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DECLARATION OF COVENANTS AND RESTRICTIONS

Frankie Vick

Carol Johnson

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DECLARATION OF COVENANTS AND RESTRICTIONS

PRAIRIE VIEW

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DECLARATION OF COVENANTS AND RESTRICTIONS
PRAIRIE VIEW

This Declaration, made as of the 5th day of February, 1997, by BDC/CARDINAL ASSOCIATES, L.P., an Indiana limited partnership ("Declarant"),

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant owns, or has the right to acquire the real estate located in Hamilton County, Indiana, described in Exhibit A and depicted on Exhibit B, upon which Declarant intends, but is not obligated, to develop a residential community to be known as Prairie View.

B. Declarant intends, but is not obligated, to develop within Prairie View three (3) residential subdivisions to be known as Brooks Landing at Prairie View, Chapman's Claim at Prairie View and Moffitt Farm at Prairie View.

C. Declarant intends, but is not obligated, to construct certain improvements and amenities in Prairie View which shall constitute Community Area.

D. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Prairie View and for the maintenance of the Tract and the improvements thereon, and to this end desires to subject the Tract together with such additions as may hereafter be made thereto (as provided in Paragraph 3) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

E. Declarant deems it desirable, for the efficient preservation of the values and amenities in Prairie View, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in Prairie View.

F. Declarant has incorporated under the laws of the State of Indiana a notforprofit corporation known as Prairie View Homeowners Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract and such additions thereto as may hereafter be made pursuant to Paragraph 3 hereof, as they are held and shall be held, conveyed, hypothecated or encumbered, leased,

rested, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

1. **Definitions.** The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

"Applegate Parcel" means the real estate described in Exhibit D.

"Applicable Date" means the earlier of (i) the date when all Lots in the Development Area have been improved by the construction thereon of Residences or (ii) December 31, 2007.

"Architectural Control Assessment" means the assessment levied by the Corporation pursuant to Paragraph 17(e).

"Architectural Review Board" means that entity established pursuant to Paragraph 18 of this Declaration for the purposes therein stated.

"Articles" means the Articles of Incorporation of the Corporation, as amended from time to time.

"Assessments" means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, any Supplemental Declaration, the Articles or the ByLaws.

"Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the ByLaws.

"Brooks Landing" means that part of Prairie View designated on the General Plan of Development or a Plat as Brooks Landing at Prairie View.

"ByLaws" means the Code of ByLaws of the Corporation, as amended from time to time.

"Chapman's Claim" means that part of Prairie View designated on the General Plan of Development or a Plat as Chapman's Claim at Prairie View.

"Community Area" means (i) the Lake, (ii) the Ponds, (iii) the Private Drives, (iv) the Entry Ways, (v) the Community Center, (vi) the Parks, (vii) the Commons, (viii) the Drainage System, (ix) the Paths, (x) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section, and (xi) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

"Community Area Access Easement" means the area designated on a Plat as a means of access to a Community Area.

"Community Area Initial Assessment" means the initial assessment for the Reserve for Replacements required by Paragraph 17(c).

"Common Facilities" means the Common Lighting, the Site Furniture and Facilities and other personal property of the Corporation.

"Common Lighting" means the light standards, wiring, bulbs and other appurtenances, if any, installed to illuminate River Road, 131st Street and/or the Community Area.

"Commons" means such land, if any, as may be denoted on a Plat as "Commons" or designated as "Commons" in any recorded instrument executed by Declarant.

"Community Center" means such of the land depicted as "Community Center" on the General Plan of Development as Declarant may make available as a site for development of recreational and other community facilities or, if such site is so developed, the land designated on a Plat as the "Community Center" together with all improvements thereto and structures and facilities thereon.

"Corporation" means Prairie View Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

"Declarant" means BDC/Cardinal Associates, L.P., its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantees assume the rights and obligations of Declarant).

"Designated Builder" means during such period as such designation by Declarant may continue, any Person engaged in the construction of more than one (1) Residence on the Tract who is designated by Declarant as a "Designated Builder". Declarant may make and revoke any such designation at any time and from time to time.

"Detention Area" means an area depicted on a Plat which has been engineered to accommodate from time to time surface water drainage.

"Development Area" means the land described in Exhibit A together with any additional land added to the Tract pursuant to Paragraph 3 of this Declaration.

"Drainage Board" means the Carmel Board of Public Works, its successors or assigns.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds (including all Detention Areas), and the other structures, fixtures, properties, equipment and facilities (excluding the Lake and the Ponds) located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"Entry Ways" means the structures constructed as an entrance to Prairie View or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic islands depicted as designated Blocks on a Plat and any other traffic islands dividing a roadway providing access to Prairie View or a part thereof, and the grassy area surrounding such structures.

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development Area, as such may be amended from time to time.

"Landscape Easement" means a portion of a Lot denoted on a Plat as an area to be landscaped.

"Lake" means the lake located in Moffitt Farm.

"Lake Access Easement" means the area designated on a Plat as a means of access to the Lake or a Pond.

"Lake Liner" means the geosynthetic containment system, if any, installed by Declarant to control the water level of the Lake.

"Lot" means a platted lot as shown on a Plat.

"Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or rightofway, and any other expense related to the continuous maintenance, operation or improvement of the facility.

"Member" means a member of the Corporation and "Members" means all members of the Corporation.

"Moffitt Farm" means that part of Prairie View designated on the General Plan of Development or a Plat as Moffitt Farm at Prairie View.

"Mortgagee" means the holder of a first mortgage on a Residence.

"Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Parcel" means each of Brooks Landing, Chapman's Claim and Moffitt Farm and any other platted subdivision within the Development Area that is subject to the same Supplemental Declaration or is declared by Declarant to constitute a "Parcel".

"Park" means such land as may be denoted on a Plat as "Park" or designated as "Park" in any recorded instrument executed by Declarant.

"Part of the Development Area" means any part of the Development Area not included in the Tract.

"Paths" means those walkways and/or bikeways installed pursuant to Paragraph 16 and such other real estate or interest therein as is conveyed or granted to the Corporation for the purpose of being used for walkways and/or bikeways.

"Path Lights" means the light standards, conduits, wiring, bulbs and other appurtenances, if any, installed to illuminate the Paths.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Plat" means a final secondary plat of a portion of the Development Area executed by Declarant and recorded in the Office of the Recorder of Hamilton County, Indiana.

"Pond" means a body of water located in the Development Area and depicted on the General Plan of Development (other than the Lake) and **"Ponds"** means all of such bodies of water (other than the Lake).

"Private Drive" means a street, lane, road, driveway or other right-of-way designed to provide access to one or more Lots that has not been accepted for maintenance by a public authority.

"Private Gate" means a security gate controlling access to and from a Private Drive.

"Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area and the Common Facilities.

"Residence" means a structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations and the Register of Regulations, as the same may from time to time be amended.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

"Round-About" means the traffic circle at the intersection of 131st Street and River Road.

"Section" means that portion of the Development Area that is depicted on a Plat.

"Site Furniture and Facilities" means any furniture, trash containers, sculpture or other furniture, fixtures, equipment or facilities constructed, installed or placed in the Development Area by Declarant or the Corporation and intended for the common use or benefit of some, if not all, of the Owners.

"Street Trees" means the trees planted by Declarant within the right-of-ways of public streets (including the medians thereof) within and adjacent to Prairies View, as the same may be replaced from time to time.

"Supplemental Declaration" means the Supplemental Declarations of Covenants and Restrictions for each of Brooks Landing, Chapman's Claim and Moffitt Farm and any Plat or other supplementary declaration of covenants, conditions or restrictions which may be recorded and which extends the provisions of this Declaration or any previously recorded Supplemental Declaration to a Section and contains such complementary or supplementary provisions for such Section as are required or permitted by this Declaration.

"Tract" means the land described in Exhibit C and such other real estate as may from time to time be annexed thereto under the provisions of Paragraph 3 hereof.

"Zoning Authority" with respect to any action means the Director of the Department of Economic and Community Development of the City of Carmel or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Director.

2. **Declaration.** Declarant hereby expressly declares that the Tract and any additions thereto pursuant to Paragraph 3 hereof shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of

occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. Additions to the Tract. Declarant shall have the right to bring within the scheme of this Declaration and add to the Tract real estate that is a Part of the Development Area or that is contiguous to the Development Area. In determining contiguity, public rights of way shall not be considered.

The additions authorized under this Paragraph 3 shall be made by the filing of record of one or more Supplemental Declarations with respect to the additional real estate and by filing with the Corporation any revisions to the General Plan of Development necessary to reflect the scheme of development of the additional real estate. Unless otherwise stated therein, such revisions to the General Plan of Development shall not bind Declarant to make the proposed additions. For purposes of this Paragraph 3, a Plat depicting a portion of the Development Area shall be deemed a Supplemental Declaration.

4. The Lake.

(a) Development. Declarant intends, but is not obligated, to develop the Lake. Declarant reserves the right, subsequent to commencement of development of the Lake, to determine the size and configuration thereof (which may vary from that depicted on the General Plan of Development attached as Exhibit B hereto).

(b) Title and Maintenance. Declarant shall convey title to the Lake to the Corporation. The Corporation shall be responsible for maintaining the Lake. The Maintenance Costs of the Lake shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts the Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot (exclusive of the Lake Liner and any Path) and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonably clean condition.

(c) Use. No boats shall be permitted upon any part of the Lake except if and to the extent authorized by the Board of Directors and then subject to such rules and regulations as may be adopted by the Board of Directors. No dock, pier, wall or other structure may be extended into the

Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming will be permitted in the Lake except if and to the extent authorized by the Board of Directors. Each Owner of a Lot abutting the Lake shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, the Lake by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any Person with respect to the Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from the Lake or the proximity of a Lot thereto, including loss or damage from erosion.

(d) **Lake Liner.** If a Lake Liner is installed at time of development of the Lake, the stability of the water level in the Lake will be dependent upon maintenance of the integrity of the Lake Liner. If a Lake Liner is installed, the Corporation shall be responsible for maintenance of the Lake Liner and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment except that an Owner who causes or permits any damage to the Lake Liner shall be solely responsible for the cost of repairing such damage and shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to damage to the Lake Liner caused by such Owner or any Person having or gaining access to such Owner's Lot with the knowledge or consent of such Owner.

5. The Ponds.

(a) **Development.** Declarant intends, but is not obligated, to develop the Ponds. Declarant reserves the right, subsequent to commencement of development of the Ponds, to determine the size and configuration thereof (which may vary from that depicted on the General Plan of Development attached as Exhibit B hereto).

(b) **Title and Maintenance.** Declarant shall convey title to the Ponds to the Corporation. The Corporation shall be responsible for maintaining the Ponds. The Maintenance Costs of the Ponds shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts a Pond shall be responsible at all times for maintaining so much of the bank of the Pond above the pool level as constitutes a part of, or abuts, his Lot (exclusive of any Path) and shall keep that portion of the Pond abutting his Lot free of debris and otherwise in reasonably clean condition.

(c) **Use.** No boats shall be permitted upon any part of a Pond. No dock, pier, wall or other structure may be extended into a Pond without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming will be permitted in any Pond except if and to the extent authorized by the Board of Directors. Each Owner of a Lot abutting a Pond shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Pond by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any Person with respect to a Pond, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Pond or the proximity of a Lot thereto, including loss or damage from erosion.

6. **The Commons.** Declarant shall convey title to the Commons to the Corporation. The Corporation shall be responsible for maintaining the Commons and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Except for underground utility facilities, no permanent improvements shall be made to or installed on the Commons other than lighting, seating, walkways, planting structures and fountains or other nonrecreational water features. The use of the Commons shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

7. **Parks.** Declarant shall convey title to the Parks to the Corporation. The Corporation shall be responsible for maintaining the Parks and the Maintenance Costs thereof, together with any costs incurred by the Corporation in connection with the improvement thereof, shall be assessed as a General Assessment against all Lots subject to assessment. The use of the Parks shall be subject to rules and regulations adopted by the Corporation which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

8. **Community Center.** Declarant intends, but is not obligated, to construct in the area designated on the General Plan of Development as the Community Center a club house, bath house, swimming pool, tennis courts and other recreational and community facilities if development of the Development Area should, in the sole judgment of Declarant, justify such construction. If Declarant undertakes the development of the Community Center or any part thereof, Declarant intends upon completion of construction to convey the same to the Corporation prior to the Applicable Date free and clear of all financial encumbrances and other liens securing indebtedness of Declarant but subject to the right of Declarant to use the Community Center as provided in Paragraph 22(a). The Corporation shall be responsible for maintenance of the Community Center and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with

respect to the use of the Community Center as it deems appropriate and may charge reasonable fees for the use thereof, but no rule, regulation or charge shall be inconsistent with the provisions of this Declaration or any Supplemental Declaration.

9. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area and maintaining the water level in the Lake and the Pond. The Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

10. Paths and Path Lights. Declarant may, but is not obligated to, install the Paths and Path Lights at the approximate locations depicted on the General Plan of Development and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Paths and Path Lights and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with respect to the use thereof as it may deem appropriate including but not limited to the prohibition of the use of all or some of the Paths by bicycles, skateboards and/or motorized or non-motorized vehicles.

11. Private Drives and Private Gates.

(a) Maintenance of Private Drives. Unless otherwise provided in a Supplementary Declaration, Declarant shall maintain each Private Drive in good condition satisfactory for the purpose for which it was constructed until the earlier of (i) December 31, 1999 or (ii) the date on which Residences have been constructed on seventy-five percent (75%) of the Lots fronting such Private Drive; at which time responsibility for the maintenance thereof shall be assumed by the Corporation. The Maintenance Costs incurred by the Corporation in maintaining a Private Drive shall be assessed against all Lots whose principal means of vehicular access to a public right-of-way is over and across such Private Drive.

(b) Maintenance of Private Gates. Private Gates shall be maintained by the Corporation. The Maintenance Costs incurred by the Corporation in maintaining Private Gates shall be assessed against all Lots whose principal access to a public right-of-way is through a Private Gate.

12. Entry Ways and Landscape Easements. The Corporation shall maintain the Entry Ways and all improvements and plantings thereon, and the Maintenance Costs thereof

shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Prairie View or a part thereof. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision. Unless the Board of Directors determines that all or some of the Landscape Easements shall be maintained by the Corporation and the Maintenance Costs thereof assessed as a General or Parcel Assessment, the Owner of each Lot upon which a Landscape Easement is located shall at his/her expense keep the grass, trees, shrubs and other plantings located on a Landscape Easement neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first-class residential subdivision and, if such Owner fails to do so, the Corporation may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against such Lot.

13. Common Lighting. Declarant may, but is not obligated to, install Common Lighting in the Tract and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Common Lighting and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.

14. Site Furniture and Facilities. Declarant may, but is not obligated to, construct, install or place Site Furniture and Facilities in the Tract. If it does so, title thereto shall be conveyed to the Corporation. After conveyance to the Corporation, the Corporation shall maintain the Site Furniture and Facilities and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.

15. Round-About and Street Trees. The Corporation shall maintain the Round-About (exclusive of the street pavement, curbs and drainage structures and tiles) and the Street Trees (including replacement of such trees as appropriate), and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.

16. Prairie View Homeowners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and ByLaws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Corporation shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

(c) Classes of Members. The Corporation shall have a single class of members.

(d) Voting and Other Rights of Members. The voting and other rights of Members shall be as specified in the Articles and Bylaws.

(e) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repair, renewal and replacement of the Community Area and the Common Facilities. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area and the Common Facilities, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a leading institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Applicable Date, funds from the Reserve for Replacements may be withdrawn and applied at the direction of Declarant to meet the costs of periodic maintenance, repairs, renewal or replacement of the Community Area and the Common Facilities.

(f) Maintenance Standards. In each instance in which this Declaration imposes on the Corporation a maintenance obligation with respect to the Community Area or a part thereof, the Corporation shall maintain the Community Area or designated part thereof in good condition, order and repair substantially comparable to its condition when originally constructed, installed or planted and compatible in appearance and utility with a first-class residential subdivision. Grass, trees, shrubs and other plantings located on the Community Area for which the Corporation has maintenance responsibility shall be kept neatly cut, cultivated or trimmed as reasonably required and otherwise maintained at all times in good and sightly condition appropriate to a first-class residential subdivision.

(g) Limitations on Action by the Corporation. Unless at least two-thirds of the Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the

Owners may not: (i) except as authorized by Paragraph 19(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage insurance on insurable Community Area on a current replacement cost basis in the amount of one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Community Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration or any Supplemental Declaration.

(h) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Tract together with the covenants and restrictions established upon any other properties as one scheme. No merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Tract except as hereinafter provided.

17. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following: (1) General Assessments, (2) the Community Area Initial Assessment, (3) annual and special Parcel Assessments, (4) Architectural Control Assessments (to the extent levied) and (5) Special Assessments, such Assessments to be established and collected as hereinafter provided.

If two (2) or more Lots originally shown on a Plat are consolidated as a single Lot by virtue of partial vacation of a Plat, or if a Lot is divided by conveyance of portions thereof to owners of adjacent Lots, then, in either such event, the vacated or divided Lot(s) shall cease to be Lots for purposes of Assessments under this Paragraph 17.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance, repair, replacement and operation of the Community Area and Common Facilities.

(ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a Person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Change in Basis. The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by (i) two-thirds (2/3) of the members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) **Method of Assessment.** By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration and all Supplemental Declarations upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) **Allocation of Assessment.** Certain of the costs of maintaining, operating, restoring or replacing the Community Area and Common Facilities have been allocated in this Declaration among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area and Common Facilities and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) for uniform assessment shall not be deemed to require that all assessments against vacant Lots or Lots improved with comparable types of Residences be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses.

(c) **Community Area Initial Assessment.** Except as otherwise provided in Paragraph 32 of this Declaration and unless otherwise provided in a Supplemental Declaration, on the earlier of (i) the date a Lot is conveyed by Declarant to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), (ii) the date a Residence constructed on the Lot has been certified for occupancy by the Zoning Authority or (iii) the date a Residence on the Lot is first occupied by an Owner upon completion of construction thereof, there shall be due and payable to the Corporation by the Owner of such Lot the sum of Five Hundred Dollars (\$500.00) which shall be deposited in the Reserve for Replacements maintained by the Corporation.

(d) **Parcel Assessments.**

(i) **Purpose of Assessments.** Parcel Assessments shall be used for such purposes as are authorized by the Supplemental Declaration for such Parcel.

(ii) **Method of Assessment.** An annual Parcel Assessment shall be levied by the Corporation against Lots in a Parcel using the basis set forth in the Supplemental Declaration for such Parcel, and collected and disbursed by the Corporation. The Board shall fix in accordance with the By-Laws and the provisions of any Supplemental Declaration the annual parcel assessment for each Parcel, the date(s) such Assessment shall become due, and the manner in which it shall be paid.

(iii) **Special Assessments.** In addition to the annual Parcel Assessment, the Corporation may levy in any fiscal year a special Parcel Assessment against one or more of the Lots in a Parcel for the purpose of (A) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Parcel, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of a majority of the Owners of Lots in the Parcel who are voting in person or by proxy at a meeting of such Owners duly called for this purpose or (B) defraying any Maintenance Costs incurred in satisfying any requirements imposed on the Corporation by a Supplemental Declaration relating to a Parcel.

(e) **Architectural Control Assessment.** If any Owner fails to comply with the requirements of Paragraph 4 of a Supplemental Declaration relating to the Parcel in which such Owner's Lot is located and/or the provisions of Paragraph 18 of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) One Hundred Dollars (\$100.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner or (ii) Ten Thousand Dollars (\$10,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (h) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Corporation provided in this Declaration, at law or in

equity in the case of the failure of an Owner to comply with the provisions of this Declaration and all applicable Supplemental Declarations.

(f) Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(g) Date of Commencement of Assessments. The General Assessment and Parcel Assessments shall commence with respect to assessable Lots within a Parcel on the first day of the month following conveyance of the first Lot in the Parcel to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment. Notwithstanding the foregoing, if an Owner owns more than two (2) unimproved Lots, the General Assessment shall not commence with respect to such unimproved Lots until the earlier of (i) the date the Owner commences construction of a Residence thereon or (ii) the first day of the sixth month following the date the Owner acquired title to the Lots.

(h) Effect of Nonpayment of Assessments; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Community Area or the Common Facilities or abandonment of his Lot.

(i) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien

of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months 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.

(i) **Certificates.** The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(k) **Annual Budget.** By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met.

18. Architectural Control.

(a) **The Architectural Review Board.** An Architectural Review Board consisting of three (3) or more Persons as provided in the ByLaws shall be appointed by the Board of Directors.

(b) **Purpose.** The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) **Conditions.** Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to another Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by any Owner other than Declarant or a Designated Builder of (i) construction, erection or alteration of any Residence, other building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot or (ii) any plantings or exterior lighting on a Lot, a Lot Development Plan with respect thereto shall be submitted to the

Architectural Review Board, and no Residence, other building, fence, wall, swimming pool, tennis court, patio or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made or exterior lighting installed, by any Person other than Declarant or a Designated Builder without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration, plantings or lighting. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Prairie View, and an Owner shall undertake any construction activity within Prairie View unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, subsequent to the Applicable Date, the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approve a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

(f) Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards established pursuant to subparagraph (e) in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant

with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.

(g) **Design Consultants.** The Architectural Review Board may utilize the services of architects, engineers and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants are affiliated with Declarant or a Designated Builder or may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.

(h) **Existing Violations of Declaration.** The Architectural Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of Paragraph 4 of a Supplemental Declaration relating to the Parcel in which such Owner's Lot is located and/or the provisions of this Paragraph 18, unless such Owner submits to the Architectural Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements, landscaping or exterior lighting constructed and/or installed prior to the submission of a Lot Development Plan (or constructed and/or installed in violation of a previously approved Lot Development Plan) to the extent any such previously constructed and/or installed improvement, landscaping or exterior lighting is not subsequently approved by the Architectural Review Board. The Architectural Review Board shall have the power to recommend to the Board of Directors that the Corporation assess an Architectural Control Assessment against any Owner who fails to comply with the requirements of Paragraph 4 of a Supplemental Declaration or Paragraph 18 of this Declaration. Under no circumstances shall any action or inaction of the Architectural Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Lot Development Plan for approval by the Architectural Review Board has violated Paragraph 4 of a Supplemental Declaration or Paragraph 18 of this Declaration and such violation remains uncured.

(i) **Exercise of Discretion.** Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of

discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

(j) Liability of Board. Neither the Architectural Review Board, nor any member thereof, nor any agent thereof, nor the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

(k) Inspection. Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

19. Community Area and Common Facilities.

(a) Ownership. The Community Area and the Common Facilities shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Community Area or the Common Facilities. Declarant or the Corporation may, however, dedicate or transfer all or any part of the Community Area or the Common Facilities to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) Density of Use. Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon.

(c) Obligations of the Corporation. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including Common Facilities and other furnishings and equipment related thereto), and, except as otherwise provided herein or in a Supplemental Declaration, shall keep the Community Area and Common Facilities in good, clean, attractive and sanitary condition, order and repair.

(d) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent

granted by, and subject to the terms and provisions of, this Declaration or any Supplemental Declaration. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. Unless otherwise provided in a Supplemental Declaration or a Plat, all Owners may use the Paths, the Community Center, the Parks and the Commons subject to the reserved rights of Declarant and the Corporation. The Owners of Lots abutting the Lake or a Pond may use the Lake or a Pond, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors. Subject to restrictions on points of access, the Lake and the Ponds may be used by all Owners, but only for fishing and such other purposes as may be authorized by the Board of Directors. No Owner whose Lot does not abut the Lake or a Pond shall have any right of access to the Lake or a Pond over any Lot, but only such right of access over the Community Area as may be designated on a Plat or by the Board of Directors for such purpose.

(e) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community Area and to charge reasonable admission and other fees for the use of any recreational facilities located in or constituting a part of the Community Area except that no fee shall be charged to those specifically authorized to use such facilities by this Declaration or any Supplemental Declaration unless the Corporation is specifically authorized to do so by this Declaration or a Supplemental Declaration;

(ii) the right of the Corporation to suspend the right of an Owner and all Persons whose right to use the Paths, the Lake, the Ponds, the Community Center, the Commons or the Parks derives from such Owner's ownership of a Lot to use such portions of the Community Area for any period during which any Assessment against his Lot remains unpaid for more than thirty (30) days after notice;

(iii) the right of the Corporation to suspend the right of an Owner or any Person claiming through the Owner to use the Paths, the Lake, the Ponds, the Community Center, the Commons or the Park for a period not to exceed sixty (60) days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations;

(iv) the right of the Corporation to mortgage any or all of the Community Area, the facilities constructed thereon and the Common Facilities for the purposes of improvements to, or repair of, the Community Area, the facilities constructed thereon or the Common Facilities, pursuant to approval of two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose;

(v) the right of the Corporation to dedicate or transfer all or any part of the Community Area and/or the Common Facilities to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded; and

(vi) the right of Declarant in any Supplemental Declaration or Plat to restrict the use of Community Area and/or Common Facilities located in a Section to (a) Owners of Residences located in such Section or (b) to other Owners of less than all of the Lots in the Tract.

(f) **Additional Rights of Use.** The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and the Common Facilities may use the Community Area and the Common Facilities subject to such general regulations consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and included within the Register of Regulations.

(g) **Damage or Destruction by Owner.** In the event the Community Area or any Common Facility is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. An amount equal to the costs incurred to

effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

(b) Conveyance of Title. Declarant may retain the legal title to the Community Area and the Common Facilities until the Applicable Date, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Lake, the Ponds, the Community Center, the Parks, the Commons and the Common Facilities to the Corporation, free and clear of all liens and other financial encumbrances exclusive of the lien for taxes not yet due and payable, not later than the Applicable Date.

20. Use of Tract.

(a) Protective Covenants.

(i) Land Use. Lots may be used only for residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Prairie View than the number of original Lots depicted on the Plats. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(ii) Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be detrimental to any other Lot in the vicinity thereof or to its occupants.

(iii) Other Restrictions. The Architectural Review Board may adopt general rules and regulations to implement the purposes set forth in Paragraph 18(b) and to supplement any covenants or restrictions set forth in a Supplemental Declaration, including but not limited to rules to regulate animals, antennas, signs, fences, walls and screens, mailboxes, storage tanks, awnings, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash

containers, and planting, maintenance and removal of vegetation on the Tract. The Architectural Review Board may adopt general rules and regulations appropriate to each Parcel, which rules and regulations may vary among Parcels. Such general rules may be amended by a two-thirds (2/3) vote of the Architectural Review Board. Subsequent to the Applicable Date, any such amendment may be made only after a public hearing for which due notice to all affected Owners has been provided, and if such amendments are approved by a two-thirds (2/3) vote of the Board of Directors. All general rules and any subsequent amendments thereto shall be placed in the Register of Regulations and shall constitute Restrictions.

(iv) **Exceptions.** The Architectural Review Board may authorize exceptions to or variances from the general rules and regulations adopted pursuant to clause (iii) if the Architectural Review Board can show good cause and acts in accordance with adopted guidelines and procedures.

(b) **Maintenance of Tract.** To the extent that exterior maintenance is not provided for in a Supplemental Declaration, each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair and free of debris including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management as determined by the Architectural Review Board. In the event an Owner of any Lot in the Tract shall fail to maintain the premises and the improvements situated thereon, as provided herein, the Corporation, after notice to the Owner as provided by the By-Laws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot.

21. Easements.

(a) **Flat Easements.** In addition to such easements as are created elsewhere in this Declaration or in a Supplemental Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, landscape easements, lake access easements, community area access

easements, pathway easements and nonaccess easements, either separately or in any combination thereof, as shown on the Plans, which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, public utility companies and governmental agencies as follows:

(i) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Prairie View and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Prairie View for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements (UE) are created for the use of Declarant, the Corporation and all public or municipal utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements (EWE) are created for the use by Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of the Entry Ways.

(v) Landscape Easements (LE) are created for the use by Declarant, the Architectural Review Board and the

Corporation for the planting and maintenance of trees, shrubs and other plantings.

(vi) Lake Access Easements (LAE) are created for the use of Declarant, the Corporation, the Drainage Board and the City of Council for the purpose of gaining access to the Lake and the Ponds in the course of maintenance, repair or replacement of any thereof.

(vii) Community Area Access Easements (CAE) are created for the use of Declarant and the Corporation for the purpose of gaining access to the Parks and the Commons in the course of maintenance, repair or replacement thereof and for the use of Owners for the purpose of gaining access to such Community Area to enjoy the use thereof to the extent authorized herein.

(viii) Pathway Easements (PE) are created for the installation by Declarant, the maintenance by the Corporation and the use by the Owners of the Paths and Path Lights.

(ix) Non-Access Easements (NAE) are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County, but a paved driveway necessary to provide access to a Lot from a public street or Private Drive and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on

the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section except as proposed and approved by Declarant prior to the conveyance of the first Lot in a Section to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways, Paths, Lake Access Easements and Community Area Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways, walkways, Paths, Lake Access Easements or Community Area Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in a Section, Declarant reserves a blanket easement and right on, over and under the ground within that Section to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any

gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.

22. Use of Lots During Development.

(a) By Declarant. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors, or any Designated Builder, may maintain during the period of construction and sale of Lots and Residences in the Tract or the Development Area, upon such portion thereof as is owned or leased by Declarant or any Designated Builder, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices. Declarant specifically reserves the right to maintain a sales office in, and make other use of, the Community Center during the period that it is engaged in the sale of Lots in Prairie View.

(b) By Builders. Notwithstanding any provisions to the contrary contained herein, a builder who has constructed a Residence in Prairie View may, with the prior consent of the Board of Directors, use such Residence as a "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Directors for such reasonable period as the Board of Directors may specify. With the approval of Declarant, Lots adjacent to or in proximity to such model home may be used for parking by visitors to such model home.

23. Enforcement. The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declarations, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide

by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

24. **Limitations on Rights of the Corporation.** Prior to the Applicable Date, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

25. **Approval by Declarant.** Notwithstanding any other provisions hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant: the addition of real estate to the Tract; dedication or transfer of the Community Area; mergers and consolidations of Sections within the Tract or of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration and any Supplemental Declaration; and changes in the basis for assessment or the amount, use and time of payment of the Community Area Initial Assessment.

26. **Mortgages.**

(a) **Notice to Corporation.** Any Owner who places a first mortgage lien upon his Residence or the Mortgagee shall notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration any Supplemental Declaration, the Articles or the ByLaws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

(b) Notices to Mortgagees. The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph (a) above notice of any of the following:

(i) Any condemnation or casualty loss that affects a material portion of the Community Area;

(ii) Any delinquency in the payment of any Assessment owed by the Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

(iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; and,

(v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Community Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Residence or (C) the purposes for which any Residence or the Community Area are restricted.

(c) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.

(d) Financial Statements. Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

(e) Payments by Mortgagees. Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the

Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

27. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required by Paragraph 25, (ii) Declarant.

(b) By Declarant. Declarant hereby reserves the right prior to the Applicable Date unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 21(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

28. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

29. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2027, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

30. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

31. Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot or erosion of a Lot. Such drainage and erosion control shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with the erosion of or drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

32. Special Provisions Applicable to the Applegate Parcel. The owner of the Applegate Parcel may, at any time, elect to have the Applegate Parcel annexed to the Tract. Such annexation shall be effected by such owner filing of record with the Recorder of Hamilton County, Indiana, a declaration of annexation pursuant to which such owner agrees that this Declaration and all applicable Supplemental Declarations shall apply to and be binding upon the Applegate Parcel. Within ten (10) days following recordation of such declaration, the owner of the Applegate Parcel shall deliver a copy thereof to the Secretary of the Corporation and shall pay to the Corporation the Community Area Initial Assessment specified in Paragraph 17(c) of this Declaration. From and after the recordation of such declaration and the payment of such Assessment, the Applegate Parcel shall be deemed a Lot located in Chapman's Claim and shall be subject to the terms and provisions of this Declaration and all applicable Supplemental Declarations. The improvements existing on the Applegate Parcel on the date of annexation shall be deemed a "Residence" in compliance with the terms and provisions of this Declaration and all applicable Supplemental Declarations, but any subsequent alteration, repair, replacement or modification thereof shall be subject to the Restrictions.

33. Compliance with the Soil Erosion Control Plan.

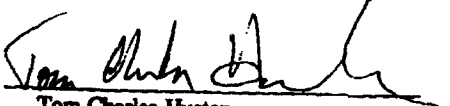
(a) The Plan. Declarant has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15, Storm Water Run-Off Associated with Construction Activity. In connection with any construction activity on a Lot by an Owner, its contractor or the subcontractors of either, Owner shall take or cause to be taken all erosion control measures contained in such plan as the plan applies to "land disturbing activity" undertaken on a Lot and shall comply with the

terms of Declarant's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

(b) **Indemnity.** The Owner of each Lot shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or be connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

BDC/CARDINAL ASSOCIATES, L.P.

By 
Tom Charles Huston
Assistant General Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Assistant General Manager of BDC/Cardinal Associates, L.P., an Indiana limited partnership, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for and on behalf of said partnership.

WITNESS my hand and Notarial Seal this 5 day of February, 1997.

Marie M. Urick
Notary Public Residing in Hamilton County

My Commission Expires:

May 24, 1999

Marie M. Urick
(printed signature)



This instrument prepared by Tom Charles Huston, Attorney at Law, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204.

INDIAN TCR 15806

DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT A

DESCRIPTION OF DEVELOPMENT AREA

EXHIBIT A

Land Description
(Overall based on survey)

Part of the Northeast Quarter of Section 27 and part of the Northwest and Southwest Quarters of Section 26 of Township 18 North, Range 4 East of the Second Principal Meridian, Clay Township, in Hamilton County, Indiana, described as follows:

Beginning at a brass plug at the southeast corner of said northeast quarter, thence South 89 degrees 59 minutes 50 minutes West (assumed bearing) along the south line of said northeast quarter a distance of 1090.70 feet to a railroad spike at the southwest corner of the land tract described in Deed Record 104, page 209 recorded in the Hamilton County Recorder's Office; thence North 00 degrees 04 minutes 25 seconds East through a stone along the west line of said land tract a distance of 2646.77 feet to a 5/8" diameter rebar with yellow cap on the north line of said northeast quarter; thence South 89 degrees 56 minutes 39 seconds East along said north quarter line a distance of 1090.75 feet to a capped rebar at the northwest corner of the northwest quarter of said Section 26; thence South 89 degrees 37 minutes 45 seconds East along the north line of said northwest quarter through a capped rebar a distance of 1246.70 feet to the west low water line of White River; thence southeasterly along the meandering of said river (the following eight courses are calculated lines and are for mathematical closure, the actual boundary being along the west low water line),

- 1) South 20 degrees 35 minutes 24 seconds West a distance of 345.78 feet;
- 2) South 05 degrees 19 minutes 26 seconds West a distance of 275.94 feet;
- 3) South 01 degrees 25 minutes 22 seconds East a distance of 178.11 feet;
- 4) South 06 degrees 56 minutes 58 seconds East a distance of 147.86 feet;
- 5) South 12 degrees 05 minutes 51 seconds East a distance of 234.71 feet;
- 6) South 24 degrees 33 minutes 22 seconds East a distance of 212.18 feet;
- 7) South 50 degrees 45 minutes 00 seconds East a distance of 375.00 feet;
- 8) South 71 degrees 45 minutes 00 seconds East a distance of 570.00 feet;

thence South 36 degrees 35 minutes 17 seconds West a distance of 74.60 feet; thence North 72 degrees 05 minutes 51 seconds West 31.67 feet; thence South 36 degrees 35 minutes 17 seconds West a distance of 90.00 feet; thence South 72 degrees 05 minutes 51 seconds East a distance of 31.67 feet; thence South 36 degrees 35 minutes 17 seconds West a distance of 872.10 feet; thence South 00 degrees 11 minutes 20 seconds West a distance of 24.01; thence South 89 degrees 48 minutes 40 seconds East parallel with the south line of said northwest quarter section a distance of 24.76 feet; thence South 00 degrees 11 minutes 20 seconds West a distance of 24.50 feet to said south quarter line; thence South 89 degrees 48 minutes 40 seconds East along said south quarter line a distance of 138.07 feet to a point (distant 1639.06 feet South 89 degrees 48 minutes 40 seconds East from the southwest corner of said northwest quarter, as measured along the south line thereof); thence South 00 degrees 00 minutes 18 seconds East a distance of 1776.78 feet to a point, (distant 845.41 feet North 00 degrees 00 minutes 18 seconds West

from a stone with cut "X"); thence North 89 degrees 50 minutes 56 seconds West a distance of 1430.21 feet to a capped rebar; thence North 00 degrees 02 minutes 46 seconds West along the east line of the land tract described in Instrument 86-8941 a distance of 149.15 feet to a capped rebar on the northeast corner of said land tract; thence South 89 degrees 57 minutes 14 seconds West along the north line of said land tract and along the north line of the land tract described in Deed Record 179, page 38, a distance of 207.58 feet to a railroad spike on the west line of the southwest quarter of said Section 26; thence North 00 degrees 02 minutes 46 seconds West along said west line a distance of 1629.42 feet to the Point of Beginning. Containing 218.794 acres, more or less.

Except,

Part of the Southwest Quarter of Section 26 of Township 18 North, Range 4 East of the Second Principal Meridian, Clay Township, in Hamilton County, Indiana, described as follows:

Commencing at a brass plug at the northwest corner of said southwest quarter, thence South 89 degrees 48 minutes 40 seconds East (assumed bearing) along the north line of said southwest quarter a distance of 295.12 feet to the Point of Beginning; thence South 00 degrees 02 minutes 46 seconds East parallel with the west line of said southwest quarter a distance of 212.00 feet; thence South 89 degrees 48 minutes 40 seconds East parallel with said north quarter line a distance of 440.00 feet; thence North 00 degrees 02 minutes 46 seconds West parallel with said west quarter line a distance of 198.90 feet; thence North 89 degrees 40 minutes 42 seconds West a distance of 88.70 feet; thence North 00 degrees 19 minutes 18 seconds East a distance of 11.84 feet; thence North 89 degrees 48 minutes 40 seconds West parallel with said north quarter line a distance of 135.00 feet; thence North 00 degrees 11 minutes 20 seconds East a distance of 1.06 feet to the north line of said southwest quarter; thence North 89 degrees 48 minutes 40 seconds West along said north quarter line a distance of 216.38 feet to the Point of Beginning. Containing 2.112 acres, more or less.

Above parcel containing after said exception, a total of 216.682 acres, more or less.

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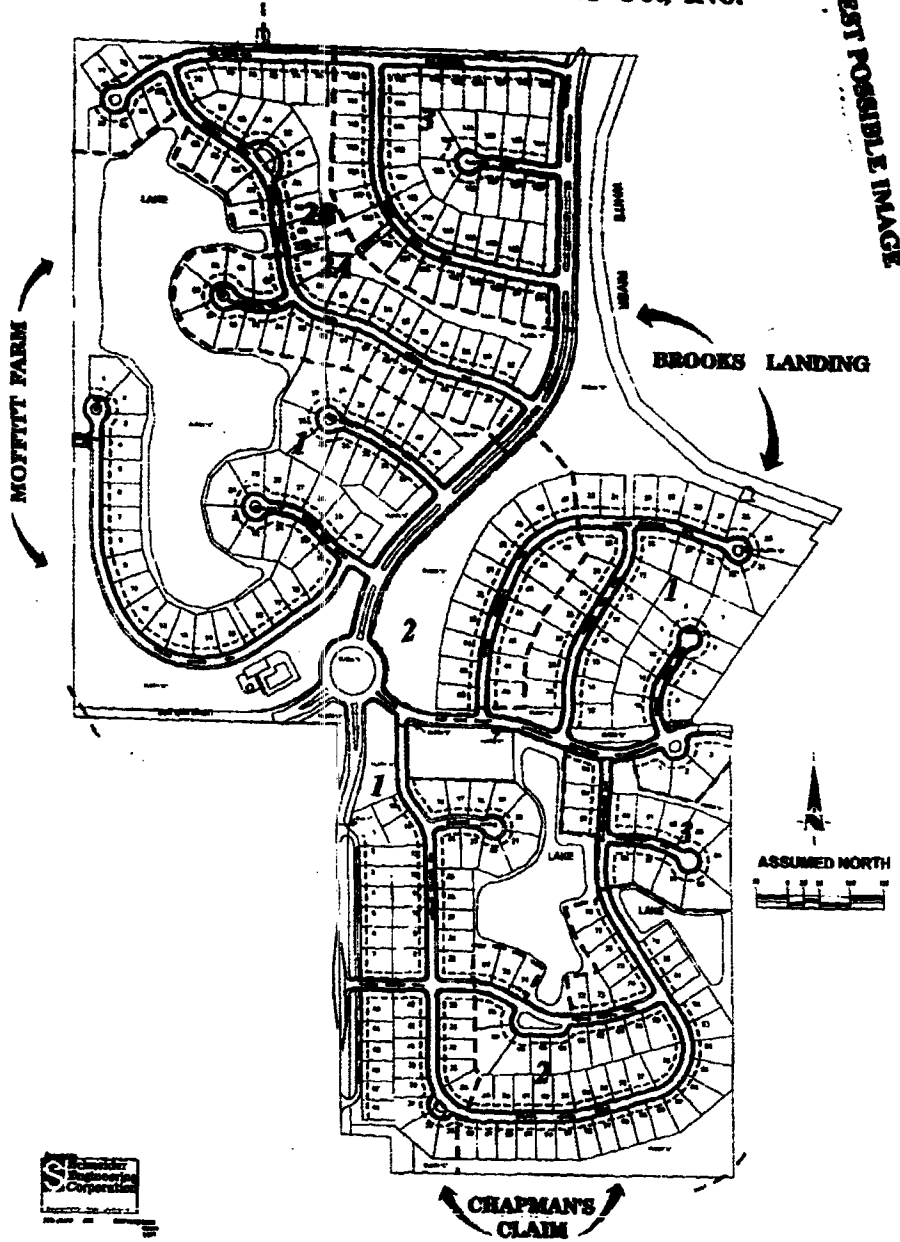
DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT B

GENERAL PLAN OF DEVELOPMENT

PRAIRIE VIEW

BRENWICK DEVELOPMENT CO., INC.



.....

DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT C

DESCRIPTION OF THE TRACT

EXHIBIT C
LAND DESCRIPTION
MOFFITT FARMS
AT PRAIRIE VIEW SECTION 3-A

Part of the Northeast Quarter of Section 27 and part of the Northwest Quarter of Section 26 of Township 18 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana described as follows:

Beginning at the Northwest corner of the Northwest Quarter of Section 26; thence South 89 degrees 37 minutes 45 seconds East (assumed bearing) along the north line of said northwest quarter section 1050.84 feet; thence South 13 degrees 18 minutes 12 seconds West 121.12 feet to a curve having a radius of 555.00 feet, the radius point of which bears South 78 degrees 41 minutes 48 seconds East; thence southerly along said curve an arc distance of 118.78 feet to a point which bears North 88 degrees 57 minutes 27 seconds West from said radius point; thence South 01 degrees 02 minutes 33 seconds West 244.46 feet; thence North 88 degrees 57 minutes 27 seconds West 114.56 feet to a curve having a radius of 325.00 feet, the radius point of which bears North 01 degrees 02 minutes 33 seconds East; thence westerly along said curve an arc distance of 35.13 feet to a point which bears South 07 degrees 14 minutes 08 seconds West from said radius point; thence North 82 degrees 45 minutes 52 seconds West 70.23 feet; thence south 07 degrees 14 minutes 08 seconds West 188.61 feet; thence South 83 degrees 24 minutes 11 seconds East 30.71 feet; thence South 11 degrees 49 minutes 47 seconds West 184.73 feet; thence South 78 degrees 10 minutes 13 seconds East 69.90 feet to a curve having a radius of 275.00 feet, the radius point of which bears North 11 degrees 49 minutes 47 seconds East; thence easterly along said curve an arc distance of 51.77 feet to a point which bears South 01 degrees 02 minutes 33 seconds West from said radius point; thence South 01 degrees 02 minutes 33 seconds West 50.00 feet to a curve having a radius of 325.00 feet, the radius point of which bears North 01 degrees 02 minutes 33 seconds East; thence westerly along said curve an arc distance of 61.19 feet to a point which bears South 11 degrees 49 minutes 47 seconds West from said radius point; thence North 78 degrees 10 minutes 13 seconds West 13.28 feet; thence South 11 degrees 49 minutes 47 seconds West 160.00 feet; thence North 78 degrees 10 minutes 13 seconds West 365.65 feet; thence North 63 degrees 49 minutes 53 seconds West 230.88 feet; thence North 51 degrees 20 minutes 25 seconds West 128.39 feet; thence North 38 degrees 04 minutes 20 seconds West 30.01 feet; thence North 25 degrees 56 minutes 21 seconds West 236.62 feet; thence North 00 degrees 23 minutes 39 seconds East 303.23 feet; thence North 06 degrees 44 minutes 04 seconds East 90.55 feet; thence North 00 degrees 23 minutes 39 seconds East 175.30 feet to the north line of the Northeast Quarter of Section 27; thence South 89 degrees 56 minutes 39 seconds East along said north line 7.73 feet to the Point of Beginning, containing 19.608 acres, more or less.

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DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT D

DESCRIPTION OF THE APPLGATE PARCEL

EXHIBIT D

PERIMETER LAND DESCRIPTION
"APPLEGATE PARCEL"

INST. #10851, BK. 179 PG. 38 & INST. #88-8841 BK. 355, PG. 934

Part of the Southwest Quarter of Section 26, Township 18 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana described as follows:

Commencing at the northwest corner of said southwest quarter; thence South 00 degrees 02 minutes 46 seconds East (Assumed Bearing) along the west line thereof, a distance of 1629.42 feet to the Point of Beginning; thence continuing along said west line South 00 degrees 02 minutes 46 seconds East a distance of 147.58 feet; thence North 89 degrees 57 minutes 14 seconds East a distance of 207.58 feet to the west line of a tract of land described in deed to M.J Kitchen & Natalie Wilkins, Instrument #80-28327; thence North 00 degrees 02 minutes 46 seconds West along said west line a distance of 147.58 feet to the south line of said Kitchen & Wilkins tract; thence South 89 degrees 57 minutes 14 seconds West along said south line a distance of 207.58 feet to the Point of Beginning, containing 0.703 acres, more or less.

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BAD

Chicago Title Insurance Company

Order: moffitfarms

Comment:

Tuesday, January 10, 2006 12:53 PM

<u>State</u>	<u>County</u>	<u>Type</u>	<u>Document Information</u>	<u>Print Description</u>
IN	Hamilton	Document-Year.Do	1997.5550	Complete 11 Page(s)

31.00
11

9709705550

**SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS**

PRAIRIE VIEW

MOFFITT FARM

9709705550
Filed for Record in
HAMILTON COUNTY, INDIANA
HENRY L. CLARK
On 02-14-1997 At 04:05 pm.
DEC COV RES 31.00

This Supplemental Declaration, dated as of the 5th day of February, 1997, by
BDC/CARDINAL ASSOCIATES, L.P., an Indiana limited partnership,

WITNESSES THAT:

WHEREAS, the following facts are true:

- A. Declarant is the owner of the fee simple title to the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- B. This Declaration is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to subdivide the Parcel into Lots upon each of which a Residence may be constructed.

NOW, THEREFORE, Declarant hereby makes this Supplemental Declaration as follows:

- 1. **Definitions.** Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

"Declaration of Covenants and Restrictions" means the Declaration of Covenants and Restrictions of Prairie View dated as of February, 1997 and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 97-0554, as amended from time to time.

"Lot" means a numerically designated subdivided parcel of land depicted on a Plat.

"Moffitt Farm" means the name by which the Parcel shall be known.

"Owner" means any Person, including Declarant, who at any time owns the fee simple title to a Lot.

"Parcel" means that part of the real estate described in Exhibit A which is at any time subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

"Plat" means the secondary plat of a Section within the Parcel.

"Section" means that part of the Parcel which is depicted on a Plat.

"Tract" means the real estate, including all or any part of the Parcel, that is subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

2. **Declaration.** Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions, the Parcel shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. **Land Use.** Lots may be used only for residential purposes as provided in the Declaration of Covenants and Restrictions. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of houses in a Section than the number of original Lots shown on a Plat of such Section.

4. **Construction of Residences.**

(a) **Lot Development Plans.** Except to the extent such requirement is waived by Declarant, prior to commencement of any construction on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board in accordance with the requirements of Paragraph 18 of the Declaration of Covenants and Restrictions. Each Owner shall comply with the terms and provisions of Paragraph 18 of the Declaration of Covenants and Restrictions and the requirements of the Architectural Review Board established pursuant to the authority granted by the Declaration of Covenants and Restrictions.

(b) **Size of Residence.** Except as otherwise provided herein, no Residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of 2,400 square feet if a one-story structure, or 1,500 square feet if a higher structure, but in the case of a building higher than one story, and the total floor area shall not be less than 2,400 square feet.

(c) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Building Location and Finished Floor Elevation. No building may be erected between the building line shown on a Plat and the front Lot line, and no structure or part thereof (exclusive of open areas or terraces, unenclosed porches not more than one story high, fireplace chimney and architectural features that project no more than two (2) feet) may be built or erected nearer than ten (10) feet to any side Lot line or nearer than twenty (20) feet to any rear Lot line; provided, however, if the Zoning Authority requires a greater side yard setback, then such greater requirement shall prevail. The aggregate side yard setback shall be not less than twenty (20) feet. A minimum finished floor elevation, shown on the development plan for each Section, has been established for each Lot and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prime requisite for alternative finished floor elevations.

(e) Driveways. All driveways shall be paved with either concrete or asphalt and maintained dust free.

(f) Yard Lights. If street lights are not installed in the Parcel, then each Owner or his builder shall install and maintain in operable condition either (i) a pole light on the Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof or (ii) two (2) carriage lights on the front of the Residence of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a wattage approved by Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day.

(g) Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a Residence such that they are completely concealed from public view.

(h) Construction and Landscaping. All construction upon, landscaping of and other improvement to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural

Review Board. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence if such completion occurs between April 1 and October 15; otherwise prior to May 1. Unless a delay is caused by strikes, war, court injunction or acts of God, construction of a residence on a Lot shall be completed within one (1) year after the date of commencement of the building process.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Residence upon the Lot within the time period specified herein. For the purposes of this subparagraph (h), construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway, landscaping and yard light) has been completed in conformity with the Lot Development Plan.

(i) **Mailboxes.** All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

(j) **Septic Systems.** No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by the City of Carmel or a successor public agency or public utility) shall be installed or maintained on any Lot.

(k) **Water Systems.** No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot as long as the well does not adversely affect the normal pool level of a Lake or Pond.

(l) **Drainage.** In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such

Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Parcel may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Parcel will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(m) Accessory Buildings. No mini-barns, storage shed or other accessory building or structure other than gazebos shall be permitted on any Lot.

(n) Pools. No above ground swimming pool, other than a children's wading pool, shall be permitted on any Lot.

(o) Basketball Goals. No basketball goal shall be placed or maintained in the front driveway of a Lot or within the right-of-way of any street. Unless the Architectural Review Board establishes a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material such as fiberglass or Lexan and attached to a black pole or similar type of post. The location of a basketball goal on the Lot is subject to approval of the Architectural Review Board if it would be visible from a public right-of-way adjoining the Lot.

5. Maintenance of Lots

(a) Vehicle Parking. No recreational vehicle, motor home, truck which exceeds 7 ton in weight, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of Prairie View or the Parcel and the sale of Lots therein, such signs as may be located on the Community Area and such signs as may, with the consent of Declarant, be displayed by a Designated Builder to advertise the property during construction and sale of Residences and the maintenance of model homes, no

sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

(c) Fencing. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is located on a Landscape Easement or is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No chain link fence shall be erected upon a Lot. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions with respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of any Lake or Pond. All fences shall be kept in good repair. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash, rubbish, garbage or other waste

shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) **Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) **Outside Burning.** No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) **Antennas and Receivers.** No satellite receiver, down-link or antenna which is visible from a public way or from any other Lot, and no satellite dish greater than eighteen (18) inches in diameter shall be permitted on any Lot without the prior written consent of the Architectural Review Board. Unless consent thereto is granted by a majority of the Owners, the Architectural Review Board shall not give its consent to the installation of any exterior television antenna if television reception is available from underground cable connections serving the Lot, nor shall it give its consent to the installation of any other exterior antenna unless all Owners of Lots within 200 feet of the Lot upon which the proposed antenna would be erected consent in writing to the installation thereof.

(j) **Exterior Lights.** No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(k) **Electric Bug Killers.** Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(l) **Air Conditioners.** No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Residence or garage) if the same would be visible from a public way, a Community Area or any other Lot; provided, however, that this Restriction shall not apply to central air conditioning units.

6. **General Community Rules.** Each Lot shall be subject to the guidelines, rules, regulations and procedures adopted by the Architectural Review Board pursuant to Paragraph 20(a)(iii) of the Declaration of Covenants and Restrictions, and each Owner of a Lot shall at all times comply therewith.

7. **Assessments.** The Board of Directors may make Assessments to cover any costs incurred in enforcing these covenants or in undertaking any maintenance or other activity that is the responsibility of the Owner of a Lot hereunder but which such Owner has not undertaken as required hereunder. Any such Assessment shall be assessed only against those Owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

8. **Enforcement.** The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural Review Board, the Owners of the Lots in the Parcel, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation or the Architectural Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

9. **Severability.** Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

10. **Non-Liability of Declarant.** Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

11. **General Provisions.** This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 27 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 27(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Lots in the Parcel (based on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Lots in the Parcel (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2027, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority of the then Owners of Lots in the Parcel it is agreed that these Restrictions shall terminate in whole or in part.

IN WITNESS WHEREOF, this Supplemental Declaration has been executed as of the date first above written.

BDC/CARDINAL ASSOCIATES, L.P.

By Tom Charles Huston
Tom Charles Huston
Assistant General Manager

STATE OF INDIANA)
COUNTY OF HAMILTON) SS:

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Assistant General Manager of BDC/Cardinal Associates, L.P., an Indiana limited partnership, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 6th day of February, 1997.

My Commission Expires:

May 24, 1999

Marie M. Urick
Notary Public Residing in Hamilton County
Marie M. Urick
(printed signature)

This instrument prepared by Tom Charles Huston, Attorney at Law, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204.

BDON TCM 15692

EXHIBIT A
LAND DESCRIPTION
(Moffitt Farm at Prairie View - All Sections)

Part of the Northeast Quarter of Section 27 and part of the Northwest and Southwest Quarter of Section 26 all in Township 18 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana being described as follows:

Beginning at the Southeast corner of said Northeast Quarter of Section 27; thence on an assumed bearing of South 89 degrees 59 minutes 50 seconds West along the south line of said southeast quarter section a distance of 1090.70 feet; thence North 00 degrees 04 minutes 25 seconds East a distance of 2646.77 feet to the north line of said Northeast Quarter; thence South 89 degrees 56 minutes 39 seconds East along said north line a distance of 1090.75 feet to the northeast corner of the Northwest Quarter of Section 26; thence South 89 degrees 37 minutes 45 seconds East along the north line thereof a distance of 1060.84 feet; thence South 13 degrees 18 minutes 12 seconds West 121.12 feet to a curve having a radius of 555.00 feet, the radius point of which bears South 76 degrees 41 minutes 48 seconds east; thence southerly along said curve an arc distance of 118.76 feet to a point which bears North 88 degrees 57 minutes 27 seconds West; thence South 01 degrees 02 minutes 33 seconds West 817.43 feet a point on a curve having a radius of 645.00 feet, the radius point of which bears North 88 degrees 57 minutes 27 seconds West; thence southerly along said curve an arc distance of 522.07 feet to a point which bears South 42 degrees 34 minutes 54 second East from said radius point; thence South 47 degrees 25 minutes 06 seconds West a distance of 627.25 feet to a curve having a radius of 555.00 feet, the radius point of which bears South 42 degrees 34 minutes 54 seconds East; thence southwesterly along said curve an arc distance of 327.91 feet to a point which bears North 76 degrees 26 minutes 01 seconds West; from said radius point; thence South 13 degrees 33 minutes 59 seconds West a distance of 75.13 feet; to a curve having a radius of 20.00 feet, the radius point of which bears South 76 degrees 26 minutes 01 seconds East; thence southeasterly along said curve an arc distance of 23.16 feet to a point which bears South 37 degrees 13 minutes 19 seconds West from said radius point also being a point of reverse curvature of a curve having a radius of 142.00 feet, the radius point of which bears South 37 degrees 13 minutes 19 seconds West; thence southeasterly along said curve an arc distance of 187.74 feet to a point which bears South 67 degrees 01 minutes 33 seconds East from said radius point also being a point of reverse curvature of a curve having a radius of 21.00 feet, the radius point of which bears South 67 degrees 01 minutes 33 seconds East; thence southeasterly along said curve an arc distance of 26.96 feet to a point which bears South 39 degrees 25 minutes 08 seconds West from said radius point also being a point of compound curvature of a curve having a radius of 375.00 feet, the radius point of which bears North 39 degrees 25 minutes 08 seconds East; thence southeasterly along said curve an arc distance of 70.18 feet to a point which bears South 28 degrees 41 minutes 48 seconds West from said radius point; thence South 28 degrees 41 minutes 48 seconds West a distance of 50.00 feet to a curve having a radius of 425.00 feet, the radius point of which bears South 28 degrees 41 minutes 48 seconds East; thence northwesterly along said curve an arc distance of 79.45 feet to a point which bears South 39 degrees 24 minutes 29 seconds West from said radius point also being a point of reverse curvature of a curve having a radius of 21.00 feet, the radius point of which bears South 39 degrees 24 minutes 29 seconds West; thence westerly along said curve an arc distance of 26.99 feet to a point which bears North 34 degrees 14 minutes 30 seconds West from said radius point also being a point of reverse curvature of a curve having a radius of 142.00 feet, the radius point of which bears North 34 degrees 14 minutes 30 seconds West; thence southwesterly along said curve an arc distance of 24.19 feet to a point which bears South 24 degrees 28 minutes 56

seconds East from said radius point also being a point of reverse curvature of a curve having a radius of 20.00 feet, the radius point of which bears South 24 degrees 28 minutes 56 seconds East; thence southwesterly along said curve an arc distance of 23.83 feet to a point which bears South 87 degrees 15 minutes 22 seconds West from said radius point; thence South 02 degrees 44 minutes 38 seconds East a distance of 92.95 feet to a curve having a radius of 640.00 feet, the radius point of which bears South 87 degrees 15 minutes 22 seconds West; thence southwesterly along said curve an arc distance of 227.32 feet to a point which bears South 07 degrees 25 minutes 54 seconds West from said radius point; thence South 17 degrees 08 minutes 54 seconds West a distance of 72.25 feet to a curve having a radius of 500.00 feet, the radius point of which bears South 72 degrees 09 minutes 50 seconds East; thence southwesterly along said curve an arc distance of 84.01 feet to a point which bears North 80 degrees 45 minutes 34 seconds West from said radius point; thence South 89 degrees 57 minutes 14 seconds West a distance of 47.34 feet to the west line of the Southwest Quarter of Section 26; thence North 00 degrees 02 minutes 46 seconds West along said west line a distance of 402.88 feet to the Point of Beginning, containing 109.88 acres, more or less.

J:\17069\DOCS\ALLMOFF.WPD

Feb. 3, 1997 BD

Chicago Title Insurance Company

Order: moffitfarms1

Comment:

Tuesday, January 10, 2006 12:55 PM

<u>State</u>	<u>County</u>	<u>Type</u>	<u>Document Information</u>	<u>Print Description</u>
IN	Hamilton	Document-Year.Do	1997.31763	Complete 3 Page(s)

1600
②
100 more

Instrument
9709731763

**AMENDMENT TO SUPPLEMENTAL DECLARATION
OF COVENANTS AND RESTRICTIONS AND NOTATION ON PLATS
PRAIRIE VIEW**

MOFFITT FARM

This Amendment to Supplemental Declaration of Covenants and Restrictions and Notation on Plats, dated as of the 13th day of August, 1997, by BDC/CARDINAL ASSOCIATES, L.P., an Indiana limited partnership,

WITNESSES THAT:

9709731763
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 08-04-1997 At 03:08 pm.
DEC COV RES 16.00

WHEREAS, the following facts are true:

A. Terms used but not defined herein shall have the meaning given such terms in that certain Supplemental Declaration of Covenants and Restrictions for Moffitt Farm, in Prairie View, dated February 5, 1997 and recorded on February 14, 1997 in the Office of the Recorder of Hamilton County, Indiana as Instrument No. 9709705550 (the "Supplemental Declaration").

B. This Amendment is made to pursuant to the provisions of Paragraph 27 of the Declaration of Covenants and Restrictions.

C. A Plat for Section 3A of Moffitt Farm was recorded on February 14, 1997, as Instrument No., 9705551, in Plat Cabinet No. 1, Slide No. 759, in the Office of the Recorder of Hamilton County, Indiana (the "3A Plat").

D. A Plat for Section 3B of Moffitt Farm was recorded on July 16, 1997, as Instrument No., 9728754, in Plat Cabinet No. 1, Slide No. 794, in the Office of the Recorder of Hamilton County, Indiana (the "3B Plat").

E. On July 28, 1997, the Board of Zoning Appeals of the City of Carmel granted (i) in case V-45-97, a variance of Section 33.4.05 of the Carmel/Clay Zoning Ordinance (the "Ordinance") to reduce the required minimum aggregate side yard for Lots (as defined in the Supplemental Declaration) in Moffitt Farm from twenty (20) feet to fifteen (15) feet, and (ii) in case V-46-97, a variance of Section 33.4.05 of the Ordinance to reduce the required minimum side yard for Lots in Moffitt Farm from ten (10) feet to seven and one-half (7.5) feet.

F. This Amendment is being made to conform the provisions of the Supplemental Declaration and each of the above-referenced Plats to the development standards as established by said variances.

NOW, THEREFORE, the Declarant hereby amends the Supplemental Declaration, the 3A Plat and the 3B Plat as follows:

1. Paragraph 4(d) of the Supplemental Declaration is hereby amended in the following respects:

(i) The phrase "ten (10) feet to any side Lot line" in the sixth line thereof is hereby deleted and the phrase "seven and one-half (7.5) feet to any side Lot line" is inserted in lieu thereof.

(ii) The aggregate side yard setback shall be fifteen (15), not twenty (20), feet.

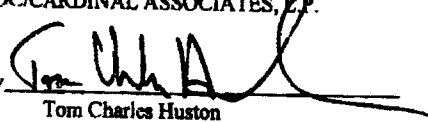
2. The side yard setback lines as depicted on the 3A Plat and the 3B Plat shall be deemed reduced from ten (10) feet to any side Lot line to seven and one-half (7.5) feet to any side Lot line.

3. Except as amended hereby, the Supplemental Declaration, the 3A Plat and the 3B Plat shall remain in full force and effect without amendment.

IN WITNESS WHEREOF, this Supplemental Declaration of Covenants and Restrictions and Notation on Plats has been executed as of the date first above written.

BDC/CARDINAL ASSOCIATES, INC.

By



Tom Charles Huston
Assistant General Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Assistant General Manager of BDC/Cardinal Associates, L.P., an Indiana limited partnership, who acknowledged execution of the foregoing Amendment to Supplemental Declaration of Covenants and Restrictions and Notation on Plats for and on behalf of said limited partnership.

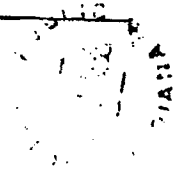
WITNESS my hand and Notarial Seal this 1st day of August, 1997.

Marie M. Urick
Notary Public Residing in Hendricks County

My Commission Expires:

May 24, 1999

Marie M. Urick
(printed signature)



This instrument prepared by David R. Warshauer, Attorney at Law, 12722 Hamilton Crossing Boulevard, Carmel, Indiana 46032.

