

OAKWOOD
THIRD AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

Third Amendment to the Declaration is made on the date hereinafter set forth by the OAKWOOD HOMEOWNERS ASSOCIATION, hereinafter sometimes referred to as "Successor Declarant."

WITNESSETH

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for OAKWOOD HOMEOWNERS ASSOCIATION ("Declaration") was recorded with the DuPage County Recorder of Deeds on January 17, 1973 as Document No. R73-3223; and

WHEREAS, the 1st Amendment to the Declaration of Covenants, Conditions and Restrictions for OAKWOOD HOMEOWNERS ASSOCIATION ("Declaration") was recorded with the DuPage County Recorder of Deeds on October 13, 1998 as Document No. R98-210360; and

WHEREAS, the 2nd Amendment to the Declaration of Covenants, Conditions and Restrictions for OAKWOOD HOMEOWNERS ASSOCIATION ("Declaration") was recorded with the DuPage County Recorder of Deeds on August 31, 2000 as Document No. R2000-136770; and

WHEREAS, Article X, Section 4, of the Declaration, including the 1st and 2nd Amendment to the Declaration, provides for Amendments to the Declaration; and

WHEREAS, the Board has approved this Amendment to the Declaration. This Amendment has been signed and acknowledged by the Board and the owners owning at least two-thirds (2/3) of the votes of the members present at a meeting, in person or by proxy, have approved the changes, pursuant to the Declaration and the 1st and 2nd Amendments thereto.

NOW THEREFORE the following shall be considered the 3rd Amended Declaration:

WHEREAS, Association is the owner or has an interest in certain real estate in the County of DuPage, State of Illinois, which is more particularly described in Exhibit "A", attached hereto and incorporated herein.

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

ARTICLE I
DEFINITIONS

Section 1. “Association” shall mean and refer to OAKWOOD HOMEOWNERS ASSOCIATION, an Illinois non-profit corporation, its successors and assigns.

Section 2. “Properties” shall mean and refer to that certain real property described on said Exhibit “A” and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

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

The initial Common Area is described immediately below and shall be conveyed to the Association within one year after the date of the conveyance of the first lot to a third party purchaser is described as follows:

Outlots 1 and 3 in Oakwood, Unit 1, being a subdivision of Part of Sections 2 and 3, Township 38 North, Range 11, East of the Third Principal Meridian, in DuPage County, Illinois which Plat of Subdivision was recorded with the Recorder of Deeds of DuPage County, Illinois on October 27, 1971 as Document No. R71-55525, which Plat was corrected by Surveyor’s Certificate of Correction recorded with said Recorder of Deeds on November 12, 1971 as Document R71-58547 and which Plat was further corrected and clarified by Surveyor’s Certificate of Correction and Clarification recorded with said Recorder of Deeds on December 27, 1972 as Document No. R72-78535.

Section 4. “Lot” for the purposes of this Declaration shall mean and refer to any plot of land shown upon any recorded plat of subdivision of the Properties (with the exception of the common area) and upon which one individual detached single family dwelling is constructed or to be constructed, a typical description of a lot being Lot 2, Unit I.

Section 5. “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 6. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. “Plat of Subdivision” shall also mean and include “Planned Unit Development”.

ARTICLE II
ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require an amendment to the Declaration.

Section 2. The sale or conveyance of all or any portion of that certain real estate in the County of DuPage, State of Illinois, which is described in Exhibit A, attached hereto and incorporated herein, which is presently owned by the Association shall require an Amendment to the Declaration.

ARTICLE III
MEMBERSHIP IN THE ASSOCIATION

Section 1. “Membership.” Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject to this Oakwood Declaration of Covenants, Conditions and Restrictions, including contract sellers, shall be a member of the Association and each purchaser of any unit by acceptance of a deed therefore covenants and agrees to be a member of the Association whether or not it shall be so expressed in any deed or other conveyance. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. For each lot owned, the owner thereof shall be entitled to one membership. Membership shall be appurtenant to and may not be separated from the fee ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. For the purpose of this Declaration, the word “member” shall include any beneficiary of a trust holding legal title to one or more lots.

Section 2. “Transfer.” The membership held by any owner of a lot shall not be transferred, alienated, or pledged in any way except upon the sale or encumbrance of such Lot, and then only for the purchaser or mortgagee of such lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event the owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchase of such lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new certificate to the purchaser, and thereupon the old certificate outstanding in the name of the seller shall be null and void as though the same had been surrendered.

ARTICLE IV
VOTING RIGHTS IN THE ASSOCIATION

The Association shall have one class of voting membership:

All members, as defined in Article III, shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE V

PROPERTY RIGHTS

Section 1. “Members Easements of Enjoyment”. Every member shall have a right and easement for ingress and egress over and across and an enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot. Reference in the respective deeds of conveyance, or in any mortgage or trust deeds or other evidence of obligation to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees or trustees of said parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents. Said right of easement for ingress and egress over and across and of enjoyment in and to the common area shall be subject to the following provisions:

- (a) The right of the Association to limit the number of guests of members.
- (b) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving or reconstructing the Common Area and facilities thereof and in aid thereof to mortgage said common area (or a portion thereof).
- (c) The right of the Association to charge reasonable admission and other fees for the use of the common area or any recreational facility situated upon the Common Area.
- (d) The right of the Association to suspend the voting rights and right to use of the common Area and the facilities thereon by a member for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed 30 days for any single infraction of the published rules and regulations of the Association provided that any suspension of such voting rights or right to use the recreational facilities, except for failure to pay assessment, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the By-Laws of the Association.
- (e) The right of the Association to declare or grant easements and licenses (subject to the reservations by Association set forth in Article VIII hereof) to dedicate or transfer all or any part of the Common Area to any public agency, authority, or public or private utility for such purposes and subject to such conditions as may be agreed to by the members. Such dedication or transfer shall not be effective unless (1) there is an amendment to the Declaration, and (2) an instrument has been recorded, signed by the Association. Only Board approval is required if such dedication or transfer is required by law.
- (f) The right of the Association to establish uniform rules and regulations pertaining to the use of the common area and the recreational facilities.

(g) The right of Declarant, its beneficiary and designees or the developers of other tracts within the area described on Exhibit "A" or Exhibit "B" after annexation (in accordance with Article II hereof), (and their respective sale agents and representatives) to the non-exclusive use of the common area (as may be amended by annexation from time to time) and facilities located on said common area, for sales, display and exhibit purposes in connection with the sale of residential units within such tracts, which rights Declarant hereby reserves; provided, however, that such use for sales shall not be for a period more than 10 years or after the sale and conveyance of all the residential lots in said properties (as may be amended by annexation from time to time thereafter), whichever is earlier.

(h) Such other rights as are reserved or created by this Declaration.

Section 2. "Delegation of Use". Any member may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. "Waiver of Use". No member may exempt himself from personal liability for assessments duly levied by the Association, nor release the lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the common area or by abandonment of his Lot.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. "Creation of the Lien and Personal Obligation of Assessments." Each owner of any Lot by acceptance of a deed therefore or possession thereof, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to personally and individually covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements such as annual and special assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon, attorneys fees and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall pass to his successors in title accepting a deed to or assignment of beneficial interest in or possession of said Lot.

Section 2. "Purpose of Assessments". The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, welfare and enjoyment of its members, and in this connection, for the maintenance and improvement of the common area and the facilities thereon and to provide funds for the Association to carry on its duties set forth herein or in its Articles of Incorporation and By-Laws.

Section 3. “Basis and Maximum of Annual Assessments.” Until January 1st of the year immediately following the ratification of this amended document by the membership, the annual assessment shall not exceed \$120.00 per lot.

(a) From and after January 1st of the year 2003 the maximum annual assessment may be increased effective June 1st each year by the Board of Directors of the Association (at any meeting of the Board of Directors duly convened at least 30 days prior to said June effective date) without a vote of the membership, provided that any such increase shall not be more than three (3%) percent or the rate of inflation as expressed by the Consumer Price Index, whichever is larger, of the annual assessment of the year immediately preceding the year in which that increase is proposed exclusive of any increase resulting from increases in real property taxes on the common area. Such increased annual assessment shall continue in effect for 12 months after the effective date, which period shall be deemed to be the assessment period. To increase the annual assessment by more than the rate stipulated above shall require an amendment to the Declaration.

(b) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix regular annual assessment at a lesser amount than provided for above. Should the Board exercise this provision, the Board retains the right to increase the annual assessment in the future to the highest historical amount without an amendment to the Declaration or without the approval of the membership.

Section 4. “Special Assessments for Capital Improvements.” In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that and succeeding years for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto. Unless capital improvements are required by law, such special assessment shall require an amendment to the Declaration. If required by law, Board approval only shall be required.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except for certain exempt Lots as provided in Section 9, and may be collected on a monthly basis, or such other basis as set by the Board of Directors.

Section 6. “Certificate of Payment.” The Association shall, upon demand, furnish to any owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether the regular and special assessments on a specified lot have been paid and the amount of the delinquency if any. A reasonable charge may be made by the Board for the issuance of these certificates. The fee shall be set forth in the By-Laws. Any such fee shall be in addition to lot owner’s assessment. Such certificate shall be conclusive evidence of payment that any assessment therein stated, to have been paid.

Section 7. “Exempt Property.” The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority and lots granted to or used by a utility company (provided, however, that any lots upon which dwelling units are constructed that are

conveyed or assigned to any governmental agency or municipality shall be subject to any annual and special assessments; (b) the Common Area; (c) all properties owned by a charitable or non-profit organization exempt from taxation by the Laws of the State of Illinois.

It is understood that upon the conveyance or occupancy of a Lot which was theretofore entitled to one of the above exemptions, such Lot shall have no further exemptions unless it qualifies for a further exemption set forth in this Article VI.

ARTICLE VII
EFFECT OF NON-PAYMENT OF ASSESSMENTS
REMEDIES OF THE ASSOCIATION

Section 1. “Delinquency.” Any assessment or charge provided for in this Declaration which is not paid when due shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the owner to pay a “Late Charge” in a sum set forth in the By-Laws. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the then legal rate, and the Association may, at its option, bring an action at law against the owner personally obligated to pay the same, or, upon compliance with the notice provisions set forth in Section 2 hereof, to foreclose the lien (provided for in Section 1 of Article VI hereof) against the Lot, and there shall be added to the amount of such assessment the late charge, and costs of preparing and filing the complaint in such action and reasonable attorneys fees, and in the event a judgment is obtained, such judgment shall include said interest together with the costs of action. Each owner vests in the Association its assigns, the right and power to bring all actions at law or lien foreclosures against such owner for the collection of such delinquent assessments and to suspend voting rights in the Association until the delinquency is paid in full. Voting rights are automatically reinstated at the time the delinquency is paid in full.

Section 2. “Notice of Lien.” No action shall be brought to foreclose said assessment lien or to proceed under the power of sale herein provided less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, addressed to the owner of said lot, and a copy thereof is recorded by the Association in the office of the County Recorder in which the properties are located; such notice of claim must recite a good and sufficient legal description of any such lot, the record owner or reputed owner thereof, the amount claimed (which may at Association’s option include interest on the unpaid assessment at the legal rate, plus reasonable attorney’s fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

Section 3. “Foreclosure Sale.” Any such sale or foreclosure provided for above is to be conducted in accordance with the provisions of the laws of the State of Illinois applicable to the exercise of powers of sale or foreclosure of mortgages or in any other manner permitted by law. The Association, through its duly authorized agents, shall have

the power to bid on the lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. :

Section 4. “Curing of Default.” Upon the timely curing of any default for which a notice of claim of lien was filed by the Association and prior to the commencement of any legal proceedings to foreclosure or otherwise enforce the collection of such claims for lien, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting owner of a fee set forth in the By-Laws to cover the cost of preparing and filing or recording such release.

Section 5. “Cumulative Remedies.” The assessment in lien and the rights to foreclosure and sale there under shall be in addition to all remedies provided in this Declaration or the Articles of Incorporation or the By-Laws of the Association or remedies otherwise provided or permitted by law. The remedies specified are cumulative and not in substitution of other remedies available and at law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6. “Subordination of Assessment Liens.” If any lot subject to a monetary lien created by Article VI of this Declaration shall be subject to the lien of a first mortgage or Trust Deed: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage or Trust Deed; and (2) the foreclosure of the lien of such mortgage or Trust Deed or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien hereof except that the lien hereof for said charges as shall have accrued up to the foreclosure or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage or Trust Deed, with the foreclosure-purchaser or deed-in-lieu grantee taking title free of the lien hereof for all said charges that have accrued up to the time of the foreclosure or deed given in lieu of foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the date of the entry of the decree of foreclosure or date of recordation with the County Recorder of the deed given in lieu of foreclosure.

ARTICLE VIII

RESERVATION OF EASEMENTS AND UTILITIES IN COMMON AREAS

Section 1. The Association hereby reserves unto itself, its successors, assigns, and designees, the right to create, declare and grant over, above, under and across the common areas non-exclusive perpetual drainage and utility easements for the installation, construction, improvement, removal, reconstruction, replacement, substitution, and maintenance of sewer (storm and sanitary) water, gas, electricity, master television antenna and transmission systems, telephone and any other easements as may be necessary in the Association’s sole judgment to develop, service and maintain the properties. The aforesaid easements shall include reasonable rights of ingress and egress.

Section 2. The Association hereby reserves for itself, its successors and assigns and designees the right and title to all storm sewers, sanitary sewers, and water lines when situated in, over, under, along or across the common area which right includes the right (but not the obligation) of maintenance, replacement, repair, or removal thereof and reasonable access thereof. Association further reserves the right, at Association's sold option, to transfer title to said storm sewers, sanitary sewers and water lines and Association's rights of maintenance, replacement, repair, and removal thereof to Association's beneficiary or designee (including the Village of Westmont, Illinois), which transfer and assignment shall be effectuated by a bill of sale or other appropriate writing.

Section 3. The Association hereby reserves unto itself, its successors, assigns, and designees and the Village of Westmont a non-exclusive, permanent and perpetual easement over, under and across the common areas for maintenance of the banks of the lake located on said outlot 1. By reserving said easement, the Association is not obligated or required to maintain said banks.

ARTICLE IX

COMMON AREA MAINTENANCE

The Association hereby agrees to maintain the common areas. The Association agrees either to do or cause the following to be done: To maintain, repair, and replace the common area and elements and the recreational facilities, including but not limited to, the building structures, lakes and their outlets, the banks of lakes, retention ponds and their outlets, sidewalks, roads, grass, trees, shrubs, plantings and lighting on said common area. The Association agrees to supervise, police and provide such personnel (including lifeguards) and issue, keep in full force and effect and enforce such By-Laws and rules and regulations as are reasonably necessary to safeguard the health, welfare and safety of the users of said lake and common areas and the recreational facilities located thereon, and further, the Association shall keep in full force and effect bodily injury and property damage liability insurance in the amounts necessary to reasonably protect the interest of the members.

ARTICLE X

GENERAL PROVISIONS

Section 1. "Enforcement." The Association, or any Owner, shall have the right to enforce, by and proceeding at law or in equity, all restrictions, conditions, covenants, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Breach of any of the covenants shall not defeat or render invalid the lien or any mortgage or deed of trust made in good faith and for value as to said lots or property, or any parts thereof, but such provisions, restrictions or covenants shall be binding and effective against any owner of said property whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

Section 2. “Reservation of Rights for Governmental Bodies.” Anything contained in this Declaration to the contrary notwithstanding, the Declarant hereby reserves and grants unto the Village of Westmont, Illinois, a municipal corporation, the unexclusive perpetual right (but not the duty or obligation) to maintain, repair, remove and replace the common areas and appurtenances thereon, including but not limited to, the grassy areas, sidewalks, parking areas, undedicated streets, driveways, retention ponds and their outlets, lakes and their outlets, recreational facilities and areas. The Declarant further reserves unto the Village of Westmont, Illinois and unto other applicable governmental agencies, bodies and districts perpetual non-exclusive rights of ingress and egress over and across the common areas for the purpose of enforcing the laws, rules, regulations and ordinances applicable to the properties and the inhabitants thereof, and further for the purpose of safeguarding and protecting the properties and the inhabitants thereof.

Section 3. “Severability.” Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no ways effect any other provisions which shall remain in full force and effect.

Section 4. “Amendment.” The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended by an instrument signed by the Association Board pursuant to resolution passed and approving said amendment by two-thirds of the votes of the members present in person or by proxy or by 235 votes, whichever is larger, at a duly convened meeting. The latest version of Roberts Rules of Order shall define a duly convened meeting. Any amendment must be properly recorded with the Recorder of Deeds of DuPage County, Illinois.

Section 5. “Proxy” A proxy may only be assigned to another member. A board member may not solicit or submit a proxy in the name of the Board of Directors.

Section 6. “Notice of Meeting” Notice must be given to all members not less than 5 days nor more than 40 days in advance of the meeting setting forth the purpose, time date and place of the meeting. The By-Laws shall set forth the method of notification.

Section 7. “Quorums” To conduct business at a meeting of the membership to amend the Declaration, a minimum of 235 members, represented in person or by proxy shall constitute a quorum. To conduct business at a meeting of the membership for all other business, a minimum of 47 members, represented in person or by proxy, shall constitute a quorum.

IN WITNESS HEREOF, we the undersigned, being members of the Board of Directors of the OAKWOOD HOMEOWNERS ASSOCIATION consent to the aforementioned amendments and set forth more fully as the 3rd Amended Declaration have hereunto set our hands and its seal this day of _____, 2004.

Sean Ladieu

Jerry Harlow

Claudia Kerbel

Larry Stephan

David Vogt

(Seal)