1.24. "Single Family" shall mean one or more persons, each related to the other by blood, adoption, or a group of not more than three persons not all so related, maintaining a common household in a Dwelling.

1.25. "Special Amendment" shall have the meaning set forth in Section 8.7.

1.26. "Subdivision Plat" or "Subdivision" shall mean the plat of subdivision for "Savannah Hills" which contains 412 Lots as preliminarily reflected on the preliminary subdivision plat prepared by Netemeyer Engineering and executed by the Declarant and Developer.

1.27. "Turnover Date" shall have the meaning set forth in Section 5.3.

1.28. "Park Common Area" shall have the meaning as set forth in Section 5.9.

**ARTICLE II**  
**Declaration Purposes and Property**  
**Subjected to Declaration**

2.1. The Declarant and the Developer desire to create on the Property a private Single Family development for future owners of Lots for the following general purposes:

(a) The Declarant desires to provide upon the Property the harmonious development of a private Single Family community by the imposition of the covenants,

conditions, restrictions and easements as hereinafter set forth, for the benefit of the Property and the Owners.

(b) By the imposition of covenants, conditions, and restrictions set forth herein and the reservation of certain powers as herein contained, Declarant and Developer intend to provide a plan for development of the Property in a manner which is similar to other high quality developments which are intended to enhance and protect the values of Declarant's development and Developer's Single Family Residential community.

(c) The Declarant and the Developer desire to (i) prevent improper use of Lots which may depreciate the value of the Owner's property; (ii) prevent the construction of buildings containing improper or unsuitable materials; (iii) ensure adequate and reasonable development of the Property; (iv) encourage the construction of attractive improvements on the Property; (v) prevent haphazard and inharmonious development; and (vi) in general, provide for the highest quality environment for the Development.

2.2. To further the general purposes herein expressed, the Declarant and the Developer, for itself, its successors and assigns, hereby declares that the Property at all times is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions and easements set forth in this First Amended Declaration.

### ***ARTICLE III General Restrictions***

3.1. All Lots shall be used only for Single-Family Dwellings and no condominiums, townhouses, duplexes, multiplexes, apartments, or other multi-family structures may be constructed in the Development. Each Owner shall (i) maintain his Lot and all Improvements located thereon in a clean, sightly and safe condition, (ii) cause the prompt removal of all papers, debris and refuse therefrom and the removal of snow and ice from all sidewalks, driveways and similar areas serving said Lot and (iii) comply with all applicable governmental codes, laws, ordinances, orders, decrees, rules and regulations.

3.2. All Improvements shall be constructed in accordance with the Plans and Specifications approved in accordance with the terms and conditions in Article IV and in accordance with all applicable governmental building and zoning codes, laws, ordinances, orders, decrees, rules and regulations. If, and to the extent any conflict exists between the terms and conditions of this First Amended Declaration and the provisions of any such codes, laws ordinances, orders, decrees, rules and regulations, then such conflict shall be resolved by the application of the more stringent provisions providing the higher or better quality result.

3.3. No noxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done thereon which may constitute or become an annoyance or nuisance to the Owners. No plants or seeds or other conditions, harboring or breeding infectious plant diseases or noxious insects shall be introduced or suffered to exist upon any part of a Lot.

3.4. Except as expressly provided herein, no temporary building, trailer, mobile home, recreational vehicle, tent, fence, shack or other similar Improvement shall be located upon the Lots. H & L Builders, LLC, an Illinois limited liability company and/or its assigns (which assigns, if any, shall be made in a document duly recorded at the St. Clair County, Illinois Recorder of Deeds Office) shall be the only one permitted to have a display or model home. Display or model home is defined as an open home and/or a sales office for view, with or without furnishings.

3.5. No Person shall accumulate on his Lot any derelict vehicles, litter, refuse or other unsightly materials. Garbage shall be placed in receptacles and all garbage receptacles shall be kept in the garage, except on trash pick-up days. All unimproved Lots shall not be planted with anything other than grass or other vegetation as permitted by the rules and regulations adopted by the Association. All unimproved Lots shall be mowed regularly.

3.6. Trucks, boats, recreational vehicles, trailers or other vehicles (other than automobiles) shall at all times be parked in the garage of the Dwelling and their repair or maintenance shall not be permitted except within the confines of the garage. All motorized vehicles shall be used in such a manner as to avoid loud or disturbing noises emitting therefrom. Parking of motorized vehicles on the street on a regular basis is prohibited.

3.7. No animals (other than inoffensive common domestic household pets such as dogs and cats) shall be kept on any Lot or within the confines of any Improvement thereon. The breeding or keeping of dogs and cats for sale or profit is expressly prohibited. Hunting and/or trapping of wild birds is not permitted.

3.8. The operation of "ham" or other amateur radio stations or the erection of any communication antennae or similar devices shall not be allowed except or approved in writing in advance by the Developer prior to the Turnover Date and by the Board thereafter. Except as provided by Telecommunications Act of 1996, as amended from time to time, or other similar federal law, no communications dishes or satellites, exterior televisions and/or radio antennas shall be permitted on any Lot, unless approved by the Developer prior to the Turnover Date and by the Board thereafter. All such communication dishes or satellite dishes, so approved, shall be located out of site from the curb and the visual parameters of any public street.

3.9. Each Owner shall keep all area of the Lot designed or intended for the proper drainage or detention of water, including swale lines and ditches, unobstructed and mowed regularly. No trees, plantings, shrubbery, fencing, patios, structures, landscaping treatment or other obstructions shall be planted, placed or allowed to remain in any such areas, and no Owner shall alter the rate or direction of flow of water from any Lot by impounding water, changing grade, blocking or redirecting swales, ditches or drainage areas or otherwise. Each Owner acknowledges, by acceptance of a deed to a Lot, that any and all such drainage or detention areas are for the benefit of the entire Property.

3.10. Motorized vehicles not requiring registration with the State of Illinois (excluding construction, landscaping and maintenance equipment) shall be prohibited from using the roads of the Subdivision.

3.11. No oil drilling, oil development, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or any other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted in any Lot.

3.12. No structure of a temporary character, mobile home, trailers, basements, tents, shacks, barns, sheds, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently. All exterior construction and landscaping must be completed within fifteen (15) months of commencement.

3.13. Except as allowed in Section 3.17 herein, no fences are allowed. No fences, however, shall be allowed within the setback area from any lot line for any Lot.

3.14. No sign of any kind shall be displayed to the public eye on any Lot, except:

(a) One sign, professionally printed, of not more than two (2) feet on a side, the purpose of which shall be to advertise a Lot for sale or rent.

(b) Signs used by a builder or Developer to advertise the Lot or Subdivision during the construction and sale period.

(c) Any size or type of sign the Developer, agents of the Developer, Owner (and Owner's agent), with the Developer's permission, may choose to erect, for the purpose of advertising the sale of the Lot and/or structures in the Subdivision.

3.15. All Lots in the Subdivision shall be used exclusively for Single Family residential purposes. No private business, business office, or advertisements for businesses shall be allowed. One and only one building shall be used for each Lot except for bath house facilities for a swimming pool or gazebo which must be approved by the Architectural Control Committee prior to the Turnover Date and by the Board thereafter. Construction of model homes is permitted by H & L Builders, LLC, an Illinois limited liability company only. No log homes shall be permitted. No underground homes shall be permitted. No condominiums, townhouses, duplexes, multiplexes, apartments or other multi-family structures shall be permitted in the Development.

3.16. No Lot in the Subdivision may be further divided, unless approved by the Declarant and the Developer. Notwithstanding the previous sentence, in the event the Developer desires to further divide any Lot from those shown on the Subdivision Plat then the Developer must obtain the approval of the Declarant, whose approval shall not be reasonably withheld, delayed or conditioned.

3.17. All swimming pools shall be in ground and of permanent construction, if approved by the Architectural Control Committee. Under no condition shall an above-ground pool be permitted. Any fence associated with an approved in ground swimming pool must be approved by the Architectural Control Committee and shall be constructed of wrought iron or a facsimile material thereof. Any fence associated in a yard only, must be approved by the Architectural Control Committee and shall be constructed of cedar wood. Homes in which the back faces Old Collinsville Road, Millburn School Road or Savannah Hills Boulevard must have white vinyl fences across the back-yard that will be seen from the road.

3.18. No mobile home (house trailer) may be located at any time upon any Lot.

3.19. No gas, oil, or fuel tank shall be permitted on any Lot.

3.20. No outside clotheslines shall be permitted.

3.21. Developer may, at its sole discretion, from time to time, elect to bring within the scheme of this First Amended Declaration certain portions of additional property. Developer is not obligated in any manner by this First Amended Declaration to annex said additional property to the Property or to annex any particular tract, or to annex tracts in any particular sequence, or to annex contiguous tracts, it being the intention hereof that Developer may decline to exercise the rights granted in this Section or may elect to exercise such rights only to a limited extent. The anticipated legal description of the property Developer intends to annex is attached hereto and incorporated herein as **Exhibit "C"** ("Annexed Property"). The additions authorized by the following and succeeding provisions of this Section shall be made by recording in the Office of the Recorder of Deeds for St. Clair County, Illinois, a Supplementary Declaration with respect to any such additional property, or portion thereof, which shall extend the scheme of this First Amended Declaration to the Annexed Property, or any portion thereof as designated. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this First Amended Declaration as are not unreasonably inconsistent with the scheme of this First Amended Declaration. At such time as the Developer causes the recording of such Supplementary Declaration or Declarations, then in such event: (a) Developer shall have and enjoy in such Annexed Property all easements and exercise all rights, privileges and immunities reserved to it in this First Amended Declaration in the same manner and with the same force and effect as though the term Property as used in this First Amended Declaration included such Annexed Property; and (b) in all other respects, all the provisions of this First Amended Declaration shall include and apply to such Annexed Property in the same manner and with the same force and effect as though such Annexed Property had been subject to the provisions of this First Amended Declaration.

#### *ARTICLE IV* *Architectural Controls*

4.1. No Improvement, whether original or replacement, temporary or permanent, shall be constructed, placed or permitted on any Lot without the prior written approval of the Architectural Control Committee (comprised as set forth hereinafter) obtained in the manner hereinafter set forth.

4.2. In order to secure the Architectural Control Committee approval of any proposed Improvement or Improvements, the Owner shall submit to the Architectural Control Committee two (2) complete sets of the following:

(a) The Lot site plan, as prepared by the Owner's architect, showing, among other things, the location and dimension of all intended Improvements;

(b) Drawings, plans and specifications, as prepared by the Owner's architect, of all exterior surfaces, showing elevations and grade, and including without limitation to the color, quality and type of exterior construction materials, color and texture of all building materials, including roof coverings, walls and mailbox;

(c) All such other information the Architectural Control Committee may reasonably require to determine the location, scale, designs, character, style and exterior appearance of the Owner's intended improvements. Improvements, or any part thereof, shall be erected or placed on any Lot in the Subdivision with the following:

(i) a front set back building line of a minimum of thirty-one point four (31.4) feet (all lots require a front set back building line of 31.4 feet to 34 feet) from the front line on the Subdivision Plat;

(ii) A side set back line of ten (10) feet; and

(iii) A rear set back line of thirty (30) feet.

4.3. Dwelling Size and Design. All dwelling structures must contain the following minimum square footage, not including garages, porches, verandas, basements, breezeways, terraces, outside steps and platforms:

(a) Lots designated 60' Frontage.

(i) One-story dwellings must have a minimum of one thousand, three hundred fifty (1,350) square feet.

(ii) Split level, one and one-half, and two-story dwellings, one thousand five hundred (1,500) square feet of living area.

(iii) Front elevation is not to exceed two (2) stories in height and shall have not more than a three (3) car garage, except when approved by the Architectural Control Committee.

(iv) All homes must have ten percent (10%) of brick or stone on the front. The exterior side of all homes shall be brick, stone, dryvit, and vinyl siding or a combination thereof (the percentage mix shall be determined by the Developer). The extent of its use will be in the sole discretion of the Developer whose intent is to provide architectural harmony throughout the Subdivision.

(b) Lots designated 70' Frontage.

(i) One-story dwellings must have a minimum of one thousand six hundred fifty (1,650) square feet.

(ii) Split level, one and one-half, and two-story dwellings, one thousand eight hundred (1,800) square feet of living area.

(iii) Front elevation is not to exceed two (2) stories in height and shall have not more than a three (3) car garage, except when approved by the Architectural Control Committee.

(iv) All homes must have thirty-five percent (35%) of brick or stone on the front. The exterior side of all homes shall be brick, stone, dryvit, and vinyl siding or a combination thereof (the percentage mix shall be determined by the Developer). The extent of its use will be in the sole discretion of the Developer whose intent is to provide architectural harmony throughout the Subdivision.

(c) Lots designated 80' Frontage

(i) One-story dwellings must have a minimum of one thousand eight hundred fifty (1,850) square feet.

(ii) Split level, one and one-half, and two-story dwellings, two thousand, one hundred (2,100) square feet of living area.

(iii) Front elevation is not to exceed two (2) stories in height and shall have not more than a three (3) car garage, except when approved by the Architectural Control Committee.

(iv) All homes must have fifty percent (50%) of brick or stone on the front. The exterior side of all homes shall be brick, stone, dryvit, and vinyl siding or a combination thereof (the percentage mix shall be determined by the Developer). The extent of its use will be in the sole discretion of the Developer whose intent is to provide architectural harmony throughout the Subdivision.

4.4. All dwelling structures must conform to the following design elements:

(a) All roofs shall have a minimum pitch of 6-12 unless otherwise agreed to by the Architectural Control Committee.

(b) All garages shall be side or front entry, and at a minimum shall be satisfactory in size to accommodate two (2) automobiles.

(c) All roofing/shingles must have an Architectural feature. This applies to asphalt, wood shake and/or clay/concrete roof coverings.

(d) All retaining walls, if required, shall be constructed using the masonry stone or similar material in appearance; no railroad ties or other wood material shall be allowed.

(e) All mailboxes will be identical and will be provided by the Developer. The Owner will incur the expense of the mailbox.

(f) All Lots must have front sidewalks which are four (4) feet wide and four (4) inches deep. The Sidewalks shall be constructed at the time of the construction of the Improvements.

(g) During construction of the Improvements or construction of the Improvements within the Subdivision by the Developer, silt fences shall be installed so that no mud or debris runs off onto the roadway or finished lots.

4.5. If concrete is exposed more than six (6) inches above the ground, same shall be veneered, unless approved by the Architectural Control Committee permitting a more decorative finish.

4.6. All driveways must be constructed of concrete and constructed at the time of initial building construction. The minimum width of a side load garage shall be ten (10) feet to the apron.

4.7. No building, wall or other structure of landscaping shall be commenced, erected or maintained upon the Lots, nor shall any exterior appearance be made until the following are submitted, reviewed and approved by the Architectural Control Committee: the name of the general contractor who will erect the improvements, the plans, specifications, materials and location as to improvements, and the nature, kind, shape, and height of landscaping must be submitted to be approved in writing to the Architectural Control Committee to ensure the harmony of external design and location in relation to surrounding structures and topography.

All of the foregoing 4.1 through 4.7 inclusive (hereinafter collectively referred to as the "Plans and Specifications") shall conform to the applicable provisions of this First Amended Declaration.

4.8. Within forty-five (45) days after the Architectural Control Committee's receipt of the Plans and Specifications, the Architectural Control Committee shall notify Owner in writing

whether such Plans and Specifications are approved or disapproved. Any such disapproval shall set forth the reason or reasons for such disapproval and shall list the changes required by the Architectural Control Committee. If the Architectural Control Committee fails to so approve or disapprove the Plans and Specifications within said forty-five (45) day period, then the Architectural Control Committee's approval shall be conclusively presumed.

4.9. If the Architectural Control Committee shall disapprove all or any portion of the Plans and Specifications submitted as aforesaid, the Owner shall revise the Plans and Specifications to incorporate the changes required by the Architectural Control Committee and shall deliver two (2) complete sets of revised Plans and Specifications to the Architectural Control Committee. The Architectural Control Committee shall have thirty (30) days after its receipt of said revised Plans and Specifications to determine whether the Owner has complied with the Architectural Control Committee's requested changes. If the Architectural Control Committee fails within said thirty (30) day period to advise the Owner in writing whether the Architectural Control Committee approves or disapproves any such revised Plans and Specifications, then the Architectural Control Committee shall be deemed to disapprove all or any portion of said revised Plans and Specifications, Owner shall revise the Plans and Specifications in the manner set forth in this Section 4.9 until such time as the Architectural Control Committee shall approve or be deemed to have approved said Plans and Specifications.

4.10 The Owners shall secure the approval of the Architectural Control Committee with respect to any material change or revision in any Plans and Specifications approved in accordance with the Article IV in the manner provided in this Article for the approval of Plans and Specifications.

4.11 Neither the Architectural Control Committee, nor any of its agents, employees, successors and assigns, shall be liable in damages of any kind to any Owner or to any other person submitting Plans and Specifications to any one or more of them for approval by reason of the withholding of consent or by reason of a mistake in judgment, negligence or nonfeasance arising out of or occurring in connection with the approval or disapproval or failure to approve or disapprove any such Plans and Specifications.

4.12 The provisions of Articles III and IV of this First Amended Declaration shall not apply to any Improvements installed or completed by the Developer or any affiliate or subsidiary of or other entity controlled by or in common control with the Developer so long as the Declarant approves same, which approval shall not be unreasonably withheld, delayed or conditioned. In addition, the Architectural Control Committee in its sole and absolute discretion has the right to approve Improvements, which do not meet the minimum requirements of Section 4.3 and 4.4 so long as the Architectural Control Committee determines that the Improvement is harmonious within the Subdivision.

4.13 If an Owner believes that the disapproval of any Plans and Specifications is arbitrary and capricious, the Owner must, as its sole remedy, submit the matter to final and binding arbitration pursuant to the provisions of the Illinois Uniform Arbitration Act ("Act") and

the rules of the American Arbitration Association to the extent that such rules are not inconsistent with the Act or otherwise applicable law. Any fees incurred by the Architectural Control Committee in connection with such arbitration, shall be borne by the Owner. In determining any question, matter or dispute before such arbitrator, the arbitrator shall apply the provisions of this First Amended Declaration without varying therefrom in any respect and shall not have the power to add to, modify or change any of the provisions of this First Amended Declaration. The parties to the arbitration agree to fully cooperate and to obtain the cooperation of their respective employees, agents and contractors and to use their respective best efforts to supply as witnesses any former employee, agent or contractor and to produce relevant documents which may be requested by the other.

4.14 The administration and enforcement of the terms, conditions and provisions of this Article IV shall be vested in the Architectural Control Committee, which shall consist of two (2) members appointed by the Developer and two (2) members appointed by the Declarant. The Architectural Control Committee shall decide all matters under this Article until the later of the Turnover Date or the date of Approval of the Plans and Specifications for Improvements to be constructed on the last Lot to be developed in the Development at which point, the Homeowner's Association shall take over the duties and be vested with all powers and authority of the Architectural Control Committee under this Article IV. Prior to such date, the Board of the Association shall not have any power or authority with the respect to architectural controls over the Development including, without limitation, those powers described in Article IV hereof.

4.15 The Architectural Control Committee's sole responsibility is to conduct architectural control as stated in this Article and for no other reason.

#### *ARTICLE V* *Homeowner's Association*

5.1. Prior to the Turnover Date, the Developer has formed or will form an Illinois not-for-profit corporation which is or will be known as Savannah Hills Homeowner's Association, Inc. or similar name thereof, that shall provide for maintenance and operation of the Common Area (and the Park Common Area to the extent required by the First Amended Declaration and the Annexation Agreement) and in general to maintain and promote the desired character of the Subdivision.

5.2.

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(a) The Association shall have a Board of not less than five (5) directors who shall be elected by the Members of the Association at such intervals as the articles of incorporation and By-Laws of the Association shall provide, except (i) that vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board if so provided by the articles of incorporation or By-Laws and (ii) that the first Board and subsequent Boards (until the Turnover Date) shall be appointed by the Developer. Except for directors of the Board appointed by the Developer, all directors shall be Members of the Association. The Developer may, from time to time, by written notice to the Association, elect to relinquish its right to appoint any one or more directors and continue to exercise its right to appoint the remaining directors of the Board until the Turnover Date.

(b) The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly provided otherwise by the corporate charter or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this First Amended Declaration and otherwise, shall be vested in the Board from time to time and its officers under the direction of the Board, and shall not be subject to the approval of the Members. The directors and officers of the Association shall not be liable to the Owners or any others for any mistake or judgment or any acts or omissions made in good faith as such directors or officers.

5.3. The Developer shall, through the Board appointed by it in accordance with Section 5.2, exercise control over all Association matters, until the first to occur of the following: (a) the date which is twenty (20) years from the date of this First Amended Declaration, (b) the date of the sale and conveyance of legal title to all of the Lots to Owners other than Declarant or Developer or their respective assignees as provided in Section 8.12 occurs, or (c) the date Declarant and Developer elect voluntarily to turn over to the Members the authority to appoint the Board, which election shall be made by the Developer executing and recording in the Office of the Recorder of Deeds of St. Clair County, Illinois an instrument setting forth its intention to so turn over its authority hereunder. The date upon which the authority to appoint the Board passes to the Members is hereinafter referred to as the "Turnover Date." On or prior to the Turnover Date, the Developer shall convey to the Association, and the Association shall accept, the Common Area (except the Park Common Area [defined hereafter]) to be owned by the Association hereunder and the Association shall maintain the Common Area, as required hereunder, including the Park Common Area as set forth in Section 5.9.

5.4.

(a) Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or any of its successors in interest owns one or more Lots.

(b) From and after the Turnover Date, each Member shall be entitled to one (1) vote for each Lot owned by him on each matter submitted to a vote of Members; provided, however, that where there is more than one Owner of a Lot, such co-owners of a Lot shall only be entitled to one vote.

5.5. The Association, through the Board, shall have the power and duty to:

(a) Own, maintain and otherwise manage the Common Area (ownership and maintenance of the Park Common Area shall be as set forth in Section 5.9) and all improvements thereon and all other property acquired by the Association or which the Association agrees to maintain, including any obligation to maintain any landscaping located in concrete islands, entrances, gates, entrance cul-de-sac, cul-de-sacs and median strips in the streets which are within the Subdivision and to maintain any signage and lighting located thereon;

(b) Employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent by Developer shall give the Association the right to terminate without cause or penalty not later than ninety (90) days after the date the initial meeting of the Members of the Association is held as provided in the By-Laws;

(c) Establish and maintain a Contingency and Replacement Reserve in an amount to be determined by the Board;

(d) Maintain, at the expense of the defaulting Owner, all drainage areas and facilities located on the Property in accordance with the reasonable and acceptable engineering requirements of the City in the event that one or more Owners fail to do so;

(e) Provide for the maintenance of landscaping, signs, monuments, fencing, retaining walls, water systems, entrance gates, lighting and other improvements located in the Subdivision;

(f) At its option, mow, care for, maintain and remove rubbish from any vacant or unimproved portions of the Property or any unimproved Lot (if the Owner fails to do so) and to do any other things necessary or desirable in the judgment of the Board to keep any vacant or unimproved portions of the Property neat in appearance and in good order. The foregoing rights shall not apply to any Lot or other portion of the Property owned by the Declarant;

(g) Make such improvements to the Common Area (with the exception of limitations on the Park Common Area as set forth in Section 5.9) and provide such other facilities and services as may be authorized from time to time by the affirmative vote of two-thirds (2/3) of the Members of the Association acting in accordance with its articles of incorporation and By-Laws, provided, however, that any such action so authorized shall always

be for the express purpose of keeping Savannah Hills a highly desirable residential community;  
and

(h) Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by this First Amended Declaration, the articles of incorporation or the By-Laws.

5.6 The Board shall also have the authority and responsibility to obtain and maintain comprehensive public liability insurance, including liability for injuries to the death of persons, and property damage, in such limits as it shall deem desirable, and workers' compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner, each member, the Association, its officers, the Board, the Declarant, and their respective employees and agents from liability and insuring the officers of the Association and the Board from liability for any good faith actions taken beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties by having a severability of interests' endorsement. The premiums for such insurance shall be common expenses payable out of the proceeds of the assessments required by and collected in accordance with this Article V. The Association shall also have the authority and responsibility to obtain and maintain insurance policies covering the Common Area (and the Park Common Area as set forth in Section 5.9) against loss or damage by fire and such other hazards contained in customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable. The Association shall also have the authority to obtain such other kinds of insurance as the Association shall from time to time deem prudent.

5.7 The Board, officers of the Association and the employees and agents of any of them shall not be liable to the Owners or any other person for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Owners shall indemnify, hold harmless, protect and defend the foregoing parties against all claims, suits, losses, damages, costs, and expenses, including without limitation, reasonable attorney's fees and amounts paid in reasonable settlement or compromise incurred in connection therewith. The burden of the foregoing indemnity shall be borne by the Owners at the time such loss, damage, cost or expense is incurred in the same proportion as assessments are borne by the Owners as provided in Article VI hereof. To the extent possible, the Board's and Association's liability hereunder and the Owner's indemnification obligation shall be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Association.

(a) Until the Turnover Date, the Developer shall have all the rights and powers herein granted to the Association and shall be authorized and empowered to exercise all power and authority of the Board.

(b) Until the Turnover Date, Developer shall have the right, but not the obligation, to maintain the Common Area (subject to the obligations set forth in Section 5.9) and all signs and monuments located thereon and, in its sole discretion, pay all expenses and costs arising in connection with the Common Area including, without limitation, the costs of improving and maintaining the Common Area (and any signs and monuments located thereon). For any general real estate taxes payable after the Turnover Date that are attributable to the period prior to the Turnover Date, Developer shall reimburse the Association on a pro rata basis, for such real property taxes. Developer shall convey the Common Area (the Park Common Area being subject to the limitations and obligations set forth in Section 5.9) to the Association on or before the Turnover Date.

(c) Developer shall be entitled at all times to conduct sales of Lots from the Property and shall have the right, for itself and its agents, employees, guests and invitees, to utilize the Streets, Common Area and all other portions of the Property, excluding sold Lots, for such purposes until all Lots are sold. The Developer only, may at any time utilize signage, lighting and establish sales offices and model homes as required to conduct its sales and marketing of the Property.

5.9 Under the Special Service Area Tax Law (35 ILCS 200/27-5 et seq., as supplemented and amended), the "SSA Law" (which if applicable law requires or under which it otherwise would be desirable includes the Special Assessment/Local Improvement ["SA/LI"] process of Article 9 of the Illinois Municipal Code), the City of O'Fallon (the "City") may undertake proceedings (the "SSA Proceedings," which shall include SA/LI proceedings, as the case may be) to finance the construction of various improvements (as "special services" under the SSA Law, the "Project") by issuing bonds under the SSA Law. The Development contains an area that is intended to be used as a park and/or common area ("Park Common Area") that is shown on the preliminary plat attached to the Annexation Agreement. The Park Common Area may be conveyed to the City pursuant to the City of O'Fallon Resolution No. 2003-54 and the Annexation Agreement. Notwithstanding the foregoing, maintenance and liability for the Park Common Area shall remain with the Association for a period of up to ten (10) years until the City shall affirmatively accept maintenance responsibility as set forth in the Annexation Agreement (in the event of conflict with the Annexation Agreement, the terms of the Annexation Agreement shall control). The City may establish a Special Service Area ("SSA") to implement assessments for the maintenance of the Park Common Area including but not limited to the storm water facilities and recreational areas therein. This Section 5.9 shall be a covenant running with the land as against the Property and Owners, their successors in interest and/or assigns, and the Association shall be subject to these requirements, including but not limited to maintenance of the Park Common Area (as set forth herein). The Owners, their successors in interest and/or

assigns and the Association shall further be obligated to execute any necessary documents authorizing the SSA and assessments if such SSA has not yet been established by the City.

**ARTICLE VI**  
**Assessments**

6.1 Each Owner, by taking title to a Lot, shall be deemed to have covenanted and agreed to pay to the Association annual assessments or charges and special assessments for capital improvements and unforeseen expenses, to be collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided shall be a lien on the Lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation of an Owner shall not pass to his successors in title unless expressly assumed by them.

6.2 The assessments levied by the Association shall be used exclusively for the purpose of promoting health, safety, and welfare of the residents of the Subdivision and in particular for the improvement and maintenance of the Subdivision, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area. Such uses shall include, without limitation, the cost of all general real estate taxes, insurance, repair, replacement and maintenance and other charges required or permitted by this First Amended Declaration and the cost of those items that the Board shall determine to be necessary or desirable to meet the purposes of the Association, including without limitation, the establishment and maintenance of a Contingency and Replacement Reserve. The initial annual assessment shall be two-hundred fifty dollars and 00/100 (\$250.00) per year, shall commence for each Lot on the first day of the month following delivery of a Lot Deed to an Owner (which prorated amount due and owing for the Owner's first year of occupancy may be collected at Closing in Declarant's sole and absolute discretion), and shall be subject to modification as otherwise provided herein.

6.3 Each year on or before November 1, the Board will estimate the total amount of maintenance expenses necessary to pay the cost of wages, materials, taxes, insurance, services, supplies and any other necessary or desirable items which will be required during the ensuing calendar year (January 1-December 31) for services authorized by the Board, together with a reasonable amount necessary to fund the Contingency and Replacement Reserve, and shall, on or before December 1, notify each Owner in writing of the amount of such estimate ("Estimated Cash Requirement"). Such Estimated Cash Requirement shall be prepared on a line-item basis. The Estimated Cash Requirement shall be assessed equally among all of the Owners excluding the Declarant and Developer. On or before January 1 of the ensuing fiscal year, each Owner shall be obligated to pay to the Board, or as it may direct, the annual assessment made pursuant to this Section 6.3. On or before the date of the annual meeting of each calendar year, the Board shall furnish to all Owners an itemized accounting of the maintenance expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts collected from

the Owners pursuant to assessments made during such year and showing the net amount over or short of the actual expenditures, plus reserves. The Board shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment or nonpayment of any assessment thereon.

#### 6.4

(a) The Board shall build up and maintain a reserve for the replacement of capital improvements, other authorized capital expenditures and for unforeseen expenditures (the "Contingency and Replacement Reserve"). Capital improvements and expenditures which may become necessary during the year shall be charged first against the Contingency and Replacement Reserve. Any expenditure from the Contingency and Replacement Reserve having a cost in excess of Twenty Thousand and 00/100 Dollars (\$20,000.00) shall require the prior approval of the Members holding two-third (2/3) of the votes of the Association.

(b) If the Contingency and Replacement Reserve proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may, at any time, levy a special assessment, which shall be assessed equally among the Owners, excluding the Declarant and Developer. The Board shall serve notice of any special assessments on all such Owners by a statement in writing giving the amount and reasons thereof, and such special assessment shall become effective and fully payable ten (10) days after the delivery or mailing of any such notice of assessment.

6.5 When the first Board elected by the Members hereunder takes office, it shall determine the Estimated Cash Requirement for the period commencing on the first day of the month following the Turnover Date and ending on December 31<sup>st</sup> of the calendar year in which the Turnover Date occurs. The initial Estimated Cash Requirement shall be assessed equally among the Owners, excluding the Declarant and Developer.

6.6 The failure or delay of the Board to prepare or serve the Estimated Cash Requirement on any Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay his share of such Estimated Cash Requirement as herein provided, as and when the Estimated Cash Requirement shall be determined, and, in the absence of the preparation of the Estimated Cash Requirement, the Owner shall continue to pay his share of such Estimated Cash Requirement at the then existing annual rate established for the previous calendar year, subject to adjustment at such time as the Estimated Cash Requirement has been prepared and the Owners have been notified thereof.

6.7 The Board shall keep full and correct books of account in chronological order of the receipts and expenditures pertaining to the Common Area and the Park Common Area (for that period of time that the Association is liable for the maintenance of the same as set forth herein), specifying and itemizing the maintenance and repair expenses of the Common Area and the Park Common Area (for that period of time that the Association is liable for the maintenance of same as set forth herein) and any other expenses so incurred. Such records and the vouchers



authorizing the payments described therein shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing or any holder of a Mortgage at such reasonable time or times during normal business hours when requested by an Owner or by the holder of a Mortgage. Upon five (5) days prior written notice to the Board any Owner shall be furnished a statement of his account, which statement shall set forth the amount of any unpaid assessments or other charges due and owing from such Owner.

6.8 All funds collected hereunder shall be held under and expended for the purposes designated herein, and are hereby held in trust for the benefit, use and account of all Owners. All funds not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select.

6.9 Any assessments or other charges which are not paid when due shall be delinquent. If the assessment or charge is not paid within thirty (30) days after the due date, the assessment shall bear interest from and after the due date at the lesser of the rate of twelve percent (12%) per annum or the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot, and interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of any such overdue assessment. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interests, costs and fees as above provided, shall be and become a lien (which the Board may record a memorandum of lien if it so desires) or charge against the Lot of any such Owner when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of mortgage liens against real estate. The directors of the Board and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at any foreclosure sale, and to acquire and hold, lease, mortgage and convey any interest so acquired. To the fullest extent permitted by law, any court shall be authorized to restrain the defaulting Owner from reacquiring his interest at such foreclosure sale.

6.10 In addition to the rights and remedies set forth in Section 6.9, if any Owner shall default in the payment, when same shall be due, of the aforesaid charges or assessments and said default shall continue for thirty (30) days after written notice to said Owner by the Board, of the amount of unpaid charges or assessments and a demand for payment thereof, the Board shall have the right to declare said default a forcible detainer of the Dwelling and shall have the right, on behalf of the other Owners, to enter and take possession of the Dwelling from any defaulting Owner, to put out said Owner, or any occupant or tenant claiming by, through or under said Owner, using such reasonable force as the Board shall deem necessary under the circumstances and, in addition, to exercise any other rights or remedies provided in the Forcible Entry and Detainer Act of the State of Illinois.

6.11 The lien of 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 assessment authorized by the First Amended Declaration so long as any such lien shall have arisen prior to the date of recording of any such deed.

**ARTICLE VII**  
***Common Area Easements***

7.1 Declarant hereby declares the following non-exclusive easements are hereby created with respect to the Common Area:

(a) A non-exclusive easement for the installation and maintenance of drainage facilities and utility easements is hereby granted to the Association and reserved by the Declarant over, under, across and through the Common Area and the Park Common Area. If any such drainage or utility facilities are not installed or if any easements for such purposes are not created with respect to a Lot or any portion thereof prior to delivery of a Lot Deed to an Owner, said Owner hereby grants to the Declarant and the Association a power of attorney to execute and record any such easements with respect to any Lots owned by said Owner for the benefit of the Property. The foregoing power of attorney is hereby coupled with an interest and is therefore irrevocable.

7.2 The Declarant, Developer, Association and any of their respective agents, employees and independent contractors shall have the right to enter upon the Common Area, the Park Common Area, and any Lot to the extent necessary for the purpose of maintaining, repairing and replacing any items or any improvements in, on, under or upon the Common Area and the Park Common Area as herein provided or for performing any of their respective obligations herein provided. In any such case, the Declarant, Developer, Association or any of their agents, employees or independent contractors shall not be guilty of any trespass.

7.3 The Declarant, Developer and the Association hereby reserve the right to grant easements for ingress, egress, installation, construction, reconstruction, maintenances, repair, operation, and inspection of utility services over, under, across and through the Common Area or the Park Common Area as they deem necessary or desirable in order to effectuate the intent of this First Amended Declaration, including without limitation, easements for the operator of the Common Area and/or Park Common Area to maintain improvements related to the Common Area and the Park Common Area, subject to any limitations set forth in Section 5.9 herein.

7.4 All other easements shown on said recorded plat shall be, and the same are hereby, set aside and reserved for the wires, pipes, water meters, and other subdivision essentials and facilities. All utility wires, pipes, lines, including telephone, electric, gas, and water shall be buried underground (except to the extent that emergency and utility construction standards require otherwise).

7.5 No building or structure, retaining wall or other interfering obstruction may be erected, constructed or maintained within, on or over an easement, as shown in the Subdivision Plat, or which may hereafter be established, without the approval of the Developer, and utility

companies which may be using said easement for their facilities, underground cable or pipes, etc.

**ARTICLE VIII**  
**General Provisions**

8.1 The covenants and restrictions of this First Amended Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Declarant, the Board, or the Owner of any Lot subject to this First Amended Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this First Amended Declaration is recorded in the Office of the Recorder of Deeds of St. Clair County, Illinois, after which time said covenants shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinabove provided.

8.2 If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time during which such covenants may be valid, then said covenant shall continue and endure only until the expiration of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Jerry Costello, Congressman of the United States of America, living at the date of this First Amended Declaration.

8.3 If at any time or times the Board shall deem it necessary or advisable to re-record this First Amended Declaration or any part hereof in the Office of the Recorder of Deeds of St. Clair County, Illinois, in order to avoid the expiration hereof or any of the covenants or other provisions herein contained under any of the provisions of 735 ILCS 5/13-118 *et seq.* of the Illinois Compiled Statutes presently in force and commonly known as the Marketable Title Act, or any other law or statute of similar purport, it shall submit the matter to a meeting of the Members of the Association called upon not less than ten (10) days' notice, and unless at such meeting at least two-thirds (2/3) of said Members shall vote against such re-recording, the Board shall have, and is hereby granted, power to so re-record this First Amended Declaration or such part thereof, and such re-recording shall be binding upon all Owners of any part of the Property in every way and with all the full force and effect as though such action were taken by each of said Owners and the re-recorded document executed and acknowledged by each of them.

8.4 Each grantee of Declarant by taking title to a Lot, and each purchaser under any contract for a deed of conveyance pursuant to which said grantee will take title, accepts said title subject to all restrictions conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this First Amended Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this

First Amended Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section 8.4 or described in any other part of this First Amended Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgagees and trustees of such Lot as fully and completely as though such rights were recited fully and set forth in their entirety in any such document.

8.5 The Declarant, the Architectural Control Committee, the Developer and each Owner from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants and obligations above set forth, or any of them, in addition to the right to bring a legal action for damages. Whenever there shall have been built (or whenever there is being built) on any Lot any Improvement which is and remains in violation of the covenants above set forth, or any of them, for a period of thirty (30) days after delivery of written notice thereof in the manner provided in Section 8.13 herein from the Declarant, the Architectural Control Committee, the Developer or the Association to the Owner of any such Lot, then the Declarant, the Architectural Control Committee, the Developer or the Association shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily to abate or remove it at the expense of the Owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure to enforce any of the covenants or obligations herein provided be deemed a waiver of the right to enforce any such violations. Notwithstanding anything in this First Amended Declaration to the contrary, the Owner shall not have the right to seek damages from the Developer or the Declarant but only to obtain declaratory relief with respect to any disagreement over interpretation of the First Amended Declaration (except to the extent the dispute provided for arbitration as stated in this First Amended Declaration), and the Owners shall not be able to collect any attorneys' fees or costs with respect to any action brought against the Developer or Declarant as stated herein AND HEREBY WAIVES THE RIGHT TO TRIAL BY JURY.

8.6 Subject to the provisions of Section 8.7, after the Turnover Date the Owners of at least two-thirds (2/3) of the Lots may revoke, modify, amend or supplement in whole or in part any or all of the covenants, obligations and conditions contained in this First Amended Declaration and may release all or any part of the Property from all or any part of this First Amended Declaration and only as specifically provided herein. Any such revocation, modification, amendment or supplement may be made if it receives written consent of the Declarant and the Developer. Written consent shall be required so long as the Declarant or Developer owns any Lot. The consent of the Declarant and the Developer can be withheld in its or their sole discretion, which may be arbitrary. Any such revocations, modifications, amendments or supplements shall be effective only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting Owners and the Declarant and Developer, if applicable, certified by the Secretary of the Association and recorded in the Office of the Recorder of Deeds of St. Clair County, Illinois.

8.7 Declarant hereby reserves the right and power to record a special amendment (hereinafter the "Special Amendment") to this First Amended Declaration at any time and from

time to time which amends this First Amended Declaration (i) to comply with requirements of the Federal National Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans' Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages encumbering any Lot, or (iii) to correct clerical or typographical errors in this First Amended Declaration or any Exhibit hereto or any supplement or amendment thereto. In addition, for so long as Declarant or Developer own any Lot, Declarant and Developer, acting together and not separately, shall have the right to effect a Special Amendment to this First Amended Declaration at any time and from time to time for any other purpose, (so long as such amendment will not materially increase the expenses to be borne by them hereunder,) which specifically includes, without limitation, the following: the Declarant has (i) the right to control the budget of the Association until the Turnover Date; (ii) the right to designate sites within the Property for public facilities so long as the Declarant owns the site; (iii) the right to connect the utilities to other property which the Declarant owns; (iv) the right to add property to and to withdraw any Lot from this First Amended Declaration; (v) the right to contract for services with the Association; (vi) the right to change this First Amended Declaration; (vii) the right to transfer amenities; and (viii) the right to provide services and facilities and charge the Association for its use thereof; and (ix) the right to establish and grant easements in the Subdivision for the purposes set forth in Section 7.4. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Said power shall be irrevocable. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledged of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute, and record Special Amendments. Subject to the provisions of Section 8.12 hereof, the right of the Declarant to act pursuant to rights reserved or granted under this Section 8.7 shall terminate at such time as neither the Declarant nor the Developer own title to any Lot.

8.8 The provisions of this First Amended Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for development for the Property and under no circumstance shall this First Amended Declaration be construed against the Declarant.

8.9 In the event title to any Lot is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants, obligations and undertaking chargeable or created under this First Amended Declaration against any such Lot. No claim shall be made against any such title holding trustee personally for payment of any lien or, obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply, in whole or in part, against such lien or obligation. The amount of such lien or obligation shall continue to be a

charge or lien upon said Lot and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to any such Lot.

8.10 All headings set forth herein are intended for convenience only and shall not be given or construed to have any substantive effect on the provisions of this First Amended Declaration. The singular shall include the plural wherever the First Amended Declaration so requires, and the masculine the feminine and neuter and vice versa.

8.11 If a court of competent jurisdiction shall hold invalid or unenforceable any part of this First Amended Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this First Amended Declaration which shall remain in full force and effect.

8.12 Notwithstanding anything herein to the contrary, either or both of Declarant and Developer, as Declarant and Developer in their sole discretion may determine, hereby reserve the right to transfer, assign, mortgage or pledge any and all of either's respective privileges, rights, title and interests hereunder, or in the Property, by means of recording as assignment of such with the Office of the Recorder of Deeds of St. Clair County, Illinois. Upon such assignment, either or both of Declarant and Developer, as the case may be, shall be relieved from any liability arising from the non-performance of such rights and obligations accruing from and after the recording of such assignment. No such successor assignee of the rights of either or both of Declarant and Developer, as the case may be, shall have or incur any liability for the obligations or acts of any predecessor in interest.

8.13 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; provided, however, that if any Owner shall fail to so notify the Association, the mailing address for such Owner shall be the street address of the Lot owned by such Owner. The Association shall maintain a file of such addresses. A written or printed notice, deposited in the United States mails, postage prepaid, and addressed to any Owner at the last address filed by such Owner with the Association shall be sufficient and proper notice to such Owner and shall be deemed delivered on the third (3<sup>rd</sup>) day after deposit in the United States mails.

8.14 Each Owner of a Lot, by acceptance of a Lot Deed, acknowledges and agrees that:

(a) Declarant has no obligation whatsoever to construct, maintain, repair or install the Common Areas, streets, lights, storm sewers, or any other improvements in the Development and will not construct, maintain or install any such improvements. Declarant shall have no liability whatsoever to any Owner with respect to the construction, maintenance, repair or installation of any such improvements and each Owner completely releases Declarant from, and forever waives and shall not assert against Declarant, any claims, demands, causes of action, losses, damages, judgments, fines, penalties, costs (including, without limitation, attorneys' and consultants' fees and litigation costs) and all other liabilities whatsoever arising out of or in connection with the construction, maintenance, repair or installation of any improvements in the Development.

8.15 Except to the extent of the negligent or wrongful act of Declarant, Developer shall indemnify, protect, defend and hold harmless the Declarant from and against any and all claims, demands, causes of action, losses, damages, judgments, fines, penalties, costs (including, without limitation, attorneys' and consultants' fees and litigation costs) and all other liabilities whatsoever incurred by or asserted against Declarant arising out of or in connection with the Development or under this First Amended Declaration including, without limitation, the construction, maintenance, repair and installation of any Common Areas or the Park Common Area, streets, lights, storm sewers or any other improvements in the Development, the creation and establishment of the Association, the calculation of the Estimated Cash Requirement, the collection and use of any assessments or the Contingency and Replacement Reserve, the enforcement of any restrictions (except for any enforcement action prosecuted by Declarant) or the exercise by Developer of any other duties, powers, obligations or other rights of Developer under this First Amended Declaration.

8.16 This First Amended Declaration hereby terminates and supercedes the Declaration. In the event of conflict between the terms of the Declaration and this First Amended Declaration, the First Amended Declaration shall govern and control.

*[Remainder of Page Left Blank Proceed to Signature Page]*

IN WITNESS WHEREOF, the undersigned have caused its corporate seal to be affixed hereunto and has caused its name to be signed and authorized to the First Amended Declaration by its duly authorized officer, as of the day and year first above written.

DECLARANTS:

H & L BUILDERS, LLC, an  
Illinois limited liability company

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

Name: \_\_\_\_\_

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

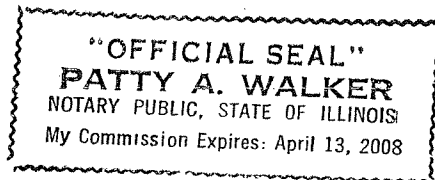
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STATE OF ILLINOIS     )  
  ) SS  
ST. CLAIR COUNTY     )

BOOK 4128 PAGE 1165

I, the undersigned, a Notary Public in and for said County in the State aforesaid, **DO HEREBY CERTIFY THAT** \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of H & L BUILDERS, LLC, an Illinois limited liability company, being the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument pursuant to authority given by the Members of said limited liability company, as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 31 day of December, 2004.



Patty A Walker  
Notary Public

**EXHIBIT "A"****[Legal Description of the Property]****PHASE I – THE SAVANNAH HILLS TRUST**

Lots 226, 227, 228, 229, 230, 231, 232, 233, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411 and 412 of the "FINAL PLAT OF SAVANNAH HILLS BEING A PART OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 8 WEST OF THE THIRD PRINCIPAL MERIDIAN, ST. CLAIR COUNTY, ILLINOIS"; reference being had to the plat thereof recorded in the Recorder' Office of St. Clair County, Illinois, in Book of Plat 104 on Page 24, as Document No. A01839319.

Except coal, gas and other mineral rights excepted or reserved in prior conveyances.

**[LEGAL DESCRIPTION TAKEN FROM FINAL PLAT RECORDED IN BOOK OF  
PLATS 104 ON PAGE 24 AS DOCUMENT NO. A01839319]**

**BY-LAWS OF SAVANNAH HILLS  
HOMEOWNER'S ASSOCIATION, INC.,  
[or other name so allowed by the Secretary of State]  
an Illinois not-for-profit corporation**

***ARTICLE I  
Purposes and Powers***

The Association shall be responsible for the general management and supervision of the Property and the ownership of the Common Area thereof (and the Park Common Area to the extent set forth in the First Amended Declaration) and shall have all of the powers to perform, and shall be responsible to perform, all of the obligations provided in the First Amended Declaration. Further, the Association shall have all powers now or hereafter granted by the General Not-For-Profit Corporation Act of the State of Illinois which shall be consistent with the purposes specified herein and in the First Amended Declaration. Any defined terms used in these By-Laws shall have the same meaning as set forth in the First Amended Declaration, except as otherwise provided herein.

***ARTICLE II  
Offices***

2.1 The Association shall have and continuously maintain in the State of Illinois a registered office and a registered agent whose office shall be identical with such registered office. The Association may have other offices within or without the State of Illinois as the Board of Directors may from time to time determine.

2.2 The principal office of the Association shall be maintained in St. Clair County, Illinois.

***ARTICLE III  
Membership***

3.1 Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Nothing herein contained shall be interpreted to exclude Developer from membership while it or any of its successors in interest owns one or more Lots.

3.2 From and after the Turnover Date, each Member shall be entitled to one (1) vote for each Lot owned by him on each matter submitted to a vote of Members; provided, however,

that where there is more than one Owner of a Lot, such co-owners of a Lot shall only be entitled to one vote.

### 3.3. Meetings.

(a) Meetings of the Members shall be held at the principal office of the Association or at such other place in St. Clair County, Illinois, as may be designated in any notice of a meeting. The presence at any meeting, in person or by proxy, of a majority of the total votes determined pursuant to Section 3.1 above 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 the Members having a majority of the total votes present at such meeting. Any Member may, in writing, waive notice of a meeting, or consent to any action of the Association without a meeting.

(b) The initial meeting of the Members shall be held at such time as may be designated upon not less than ten (10) days' written notice given by the Developer, provided that such initial meeting shall be held no later than sixty (60) days after the Turnover Date. Thereafter, there shall be an annual meeting of the Members on the third Tuesday of November of each succeeding year, at 7:30 o'clock P.M. If the date for the annual meeting of Members is a legal holiday, the meeting will be held at the same hour on the first day next succeeding such date which is not a legal holiday.

(c) Special meetings of the Members may be called at any time for the purpose of considering matters which, by the terms of the First Amended Declaration or these By-Laws, require the approval of all or some of the Members, or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board or by the Members having one-fourth (1/4) of the total votes, and delivered not less than five (5) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

3.4 Notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Dwelling of the Owner with respect to which such voting right appertains, if no address has been given to the Board.

3.5 At any meeting of the Members, a Member entitled to vote may either vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

*ARTICLE IV*  
*Board of Directors*

4.1 The direction and administration of the Property in accordance with the provisions of the First Amended Declaration shall be vested in the Board consisting of five (5) persons who shall be elected in the manner hereinafter provided, except that until the Turnover Date the first and each subsequent Board shall be appointed by the Developer. From and after the Turnover Date, the Members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease the number and term of the office of the Board members at any annual meeting, provided that such number shall not be less than five (5), and the terms of at least two-fifths (2/5) of the persons on the Board shall expire annually. Each member of the Board, with the exception of the Board members initially appointed by the Developer shall be an Owner; provided, however, that in the event an Owner is a corporation, limited liability company, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, members or manager of the limited liability company, partner of such partnership, individual trustee or beneficiary of such trust or agent or employee of a beneficiary of such trust, or manager of such legal entity, shall be eligible to serve as a member of the Board.

4.2 All matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of the First Amended Declaration or these By-Laws shall be determined by the Board, which determination shall be final and binding on the Association and on all Owners.

4.3 At the initial meeting of the Members as provided in Section 3.2(b) hereof, and at all subsequent annual meetings of the Members there shall be elected members of the Board. In all elections for members of the Board, each 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. Five (5) Board members shall be elected at the initial meeting and shall serve until the first annual meeting. The three (3) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years and the two (2) persons receiving the next highest number of votes at the first annual meeting shall be elected to the Board for a term of one (1) year. In the event of tie votes, the members of the Board shall determine which members shall have the two (2) year terms and which members shall have the one (1) year terms. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each. Notwithstanding the aforesaid election procedure the Developer may appoint a Board which shall have the same powers and authority as given to the Board generally, as provided hereinafter, and such appointed Board shall function until such time as the initial meeting of the Members is held.

4.4 Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the Members having two-thirds (2/3) of the total votes. However, any director may be reimbursed for reasonable expenses incurred in the performance of his duties.

4.5 Vacancies in the Board, other than as a result of removal pursuant to Paragraph 4.7, including vacancies due to any increase in the number of persons on the Board, shall be filled by majority vote of the remaining members of the Board or of the Members present at the next annual meeting or at a special meeting of the Members called for such purpose.

4.6 The Board shall elect from among its members: (i) a President who shall preside over both its meetings and those of the Members, and who shall be the chief executive officer of the Board and Association, (ii) a Secretary who will keep the minutes of all meetings of the Members and of the Board and who shall, in general, perform all the duties incident to the office of Secretary, and (iii) a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect. All officers shall be elected at each annual meeting of the Board and shall hold office at the pleasure of the Board.

4.7 Any Board member may be removed from office by affirmative vote of the Members having at least two-thirds (2/3) of the total votes, at any special meeting called for the purpose in the manner aforesaid. A successor to fill the unexpired term of a Board member removed may be elected by the Members at the same meeting or any subsequent meeting called for that purpose.

4.8 The initial meeting of the Board shall be held immediately following the initial meeting of the Members and at the same place. At such meeting the Board shall elect its officers to serve until the first annual meeting which shall be held immediately following the first annual meeting of the Members, and at the same place. All subsequent annual meetings of the Board shall be held immediately after, and at the same place as, the annual meeting of Members. Special meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours notice in writing to each member of the Board, delivered personally or by mail or telegram. Any member of the Board, may in writing waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting. A majority of the number of Board members shall constitute a quorum for the transaction of business. Unless otherwise expressly provided herein, any action may be taken by the Board upon the affirmative vote of those present at its meetings when a quorum is present.

4.9 All agreements, contracts, deeds, leases, vouchers for payment of expenditures, and other instruments shall be 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 signed by the President and countersigned by the Secretary.

*ARTICLE V*  
*Powers of the Board*

5.1 Without limiting the general powers which may be provided by law, the First Amended Declaration or these By-Laws, the Board shall have the power and duty to:

(a) Own, maintain and otherwise manage the Common Area (and the Park Common Area to the extent set forth in the First Amended Declaration and the Pre-Annexation Agreement) and all improvements thereon and all other property acquired by the Association or which the Association agrees to maintain, including any obligation to maintain any landscaping located in concrete islands, snow removal, cul-de-sacs and median strips in the streets which are within the Subdivision and to maintain any signage and lighting located thereon;

(b) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent by Developer shall give the Association the right to terminate without cause or penalty not later than ninety (90) days after the date the initial meeting of the Members of the Association is held as provided in these By-Laws;

(c) Establish and maintain a Contingency and Replacement Reserve in an amount to be determined by the Board;

(d) Maintain, at the expense of the defaulting Owner, all drainage areas and facilities located in the Subdivision in accordance with the reasonable and acceptable engineering requirements of the County in the event that one or more Owners fail to do so;

(e) Provide for the maintenance of landscaping, signs, monuments, fencing, retaining walls, water systems, lighting and other improvements located in the Subdivision and also shown on the Common Area (and the Park Common Area to the extent set forth in the First Amended Declaration and the Pre-Annexation Agreement) on the Subdivision Plat;

(f) At its option, mow, care for, maintain and remove rubbish from any vacant or unimproved portions of the Subdivision and to do any other things necessary or desirable in the judgment of the Board to keep any vacant or unimproved portions of the Subdivision neat in appearance and in good order. The foregoing rights shall not apply to any Lot or other portion of the Subdivision owned by Developer;

(g) Make such improvements to the Common Area and provide such other facilities and services as may be authorized from time to time by the affirmative vote of two-thirds (2/3) of the Members of the Association acting in accordance with its articles

of incorporation and these By-Laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping the Subdivision a highly desirable residential community; and

(h) Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by the First Amended Declaration, the articles of incorporation or these By-Laws.

5.2 The Board shall have the power to seek relief from or in connection with the assessment or levy of any general real estate taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any other lawful assessing body, which are authorized by law to be assessed and levied on the Common Area and to charge all expenses incurred in connection therewith to the maintenance fund.

5.3 The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Subdivision, and for the health, comfort, safety and general welfare of the Owners and occupants of the Subdivision. Written notice of such rules and regulations shall be given to all Owners and occupants, and the entire Subdivision shall at all times be maintained subject to such rules and regulations.

5.4 The Developer or Board may engage the initial management organization under contracts expiring not later than ninety (90) days after the date the initial meeting of Members is held. Thereafter, the Board may engage the services of an agent to manage the Subdivision to the extent deemed advisable by the Board.

5.6 Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Owners or any of them.

5.7 The members of the Board and the officers of the Association shall not be personally liable to the Owners or others for any mistake of judgment or for any acts or omissions made in good faith by such officers or Board members.

#### *ARTICLE VI* *Assessments-Maintenance Fund*

6.1 Each year on or before November 1, the Board will estimate the total amount of maintenance expenses necessary to pay the cost of wages, materials, taxes, insurance, services, supplies and any other necessary or desirable items which will be required during the ensuing calendar year (January 1-December 31) for services authorized by the Board, together with a reasonable amount necessary to fund the Contingency and Replacement Reserve, and shall, on or before December 1, notify each Owner in writing of the amount of such estimate ("Estimated Cash Requirement"). Such Estimated Cash Requirement shall be prepared on a line-item basis. The Estimated Cash Requirement shall be assessed equally among all of the Owners, excluding the Developer. On or before January 1 of the ensuing fiscal year, each Owner shall be obligated

to pay to the Board, or as it may direct, the annual assessment made pursuant to this Section 6.1. On or before the date of the annual meeting of each calendar year, the Board shall furnish to all Owners an itemized accounting of the maintenance expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts collected from the Owners pursuant to assessments made during such year and showing the net amount over or short of the actual expenditures, plus reserves. The Board shall, upon demand at any time, furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment or nonpayment of any assessment thereon.

6.2 Contingency and Replacement Reserve.

(a) The Board shall build up and maintain a reserve for the replacement of capital improvements, other authorized capital expenditures and for unforeseen expenditures (the "Contingency and Replacement Reserve"). Capital improvements and expenditures which may become necessary during the year shall be charged first against the Contingency and Replacement Reserve. Any expenditure from the Contingency and Replacement Reserve having a cost in excess of Twenty Thousand and 00/100 Dollars (\$20,000.00) shall require the prior approval of the Members holding two-thirds (2/3) of the votes of the Association.

(b) If the Contingency and Replacement Reserve proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may, at any time, levy a special assessment, which shall be assessed equally among the Owners, excluding the Developer. The Board shall serve notice of any such special assessment on all such Owners by a statement in writing giving the amount and reasons therefor, and such special assessment shall become effective and fully payable ten (10) days after the delivery or mailing of any such notice of assessment.

6.3 When the first Board elected by the Members hereunder takes office, it shall determine the Estimated Cash Requirement for the period commencing on the first day of the month following the Turnover Date and ending on December 31 of the calendar year in which the Turnover Date occurs. The initial Estimated Cash Requirement shall be assessed equally among the Owners, excluding the Developer.

6.4 The failure or delay of the Board to prepare or serve the Estimated Cash Requirement on any Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay his share of such Estimated Cash Requirement as herein provided, as and when the Estimated Cash Requirement shall be determined, and, in the absence of the preparation of the Estimated Cash Requirement, the Owner shall continue to pay his share of such Estimated Cash Requirement at the then existing annual rate established for the previous calendar year, subject to adjustment at such time as the Estimated Cash Requirement has been prepared and the Owners have been notified thereof.

6.5 The Board shall keep full and correct books of account in chronological order of the receipts and expenditures pertaining to the Common Area (and the Park Common Area to the extent required by the First Amended Declaration and the Pre-Annexation Agreement), specifying and itemizing the maintenance and repair expenses of the Common Area (and the Park Common Area to the extent required by the First Amended Declaration and the Pre-Annexation Agreement) and any other expenses so incurred. Such records and the vouchers authorizing the payments described therein shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, or any holder of a Mortgage at such reasonable time or times during normal business hours when requested by an Owner or by the holder of a Mortgage. Upon five (5) days' prior written notice to the Board, any Owner shall be furnished a statement of his account, which statement shall set forth the amount of any unpaid assessments or other charges due and owing from such Owner.

6.6 All funds collected hereunder shall be held and expended for the purposes designated herein, and are hereby held in trust for the benefit, use and account of all Owners. All funds not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select.

6.7 Any assessments or other charges which are not paid when due shall be delinquent. If the assessment or charge is not paid within thirty (30) days after the due date, the assessment shall bear interest from and after the due date at the lesser of the rate of twelve percent (12%) per annum or the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot, and interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of any such overdue assessment. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided, shall be and become a lien or charge against the Lot of any such Owner when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of mortgage liens against real estate and may include the collection of reasonable attorneys' fees and costs. The directors of the Board and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey any interest so acquired. To the fullest extent permitted by law, any court shall be authorized to restrain the defaulting Owner from reacquiring his interest at such foreclosure sale.

6.8 In addition to the rights and remedies set forth in Section 6.7 of these By-Laws, if any Owner shall default in the payment, when same shall be due, of the aforesaid charges or assessments and said default shall continue for thirty (30) days after written notice to said Owner by the Board, of the amount of unpaid charges or assessments and a demand for payment thereof, the Board shall have the right to declare said default a forcible detainer of the Dwelling and shall have the right, on behalf of the other Owners, to enter and take possession of the Dwelling from any defaulting Owner, to put out said Owner, or any occupant or tenant claiming by, through or under said Owner, using such reasonable force as the Board shall deem necessary under the

circumstances and, in addition, to exercise any other rights or remedies provided in the Forcible Entry and Detainer Act of the State of Illinois.

**ARTICLE VII**  
*Covenants and Restrictions as to Use and Occupancy*

All Owners shall maintain, occupy and use their Dwelling only in accordance with the terms of the First Amended Declaration and any additional rules and regulations adopted by the Board or by the Members. The Board shall have full authority to enforce all such rules and regulations by taking all action as may be necessary.

**ARTICLE VIII**  
*Committees*

8.1 The Board, by resolution adopted by a majority of the Board, may designate one (1) or more committees, each of which shall consist of one (1) or more members of the Board; said committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Association; but the designation of such committees and the delegation thereof of authority shall not operate to relieve the Board, or any individual member of the Board, of any responsibility imposed upon it or him by law.

8.2 Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by a majority of the members of the Board present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Members of the Association, and the President of the Association shall appoint the members thereof. Any member thereof may be removed whenever in the judgment of the Board the best interests of the Association shall be served by such removal.

8.3 Each member of a committee shall continue as such until the next annual meeting of the Board and until his successor is appointed and shall have qualified, unless the committee shall be sooner terminated, or unless such member shall cease to qualify as a member thereof.

8.4 One (1) member of each committee shall be appointed chairman.

8.5 Vacancies in the membership of any committee may be filled by appointment made in the same manner as provided in the case of the original appointment.

8.6 Unless otherwise provided in the resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

8.7 Each committee may adopt rules for its own governance not inconsistent with these By-Laws or with rules adopted by the Board.

**ARTICLE IX**  
***Interim Procedure***

Until the initial meeting of the Members as provided in Section 3.2(b) hereof, the Developer may appoint the Board which shall have the same powers and authority as given to the Board generally.

**ARTICLE X**  
***Amendments***

These By-Laws may be amended or modified from time to time by action or approval of the Members entitled to cast two-thirds (2/3) of the total votes computed as provided in Section 3.2 and the Developer so long as Developer owns any Lot. Such amendments shall be recorded in the Office of the Recorder of Deeds of St. Clair County, Illinois.

**ARTICLE XI**  
***Interpretation***

In the case of any conflict between the articles of incorporation of the Association and these By-Laws, the articles of incorporation shall control; and in the case of any conflict between the First Amended Declaration and these By-Laws, the First Amended Declaration shall control.