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DOUGLAS J. JOHNSON
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**FOURTH AMENDED COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS,
GRANTS, AND EASEMENTS AFFECTING THE PROPERTY
KNOWN AS THE MERRY OAKS HOMEOWNERS ASSOCIATION
CITY OF SYCAMORE,
DEKALB COUNTY, ILLINOIS**

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**FOURTH AMENDED CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS,
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KNOWN AS MERRY OAKS
CITY OF SYCAMORE, DE KALB COUNTY, ILLINOIS**

THIS AMENDED DECLARATION, made this 27 day of April, 2017, is being implemented pursuant to Article Thirteen of the Merry Oaks Covenants and Article III, Section II of its By-Laws. These Covenants and restrictions replace those previously recorded as document number 2014006985 recorded with the DeKalb County Recorder of Deeds pertaining to the property previously known as the commonly known as Merry Oaks Homeowners Association.

WHEREAS, Declarant is the owner of the real property described in Article One of this declaration;

WHEREAS, Declarant is desirous of subjecting said real property to the conditions, Covenants, restrictions, reservations, and easements hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof;

WHEREAS, Declarant desires to provide adequately for a subdivision of the highest quality and character by establishing uniform building restrictions and Protective Covenants for the use and occupancy of single-family detached residential and multifamily attached residential real property described in Exhibit "A".

NOW, THEREFORE, Declarant hereby declares that the real property described in and referred to in Article One hereof is, and shall be held, transferred, sold, conveyed, and occupied subject to the conditions, Covenants, restrictions, reservations, grants, and easements (sometimes hereinafter collectively referred to as "Covenants") hereinafter set forth.

ARTICLE ONE

Property Subject to this Declaration

1. **EXISTING PROPERTY.** The existing property which is, and shall be held, transferred, sold, conveyed, and occupied subject to the Covenants set forth herein is located in the City of Sycamore, DeKalb County, Illinois, and is more particularly described in Exhibit "A" which is attached hereto, incorporated herein, and made a part hereof.
2. **ADDITIONAL LANDS.** Lands in addition to the aforesaid Existing Property may hereafter become subject to this Declaration in the following manner:
 - (A) The Declarant, or its successor or assign, shall have the right, but not the obligation, without the further consent of any Owner, mortgagee, or other party, to bring within the purview of this Declaration additional Lands within the entire Tract described in Exhibit "B" attached hereto, incorporated herein and made a part hereof, or which are contiguous to the Entire Tract, and are approved by the appropriate governmental entity to be developed as part of Heron Creek. Such additional properties shall be deemed to be "contiguous" even though separated from the Existing Property by streets, roads, highways, rivers, streams, rights of way, railroads, utility easements, or other intervening physical features or property interests not inconsistent with the general contiguity of the Lands in question.
 - (B) Any supplemental Declaration filed of record pursuant to this Article One may contain such complementary additions and modifications of this Declaration as may be necessary or convenient, in the judgment of Declarant, of its successor or assign, to reflect and adapt to any difference in character of the added properties, provided, however, such additions and modifications are not inconsistent with the scheme of this Declaration. In no event, however, shall such supplementary Declaration revoke, modify, or add to the Covenants established by this Declaration so as to materially and adversely affect the Existing Property.

ARTICLE TWO

General Purposes of this Declaration

The real property described in Article One hereof is subject to the Covenants hereby declared to insure the tasteful and consistent development of Merry Oaks (Formally a part of the Heron Creek Homeowners Association and commonly known as Heron Creek Country Estates) and every part thereof; to protect each property Owner therein from such improper use of surrounding Lots as may depreciate the value of their property; to guard against the erection thereon of buildings of improper design or unsuitable materials; to insure adequate and reasonable development of said property; to encourage the erection of original designs and attractive improvements thereon, with appropriate locations thereof; to prevent haphazard and inharmonious improvements; to secure and maintain proper setbacks from streets and adequate free spaces between structures; to ensure desired high standards of maintenance and operation of community facilities and services for the benefit of all owners of property and residents; and, in general, to provide adequately for a residential subdivision of the highest quality and character.

For the purpose of securing an attractive, harmonious subdivision that will have the continuing appeal, the Merry Oaks Homeowners Association Board shall have the right to appoint a Design Review Committee to review the construction plans and specifications showing the elevations and location on such single-family and multifamily Lots, and the nature, kind, shape, height, material, and color scheme of all principal and accessory structures.

ARTICLE THREE

Definitions

The following words and terms, when used in this Declaration or any supplemental Declaration, shall have the following meanings:

ARTICLES shall mean the Articles of Incorporation of the Association, Inc.

ASSOCIATION shall mean the Not for Profit Corporation which is hereby designated as a "Neighborhood Association."

ASSOCIATION EXPENSES shall mean the expenses for which the Owners are or may be liable to the Association in accordance with the method of allocation thereof described in Article Seven hereof and includes the following:

Common Area Expenses which means and includes expenses incurred or to be incurred by the Association with regard to ownership, operation, administration, maintenance, and repair of the Common Areas or any part thereof; and

Expenses, which means and includes those expenses incurred or to be incurred by the Association with regard to the operation, administration, maintenance and repair of the Lots and buildings as set forth in the provisions of this Declaration.

BASEMENT shall mean a portion of a building located partly underground, but having half or more than half its clear floor-to ceiling height below the average grade of the adjoining ground at the building front.

BOARD OF DIRECTORS shall mean the Board of Directors of the Association.

BUILDING shall mean any roofed structure intended for the shelter, housing, or enclosure of any person or chattel.

BUILDING ACCESSORY shall mean a subordinate building or portion of a principal building, the use of which is incidental to that of the principal building and customary in connection with that use.

BY LAWS shall mean the Bylaws of the Association.

COMMON AREAS shall mean the portions of the Land not included within the Lots nor dedicated to a party other than the Association unless the Association maintains such dedicated area pursuant to the terms hereof, and such additional Common Areas as may hereafter be declared as such. Common Areas include the road right-of-way within the property described in Exhibit "A" as well as any street lighting within or adjacent to the aforesaid road right of way, all parks, lakes, and entrances.

CONTRACT PURCHASER shall mean any person(s) or entity that purchases a Lot by way of an installment sales contract.

COUNTY shall mean DeKalb County, Illinois.

DECLARANT shall mean the Developer and the Owners, the beneficiaries thereof, and any assignees thereof.

DECLARATION shall mean this instrument and any amendments, supplements, or modifications hereto.

ARCHITECTURAL/DESIGN REVIEW COMMITTEE shall mean a committee appointed by the Merry Oaks Homeowners Association Board for purposes of reviewing plans for structures and accessory structures pursuant to Article Four.

DEVELOPER shall mean B & B Development Limited Partnership and/or B & B Development, Inc., its successors and assigns; provided however, that an Owner shall not, solely by the purchase of a Lot, be deemed a successor or assign of Developer or of the rights of the Developer under this Declaration unless such Owner is specifically so designated as a successor or assignee of such rights in the respective instrument of conveyance or any other instrument executed by the Developer. The Developer shall have the right to designate any other party or entity as a successor Developer, and if such a designation occurs, the designated party or entity shall succeed to all of the Developer's rights and powers as set forth in the documents.

DOCUMENTS shall mean in the aggregate this Declaration and any and all Supplemental Declarations, the Articles, the Bylaws, the Master Declaration and all supplements thereto, the Articles of Incorporation and Bylaws of the Master Association, and the Rules and Regulations of the Association and the Master Association and all of the instruments and documents referred to or incorporated therein or attached thereto as the same may be amended from time to time.

DWELLING shall mean any building located on a dwelling Lot and intended for the shelter and housing of a single family.

DWELLING LOT shall mean any Lot zoned for single-family detached residential use or multifamily attached residential use.

ENTIRE TRACT shall mean that parcel of real estate located in the City of Sycamore, DeKalb County, Illinois as is legally described in Exhibit "B" attached hereto.

EXISTING PROPERTIES shall mean and refer to the existing Property as defined in Exhibit "A", attached hereto and made a part hereof when all or a portion of such property is subject to this Declaration from time to time.

GARAGE shall mean an enclosed storage area complete with doors which is designed or used for storage of motor vehicles.

INSTITUTIONAL MORTGAGEE shall mean any lending institution or real estate investment trust having a first mortgage lien upon a Lot and includes any insurance company doing business in Illinois and approved by the Commissioner of Insurance of the State of Illinois, a Federal or State Savings and Loan Association, Building and Loan Association or bank doing business in the State of Illinois and approved by the office of the comptroller, Division of Banking of the State of Illinois, a mortgage banking company licensed in the State of Illinois and "Secondary Mortgage Market Institution" which includes the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; and any mortgagee which has loaned money to Developer secured by a mortgage encumbering any portion of the Land.

LAND shall mean the land more particularly described on Exhibit "A", which is committed by this Declaration to the provisions hereof and any additional real estate which may hereafter be declared to be subject to this Declaration and all improvements made to such land including residences.

LIVING AREA shall mean those portions of a dwelling which are enclosed and customarily used for dwelling purposes and having not less than seven (7) feet six (6) inches headroom, but shall not include open porches, open terraces, breezeways, attached garages, carports, basements (including "walk-out" lower levels), or accessory dwelling buildings.

LOT shall mean any Lot zoned for single-family detached residential or multifamily attached residential use described by a number or letter upon any recorded subdivision plat of the Property, but shall not include any parcel designated therein as a "Tract."

OWNER shall mean the record owner (whether one or more persons or entities), of a fee or undivided fee interest or having an interest in real estate as a contract purchaser of any Lot or living unit, situated upon the Property, but shall not include any such person or entity who holds such interest merely as a security for performance of an obligation.

MERRY OAKS shall mean the entire Merry Oaks Subdivision as legally described in Exhibit "B" attached hereto.

PLAT shall mean the plat of subdivision of Heron Creek in Sycamore as originally recorded in the Office of the Recorder of Deeds of DeKalb County, Illinois, and as amended or added to from time to time thereafter.

SINGLE FAMILY shall mean one or more persons, each related to the other by blood, marriage, or adoption, or a group of not more than four persons not all so related together with his or their domestic servants, maintaining a common household in a dwelling.

SINGLE FAMILY OCCUPANCY shall mean and refer to occupancy by a family unit consisting of not more than five adult members.

STORY shall mean that portion of a dwelling included between the surface of any floor and the surface of a floor next above, or if there is no floor above, the space between the floor and ceiling next above.

STRUCTURE shall mean any building or other improvement erected or constructed, the use of which requires more or less permanent location on or in the ground, or attached to something having a more or less permanent location on or in the ground. All fences or signs or other advertising devices, attached or projecting, shall be construed to be a separate structure.

ARTICLE FOUR

Architectural/Design Review

1. **OBJECTIVES.** The Merry Oaks Homeowners Association objectives are: to carry out the General Purposes as expressed in this Declaration and to assure a development of a distinctively high quality; to insure that Merry Oaks Subdivision, is a Subdivision in which all Lots effectively make Merry Oaks one of the more desirable areas in which to live in DeKalb County, Illinois; to encourage design features and the use of quality materials which preserve and protect the value of all Dwellings in Merry Oaks; to assure that any improvements or changes in the Property will be in harmony with the natural beauty of the area.

2. **MATTERS REQUIRING APPROVAL.** Prior written approval shall be obtained from the Architectural/Design Review Committee with respect to all matters stated in this Declaration as requiring approval. Lot Owners are encouraged to submit preliminary sketches for "informal comment" prior to submittal of final architectural drawings and specifications for final review. No building, fence, wall, pole, pool, or any other recreational surface or court, driveway access, screened enclosure, or any other principal or accessory structure, including but not limited to play sets, swing sets, dog houses, or sandpits shall be commenced, erected, or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until

the plans and specifications showing the nature, kind, shape, elevations, heights, materials, color, location, grade, and site clearing or preparation have been submitted to and approved in writing by the Architectural/Design Review Committee. The A/DRC may also require the submission of additional information and materials as may be reasonably necessary to evaluate the proposed construction or alteration. All new landscaping plans, as well as additions or changes to landscaping must be submitted for approval to A/DRC.

3. **PROCEDURE.** Whenever approval is required by the Architectural/Design Review Committee, appropriate architectural and/or landscape plans, including a site layout, and specifications shall be submitted to the A/DRC and they shall either approve or disapprove such design, location, proposed construction and site clearing, and preparation activities within thirty (30) days after completed plans and specifications have been submitted to it; except that if such plans and specifications are disapproved in any respect, the applicant shall be notified wherein such plans and specifications are deficient. The A/DRC shall evaluate all plans utilizing standards of the highest level as to the aesthetic quality and materials and workmanship to be used and as to suitability and harmony of location, structure, and external design in relation to surrounding topography and structure. The A/DRC may withhold approval for any reason deemed by it to be appropriate, including aesthetic reasons, except that approval will not be withheld for capricious, subjective, or unreasonable reasons. If such plans and specifications are neither approved nor disapproved within thirty (30) days after completed submission, approval shall be deemed to have been given and this Article fully complied with.
4. **NON-LIABILITY FOR APPROVAL OF PLANS.** Plans and specifications shall be approved by the Architectural/Design Review Committee as to style, exterior design, appearance, and location, but such approval shall not constitute approval for engineering design, or for compliance with zoning and building Developer or beneficiaries of the Owner, nor any professional consultant engaged by the Architectural/Design Review Committee, assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the Architectural/Design Review Committee, any member thereof, the Declarant, nor the beneficiaries of Owner shall be liable to any Owner or other person for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (c) the development or manner of development of any property within Merry Oaks, or (d) the execution and filing of an estoppel certificate pursuant to the Design Guidelines, whether or not the facts therein are correct, provided, however, that such action, with the actual knowledge possessed by such party, was taken in good faith. Approval of plans and specifications by the Declarant or the Architectural/Design Review Committee is not, and shall not be deemed to be the representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations, including but not limited to zoning ordinances and building codes.
5. **LANDSCAPE.** All new construction must submit landscaping plans to the Architectural/Design Review Committee. Unless otherwise approved by the A/DRC, all residents shall be required to landscape at a minimum with mulch, landscaping and planting beds in the front yard, and around the complete perimeter of the residence and/or any other approved structure. Perimeter landscaping must include but is not limited to various bushes and shrubs. The remainder of the yard must have grass (seed or sod). Front, side or city boulevard trees must be at least 2 ½ inches in diameter, 6 inches above the tree root ball at time of installation. Rear landscaping plans must include at a minimum 2 trees that are at least 2 ½ inches in diameter, 6 inches above the tree root ball at time of installation. Additional rear trees are encouraged and have no installation size requirement. The landscaping plan must hide from any street view utility units or air conditioners with non-deciduous trees and/or bushes. The landscaping shall be completed within six months following the issuance of an occupancy permit or as soon as reasonably possible in the next planting season. Any changes of a landscaping plan already in place (including, but not limited to the addition of bushes, trees, berms, ponds, water features, new beds, requires a landscape plan be submitted for approval by the A/DRC. The Architectural/Design Review Committee reserves the right to disapprove any landscaping and require changes or alterations thereto if need be.
 - (A) **Statuary:** Statuary must be limited in number and size as to not be a nuisance. Any statue over 3 ft tall must be limited to the back half of the Lot, unless approved by A/DRC. Lot Owner must request permission to have more than 3 statues over 3 ft tall on any one Lot. No more than 10 statues total are allowed on any Lot unless approved by A/DRC. Arrangements of statues must be aesthetically pleasing,

and A/DRC may require specific placement and landscaping around the statuary. Statuary may not exceed 8 ft in height.

- (B) Flag Pole: A/DRC requires prior approval for the allowance, size, and placement of a free standing (permanent) pole. No more than one pole of any kind may be allowed per Lot. A flag pole may carry no more than two flags. The primary flag should be no larger than 3' x 5'. The secondary flag must equal or be smaller than the primary flag. All flags must be kept in good condition.

- 6. **ASSIGNABILITY.** The functions of the Architectural/Design Review Committee under this Article may be assignable at the sole discretion of the Merry Oaks Homeowners Association Board.

ARTICLE FIVE

Protective Covenants/General Restrictions

On and after the date hereof, title to the property legally described in Exhibit "A" shall be subject to the following Covenants which shall run with the Land and which are Protective Covenants applicable to all of the property described in Exhibit "A", attached hereto and made a part hereof. No principal building or other accessory structure of any kind shall be erected, moved to and on, altered, or permitted to remain on any Lot, (except Lot 83 as to the existing single-family home on said Lot, and not including outbuildings), within said Development which does not comply with the following restrictions:

- 1. **LAND USE SINGLE-FAMILY RESIDENTIAL.** All properties subject to this Declaration (and any future single-family detached areas of Merry Oaks) shall be used only as Residential Dwelling Lots for a detached single-family residence with attached garage, or for attached multifamily residences with attached garages where zoning permits. Each Dwelling shall be designed and erected for occupation by a single-family for the sole use of such family. No home, occupation, or profession shall be conducted on any Lot except as permitted by local zoning ordinances and appropriate governmental regulation.
- 2. **SUBDIVISION OF LOTS.** No Lot shall be subdivided or re-subdivided to create additional buildable Lots. No more than one (1) such detached single-family Residential Dwelling with attached garage shall be built on any said lot, except where zoning permits multiple family buildings. Developer reserves the right to make boundary and non-recorded easement adjustments not inconsistent with the intent of this section, which adjustments shall not be deemed to be a subdivision as contemplated herein.
- 3. **LOCATION OF STRUCTURE ON LOT.** Front yard setbacks shall be no less than 40 feet from the Lot line and shall be set back no more than 55 feet from the Lot line. Side yard setbacks must be a minimum of 15 feet from all Lot lines and placed generally in the center of the Lot.
- 4. **QUALITY OF STRUCTURE.** It is the intent and purpose of these Covenants to ensure that all structures shall be of high quality design, workmanship, and materials, and that they shall be compatible and harmonious with the natural setting of the area and other structures within the Development. All structures shall be constructed in accordance with applicable building codes and with more restrictive standards which may be required by the Architectural/Design Review Committee.

In addition to those requirements set forth in Article Four, all Lots listed on Exhibit "A" shall conform to the following minimum standards which shall be subject to review by the Architectural/Design Review Committee:

- (A) In any home having a fireplace, the fireplace chimney must be masonry.
- (B) There shall be no aluminum or vinyl siding, and no dryvit nor EIFS shall be allowed.
- (C) There shall be no more than three (3) primary exterior surface materials, with the exception of surface materials used only for detail specific areas which are approved by the A/DRC. All frontal elevation home exterior materials must be natural stone and/or brick, and/or natural cedar unless approved by A/DRC. All homes must have decorative trim, which should include, but not be limited to, contrasting shutters or

accents in stone, brick or other approved material.

- (D) A/DRC reserves the right to ensure that houses next to, or across from each other must not duplicate exterior material colors, or frontal design elevations.
 - (E) There shall be windows on all elevations and the windows will be appropriate in size and number for each elevation.
 - (F) There shall be a minimum porch depth of five (5) feet.
 - (G) No roof shall have a roof pitch of less than 8/12 unless otherwise specifically approved by the A/DRC.
5. **SIZE OF STRUCTURE.** Structure heights shall conform to requirements of the City Ordinance. Raised ranches, bi-level, and tri-level homes shall not be permitted. The Living Area of the single family detached dwelling, exclusive of the attached garage, basements, porches, or patios shall be:
- (A) For one-story, single-family dwellings not less than 2,750 square feet of Living Area, excluding the basement.
 - (B) For dwellings of more than one story, not less than 3,600 square feet of Living Area excluding the basement.
 - (C) All garages shall be attached to the dwelling and shall be constructed at the same time as the Residence Dwelling. Unless otherwise approved by the Architectural/Design Review Committee, there shall be no less than one three (3) car attached garage for each dwelling unit constructed. Garages in excess of three (3) cars must be approved by the Architectural/Design Review Committee. All garages on north and south facing residences must be located on the west side of the residence. All garages on east and west facing residences must be located on the north side of the residence.
6. **DRIVEWAYS.** Access driveways and other paved areas for vehicular use on a Lot shall have a base of compacted gravel, crushed stone, or other approved base material, and shall have a wearing surface of asphalt, concrete, pavers, or the equivalent thereof. Plans and specifications for driveways, culverts, pavement edging, or markers shall be approved in writing by A/DRC, or its successor or assign.
7. **TEMPORARY STRUCTURES.** No trailer, tent, shack, garage, barn, or basement shall be used at any time for a Residence either temporarily or permanently. During the period of construction, all refuse and trash shall be stored in a dumpster (or other trash container) located on the Lot.
8. **VEHICULAR PARKING.** No person, firm, or corporation shall park or cause to be parked on the Land, including but not limited to their Lot, or in the streets, alleys, or parkways abutting their Lot, any commercial vehicle, recreational vehicle, snowmobile, motor home, camper, mobile or stationary trailer, house trailer, boat, boat trailer or truck (including either tractor or trailer, or both, which truck has a carrying capacity of over 3/4 ton) for a period exceeding 24 hours.
- (A) Any commercial vehicle, recreational vehicle, snowmobile, motor home, camper, mobile or stationary trailer, house trailer, boat, boat trailer, panel truck, pick-up truck which has a carrying capacity of over 3/4 ton shall be permitted, but shall at all times be kept in a closed garage. Trucks having a capacity over 3/4 ton may be kept in a closed garage.
 - (B) No maintenance or repair shall be done upon or to any vehicle (including, but not limited to, four-wheel passenger automobiles) except within a closed garage and totally isolated from view.
 - (C) Because of the importance of keeping vehicles within garage areas, no Owner may convert any garage area for any other use. Garage sales may be held no more than 4 times per year for any Lot.
9. **COMPLETION OF CONSTRUCTION.** Any construction undertaken on any Lot shall be continued with diligence toward the completion thereof and construction of any Dwelling shall be substantially completed within one (1) year from the date of issuance of a building permit therefore. Completion of construction shall include completion of any sidewalks, driveways, and landscaping required for the residence. This one (1) year period of time may be extended by written agreement of Merry Oaks Homeowners Association, or its successor or assigns.
10. **NUISANCES.** No noxious or offensive activity shall be carried on, in or upon any Dwelling Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the other residents of Merry Oaks.

No noxious or offensive plants or seeds, or other things, or conditions harboring or breeding of infectious plant diseases or noxious insects shall be introduced or maintained upon any Lot.

11. **FENCES.** No fencing of any kind or similar barrier will be allowed on any Dwelling Lot, except to enclose swimming pools. No wall, fence, hedge, pole, structure, or shrubbery which unreasonably restricts the view and impairs the openness of Merry Oaks shall be constructed on any Lot. The A/DRC reserves the right to determine acceptable fence materials, design, heights, and placement on Lot. In the event that a swimming pool fence is approved, the required standard for fences shall not exceed 4 ½ ft tall and 4-inch width between spindles (or as specified in city building code), and the material must be bronze, brown, or black approved metal material.
12. **LOT APPEARANCE.** No Owner shall accumulate or allow to accumulate on his or her Lot, junked vehicles, litter, refuse, toys, tools, personal items, or other unsightly materials. Natural growth shall be kept trim and neat. All dead or diseased landscaping shall be promptly replaced and/or treated and it does NOT require A/DRC approval if replacement landscaping is the same or similar. All structures, including but not limited to the residence, decks, and play sets shall be routinely and properly maintained to include maintenance, washing, staining, painting or other general methods to ensure proper aesthetic levels. If the same colors and/or materials are used for the general maintenance of approved existing structures, then A/DRC approval is NOT required. Tarpaulins and similar covering materials are prohibited. Garbage and recycling shall be placed in receptacles and may not be outside the residence more than 24 hours prior to and/or concluding garbage pickup. Within six (6) months or sooner of the date of occupancy of any residences constructed on any Lot, all driveway and turnaround areas shall be finished with concrete, asphalt, or brick material.
13. **GARDENS.** Except as otherwise approved by the A/DRC, no garden of any type, whether for the production or maintenance of shrubs, landscape plantings (other than decorative flower beds), or foods are permitted, with the exception that one (1) garden of an area not to exceed three percent (3%) of the Lot size shall be permitted on each Lot, and it shall not be placed between the house and the street. Any vegetable garden must be placed in the backyard. All lawns, gardens, and other landscaped planting shall be kept reasonably free of weeds and maintained in a reasonable fashion.
14. **SWIMMING POOLS OR OTHER RECREATIONAL SURFACES.** All recreational structures or surfaces including, but not limited to: Swimming Pools, Hot Tubs, Basketball Hoops, Shuffleboard Courts, Gazebos, and Playground Equipment must be approved by the A/DRC. All plans, including site plans, must be submitted and approved by the A/DRC prior to beginning construction or the placement of equipment. The A/DRC retains the right to disallow any of the above structures or surfaces. Pools must be in the back of the Lot and may not be located closer than ten (10) feet from rear and side Lot lines. No above ground pools shall be permitted. Playground/Swing Set equipment shall not exceed 20ft wide x 20ft deep x 15ft tall dimensions. A landscaping plan must be submitted and approved by the A/DRC in order to assure proper screening of any approved structure. Landscaping at the discretion of the A/DRC will be required depending on the structure size and location.
15. **FIRES.** Other than barbecues in properly constructed barbecue pits, or grills and fire pits, no open fires shall be permitted on a Lot, nor shall any other similar activity or condition be permitted which would tend to increase insurance rates for other Owners. There shall be no open burning of refuse or building materials by an Owner. Any permanent fire pit or structure must be approved with regard to materials, size, and Lot location by A/DRC. All approved fire pits must also have a properly fitted screened cover.
16. **ANIMALS.** No animals, including but not limited to horses, or other domestic farm animals, fowl, or reptiles of any kind may be kept, bred, or maintained on any Lot, except commonly accepted household pets. No animals shall be kept, bred, or raised within the Development for commercial purposes. In no event shall any domestic pet be allowed to run free away from its Owner's Lot without a leash or so, as to create a nuisance. There shall be no dog kennels or other animal shelters.
17. **EXTERIOR AND FREESTANDING TECHNOLOGY.** Radio or television transmission, satellite, cable, or other types of reception dishes or receiving towers, antennae, or receivers are not permitted, except within the

interior portion of a Dwelling, and except as specifically allowed by the FCC. Ham Radio antennas or towers are not permitted. Solar panels, wind generators, windmills, turbines, and other similar technologies may not be permitted. Notwithstanding the foregoing, satellite dishes which are no larger than 18” in diameter shall be permitted on the exterior of a Dwelling subject to approval of the A/DRC, and provided that said dish is not visible from the roadways.

18. **UNDERGROUND WIRING.** No above ground electrical or communication wires or cables, except those which may exist as of the date of recording of this document, are permitted other than within Dwellings. Existing communication wires or cables and poles may be replaced and maintained as necessary. All necessary and approved conduit and cable will be placed and maintained underground. Temporary above-ground power facilities and connections thereto shall be exempt from the provisions of this Section.
19. **REFUSE.** No refuse, garbage, or trash shall be kept, maintained, or contained on any Lot so as to be visible from another Lot. No incinerators shall be kept or maintained on any Lot. No refuse pile, garbage, or unsightly objects shall be allowed to be placed, accumulated, or suffered to remain anywhere on a Lot. No recyclable materials may be stored outside. On-site dumpsters (trash containers) shall be used during the period of construction of any structure or Dwelling.
20. **MAIL AND DELIVERY BOXES.** Merry Oaks Homeowners Association, or its successor or assign, reserves the right to establish a standard mail or delivery box design. In the event the MOHOA establishes a standard mailbox, all residences shall comply with this standard mailbox form.
21. **NATURAL DRAINAGE WAYS AND SUB-SURFACE DRAINAGE SYSTEMS.** No Owner shall erect, construct, maintain, permit, or allow any principal or accessory structure, fence, dam, barrier, or other improvements or obstructions of any kind which would interrupt normal drainage on any private or public property or any portion of any public right-of-way or within any area designated on the Plat of Subdivision or other recorded document as a “drainage easement.” In addition, an Owner shall not take any action which shall in any way obstruct, alter, or otherwise interfere with drainage easements established by the Developer for the benefit of the property.
22. **NO TRADE, BUSINESS, PROFESSION, ETC.** No trade, business, profession, or any other type of commercial activity shall be carried on upon the Land except as approved by the Merry Oaks Homeowners Association Board, or assigns.
23. **SIDEWALKS.** Each Owner shall be responsible for keeping the sidewalk and bike paths abutting his Lot, if any, free from any obstruction and clutter including, but not limited to, bicycles, grass clippings, and garbage, and each owner shall also be responsible for snow removal.
24. **RECONSTRUCTION.** Any repair, rebuilding, or reconstruction of damaged home shall be substantially in accordance with the architectural plans and specifications for:
 - i. the originally constructed home;
 - ii. a previously reconstructed home; or
 - iii. new plans and specifications approved by the Association.
25. **RULES AND REGULATIONS.** Each Owner shall be subject to such rules and regulations with respect to Merry Oaks as the Merry Oaks Homeowners Association determines from time to time, to be in the best interest of the Association and the Owners.
26. **ADDITIONAL CONSTRUCTION AND/OR EXTERIOR CHANGES.** Any changes to approved plans, before, during, or after the construction of an improvement to a Lot shall first be submitted to the Architectural/Design Review Committee for approval pursuant to these Covenants.
27. **MAINTENANCE OF PARKWAYS.** The Owner of Lots in Merry Oaks shall be responsible for the maintenance of parkways located between their Lot lines and the edges of street pavements on which said lots

face. Placement of trees in the parkway should be coordinated with the City of Sycamore. Dead or diseased trees should be removed and replaced in a timely manner.

28. **LIGHTING.** No lighting shall be permitted which alters the residential character of Merry Oaks; however, nothing herein contained shall be deemed to prohibit the maintenance upon the roadways within Merry Oaks lighting as installed by the MOHOA for the purposes of lighting the roadways, sidewalks, and pathways of Merry Oaks. No lighting of outdoor activity areas upon a Lot shall be permitted unless approved by the A/DRC.
29. **CLOTHESLINES.** No clotheslines are allowed.
30. **EXEMPTION FOR LOT 83.** The exemption contained in this Declaration for existing single-family home (but not outbuildings), situated on Lot 83 is due to the fact that existing single-family home, situated on said Lot existed prior to the development of the property described in Exhibit "A" and the establishment of the Association. Upon any transfer in the ownership interest in Lot 83, the single-family home (but not the outbuildings) situated on said Lot 83 shall be exempt as to paragraphs 3-5 of this Article Five. All other provisions of this Article Five and as may be amended from time to time, shall apply to said Lot 83. Further, any new construction or alterations to the existing single-family home on Lot 83 shall be subject to any and all applicable provisions of this Declaration. The language in this Paragraph shall not be deemed dispositive, one way or another, as to the issue of the applicability to Lot 83 of any and all of the provisions of this Article Five which do not directly relate to the physical attributes of the existing single-family home situated on said Lot.
31. **AMENDMENT:** Notwithstanding the provisions of Article Thirteen of this Declaration ("Amendment and Modification"), the Amendment of the Covenants/Restrictions contained in paragraphs 1-5 of this Article and, as same may be amended from time to time, shall require the consent of the members of the Association who own, legally or beneficially, three-fourths of the Lots in Merry Oaks. Said consent, or lack thereof, shall be evidenced by a vote by the Members of the Association, either in person or by proxy, at the annual meeting of Members, or by such other meeting of the Members called by the Board of Directors with not less than 30 days' written notice to the Members, which notice specifically providing the language of the proposed Amendment to be voted upon.

ARTICLE SIX

Homeowners Association

1. **CREATION AND PURPOSES.** At Declarant's election, it may cause to be formed an Illinois not-for-profit corporation to be known as the Merry Oaks Homeowners Association, formally the Heron Creek Homeowners Association (hereinafter referred to as the "Association") or such other name as Declarant shall choose, whose purposes shall be to ensure enforcement of the high standards established for property in Merry Oaks under the Covenants to ensure the provision of certain services and facilities of common benefit to all or the majority of Lot Owners, and in general to maintain and promote the desired character of Merry Oaks.
2. **MEMBERSHIP AND VOTING.** Every record Owner of a fee simple interest in Merry Oaks, including the Declarant, shall become and be a member of the Association, and each member, including the Declarant, its successor or assign, shall be entitled to one (1) vote on each matter submitted to a vote of members for each Lot owned by him or it, or, in the case of the Declarant, or its successor or assign, each Lot owned, or beneficially owned, by it. Where title to a Lot is in the name of more than one person, such co-Owners must designate one spokesman or spokeswoman, and shall be entitled to one vote.

Each Owner shall be entitled to the benefit of and is subject to, the provisions of the Documents as same may be amended from time to time. The voting rights of the Members shall be as set forth in the Articles.

3. **BOARD OF DIRECTORS.** The Association shall be governed by the Board of Directors which shall be appointed, designated, or elected, as the case may be, as set forth in the Articles.

4. **INITIATION OF LEGAL ACTION.** Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain a vote by a majority of all Lots within the Land (at a duly called meeting of the Association) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purposes of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:
- (A) The collection of assessments and "Maintenance Fees"; or
 - (B) The collection of other charges which Owners are obligated to pay pursuant to the applicable Documents; or
 - (C) The enforcement of the use and occupancy restrictions contained in the applicable Documents; or
 - (D) In an emergency where waiting to obtain the approval of the Owners creates a substantial risk or irreparable injury to the Land or to Owner(s).
5. **CONVEYANCE TO ASSOCIATION.** Developer agrees that it shall convey to the Association fee simple title in and to the Common Areas together with the improvements located thereon on or before the "Conveyance Date" which shall be on or before 120 days after the earlier of the following ("Turnover Event"):
- (A) The conveyance by Developer of a total of one hundred percent (100%) of the Lots within all Units of the Merry Oaks development; or
 - (B) When Developer shall determine that the development has been completed; or
 - (C) At such earlier time as Developer, in its sole discretion, may elect.

All conveyances to the Association described herein shall be by Warranty Deed subject to (1) taxes for the year of conveyance and subsequent years; (2) such facts as an accurate survey would show (3) the terms and provisions of this Document and the Master Declaration; (4) easements, restrictions, reservations, conditions and limitations of record; (5) applicable zoning and ordinances and regulations. The Association shall be obligated to accept all conveyances of any property within the Land from the Developer.

6. **POWERS OF THE ASSOCIATION.** The Association shall have the following powers, but not duties:
- (A) To the extent such services are not provided by any governmental body:
 1. To care for, spray, trim, protect, and replant trees on all streets and private drives and in other public places where trees have once been planted, and to care for, protect and replant shrubbery and grass in the parkways which are in the streets and set aside for the general use of all residents and Owners of property in Merry Oaks.
 2. To spray and take other measures for mosquito and fly abatement within Merry Oaks.
 3. To employ duly qualified peace officers for the purpose of providing such additional security protection as the Association may deem necessary or desirable in addition to that provided by any governmental body.
 4. To maintain entranceways and any other common areas located within Merry Oaks.
 5. To mow, care for, and maintain vacant or improved property, remove rubbish from same, and to do any other things necessary or desirable in the judgment of the officers of the Association to keep all private property and all parkways in front of any Lot in Merry Oaks neat in appearance and in good order.

Accompanying this authority will be the right to make and collect reasonable charges, not to exceed the cost to the Association, from the owners of such Lots, and the right to lien such Lot or Lots as a remedy.

 6. To own or lease such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay taxes on such real estate as may be owned by it.
 7. To make such improvements to the entrance ways, parkways, and streets within Merry Oaks and provide such other facilities and services as may be authorized from time to time by the affirmative vote of two-thirds of the members of the Association acting in accordance with its by-laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping Merry Oaks a highly desirable residential community.

8. To provide for the maintenance of facilities in any public street, private driveway, park, pedestrian and non-vehicular pathway, entranceway, or on any Land set aside for the general use of the Owners and residents of Merry Oaks.
9. Pay for street lighting.
10. Any and all other related powers to reasonably ensure the aesthetic appeal and architectural integrity of the property.

ARTICLE SEVEN

Association Expenses

In order to fulfill the Covenants contained in this Declaration and in order to maintain and operate the Common Areas for the use, safety, welfare, and benefit of Owners, their families, invitees, guests and lessees there is hereby imposed upon each Lot and its Owners the affirmative covenant and obligation to pay the Association (in the manner set forth in Article Eight hereof), and upon the Association, the obligation to assess, collect and expend, the Association Expenses, for those Association expenses described in this Declaration, including the following:

1. COMMON AREA.

- (A) **Taxes.** Any and all taxes levied or assessed at any and all times upon the Common Areas by any and all taxing authorities, including all taxes, charges, assessments and impositions, and liens for public improvements, special charges and assessments, and water drainage districts and, in general, all taxes and tax liens which may be assessed against the Common Areas and against any and all personal property and improvements which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue on such taxes.
- (B) **Utility Charges.** All charges levied for utilities providing services for the Common Areas, whether supplied by a private or public firm including, without limitation, all charges for water, gas, electricity, telephone, sewer, and any other type of utility or service charge.
- (C) **Insurance.** The premiums on any policy or policies of insurance required to be obtained by the Association under this Declaration of the documents.
- (D) **Maintenance, Repair and Replacement.** Any and all expenses necessary to:
 1. Maintain and preserve the Common Areas (including such expenses as grass cutting, tree trimming, and other landscape maintenance, operating and maintaining sprinklers and the like); and
 2. To keep, maintain, repair, and replace any and all improvements upon the Common Area in a manner consistent with the development of Merry Oaks the Covenants and restrictions contained herein and all orders, ordinances, rulings, and regulations of any and all federal, state, and city governments having jurisdiction thereover as well as the statutes and laws of the State of Illinois and the United States.
- (E) **Administrative Expenses.** The costs and administration for the Association, including any secretaries, attorneys' fees, budget and tax preparation, management fees, bookkeepers, and other employees necessary to carry out the obligations and Covenants of the Association under this Declaration, notwithstanding the fact that some of these services may be expended in providing services to or collecting sums owed by particular Owners. In addition, the Association may retain a management company or contractors to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company or contractor so retained shall be deemed to be part of the Common Area Expenses.
- (F) **Indemnification.** The costs of the Association to indemnify and save harmless Developer from and against any and all claims, suits, action, damages, and/or causes of action arising from any personal injury, loss

of life, and/or damage to property sustained in or about the Common Areas or the appurtenances thereto; from and against all costs, counsel fees, expenses, and liabilities incurred relating to any such claim or in settlement thereof, the investigation thereof or the defense at any levels of any action or proceedings brought thereon, and from and against any order, judgments, and/or decrees which may be entered therein. Included in the foregoing provisions for indemnification are any expenses that Developer may be compelled to incur in bringing suit for the purpose of enforcing rights hereunder, or for the purpose of compelling the specific enforcement of the provisions, conditions, Covenants, and restrictions contained in this Declaration to be kept and performed by the Association and/or the Owners, including the payment of Association Expenses. Further, the costs to the Association of indemnifying its Officers and members of the Board of Directors for all costs and expenses whatsoever incurred in the pursuance of their duties, obligations, and functions hereunder and in any legal defense of such actions or in settlement thereof including, without limitation, counsel fees and costs at all levels of any trial or appeal or other proceeding, costs of investigation and discovery, etc. Nothing in the provisions of this Paragraph shall require an Institutional Mortgagee to pay any Association Expenses or portion thereof attributable to costs to the Association to indemnify and save harmless Developer in accordance with such paragraph. Any such Association Expenses shall be reallocated amongst the Owners other than the Institutional Mortgagees.

- (G) **Enforcement.** Any and all expenses, including attorneys' fees, incurred by the Association in enforcing any of the Covenants, restrictions, terms, and conditions of the Declaration or in curing any default, violation or failure to perform or abide by such Covenants, restrictions, terms, and conditions.
- (H) **Reserve Funds.** The costs to establish, at the discretion of the Association, an adequate reserve fund for replacement and/or capital refurbishment of the Common Areas in amounts determined proper and sufficient by the Association. Each Owner acknowledges, understands, and consents that such reserve funds are the exclusive property of the Association as a whole and that no Owner shall have any interest/claim or right to any reserve funds. The Association shall be responsible for maintaining the reserve funds in a separate reserve account and to use such funds only for capital costs and expenses as aforesaid.
- (I) **Miscellaneous Expenses.** The costs of all items of expense pertaining to or for the benefit of the Common Areas or any part thereof, or the Association not herein specifically enumerated and which is determined to be a Common Area Expense by the Association including, but not limited to, the cost of refuse collection if billed to the Association and not individual Owners and the cost of providing security services to Merry Oaks in the event the Board of Directors elects to provide such services.

2. **ASSESSMENTS.** It is hereby declared, and all Owners and the Association agree, that the Association Expenses shall be disbursed by the Association out of funds assessed and collected from any paid by all Owners in Merry Oaks.

(A) **Determining Individual Assessments.**

As provided in the Bylaws of the Association, the Board, or the management company with the Board's approval, shall prepare an annual estimated Budget which shall reflect the annual common expenses described in Article Eight. Thereupon the Board of Directors shall allocate to all Merry Oaks Lots an equal share of the said annual Common Expenses. The share of the Annual Association Expenses allocated to an Owner is the "Individual Assessment" for each Lot.

The individual Assessment shall be payable at such time as the Board of Directors determines.

- (B) **Liability of Owners for Individual Assessments.** By the acceptance of a deed or other instrument of conveyance of a Lot in Merry Oaks, each Owner thereof acknowledges that each Lot and the Owners thereof are jointly and severally liable for their own Individual Assessment as provided for herein. Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner for himself and his heirs, executors, successors, and assigns, that in the event Owners fail or refuse to pay their Individual Assessment or any portion thereof or their respective portions, then the other Owners may be responsible for increased Individual Assessments due to the nonpayment by such other Owners, and such increased Individual Assessment can and may be enforced by the Association and the Developer in the

same manner as all other assessments hereunder as provided in this Declaration.

ARTICLE EIGHT

Establishment and Enforcement of Liens

1. **LIENS.** Any and all Individual Assessments for Association Expenses, and special Assessments and all installments thereof (collectively the "Assessments") with interest thereon at the highest rate allowed by law and costs of collection, including attorneys' fees are hereby declared to be a charge and continuing lien upon a Lot and the home against which each such Assessment is made. Each Assessment against a Lot and the home, together with interest thereon at the highest non-usurious rate allowed by law (and if not such rate specified by law, then at eighteen percent (18%) per annum) and costs of collection thereof, including attorneys' fees, shall be the personal obligation of the person, persons or entity owning the Lot and/or home assessed. As to Institutional Mortgagees, said lien shall be effective only from and after the time of recordation amongst the Public Records of the County, of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a recordable satisfaction of the statement of lien. Where an Institutional Mortgagee obtains title to a Lot or home as a result of foreclosure of its mortgage or deed given in lieu of foreclosure, such acquirer of title, its successors, and assigns, shall not be liable for the share of Assessments pertaining to such Lot and/or home or chargeable to the former Owner which become due prior to the acquisition of title as a result of the foreclosure, unless such share is secured by a claim of lien for Assessments that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of Assessments shall be added to the Assessments collectible from all other Lots and homes. The foregoing shall not excuse an Institutional Mortgagee from payment of Assessments pertaining to a Lot and/or home which accrue during the period of ownership of such Lot and/or home by such Institutional Mortgagee whether or not such Lot and/or home is occupied.
2. **ENFORCEMENT.** In the event any Owner shall fail to pay Assessments or any installment thereof charged to his Lot within fifteen (15) days after the same becomes due ("Delinquent Owner"), then the Association, through its Board of Directors, shall have any of the following remedies to the extent permitted by law:
 - (A) To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.
 - (B) To advance on behalf of the Delinquent Owner funds to accomplish the needs of the Association and the amount or amounts of monies so advanced, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of the Delinquent Owner, together with interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum), may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.
 - (C) To place of record a claim of lien against the home and/or Lot of the Delinquent Owner.
 - (D) To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.
 - (E) To file an action at law to collect said Assessment plus interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum) plus court costs and attorneys' fees without waiving any lien rights and/or rights of foreclosure in the Association.

ARTICLE NINE

Insurance

1. **COMMON AREAS INSURANCE.** The Association shall purchase the following coverage for the Common

Areas subject to the following provisions:

- (A) **Liability Insurance.** The costs of the policy or policies of insurance in the form generally known as Public Liability and/or Owners policies insuring the Association against any and all claims and demands made by any person or persons whomsoever for injuries received in connection with the use, operation, and maintenance of Common Areas and improvements and buildings located thereon, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against. Each policy purchased by the Association shall have limits of not less than Three Million Dollars (\$3,000,000.00) or such other amount as may be determined from time to time by the Association covering all claims for personal injury and One Hundred Thousand (\$100,000.00) or such other amount as may be determined from time to time by the Association for property damage arising out of a single occurrence. The coverage of the liability insurance policies purchased by the Association shall include protection against liability for property damage, bodily injuries, and deaths of person in connection with the operation, maintenance, or use of the Common Areas, legal liability arising out of law suits related to employment contracts of the Association, water damage liability, liability for non-owned and hired automobiles, liability of hazards related to usage and liability for property of others. All such policies will name the Association (and Developer for so long as Developer shall own any portion of the Common Areas as their respective interest may appear) as the insured under such policy or policies. The insurance purchased shall contain a "severability of interest endorsement," or equivalent coverage, if such endorsement is reasonably obtained, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of either the Association, the Developer or any other Owners or deny the claim of either the Developer or the Association because of the negligent acts of an Owner.
- (B) **Casualty Insurance.** The costs of the policy or policies of insurance to allow the Association to insure any improvements now located or which may hereafter be located, built, or placed upon the Common Areas against loss or damage caused by or resulting from at least the following: fire and other hazards covered by the standard extended coverage endorsement, sprinkler leakage, windstorm, vandalism, malicious mischief, water damage, debris removal and demolition, and such other risks as the Association shall determine are customarily covered with respect to developments similar to Merry Oaks in construction, location, and use.
2. **MISCELLANEOUS INSURANCE.** The Association may also obtain such forms of insurance and in such coverages as the Association shall determine for the protection and preservation of the Common Areas. Such insurance may include without limitation, workmen's compensation insurance and flood insurance, and fidelity coverage to protect against dishonest acts of the officers, directors and employees of the Association. -

ARTICLE TEN

Grant and Reservation of Easements

As the Owner of those portions of the Land committed or which may be committed to the terms hereof, Developer hereby reserves and grants the following easements over and across the Land for the duration of the term of this Declaration (except as hereafter provided) and for the benefit of the parties or properties as hereinafter specified for the following purposes:

1. **RIGHTS-OF-WAY.** A perpetual nonexclusive easement is hereby declared, granted, and reserved in favor of Developer, the Association, and Owners, their lessees and family members, guests, and invitees over and upon the walks, road right-of-way, and other rights-of-way within the Common Areas to provide ingress, egress, and access to and from, through and between the Land and publicly dedicated roads.
2. **RIGHTS OF ASSOCIATION TO ENTER UPON THE LAND.** An easement or easements for ingress and egress in favor of the Association by its board of Directors or the designees of the Association to enter upon each portion of the Land for the purpose of fulfilling its duties and responsibilities of ownership, administration, maintenance, and repair in accordance with the Documents.

3. **USE AND ENJOYMENT OF COMMON AREAS.** A nonexclusive easement for the use and enjoyment and for access over and to the Common Areas on behalf of Developer, the Association, and Owners, their lessees, family members, guests, and invitees; provided, however, an Owner's easement to such use and enjoyment may be temporarily suspended by the Association upon written notice for a period not to exceed thirty (30) days for failure of an Owner, his lessee, or their family members, guests, or invitees to conform to the rules and regulations promulgated by the Association in regard to use of the Common Areas.
4. **EASEMENT FOR OWNERS WITHIN MERRY OAKS.** An easement over and to the common areas in favor of the Owners of any residential Dwelling unit now or hereafter located upon any portion of Merry Oaks for purposes of ingress and egress across, over, and upon the Land and the private roadways located or to be located hereon to and from publicly dedicated rights-of-way.

ARTICLE ELEVEN

Condemnation

REPAIR AND REPLACEMENT. If any improvements upon the Common Areas not included in the Taken Area shall be damaged or partially destroyed by such Condemnation, then the Association shall proceed with reasonable diligence to demolish, if necessary, and to construct, repair, replace, or rebuild such improvements so such improvements are complete and in good condition and repair. The Association shall hold that portion, if any, of the Taken Area Award which represents consequential damages to said improvements or replacements thereof in trust for application of the same to the cost and expense as herein provided. Repair of such improvements may be conducted under the supervision of any architect or engineer licensed in the State of Illinois selected by the Association, and such work shall be done in accordance with plans and specifications prepared and approved in writing by such architect or engineer and submitted to the Developer for approval, which approval shall not unreasonably be withheld.

ARTICLE TWELVE

Enforcement

The Covenants and restrictions contained in these Documents may be enforced by Declarant, the Association, and any Owner in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction, or any other form of relief against any person, firm, or entity violating or attempting to violate any covenant or restriction hereunder. The failure by any party to enforce any covenant, restriction, or easement herein contained shall in no event be deemed a waiver of such covenant, restriction, or easement or of the right of such party to thereafter enforce such covenant, restriction, or easement. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees.

ARTICLE THIRTEEN

Amendment and Modification

PROCEDURE FOR AMENDMENTS. The provisions of this Declaration may be changed, modified, or rescinded by a written instrument setting forth such change, modification, or rescission and certified by the Secretary of the Board of Directors. Said change, modification, or rescission shall be approved by not less than two-thirds of the total vote able to be cast by the Members of the Association, unless a higher percentage for certain amendments is required by specific provision of this Declaration. There shall be a meeting of the Members called for the purpose of discussing the proposed change, modification, or rescission and thereafter voting thereon. Voting may be in person or by proxy. Under no circumstances shall any change, modification, or rescission of any provision of this declaration be introduced or voted upon at a meeting of the Members if said proposed change, modification, or rescission has not been previously submitted to the Members in writing prior to said meeting of the Members and does not appear on the Agenda for such a meeting of the members.

Any change, modification, or rescission properly accomplished under the terms of this Article Thirteen, shall be effective upon the recordation of such instrument with the Office of the DeKalb County Recorder of Deeds and the recordation of such instrument shall serve as proper notice to the Members of such change, modification, or rescission.

Whenever it shall appear to the Association that there is a technical or minor defect, error or omission in the Declaration, the Association, through its Board of Directors, may amend the Declaration. The amendment shall become effective upon the recording of a certificate amongst the Public Records of DeKalb County, Illinois.

ARTICLE FOURTEEN

General Provisions

1. **DURATION.** The Covenants and restrictions set forth in this Declaration shall run with and bind the Land, and shall inure to the benefit of and be enforceable by the Declarant, or the Owners of any Land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this declaration is recorded with the DeKalb County Recorder, after which time the said Covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument, signed by the then Owners of the majority of the Lots within the subject property, has been recorded, agreeing to change said Covenants and restrictions in whole or in part
2. **ENFORCEMENT.**
 - (A) Enforcement of these Covenants and restrictions and/or any provisions contained in this Declaration shall be by a proceeding at law or in equity against any person or any entity violating or attempting to violate any covenant or restriction and/or any provision contained in this Declaration. Such action may be to restrain or enjoin such violation, or to recover damages, or may be against the Land to enforce any lien created by these Covenants and restrictions. Should the Merry Oaks Homeowners Association employ legal counsel to enforce any covenant or restriction and/or any provision contained in this Declaration, or to prosecute the violation or the attempt to violate any Covenant or Restriction, and/or any provision contained in this Declaration, then all costs incurred by MOHOA by reason of such enforcement or prosecution, including reasonable attorneys' fees and expenses, shall be recoverable against and shall be paid by the person or entity against whom such enforcement or prosecution is brought. MOHOA shall have a lien upon any Lot owned by any person or entity against whom enforcement or prosecution is brought in order to secure payment of all such costs, fees, and expenses. No delay or failure on the part of the MOHOA or the Owners of any Land subject to this Declaration, in exercising any right, power, or remedy provided in this Declaration, including the right to enforce any covenant or restriction, shall be construed or deemed to be a waiver of the right to do so thereafter. No right of action shall accrue to nor shall any action be brought or maintained by anyone against the MOHOA for or on account of its delay in bringing, or failing to bring, any action or enforcement proceeding on account of any breach of any covenant or restriction and/or any provision contained in this Declaration or for imposing any Covenant or Restriction and/or any provision contained in this Declaration which may be unenforceable by the MOHOA.
 - (B) B & B Development Limited Partnership is a Developer by selection of the Owner, and in the event Owner designates a different entity as Developer, the exculpatory provisions in favor of the Developer shall continue to operate in favor of B & B Development Limited Partnership, as well as the newly designated Developer.
3. **NOTICES.** Any notice sent or required to be sent to any Lot Owner under the provisions of this Declaration shall be deemed to have been properly given when mailed, postage prepaid, to the last known address of the person who appears as a member or Lot Owner on the records of the MOHOA at the time of the mailing. Any notice sent or required to be sent to the MOHOA under the provisions of this Declaration shall be deemed to have been properly given when mailed, postage prepaid, to the MOHOA.

4. **SEVERABILITY.** Invalidation of any one or more of these Covenants or restrictions and/or any provision contained in this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
5. **OCCUPANTS.** All of the obligations, liabilities, restrictions, and Covenants imposed upon Owners hereunder shall also be applicable to and imposed upon all persons occupying any Lot who are not Owners.
6. **DEEDS.** Each Owner and Contract Purchaser under an Installment Sale Contract accepts such conveyance subject to the restrictions, Covenants, obligations, and liabilities hereby created, reserved or declared, as though same were recited at length in such deed or Installment Sale Contract.

IN WITNESS WHEREOF, Declarant has caused the foregoing instrument to be executed on the 27th day of April, 2017.

Merry Oaks Homeowners Association,
an Illinois Not For Profit Corporation.

Adam Ferguson
President *Adam Ferguson*

Ryan G. Smith
Secretary *Ryan G. Smith*

State of ILLINOIS)
) SS
County of DeKalb)

I hereby certify that on this day, before me, an office duly authorized in the State aforesaid and in the County aforesaid, to take acknowledgments personally, appeared *Adam Ferguson*, and *Ryan G. Smith* who is to me known to be the persons described in and who executed the foregoing instrument and he acknowledged before me that he executed same.

Given under my hand and notarial seal this 27 day of April, 2017

Judy A. Butler
Notary Public

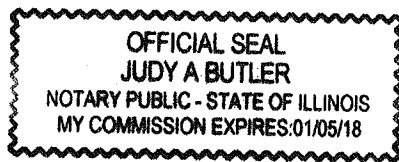


EXHIBIT "A"

Lot 67 (Private Park), Lots 68 through Lots 122 inclusive, Lot 123 (Private Park), Lot 124 (Private Park), Lot 125 (Private Park), Lot 126 (Private Park), Lot 127 (Private Park), Lot 128 (Private Park), Lot 129 (Public Park), of Heron Creek Country Estates, City of Sycamore, DeKalb County, Illinois, of part of the South Half of Sections 20 and 21, Township 41 North, Range 5 East of the Third Principal Meridian in the City of Sycamore, DeKalb County, Illinois.

EXHIBIT "B"

(TRACT ONE)

That part of the South Half of Section 20 and that part of the South Half of Section 21, Township 41 North, Range 5 East of the Third Principal Meridian described as follows: Beginning at the Southwest Corner of the Southeast Quarter of said Section 20; thence easterly, along the South Line of said Southeast Quarter, 2665.68 feet to the Southeast Corner of said Southeast Quarter; thence easterly, along the South Line of the Southwest Quarter of said Section 21, a distance of 2643.98 feet to the Southeast Corner of said Southwest Quarter; thence easterly, along the South Line of the Southeast Quarter of said Section 21, 1140.37 feet to a point on said South Line which is 183.0 feet westerly of the Southeast Corner of the Southwest Quarter of said Southeast Quarter; thence northeasterly, 275.05 feet to a point on the east Line of the Southwest Quarter of the Southeast Quarter of said Section 21 which is 202.0 feet northerly of the Southeast Corner of said Southwest Quarter of the Southeast Quarter; thence northerly, along said East Line, 1125.66 feet to the Northeast corner of the Southwest Quarter of said South east Quarter; thence westerly along the North Line of the Southwest Quarter, of said Southeast Quarter, 331.78 feet; thence northerly, along a line which forms an angle of $89^{\circ}09'05''$ with the last described course (measured counterclockwise therefrom), 759.66 along a fence and agreement line, and a northerly extension thereof, to the Northerly Right-of-Way Line of Plank Road; thence, westerly, along said Northerly Right-of-way Line, being along a non-tangential curve to the right with a radius of 920.37 feet, an arc distance of 188.14 feet; thence westerly, along said Northerly Right-of-Way Line being tangent to the last described curve at the last described point, 808.86 feet; thence northerly, along a line which forms an angle of $90^{\circ}47'05''$ with the prolongation of the last described course (measured clockwise therefrom), 15.0 feet; thence westerly, along said Northerly Right-of-Way Line, 824.38 feet to an angle point therein; thence northwesterly, along said Northerly Right-of-Way Line, 226.99 feet; thence westerly, along said Northerly Right-of-Way Line and said Northerly Right-of-Way Line extended, being 80.0 feet northerly of and parallel with said Plank Road centerline, 736.46 feet to the centerline of Illinois State Route No. 23; thence southerly, along said centerline, being a nontangential curve to the right with a radius of 21485.94 feet, an arc distance of 5.0 feet to a point on a line which is parallel and 75.0 feet northerly of the centerline of Peace Road; thence westerly, along said parallel line and along the Northerly Right-of-Way Line of Peace Road, 2196.89 feet to the East Line of the West Half of the Southeast Quarter of said Section 20; thence northerly along said East Line, 519.92 feet to the Northeast Corner of the West Half of said Southeast Quarter; thence westerly, along the North Line of the West Half of said Southeast Quarter and the North Line of the East Half of the Southwest Quarter of said Section 20, a distance of 2673.88 feet to the former Westerly Right-of-Way Line of the Chicago and Northwestern Railroad; thence southerly, along said Westerly Right-of-Way Line, 1966.82 feet;

thence westerly, along said Westerly Right-of-Way Line which forms an angle of $83^{\circ}59'05''$ with the last described course (measured counterclockwise therefrom), 40.22 feet; thence southerly, along said Westerly Right-of-Way Line which forms an angle of $83^{\circ}59'05''$ with the last described course (measured clockwise therefrom), 700.0 feet to the South Line of the Southwest Quarter of said Section 20; thence easterly, along said South Line, 66.0 feet to a point on said South Line which is 983.77 feet westerly of the Southeast Corner of the Southwest Quarter of said Section 20; thence northerly, perpendicular to said South Line, 139.15 feet; thence easterly, parallel with said South Line, 298.06 feet; thence southeasterly, 142.35 feet to a point on said South Line which is 655.71 feet westerly of the Southeast Corner of said Southwest Quarter; thence easterly, along said South Line, 655.71 feet to the point of beginning in Sycamore Township, DeKalb County, Illinois and containing 401.903 acres.

(TRACT TWO)

That part of Section 21, Township 41 North, Range 5 East of the Third Principal Meridian described as follows: Commencing at the intersection of Illinois State Route No. 23 and Peace Road; thence northerly, along the centerline of said Illinois State Route No. 23, being a curve to the left with a radius of 21485.94 feet, an arc distance of 608.94 feet to the westerly extension of the South Line of Lot "A" of the Waterman Farm Plat as shown in Book "G" of Plats at Page 33; thence easterly, along said South Line, 1801.19 feet to the Southeast Corner of said Lot "A"; thence northerly, along the East Line of said Lot "A" which forms an angle of $90^{\circ}43'34''$ with the last described course (measured clockwise therefrom), 1807.80 feet to the Northeast Corner of said Lot "A"; thence northwesterly, along the North Line of said Lot "A", which forms an angle of $96^{\circ}54'22''$ with the last described course (measured clockwise therefrom), 1865.51 feet; thence southerly, along a line which forms an angle of $73^{\circ}54'32''$ with the last described course (measured clockwise therefrom), 246.81 feet; thence westerly, along a line which forms an angle of $90^{\circ}39'00''$ with the last described course (measured counterclockwise therefrom), 257.13 feet to the Westerly Right-of-Way of Illinois Route 23; thence southerly, along said Westerly Right-of-Way, 1781.91 feet to the westerly extension of the South Line of said Lot "A"; thence easterly, along said extension, 60.02 feet to the point of beginning in Sycamore Township, DeKalb County, Illinois and containing 85.668 acres.