

**The Midwest Club  
of  
Oak Brook**

**Third Amendment to First  
Amended Declaration  
of Covenants**

**1100 Midwest Club Parkway  
Oak Brook, IL 60523  
630-655-9002**

## **SECOND AMENDMENT TO FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE MIDWEST CLUB AREA**

**WHEREAS**, the Midwest Declaration of Trust, establishing conditions, covenants, restrictions, reservations, grants and easements in respect to the Midwest Club Area and providing for the creation and operation of the Midwest Club Community Area was recorded on December 7, 1978 with the Recorder of Deeds of Du Page County, Illinois as Document Number R78-117289;

**WHEREAS**, pursuant to Section 6 of the Midwest Club Declaration of Trust, title to the Community Area was transferred to the Midwest Club Trust by the Developer as all lots were sold by the Developer;

**WHEREAS**, the Developer has no further interest in the Midwest Club Area and thus provisions of the Midwest Club Trust which refer to the Developer are no longer applicable;

**WHEREAS**, the Illinois Revised Statutes allow for an Association to be formed as an Illinois Not for Profit Corporation which serves, through its duly elected Board, to be responsible for the overall administration of property such as the Midwest Club Area. The formation of such a Not for Profit Corporation has been determined to be a more modern and efficient method in which to provide administration in order to preserve the attributes of a distinguished and superior residential community;

**WHEREAS**, the Board of Trustees have determined other changes should be made to the Midwest Club Declaration of Trust since it was initially drafted by the Developer of the Midwest Club Area and adopted in 1978;

**THEREFORE**, pursuant to two-thirds vote of the Owners, and unanimous vote of the Board of Trustees of the Midwest Club, this First Amended Declaration of Covenants, Conditions and Restrictions of the Midwest Club Area is hereby adopted which shall supersede the initial Midwest Club Declaration of Trust.

### **SECTION 1. PURPOSE AND NEED**

For the purpose of protecting and preserving the distinctive characteristics and qualities of the Midwest Club Area, the owners deem it necessary and desirable to provide for the management, operation and governance of the Community Area and the facilities within that area, to provide for the establishment, administration and enforcement of the Covenants, Conditions and Restrictions, to provide for the collection and disbursement of all necessary assessments or charges to insure proper use of the Club Area, and to provide in general for the various matters hereinafter set forth, all having as their object the preservation of the attributes for distinguished and superior residential community.

## **SECTION 2. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

### **2.1 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND DESCRIPTION OF THE MIDWEST CLUB AREA.**

The real property to which this First Amended Declaration of Covenants, Conditions and Restrictions relates, and which is subject to this First Amended Declaration of Covenants, Conditions and Restrictions, is described as follows:

2.1.1 Lots numbered 1 to 69, inclusive, 85 to 88, inclusive, 111 to 117, inclusive, and 221, in the Midwest Club Subdivision Phase I, according to the Plat of Subdivision Phase I recorded December 6, 1978 as Document R78-116577, being a subdivision in that part of Sections 33 and 34, Township 39 North, Range 11 East of the Third Principal Meridian, in the Village of Oak Brook, DuPage County, Illinois.

2.1.2 Lots numbered 70 to 84, inclusive, 89 to 110, inclusive, 118 to 221, inclusive in The Midwest Club Subdivision Phase II recorded January 11, 1979 as Document Number R79-003596, being a subdivision in that part of Sections 33 and 34, Township 39 North, Range 11 East of the Third Principal Meridian, and combined with Phase I above, shall be deemed one combined subdivision for all purposes and shall constitute the entire Club Area.

## **SECTION 3. GENERAL PURPOSE OF THIS DECLARATION**

3.1 **STATEMENT OF PURPOSE.** The purpose of this First Amended Declaration of Covenants, Conditions and Restrictions contained herein is to insure a use and development of the Club Area consistent with the desire and intention of owners to establish a residential community of high quality, to protect the owners of homes therein against use of the Club Area or of any part of the Club Area inappropriate to a fine residential community and incompatible with the proper enjoyment of such community; to prevent the construction of buildings which because their design, or construction, or materials, are not in aesthetic harmony with other buildings in the Club Area; to encourage the construction of fine quality homes of appropriate size and compatible with the architectural character of the Club Area; to make certain that homes are so located on sites within the Club Area that each home enjoys light, air, and free and open space; to protect owners of property within the Club Area against any improper use of proximate lots as may depreciate the value of their property; to insure that the Community Area within the Club Area is at all times carefully and efficiently maintained and that the facilities, lawns, walks, and

open spaces within the Community Area are always so maintained and operated that they may be enjoyed and used with comfort and pleasure by the owners of homes within the Club Area. It is the purpose of this Declaration, further, to provide for security arrangements, unobtrusive but efficient, which will deter trespassers, and will enhance the privacy of the Club Area for residents. It is the purpose of the Declaration, in general, to provide that the Club Area will be so managed, maintained, guarded and preserved, that it will at all times be regarded as an excellent residential community.

#### **SECTION 4. DEFINITIONS**

- 4.1 "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Midwest Club, Inc., as filed with the Secretary of State of the State of Illinois.
- 4.2 "Association" shall mean and refer to Midwest Club, Inc., an Illinois Not for Profit Corporation, its successors or assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Illinois corporate law.
- 4.3 "By-Laws" shall mean and refer to the By-Laws of the Midwest Club, Inc., attached hereto and incorporated herein by reference, as they may be amended from time to time.
- 4.4 "Assessments" shall mean and refer to assessments levied against all Units in the Club Area to fund Common Expenses.
- 4.5 "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Owners, including and reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.
- 4.6 "Community Area" shall mean Lot 221, as described in Section 2.1.1 and 2.1.2. Said title to the Community Area shall be held by the Midwest Club, Inc., an Illinois Not for Profit Corporation.
- 4.7 "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.
- 4.8 "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.
- 4.9 "Club Area or Midwest Club Area" shall mean and refer to the real property legally described in Sections 2.1.1 and 2.1.2 above and includes the common area described as lot 221 and also as described in Exhibit "A" attached hereto.
- 4.10 "Unit" shall mean a portion of the Club Area, whether developed or undeveloped, intended for development, use, and occupancy as a single-family detached home on separately platted lot.

- 4.11 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is part of the Properties, except the Community Area, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 4.12 "Property" The use of the term "property" refers to any or all lots in the Club Area, either improved or unimproved, or both improved and unimproved, whichever reference is appropriate.
- 4.13 "Lot" The use of the term "Lot" refers to any improved or unimproved lot in the Club Area.

## **SECTION 5. CLUB AREA**

- 5.1 **SUBJECT TO COVENANTS AND RESTRICTIONS.** The Midwest Club Area is hereby made and declared to be subject to the conditions, covenants, restrictions, reservations, grants and easements contained in this First Amended Declaration of Covenants, Conditions and Restrictions, and the sale, transfer, mortgage, conveyance, use and occupation of lots and the Community Area are and shall at all times hereafter be subject to the Covenants, Conditions and Restrictions.

## **SECTION 6. THE COMMUNITY AREA AND OWNERS**

- 6.1 **USE BY OWNERS.** The owners, their families, guests and invitees have the rights to use the Community Area and all facilities thereon. Use of the Community Area and its facilities shall be subject to the Rules, Regulations, Restrictions, Fees and Assessments established by the Association.

## **SECTION 7. MEMBERSHIP**

- 7.1 **MEMBERSHIP.** Every owner, as defined in Section 4, shall be deemed to have a membership in the Association. All members of the Association shall be entitled one equal vote for each unit in which they hold interest required for membership; there shall be only one vote per unit. The voting rights of a unit owned by a corporation or partnership shall be exercised by the individual designated by the Owner in a written instrument provided to the Secretary of the Association.

## **SECTION 8. RESTRICTIONS AND RESPONSIBILITIES**

- 8.1 **LAND USE AND BUILDING TYPE.** All Lots in the Club Area, except the lot reserved as Community Area, shall be used for single family private residence purposes only, and not dwellings other than a single family private residence shall at any time be constructed or maintained.

- 8.2 **SIGNS.** No sign of any kind shall be erected within the Club Area. The Board shall have the right to erect signs as they, in their discretion, deem appropriate.
- 8.3 **PARKING AND GARAGES.** Vehicles shall be parked only in the garages or in the driveway serving the Units. Units shall contain garages which shall be used for parking, and no Owner may so modify a garage so as to make it unable to accommodate at least two parked automobiles. No more than two vehicles shall be parked outside any unit overnight on a permanent basis. The Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. Commercial vehicles, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall not be parked in the Club Area unless prior written approval has been received from the Board.
- 8.4 **OCCUPANTS BOUND.** All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Community Areas caused by such persons, notwithstanding the fact that the occupants of a Unit are fully liable and may be sanctioned for any violation of the declaration, By-Laws, and rules and regulations adopted pursuant thereto.
- 8.5 **ANIMALS AND PETS.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Club Area, except that dogs, cats, or other usual and common household pets may be permitted in a Unit. However, those pets which roam free outside the pet owner's unit or lot, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units shall be removed upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. Dogs which are household pets shall at all times whenever they are outside the pet Owners Unit or lot be confined on a leash held by a responsible person. No more than three pets shall be kept in any one unit.
- 8.6 **NUISANCE.** No portion of the Club Area shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be

kept upon any portion of the Club Area that will emit foul or obnoxious odors or that will cause any noise, emit any light, or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding properties. No noxious or offensive activity shall be carried on upon any portion of the Club Area, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Club Area. No plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Club Area shall be permitted within the Club Area.

- 8.7 **UNSIGHTLY OR UNKEMPT CONDITIONS.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Club Area.
- 8.8 **SUBDIVISION OF UNIT.** No unit shall be subdivided. No unit shall have boundary lines changed except with the prior written approval of the Board of the Association. Any such boundary line change shall not be in violation of the applicable subdivision and zoning regulations.
- 8.9 **IRRIGATION.** No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Club Area shall be installed, constructed or operated within the Club Area unless prior written approval is received from the Board.
- 8.10 **TRAILERS AND TEMPORARY STRUCTURES.** No utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Unit or any part of the Club Area unless written approval is received from the Board.
- 8.11 **DRAINAGE SYSTEMS.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Septic systems are prohibited in the Club Area.
- 8.12 **SIGHT LINE OF COMMUNITY AREA.** No Person shall erect any trees, shrubs or structures, other than a dwelling on an unimproved

lot, which shall obstruct or interfere with the view of the Community Area from the Unit of any other Owner.

- 8.13 **SIGHT DISTANCE AT INTERSECTIONS.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.
- 8.14 **UTILITY LINES.** No overhead utility lines, including lines for cable television, shall be permitted within the Club Area, except for temporary lines as required during construction or repair of a Unit or Community Area.
- 8.15 **AIR CONDITIONING UNITS.** No window air conditioning units may be installed in any unit.
- 8.16 **LIGHTING.** Except for seasonal Christmas decorative lights, which may be displayed between December 1<sup>st</sup> and January 10<sup>th</sup>, and other decorative lights which are customarily displayed for a specific period of time in order to celebrate a religious holiday, all other exterior lights must be approved in accordance Section 8.25.
- 8.17 **ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE AND SIMILAR ITEMS.** No artificial vegetation shall be permitted on the exterior of any portion of the Club Area. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Section 8.25.
- 8.18 **ENERGY CONSERVATION EQUIPMENT.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as determined pursuant to Section 8.25 hereof.
- 8.19 **LAKES AND WATER BODIES.** All lakes, ponds, and streams within the Club Area, shall be aesthetic amenities only, and no swimming, boating, playing, or use of personal flotation devices, shall be permitted. This Section shall not apply to prohibit use for irrigation of property comprising the Community Area. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Club Area.
- 8.20 **BUSINESS USE.** No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Club



Area; (c) the business activity does not involve door-to-door solicitation of residents of the Club Area or involve persons coming onto the Club Area who do not reside in the Club Area; and (d) the business activity is consistent with the residential character of the Club Area and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Club Area, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore.

8.22 **VEHICLES.** No snowmobile, dune buggy, unlicensed vehicle, golf cart, or similar motorized device may be operated anywhere within the Club Area.

8.23 **ANTENNAS AND MISCELLANEOUS.** No television or radio antennae or tower, shall be erected outdoors, nor shall laundry be dried outdoors. Flagpoles may be permitted by owners, but no flagpole on a Lot shall have a height in excess of 27 feet, and such permitted flagpole shall be used solely for the display of the American flag or United States military flag.

8.24 **SECURITY SYSTEMS.** All homes in the Club Area are required to be equipped with an operating security system that is connected to a central system and approved by the Board. It shall be the sole responsibility of each owner to maintain, repair and assure the continued operation of the security system installed in the respective owner's home.

8.25 **ARCHITECTURAL AND LANDSCAPING CONTROLS.** The Board has the right to establish Architectural and Landscaping Controls for the purpose of preserving a residential community in which each home is attractive and pleasing in design, and for the purpose of requiring and encouraging building styles and landscaping within the Club Area which incorporate a pleasing variety of designs, materials and colors that are compatible, and blend, rather than clash. No building, outbuilding, detached structure, storage shed, garage, landscape structure, recreational structure, (including but not limited to, patios, swing sets, and basketball hoops), fence, wall or other structure shall be commenced, erected or maintained, nor shall any addition to, or change or alteration in any of the foregoing be made,

nor shall any exterior color changes be made, until the construction plans and specifications shall have been submitted to the Board and approved by the Board in writing. Said plans and specifications shall show the nature, kind, size, shape, height, materials, color scheme and location on lot. In addition to the construction plans and specifications to be submitted to the Board as provided above, there shall also be submitted to the Board for its prior written approval, landscaping and grading plans which shall show clearly in reasonable detail proposed grading and landscaping plans. The Board shall have the right to refuse to approve any construction plans or specifications, which in the Board judgment does not comply with the Architectural and Landscaping Controls. The Board has the right, in making judgment as to the giving or withholding of approval to plans and specifications submitted to the Board, to consider the desirability of the proposed construction, landscaping or grading, in relation to other homes and other landscaping and grading in the Club Area, and to provide for the character and qualities of the residential development existing or being created within the Club Area. The Board has the right to appoint an Architectural and Landscape Advisory Committee for the purpose of establishing procedures for the review of plans and designs, actually reviewing plans and designs, and making recommendations to the Board. The Architectural and Landscape Advisory Committee may indicate to an owner whether they plan to recommend approval of plans or specifications to the Board, however final approval of plans or specifications shall rest with the Board. The decision of the Board shall be provided to the owner in writing. Such Committee may be composed of persons with special expertise, and may be made of owners or non-owners, or a combination thereof in the discretion of the Board. The Board further has a right to charge reasonable fees for such plan and design review, and to pay out of such fees for such plan and design review, and to pay out of such fees for professional services used in connection with said plan and design review.

- 8.26 **SUBMISSION OF PLANS AND SPECIFICATIONS.** All plans specifications and supporting and related material for which the approval of owners are required shall be delivered to the Board or their designated agent, pursuant to the established procedures, together with the payment of the fee, if any, established by the Board. The Board shall approve or disapprove the submitted material as soon as practicable, but the Board's written approval or disapproval shall in any event be given within 60 days after all the necessary material has been delivered to the Board. If the Board shall disapprove any submitted material, or if within said 60-day period the Board shall request changes be made to material submitted, the Board shall inform the Lot owner, in writing, of the reasons for Board

disapproval or Board's requirement that changes be made. Notwithstanding the obligation of the Board to state the reason for disapproval, or for the required modifications, the decision of the Board reasonably made, shall be conclusive and binding on all parties.

**8.27 LANDSCAPING OF CONTIGUOUS COMMUNITY AREA.** On any Lot boundary contiguous to the Community Area, there shall be no landscaping, planting, growth or structure permitted that would have the effect of physically or visually obstructing, defining or delineating said boundary.

**8.28 LANDSCAPING COMMUNITY AREA.** There should be no landscaping to any portion of the Community Area by any Owner without approval of the Board.

**8.29 DRIVEWAYS AND WALK.** No driveway or walk from any Lot, (except Lot Number 221,) shall intersect or otherwise be connected to Midwest Club Parkway. Driveways and walks on all Lots, (except Lot Number 221), may be connected to the Court road on which such Lots are fronted.

**8.30 OWNER'S INDIVIDUAL MAINTENANCE OBLIGATION.** Each owner is responsible for the maintenance of his Lot, the improvements thereon, and that part of the Community Area contiguous to his Lot line and any abutting Court Road pavement. This responsibility shall be known as the "Owner's Maintenance Obligation." If any owner defaults in his maintenance obligation, the Association is hereby granted all rights and powers necessary to perform such reasonable repairs, maintenance, rehabilitation or restoration which are necessary in the Association's opinion to correct such default. All costs and expense incurred in the performance of any such work shall be charged to the defaulting Owner, and shall constitute a lien against said owner's lot, enforceable as set forth in Sections 12.7, 12.8 and 12.9 hereof.

**8.31 COVENANTS AND RESTRICTIONS-RUNNING WITH LAND.** The Covenants and Restrictions created by this Declaration run with the land both as to burden and benefit, and every conveyance or other instrument affecting the Club Area shall be deemed subject to these Covenants and Restrictions and bound thereby as fully and as firmly as if said Covenants and Restrictions were fully set forth in said conveyance or other instrument.

## **SECTION 9. EASEMENTS**

**9.1 PERPETUAL EASEMENTS.** Perpetual easements are hereby established in the Community Area for the use and enjoyment of said Area by all Owners, their families, guests, invitees and others whose

right to use or enjoy the Community Area is derived from the owners. Each owner and all persons whose rights are derived from the owner, have an easement to freely make all reasonable and proper use of the Community Area and all facilities, subject to the Rules and Regulations and the established fees.

- 9.2 PERPETUAL EASEMENT IN GROSS TO THE ASSOCIATION.** The Community Area shall be subject to a perpetual easement in gross to the Association for the purpose of enabling and permitting the Association to properly perform their duties and responsibilities. The Association further has a perpetual easement in gross to enter upon an owner's lot when reasonably necessary in the judgment of the Board, for the purpose of properly performing for executing a duty or responsibility of the Association in respect of other owners, or of the owners generally.
- 9.3 EASEMENT: LOTS TO COURTS AND ROADS.** An easement for ingress and egress to public streets shall exist over the Community Area, in favor of the owners, their families, guests, invitees and others whose right of use is derived from the owners. An area for private roads and for utility easements (in addition to the easements hereinabove provided for), and for other purposes not inconsistent with such uses, is created and shall exist, as shown on the Plat.
- 9.4 EASEMENT TO VILLAGE OF OAK BROOK AND OTHER PUBLIC ENTITIES.** The Village of Oak Brook, Illinois, its agents and employees and other public entities having official jurisdiction over the area comprising the Club Area, are hereby granted an easement to enter upon and make such use of the courts and roads of the Club Area, and of so much of the Club Area itself, as is necessary to provide public services within and upon said property.

## **SECTION 10. ELECTION OF DIRECTORS AND OFFICERS AND APPOINTMENT OF MANAGEMENT**

- 10.1 ELECTION OF DIRECTORS AND OFFICERS.** The Directors and Officers of the Midwest Club, Inc., an Illinois Not for Profit Corporation, shall be elected and shall have the duties pursuant to the By-Laws of the Midwest Club, Inc., which are attached hereto and made part hereof.
- 10.2 DAY TO DAY MANAGEMENT AND CONTROL BY MANAGER.** Responsibility and authority for day to day management and control of the Community Area shall be vested in a manager to be employed by the Association. The manager shall be subject to the authority of the Association through the Board. The policies and decisions of the Association shall be executed by the manager, and the manager shall enforce their Rules and Regulations. The power and authority of the

manager shall be co-extensive with that of the Association, but shall be subject and subordinate to the Association.

- 10.3 ADOPTION OF RULES AND REGULATIONS.** The Board may adopt Rules and Regulations governing the Community Area and use of the Community Area by the owners and by all other persons. All users of the Community Area, and all use of the Community Area, shall comply with the Rules and Regulations, and no use shall be made of the Community Area by any person who does not comply with the Rules and Regulations. Although the Rules and Regulations shall apply to and be effective throughout the Club Area, including the Lots located therein, the rights, powers and duties of the Board shall be primarily concerned with the Community Area and the primary responsibility of the Board is the management and operation of the Community Area. In all matters relating to enforcement and implementation of the Rules and Regulations, the Board may act through their manager.

## **SECTION 11. RIGHTS, POWERS AND OBLIGATIONS OF THE ASSOCIATION**

### **11.1 RIGHTS, POWERS AND OBLIGATIONS OF THE ASSOCIATION.**

For the benefit of all the owners, the Association shall have all powers relating to the maintenance, repair, improvement, management and operation of the Community Area, including but not limited to the powers set forth in this Section 11. The power of the Board shall include the power to acquire and pay out funds as hereinafter provided for the following:

- (a) Management services.
- (b) Security services, including security personnel, and operation and maintenance of central security signal receiving systems and other security arrangements or devices, if any.
- (c) Water, waste removal, if any, operating expenses, electricity, telephone and other necessary utility services for the Community Area.
- (d) A policy or policies of insurance insuring the facilities of the Community Area against loss or damage.
- (e) Policies of insurance as per Section 13.1 in such limits as the Association, through its Board, shall deem desirable, insuring the Board themselves, their manager, agents and employees, the owners, including the members of the board personally, its agents and employees, from any liability in connection with the Community Area or the streets, sidewalks, and public spaces adjoining the Community Area. Such insurance coverage shall also cover cross liability claims of one insured against another.

(f) Workmen's compensation insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Board in its judgment shall determine.

(g) The services of any person or firm employed by the Association. The Association, through its Board, may employ the service of any person or firm to act on behalf of the owners in connection with real estate taxes and special assessments, and in connection with any other matter the Board shall deem in the best interest of the Owners.

(h) Landscaping, maintenance of drainage systems, gardening, snow removal, painting, cleaning, tuck pointing maintenance, decorating, repair and replacement in the Community Area, and acquisition of such furnishings and equipment of the Community Area. The Association shall have no responsibility for the maintenance or for payment for the maintenance of the elements defined as the Owners Maintenance Obligation under section 8.30 thereof.

(i) Any other materials, supplies, furniture, labor, services, maintenance, repairs, or assessments, taxes or otherwise, which the Association is required to secure or pay for pursuant to the terms of this First Amended Declaration of Covenants, Conditions and Restrictions or by law or which in their opinion shall be necessary or proper for the maintenance and operation of the Community Area and the facilities therein or for the implementation of this Declaration.

(j) Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Community Area or any part thereof, which may in the opinion of the Association constitute a lien against the Community Area, rather than merely against the interests therein of particular owners.

(k) The Board shall establish a separate fund to refurbish, maintain and replace the roads within the Club Area and a second separate fund to refurbish, maintain and replace the Pool, Tennis Courts and Clubhouse. Each fund shall be held in a separate account and shall be expended only for the purpose of that particular fund. The responsibility of the Board to contribute to these separate funds shall be pursuant to the provisions contained in Section 12.

#### **11.2 ALTERATIONS AND IMPROVEMENTS OF COMMUNITY AREA.**

The Association shall have the right to make or cause to be made alterations and improvements to the Community Area. The costs of such alterations and improvements shall be assessed as expenses in the manner hereinafter set forth. Any change to the Community Area which results in the addition or removal of tennis courts, swimming or wading pools, or the construction of any building or recreational facility in addition to the present guardhouse or clubhouse or

recreational facilities shall require approval of the Board and 2/3 affirmative vote of all owners.

- 11.3 **CAPITAL EXPENDITURES LIMITATION.** The Association shall make no capital improvement which will result in an assessment to each owner of more than \$200.00 in any 12 month period. Approval of the Board and 2/3 affirmative vote of all owners shall be required in order for any capital improvement to increase assessments more than \$200.00 in any 12 month period.
- 11.4 **BOOKS AND RECORDS.** The Association, through their manager, shall keep complete and correct books of account of the receipts and expenditures relating to the Community Area, specifying and itemizing the maintenance and repair expenses of the Community Area and any other expenses incurred. Such records and vouchers authorizing the payments shall be available for inspection by any owner or any representative of an owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the owner. Upon 10 days notice to the Association and payment of a reasonable fee, any owner shall be furnished a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.
- 11.5 **EMPLOYMENT OF PROFESSIONAL MANAGEMENT.** The administrative duties of the Association shall be performed by a manager employed by the Association, and the Association shall have the right to pay reasonable compensation to a manager so employed.
- 11.6 **EXECUTION OF AGREEMENTS, CONTRACTS, ETC.** All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such persons and in such manner, as from time to time may be determined by the Association.
- 11.7 **RULES AND REGULATIONS FOR COMMUNITY AREA.** The Association may adopt such reasonable Rules and Regulations (including traffic regulations) as it may deem advisable for the maintenance, conservation, and beautification of the Community Area, and for the security, health, comfort and safety of the owners. The Community Area and the use thereof shall at all times be subject to such Rules and Regulations. The Association may establish a schedule of fines to be levied against an owner in the event of non-compliance with the Rules and Regulations adopted by the Association.
- 11.8 **AUTHORITY OF BOARD TO LEASE OR LICENSE.** The Association shall have the authority to grant a license with respect to

the operation of the concession stand located by the pool within the Club Area. The Association may lease the common area facilities to an Owner for their own use subject to the Rules and Regulations.

**11.9 USER FEES.** The Association shall have the power to charge reasonable fees for the use of selected recreation facilities in the Community Area, and shall use the fees so collected for the maintenance and operation of such facilities.

**11.10 NON-LIABILITY OF THE DIRECTORS.** The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Midwest Club Trust or Midwest Club, Inc.) by reason of the fact that the indemnitee is or was a member of the Board of Trustees or Board, against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the indemnitee in connection with such action, suit or proceeding if the indemnitee acted in good faith and in a manner the indemnitee reasonably believed to be, or not opposed to, the best interests of the Midwest Club Trust or Midwest Club, Inc., and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, shall not of itself, create a presumption that the person did not act in good faith and in a manner which the indemnitee reasonably believed to be in or not opposed to the best interests of the Association or Trust, and with respect to any criminal action or proceeding, had reasonable cause to believe that is conduct was unlawful.

The Association may indemnify and person who was or is a party of is threatened to be made a party to any threatened, pending or completed action, suit by or in the right of the Midwest Club Trust or Midwest Club, Inc. to procure a judgment in its favor by reason of the fact that the indemnitee is or was a member of the Board against expenses (including attorneys fees) actually and reasonably incurred by the indemnitee in connection with the defense or settlement of such action or suit, if the indemnitee acted in good faith and in a manner the indemnitee reasonable believed to be in, or not opposed to, the best interest of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such a person shall have been adjudged to be liable for negligence of misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the



circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

To the extent that a member of the Board of the Midwest Club Trust or Midwest Club, Inc. has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in the foregoing two paragraphs, or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys fees) actually and reasonably incurred by him in connection therewith.

The sums necessary to discharge the obligations of the Association under this Article shall be considered assessments upon the owners.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote by owners, or disinterested members of the Board, or otherwise, both as to action in his official capacity and as to a person who has ceased to be a member of the Board.

**11.11 DELEGATION OF POWERS.** The maintenance, repair, improvement, management and operation of the Community Area shall be the responsibility of the Association, but the Board has the right to delegate to the manage or others, such authority and duties as may be granted and imposed upon the Association by this First Amended Declaration of Covenants, Conditions and Restrictions.

**11.12 RIGHTS OF THE VILLAGE OF OAK BROOK TO MAINTAIN COMMUNITY AREA.** If the Corporate Authorities of the Village of Oak Brook, Illinois ("Village") determine after a public hearing on ten (10) days prior notice to the Association hereunder that said Association have failed or ceased to properly maintain the Community Area and/or the drainage easements so designated in the recorded plat of subdivision, or any part of either, the Association covenant that the Village may, at the Village's option, assume the maintenance thereof, in whole or in part, and thereafter bill the Association hereunder directly for the cost of any such maintenance. The Association agrees to pay promptly upon receipt of such billing. To the extent that the cost of such service exceeds the income or cash reserves from assessments for maintenance and operation of the Community Area as provided under Section 12 of this First Amended Declaration of Covenants, Conditions, and Restrictions, such excess shall result in an automatic increase in the stated assessments; shall be due and payable within thirty (30) days after notice thereof to the respective lot owners; and, subject to the provisions of Section 12.7, shall constitute a lien on the affected lots.

The Association further covenants that in the event they shall be more than sixty (60) days in arrears in the payment of the maintenance costs billed to them by the Village hereunder, the Association will, at the Village's election, assign to the Village any and all lien rights which the Association may have for the payment of assessments to the extent that such assignment is sufficient to cover the arrearage, together with all costs, fees, and expenses so provided for under Section 12.9 of this Declaration. The failure of the Village to elect such an assignment shall in no way prejudice any rights and remedies that the Village may have against the Association or owners, including and obtaining of any assignment of such lien rights at a later date.

- 11.13 **GENERAL RULES AND USE.** The Rules and Regulations to be adopted by the Association in respect of the Community Area may cover, among other things and without limitation, matters pertaining to use, dress, hours, deportment, admission of guests, pets, discipline and disciplinary measures against violators of said Rules and Regulations.
- 11.14 **FUNDS AND TITLES FOR THE ASSOCIATION.** All funds and all properties acquired by the Association, and the proceeds thereof, shall belong to the owners and shall be held for the benefit of the owners subject to this First Amended Declaration of Covenants, Conditions and Restrictions for the purposes herein stated.
- 11.15 **VILLAGE AS THIRD PARTY BENEFICIARY.** The Village of Oak Brook, Illinois ("Village") is hereby made a third party beneficiary to these conditions, covenants and restrictions and its agents and employees shall have the unrestricted right and authority to enforce the provisions of Section 9.4, Section 11.12, and Section 11.15 hereof, in law or in equity. Notwithstanding the foregoing, the Village shall be under no obligation to enforce the provisions of said Sections. Its failure to enforce said Sections shall in no event be deemed a waiver of the Village's right to do so at a later time.

## **SECTION 12. ASSESSMENTS FOR MAINTENANCE AND OPERATION OF COMMUNITY AREA**

- 12.1 **ESTIMATE AND ASSESSMENTS OF MAINTENANCE COSTS BY ASSOCIATION.** Payment by owners for common expenses, shall continue to be made regularly in the same amount until the owners are notified by the Association of a change in the amount of the assessments.
- (a) The Board shall prepare and approve an estimate of income and expenses for said forthcoming fiscal year with reasonable supporting data. Said estimate shall be provided to the owners within a reasonable time prior to the annual meeting. Said estimate of

income and common expenses shall be finalized prior to the beginning of said forthcoming fiscal year.

(b) The Board shall also prepare an accounting of common maintenance and operating expense actually incurred and paid, for the preceding fiscal year, together with a tabulation of the amounts collected, and showing the net amount over or under the actual expenditures, plus reserves. Said accounting shall be certified by an independent certified public accountant. Any amount accumulated in excess of the amount required for actual expenses and reserves may be placed in a special reserve to apply against cash requirements for the following year, and any net shortage may be assessed equally among the owners. Said accounting shall be made available to any Owner during normal business hours.

**12.2 RESERVE FOR CONTINGENCIES.** The Board shall establish a separate fund to refurbish, maintain and replace the roads within the Club Area and a second separate fund to refurbish, maintain and replace the Pool, Tennis Courts and Clubhouse. Each fund shall be held in a separate account and shall be expended only for the purpose of that particular fund. Extra-ordinary expenditures or replacement which may become necessary during the year shall be charged first against the specific reserve account for that particular expenditure. If the estimated cash reserve account is inadequate for any reason, including nonpayment for any assessment, the Association has the right to levy an additional assessment to cure the deficiency. The Association shall serve notice of such additional assessment on the owners by a statement in writing giving the amount and reason thereof, and such additional assessment shall be paid as directed by the Association. Each owner shall be personally liable for and obligated to pay his respective adjusted assessment.

**12.3 FAILURE OF THE ASSOCIATION TO SERVE ESTIMATE.** The failure or delay of the Board or it's designee to prepare or of the Board to approve the annual estimate, or the adjusted estimate, shall in no way constitute a waiver or release in any respect, or in any degree, of the obligation of each owner to pay the maintenance assessments herein provided for, when-ever the same shall be determined. The owners shall continue to pay the then existing assessments, until the new or adjusted estimate shall be approved by the Board.

**12.4 ASSESSMENTS ROLL.** The assessments against owners shall be set forth upon a roll which shall be available for inspection in the manager's office at all reasonable times by the owners or their duly authorized agents. Said assessments roll shall show all

assessments made and their purposes, and shall show further the amounts of all assessments and unpaid assessments.

**12.5 NON-USE, NO WAIVER.** The liability of an owner for assessments shall not be avoided by a waiver of the use or enjoyment of the Community Area by a claim of non-use, or by abandonment or surrender of the Lot in respect of which liability for assessments were made.

**12.6 ALLOCATION OF ASSESSMENTS AND LIABILITY AMONG OWNERS.** All expenses in connection with maintenance, improvement, management and operation of the Community Area, herein sometimes referred to as common expenses, shall be borne in equal share by all the owners. Each owner agrees to become liable for and to pay all assessments herein provided for.

**12.7 LIEN FOR ASSESSMENTS.** If an owner fails to pay any assessments or portion thereof, or other charges for which he is liable, then the Association shall have a lien, effective as of the date on which payment was due, on such owner's lot for the purpose of securing the obligation of the owner in respect of said unpaid assessments or portion thereof, or other charges effective as of the date on which payment by the owner was due; provided, the lien hereby created in favor of the Association shall be subject and subordinate to the lien in favor of any mortgage on such Lot made by a bank or insurance company or savings and loan association or other commercial lender, except in respect of assessments on the mortgaged lot which become due and payable subsequent to the date on which the mortgagee, after default, takes possession of the Lot, or accepts a conveyance of the owner's interest therein, or has a receiver appointed in proceedings to foreclose the mortgage lien, and in respect of assessments subsequent to the mortgage lien, and in respect of assessments subsequent to the mortgagee's possession or acceptance of a conveyance, or appointment of a receiver, the lien of the Association shall have priority over the defaulted mortgage.

(a) In addition to the lien for unpaid assessments or any portion thereof in favor of the Association, provided for herein, the Association shall have a lien on all tangible personal property located in, on, or about the Lot, except that such Association lien shall be subject and subordinate to prior bona fide liens of record.

(b) In addition to any of the above, the Association may utilize any other means authorized by Illinois law to collect past due assessments from any owner.

**12.8 PAYMENT OF ASSESSMENTS: INTEREST.** Assessments and installments not paid on or before 20 days after the date when due, shall bear a late charge in an amount as determined by the Board. In

addition, interest shall also be charged at a rate of 18% per annum on any unpaid balance. All payments on account shall be applied first to interest and next to the principal of the assessments which were first due and owing.

- 12.9 RIGHTS OF THE ASSOCIATION ON DEFAULT.** If an owner is in default in the payment of the aforesaid assessments or expense for 30 days or more, the Association may bring suit to foreclose the lien in favor of the Association hereinabove provided for, or may bring suit to enforce collection of the unpaid assessments, and for the recovery of all costs, fees, and expenses incurred by reason of said default, including interest as hereinabove provided and reasonable attorney's fees. The lien hereby created may be foreclosed by an action brought in the name of the Association and shall be maintained as in the case of foreclosure of any mortgage or other equitable lien against real estate provided, that as herein provided, a mortgage shall be subject and subordinate to the lien in favor of the Association hereby provided for, only in respect of assessments on the mortgage Lot which become due and payable subsequent to the date the owner or holder of said mortgage either takes possession of the Lot, or has a receiver appointed in a suit to foreclose the mortgage lien. Any mortgagee has the right from time to time to request in writing a written statement from the Association showing the condition of the assessments account of the owner of the mortgaged Lot and showing all unpaid items in respect of which Association are given lien rights hereunder. The Association may also collect unpaid assessments pursuant to any other applicable statute or law.

## **SECTION 13. INSURANCE**

- 13.1 INSURANCE COVERAGE.** The Association shall obtain insurance in respect of the Midwest Club Community Area pursuant to this Section 13. The "improvements" referred to in this Section 13 are improvements on the Community Area.

(a) All-risk physical damage shall be covered for the full insurable replacement value of the improvements on the Community Area. The "full insurable replacement cost" of the improvements on the Community Area shall be determined from time to time (but not less frequently than once in any twelve-month period) by the Board of the Association. The Association shall have the authority to obtain an appraisal of the improvements by a qualified appraiser. The costs of any and all such appraisals shall be included in the expenses of maintaining the Community Area.

(b) The Association shall obtain insurance on the improvements against loss or damage from those perils provided in the so-called broad form boiler and machinery policy covering boilers, heating

apparatus, pressure vessels and pressure pipes installed in, on, or about the improvements, without coinsurance clause, so long as available, in such amount as the Board of the Association shall deem desirable.

(c) The Association shall obtain comprehensive general liability insurance for bodily injury, property damage and personal injury, covering ownership, maintenance or use of the Community Area, the Lots, and other areas within or outside the Club Area necessary and incidental thereto.

(d) Such workmen's compensation insurance as is required by law and employer's liability insurance as the Board of Association shall deem desirable.

(e) Such other insurance in such reasonable amounts as the Board of Association shall deem necessary.

**13.2 PREMIUMS AS COMMUNITY AREA EXPENSES.** The premiums for the above described insurance shall be included in the Common Expenses of maintaining the Community Area and shall be paid by the Association.

**13.3 POLICIES.**

(a) All insurance provided for in this Section shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Illinois.

(b) All policies of insurance of the character described in paragraphs (a) and (b) of Section 13.1 shall be carried in the name of The Midwest Club, Inc., an Illinois Not for Profit Corporation and the Midwest Club Trust and shall provide that the insurance as to the interest of the Association shall not be invalidated by any act or negligence of any owner.

(c) All policies of insurance of the character described in paragraphs (c) through (e) of Section 13.1 shall name as insured the Board of The Midwest Club, Inc., a Not for Profit corporation, the managing agent and other agents.

**13.4 LOSSES.** The loss, if any, under any policies of insurance described in Section 13.1 shall be adjusted with the insurance company of companies by the Association. The loss, if any, under any policies of insurance of the character described in paragraphs (a) and (b) of Section 13.1 shall be payable and the insurance proceeds paid on account of any such loss shall be paid to the Association and disbursed by said Board. The insurance proceeds received by the Association, less the actual cost, fees and expenses, if any, incurred

in connection with the adjustment of the loss, shall be applied to the payment of the cost of restoring the Community Area and the improvements therein to substantially the same condition in which it existed immediately prior to such damage or destruction.

**13.5 INDIVIDUAL OWNER'S INSURANCE.** Each owner of a lot in The Midwest Club shall be responsible for his own insurance on his personal liability covering his property. The Association has no obligation or responsibility to insure the owner for their liability arising out of the ownership, maintenance of use of the property. If improvements are damaged or largely destroyed by fire or other casualty, each owner shall restore the improvements within a reasonable period. If, however, an owner decides not to restore improvements damaged or largely destroyed by fire or other casualty, or fails to restore said improvements within a reasonable period, the owner shall expeditiously raze the improvements and shall then place the lot in a safe and presentable condition.

**13.6 SUFFICIENT INSURANCE.** In the event the improvements on the Community Area shall suffer damage or destruction from any cause and the damage proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, shall be sufficient to pay the cost or repair or restoration or reconstruction, then such repair, restoration or construction shall be made, and the insurance proceeds shall be applied by the Association through the Board, or the payee of such insurance proceeds, in payment thereof.

**13.7 UNINSURED PROPERTY OR INSUFFICIENT INSURANCE.** In the event improvements on the Community Area are not insured against the peril causing the loss or damage, or the insurance proceeds are not sufficient to pay the costs or repair, restoration or reconstruction, and the Association, on behalf of the owners, does not voluntarily make provision for repair or reconstruction of the improvements within 180 days after said damage or destruction, then the owners shall determine the action to be taken with respect to the Community Area or the improvements, at a special meeting of the owners called for the purpose of considering such action.

## **SECTION 14. SALE OR LEASE OF PROPERTY**

**14.1** Any Owner who wishes to sell his property shall not less than thirty (30) days before the closing of the sale, provide the manager of the Midwest Club with a copy of the contract for sale.

**14.2** The Board shall then issue a written statement which indicates any assessments or other charges due and owing the Association in connection with the unit to be sold, as well as whether the subject

property is in compliance with this First Amended Declaration of Covenants, Conditions and Restrictions, Architectural and Landscaping Guidelines, and Rules and Regulations of the Midwest Club. This written statement shall be available to both buyer and seller.

- 14.3 No Owner shall enter into a lease, regardless of the consideration, term or other provisions thereof, for the use of occupancy of his property of any part thereof, by any lessee at any time. Any purported lease of agreement in violation of this Section 14.3 shall be void and the Association shall have the right to take all appropriate action to remove such lessee from the property. All costs, fees and expenses, including but not limited to attorney fees, incurred by the Association in connection with such action shall be charged to the Owner, shall constitute a lien against said Owner's lot, and shall be enforceable as set forth in Sections 12.7, 12.8 and 12.9 hereof.

## **SECTION 15. COMPLIANCE, BREACH OF COVENANTS, AND DEFAULT**

- 15.1 **RIGHTS AND REMEDIES OF ASSOCIATION.** Each owner is bound by and shall comply with the terms of this First Amended Declaration of Covenants, Conditions and Restrictions and of the By-Laws, Rules and Regulations adopted pursuant thereto, and by all amendments to them. A failure by an owner to comply with this First Amended Declaration of Covenants, Conditions and Restrictions, or with the By-Laws, Rules and Regulations of the Association shall constitute a default by such owner. If a default occurs, the Association shall have the right to recover damages at law, to procure injunctive relief, to foreclose on any lien rights the Association may have, or to avail themselves of any other rights or remedies permitted at law or in equity. The rights and remedies of the Association shall be cumulative and shall be enforceable concurrently in a single proceeding.
- 15.2 **LIABILITY OF OWNERS FOR NEGLIGENCE.** Each owner shall be liable for any damage caused by his act or negligence, or by the act or negligence of any party whose right to be upon the Community Area is derived from such owner, but only to the extent that such damage is not covered by insurance carried by the Association. Nothing herein contained, however, shall be construed so as to modify any waiver by an insurance company of rights of subrogation.
- 15.3 **RECOVER OF SUIT EXPENSE.** In any proceeding commenced by the Association, based upon or arising out of an alleged default by an owner, the Association, if prevailing, shall be entitled to recover all expense of the proceeding, including reasonable attorney's fees.



## **SECTION 16. TITLE IN LAND TRUSTEE OR CORPORATION**

**16.1 TITLE HELD BY LAND TRUSTEE.** If title to any property is conveyed to a land trustee, under the terms of which all powers of management, operation and control of the premises are vested in the trust beneficiary or beneficiaries, then the parties who are the beneficiaries, from time to time under such land trust, shall be deemed the owners and shall have all the rights and obligations of owners hereunder. The Trustee holding title under such a land trust shall have no personal liability for payment of any obligation or lien created by or arising under this Declaration and no party shall have the right to claim personal liability on the part of any such land trustee for any liability or obligation of any kind arising under this Declaration. Beneficiaries of a land trust who transfer their beneficial interest by assignment, or who cause their trustee to transfer the property by trustee's deed, shall continue liable for all liabilities and obligations incurred by them prior to the disposition of their property.

## **SECTION 17. AMENDMENT AND TERMINATION OF DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**17.1 WHO MAY AMEND.** This First Amended Declaration of Covenants, Conditions and Restrictions may be amended by the members, in the manner provided for in this Section 17. Neither Sections 2,9.4, 11.12, 11.15, 12.7, 17.1, 17.3, 17.5, 18.10 of this Declaration, nor any part of the Sections so denoted shall be amended without prior written consent of the Village of Oak Brook. Amendment other than in accordance with this Section is not permissible.

**17.2 AMENDMENTS.** This First Amended Declaration of Covenants, Conditions and Restrictions may be amended by a two-thirds affirmative vote of the owners, but such amendment shall not unfairly or unreasonably affect the rights of the owners.

**17.3 TERMINATION OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.** The First Amended Declaration of Covenants, Conditions and Restrictions may be terminated only with the joint consent of:

- (a) The consent of a majority of the Board;
- (b) seventy-five percent affirmative vote of the owners;
- (c) all mortgagees.

Concurrence of all the foregoing shall be required in order to effect a valid termination of this First Amended Declaration of Covenants, Conditions, and Restrictions. Notwithstanding the foregoing, it is expressly provided that the rights of the Village of Oak Brook, Illinois ("Village"), under Section 11.12 of this First Amended Declaration of

Covenants, Conditions, and Restrictions, shall survive any termination hereunder with respect to the remedies available to the Village against the individual lot owners and with respect to those provisions going to an elective assignment of lien rights from the Association to the Village for satisfaction of any indebtedness owed to the Village for services performed under Section 11.12 prior to the effective date of any such termination.

#### **17.4 PROCEDURE ON AMENDMENT OR TERMINATION.**

(a) If this First Amended Declaration of Covenants, Conditions and Restrictions is to be terminated, the termination shall be evidenced by an appropriate written instrument stating that this Declaration has been terminated. The statement of termination shall be executed by the chairman and secretary of the Association on behalf of the Association, by seventy-five percent affirmative vote of the owners, and by all holders of mortgage liens. The chairman and secretary of the Association shall certify, in the statement of termination, that no less than a majority of the Board have consented to termination of this First Amended Declaration of Covenants, Conditions and Restrictions and that a seventy-five percent affirmative vote of the owners have consented to termination.

(b) The instrument effecting an amendment or termination of this First Amended Declaration of Covenants, Conditions and Restrictions shall, after execution, be recorded promptly in the office of the Recorder of Deeds of Du Page County, Illinois, and the amendment or termination provided for therein shall become effective and operative upon recordation.

#### **17.5 NOTICES WITH RESPECT TO AMENDMENT OR TERMINATION.**

A special Meeting of members may be called to initiate proceedings for amendment or termination of this First Amended Declaration of Covenants, Conditions and Restrictions of the Midwest Club. Notice of the special meeting for the purpose of amendment or termination of this Declaration of Covenants, Conditions or Restrictions shall also be given to the Village of Oak Brook.

### **SECTION 18. GENERAL PROVISIONS**

#### **18.1 NOTICES—IN GENERAL.**

(a) Notices given pursuant to this Declaration of Covenants, Conditions and Restrictions shall be written, and shall be delivered in person or by mail. Notices of default, or formal demands by any party hereunder to any other party shall be sent by certified or registered mail, with request of return receipt. Notices shall be deemed delivered on the date personal delivery is made or on the date of mailing. Notice to an owner may be given to the owner at his home, unless the owner has informed the

Association in writing. Notices to the Association may be given to the Association at their office in the Club Area, or sent to the home of the chairman of the Board of the Association.

(b) Notice to the personal representative of a deceased owner shall be sent to the address furnished by such personal representative to the Association, and if no address is furnished by the personal representative, the notice to a deceased owner shall be given to decedent by writing directed to the owner at such owner's home.

(c) Upon request of a mortgagee, and payment of a reasonable charge therefore the Association shall supply to such mortgagee a copy of any amendment of this First Amended Declaration of Covenants, Conditions and Restrictions.

**18.2 NON-WAIVER EXCEPT BY WRITTEN INSTRUMENT.** No conditions, covenants, restrictions reservations, grants or other provisions of this First Amended Declaration of Covenants, Conditions and Restrictions shall be deemed to have been waived by silence, or inaction, or failure to enforce rights or by any other matters whatsoever, other than writing executed by the party against whom the waiver is asserted, which expressly states that a specified right or remedy is being waived. No waiver shall be deemed to have been effected by the failure to enforce rights or remedies of which a party is possessed, regardless of the number of breaches or violations of said rights which have occurred.

**18.3 LIBERAL INTERPRETATION.** This Declaration shall be liberally construed so as to facilitate and promote the objectives of this First Amended Declaration of Covenants, Conditions and Restrictions hereinabove set forth. Narrow, technical and literal construction of this instrument, inconsistent with the objectives of the Association and owners shall be avoided.

**18.4 RULE AGAINST PERPETUITIES.** Should any provision of this instrument be unlawful or void for violation of (a) the rule against perpetuities of some analogous statutory provision, (b) the rule restricting restraints on alienation, (c) or any other statutory or common law rules imposing time limits, then such provisions shall be deemed to be operative only until 21 years after the death of the last survivor of the now living lawful descendants of Jim Edgar, Governor of the State of Illinois, and of William Clinton, President of the United States of America.

**18.5 PARTIAL INVALIDITY—SEVERABILITY.** The invalidity of any of the conditions, covenants, restrictions or reservations herein contained, or of any other provision of whatever nature of this First Amended Declaration of Covenants, Conditions and Restrictions, shall not in any way impair or affect the validity or enforceability of any other provision of this Declaration, and any such invalidity or enforceability or any other provision of this Declaration, and any such invalidity shall be deemed partial and

separable, and all of this Declaration shall be deemed valid, effective and binding except for the invalid provision.

**18.6 GENDER, USAGE OF SINGULAR AND PLURAL FORMS, AND OTHER USAGE.** Whenever the context so requires, use of the plural form shall include the singular, use of the singular form shall include the plural and any gender shall be deemed to include both genders. The term "sale" means a sale consummated by delivery of a deed to a Lot.





**18.7 CAPTIONS.** Captions used in this First Amended Declaration of Covenants, Conditions and Restrictions are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text thereof.

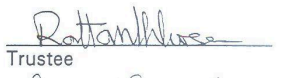
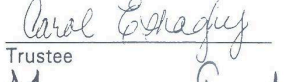

**18.8 RELIANCE OF ASSOCIATIONS' CERTIFICATION.** A certification or statement that a described act has been authorized, or in particular, that execution and delivery of a described instrument has been authorized, signed by the president of the Board of the Association and attested by the Secretary of the Board, shall sufficiently establish for all purposes that the described act or instrument is the act or instrument of the Board and has been fully authorized by the Board of Association, and the said described act or instrument may be relied upon by all parties.

**18.9 RECORDATION.** This First Amended Declaration of Covenants, Conditions and Restrictions is recorded in the office of the Recorder of Deeds of DuPage County, Illinois. All amendments to this Declaration shall also be recorded in said Recorder's Office.

**18.10 CONFLICTS BETWEEN DECLARATION AND VILLAGE ORDINANCE PROVISIONS.** In the event there is at any time a conflict between any provision of this Declaration and any provision of any then effective ordinance, rule or regulation of the Village of Oak Brook, Illinois, the ordinance, rule or regulation of the Village of Oak Brook then in effect shall prevail, but only to the extent it is more restrictive than this Declaration.

This First Amended Declaration of Covenants, Conditions and Restrictions of the Midwest Club Area is hereby adopted on this 23<sup>rd</sup> day of January, 1995 by two-thirds vote of the Owners of the Midwest Club Area and unanimous vote of the Board of Trustees.

  
Trustee  
  
Trustee  
  
Trustee  
  
Trustee

  
Trustee  
  
Trustee  
  
Trustee



## Exhibit "A"

Lots numbered 1 to 69, inclusive, 85 to 88, inclusive, 111 to 117, inclusive, and 221, in The Midwest Club Subdivision Phase I, according to the Plat of Subdivision Phase I recorded December 6, 1978 as Document R78-116577, being a subdivision in that part of Sections 33 and 34, Township 39 North, Range 11 East of the Third Principal Meridian, in the Village of Oak Brook, Dupage County, Illinois.

Lots numbered 70 to 84, inclusive, 89 to 110, inclusive, 118 to 221, inclusive in the Midwest Club Subdivision Phase II recorded January 11, 1979 as Document Number R79-003596, being a subdivision in that part of Sections 33 and 34, Township 39 North, Range 11 East of the Third Principal Meridian, in the Village of Oak Brook, Dupage County, Illinois.

P.I.N. # 06-33-103-016 through 029  
06-33-104-016 through 025  
06-33-200-005 through 027  
06-33-200-029 through 068  
06-33-205-001 through 008  
06-33-206-001 through 005  
06-33-207-002 through 006  
06-33-201-001 through 019  
06-33-202-001 through 034  
06-33-203-001 through 003

### Property Addresses

101-107 Midwest Club	1100-1108 Midwest Club
201-205 Midwest Club	1201-1206 Midwest Club
301-308 Midwest Club	1301-1308 Midwest Club
401-406 Midwest Club	1401-1407 Midwest Club
501-508 Midwest Club	1501-1512 Midwest Club
601-607 Midwest Club	1601-1623 Midwest Club
701-725 Midwest Club	1701-1726 Midwest Club
801-803 Midwest Club	1801-1810 Midwest Club
901-915 Midwest Club	1901-1918 Midwest Club
1001-1004 Midwest Club	2002-2017 Midwest Club

This Document Prepared by:  
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