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Authorized By: *Margie Valmy*

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**Towne & Country Abstract**

**DECLARATION**

**OF COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS AND CHARGES AND LIENS OF THE  
EMERY CREEK CLUSTER HOMEOWNER'S  
ASSOCIATION, A NOT FOR PROFIT CORPORATION**

**THIS DECLARATION, made on the date hereinafter set forth by J. Churchill Construction, Inc., hereinafter referred to as "Declarant."**

**WITNESSETH:**

**WHEREAS, Declarant is the owner of certain property in the County of Adams, State of Illinois, which is more particularly described in Exhibit A, attached hereto and expressly incorporated herein by reference; and**

**WHEREAS, Declarant will convey the real estate described in Exhibit A, Subject to certain protective covenants, conditions, restrictions, easements, charges and liens as hereinafter set forth;**

**NOW THEREFORE, Declarant hereby declares that all of the real estate described in Exhibit A shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These covenants, conditions, restrictions, easements, charges and liens shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the real estate described in Exhibit A or any part thereof, and shall inure to the benefit of each owner thereof.**

**ARTICLE I  
DEFINITIONS**

**Section 1. “Association” shall mean and refer to EMERY CREEK CLUSTER HOMEOWNER’S ASSOCIATION, ITS SUCCESSORS AND ASSIGNS.**

**Section 2. “Properties” shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions.**

**Section 3. “Common Area” shall mean all real property owned by the Association for the common use and enjoyment of all the members of the Association.**

**Section 4. “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.**

**Section 5. “Living Unit” shall mean and refer to any portion of a building situated within the Properties in an area designated and intended for use and occupancy as a residence by a single family.**

**Section 6. “Member” shall mean and refer to every person or entity who holds a membership in the Association.**

**Section 7. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit which is a part of the properties, including contract seller, but excluding those having such interest merely as security for the performance of an obligation.**

**Section 8. “Declarant” shall mean and refer to J. Churchill Construction, Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.**

**Section 9. “Declaration” shall mean and refer to the Declaration of Covenants, Conditions, Restriction, Easements, Charges and Liens applicable to the Properties recorded in the Office of the Recorder, Adams County, State of Illinois.**

**Section 10. “Cluster Home” shall mean and refer to a Living Unit which may be attached to one or more Living Units by common party walls.**

**ARTICLE II  
MEMBERSHIP**

**Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants or record to assessments by the Association, including contract seller, shall be a Member of the Association. The foregoing is merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Living Unit which is subject to assessment by the Association. Ownership of such Lot or Living Unit shall be the sole qualification for membership.**

### ARTICLE III

The Association shall have two classes of voting membership:

**Class A.** Class A Members shall be all those Owners as defined in Article V of the Articles of Incorporation with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot or Living Unit in which they hold the interest required for membership by Article V. When more than one person holds such interest in any Lot or Living Unit, all such persons shall be Members. The vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot or Living Unit.

**Class B.** The Class B Member(s) shall be the Declarant (as defined in the Declaration). The Class B Member(s) shall be entitled to three (3) votes for each Lot or Living Unit in which it holds the interest required for membership by Article V of the Articles of Incorporation, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier;

- (a) when the total votes and square footage of lots outstanding in Class A membership are three times greater than the total votes and square footage of lots outstanding in the Class B membership;
- (b) December 31, 2012; or
- (c) when the Class B membership is dissolved by a written consent in writing signed by all of the Class B Members.

### ARTICLE IV PROPERTY RIGHTS

**Section 1.** Member's easements of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot or Living Unit, subject to the following provisions;

- (a) the right of the Association to limit the number of guests of Members;
- (b) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said property shall be subordinate to the rights of the homeowners hereunder;
- (c) the right of the Association to suspend the voting rights of the Member for the period during which any assessment against his Lot or Living Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

**Section 2. Delegation of Use.** Any Member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the member of his family, his tenant, or contract purchaser who resides on the property.

**Section 3. Title to the Common Area.** The Declarant hereby covenants for itself, its heirs, and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot.

**Section 4. Parking Rights.** Parking on the "private drive" as shown on the official Emery Creek Cluster Home subdivision plat is restricted to two guest vehicles which may be allowed to park in the designated parking spaces at the east end of the private drive and shall not exceed a two week stay. In no event shall parking be permitted which would interfere with the ingress and egress of Lot owners from their garages. Lot owners are allowed one vehicle to be parked in their garage and one vehicle may be parked on the driveway associated with their unit.

**Section 5. Common Area Private Drive Use and Maintenance.** The common areas upon which a private drive (shown as a private drive on the official plat) has been built serving Unit Owners shall be available for use by the Unit Owners and their guests. The City of Quincy shall be permitted to use said private drives for garbage and recycling services. The Emery Creek Cluster Homeowner's Association agrees to hold the City harmless for any damages to the private drive areas that may result from the use of the private drives by the City of Quincy trucks.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.**

Each Owner of any Lot or Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Association;

(1) annual assessments or charges; (2) exterior maintenance charges as provided in Article VIII; and (3) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessment.** The assessment levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Properties.

**Section 3. Basis and Maximum of Annual Assessments.** Until January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner, the Maximum annual assessment shall be **Eight Hundred Eighty Dollars (\$880.00)** per Lot or Living Unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding three years and at the end of each such period of three years, for each succeeding period of three years, **provided that** any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days or more than 60 days in advance of the meeting setting forth the purpose of the meeting.

**Section 5. Uniform Rate of Assessment.** Both annual and special assessments for maintenance of the Common Area must be fixed at a uniform rate for all Lots or Living Units and may be collected on a monthly basis or a semi-annual basis as determined by the Owners.

**Section 6. Quorum for Any Action Authorized Under Sections 3 and 4.** At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the voting membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Date of Commencement of Annual Assessment: Due Dates.** The annual assessments provided for herein shall commence as to all Lots and Living Units on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot or Living Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot or Living Unit have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 8 <sup>3</sup>/<sub>4</sub> percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fee of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot or Living Unit.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any Lot or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Living Unit which is

subject to any mortgage, pursuant to a decree of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 10. Exempt Property.** The following property subject to the Declaration shall be exempt from all assessments created herein, including but not limited to maintenance on the Common Area and exterior maintenance; including, (a) all property owned by Declarant; (b) all properties dedicated to and accepted by a local public authority; (c) the Common Area and; (d) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Illinois. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE VI PARTY WALLS

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the Properties placed upon the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 6. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator and the decision shall be by a majority of all the arbitrators.

## **ARTICLE VII ARCHITECTURAL CONTROL**

**Section 1.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties and single family residences here, nor shall any exterior additions to or change or alterations therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have submitted to it, approval will not be required and the Article will be deemed to have fully complied.

**Section 2. Landscaping.** The provisions of Section 1 of this Article shall also apply to the maintenance of planting and alteration of any and all shrubs, grass, flowers, trees and all other landscaping of any kind whatsoever on the Property.

**Section 3.** Declarant to be exempt from the provisions of this Article.

## **ARTICLE VIII EXTERIOR MAINTENANCE**

**Section 1. Exterior Maintenance.** In addition to maintenance upon the Common Area described aforesaid; the Association: (a) shall provide exterior maintenance upon Living Unit or Cluster Home which is semi-attached and upon each Lot; (b) the exterior building surfaces. Trees, shrubs, grass, walks and

other exterior improvements as may from time to time be declared and undertaken by the Association; (c) in the event an Owner of any Lot or Living Unit in the Properties shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

The repair and replacement of the roof shall be the responsibility of the Owners of the building needing repair or replacement. In the event of a leak needing repair, the affected owner shall be responsible for said repair. In the event that the entire roof requires replacement, it shall be agreed upon by a simple majority of the Owners of said building and the cost of replacing the roof shall be born equally by all Owners through a special assessment. Any Owner refusing to contribute their share to this special assessment shall be held accountable to the Home Owner's Association as provided in the Declaration.

**Section 2. Assessments of Cost.** The cost of such exterior maintenance shall be assessed against the Lot or Living Unit upon which such maintenance is done and shall be added to and become part of the annual maintenance herein and , as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided herein. **Provided that** the Board of Directors of the Association, when establishing the annual assessment against each Lot or Living Unit for any assessment year as required herein, may add thereto the estimated cost of the exterior maintenance for that year but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

**Section 3. Access.** For the purpose solely of performing the exterior maintenance required (authorized) by this Article, the Association, through its duly authorized agents or employees shall have the right to enter upon any Lot or exterior of any Living Unit.

## **ARTICLE IX EASEMENTS**

The holders of Class A and Class B memberships agree that all necessary easements and rights-of-way, as deemed necessary by the Declarant herein, shall be agreed to by the holders of both Class A and Class B memberships without limitations.

**ARTICLE X  
RESTRICTIONS & COVENANTS**

**Section 1.** Each unit, or any two or more adjoining Units used together, shall be used for housing and related common purposes for which the Property was designed and for no other purpose.

**Section 2.** The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner, nor shall anything be stored in the Common Elements without the prior consent of the Board except as hereinafter expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit.

**Section 3.** Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the building, or contents thereof, applicable for residential use, without the prior written consent of the Board.

**Section 4.** Each Unit Owner shall not be permitted to have and maintain more than two vehicles. One vehicle must be parked inside the Unit Owner's garage at all times. Any unit owner having a second vehicle must park the second vehicle on said owner's driveway. The owner of any boat, trailer or motor home shall not be allowed to store said unit outside of the owner's garage on the common area. Each Unit Owner shall be responsible for cleaning the interior of his garage unit.

**Section 5.** Unit Owners shall not cause or permit anything to be placed on the outside walls of the Building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof of any part thereof, without the prior consent of the Board.

**Section 6.** No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that dogs and cats (not to exceed more than one (1) per Unit) or other household pets may be kept in Units, subject to rules and regulations adopted by the Board, provided they are not kept, bred or maintained for any commercial purposes; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days written notice from the Board. Pet owners must pick up after their pet on any common area or on city right of way as per city ordinance.

**Section 7.** No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants.

**Section 8.** Nothing shall be done in any Unit or in or to the Common Elements which will impair the structural integrity of the Building, or which would structurally change the building except as is otherwise provided therein. No Unit Owner shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

**Section 9.** No clothes, sheets, blankets, laundry or any other kind of other articles shall be hung out or exposed on any part of the Common Elements or visible from any window in a Unit. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials which are not in receptacles provided for such purposes.

**Section 10.** No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designed for profit, altruism, exploration or otherwise shall be conducted, maintained, or permitted in any Unit.

**Section 11.** The Owner of each Unit shall be legally liable to the Board for all damages to the Common Area, any improvements thereon, including, but not limited to, buildings and landscaping caused by such Owner or any occupant of such Owner's Unit.

**Section 12.** No signs, advertising or other displays shall be maintained or permitted on any part of the property except at such locations and in such form as shall be determined by the Board and except as Declarant is permitted under Section 13. However, the home owner shall be allowed to display, in the front yard, a professional sign, not exceeding 4 sq. ft. in area, offering the property for sale.

**Section 13.** During the period of construction of the Building on the Property by the Declarant, the Declarant and its contractors and subcontractors, and their respective agents and employees, shall be entitled to access, ingress and egress said building and Property as may be required in connection with said construction. Until all of the units have been sold by the Declarant and occupied by the Purchasers, the Declarant may use and show one or more of such unsold or unoccupied units as a model, and may maintain customary signs in connection therewith.

**ARTICLE XI  
GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by proceeding at law or in equity, charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the combined total membership of Class A and Class B Members, and thereafter by an instrument signed by not less than seventy-five (75%) of the combined total membership of Class A and Class B Members. Any Amendment must be properly recorded.

**EXHIBIT A**

Units 1 through 12, inclusive of Lot Two (2), in Emery Creek Cluster Home Subdivision, a subdivision of a part of the Southwest Quarter of Section Thirty-three (33) in Township One (1) South of the Base Line and in Range Eight (8) West of the Fourth Principal Meridian, situated in the City of Quincy, County of Adams and State of Illinois; also the common area in Lot Two (2) in said Subdivision.

BY-LAWS  
EMERY CREEK CLUSTER  
HOMEOWNER'S ASSOCIATION

ARTICLE I

**NAME AND LOCATION.** The name of the corporation is EMERY CREEK CLUSTER HOMEOWNER'S ASSOCIATION, hereinafter referred to as the "Association". The Principal office of the corporation shall be located at 800 North 49<sup>th</sup> Street, Quincy, IL 62305, but the meeting of members and directors may be held at such places within the State of Illinois, as may be designated by the Board of Directors.

ARTICLE II  
DEFINITIONS

Section 1. "Association" shall mean and refer to Emery Creek Cluster Homeowner's Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in Exhibit A of a document entitled "Declaration of Covenants, Conditions, Restrictions, Easements and Charges and Liens of Emery Creek Cluster Homeowner's Association" and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Living Unit" shall mean and refer to any portion of a building situated upon the Properties in an area designated and intended for use and occupancy of a residence by a single family.

Section 6. "Member" shall mean and refer to every person who holds a membership in the Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "Declarant" shall mean and refer to J. Churchill Construction, Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 9. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, Restrictions, Easements and Charges and Liens applicable to the Properties recorded in the Office of the Recorder, Adams County, State of Illinois.

### ARTICLE III MEMBERSHIP

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Living Unit which is subject to assessment by the Association. Ownership of such Lot or Living Unit shall be the sole qualification for membership.

Section 2. Suspension of Membership. During any period in which a member shall be in default in the payment of any annual or special assessment levied by the Association, the voting rights of such member may be suspended by the Board of Directors until such assessment has been paid. Such rights of a member may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days, for violation of any rules and regulations established by the Board of Directors governing the use of the Common Area and facilities.

ARTICLE IV  
PROPERTY RIGHTS: RIGHTS OF ENJOYMENT

Section 1. Each member shall be entitled to the use and enjoyment of the Common Area and facilities as provided in the Declaration. Any member may delegate his rights of enjoyment to his family, his tenants or contract purchasers, who reside on the property. Such member shall notify the secretary in writing of the name of any such delegee. The rights and privileges of such delegee are subject to suspension to the same extent as those of the member.

ARTICLE V  
BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed and governed by a Board of three (3) directors, who need not be members of the Association.

Section 2. Election. At the first annual meeting the members shall elect one (1) director for a term of one year, and two (2) directors for a term of two years; and at each annual meeting thereafter the members shall elect that number of directors whose tenure expires on that date for a term of three (3) years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the expired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expense incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of directors.

ARTICLE VI  
NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall

consist of the Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 2. Election. Election to the Board of Directors shall be secret ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VII MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors after not less than three (3) days notice of each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VIII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon and to establish penalties for the infraction thereon;
- (b) exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(c) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(d) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting, when such statement is requested in writing by one fourth (1/4) of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided herein, and in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, as hereinafter provided in Article XII, and

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days after due date or to bring an action of law against the Owner personally obligated to pay same;

(3) enforce the lien right against property for which assessments are not paid within thirty (30) days after due date or to bring an action of law against the Owner personally obligated to pay same;

(d) issue, or to cause an appropriate office to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained; and

(h) cause the exterior of the Living Unit to be maintained.

## ARTICLE IX COMMITTEES

Section 1. The Association shall appoint an Architectural Control Committee, as provided in the Declaration and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint

other committees as deemed appropriate in carrying out its duties and functions, such as:

(a) A Maintenance Committee, which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the Community, and shall perform such other functions as the Board in its discretion determine.

Section 2. It shall be the duty of each committee to receive complaints from members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, directors or officer of the Association as is further concerned with the matter presented.

## ARTICLE X MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held the first Monday in November of 2008 and each subsequent regular annual meeting of the members shall be held on the same day of the same month each year thereafter, at the hour of 7 o'clock, p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special Meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all the votes of the entire membership or who are entitled to vote one-fourth (1/4) of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-third (1/3) quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these By-Laws. If, however, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum of aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and shall automatically cease upon conveyance by the member of his Lot.

## ARTICLE XI OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a president, who shall at all times be a member of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the association may require each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause of the Board. Any officer may resign at any time by giving written notice to the Board, the president or secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Officers. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

### President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all

leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

### Secretary

(b) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of the meetings of the Board to the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

### Treasurer

(c) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## ARTICLE XII ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. By the Declaration each member is deemed to covenant and agree to pay to the Association; (1) annual assessments and charges, and (2) special assessments for capital improvements. The annual and special assessments together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such interest, costs, and reasonable attorney's fee shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due and shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Properties, services and facilities

devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the properties.

Section 3. Basis and Maximum of Annual Assessments. The basis and maximum of annual assessments shall be as established by the Board from time to time hereafter, all on the terms, covenants, methods and conditions as set forth in the Declaration of Covenants, Conditions, Restrictions, Easements and Charges and Liens of Emery Creek Cluster Homeowner's Association which are made a part hereof by reference;

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding three (3) years, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessment undertaken as an incident to a merger of consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Method of Computation When Using the Consumer Price Index. The Consumer Price Index establishes the United States City Average numerical rating for the month of July, 1980, as figure. This will be the base rating. To determine the percentage to be applied to the maximum annual assessment for each subsequent year, divide this base rating into the numerical rating established by the Consumer Price Index for the month of July preceding the proposed assessment year. This adjustment percentage, if in excess of 100 per centum, is multiplied by the original maximum annual assessment to obtain the maximum assessment for the subsequent year.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only for

the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

Section 6. Uniform Rate. Both annual and special assessments against Class A membership must be fixed at a uniform rate for all Lots and Living Units, and may be collected on a monthly basis.

Section 7. Quorum for Any Action Authorized Under Sections 3 and 5. At the first meeting called, as provided in Sections 3 and 5 hereof, the presence at the meeting of members or of proxies entitled to cast sixty (60) percent of all of the votes of the memberships entitled to vote shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 3 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence as to all Lots or Living Units on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot or Living Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing, signed by an officer of the Association, setting forth whether the assessments on a specified Lot or Living Unit have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 8 ¾ percent per annum, and the Association may bring an action at law

against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot or Living Unit.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. The following property subject to the Declaration shall be exempt from all assessments created herein, including, but not limited to, maintenance on the Common Area and exterior maintenance, including, (a) all property owned by the Declarant; (b) all properties dedicated to and accepted by a local public authority; (c) the Common Area; and (d) all properties owned by a charitable or non profit organization exempt from taxation by the laws of the State of Illinois. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

### ARTICLE XIII BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association where copies may be purchased at reasonable cost.

### ARTICLE XIV CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words; EMERY CREEK CLUSTER HOMEOWNER'S ASSOCIATION; an Illinois not for profit corporation.

## ARTICLE XV AMENDMENTS

Section 1. These By-Laws may be amended at a regular or special meeting of the members, by a vote of a majority of both the Class A and Class B membership of a quorum of members present in person or by proxy.

Section 2. In case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

## ARTICLE XVI MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation.