

**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR DUTCH CREEK ESTATES**

THIS AMENDED AND RESTATED DECLARATION (the “Declaration”) is made this _____ day of _____, 2013 for the purposes hereinafter set forth, by the DUTCH CREEK HOMEOWNER’S ASSOCIATION (the “Association”)

RECITALS

WHEREAS, a certain Declaration of Covenants, Conditions, and Restrictions for Dutch Creek Estates was recorded in the office of the Recorder of Deeds of McHenry County, Illinois on May 16, 1991 as Document Number 91R017202 and affecting property legally described as Dutch Creek Estates Phase I on Exhibit A attached hereto, which document was further amended by the first amendment recorded on June 11, 2008 as Document No. 2008R0033414, the second amendment recorded on December 16, 2008 as Document No. 2008R0061691, the third amendment recorded on March 24, 2010 as Document No. 2010R0013346 and the fourth amendment recorded on March 29, 2011 as Document No. 2011R0014076 (hereinafter referred to as “Phase I Declaration”); and

WHEREAS, a certain Declaration of Covenants, Conditions, and Restrictions for Dutch Creek Estates , Phase II was recorded in the office of the Recorder of Deeds of McHenry County, Illinois on August 27, 2001 as Document Number 2001R0062264 and affecting property legally described as Dutch Creek Estates Phase II on Exhibit A attached hereto, which document was further amended by the first amendment recorded on June 11, 2008 as Document No. 2008R0033415, the second amendment recorded on December 16, 2008 as Document No. 2008R0061690, the third amendment recorded on March 24, 2010 as Document No. 2010R0013347 and the fourth amendment recorded on March 29, 2011 as Document No. 2011R0014075 (hereinafter referred to as the “Phase II Declaration”); and

WHEREAS, all of the property described on attached Exhibit A shall be referred to herein as the “Property;” and

WHEREAS, notwithstanding that the Property was encumbered by two separate sets of Declarations, being the Phase I Declaration and the Phase II Declaration, (hereinafter referred to as the “Declarations”) the administration of the Property, pursuant to the terms of said Declarations, has been carried out by one Illinois not-for-profit corporation known as the Dutch Creek Homeowner’s Association, hereinafter referred to as the “Association;” and

WHEREAS, the Association is the assignee of the Declarant’s rights as set forth and described in the Declarations; and

WHEREAS, although the terms and provisions of the Declarations are substantially similar in many aspects, there are several differences in the terms of the documents that could create ambiguities in the interpretation of the documents and overall make the administration of Declarations more difficult and burdensome for the Association; and

WHEREAS, the Association has determined that it is in the best interest of all of the Owners in the Property that the terms and provisions of the Declarations shall be combined into one Amended and Restated Declaration and have recommended said consolidation to the Owners; and

WHEREAS, pursuant to Section 3 of Clause VII of the Phase I Declaration, the Phase I Declaration may be amended by the Association with the consent of record owners in fee simple of at least two-thirds (2/3) of the Lots in the Subdivision, by written instrument or instruments executed and acknowledged by each of the consenting owners and a certificate thereof recorded in the office of the Recorder of Deeds of McHenry County, Illinois; and

WHEREAS, pursuant to Section 3 of Clause VII of the Phase II Declaration, the Phase II Declaration may be amended by the Association with the consent of record owners in fee simple of at least two-thirds (2/3) of the Lots in the Subdivision, by written instrument or instruments executed and acknowledged by each of the consenting owners and a certificate thereof recorded in the office of the Recorder of Deeds of McHenry County, Illinois; and

WHEREAS said consent to an Amendment has been given by the record owners in fee simple of at least two-thirds (2/3) of the Lots in both Dutch Creek Estates Phase I and Dutch Creek Estates Phase II, by a written instrument or instruments executed and acknowledged by each of the consenting owners.

WHEREAS the Village of Johnsburg must also consent to any Amendment pursuant to the Phase II Declaration and the Village of Johnsburg has also provided its written consent to the Association prior to the recording of this Amended and Restated Declaration.

NOW, THEREFORE, in consideration of the above Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Association hereby declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property.

CLAUSE I

PROPERTY SUBJECT TO AND BENEFITTING FROM THIS DECLARATION

THIS SUBDIVISION. The real property which is, and shall be, held, transferred, sold, conveyed, used , and occupied subject to the Covenants set forth herein (the “Covenants”) is located in McHenry County, Illinois, and is more particularly described in Exhibit “A” attached hereto.

CLAUSE II

GENERAL PURPOSES OF THIS DECLARATION

This Subdivision (the “Subdivision”) is subjected to these Covenants, Conditions and Restrictions (hereinafter referred to as “Covenants”) to ensure proper use and appropriate development and improvements of this Subdivision; to protect each and every Owner of any part of this Subdivision against such use of Lots in this Subdivision as may depreciate the value of their property; to guard against the erection thereon of buildings built of improper or unsuitable materials; to ensure adequate and reasonable development of this Subdivision and the use and enjoyment of property ownership therein; to encourage the erection of 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; and in general to provide adequately for a type and quality of improvement in this Subdivision consistent with these Covenants; and to ensure desired standards of maintenance and operation of community facilities and services for the benefit of all Owners of Lots. It is the intention and purpose of these Covenants to ensure that all dwellings in this Subdivision shall be of a quality design, workmanship, aesthetics and materials approved by the Architectural Review Committee, in accordance with the minimum architectural requirements, established from time to time by the Association.

CLAUSE III

DEFINITIONS

In the event of a conflict between these definitions and the applicable Village of Johnsburg Codes and Ordinances, the more strict definitions shall prevail.

ASSOCIATION. The Dutch Creek Homeowner’s Association, described in Clause VI hereof.

ARCHITECTURAL REVIEW COMMITTEE. The committee so designated and described in Clause V hereof.

BASEMENT. That portion of the interior area of a Building having its floor level below grade and having less than half its clear floor-to-ceiling height above grade. For purposes hereof, grade shall be the average level of the ground contiguous to the building front.

BUILDING. Any structure having a roof, supported by columns or by walls or other means, or other structure intended or used for the shelter or enclosure of any single family.

BUILDING. ACCESSORY. A subordinate Building or portion of a principal Building, the use of which is incidental to that of the principle Building on a Lot.

BUILDING HEIGHT. The vertical distance measured from the established ground level to the highest point of the underside of the ceiling beams, in the case of a flat roof: to the deck line of a mansard roof; to the mean level of the underside of rafters or to the mean level of any other vertical parts of any other structure. Chimneys and ordinary and customary ornamental architectural projections shall not be included in calculating Building Height.

COMMON PROPERTY. The portion of the property described as Lot 1 in Dutch Creek Estates Unit 1 and Lot 5 and Outlots A, B, C, D and E and the Park Lot, in Dutch Creek Estates Unit II, including all improvements and facilities thereon, intended to be devoted to the common use or for the benefit of the Owners.

CONSERVATION EASEMENT. That portion of the Property, that is referred to as such on the Plats, and which is dedicated to the McHenry County Conservation District to be preserved in its natural state and restricted as to the amount of improvement and or disturbance of the vegetation in such areas, pursuant to a separate, recorded Grant of Conservation Right and Easement.

DECLARANT. The land trust originally designated in the Declarations as “Declarant”.

DWELLING. A residential Building which, as originally constructed, is integrated and designed for use exclusively as living quarters for one family.

DEVELOPER. INTENTIONALLY DELETED.

DRAINAGE AND DETENTION EASEMENTS AND FACILITIES AND

IMPROVEMENTS. All on-site facilities and area necessary for the management of storm water as are reserved and/ granted and described in further detail on the Plats.

FAMILY. One or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three unrelated persons, together with his or their domestic servants, maintaining a common household in a dwelling.

LOT. One subdivided Lot of record in this Subdivision, or a combination of such Lots.

LOT LINE, FRONT. That boundary line of a Lot that is along a dedicated street.

LOT LINE, REAR. That linear boundary of a Lot that is most distant from the Front Lot Line. If the Rear Lot Line is less than 10 feet in length, or if the Lot forms a point at the rear, the Rear Lot Line shall be deemed to be a line 10 feet in length within the Lot, parallel to and at the maximum distance from the Front Lot Line.

LOT LINE, SIDE. Any boundary of a Lot that is not a front or rear Lot line.

OWNER. A record Owner, whether one or more persons, of fee simple title to a Lot, including a contract seller, but excluding those having such interest merely as security for the performance of an obligation.

PLATS. The recorded final plats of subdivision for Phases I & II of the Property or individually PHASE I Plat or PHASE II Plat.

STORY. That portion of the interior of a Building included between the surface of the ground or any floor and the surface of existing or extended plane of the floor next above; or if there is no floor above, the space between the floor and the surface of existing or extended plane of the ceiling next above.

STORY, HALF. A space under a sloping roof which had the line of intersection of roof decking and exterior wall not more than 4 feet above the top floor level, and in which space not more than 60 percent of the floor area is improved for principle or accessory use.

STRUCTURE. Any stationary object erected, constructed, or placed on the property or attached to something having a permanent location on or in the ground. A sign or other advertising device, detached, or projecting, shall be construed to be a separate Structure. Structures shall include but not be limited to decks, sheds, tree-houses, play structures or playground equipment, greenhouses, gazebos, dog houses or play houses.

CLAUSE IV

GENERAL RESTRICTIONS

1. **LAND USE AND BUILDING TYPE.** Each Lot shall be used as a site for one building only. All buildings and other detached accessory buildings or structures may be erected only in such a manner and location as approved in writing at the sole discretion of the Architectural Review Committee, and subject to the restrictions for said structures which are imposed by the Covenants or the Architectural Review Committee, and in accordance with the building codes and ordinances of the Village of Johnsburg.

2. **BUILDING HEIGHT.** All buildings erected on a Lot shall be constructed in accordance with the applicable governmental building and zoning codes, including but not limited to the applicable building and zoning ordinances and codes of the Village of Johnsburg and with such additional standards as may be required by these Covenants and the Architectural Review Committee.

3. **DWELLING AND STRUCTURE COST, QUALITY AND SIZE.** All Buildings erected on a Lot shall be constructed in accordance with the applicable governmental building and zoning codes, including but not limited to the applicable building and zoning ordinances and codes of the Village of Johnsburg and with such additional standards as may be required by these Covenants and the Architectural Review Committee; provided that area inside the foundation walls or footings of any such Dwelling, exclusive of attached garages, carports, open terraces, porches, decks, and breezeways, shall be:

- A. One-story Dwellings – not less than 2,700 square feet of living area, expressly excluding any Basement area, as that term is defined herein.

B. For Dwellings of more than one-story, not less than 1,500 square feet on the first floor, and the total living area in the Dwelling not to be less than 3,000 square feet, expressly excluding any Basement area, as that term is defined herein.

4. **LOCATION ON LOT**. To ensure the harmonious positioning of all wells and septic systems, all wells and septic systems shall be located according to the applicable health department codes and ordinances and any restrictions set forth in the Plats. Tennis courts and swimming pools shall be screened from the street or streets by a wall, solid fence, evergreen hedge or other visual barrier as approved in writing by the Architectural Review Committee. No portion of a tennis court or swimming pool shall be located on a Lot nearer to the front Lot line than the rear of the dwelling.

5. **LOT AREA AND WIDTH**. None of the Lots shall at any time be subdivided into two or more parcels and no Lot shall be less in area than the acreage shown on the Plats.

6. **STREETLIGHTS**. Every house is required to install, operate and maintain in good working order a streetlight installed within 15 feet of the edge of the driveway and within 5 feet of the edge of the utility right of way (I.E.: not less than 42 feet, nor more than 47 feet from the centerline of the road). It shall be continuously illuminated from dusk to dawn.

If applicable, the streetlight must be installed prior to issuance of the Occupancy Permit by the Village of Johnsburg. The Village shall not be liable for the issuance of a certificate of occupancy prior to the installation of such light. In the event the Village defends or brings an action arising out of this provision, the Village shall be reimbursed its attorney's fees and costs from the relevant Lot Owner.

7. **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 be surfaced with asphalt, concrete, paving blocks or other suitable material as approved by the Architectural Review Committee. The Architectural Review Committee shall approve plans and specifications for driveways in writing. Driveways may access the adjacent street at one location only, unless otherwise approved by the Architectural Review Committee.

8. **NATURAL DRAINAGE WAYS AND WETLANDS**. Where there exists on any Lot or Lots a condition or accumulation of storm water remaining over an extended period of time, the Lot Owner may, with the written approval of the Architectural Review Committee, and applicable governmental authority if necessary, take such steps as shall be necessary to remedy such condition, provided that no obstructions or diversions of existing storm water drainage swales and channels over and through which surface storm water naturally flows upon or across any Lot shall be made by the Lot Owner in any manner which may cause damage to or otherwise adversely affect the use of other property or the wetlands on the parcel except in areas designated as drainage easements; nor may any Owner impair the use or function of the storm water detention facilities and improvements in any manner other than as permitted in writing by the County of McHenry or other applicable governmental authority. The Architectural Review Committee may authorize the installation of drainage tile and other conduits at any location

within a drainage easement to permit the proper drainage of any other Lot or other property in McHenry County, but only if the proposed action is first approved in writing and a permit issued by the County of McHenry or Village of Johnsburg, as required.

9. **EASEMENTS.** Declarant previously reserved the following easements in the Property for the benefit of each and all of the Lots, parcels, and lands located in the Property, as well as for those entities hereinafter named including any public entity having jurisdiction.

A. The County of McHenry, the Village of Johnsburg, all public utility companies, including but not limited to Commonwealth Edison Company, Illinois Bell Telephone Company, and Northern Illinois Gas Company, the right to install, place, and maintain, gas mains, conduits, cables, poles, and other wires, either overhead or underground with all necessary braces, guides, anchors, and other appliances in along and over the strips of land designated on the Plat and marked "Utility Easement," and for underground facilities in all easements for the purpose of serving the public in general with gas, electric, telephone services, and cable television, and to overhang Lots with aerial serving wires to serve adjacent Lots, including the right to enter upon the said easements for public utilities at all times for any and all of the purposes aforesaid, and to trim and keep trimmed any trees, shrubs, or saplings that interfere with any such utility equipment. No permanent buildings shall be placed on said easements but these easements may be used for gardens, shrubs, landscaping, and other purposes that do not interfere with the use of said easements for such public utility purposes.

B. Portions of this Subdivision delineated on the Plats and designated "Drainage Easement" and "Detention Easement" are dedicated to the Homeowners' Association for the purpose of installing and maintaining drainage swales, storm sewers, or waterways for the purpose of draining and storing surface water run-off. No permanent buildings shall be placed on said easements, but these easements may be used for gardens, shrubs, landscaping, (as approved by the Architectural Review Committee) and other purposes that do not interfere with the use or potential use of said Easements for drainage and storm water storage purposes.

Notwithstanding that the Drainage Easements or Detention Easements are private and NOT dedicated to the Village of Johnsburg, in the event there is any modification of the grade, excavation or obstruction placed in such area, the Village shall have the right to enter upon the area in question and restore it to its condition prior to such modification, excavation or placing of the obstruction thereon. The exercise of such right shall not be considered a trespass. The costs associated with such remedial action shall be paid to the Village from the relevant lot Owner. If such amount is not paid, the Village may, and is hereby given the right to record a lien against said Lot. The Village shall have all rights in law and equity, including but not limited to injunctive relief, to enforce this provision. In the event that the Village brings or defends an action relative to this provision, it shall be entitled to its attorney's and engineering or consultant's fees and court costs.

C. The Phase II Plat depicts Outlot E as partially encumbered with a private ingress and egress easement to the property to the west. All Lot Owners in the Subdivision acknowledge the existence of said private ingress and egress easement on Outlot E, located between Lots 52 and 53 on the south side of Sweetwater Lane.

10. **SANITARY DISPOSAL FOR LOTS, WATER WELLS.**

Septic Systems. Sanitary disposal for each Lot shall be by means of a septic system or other approved method designed by a registered professional engineer. All septic systems shall be installed only in "suitable septic areas", those areas so designated on the Dutch Creek Estates Well and Septic System Location Plan. Before installation, the design plans for the system shall be submitted to, and a permit for installation obtained from, the McHenry County Health Department or any other governmental authority having jurisdiction. Any such system as installed shall be subject to inspection and final approval by the approving authority before backfilling. The cost of installation of the system shall be borne by the Owner of the Lot. No sewage disposal system shall be permitted on any Lot, nor may any sewage disposal system be used, unless such system is designated, located, constructed and maintained in accordance with the requirements, standards, and recommendations of the appropriate public health authority. Final approval by the Architectural Review Committee of building plans shall be subject to issuance of the required permit for sanitary disposal.

Private Water Wells. Each Lot Owner shall provide its own private water well, in a location that complies with the Dutch Creek Estates Well and Septic System Location Plan and otherwise complies with McHenry County Ordinances and State of Illinois Statutes. The well shall be purchased and installed at the Lot Owners expense.

11. **PROHIBITIONS.** Except for construction activities authorized by the Architectural Review Committee, the following prohibitions shall be applicable to all Lots, Buildings, and Structures in this Subdivision.

A. No noxious or offensive activity shall be carried on, in, or upon any premises nor shall anything be done thereon which may be or may become, an annoyance or nuisance to the neighborhood.

B. No livestock or poultry shall be kept or maintained. No swine, sheep, cattle, or other objectionable animals shall be kept or processed, and no animals may be raised for commercial purposes. Pets kept out-of-doors shall present no nuisance or disturbance to the subdivision. All pet Owners shall be responsible for their pets waste. All pets not on their Lot shall be maintained on leashes.

C. No burning or refuse shall be permitted other than in proper facilities therefore maintained in or as a part of a Structure, except that the burning of leaves is permitted if allowed by applicable laws and regulations.

D. No temporary buildings, anything that attaches to the back of a vehicle, tents, recreational vehicles or shacks shall be constructed, erected, or parked upon a Lot unless enclosed in the garage. Any Structure that is to be built outside the residence must be reviewed and approved by the Architectural Review Committee. No sheds may be placed or constructed on a Lot.

E. Vehicle Housing:

(i). Personal, non-commercial passenger vehicles are allowed to park outside of the garage in the driveway without restriction.

(ii). All commercial vehicles, and any vehicle, regardless of size or capability, that has signage of any kind other than that installed by the manufacturer, are prohibited from dusk to dawn parking outside of a fully enclosed garage, except that vehicles having an Illinois license plate designation of "Passenger" or "B-Truck" shall be permitted to park in the Subdivision at all times.

(iii). All trailers, wagons or trailer type conveyances intended to be towed at some point in time are prohibited from dusk to dawn parking outside of a fully enclosed garage away from the view of the public.

(iv). Boats on a trailer, personal RVs, water-craft and other similar vehicles may to be parked on the Lot (outside of a garage) for a continuous period of up to fourteen (14) days at the commencement of the boating season and for a continuous period of up to fourteen (14) days at the end of the boating season. Snowmobiles or similar vehicles used during the winter recreational season may be parked on a Lot (outside of a garage) for a continuous period of up to fourteen (14) days at the commencement of the winter recreational season and for a continuous period of up to fourteen (14) days at the end of the winter recreational season. They are not allowed within the Subdivision at any time other than within these two fourteen (14) day periods.

(v). Construction equipment, snow-plows, tractors, landscape equipment, etc, must be housed inside a garage away from public view, and not left outside anywhere on the Lot when not in use.

(vi). No vehicle with an A (any combination of vehicles with a gross combination weight rating (GCWR) of 26,001 pounds or more, providing the Gross Vehicle Weight Rating (GVWR) of the vehicle being towed is in excess of 10,000 pounds) or B (any single vehicle with a GVWR rating of 26,001 pounds or more, or any such vehicle towing another not in excess of 10,000 pounds) rating shall be allowed in the subdivision at any time from dusk to dawn.

F. No plants, seeds, or other materials which harbor or are a source of breeding infectious plant diseases or noxious insects shall be introduced or maintained.

G. No Signage of any kind shall be permitted anywhere within the Subdivision except for the following:

(i). Signs provided and installed by the Village of Johnsburg or other civil authority;

(ii). Signs at the entrance to the Subdivision identifying it as Dutch Creek Estates;

(iii). One (1) sign with a sign face area of not more than nine (9) square feet, located on the parcel, for the sale or rent of a residential home or Lot;

(iv). Site identification signs listing the phase, Lot and house numbers, the name of the Owner(s) and the general contractor (only) which may be installed on the Lot, but only during the actual construction of a residence thereon;

(v). Political signs and garage sale signs are allowed to be posted as long as they are in compliance with the Johnsburg Village ordinance pertaining to such signs. Once the election or sale has been held such signs shall be immediately removed.

H. The use of firearms in the Subdivision shall be controlled by all applicable federal, state and local codes and ordinances.

I. All rubbish, trash, and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. All refuse containers, storage areas and containers, and machinery and equipment shall be prohibited upon any Lot, unless obscured from public view or screened in a manner approved by the Architectural Review Committee. No visible oil or gas tank for fuel, disposal, or other purposes shall be erected or maintained anywhere within the Subdivision.

J. No wiring for electrical or telephone installations, television antennae, security systems, machines, air conditioning units, or appliances shall be permitted on the exterior of any building or that protrude through the walls or roof of any building unless approved by the Architectural Review Committee. Satellite dishes are acceptable, but are restricted to an outside diameter of not greater than one meter (39.7"), or the maximum diameter measurements allowed by federal or other applicable codes or ordinances.

K. No swimming pools shall be erected above grade. All recreational equipment, material and location, shall be added to the landscape plan submitted to the Architectural Review Committee for approval.

L. Each Lot shall be used only for residential purposes, as a private residence, and no professional, business or commercial use shall be made of the same, or any portion thereof, except as expressly permitted under any applicable ordinances and regulations governing the Property. Notwithstanding the foregoing, the restrictions contained in this paragraph shall not be construed in such manner so as to prohibit a Lot Owner from (i) maintaining his personal professional library therein; (ii) keeping his personal business or professional records or accounts therein; or (iii) handling his personal, business or professional telephone calls or correspondence therefrom. A Lot Owner's use of a Lot shall not endanger the health or disturb the reasonable enjoyment of any other Lot Owner or Occupant, except that the foregoing restriction shall not be deemed to preclude or prohibit any of the rights or activities expressly reserved by, or granted in, this Declaration to the Association.

12. **NAMEPLATES, TELEVISION OR RADIO ANTENNAE AND TOWERS, LAUNDRY DRYING FACILITIES, AND MAIL BOXES.** Except as provided in paragraph 11 (J) above, there shall be no nameplates, television and radio antennae, laundry drying facilities, or mail and/or newspaper boxes erected or used outdoors, whether attached to the Building or Structure, or otherwise.

13. **TEMPORARY STRUCTURES.** No trailer, basement of an uncompleted building, tent, shack, garage, barn, and no temporary building or structure of any kind shall be used at any time for a residence either temporary or permanent. Temporary buildings or Structures used during the construction of a Dwelling shall be on the same Lot as the dwelling in compliance with Village of Johnsburg and McHenry County ordinances, and such buildings and Structures shall be removed upon the completion of construction and prior to occupancy of the primary Building/residence.

14. **ARCHITECTURAL CONTROLS.** All Buildings, fences, walls, or other Structures constructed or erected in this Subdivision shall be approved in writing prior to construction, by the Architectural Review Committee, as to placement, landscaping, exterior lighting and design. In all cases, the Architectural Review Committee, prior to commencement of construction, must approve all architectural design and construction methods.

An Owner of a Lot shall submit the following documents to the Chairman of the Architectural Review Committee, or his designee, requesting approval thereof:

- A. Four sets of drawings of the proposed structure showing at a minimum, floor plans, elevations of all views of the Structure, exterior finishes, roofing type, landscaping, driveway location, exact location of the structure on the Lot and fence or wall details; and
- B. Three sets of site plan drawings to a scale of at least 1" = 20' showing the location of proposed Structures on the site, existing landscaping, driveways, fence and wall details, walks, septic system, utility lines, and any tree whose trunk caliper diameter exceeds 8" when measured 5 feet above the ground, as well as the species and caliper, of each such tree; and
- C. Four sets of the proposed grading and landscaping plan for the Lot;
- D. Four sets of architectural specifications for the above; and
- E. The address for mailing the determination of the Architectural Review Committee.

All submittals shall include such application or similar forms as the Committee shall provide from time to time, and contain sufficient detail to procure a building permit thereon, and such additional detail as the Architectural Review Committee may require. The Architectural Review Committee shall meet within ten (10) business days of the date the plans shall have been submitted for approval to review plans and specifications and other materials submitted by applicant, and render its written approval or rejection thereof. The deposit of such approval or

rejection in the U.S. mail to the designated address, postage prepaid, shall be sufficient notice of such determination.

No approval of plans and specifications shall be construed as representing or implying that such plans or specifications will, if followed, result in properly designed improvements. Such approvals shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither the Association, or the Architectural Review Committee shall be responsible or liable for any defects in any plans of specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications. All Dwellings and other Structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions and any applicable regulations and restrictions of applicable governmental agencies.

15. **GRASSING**. The Owners of Lots in this Subdivision shall be responsible for the maintenance of parkways located between their Lot lines and edges of street pavement surface that abut said Lots. After construction of a Building is completed on a Lot, the Owner of such Lot shall grade the land between the edge of the street pavement surface and the undisturbed ground on his property, and shall sod **and/or seed**, fertilize, and cause grass to grow from said edge into his/her Lot, cover all disturbed soil left bare by construction of roads, and thereafter keep said grass properly mowed. In the event an Owner shall clear a portion of his/her Lot, he/she shall plant grass on the cleared area. Said Owner shall maintain and keep his/her Lot in good appearance by cutting and maintaining all lawns to a proper height.

At any time and from time to time, after 30 days written notice to the affected Lot Owner, the Association may, at its option, enter the Lot and plant grass or clear the weeds and underbrush and thereafter maintain the Lot in good appearance. No such entry shall be deemed a trespass. If the Association chooses to exercise this option, any planting, underbrush clearing, or grass cutting by the Association shall be cause for a lien to arise and be created in favor of the Association against any such Lot for the full amount expended or otherwise chargeable, including the cost of supervision, contracting fees and office overhead. The full amount chargeable to such Lot shall be due and payable within thirty (30) days after the Owner has been billed for said services, and the lien shall be enforceable in the same manner as liens created pursuant to Clause VI, paragraph 3 hereof. The Association shall also have the right to enforce such rights in a court of law by injunction, specific performance or other appropriate remedy.

16. **PUBLIC ENTITY FEES**. Upon acceptance of title to a Lot, each Lot Owner agrees that it shall be the Lot Owner's sole responsibility to pay as a condition of issuance of a building permit, all applicable local fees, including but not limited to School, Fire and Library Districts.

17. **DEVIATIONS BY AGREEMENT WITH THE ASSOCIATION**. The Association hereby reserves the right to enter into agreements with the Owner of any Lot or Lots without the consent of Owners of other Lots of adjoining, or adjacent property to deviate from any or all of the Covenants set forth in this Clause IV, provided the Association shall in its sole discretion determine that there are causes, difficulties, or hardships evidenced by the Owner to warrant such

deviation (which shall be evidenced by an agreement in writing). Said grant of deviation shall in no event constitute a waiver of any such Covenant as to the remaining Property in this Subdivision nor shall same constitute a violation of a Covenant within the meaning of Paragraph 2 of Clause VII. However, no deviations may be permitted which affect the storm water detention facilities and improvements without the prior written approval of McHenry County or the Village of Johnsburg.

18. **PONDS**. The Association shall be responsible for the maintenance of the ponds, spillways, and overland waterways depicted on the recorded Plats or existing on the Property at the time of the recording of the applicable Plat. The Association shall not alter the size, depth, or character of the ponds in any way. To the extent that a Lot Owner has changed the size, depth or shape of a pond located wholly or partially on his or her Lot, the Lot Owner shall be required to contribute to the Association, the costs of maintenance of said pond.

19. **DEED RESTRICTED OPEN SPACE AND WETLANDS**. The following activities are prohibited in any area designated as "Deed Restricted Open Space" or "Wetlands" on any Lot:

A. The construction of any physical improvement or placement thereon of any tangible personal property.

B. The dumping or placing of any physical improvement or placement thereon of any tangible personal property, including the depositing of any kind of fill material.

C. The excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such a manner as to affect the surface or to otherwise alter the topography of the flood plain or wetland area, or

D. Any activity that would affect drainage, flood control, water conservation, erosion or soil conservation, or fish and wildlife habitat preservation, and any drainage of the wetlands.

20. **RULES AND REGULATIONS**. The Association by the Board of Directors shall have the ability to establish rules and regulations concerning the subdivisions. Each Owner shall accept and hold title to his or her Lot subject to such additional rules and regulations as may from time to time be adopted by the Association and each Owner agrees to abide by and comply with such rules and regulations as may subsequently be adopted by the Board.

21. **CUL DE SAC MAINTENANCE**. The parties acknowledge that the design of the curbs on the teardrop shaped islands lends itself to being damaged by the Village trucks in connection with snowplowing of the areas around these islands. Accordingly, if such curbs are damaged by the Village in connection with the snowplowing of the areas around these islands, neither the Owners, their successors, assigns or subsequent purchasers of Lots, the Association or any other party shall have a cause of action against the Village for such damage. The Owners, their successors, assigns, the subsequent purchasers of Lots and the Association, jointly and severally, shall indemnify and hold harmless the Village for any claims, action, suits, damages and judgments that may arise from the Village's snowplowing of the areas around these islands and

damaging such curbs. In the event the curbs are damaged, the Association shall promptly restore the damaged curb in an expeditious manner. Notwithstanding any other agreement, the Village has not nor will accept the curbs, or the areas within the curbs of these cul-de-sac islands as public improvements, or be responsible to maintain such curbs or restore them. However, the Village shall have the right to deposit snow within the areas situated in the cul-de-sac islands without such activity constituting an acceptance of such area as a public improvement.

CLAUSE V

ARCHITECTURAL REVIEW COMMITTEE

1. **CREATION.** The Architectural Review Committee shall consist of no less than three individuals whose appointment shall be unanimously approved by the Association's Board of Directors. In the event of the death or resignation of any member of the Committee, the Association's Board of Directors shall have the right to designate a successor. The Minimum Architectural Guidelines of the Architectural Review Committee shall be established by the Board from time to time and modified, as necessary, to allow construction of residences and additions thereto to reflect current trends in the construction industry and geographic area.
2. **PROCEDURE.** All plans, specifications, and other material, for the improvement of any Lot shall be filed in the office of the Association for referral to the Architectural Review Committee, as provided in Clause IV, paragraph 14 hereof. The Architectural Review Committee's approval or disapproval shall be by majority vote of the Committee.

A report in writing setting forth the decisions of the Committee and reasons thereof shall be transmitted to the applicant by the Architectural Review Committee within (ten) 10 business days after the date of the filing of the plans, specifications, and other material by the applicant. If so requested by a Lot Owner, the Architectural Review Committee will aid and cooperate with prospective builders and make suggestions from preliminary sketches. Builders and/or Lot Owners are encouraged to submit preliminary sketches for informal comment prior to the submittal of architectural drawings and specifications for approval.

CLAUSE VI

DUTCH CREEK HOMEOWNER'S ASSOCIATION

1. **CREATION AND PURPOSES.** An Illinois not-for-profit corporation, known as the Dutch Creek Homeowner's Association (herein referred to as the "Association") has been established to insure high standards of maintenance and operation of all Common Property in Dutch Creek Estates for the common use of all Owners of property therein including the storm water detention facilities and Improvements, and to insure the provision of services and facilities of common benefit, and in general to maintain and promote the desired character of this Subdivision. These tasks shall include, but not be limited to, the following, as determined by the Board of Directors:

- A. To manage, control, and maintain the Common Property, including but not limited to entry monuments and landscaping, open space, and facilities, if any.
- B. To care for, spray, trim, protect, and replant trees on all streets and in other public places where trees have once been planted, and grass in the parkways which are in the streets and in the open space and detention areas set aside for the general use by the Owners.
- C. To mow, care for, and maintain vacant and unimproved property and to remove rubbish from same and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved Property and parkways in front of any property neat in appearance and in good order.
- D. To provide for the maintenance of open spaces and for the care and maintenance of facilities in any public street or park, or on Common Property and/or any land set aside for the general use of the Owners, or owned by the Association.
- E. 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: (i) on such real estate as may be owned by it; and (ii) which may be assessed against the community grounds owned by the Association.
- F. To make such improvements to the Common Property and any open space and detention areas and parkways within streets and provide such other facilities and services provided, however, that any such action so authorized shall always be for the express purpose of keeping the area over which it has jurisdiction a highly desirable and exclusive residential community.
- G. To create and manage financial reserves to provide for the foregoing duties.
- H. To appoint members of the Architectural Review Committee when and as permitted in Clause V hereof.
- I. To hire contractors to perform any of the functions undertaken by the Association.
- J. To borrow money in reasonable amounts for Association purposes.
- K. To purchase liability, directors and officers errors and omissions, and all other such insurance as may be deemed necessary by the Association.

- L. To grant and accept easements and to dedicate or transfer fee simple title to all or any portion of the Common Property to the Village of Johnsburg, Illinois, or to any public or private agency or authority, foundation, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of Owners present in person or by proxy at a duly held meeting of the Association.
2. **MEMBERSHIP AND VOTING.** Every Owner shall become and be a member of the Association, and each such member shall be entitled to one vote for each Lot owned by him/her

or it on each matter submitted to a vote of members, provided, that where title to a Lot is in more than one person, such co-owners acting jointly shall be entitled to but one vote.

3. **METHOD OF PROVIDING GENERAL FUNDS.** For the purpose of providing a general fund to enable the Association to exercise the powers and make and maintain the improvements and render the services provided for, an assessment shall be levied, assessed, and collected from the Owner of each Lot in the Subdivision.

A. The Board of Directors of the Association, after having held a proposed budget presentation meeting open to all members of the Association shall determine the total amount required for that budget year. Commencing with the annual dues for the year 2009, unless otherwise approved in writing by a majority of the members, no increase in annual dues shall exceed 5% of the previous year's dues. The budget shall be divided by the number of Lots contained in the Plats and the resultant figure assessed to each Lot as the annual assessment. Each Owner of a Lot shall be assessed an equal amount for each Lot owned.

B. In the event of failure of any Lot Owner to pay any assessment on or before thirty (30) days following notice to such Owner of such assessment or the scheduled due date thereof, then such assessment shall become delinquent and shall have a late fee applied as determined by the Board of Directors and shall bear annual interest compounded quarterly at the rate of two (2) points over the prime rate at J. P. Morgan Chase or its successor from the due date thereof to the date of payment, and the Association shall have a lien on each Lot against which such assessment is levied to secure payment thereof, in the principal amount including late fee owing including plus interest and collection costs. When delinquent, payment of both principal and interest may thereafter be enforced against the Owner personally, and/or as a lien on said Lot. The Association may, at its discretion, file a Notice of Claim for Lien for the nonpayment of assessments in the office of the Recorder of Deeds whenever any such assessments are delinquent. For each Notice so filed, the Association shall be entitled to collect from the Owner or Owners of the Lot described therein a processing fee as determined by the Association from time to time, which fee is hereby declared to be part of the collection costs.

C. The liens herein provided shall be subject and subordinate to the lien of any valid mortgage or deed of trust now existing or which may hereafter be placed on said Lot.

D. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair, or replacement of any of the areas required to be maintained by the Association hereunder, including fixtures related thereto. Any such special assessment must be approved by a majority of the members of the Association.

4. **EXPENDITURES LIMITED TO ASSESSMENT FOR CURRENT YEAR.** The Association shall not expend more money within any one-year than the total amount of the assessment for that particular year, plus any reserves held in the Association's account(s) and any funds obtained as a result of duly approved borrowing by the Association.

5. SPECIAL COVENANTS – STORM WATER DETENTION FACILITIES.

(i) It shall be the responsibility of the Association to maintain and care for the storm water detention facilities and improvements and open areas located within the Property. Each Owner shall bear his or her proportionate share (based on the number of Lots owned) or responsibility and cost for the continued maintenance, operation, and preservation of the storm water detention facilities and improvements, both on the surface and underground, and the preservation of the hydraulic characteristics thereof.

(ii) All on-site detention improvements shall be maintained in perpetuity and cannot be developed for any other use that limit or cause to limit their use and function for the management of storm water.

(iii) The duly designated officials and employees of McHenry County or the Village of Johnsburg, as applicable, are hereby granted an easement to enter upon, on, and over areas of on-site detention improvements and park land and open space for the purpose of inspecting such areas and to determine whether the improvements and system therein and thereon have been and are being properly maintained in conformity with this Declaration and the applicable ordinance and regulations. If it is determined that the facilities are not in conformity with applicable restrictions, ordinances, and regulations, McHenry County or the Village of Johnsburg shall give the Association written notice of such determination. The easement described in this section is an easement appurtenant, running with the land; it shall at all times be binding upon all Owners, their grantees and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

(iv) Further, the Village of Johnsburg shall be empowered to compel correction of a problem concerning maintenance after providing prior written notice to the Association, although notice shall not be required in the event that Village of Johnsburg determines that the failure of maintenance constitutes an immediate threat to public health, safety, and welfare. If the Association fails to perform the necessary maintenance within a reasonable time after receiving notice of the determination, the Village of Johnsburg shall have the right to perform or cause to be performed such maintenance or other operations necessary to preserve the drainage structures and characteristics of the on-site detention improvements and the park land and open space. If the Village of Johnsburg deems it necessary to perform such service, it shall be entitled to complete reimbursement, including all reasonable costs and attorney's fees from the Association. The amount of the Village's reimbursement, if unpaid after a reasonable time of being incurred, shall constitute a lien against the Association or any individual Lot Owner or member of the Association enforceable in the same manner as provided under Clause VI, paragraph 3.

CLAUSE VII

GENERAL PROVISIONS

A. Each of the Covenants set forth in the Declaration shall run with the land and be binding on the Declarant, its successors, grantees and assigns, and all parties claiming, by,

through or under them for an initial period of thirty (30) years from the date of recording of this Declaration with the Recorder of Deeds of McHenry County, Illinois and thereafter for successive periods of twenty-five (25) years each; provided however, that the easements and provisions relating to the creation, maintenance, and care of the Open Space and its Storm water Detention Facilities and Improvements and compliance with applicable ordinances and regulations relating to the same, are and shall be perpetual, and may only be modified with the prior written approval of the McHenry County and/or the Village of Johnsburg.

B. In the event of any default by any Owner under the provisions of the Declaration, By-Laws or rules and regulations of the Association, the Association and the Board of Directors shall have each and all of the rights and remedies which may be provided for in this Declaration, the By-Laws and said rules and regulations and those which may be available at law or in equity and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, for specific performance, for judgment for payment of money and collection thereof, for any combination of remedies or for any other relief. No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at either one percent (1%) per month or the maximum rate permitted by law and late charges, from the due date until paid, shall be charged to and assessed against such defaulting Owner and shall be deemed to constitute a lien upon the Lot and upon all of his or her additions and improvements thereto. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board of Directors.

All of the provisions of this instrument, and those in the By-Laws of the Association, are mutually enforceable by and among the Owners of the Lots. Any Owner who feels that a provision is being violated may petition to the Association to investigate the situation. Should the Association determine that this allegation is true and that corrective action should be taken, the Association shall take whatever action is necessary to end the violation. Should the Association deem the allegation of violation as unworthy of action or fail to investigate the alleged violation within thirty (30) days of notice, then the complaining Owner can prosecute his or her claim in whatever legal manner is best suited to the situation.

C. Except with respect to Clause VI, and except as to any matters which may affect the open space or storm water detention facilities and improvements (which requires the prior written approval of McHenry County and/or the Village of Johnsburg), the Owners in fee simple of the Lots in the Property may revoke, modify, amend, or supplement in whole or in part any or all of the Covenants and conditions contained in this Declaration and may release from any part or all of said Covenants all or any part of the Property subject thereto. Any such change or changes may be made if approved by the Owners in fee simple of at least two-third (2/3) of the Lots in the Property.

A recorded certificate shall be deemed conclusive evidence thereof with regard to compliance with the provisions of this section. Upon and after the effective date of any such change or changes, it or they shall be binding upon all persons, firms, and corporations then owning Lots in the Property and shall run with the land and bind all persons claiming by, through, or under any one or more of them.

D. All Covenants, liens, and other provisions herein set forth shall be subject to and subordinate to all mortgages or deeds of trust in the nature of a mortgage now or hereafter executed, encumbering any of the real property in the Property, and none of said Covenants, liens, or other provisions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust in the nature of a mortgage. However, if any such property is acquired in lieu of foreclosure, or is sold under foreclosure of any mortgage or under the provisions of any deed of trust in the nature of a mortgage, or under judicial sale, any purchaser at such sale, his or its grantees, heirs, personal representatives, successors, or assigns shall hold any and all such property so purchased subject to the provisions of this Declaration.

E. If a court of competent jurisdiction shall hold invalid or unenforceable any part of any Covenants or provisions contained in this Declaration, such holding shall not impair, invalidate, or otherwise affect the remainder of this Declaration, which shall remain in full force and effect. The failure by the Association or any Owner to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

F. Each Owner of a Lot in the Subdivision shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address. The Association shall maintain a file of such addresses. A written or printed notice, deposited in the United States Post Office, postage prepaid, and addressed to any Owner at the last address filed by such Owner with the Association shall be sufficient and proper notice to such Owner wherever notices are required in this Declaration.

IN WITNESS WHEREOF, The Association has caused this instrument to be executed and attested as of the day and year first above written after approval by the Owners as required under the terms of said Declaration, by its duly authorized President and Secretary.

Dutch Creek Homeowner's Association

By: _____

Attest: _____

State of Illinois)
)
 ss
County of McHenry)

The undersigned, a Notary Public in and for said County, in the State afore said, does hereby certify that _____, as President of the Dutch Creek Homeowner's Association, an Illinois not-for-profit corporation, and _____, as Secretary of said Corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said Corporation, for the purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 2013

Notary Public

AFFIDAVIT OF SECRETARY

STATE OF ILLINOIS)
)
) SS
COUNTY OF MCHENRY)

I, _____, state that I am the Secretary of the Board of Directors of the Dutch Creek Homeowner's Association, and hereby certify that the consent for the foregoing Third Amendment of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dutch Creek Estates has been given by the record owners in fee simple of at least two-thirds (2/3) of the lots in the Property, by a written instrument or instruments executed and acknowledged by each of the consenting owners and this Affidavit shall serve as the certificate of compliance with the provisions of the Declaration and shall be recorded in the office of the Recorder of Deeds of McHenry County, Illinois.

By:

Secretary

Subscribed and sworn to before me this

____ day of _____, 2013

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

DUTCH CREEK ESTATES PHASE I

LOTS 1 THROUGH 55, BOTH INCLUSIVE, IN DUTCH CREEK ESTATES UNIT 1, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE NORTHWEST QUARTER AND THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 45 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 19, 1991 AS DOCUMENT 91R027077 AND CORRECTED BY CERTIFICATE OF CORRECTION RECORDED MAY 12, 1992, AS DOCUMENT NO. 92R026012, IN MCHENRY COUNTY, ILLINOIS.

DUTCH CREEK ESTATES PHASE II

LOTS 1 THROUGH 61, BOTH INCLUSIVE, OUTLOTS A, B, C, D, AND E, BOTH INCLUSIVE AND THE PARK LOT, ALL IN DUTCH CREEK ESTATES UNIT 2, OF JOHNSBURG, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 12, PART OF THE NORTHWEST QUARTER OF SECTION 13, PART OF THE NORTHEAST QUARTER OF SECTION 14, ALL IN TOWNSHIP 45 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 27, 2001 AS DOCUMENT NUMBER 2001R0062263 IN MCHENRY, COUNTY, ILLINOIS.