

SCTM NOS.: 3-35-8.14-50-88 and Savannah Circle  
 PREPARED BY AND RETURN TO:  
 STEEN, WAEHLER & SCHRIDER-FOX, LLC  
 P.O. BOX 1398, OCEAN VIEW, DE 19970  
 TBS:WH

### SAVANNAH PLACE ANNEXATION AGREEMENT

**THIS ANNEXATION AGREEMENT** ("Agreement") made the 13<sup>th</sup> day of January, 2009, by and between **THE CITY OF LEWES**, a municipal corporation of the State of Delaware, ("City"), P.O. Box 277, 114 East Third Street, Lewes, Delaware 19958, the **BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**, ("BPW"), 107 Franklin Street, Lewes, Delaware 19958 and **SAVANNAH PLACE HOMEOWNERS ASSOCIATION, INC.**, a Delaware corporation, its successors and assigns, ("Association"), c/o A. Wallace Evans, President, 2051 Savannah Circle, Lewes, DE 19958.

### RECITALS

A. The Association, the incorporated property owners association, is comprised of 38 lots in the community known as "Savannah Place" and the street known as "Savannah Circle", as shown on a plot prepared by Mann Associates, dated 1987 (revised), and recorded in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, in Plot Book 36, page 255, incorporated herein by reference; contiguous to the incorporated boundaries of the City, being 22.74 acres, more or less, bounded by Savannah Road (State Road 18/U. S. Rt. 9) on the east, and Donovan Road (County Road 263) on the south, Tax Map Numbers 3-35-8.14-50-88, and Savannah Circle, hereinafter referred to as (Property).

B. The City through the BPW owns and operates water, sewer, and electric throughout the City.

C. The Association consented to annexation of the Property for incorporation into the City limits through a preannexation agreement for the purpose of eligibility for City services, particularly City water and for which Property the Association has requested sufficient allocation of water.

D. The Property is located within the "Future Annexation Area" as shown on Map 9A of the City of Lewes Comprehensive Plan.

*AW*  
*mwj*

E. The Association has requested the zoning of the Property to the City Outer Ring Residential (OR) District.

F. The City has held a special election for the annexation of Savannah Place, with the designation of Outer Ring zoning, into the City. At such election, a large majority of voters, both within the City and within Savannah Place, voted in favor of annexation. Such annexation will become effective within 90 days of August 8, 2009, or upon recordation of notice of such election result prior to that date.

G. The City and the Association now desire to enter into this Agreement setting forth mutual understanding and undertaking providing for certain obligations, duties, and responsibilities regarding the annexation of the Property into the City.

**NOW THEREFORE, WITNESSETH,** in consideration of the mutual covenants contained herein and other valuable consideration, the parties agree that the above referenced clauses are incorporated in this Agreement, and the parties further agree as follows:

**1. THE PROPERTY**

1.1 The Property is comprised of 38 lots in the community known as "Savannah Place" and the street known as "Savannah Circle", as shown on a plot prepared by Mann Associates, dated 1987 (revised), and recorded in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, in Plot Book 36, page 255; contiguous to the incorporated boundaries of the City, being 22.74 acres, more or less, bounded by Savannah Road (State Road 18/U.S. Route 19) on the east, and Donovan Road (County Road 263) on the south, Tax Map Numbers 3-35-8.14-50-88.

1.2 The Mayor and City Council have proceeded to annex the Property into the City of Lewes and are willing to make such annexation subject to the terms of this Agreement.

1.3 The obligations of the Association and the rights, restrictions and conditions upon the use of the Property after annexation of the Property, all as hereinafter set forth, are contingent upon the taking effect of the Annexation Agreement, the enactment of an ordinance to zone the City Outer Ring Residential (OR) and the recordation of the annexation with the Recorder of Deeds in and for Sussex County.

1.4 The Association represents and warrants to the City that the description in the Plot Plan of record is true and correct to the best of its knowledge and belief, remains

true and correct as of the date of this Agreement, and will be true and correct at such time as the Mayor and City Council act to record such annexation into the City.

## 2. ZONING

2.1 The Mayor and City Council agree to proceed to designate the Property in the City's Outer Ring Residential (OR) zoning district, and the Association agrees that the Property shall be used and maintained consistent with the legal requirements provided in the City of Lewes Comprehensive Plan, the City of Lewes Zoning Ordinance and the City of Lewes Subdivision and Land Development Ordinance.

2.2 The maximum number of lots shall not exceed 38, as established by the Plot Plan.

## 3. WATER IMPROVEMENTS

3.1 *The Association's Obligations.* The Association agrees to conduct, at their expense and without any expense or liability to City, the design, permitting, construction, installation and inspection of all on-site water improvements, including water mains, valves, meters, meter pits, fire hydrants, services, and fire lines as necessary to furnish water supply and fire protection to the Property. Off-site improvements are the responsibility of the City.

3.2 *City's Obligations.* The BPW is willing and able to provide the required water service to the proposed development. The City and BPW hereby agree to take all actions necessary to provide and operate systems to provide sufficient water capacity, distribution, and fire flow to serve the development at a maximum 38 residential units. The BPW shall reserve and allocate such water capacity for the Property. The BPW shall permit connection to the Property, in whole or in part, the BPW's water system upon payment by Association of applicable fees, as set forth in this Agreement. Any and all Off-site improvements to provide water service shall be the responsibility of the BPW.

3.3 *Water Fees and Charges.* Upon issuance of building permits, the Association agrees to pay all fees for water pursuant to the City Ordinance and the regulations of the BPW. Any fees, including but not limited to impact fees, existing at the time of application, site plan review, or connection to any utilities of the BPW, as applicable shall be due and owing at said point.

3.4 *Size of System.* The BPW shall construct all facilities large enough to provide service to "Savannah Place. If the facilities constructed are larger than is

necessary to serve "Savannah Place" such excess capacity or oversizing shall be at the BPW's expense.

**3.5. Existing wells.**

**3.5.1.** There are at three (3) water wells within the Property; one communal well serving all of Savannah Place, one communal well no longer in use and the third used privately. The location of each well is shown on a drawing attached as *Exhibit A* and identified as:

(a) Functioning well for Savannah Place community on lands now or formerly of Richard and Anna Kroon, on Lot 9, Tax Map #3-35-8.14-58.

(b) Nonfunctioning well for Savannah Place community on lands now or formerly of Charles and Frances Smith, on Lot 18, Tax Map # 3-35-8.14-68.

(c) Private well on lands now or formerly of Don Johnson, Trustee, on Lot 20, Tax Map #3-35-8.14-70.

The three wells shall be disconnected upon connection of lots to the BPW water system and the wells shall be abandoned, capped, and plugged according to existing regulations, unless otherwise exempted.

**3.5.2.** There are two (2) irrigation wells, licensed by the State of Delaware. The location of each well is shown on a drawing attached hereto as *Exhibit A* and identified as:

(a) Private Irrigation Well on lands now or formerly of George and Kathryn Pepper, on Lot 11, Tax Map # 3-35-8.14-61.

(b) Private Irrigation Well on lands now or formerly of Jonathan and Gwyneth Sharp, on Lot 13, Tax Map # 3-35-8.14-63.

These irrigation wells may continue to be used solely for irrigation purposes and only to serve the lots on which they are located. If a well fails, it shall not be modified or redrilled but rather said well shall lose its exempted status under this Agreement.

**4. SEWER/ WASTEWATER IMPROVEMENTS**

**4.1 Association's Obligations.** The Association agrees, at its expense and without any expense or liability to BPW or City, and no sooner than five (5) years from

the date of completion of the water system and no later than five (5) years from the availability of sewer to the Property, to the design, permitting, construction, installation of all on-site Sewer improvements including pumping stations, force mains, gravity sewer mains, manholes, laterals and other appurtenances necessary to furnish sewage disposal to the Property and all off-site improvements and extensions necessary to connect to the BPW sewer system. The Association shall be responsible for the design and installation of the required off-site improvements in accordance with BPW requirements; however, the parties agree to develop a reimbursement mechanism to recover the costs with the exact methodology to be determined in conjunction with the BPW. The location, materials, and standards to be met for sewer cleanout and service lines as well as any related matter shall be approved by the BPW Engineer.

**4.2** *BPW's Obligations and Expense.* The BPW is willing and able to provide the required sewer service to the proposed development. The BPW hereby agrees to take all actions necessary to provide and operate systems to provide sufficient wastewater collection, treatment and disposal capacity, to serve the Savannah Place at a maximum 38 single family dwellings. The BPW shall reserve and allocate such sewer capacity for the Property. The BPW shall permit connection to the Property, in whole or in part, the BPW's sewer system upon payment by the Association of applicable fees, as set forth in this Agreement.

**4.3** *Size of System.* The BPW shall construct all facilities large enough to provide service to "Savannah Place. If the facilities constructed are larger than is necessary to serve "Savannah Place" such excess capacity or over sizing shall be at the BPW's expense.

**4.4** *Dedication and Acceptance of Sewer Improvements.* Following completion, inspection and approval by the BPW, at the timing set forth by a Public Works Agreement approved as part of the Sewer Improvements plan and approval, the Association shall dedicate and the City and BPW shall accept such approved Sewer Improvements.

**4.5** *Sewer Fees and Charges.* Upon issuance of building permits, the Association agrees to pay all sewer fees for wastewater services pursuant to the City Ordinance and the regulations of BPW. Any fees, including but not limited to impact fees, existing at the time of application, site plan review, or connection to any utilities of the BPW, as applicable shall be due and owing at said point.

## **5. ELECTRIC**

The Property is currently served by the BPW.

**6. STORMWATER, SEDIMENT AND EROSION CONTROL--ASSOCIATION RESPONSIBILITY**

The Association currently is served by a stormwater drainage system that remains the responsibility of the Association until further agreement among the parties.

**7. TRANSPORTATION IMPROVEMENTS**

**7.1. *Savannah Circle.*** Part of the Property is the street known as "Savannah Circle", a public street in the system of the Delaware Department of Transportation ("DelDOT"). Savannah Circle is a fifty (50') foot right of way with a paved width of twenty-two (22') feet. There are no curbs, gutters or sidewalks.

**7.2. *City acknowledgement.*** The City agrees and acknowledges that Savannah Circle may continue with its current configuration as described in section 7.1 above, except, however, that the street bed and paving shall be brought up to and comply with City street standards.

**7.3 *Association's Obligations.*** The parties acknowledge that Savannah Circle will be affected by construction and installation of the utilities, particularly Water and Sewer Improvements. The parties agree that restoration and changes to Savannah Circle shall occur as part of the installation of the Water and/or Sewer Improvements, whichever is later. Such restoration and/or changes to Savannah Circle shall meet all City standards; provided, however, that the City shall not require curbs, gutters or sidewalks or that Savannah Circle be paved at a width of greater than twenty-two feet (22'). Savannah Circle may also be subject to regulations or jurisdiction of other governmental agencies, except as provided in this section. The parties agree to develop a reimbursement mechanism to recover costs with the exact methodology to be determined in conjunction with the City. After such restoration to Savannah Circle, the Association may request from the City any major repair, replacement, or reconstruction of Savannah Circle but the Association acknowledges that such request may, at the sole discretion of the Mayor and City Council, be placed upon the future maintenance schedules as is consistent with streets and roadway repair policy of the City.

**8. FEES**

Notwithstanding any other financial obligation required by the Association as provided herein, the Association shall also be responsible for all other costs of the annexation of the Property. The individual property owners in Savannah Place shall reimburse to the City direct expenses, in the amount of Eight Thousand Seven Hundred Forty Dollars

(\$8,740.00) calculated at \$230 per lot incurred on its behalf by its staff, consultants, engineers and attorney in connection with their review and approval of the Property. Said amount shall be paid to the City on or before March 31, 2010.

9. **PUBLIC WORKS AGREEMENT AND PERFORMANCE GUARANTY**

The parties acknowledge that each infrastructure improvement, water, sewer, streets and the like, requires a separate public works agreement among the parties. The parties agree to cooperate in completing such agreements within a reasonable time.

10. **CONFLICT**

This instrument contains the entire Agreement between the Parties and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein, and no modification shall be binding upon the party affected unless set forth in writing.

11. **REMEDIES**

If any party fails in any manner to fully perform and carry out each and all of the terms, covenants and conditions of this Agreement, the defaulting party shall be given notice in writing of the default. If the defaulting party fails to cure the default within the time as may be stated in the notice, the other party may, at its option, terminate and cancel the Agreement or any part thereof, and may seek any relief available at law or equity including declaratory relief, equitable relief, specific performance and monetary damages, including attorney's fees associated with the enforcement of this Agreement incurred by the non-defaulting party.

12. **RIGHT OF ENTRY.**

The Association shall allow the City's and BPW's representatives access to all parts of Property undergoing construction.

13. **BINDING EFFECT & OBLIGATIONS UPON SALE AND TRANSFER**

13.1. *Successors in Interest.* This Agreement is for the benefit of City, BPW and the Association. Except as otherwise provided, it shall be binding upon the respective parties to them and upon their officers, directors, employees, agents, heirs, personal representatives, successors and assigns. The Association has the duty to inform any such successors or assigns of the obligations under this Agreement.

**13.2. General Contractors.** Any registered general contractor who engages in construction activity in the Property is subject to the enforcement provisions set forth in this Agreement.

**13.3 Third Party Rights.** Nothing herein creates any rights in third parties to enforce the provisions of this Agreement.

#### **14. COOPERATION: CHALLENGES TO VALIDITY OF AGREEMENT**

In the event of any legal or equitable action or other proceeding instituted by any person or entity challenging the validity of any provision of this Agreement, the Association, the City and the BPW shall jointly cooperate in the defense of such action and shall fairly allocate any and all costs, expenses, and attorney's arising out of this Agreement or any challenge to the validity of this Agreement, in the defense of any such action. Such challenge shall in no way relieve the Association, City or BPW of its obligations under this Agreement, until such time as a final non-appealable order of a court of competent jurisdiction shall have been entered disposing of all litigable matters.

#### **15. HARMLESS AND INDEMNIFICATION**

Each party shall hold the other harmless, and shall indemnify and defend from liability and shall pay for any and all damages or claims for personal injury including wrongful death and property damage which may arise from directly or indirectly from the conduct of the City, BPW, or the Association, or the officers, directors, agents, employees, contractors, or assigns arising out of (a) the failure of a party to perform any covenant or condition required to be performed herein; (b) any accident, injury, or damage which shall occur on the Property; and (c) failure to comply with the requirements of any governmental authority.

#### **16. WAIVER**

The City shall not be deemed to waive any rights unless such waiver is in writing and signed by the City Manager who has jurisdiction to exercise such right. The BPW shall not be deemed to waive any rights unless such waiver is in writing and signed by the General Manager who has jurisdiction to exercise such right.

#### **17. SEVERABILITY**

Any illegal or unenforceable provision of this Agreement shall be severed and shall not render invalid the remaining portions of this Agreement.

**18. IMMUNITY**

This Agreement shall not be deemed to waive City's statutory or common law immunity.

**19. GOVERNING LAW.**

This Agreement is made under and shall be governed in all respects by the Laws of the State of Delaware.

**20. NOTICES**

All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addresses thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices and communications to the Association shall be addressed to, and delivered at, the following addresses:

Savannah Place Homeowners Association, Inc.  
c/o A. Wallace Evans, President  
2051 Savannah Circle  
Lewes DE 19958

With a copy to  
Dennis L. Schrader, Esquire  
P.O. Box 690  
Georgetown DE 19947

Notices and communications to the City shall be addressed to, and delivered at, the following addresses:

The City of Lewes  
114 East Third Street  
P.O. Box 227  
Lewes DE 19958

Attention: City Manager

*With a copy to:*

Tempe Brownell Steen  
Steen, Waehler & Schrider-Fox, LLC  
17 Atlantic Avenue, Unit 2  
P.O. Box 1398  
Ocean View, DE 19970

Notices and communications to the BPW shall be addressed to, and delivered at, the following addresses:

Board of Public Works of The City of Lewes  
107 Franklin Street  
Lewes DE 19958

Attention: General Manager

*With a copy to:*

Tempe Brownell Steen  
Steen, Waehler & Schrider-Fox, LLC  
17 Atlantic Avenue, Unit 2  
P.O. Box 1398  
Ocean View, DE 19970

By notice complying with the requirements of this Section, each party shall have the right to change the address or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

## **21. AMENDMENTS**

This Agreement may be amended from time to time. No amendments to this Agreement shall be effective unless it is in a written agreement signed by all parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their proper corporate officers and their corporate seals to be hereunto affixed, the day and year first above written.

THE CITY OF LEWES

(Municipal Seal)

BY: James J. Pile  
MAYOR

ATTEST: Barbara W. Vaughan  
SECRETARY

BOARD OF PUBLIC WORKS OF THE CITY OF LEWES

(Seal)

BY: Hayley Alston  
PRESIDENT

ATTEST: James S. Roberts  
SECRETARY

SAVANNAH PLACE HOMEOWNERS ASSOCIATION, INC.

(Corporate Seal)

BY: A. Wallace Evans  
PRESIDENT

ATTEST: [Signature]  
SECRETARY



STATE OF DELAWARE :  
: ss.  
COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this 20 day of Nov, A.D. 2009, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, GARY W. STABLEY, President of the **Board of Public Works of the City of Lewes**, a Municipal corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed, and the act and the deed of the said Municipal corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said Municipal corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said Indenture was first duly authorized by resolution of the said Municipal corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Barbara Catts  
Notary Public

Commission Expires: 8-16-2011

BARBARA CATTS  
Type or Print Name of Notary

**BARBARA CATTS  
NOTARY PUBLIC  
STATE OF DELAWARE  
MY COMMISSION EXP 8-18-2011**

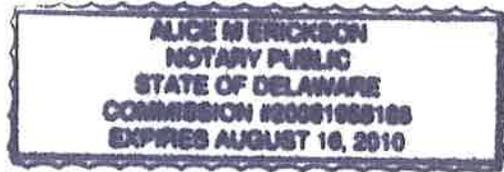
STATE OF DELAWARE :  
: ss.  
COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this 13 day of Jan, A.D. ~~2009~~<sup>2010</sup>, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Wally Evans, President of **Savannah Place Homeowners Association, Inc.**, a corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said Indenture was first duly authorized by resolution of the Board of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Alice M. Erickson  
Notary Public  
Alice M. Erickson  
Print or Type Name of Notary

My Commission Expires: 8/16/10



**RECEIVED**

JAN 21 2010

**ASSESSMENT DIVISION  
OF SUSSEX COUNTY**



*Knoll*

*Lot # 9*

*Lot # 11*

*Lot # 13*

*Savannah Place used well*

*Savannah Sharp on well*

*Savannah used well*

*Lot # 18*

*Johns  
Dorshie  
Walter  
SEE 3-35-814*

*Lot # 20*

Recorder of Deeds  
John F. Brady  
Jan 21, 2010 12:03P  
Sussex County  
Doc. Surcharge Paid

INSERT SHEET  
D: 3-3F

TEMPE BROWNELL STEEN  
JAMES F. WAEHLER  
MARY R. SCHRIDER-FOX

STEEN, WAEHLER  
& SCHRIDER-FOX, LLC  
COUNSELORS AT LAW

P.O. BOX 1398  
17 ATLANTIC AVENUE, SUITE 2  
CANAL BRIDGE PROFESSIONAL BUILDING  
OCEAN VIEW, DELAWARE 19970

PHONE (302) 539-7900 FAX (302) 539-7800

TEMPE BROWNELL STEEN  
Direct Dial: (302) 539-8500  
[Tempe@swsflaw.com](mailto:Tempe@swsflaw.com)

ENCLOSURE AND FORWARDING MEMO

TO: Mayor and Council  
Attn: Alice Erickson, Administrative Assistant

FROM: Tempe B. Steen, Esquire

DATE: March 2, 2010

RE: Savannah Place

**ENCLOSED PLEASE FIND: the Original Savannah Place Annexation Agreement recorded on January 21, 2010, in Book 3753, page 210.**

- Sign your name in each place indicated.
- Review and call
- Kindly review and, if in proper form, add your endorsement.
- Acknowledge before a Notary Public.
- Keep one copy for your records.
- Please forward to
- Also enclosed for you is

Mayor and Council  
City of Lewes  
Attn: Alice Erickson, Administrative Assistant  
P.O. Box 227  
Lewes, DE 19958