

AGREEMENT BETWEEN THE VILLAGE OF ROMEOVILLE

AND MALIBU BAY HOMEOWNERS ASSOCIATION

This Agreement ("Agreement") is made this **16th day of November, 2016**, by and between the Village of Romeoville (the "Village"), an Illinois municipal corporation and unit of local government, and Malibu Bay Homeowners Association, the owner ("Owner") of certain property generally consisting of commonly owned property, and legally described **as Lot 188 (excluding the portion thereof conveyed by deed recorded as Document No. R201601504 with the Will County Recorder's Office) and Lot 189 in the Malibu Bay Subdivision, according to the plat thereof recorded as Document No. R98081448 with the Will County Recorder's Office.**

WHEREAS, the Corporate Authorities are concerned with the promotion of the public health, safety, morals and welfare throughout the Village in its entirety, and with the enforcement of the Ordinances of the Village, and with the laws of the State of Illinois, insofar as it may be the responsibility of the Village to enforce such laws; and

WHEREAS, numerous residential and nonresidential developments built within the Village limits in recent years have included substantial privately owned common areas, intended for the use and benefit of the owners, occupants or lawfully entitled users thereof and not for the use and benefit of the public at large; and

WHEREAS, notwithstanding the private ownership of such common areas and the limited class of persons lawfully entitled to use and benefit from such common areas, such common areas share certain characteristics with Village owned public common areas, parks or other public properties, including the need for a security or law enforcement presence to facilitate the prevention, reduction and suppression of violations of pertinent Village Ordinances and such laws of the State of Illinois as may apply to conduct therein; and

WHEREAS, Owner acknowledges that the property legally described above (the "Commonly Owned Property") constitutes a privately owned common area used for private purposes which is in need of a security or law enforcement presence to facilitate the prevention, reduction and suppression of violations of pertinent Village Ordinances and such laws of the State of Illinois as may apply to conduct therein; and

WHEREAS, Owner desires to have Village, through its sworn law enforcement personnel, provide such a law enforcement presence and all related law enforcement services in and on the Commonly Owned Property for the purpose of enforcing all pertinent ordinances of the Village and laws of the State of Illinois, including but not limited to those governing and affecting vehicular and pedestrian traffic therein; and

WHEREAS, Owner acknowledges that without entering into this Agreement, Village would not be in position to provide all of the services contemplated herein in the manner set forth herein on and for the Commonly Owned Property and

WHEREAS, notwithstanding the foregoing recital, Village is willing to provide a law enforcement presence in and on the Commonly Owned Property together with all related services in the manner and upon the terms and conditions hereinafter set forth; and

WHEREAS, to facilitate Village's performance under this Agreement, Owner is willing to grant to Village full, complete, free and unrestricted access to and permission to enter and remain upon the Commonly Owned Property for the purpose of enforcing all applicable Village Ordinances and laws of the State of Illinois and for taking such other actions as may be reasonably necessary, convenient or related thereto; and

WHEREAS, to further facilitate Village's performance under this Agreement, Owner desires to take such steps as may be necessary to cause the repeal, rescission or subordination of any privately created or imposed rules, regulations or covenants which govern and apply to the Commonly Owned Property which are inconsistent or in conflict with the Ordinances of the Village and the laws of the State of Illinois as the same apply to the Commonly Owned Property and any uses or activities thereon, all so as to allow the Ordinances of the Village and the laws of the State of Illinois to be enforced in the same manner and to the same extent on the Commonly Owned Property as the would be on similarly situated public property.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and the Owner hereby agree as follows:

1. Grant of Authority. The Owner hereby grants to Village the full, complete and unrestricted right, power and authority to (a) enforce all Ordinances of the Village and all laws of the State of Illinois in and on the Commonly Owned Property, (b) enter and remain upon the Commonly Owned Property for the purpose of performing or taking any action permitted or contemplated under this Agreement and (c) prosecute all violations of any Ordinances of the Village taking place upon or otherwise involving the Commonly Owned Property. Without otherwise limiting the generality of the foregoing, the foregoing grant of authority specifically includes the power and authority to enforce the property rights of the Owner and the laws of the State of Illinois and Ordinances of the Village of Romeoville as the same pertain to persons trespassing upon the Commonly Owned Property, including without limitation the right to issue notice of trespass on behalf of the Owner to any persons not authorized by Owner to be present upon the Commonly Owned Property, or who are not residents or guests of residents of dwelling units within the Commonly Owned Subdivision, to request that all persons given such notice immediately vacate the Commonly Owned Property, and to thereafter arrest on behalf of Owner and in accordance with the laws of Illinois and the ordinances of the Village any recipients of such a notice of trespass who refuse to vacate the Commonly Owned Property after receiving such a notice of trespass.
2. Facilitation of Enforcement. To facilitate the Village's performance of any action permitted or contemplated by Section 1 above, Owner shall take such action as may be necessary to cause any rules, regulations or covenants binding or governing the Commonly Owned Property or the use thereof which are inconsistent or in conflict with the Ordinances of the Village or the laws of the State of Illinois as the same may apply or pertain to the Commonly Owned Property to be repealed or rescinded, or otherwise made subordinate to such Ordinances and laws. Without otherwise limiting or restricting the generality of the foregoing, Owner shall further be required to extend such cooperation as may be reasonably requested by the Village in connection with its performance of any action permitted or contemplated by this Agreement. Owner shall also post appropriate signs stating "NO TRESPASSING" upon the Commonly Owned Property and shall keep such signs maintained and visible.
3. Village Retention of Discretion. Owner acknowledges that the intent and spirit of this Agreement shall be to enable the Village to enforce its Ordinances and the laws of the State of Illinois on the Commonly Owned Property in the same manner and to the same extent as the Village would enforce the same on similarly situated public property. Accordingly, Owner further acknowledges that (a) Village shall retain the sole and exclusive discretion and authority to enforce its Ordinances and the laws of the State of Illinois on the Commonly Owned Property as it sees fit, to maintain such a law enforcement presence on the Commonly Owned Property as it deems to be necessary and convenient and consistent with the law enforcement presence maintained upon similarly situated public properties, and to prosecute such violations of its Ordinances occurring upon or otherwise related to the Commonly Owned Property as it may deem necessary and appropriate, and (b) neither Owner nor any member of Owner or other person lawfully entitled to use or enter or remain upon the Commonly Owned Property pursuant to Owner's own rules, regulations or covenants shall claim or assert as a defense or immunity in connection with any prosecution for any violation of any Village Ordinance the status of any person as a member of Owner or as a person otherwise entitled to the rights and privileges of a member of Owner.

5. Recitals. The recitals set forth above are true and correct, and are hereby incorporated as a part of this Agreement as if fully set forth herein.

6. Miscellaneous.

(a) Governing Law. The laws, cases and statutes of the State of Illinois shall govern the validity, performance and enforcement of this Agreement.

(b) Notices. All notices or other writings which any party hereto is required or permitted to give in connection with this Agreement shall be in writing and shall be served by personal delivery, which service shall be effective as of the date of such delivery, or mailed by registered or certified mail, return receipt requested, with proper postage prepaid, which service shall be effective two (2) business days after the date of such mailing, and addressed as follows or to such other person or address as either party may designate from time to time by written notice given to the other party pursuant hereto:

If to Village: Village Manager
Village of Romeoville
1050 W. Romeo Rd.
Romeoville, Illinois 60446

with a copy to: Richard E. Vogel
Tracy, Johnson & Wilson
2801 Black Road
Joliet, Illinois 60435

If to Owner:

MALIBU Bay Homeowners Association
P.O. Box 7305, Romeoville, IL 60446

with a copy to:

MR. KENNETH DONKEL
ATTORNEY AT LAW
7220 W. 194th STREET, Tinian, Park, IL 60487

(c) Severability. If any provisions of this Agreement are held to be invalid, such provisions shall be deemed to be excised therefrom, and the invalidity thereof shall not affect any of the other provisions contained herein, which provisions shall be enforceable to the fullest extent possible.

(d) Amendments. The parties agree that this Agreement and all Exhibits attached hereto may be amended only by the mutual consent of the parties by means of the same procedures used to adopt this Agreement and authorize its execution in the first instance.

(e) Headings. The headings of the paragraphs of this Agreement are for convenience and reference only and do not form a part hereof and do not modify, interpret or construe the understandings of the parties hereto.

(f) Counterparts. This Agreement may be signed upon any number of counterparts with the same effect as if the signatures to each were upon the same Agreement.

(g) Originals. This Agreement may be reproduced by means of carbons, Xerox process or otherwise. Each such reproduction, if manually executed by the parties, shall for all purposes be deemed, and the same is hereby declared, to be a duplicate original of this Agreement.

(h) Singular and Plural. Terms used in this Agreement shall be read in the singular or the plural as may be appropriate to the context in which they are used.

(i) Waiver. No waiver by either party of any breach of any term or condition hereof shall be deemed a waiver of the same or any subsequent breach of the same or any other term or condition hereof. No term or condition of this Agreement shall be deemed waived by either party unless waived in writing.

(j) Entire Agreement. Except as hereinafter expressly provided, this Agreement supersedes all prior agreements, negotiations and representations and is a full integration of the entire Agreement of the parties.

“Village”

Village of Romeoville

By: _____
John Noak
Its President

“Owner”

MALIBU Bay HOMEOWNERS ASSOCIATION

By: Gregory J. Tovaia, President