

Ordinance No. 94-72

**AN ORDINANCE APPROVING THE ANNEXATION AGREEMENT WITH  
THE STATE BANK OF AUBURN AS TRUSTEE OF TRUST 94-195**


BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE  
VILLAGE OF CHATHAM, SANGAMON COUNTY, ILLINOIS, AS FOLLOWS:

**SECTION 1:** That certain annexation agreement attached  
hereto by and between the Village of Chatham, Illinois and The  
State Bank of Auburn, as Trustee of Trust 94-195, is hereby  
approved.


**SECTION 2:** The President is directed to execute said  
agreement as amended on behalf of the Village, and the proper  
officers of the Village are authorized and directed to carry out  
said annexation agreement according to its terms.

**SECTION 3:** This Ordinance is effective immediately.

PASSED this 29<sup>th</sup> day of November, 1994.

  
\_\_\_\_\_  
VILLAGE PRESIDENT

ATTEST:

  
\_\_\_\_\_  
Village Clerk

AYES: 6  
NAYS: 0  
PASSED: 11-29-94  
APPROVED: 11-29-94  
ABSENT: 0

ORDINANCE CERTIFICATE

STATE OF ILLINOIS     )  
                              )     SS.  
COUNTY OF SANGAMON   )

I, the undersigned, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Chatham, Sangamon County, Illinois.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 94-72, adopted by the President and Board of Trustees of said Village on the 29 day of November, 1994, said Ordinance being entitled:

**AN ORDINANCE APPROVING THE ANNEXATION AGREEMENT WITH  
THE STATE BANK OF AUBURN, AS TRUSTEE UNDER TRUST NO. 94-195**

I do further certify that prior to the making of this certificate, the said Ordinance was spread at length upon the permanent records of said Village, where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Village this 29 day of Nov, 1994.

Ray Mooney  
Village Clerk

ANNEXATION AGREEMENT

THIS AGREEMENT is made by THE STATE BANK OF AUBURN as Trustee of TRUST 94-195 ("Trust") and the Village of Chatham, Illinois (the "Village"), an Illinois municipal corporation, both of Sangamon County, Illinois, and is effective this 29<sup>th</sup> day of November, 1994.

WHEREAS, Trust is the record owner of property legally described as parcels 2 and 3 on Exhibit A attached hereto ("the Property").

WHEREAS, parcels 1 and 3 described on Exhibit A are in unincorporated Sangamon County, Illinois, and is contiguous to the Village limits of the Village;

WHEREAS, the Trust wishes to annex the unincorporated portion of the property to the Village and obtain an initial zoning upon annexation of R-1, R-1A, R-2, R-3, B-1 and B-2 as shown on Exhibit D hereto;

WHEREAS, a sketch map, showing proposed lots, and streets and other public improvements and drainage works is attached hereto as Exhibit B-1, B-2 and B-3; a plat of annexation for the unincorporated portion of the Property is attached hereto as Exhibit C; a zoning plat for the Property is attached hereto as Exhibit D; proposed subdivision covenants are attached hereto as Exhibit E, and a railroad crossing plan is attached hereto as Exhibit F, and a list and plat of lots with side yard variances and

a cul-de-sac variance is attached hereto as Exhibit G, and made a part hereof;

WHEREAS, annexation and development of the Property in the Village is anticipated to increase the property and sales tax revenues to the Village and provide an attractive mix of commercial and residential development within the Village;

WHEREAS, the Trust has requested and the Village is willing to provide certain financial incentives in connection with this project, which should provide for the orderly development of the Property at little or no cost to the Village;

WHEREAS, the development proposed by the Trust will provide a benefit to the entire Village by improving east-west traffic patterns in the vicinity of the Village and providing an east-west roadway wider than the roadway required by Village ordinances, and the Village is therefore willing to fund the construction of certain improvements as set forth herein.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ANNEXATION

1. The Trust has petitioned to annex the Property conditional upon this Agreement.

2. If the petition for annexation complies with the ordinances of the Village and with the Illinois Municipal Code, then the annexation petition as filed shall be recommended and approved by the appropriate administrative and legislative bodies of the Village, and an annexation ordinance in such form as shall be approved by counsel for the Village, shall be enacted by the

President and Board of Trustees within 20 days of execution of this Agreement.

3. Such annexation shall be expressly conditioned and contingent upon the simultaneous classification of the property as R-1, R-1A, R-2, R-3, B-1 and B-2, all as depicted on Exhibit D hereto together with side lot variances and cul-de-sac variances shown in Exhibit G. Any ordinance annexing the property or any part thereof without simultaneous initial zoning classification as set forth in Exhibit D and variances shown in Exhibit G shall be void unless this Agreement has been amended as hereafter provided.

PRELIMINARY PLAN AND FINAL PLATS

4. The Trust shall, within 5 years of execution of this Agreement, submit a preliminary plan for the Property for consideration by the Village in accordance with the 1994 Village Subdivision Ordinance. If the preliminary plan complies with Village ordinances and is consistent with the exhibits to this Agreement, it shall be approved by the Village. The Trust shall within twenty years of execution of this Agreement file final subdivision plats, up to twelve in number, subdividing the Property. These plats shall be approved by the Village in accordance with the law, provided they comply with the ordinances of the Village and statutes of the State of Illinois and are generally in accordance with the preliminary plan and the exhibits to this Agreement. Said plats shall include a roadway easement 80 feet in width for the roadway designated as Independence Drive on Exhibit B. Construction plans for such plats shall include a

roadway 40 feet in width and constructed to Village standards for secondary arterial roadways.

#### ZONING

5. a. Upon enactment of an ordinance annexing the Property, then without additional action required of the Trust or the Village, the Property shall automatically be classified in the R-1, R-1A, R-2, R-3, B-1 and B-2 zoning classifications as depicted on Exhibit D and variances set forth in Exhibit G, without further hearing before any administrative or legislative body of the Village. Prior to executing this Agreement, this zoning has been considered by the appropriate administrative bodies of the Village.

b. If during the term of this Agreement the Village should amend its Zoning Ordinance to disallow multifamily dwellings in a B-1 zone, such amendment shall not apply to lots 61, 62, 63, 69 and 94 as shown on Exhibit B-1; provided, that this subparagraph shall apply only to the first purchaser of such lots from the Trust, and shall apply only to the first building permit allowed with respect to each such lot; this subparagraph shall not be construed to permit a remodeling or change of use of any building or lot from a business use to a residential use.

#### FINANCIAL INCENTIVES

6. Conditioned on approval by any appropriate governmental body required to issue a permit for each of the following, the Village agrees to pay the actual costs of the construction of an at grade railroad crossing at the location set forth in Exhibit B and in accordance with the plan in Exhibit F.

As to the construction of the railroad crossing the Village agrees to take all steps necessary to pursue the same and to be solely responsible for any expense pertaining thereto, including signalization, and to hold the Trust and its property harmless from the same. In no event shall the Trust be responsible for the funding or construction of said crossing and related signalization. Village agrees to use best efforts to cause the completed construction of said crossing within four (4) years of the execution of this Agreement. If said crossing cannot be completed as depicted on Exhibit F, Village will pursue any and all other available methods to provide such a crossing at no expense to Trust, including overpass or subway. Should all such means of crossing fail due to lack of permit issued, funding or regulatory approval, all further construction of an East-West road by the Trust shall immediately be reduced to standard roadway width. In no event shall Village's share of funding of an overpass or subway crossing exceed the then current cost of an at-grade crossing designed in accordance with Exhibit F.

#### GENERAL

7. This Agreement shall not be construed as a limitation on the Village's right to adopt or amend ordinances of general applicability, including the zoning and subdivision ordinances, or the applicability of such ordinances to the Property. However, in the event of a conflict between the Village ordinances and this Agreement, this Agreement shall prevail.

8. The Village hereby waives provisions of its ordinances relating to initial P-1 zoning upon annexation.

9. All notices and other communications required under this Agreement shall be in writing and delivered either personally or by depositing the same, postage pre-paid, to the parties at the following addresses (or such other addresses as may be designated by the parties from time to time):

- A. State Bank of Auburn  
As Trustee of Trust 94-195  
200 North 5th Street  
Auburn, Illinois 62615
- B. Gregory P. Sgro  
1119 South 6th Street  
P.O. Box 818  
Springfield, IL 62705
- C. Village of Chatham, Illinois  
Attention: Village Administrator  
117 East Mulberry Street  
Chatham, IL 62629

Copy to Village Attorney

10. Except as set forth in paragraph 5(b) hereof, this Agreement is binding upon the parties hereto, their respective heirs, executors, personal representatives, corporate authorities, administrators, successors and assigns. It shall be effective for twenty years from the date of execution.

11. Time shall be of the essence of this Agreement.

12. This Agreement shall only be amended in writing, signed by the parties and approved by the Village by ordinance.

13. The Village shall enact such ordinances, execute such documents, and issue such permits and certificates as shall be required by this Agreement and any ordinance adopting it.



14. The Village hereby agrees to provide electric service to the boundary of the Property, and will construct at the Trust's expense electric improvements within the property in accordance with applicable Village ordinances. The Village shall supply water and sewer to the boundary of the Property in accordance with applicable rate ordinances. The Village shall construct at its cost a water main at least that number of inches in diameter as necessary for full completion of the development, to the West boundary of the Property, the precise location of which shall be agreed on by the Trust's and the Villages' engineer.

15. The Village shall within 45 days of passage of an ordinance annexing the Property, petition the Illinois Commerce Commission for approval of the railroad crossing depicted in Exhibit F. The Village shall prosecute such petition at its cost.

16. a. The parties shall enter into an Agreement, a copy of which is attached hereto as Exhibit H, whereby the Village will purchase an as yet undeveloped tract of land from the Trust for future corporate purposes (the "Village Parcel"), said tract being shown as Lots 129, 130, 131 and 132 on Exhibit B. The parties acknowledge that said transaction is a negotiated partial consideration for the execution of this Agreement.

b. Said purchase and payment shall take place at a date during January, 1995, to be determined by the parties, or within thirty (30) days of the filing of a Preliminary Plan by Trust, or within 30 days of Trust notifying the Village that it has made arrangements with the Illinois Department of Transportation

regarding access to Illinois Route 4 which are satisfactory to it in its discretion, whichever is later. At closing, Trust shall deliver a recordable warranty deed to Lots 129, 130, 131 and 132 containing a metes and bounds legal description thereof. As said parcel is not anticipated to be contained in a final plat of subdivision until some time in the future, the Trust shall have the sole right and obligation to manage and maintain the same until it shall be platted, and shall be responsible for all property taxes thereon, and shall indemnify and hold the Village harmless from all claims brought by third parties with respect to such lot. The Trust shall have the right to any income received therefrom in exchange for said maintenance obligation and payment of property taxes. All rights, obligations and tax liabilities with regard to said parcel will transfer to Village immediately upon the recordation of any final plat containing said parcel, or upon written notice by the Village to the Trust, whichever comes first.

A portion of the Village Parcel, Lot 132, is depicted as a storm water detention area on Exhibit B. The Trust, and the Homeowner's Association established pursuant to Exhibit G shall have a permanent easement on and over such designated detention area for storm water detention use. The Village shall erect no structures in the detention area or otherwise interfere with its use for storm water detention. The Village shall have the option to sell the detention portion of the Village Parcel (lot 132) to said Homeowner's Association, together with an easement for access

thereto, for the sum of Ten Dollars (\$10.00) at any time prior to the expiration of this Agreement.

17. The Trust shall construct the east-west street from Park Avenue to the railroad tracks as part of the first plat approved pertaining to property east of the railroad track, or within 24 months of ICC approval of the railroad crossing, whichever is later.

18. Trust shall, at its expense, record this Agreement with the Sangamon County Recorder of Deeds within 30 days of its execution. The covenants contained herein shall run with the land.

19. Upon a breach of this Agreement, any of the parties, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreement herein contained, may be awarded actual, but not consequential, damages for failure of performance, or both, or in the alternative, may obtain rescission and, if permitted by law, disconnection for material failure of performance.

20. In the event of a material breach of this Agreement, the parties agree that the party alleged to be in breach shall have thirty (30) days after receipt of written notice of said breach to correct the breach prior to the non-breaching party's seeking of any remedy provided for herein (provided, however, that said thirty (30) day period shall be tolled if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same.)

21. The failure of the parties to insist upon the strict and prompt performance of the terms, covenants, agreement, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

22. If the performance of any covenant to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include acts of God, war, acts of civil disobedience, strikes or similar acts), the time for such performance shall be extended by the amount of time of such delay.

23. Without the prior written consent of Owner, Chatham shall not, with respect to any of the Real Estate for the initial five (5) years of this Agreement and thereafter with respect to any portion of the Real Estate until it has been part of an approved final plat for three (3) years;

A. Levy against any real or personal property within the Real Estate, any special assessment of special tax for the cost of any improvements in or for the benefit of the Real Estate; or

B. Undertake any local improvements in, on or for the benefit of the Real Estate pursuant to the imposition of a

special assessment or special tax against the Real Estate, or any portion thereof; or

C. Levy or impose additional taxes on the Real Estate, in any manner provided by law for the provision of special services to the Real Estate or to an area in which the Real Estate is located or for the payment of debt incurred in order to provide such special services.

24. Nothing herein shall prevent Chatham from levying or imposing additional taxes upon the Property in the manner provided by law, which are applicable to and apply equally to all other properties within the Village.

26. a. Either party may terminate this Agreement on written notice to the other if within one year of the execution of this Agreement, Trustee has not secured an access permit to Illinois Route 4 on terms satisfactory to Trust in its sole discretion. In such event, the parties shall take all steps necessary to disconnect the Property and return it to its County zoning.

b. If Trust sends the Village a notice pursuant to paragraph 16(b) that it has entered into arrangements with IDOT regarding access to Route 4, all rights to terminate this Agreement pursuant to paragraph 26(a) shall be extinguished.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 29<sup>th</sup> day of November, 1994.

STATE BANK OF AUBURN TRUST 94-195

BY: Marceau Arguelion  
TRUSTEE

VILLAGE OF CHATHAM, ILLINOIS

BY: Linda Koester  
LINDA KOESTER, President

ATTEST: Benny Mooney  
VILLAGE CLERK

annex.red

**PARCEL 1  
EAST BOUNDARY**

Part of the South Half of Section 6 and part of the Southwest Quarter of Section 5 and part of the Northeast Quarter of Section 7, all in Township 14 North, Range 5 West of the Third Principal Meridian, described more particularly as follows:

Beginning at a stone at the Southeast corner of the aforementioned Section 6; thence North 89 degrees 33 minutes 01 seconds West along the section line a distance of 1331.92 feet to a stone at the quarter, quarter corner, thence North 89 degrees 39 minutes 35 seconds West along the section line a distance of 668.54 feet to an axle, thence South 01 degrees 17 minutes 32 seconds East a distance of 44.85 feet to an iron pin, thence South 89 degrees 56 minutes 18 seconds West a distance of 1502.78 feet to an iron pipe on the Easterly Right-of-Way Line of the Southern Pacific Railroad, thence North 20 degrees 51 minutes 03 seconds East along the aforementioned right-of-way line a distance of 1475.32 feet to an iron pipe, thence South 89 degrees 49 minutes 16 seconds East along the quarter, quarter section line a distance of 310.32 feet to an iron pipe at the quarter, quarter corner, thence South 89 degrees 36 minutes 46 seconds East along the quarter, quarter section line a distance of 1329.23 feet to an axle at the quarter, quarter corner, thence South 89 degrees 37 minutes 39 seconds East along the quarter, quarter section line a distance of 1331.52 feet to a stone at the quarter, quarter corner, thence South 89 degrees 53 minutes 37 seconds East along the quarter, quarter section line a distance of 66.00 feet to an iron pipe, thence South 00 degrees 15 minutes 40 seconds East a distance of 664.04 feet to an iron pipe, thence South 89 degrees 53 minutes 50 seconds East a distance of 1226.60 feet to an iron pipe on the West Right-of-Way Line of Sangamon County Route 22, thence South 00 degrees 03 minutes 06 seconds East along the aforementioned right-of-way line a distance of 663.95 feet to an iron pipe on the section line, thence North 89 degrees 54 minutes 03 seconds West along the section line a distance of 1290.17 feet to the point of beginning. Said tract contains 120.676 acres, more or less, all in the County of Sangamon, State of Illinois.

Basis of bearing is North 89 degrees 33 minutes 01 seconds West along the South Line of Section 6.

**EXHIBIT A**

**PARCEL 2**  
**EAST BOUNDARY ANNEXATION**

Part of the South Half of Section 6 and part of the Southwest Quarter of Section 5 all in Township 14 North, Range 5 West of the Third Principal Meridian, described more particularly as follows:

Beginning at a stone at the Southeast corner of the aforementioned Section 6; thence North 89 degrees 33 minutes 01 seconds West along the section line a distance of 1331.92 feet to a stone at the quarter, quarter corner, thence North 89 degrees 39 minutes 35 seconds West along the section line a distance of 668.54 feet to an axle, thence North 89 degrees 31 minutes 35 seconds West along the section line a distance of 664.15 feet to an iron pin at the quarter corner, thence North 89 degrees 50 minutes 14 seconds West along the section line a distance of 816.97 feet to an iron pipe on the Easterly Right-of-Way Line of the Southern Pacific Railroad, thence North 20 degrees 51 minutes 03 seconds East along the aforementioned right-of-way line a distance of 1417.25 feet to an iron pipe, thence South 89 degrees 49 minutes 16 seconds East along the quarter, quarter section line a distance of 310.32 feet to an iron pipe at the quarter, quarter corner, thence South 89 degrees 36 minutes 46 seconds East along the quarter, quarter section line a distance of 1329.23 feet to an axle at the quarter, quarter corner, thence South 89 degrees 37 minutes 39 seconds East along the quarter, quarter section line a distance of 1331.52 feet to a stone at the quarter, quarter corner, thence South 89 degrees 53 minutes 37 seconds East along the quarter, quarter section line, a distance of 66.00 feet to an iron pipe, thence South 00 degrees 15 minutes 40 seconds East a distance of 664.04 feet to an iron pipe, thence South 89 degrees 53 minutes 50 seconds East a distance of 1226.60 feet to an iron pipe on the West Right-of-Way Line of Sangamon County Route 22, thence South 00 degrees 03 minutes 06 seconds East along the aforementioned right-of-way line a distance of 663.95 feet to the section line, thence North 89 degrees 54 minutes 03 seconds West along the section line a distance of 1290.17 feet to the point of beginning. Said tract contains 118.945 acres, more or less, all in the County of Sangamon, State of Illinois.

Basis of bearing is North 89 degrees 33 minutes 01 seconds West along the South Line of Section 6.

Together with public highway (Gordon Drive - County Highway 22) adjacent thereto.

**EXHIBIT A**



**PARCEL 3**  
**WEST BOUNDARY & WEST BOUNDARY ANNEXATION**

Part of the Southwest Quarter of Section 6, Township 14 North, Range 5 West of the Third Principal Meridian, described more particularly as follows:

Commencing at a PK Nail marking the Southwest corner of the Southwest Quarter of the aforementioned Section 6, thence South 89 degrees 50 minutes 14 seconds East along the section line a distance of 70.64 feet to the true point of beginning, marked by an iron pipe being on the East Right of Way Line of Illinois Route 4, thence North 00 degrees 29 minutes 55 seconds West along the aforementioned right-of-way line a distance of 536.54 feet to a concrete right-of-way marker, thence North 00 degrees 25 minutes 09 seconds West along the aforementioned right-of-way line a distance of 154.45 feet to a concrete right-of-way marker, thence North 02 degrees 05 minutes 15 seconds East along said right of way line a distance of 132.04 feet to a concrete right of way marker, thence North 00 degrees 48 minutes 13 seconds West along the aforementioned right of way line a distance of 113.06 feet to an iron pipe, thence South 89 degrees 49 minutes 16 seconds East a distance of 224.06 feet to an existing iron rod, thence North 00 degrees 28 minutes 56 seconds West a distance of 390.54 feet to an iron pipe being on the quarter, quarter section line, thence South 89 degrees 49 minutes 16 seconds East along the aforementioned quarter, quarter section line a distance of 1795.19 feet to an existing iron pipe, being on the former Westerly Right-of-Way Line of the Illinois Terminal Railroad, thence South 20 degrees 51 minutes 03 seconds West along the aforementioned right-of-way line a distance of 1417.30 feet to an iron pipe on the aforementioned section line, thence North 89 degrees 50 minutes 14 seconds West along the section line a distance of 1508.92 feet to the point of beginning. Said tract contains 51.712 acres, more or less, all in the County of Sangamon, State of Illinois.

Basis of bearing is North 89 degrees 50 minutes 14 seconds West along the section line.

Together with public highway (IL Rt. 4 - FAP 662) adjacent thereto.

**EXHIBIT A**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION dated this \_\_\_\_\_ day of \_\_\_\_\_, 1994 by STATE BANK OF AUBURN TRUST 94-195 (the "Declarant").

A. The Declarant owns a 175 acre tract of land, more or less, located in Sangamon County, Illinois. The tract (hereafter called the "Property") consists of all of the land shown on the subdivision plat entitled "Oakbrook Estates", recorded among the Land Records of Sangamon County, Illinois in Plat Book \_\_\_\_\_, Pages \_\_\_\_\_.

B. The Declarant desires to subject the Property, and the lots located therein (the "Lots") to the Covenants, Conditions and Restrictions set forth below which are for the purpose of protecting the value and desirability of the Property and the Lots, and are for the purpose of distributing among the lot owners the cost of maintaining and operating the Common Areas located within the Property and any improvements constructed thereon.

C. The Declarant hereby declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the Covenants, Conditions and Restrictions set forth below.

ARTICLE I

DEFINITIONS

A. "Association" means the Oakbrook Estates Association, Inc., an Illinois Not For Profit Corporation, its successors and assigns.

B. "Common Area" means those land areas, designated on the recorded subdivision plats of the Property as "Common Areas", intended to be owned by the Association and devoted to the common use and enjoyment of the owners of the Lots.

C. "Declarant" means STATE BANK OF AUBURN TRUST 94-195 ("Trust") and any successor or assign thereof to whom Trust shall convey or otherwise transfer all of the rights, title and interest in the Property then owned by it, and to whom Trust shall expressly transfer, and assign all of its rights, title and interest under this Declaration, or any amendment or modification thereof.

D. "Owner" means the person, or legal entity, or the combination thereof, including contract sellers, holding the record fee simple or perpetually renewable leasehold title to a Lot in the Property, as the Lot is now or may from time to time hereafter be created or established. If more than one person, or other legal entity or any combination thereof, holds the record title to any Lot, all of them shall be deemed a single record owner and shall be a single member of the Association by virtue of their ownership of the Lot. The term "Owner" shall not mean any contract purchaser, or the owner of any redeemable ground rent reversion issuing out of any Lot, nor shall it include any mortgages or other person or

legal entity holding an interest in a Lot as security for the performance of an obligation.

E. "Property" means all of the land shown on the "Plat of Oakbrook Estates", more particularly referred to in Paragraph A of the Recitals to this Declaration and such additional land as may be subjected to this Declaration under the provisions of Article II below.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

All of the land shown on the Plat referred to in Paragraph A of the Recitals to this Declaration (the 'Existing Property') shall be held, transferred, sold, conveyed, and occupied subject to the terms of this Declaration.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

#### Section 1

Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of the Lot. An Owner may not decline membership in the Association nor may an Owner resign from membership: an Owner may have his voting rights suspended by the Board for any period in which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for failure to comply with all rules, regulations and by-laws of the Association.

#### Section II

Class A. Except for the Declarant (which shall initially be a Class B member), the Class A members shall be all of the Owners of the Lots. Each Class A member shall be entitled to one vote per Lot, for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three votes per Lot for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

The vote of any Class A member comprised of two or more persons, or other legal entities, or any other combination thereof, shall be cast in the manner provided for in the Articles of Incorporation of the Association, or as the several constituents cast more than one vote per Lot for each Lot owned by them.

The Class B membership in the Association shall cease and be converted to Class A membership in the Association on the fifteenth anniversary of the date of this Declaration or at such earlier time as the total number of votes entitled to be cast by Class A votes exceeds those entitled to be cast by the Class B member of the Association.

#### ARTICLE IV

#### COMMON AREA

#### Section 1

The Declarant shall grant and convey to the Association, and the latter shall take and accept from the Declarant, the Common Areas shown on a subdivision plat which is subject to this Declaration, not later than the date the first Lot shown on the subdivision plat which is improved by a dwelling is conveyed to an Owner. At the time of the conveyance the Common Area shall be free of any mortgages, judgment liens or similar liens or encumbrances.

The Association shall hold the Common Area conveyed to it subject to the following:

(a) The reservation to the Declarant, its successors and assigns, of the right to lay, install, construct and maintain, on, over, under or in those strips across land designated on the subdivision plat, as "Drainage and Utility Easement", "Sewer Easement", "Drainage and Sewer Easement", "Open Space", and "Area Reserved for Future Road", or otherwise designated as an easement area, or on, over, under, or in any portion of any Common Area, pipes, drains, mains, conduits, lines and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone and other public utilities or quasi-public utilities deemed necessary or advisable to provide adequate service to any Lot now or hereafter laid out or established on the Property, or the area in which the same is located, together with the right and privilege of entering upon the Common Area for such purposes and making openings and excavations therein.

(b) The reservation to the Declarant, its successors and assigns of the right to enter upon any Common Area conveyed to the Association for the purpose of construction or completing the construction of improvements and the landscaping of the Common Area.

(c) The reservation to the Declarant, its successors and assigns, of the right to continue to use and maintain any storm water management ponds and any sediment control ponds or facilities located on any Common Area conveyed to the Association.

#### Section 2

The Common Areas conveyed to the Association shall be deemed property and facilities for the use, benefit and enjoyment, in common, of each Owner. Except as otherwise permitted by the provisions of this Declaration, no structure or improvement of any kind shall be erected, placed or maintained on any Common Area except: 1) structures or improvements designed exclusively for community use, including, without limiting the generality of the foregoing, shelters, benches, chairs or other seating facilities, fences, and walls, walkways, roadways, playground equipment, swimming pools and tennis courts, and 2) drainage, storm water and utility systems and structures. The Common Areas may be graded, and trees, shrubs or other plants may be placed and maintained thereon for the use, comfort and enjoyment of the Owners, or the establishment, retention or preservation of the natural growth or topography of the Common Areas, or for aesthetic reasons. No portion of any Common Area may be used exclusively by any Owner for personal gardens, storage facilities or other private uses without the prior written approval of the Association.

### **Section 3**

No noxious or offensive activity shall be carried on upon any Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the neighborhood.

### **Section 4**

The Association shall improve, develop, supervise, manage, operate, examine, inspect, care for, repair, replace, restore and maintain the Common Area as from time to time improved, together with any items of personal property placed or installed thereon, all at its own cost and expense.

### **Section 5**

The right of each Owner to use the Common Areas shall be subject to the terms, conditions, and provisions as set forth in this Declaration and, to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Areas. All such terms, conditions, provisions, rules and regulations shall inure to the benefit of and be enforceable by the Association and the Declarant, or either of them, their respective successors and assigns, against any Owner, or any other person, violating or attempting to violate the same, Whether by an action at law for damages or a suit in equity to enjoin a breach or violation, or to enforce performance of any term, condition, provision, rule or regulation. The Association and the Declarant shall each have the right summarily to abate and remove any breach or violation by any Owner at the cost and expense of the Owner.

## **ARTICLE V**

## PROPERTY RIGHTS

### Section 1 - Title to the Common Area

The Declarant hereby covenants for itself, its successors and assigns that it will convey fee simple title to the herein designated Common Area, free and clear of all liens and encumbrances but subject to these Covenants and Restrictions (as easements, covenants, conditions and restrictions of record) to the Association.

### Section 2 - Owners' Easements of Enjoyment

Every Owner, in common with all other Owners, shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area (including the Recreational Common Area) and in aid thereof to mortgage said property, and the right of Owners hereunder shall be subordinate to the rights of the mortgage in said properties, provided, however, that no mortgage of the Common Area shall be valid or effective unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote per mortgage) shall have given their prior written approval, and unless an instrument consenting to said mortgage has been signed by Members entitled to cast a majority of the Class B membership, if any, and has been recorded;

(b) the right of the Association to take such steps as are reasonably necessary to protect the Common Areas against mortgage default and/or foreclosures;

(c) the right of the Association to suspend the voting rights and rights to use the Recreational Common Area by an Owner for any period during which any assessment against such Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;

(d) the right of the Association, if it so determines to permit the use of the Common Area by non-members and to charge reasonable admission and other fees for the use either by Members or non-members of any Recreational Common Area situated upon or within the Common Area;

(e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by a majority of the Members (based upon the number of votes entitled to be cast) or by the Board of Directors. Except

as hereinafter provided, no such dedications or transfer shall be effective unless the Village of Chatham and at least seventy-five percent (75%) of the First Mortgagees (based upon one vote per mortgage) shall have given their prior written approval and unless an instrument consenting to said dedication or transfer has been signed by Members entitled to cast a majority of the votes of the Class A membership and a majority of the Class B membership, if any, and has been recorded, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance. Without the approval of the Village and without notice to, or the assent of signatures of, the Membership being required, the Board of Directors shall have the right to grant easements, rights-of-way, and licenses and to dedicate streets and roads in and through the Common Area, as it shall from time to time deem necessary or desirable. Without the approval of either the Village or the First Mortgagees being required, and without notice to, or the assent and signatures of, the membership being required, the Board of Directors shall have the right to grant easements in and through the Common Area for public utilities or for other public purposes consistent with the intended use of the Common Area;

(f) the right of the Association to limit the number of guests of Members using the Common Area;

(g) the right of the Declarant to impose reasonable covenants and restrictions with respect to the Common Area, in addition to those set forth herein, at the time of conveyance of such Common Area to the Association and such covenants and restrictions are hereby incorporated by reference and made part of this Declaration;

### **Section 3 - Declaration of Use**

Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and any facilities thereon, to the members of such Owners's tenants or contract purchasers who reside on his Lot, and to such other persons as may be permitted by the Association.

### **Section 4 - Reservation by Declarant**

Declarant reserves unto itself the right to grant easements, rights of way and licenses to any person, individual, corporate body or municipalities to install and maintain pipeline, underground or above ground lines, with the appurtenances necessary thereto, for public or quasi-public utilities, and to grant such other licenses or permits as Declarant may deem necessary, in all cases for the improvement of the Oakbrook Estates Subdivision, in, over, under, through, upon and across any and all of the roads, streets, avenues, alleys, Lots and Common Areas.

### **Section 5 - Grading**

Declarant reserves unto itself the sole and exclusive right to review and approve the grades and slopes on all Properties and to review and approve the grade at which any Dwelling Unit shall be erected or placed thereon so that the same shall conform to a general plan, subject only to compliance with the regulations of public authorities having control thereof.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

#### **Section 1 - Creation of the Lien and Personal Obligation of Assessments**

The Declarant, for each Lot in the Oakbrook Estates Subdivision, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) the hereinafter provided applicable annual assessments charges ("Regular Assessments") and (2) special assessments or charges for capital improvements ("Capital Assessments"), such Regular and Capital Assessments to be fixed, established and collected from time to time as hereinafter provided. The Regular and Capital Assessments, together with such interest thereon and costs of obligation thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest thereon at the rate of twelve percent (12%) per annum, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the person of entity who was the Owner of such property at the time when the Assessment fell due.

#### **Section 2 - Purpose of Assessment**

The Assessments levied by the Association shall be used exclusively for the following purposes; the promotion of the recreation, health, safety and welfare of the residents in the Properties; the payment of all costs relating to the maintenance and operation of the Association, the operation, improvement, maintenance, replacement and repair of the Common Area, including but not limited to, the maintenance, improvement and establishment of any piers, roads, walkways, parking areas, and any and all other facilities located or established from time to time carried on the Common Area or the facilities located thereon; and the improvement and maintenance of the Properties, services and facilities devoted to the promotion of the health, recreation, safety and welfare of the residents in the Properties. The foregoing shall not be deemed to be a representation by Declarant that any of the foregoing described improvements will be established within the common Area by Declarant.



### Section 3 - Annual Assessment

(a) Until January 1 of the calendar year immediately following the date of commencement of Assessments as set forth in Section 7 hereof, the maximum Regular Assessment shall be Five Hundred Dollars (\$500.00) per lot year, whether improved or unimproved, adjusted in accordance with Section 7 of this Article.

(b) From and after January 1 of the calendar year immediately following the commencement of Assessments as set forth in Section 7 of this Article, the Board of Directors may increase maximum Regular Assessments each year by an amount not greater than ten percent (10%) of the maximum Regular Assessment for the immediately preceding year by a vote of one-half (1/2) of each class of Members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.

(d) Subject to the limitations of Section 3 of this Article, and for the periods therein specified, the Association may change the maximum and the basis of the Assessments fixed by Section 3 of this Article prospectively for any period provided that any such change shall have the assent of one-half (1/2) of each class of Members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.

(e) The Board of Directors shall fix the actual Regular Assessment at an amount not less than Seventy-Five Dollars (\$75.00) per lot per year and not in excess of the maximum Regular Assessment for that said year, after consideration of (i) current maintenance requirements and costs; (ii) requirements for an adequate reserve fund for replacement of improvements on and to the Common Area, and (iii) future needs of the Association.

(f) An adequate reserve fund for the replacement of the improvements on and to the Common Area shall be established and funded by the Regular Assessments.

(g) Regular Assessments shall be payable monthly, quarterly, semi-annually, or annually in advance, as determined from time to time by the Board of Directors of the Association.

### Section 4- Special Assessments for Capital Improvements

In addition to the Regular Assessments authorized by Section 3 of this Article, the Association may levy in any assessment year, a Capital Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of any capital improvements upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such Capital Assessment shall first be approved by two-thirds (2/3) of the votes of each class of Members, voting in person or by proxy, at a meeting duly

called for this purpose.

**Section 5 - Notice and Quorum for any  
Action Authorized Under Sections 3 and 4**

Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of this Article shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60)% of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6 - Assessment of Declarant and Security Holders**

Any provision of this Declaration or of the Articles of Incorporation or By-Laws of the Association to the contrary notwithstanding, commencing with the commencement of Assessments, the Declarant shall not be required to pay any Assessment, whether Regular or Capital, for any Lot in which it has the interest otherwise required for membership with the exception that if Declarant owns houses that are occupied, it shall be liable for the assessment on such land or improvement devoted to dwelling use. No Assessment, whether Regular or "Capital, shall be levied against persons or entities holding an interest in a Lot or Lots merely as security for the performance of obligations or payment of debt.

**Section 7 - Date of Commencement of Regular and  
Capital Assessments: Due Dates**

The Regular Assessments provided for herein shall commence on the date designated by the Board of Directors or the Association as the "Assessment Commencement Date".

The first Regular Assessment shall be adjusted according to the number of months remaining in the Assessment year, which shall be the calendar year unless otherwise determined by the Board of Directors. The Board of Directors shall fix the amount of the Regular Assessment against each Lot at least thirty (3) days in advance of each annual Assessment period. The due date of any Capital Assessment authorized under Section 4 of this Article shall be fixed in the resolution authorizing such Assessment. Written notice of the Regular and any Capital Assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish to Owner, to any mortgagee or to any contract purchaser, a certificate in writing signed by an officer of the

Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for issuance of these certificates except as to a First Mortgagee. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

#### **Section 8 - Effect of Non-Payment of Assessment**

##### **The Personal Obligation of the Owner, the Lien, Remedies of the Association**

If an Assessment is not paid on the date when due (being the dates determined pursuant to Section 7 of this Article), then such Assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot assessed which shall bind such Lot in the hands of the then Owner, his heirs, devisee, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessments shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the Assessment is not paid within thirty (30) days after the due date therefore (the "delinquency date:), then the Assessment shall bear interest from the delinquency date at the rate of the lesser of twelve percent (12%) per annum or the highest rate of interest allowed by applicable law, and the Association may bring an action at law against the Owner personally obligated to pay the same or at equity to foreclose the lien against the such Owner's Lots, and there shall be added to the amount of such Assessment the cost of preparing and filing the complaint or bill in equity in such action, and in the event of a judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the cost of the action. In addition to the aforesaid, the Board of Directors may charge a reasonable late payment fee on all delinquent Assessment accounts. No Owner may waive or otherwise escape liability of the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

#### **Section 9 - Subordination of the Lien to Mortgagee**

The lien of the Assessments provided for herein shall be subordinate to the lien of any bona fide first mortgage on a Lot. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien for all such Assessments as to payments thereof which became due prior to such sale or transfer. No sale or

transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof. The term mortgage or mortgages shall include deed of trust or deeds of trust.

#### **Section 10 - Exempt Property**

The following property subject to this Declaration shall be exempt from the Assessments created therein: (a) all properties dedicated to and accepted by a local public authority; and (b) the Common Area. No land or improvements devoted to dwelling use shall be exempt from said Assessments.

### **ARTICLE VII**

#### **ARCHITECTURAL CONTROL AND APPROVED BUILDER**

##### **Section 1 - Administration**

The Oakbrook Estates Subdivision Architectural Review Committee referred to herein and in the succeeding sections of this Declaration (the "ARC") shall have all the rights, powers and duties granted to it by the Board of Directors of the Association and by this Declaration. The ARC is composed of the following members: Gregory P. Sgro, Peter M. Sgro and Catherine Schaper each of whom shall act and serve for a term of five (5) years accounting from the date hereof, and thereafter until his successor shall be duly appointed. At any time after the expiration of the aforesaid five (5) year period, the then members of the Board of Directors of the Association, upon a majority vote of the Board of Directors, shall appoint, by a duly executed instrument, new members to, or otherwise change the membership of, the ARC, so long as the ARC shall at all times be comprised of at least three (3) members. In the event of the death or resignation of any member of the ARC during the aforesaid five (5) year period, the Board of Directors shall appoint a successor by a duly executed instrument. All questions shall be decided by a majority of the members of the ARC, and such majority shall be necessary and sufficient to act in each instance and on all matters. In the event of a foreclosure of all or any part of the Properties by the Trustee or the Lender, the initial ARC members specified in this Section shall promptly prepare and submit to such foreclosing party their irrevocable written resignations from the ARC, which resignations shall be effective immediately upon receipt. The Declarant hereby grants to the ARC the right to waive, on a case by case basis, such portion, or portions of covenants and by Restrictions contained in this Declaration placed upon the Oakbrook Estates Subdivision as the ARC, in its sole discretion, may deem advisable in the best interest of the Oakbrook Estates Subdivision.

##### **Section 2 - Architectural Review**

No building, addition to a building, fence, wall, storage shed, tank, or other structure of any kind, nature or size, including any driveway, walkway and outside lighting, shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change (including, but not limited to, change of exterior house color) or alteration therein be made nor shall any work be commenced or performed (other than landscaping) which may result in a change of the exterior appearance of any of the above mentioned structures until the complete plans and specifications, in duplicate, showing the nature, color, kind, shape, dimensions, materials, floor plans, exterior plans and details, driveway plans, location and proposed topographical change, together with the estimated costs of such work and a designation of the party or parties to perform said work, have been submitted to, and approved in writing by, the ARC.

The ARC shall consider applications for approval of plans, specifications, etc., on the basis of conformity with this Declaration and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance with existing and proposed structures within Oakbrook Estates Subdivision. The ARC shall have the right to adopt and publish guidelines or policies with respect to all architectural requirements (and repeal or amend the same from time to time) which in the ARC's opinion are appropriate for the Oakbrook Estates Subdivision.

The ARC shall have the right to refuse to approve any such plans or specifications, including grading and location plans, which are not suitable or desirable in the sole opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the ARC from time to time shall be submitted to the ARC by registered or certified mail or in person in which case a written receipt shall be obtained. The ARC has the authority to hire a professional architect to review the plans and specifications. The ARC will assess the Owner a fee of \$100.00 for such review of the plans and specifications as compensation for the architectural review service.

In the event the ARC fails to approve or disapprove the plans and specifications within sixty (60) days after such plans and specifications and other information have been submitted to the ARC as required herein, approval will not be required and this Article will be deemed to have been fully complied with.

Approval hereunder shall in no way be construed as passing judgment or making a determination with respect to the correctness of the location, structural design, suitability of water flow or drainage, location of utilities or other qualities of the item being reviewed.

Notwithstanding anything contained herein to the contrary, the construction undertaken by or at the direction of Declarant or any successor or additional declarant shall not be subject to the terms of this Article and shall not require the approval of the ARC.

### **Section 3 - Approved Builder**

No dwelling Unit shall be constructed on any Lot unless such construction is undertaken by an Approved Builder. Should an Owner propose that such construction be undertaken by a builder other than Peter M. Sgro, Builder, the Owner shall submit detailed plans and specifications for the proposed Dwelling Unit and detailed bid information from the proposed alternate builder to the Declarant. If, within fourteen (14) days of Declarant's receipt of the Owner's submission of the foregoing information, Declarant shall consent in writing to designation of the alternate builder as Approved Builder, the alternate builder shall be designated an Approved Builder for the construction of the proposed Dwelling Unit on the Owner's Lot, but shall not be an Approved Builder for any other Dwelling Unit or for any other Lot unless the provisions of this Section shall have been followed for such other Dwelling Unit by the Owner of such other Lot. Declarant reserves the right to object to bid specifications submitted and to request further information from the proposed alternate bidder, and may reject the proposed plans and specifications and/or the bid information if, in Declarant's sole judgment, said plans and specifications and/or bid information shall be inadequate or not consistent with other construction in the Oakbrook Estates Subdivision.

The ARC may, as a part of an during the architectural review process specified in Section 2 of this Article, designate one or more alternate builders as Approved Builders for the construction of Dwelling Units on any Lot within the Oakbrook Estates Subdivision.

## **ARTICLE VIII**

### **USE RESTRICTIONS AND EASEMENTS**

#### **Section 1 - Use**

Except for those Lots designated otherwise on Exhibit A attached hereto, the Lots and Dwelling Units shall be used exclusively for private and residential purposes only. No building or structure of any kind whatsoever shall be erected, altered, converted, maintained or operated on any Lot except for one (1) Dwelling Unit for occupancy by not more than one (1) family, with only a garage for not more than three (3) non-commercial vehicles and an in-ground swimming pool (hereinafter defined) as accessory structures for the sole and exclusive use of the Owner or occupants of the Lot.

Notwithstanding anything contained herein to the contrary, Declarant reserves the right to (i) erect, alter, or convert any building within Oakbrook Estates Subdivision for house, playground or for other similar purposes; and (ii) erect, maintain and operate a real estate sales, or construction office or trailer on any Lot, or in any building or structure now or hereafter located thereon, provided such office or trailer is used and operated only in connection with development and sale of Dwelling Units and Lots within Oakbrook Estates Subdivision only.

Those Lots designated as duplex on Exhibit A shall be subject to all of the terms and conditions of these Covenants except that each individual Dwelling Unit shall be not less than one-thousand square feet of livable space, excluding garage, basement, porches, decks or balconies. Further each individual Dwelling Unit shall be required to contain an attached garage suitable for the storage of one (1) or more vehicles.

## **Section 2 - Architectural Requirements**

Each Dwelling Unit shall contain not less than One-Thousand Four Hundred (1,400) square feet of habitable area, exclusive of basements, porches (open and screened), patios, terraces, decks, and garages. Each Dwelling Unit shall have a garage for not less than two (2) non-commercial vehicles. No above ground swimming pools shall be permitted on any property within Oakbrook Estates Subdivision. For purposes of this Declaration, an in-ground swimming pool is defined as an outdoor swimming pool of a permanent type of construction and constructed substantially below ground so as to qualify as to what is commonly referred to as an "in-ground" or "below ground" type.

All improvements shall be maintained in accordance with applicable building lines, setback and height provisions set forth in the Zoning Ordinance of the Village of Chatham, Illinois, except where more stringent requirements are imposed by the Record Plats, the deed of conveyance for a particular Lot or the ARC.

Construction must commence on each and every Lot within three (3) years from the date of transfer of title from the Declarant to the Purchaser, unless the Declarant specifically waives such requirement with respect to such Lot in writing. Any violation of this restriction shall subject the Owner to a charge payable to the Declarant at the rate of five percent (5%) per annum of the original purchase price of the Lot, to be paid by the Owner to the Declarant, for such time as the violation of the restriction exists. The charge shall, until paid in full, be a lien against the Lot and collection of the penalty shall be made in the same manner as herein provided for collection of delinquent Assessments. All structures shall be completed in accordance with the approved plans and specifications within eighteen months (18) after construction thereon has commenced, and such construction shall proceed with all

due diligence and be continuous without delay, except where such completion is impossible or would result in great hardship to the Owner or the Builder due to strikes, fire, national emergency or natural calamities. Notwithstanding anything contained herein to the contrary, the provisions of this paragraph with respect to the requirement of commencement of construction within three (3) years and the imposition of a five percent (5%) per annum charge if construction is not commenced within such period shall be inapplicable in the event that the Trustees or the Lender foreclose upon all or any part of the Properties.

No residence can be temporarily or permanently occupied until the exterior thereof has been fully completed. During the construction period, the Owner of any Lot shall require the Builder to maintain the Lot in a reasonably clean and uncluttered condition and to take necessary action to control any erosion of or from disturbed site areas. Cessation of work on any structure once started, and prior to completion, for a period of sixty (60) days shall be prima facie evidence of an attempt to abandon the same in its partially completed state, and the same shall be deemed to be both a public and private nuisance.

Each Lot Owner shall construct such sidewalk as may be required by ordinances of the Village of Chatham, Illinois, as such Owner's sole expense. Failure to conform with such requirement or ordinance shall vest Declarant or Association with the right to do so and to file a lien and/or legal action for reimbursement therefor. Declarant or Association shall expressly be entitled to pre-judgment interest and attorneys fees resulting from any such action.

### Section 3 - Signs

No signs of any nature shall be erected or maintained on any Lot except:

(a) Signs required by legal proceedings.

(b) Temporary signs, including for rent, for sale, sold signs or signs during construction of a residence or other improvement indicating the nature of the improvement and the persons or firm responsible therefor, which sign shall be consolidated into a single frame having not more than six (6) square feet of face area and shall be subject to the prior written approval of the ARC as to location, size, color, material and content; such temporary signs to be removed within ten (10) days after rental or sale of the subject property or completion of the improvement.

(c) Community or street identification signs which may be located on private property.

(d) Signs erected by Declarant.



#### **Section 4 - Destruction**

Should any residence or structure on any Lot be destroyed in whole or in part, it must be reconstructed or the debris therefrom removed from the site and the property restored to a neat and slightly condition within three (3) months, or the area shall be deemed to be both a public and private nuisance.

#### **Section 5 - Appearance**

Although garbage and trash containers, incinerators, fuel tanks, mechanical swimming pool equipment, utility meters, air conditioning equipment, clothes lines and other similar outdoor maintenance, storage and service facilities shall be stored in or concealed by a solidly screened, enclosed or covered receptacle in order to conceal said maintenance, storage and service facilities from view from the roads and neighboring properties. Garbage and trash containers and fuel tanks need not be screened if located underground. The placement of all of the aforesaid items, whether located above or below ground, shall require the prior written approval of the ARC.

#### **Section 6 - Temporary Structures**

No structure of a temporary character, tent, trailer, mobile home, shack or other outbuilding, except as provided herein, shall be placed or permitted to remain on any Lot or Common Area at any time, except that temporary construction shelter may be erected and maintained during and used exclusively for construction of any approved work or improvement and such shelters shall not in any event be used for living quarters and shall be removed from the premises promptly upon completion of the approved work or improvement and such shelters shall not in any event be used for living quarters and shall be removed from the premises promptly upon completion of the approved work or improvement.

#### **Section - 7 Vehicles**

No motorized vehicles shall be operated within the Properties unless (i) licensed or (ii) used primarily for maintenance purposes (i.e., lawn mowers, tractors or snowplows). No snow mobiles, dune buggies, motorcycles, or other similar vehicles shall be operated off the paved roads. The ARC has the right to establish and enforce such rules for operation of any type vehicle as it shall in its sole discretion see fit.

Campers, recreational vehicles, commercial vehicles, trucks, horse trailers, travel trailers or utility trailers and similar vehicles may only be maintained on a Lot within an enclosed or screened area which renders such objects non-visible from the roads or neighboring properties. During construction of Dwelling Units, however, the Owners and builders may maintain commercial vehicles

and trailers on the Lots for the purpose of construction, and for use as a field or sales office. Commercial vehicles, private passenger vehicles, trailers, buses, campers, tractors or trucks shall not be regularly parked or maintained upon any streets. No trailer, camper or mobile home of any kind shall be used on any Lot as a temporary or permanent dwelling.

No inoperable junk or junked cars or any motor vehicles other than private passenger vehicles, tractors or trucks in regular operation shall be permitted on the Properties of Oakbrook Estates Subdivision and no commercial vehicles shall be left parked on any part of the Properties, including, without limitation, any street or Lot, longer than is necessary to perform the business function of such vehicle in the area; it being the express intention of this restriction to prevent the parking of commercial vehicles upon any part of the Properties for a time greater than that which is necessary to accomplish the aforesaid business purpose. No automobile or vehicles of any kind and no boat or trailer of any kind shall be constructed, restored or repaired upon any Lot in such a manner that said construction, restoration or repair is visible from the roads or neighboring properties.

#### **Section 8 - Boats**

No un-garaged boat may be maintained and/or stored on any Lot, unless the ARC determines, in its sole discretion, that the storage of such un-garaged boat will not be detrimental to the overall character of Oakbrook Estates Subdivision.

#### **Section 9 - Lighting**

Any exterior lighting on structures and Lots shall be directed downward so that direct light rays shall not extend beyond the lot lines of the Lot on and for which they were installed.

#### **Section 10 - Mailboxes**

The size, type, style, composition and location of mailboxes, newspaper containers, and like structures, if placed apart from the Dwelling Unit, must be approved in writing by the ARC.

#### **Section 11 - Noxious Activity**

No noxious, dangerous or offensive thing, trade, business or activity shall be carried on upon any Lot or Common Area, nor shall anything be done or placed thereon which, in the sole opinion of the ARC, would cause embarrassment, discomfort, annoyance or a nuisance to any adjoining Owner or to the community generally. There shall not be maintained on any Lot or Common Area any plants or animals or devices or things of any kind, the normal activities or existence of which is in any way noxious, offensive, dangerous, unsightly, unpleasant or of a nature that would diminish or destroy

the enjoyment of other property in the community by the Owners thereof.

#### **Section 12 - Animals**

No animals, livestock or poultry of any kind, including pigeons, shall be raised, bred, kept or maintained within the Oakbrook Estates Subdivision except dogs, cats or any other household pets, not exceeding four (4) in the aggregate, may be kept or maintained on a Lot for non-commercial purposes only. All pets must be secured by leash or lead, or under the control of a responsible person and obedient to that person's command at any time they are permitted outside of a house, dwelling or enclosed area used for their maintenance and confinement.

#### **Section 13 - Compost**

Accumulated waste plant material may not be accumulated on a Lot except as part of an established compost pile which is maintained in such a manner as not to be visible from the roads and neighboring properties and not closer than one hundred (100) feet from any neighboring residence or established outdoor living area of an existing or future residence.

#### **Section 14 - Antennae**

No exterior antennae, aerials, poles, towers, discs or similar structures of any type shall be erected on any lot within the Oakbrook Estates Subdivision without prior written approval of the ARC.

#### **Section 15 - Outdoor Courts**

No tennis, basketball or other outdoor courts or recreational game or sport facilities may be installed, constructed or maintained on any Lot without the prior written approval of the ARC.

#### **Section 16 - Other Easements, Conditions and Restrictions**

Declarant reserves the right prior to the settlement of any Lot to file additional covenants, conditions and restrictions pertaining to use of the Lots and other conditions and restrictions relating thereto, provided such covenants, conditions and restrictions comply with the Village of Chatham Law.

#### **Section 17 - Right of Association to Remove or Correct Violation of this Article**

The Association or its duly authorized agents, officers and employees may, in the interest of the general welfare of all the Owners of the Properties and after reasonable notice to the Owner,

and without liability to the said Owner or occupant for trespass or otherwise, enter upon any Lot or the exterior of any Dwelling Unit at reasonable hours on any day for the purpose of removing or correcting any violations or breach of any attempted violation of any of the Covenants and Restrictions, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided, however, that no such action shall be taken without a resolution of the Board of Directors of the Association or the ARC. Any costs incurred by the Association or the ARC directly attributable to taking necessary corrective actions shall be the sole personal responsibility of the Owner and shall also become a line against such Owner's Lot until satisfied.

#### **Section 18 - Declarant's Exemption**

During the period of development, the Declarant shall be exempt from the provisions of this Article.

#### **Section 19 - Easements**

The Properties herein described shall be subject to all easements and restriction of record.

### **ARTICLE VIII-A**

#### **MAINTENANCE**

#### **Section 1 - Lot Maintenance**

Owners shall, at all times, maintain their property and all appurtenances thereto in good repair and in a state of a neat appearance. Each Lot Owner shall be responsible for the suitable appearance of his Lot including cutting grass, weeds and brush and removing trash and rubbish therefrom at all reasonable times and maintaining same in good condition and repair, in a manner that does not decrease the beauty, value, health or safety of the community as a whole or specific areas within the community. Should and such Owner fail to maintain the appearance of his Lot in accordance with the aforesaid criteria and as determined solely by the Board of Directors of the Association, the said Association is hereby and herewith granted the right and privilege to enter upon such Owner's Lot of the purpose of maintaining the suitable appearance of such Owner's Lot (whether improved or un-improved), the cost of which is to be borne by the Owner or Owners thereof pursuant to the same procedures and conditions as set forth in Section 4 of this Article.

#### **Section 2 - Exterior Maintenance**

In addition to maintenance of the Common Areas, the

Association may, at its option and upon agreement with the Owner, provide exterior maintenance to any Lot which is subject to assessment under Article V hereof, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.

### **Section 3 - Assessment of Cost**

The cost of such exterior maintenance shall be assessed against the Lot upon which such maintenance is performed and shall be added to and become part of the Regular Assessment to which such Lot is subject under Article V hereof and, as part of such Regular Assessment, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article 3 hereof. The Board of Directors of the Association, when establishing the Regular Assessment against each Lot for any assessment year as required under Article VI hereof, may add thereto the estimated cost of any exterior maintenance for the year but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof. The assessments of charges provided for hereunder shall not be considered for computation purposes as part of the maximum Regular Assessments under said Article VI.

### **Section 4 - Access at Reasonable Hours**

For the sole purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agent or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours.

## **ARTICLE IX**

### **DRAINAGE PROVISIONS**

In addition to the foregoing, and notwithstanding anything herein contained to the contrary, the following provisions shall govern drainage within Oakbrook Estates Subdivision.

**Section 1.** No owner of any lot shall change or permit to be changed the contours and the gradeline of any lot. The gradeline and contour of any lot shall conform with that of surrounding property. No swale within any easement of any lot shall be altered or wholly or partially filled so as to interfere with or prohibit the free flow of surface water; however, if such swale shall be altered, it shall be restored at the expense of such lot owner of the lot where such alteration occurs.

**Section 2.** If the owner fails to restore any swale to the approved grade upon request of the Developer, Architectural Control

Committee, or Association, the Developer, Architectural Control Committee or Association shall make all necessary repairs and restorations to the swale as they determine in their sole discretion and may bill the lot owner for the cost of the repair. Should the lot owner fail to pay the bill within 30 days, the Developer, Architectural Control Committee, or Association may file a lien in the amount of such repair costs against the lot in the office of the Recorder of Deeds of Sangamon County, Illinois, and may foreclose such lien in the same manner as a lien for unpaid Association dues or expenses.

**Section 3.** When required by the Architectural Control Committee, prior to activating any sump pump on any lot, the sump pump shall be connected to the existing storm or drainage pipe in the swale located within the easement area of each lot at the expense of the lot owner.

## ARTICLE X

### JOINT DRIVEWAYS

#### **Section 1 - Joint Driveways**

Any driveway which is built or installed as part of the original construction upon the Properties and which is situated on the dividing line between Lots or partly on one Lot and partly on another Lot or other Lots, shall constitute a joint driveway for the equal and common use and benefit of the Owners of any Lots or other portions of the Properties which is reasonably designed to serve, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding joint driveways and of liability for property damage due to negligent or willful acts or omissions regarding the same shall apply thereto.

#### **Section 2 - Repair and Maintenance**

The cost of reasonable repair and maintenance of any joint driveways shall be shared by the Owners who make use of the same in equal amounts.

#### **Section 3 - Damage or Destruction**

In the event any joint driveway is destroyed or damaged, any Owner who has used the same may restore it, and if the other Owner thereafter makes use of the same, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

#### **Section 4 - Easement**

There shall be a perpetual and non-exclusive easement in, through and over any such joint driveway reserved to the Owners of any Lot or Lots upon which the same has been built or installed or which the same has reasonably been designed to serve and no person shall in any way interfere with the free and unobstructed use thereof by said Owners.

#### **Section 5 - Right to Contribution Runs with Land**

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

### **ARTICLE XI**

#### **GENERAL PROVISIONS**

##### **Section 1 - Enforcement**

The Association, or any Owner, or any First Mortgagee shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any line created by these Covenants and Restrictions set forth in this Declaration shall automatically be extended for successive periods of ten (10) years each unless the members entitled to cast not less than sixty-six percent (66%) of the total vote of the membership execute, acknowledge and record a document terminating the Covenants and Restrictions of this Declaration. Except as hereinafter provided, this Declaration as from time to time amended, and the Covenants and Restrictions of this Declaration may be amended by a document executed acknowledged and recorded by the members entitled to cast not less than sixty-six percent (66%) of the total votes of the membership. In the event that any portion of the herein described Properties shall be financed by or shall be sought by Declarant or any successor or additional declarant to be financed by loans insured by the Veteran's Administration or Federal Housing Administration or in the event that any loans secured by a first mortgage on any "Lots" and/or "Dwelling Units" are purchased by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or a similar type of organization, as the case may be so long as such revision or modification complies with the laws of Sangamon County in effect at the time of such change. Prior to January 1, 1994, no amendment shall become effective until approved in writing by Declarant. Any instrument altering, amending, canceling, annulling or abrogating these Covenants and Restrictions, in whole or in part, must be in writing, properly executed, acknowledged and recorded among the Land Records.

## **Section 5 - FHA/VA Approval**

As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veteran's Administration, should same have a financial interest in the Properties arising out of initial financing to an Owner: dedication of Common Area and amendments to this Declaration.

## **Section 6 - First Mortgages Approval**

Notwithstanding any provision of this Declaration or of the Articles of Incorporation or ByLaws of the Association or Laws of Illinois expressly or impliedly to the contrary, neither the membership of the Association nor the Board of Directors of the Association shall without the prior written approval of at least seventh-five percent (75%) of the First Mortgagees (based upon one vote for each mortgage) be entitled to:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the Common Area or improvements thereon which are owned, directly or indirectly, by the Association; provided, however, that the granting of easements for public purposes consistent with the intended use of the Common Area by the Association shall not be deemed to be a transfer within the meaning of this clause;

(2) fail to maintain fire and extended coverage or insurance on normally insured Common Area improvements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(3) use hazard insurance proceeds for losses to any Common Area improvements for other than the repair, replacement or reconstruction of such improvements.

## **Section 7 - Assignability**

Declarant, its legal representative, successors and assigns, notwithstanding any other provision herein to the contrary, shall at all times have the unlimited right to fully or partially transfer, convey and assign its rights, title, power and interest under this Declaration as Declarant, and its transferee, grantee or assignee shall take such rights subject to any and all obligations of a Declarant herein. Any such assignment shall be made by an instrument in writing, duly recorded among the Land Records and signed by the assignee for the purpose of evidencing acceptance of such rights, title, power and interests.



IN WITNESS WHEREOF, Declarant has caused these presents to be executed and sealed on the date first above written.

WITNESS:

DECLARANT:

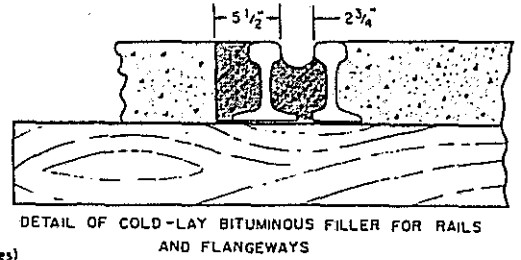
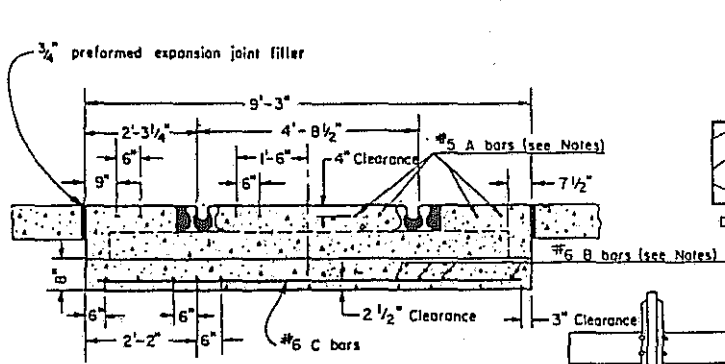
STATE BANK OF AUBURN TRUST  
94-195

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GREGORY P. SGRO, Trustee

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PETER M. SGRO, Trustee



SECTION A-A

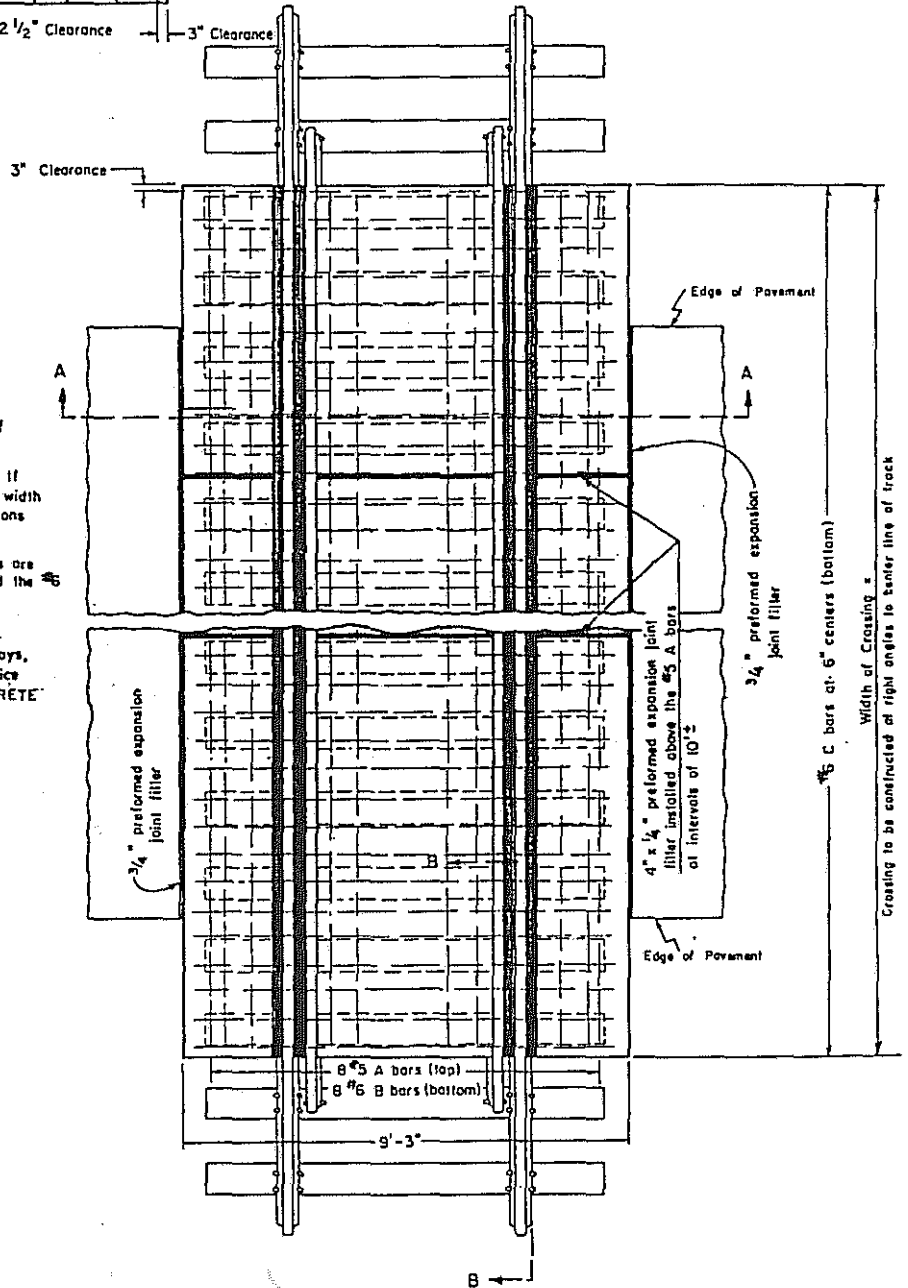
**NOTES**

All Work shall be in accordance with Section 622 of the Standard Specifications.

The design of crossing is based on 8'-0" cross ties. If ties other than 8'-0" in length are used, the total width of crossing shall remain 9'-3" and the other dimensions will be adjusted.

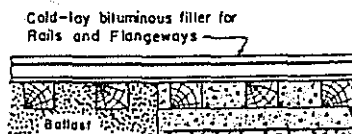
Longitudinal reinforcement shall be continuous. If laps are necessary, the #5 A bars (top) shall be lapped 16" and the #6 B bars (bottom) shall be lapped 19".

Furnishing and installing the preformed expansion joint filler, cold-lay bituminous filler for rails and flangeways, and granular backfill shall be included in the unit price bid per square yard for PORTLAND CEMENT CONCRETE RAILROAD CROSSING



**BILL OF MATERIAL**

Bar	No.	Size	Length
A		#5	
B		#6	
C		#6	8'-9"
Portland Cement Concrete Railroad Crossing - Sq. Yd.			
Reinforcement Bars - Lb.			



SECTION B-B

Construction Joint to be painted with one coat of Asphalt RC-70 Primer

**EXHIBIT F**

PORTLAND CEMENT CONCRETE RAILROAD CROSSING

STANDARD 1894-2

REVISIONS	
BY	DATE
J.F.L.	11-18-58
D.H.W.Sr.	8-30-77

PASSED Dec. 14, 1977  
*D.S. Hamming*  
 ENGINEER OF DESIGN OPERATIONS  
 APPROVED Dec. 14, 1977  
*Thomas A. Smith*

Crossing to be constructed at right angles to center line of track