

PREPARED BY AND MAIL TO: *Emp pd 23.0*  
JOHN P. MARTIN  
HUCK, BJUMA, MARTIN, CHARLTON &  
BRADSHAW, P.C.  
1755 S. Naperville Road #200  
Wheaton, IL 60187

FILED FOR RECORD  
KANE COUNTY, ILL.

96K008590

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
IN PRAIRIE TRAIL SUBDIVISION,  
BATAVIA, ILLINOIS**

*Linda M. Rivera*  
RECORDER

THIS DECLARATION made this 5<sup>TH</sup> day of January, 1997 by  
COLE-TAYLOR BANK, NOT PERSONALLY, BUT AS TRUSTEE UNDER TRUST  
AGREEMENT DATED SEPTEMBER 1, 1995 AND KNOWN AS TRUST NO. 952088  
("Declarant");

RECITALS:

A: Declarant is the owner of record of the property legally described on Exhibit A,  
which is attached hereto and incorporated herein (the "Property"); and

B: Declarant and Beechen and Dill Builders, Inc. (the "Developer") desire to  
subdivide the Property as PRAIRIE TRAIL SUBDIVISION, as set forth on Exhibit "B"  
attached hereto and incorporated herein (the "Development"); and

C: Declarant, is desirous of submitting the Property to the terms of this Declaration;  
and

D: The Property will be subdivided under the name Prairie Trail Subdivision, the  
platting of which will be in two or more phases; and

E: It is Declarant's intention that the entirety of the Property be submitted to this  
Declaration, effective as to each phase upon its recordation; and

F: The purposes of this Declaration are to keep and maintain the Development as  
desirable, attractive, uniform and suitable in architectural design and use, to prevent haphazard  
and inharmonious improvements thereto, to guard against the erection thereon of buildings built  
of improper or unsuitable materials, and to provide for the highest level and quality of  
improvements thereto, as more fully set forth below.

NOW THEREFORE, Declarant declares that the Property is and shall be held,  
transferred, sold conveyed and occupied subject to the covenants, restrictions, easements, charges /

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and liens hereinafter set forth.

1. **RECITALS:** The foregoing recitals are incorporated herein as if fully set forth hereinafter.

2. **BUILDINGS OR STRUCTURES:** No building or structure of any kind whatsoever, other than a residential dwelling and appurtenances thereto, including but not limited to fences, shall be erected, altered, placed or permitted to remain on any lot in the development, except as set forth herein, and no such building or structure shall be put to any use other than for residential purposes. Such residential dwellings shall not exceed two (2) stories in height and shall include an attached garage for not more than three (3) automobiles. All frontload three (3) automobile garages must have a break in the roof by stepping one stall back or forward a minimum of one (1) foot.

3. **OFFENSIVE ACTIVITIES, NUISANCE:** No noxious or offensive trade or activity shall be carried on upon any lot in the Development nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No installation of exterior television or radio antennas, poles, wires, rods, satellite dishes exceeding 18 inches in diameter or other devices in connection with the reception or transmission of any television, radio or other electrical signal shall be permitted.

4. **EXISTING STRUCTURES:** No existing structure shall be moved onto any lot in the Development from an off-site location.

5. **PARKING VEHICLES:** No type of vehicle except conventional passenger automobiles shall be parked outside any garage on any lot in the Development; provided, however, that commercial vehicles may be so parked when same are engaged in delivery or service to any residence located in the Development. Further, no aircraft, recreational vehicle, commercial vehicle, boat or snowmobile shall be stored, either temporarily or permanently, outside any garage or otherwise in the open on any lot in the Development.

6. **LANDSCAPING:** Each owner of lots 19, 30, 31, 32 and 33 shall retain and maintain the hedgerow on the Southerly line of those lots. The owners of all lots shall be responsible to provide parkway trees in accordance with City ordinances. The owners of lots adjacent to Raddant Road shall maintain landscaping in the rear yard easements in accordance with landscaping plans on file with the City of Batavia.

7. **SQUARE FOOTAGE REQUIREMENTS:** All two (2)-story houses shall have a minimum of 2,200 square feet with 1,200 square feet on the first floor; all multi-level houses other than two (2)-story shall have a minimum of 2,200 square feet; and all one (1)-story houses shall have a minimum of 1,900 square feet. The term "square feet" is defined as the sum of the horizontal areas of the several floors of the building, exclusive of basements, breezeways,

garages, carports and open terraces. All buildings in the Development shall be constructed according to applicable building codes, regulations and ordinances promulgated by the City of Batavia; provided, however, that if any of the standards set forth herein or which may be hereinafter imposed by amendment to this document are more restrictive than said codes, regulations and ordinances, the more restrictive standards shall govern.

8. **COMMENCEMENT OF CONSTRUCTION:** All purchasers of a lot or lots in Prairie Trail Subdivision shall commence construction thereon within twenty-four (24) months from the date of the closing of said purchase. Once commenced, such construction shall be completed within twelve (12) months from the date of commencement. Site landscaping (including, but not limited to, the parkway adjoining the street at the front or side of each lot which shall be sodded and planted with any required parkway trees) must be completed within six (6) months of the completion of the structure built thereon.

9. **ARCHITECTURAL REVIEW:** Prior to initial construction, all building plans shall be submitted for approval to the Architectural Review Committee, which shall not unreasonably withhold such approval. Such Committee shall review submitted plans and reply to the submitting party no later than fifteen (15) days after submittal. The Committee shall consist of the Developer and its appointees, or successors or nominees. All major construction, must be undertaken and completed only by qualified Builders to insure the quality of workmanship on said buildings so constructed conforms to professional standards.

No construction or installation of any sort including, but not limited to, residential construction, fences, walls or hedges shall be commenced, erected or maintained, nor shall any addition or alteration thereto be made, except interior alterations, until the construction plans and specifications, showing the nature, kind, shape, heights, materials, color scheme, location on lot, the grading plan and the landscape plan of the lot they are to be built upon, and shall have been submitted to and approved in writing by the Architectural Review Committee. The Architectural Review Committee shall have the right to refuse to approve any such construction plans which are not suitable or desirable in the opinion of the Committee for aesthetic or other reasons.

10. **EXTERIOR APPEARANCE:** All residential structures must have brick, stone or stucco covering at least two-thirds (2/3rds) of the front exterior of the first floor. Two-story houses need not have brick or stone on the second story. All aluminum siding shall be 4" or 5" embossed and .024 gauge. All roofs must be of cedar shake, or slate or tile or laminated (textured) 240# asphalt single material. A minimum roof pitch of 7-12 is required.

11. **FARM ANIMALS; DOMESTIC ANIMALS:** No farm animals or stock of any sort shall be kept or housed on any lot in the Development. This restriction shall not apply to the keeping or housing of domestic birds, dogs, cats, fish or other domestic pets.

12. **SITE GRADING:** The owner of any lot in the Development on which any site grading activity is planned shall be solely responsible for ensuring that such grading activity takes

place according to the master grading plan submitted by the Developer to and approved by the City of Batavia. Neither the Declarant nor the Developer can be held responsible for any failure of an individual owner to adhere to such master grading plan. It is strongly recommended that, prior to commencement of construction on any lot, the owner of said lot accord due caution and regard to the siting of the proposed dwelling unit, its attached garage and the driveway, and the elevation of the top of foundation of said dwelling unit, in connection with and as the siting of said structures may affect the grading of said lot.

13. **"FOR SALE" SIGNS:** The Developer, its successors and assigns and other professional builders, shall be allowed to erect and maintain "For Sale" signs on any lot in the Development until said lot, and any dwelling thereon, is sold to any person other than the Developer or the Builders. After such sale to such other party, all "For Sale" or "For Rent" signs or any other advertising or display shall be prohibited on said lot with exception of standard step-down signs customarily used in residential real estate sales. Nothing, however, in this paragraph shall be construed to restrict the erection of any signs by Developer or other commercial builders designed to advertise generally the name of the Development, the Developer or other commercial builders involved or to call attention to model homes as set forth in paragraph 16 below, etc.; provided that such signs have been approved by the City.

14. **FENCES:** No fence or other non-residential structure shall be erected or maintained on any lot in the Development which shall unreasonably restrict or block the view from an adjoining lot in the Development. Said fences shall be no higher than four (4) feet, except for swimming pool enclosures, which shall be governed by local ordinances. **No cyclone or stockade fences are permitted, except at the reasonable discretion of the Architectural Review Committee.** Fences shall be allowed only in the rear yard of any lot. No fences of any description are permitted within the easements adjacent to Raddant Road.

15. **VARIATION AND DEPARTURES:** Declarant hereby reserves the right to enter into agreements with the owner or owners of any lot or lots, without the consent of the owner or owners of other lot or lots, to depart from or vary any and all of the covenants set forth above, provided there are practical difficulties or particular hardships or other good and sufficient reasons evidenced by the owner making the request; any and such departure or variation, which shall be manifested by an agreement in writing, shall not constitute a waiver of any such covenant as to the other lots in the Development, provided that any such departure or variation shall not result in harm or diminution in value of the Development as a whole.

16. **MODEL HOMES:** The Developer and professional builders, shall be allowed to construct single-family residences to shall be used as "model homes" to advertise the construction product of the aforementioned entities, with appropriate signage as approved by the City. Plans for all model homes shall be subject to the approval of the Architectural Review Committee.

17. **AMENDMENTS:** This Declaration may be amended by the Declarant until such time as Declarant has conveyed all lots in the Development. Thereafter, this Declaration

may be amended by vote of the majority of the owners of lots in the Development. No amendment shall be effective unless and until a copy of the same signed by the Declarant or, where appropriate, by a majority of the owners of lots in the Development, is filed of record in the Office of the Recorder of Deeds of Kane County, Illinois.

**18. GENERAL PROVISIONS:**

(a) The covenants, conditions and restrictions contained herein and all amendments thereto shall run with the land and be binding upon Declarant and upon all persons claiming by, under and through Declarant until the date which is twenty-five (25) years from the date of execution of this Declaration;

(b) Upon the date referenced in subparagraph 19(a) above, this Declaration and all amendments thereto, shall be automatically extended for successive ten (10)-year periods;

(c) In the event of a default by an owner of a lot other than the Developer, the Developer shall neither be liable nor responsible to any owner of a lot for the enforcement of the covenants and restrictions contained in this Declaration. Each owner of a lot acknowledges that Developer shall not be liable or responsible for Developer's exercise or failure to exercise any right or power of review and approval hereunder, or for Developer's enforcement or non-enforcement of any provision of this Declaration;

(d) In the event that the owner of any lot in the Development shall violate or attempt to violate any of the covenants, conditions and restrictions, controls and limitations contained herein, any owner of any other lot in the Development shall have the right to institute and carry through any proceeding at law or in equity in order to prevent, restrain, enjoin or remove any such violation or attempted violation, or to recover damages based on such violation or attempted violation. In the event of a lawsuit, the losing party shall pay all reasonable attorney's fees and costs incurred by the prevailing party in enforcing the terms and provisions of this Declaration;

(e) Upon acceptance of the Deed, the owner of any lot or lots hereby consents to the establishment of a special service area for the maintenance, repair and reconstruction of the storm detention facilities and entry easement areas located on the property legally described in Exhibit A;

(f) In the event that a court of competent jurisdiction finds any section, part, provision, term or phrase of this Declaration invalid, said invalidity shall not affect the validity or invalidity of the remainder hereof; and

(g) This Declaration shall be effective upon the filing of record of same in the office of the Recorder of Deeds of Kane County, Illinois.

19. Executed and delivered by **COLE-TAYLOR BANK**, not in its individual

capacity, but solely in the capacity herein described, for the purpose of binding the herein described property, and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding that each and all of the undertakings and agreements herein made, are made and intended not as personal undertakings and agreements of the Trustee, or for the purpose of binding the Trustee personally, but executed and delivered by the Trustee solely in the exercise of the powers conferred upon it as such Trustee, and no personal liability or personal relationship is assumed by, or shall at any time be asserted or enforced against said Trustee on account hereof or on account of any undertaking or enforced against said Trustee on account hereof or on account of any undertaking or agreement herein contained, either expressed or implied, all such personal liability, if any, being hereby expressly waived and released by all other parties hereto, and those claiming by, through or under them.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be signed and sealed on the day and year first above written.

COLE-TAYLOR BANK  
as Trustee u/t/a dated September  
1, 1995 a/k/a Trust No. 952088

By: Constance E. Considine  
Its: Vice-President & Trust Officer

ATTEST:

By: [Signature]  
Its: Assistant Trust Officer

Trustee's Exoneration Rider Attached Hereto And Made A Part Hereof

STATE OF ILLINOIS        )  
  )  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County in the State aforesaid, DO  
HEREBY CERTIFY that Constanc eE. Considine, xxx <sup>Land Trust Officer</sup> ~~xxx~~ <sup>President of</sup> ~~xxx~~ <sup>COLE-TAYLOR BANK</sup>  
Kenneth E. Piekut, Trust Officer ~~Secretary~~ <sup>President</sup> of said Bank, who are personally the  
foregoing instrument as such Trust Officer President and person and acknowledged that they  
signed and delivered said instrument as their own free and voluntary act and as the free and voluntary

act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and said Trust Officer and there acknowledged therein set forth; and said Trust Officer and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 5th day of January, 1996.



*Maritza Castillo*  
\_\_\_\_\_  
Notary Public

## GENERAL EXCULPATORY CLAUSE

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Land Trustee on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implies, all such personal liability, if any, being expressly waived and released.

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CONSENT OF MORTGAGE

Cole Taylor Bank ("Bank"), holder of a mortgage (the "Mortgagee") dated as of Oct. 12, 19 95, and recorded in the office of the Recorder of Deeds of Kane County, Illinois, on Oct. 17, 1995, as Document Number 95K062091, hereby consents to the execution and recording of the attached Declaration of Covenants, Conditions and Restrictions and agrees that said Mortgage is subject thereto.

IN WITNESS WHEREOF, said Cole Taylor Bank has caused this consent of Mortgagee to be signed by its duly authorized officers on its behalf in Chicago, Illinois, on this 5th day of January, 19 96.

By: [Signature]  
President

ATTEST:

[Signature]  
Land Trust Officer

STATE OF ILLINOIS )  
 ) SS.  
COUNT OF Cook )

I, the undersigned Notary Public in and for said County and State, do hereby certify that Thomas J. Hennessy Group Sr. Vice President and Constance E. Considine, LTO respectively, of COLE TAYLOR, as such Group Sr. Vice President and LTO, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes herein set forth.

Given under my hand and notarial seal this 5th day of January, 19 96.

[Signature]  
Notary Public  
"OFFICIAL SEAL"  
MARITZA CASTILLO  
NOTARY PUBLIC STATE OF ILLINOIS  
My Commission Expires 10/21/98

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ATTEST:

[Signature]  
Land Trust Officer

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Given under my hand and notarial seal this 5th day of January, 19 96.

[Signature]  
Notary Public  
"OFFICIAL SEAL"  
MARITZA CASTILLO  
NOTARY PUBLIC STATE OF ILLINOIS  
My Commission Expires 10/21/98

EXHIBIT "A"

THAT PART OF THE SOUTH ½ OF SECTION 26, AND PART OF THE NORTH ½ OF SECTION 35, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST ¼ OF SAID SECTION 35; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID NORTHEAST ¼ 627.0 FEET FOR A POINT OF BEGINNING; THENCE WESTERLY PARALLEL WITH THE ORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 35, 513.50 FEET; NORTHERLY ALONG A LINE FORMING AN ANGLE OF 89 DEGREES 14 MINUTES WITH THE LAST DESCRIBED COURSE (MEASURED COUNTER-CLOCKWISE THEREFROM) 361 FEET; THENCE NORTHERLY ALONG A LINE FORMING AN ANGLE OF 181 DEGREES 07 MINUTES WITH THE LAST DESCRIBED COURSE (MEASURED COUNTER-CLOCKWISE THEREFROM) 420.90 FEET; THENCE NORTHERLY ALONG A LINE FORMING AN ANGLE OF 177 DEGREES 51 MINUTES 49 SECONDS WITH THE LAST DESCRIBED COURSE (MEASURED COUNTER-CLOCKWISE THEREFROM) 419.10 FEET; THENCE EASTERLY ALONG A LINE FORMING AN ANGLE 91 DEGREES 46 MINUTES 03 SECONDS WITH THE LAST DESCRIBED COURSE (MEASURED COUNTER-CLOCKWISE THEREFROM) 514.41 FEET TO THE POINT OF INTERSECTION OF THE WEST LINE OF THE SOUTHEAST ¼ OF SAID SECTION 26 WITH THE SOUTH LINE EXTENDED WESTERLY OF WESTERN VIEW SUBDIVISION, TOWNSHIP OF BATAVIA, KANE COUNTY, ILLINOIS; THENCE EASTERLY ALONG SAID SOUTH LINE 689.15 FEET TO THE SOUTHEAST CORNER OF SAID SUBDIVISION; THENCE EASTERLY ALONG A LINE FORMING AN ANGLE OF 88 DEGREES 34 MINUTES WITH THE EAST LINE OF SAID SUBDIVISION (MEASURED CLOCKWISE THEREFROM) 673.90 FEET; THENCE SOUTHERLY ALONG A LINE FORMING AN ANGLE OF 88 DEGREES 24 MINUTES 34 SECONDS WITH THE LAST DESCRIBED COURSE (MEASURED COUNTER-CLOCKWISE THEREFROM) 570.31 FEET TO THE SOUTH LINE OF SAID SOUTHEAST ¼; THENCE SOUTHERLY ALONG A LINE FORMING AN ANGLE 100 DEGREES 08 MINUTES 36 SECONDS WITH THE LAST DESCRIBED COURSE (MEASURED COUNTER-CLOCKWISE THEREFORE) 627.0 FEET TO A LINE DRAWN PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST ¼ FROM THE POINT OF BEGINNING; THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST ¼ 413.22 FEET TO A POINT THAT IS 250.0 FEET EASTERLY OF THE CENTER LINE OF RADDANT ROAD; THENCE NORTHERLY ALONG A LINE FORMING AN ANGLE OF 88 DEGREES 54 MINUTES 07 SECONDS WITH THE LAST DESCRIBED COURSE (MEASURED COUNTER-CLOCKWISE) PARALLEL WITH SAID CENTER LINE 198.0 FEET; THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST ¼ 220.0 FEET TO A POINT THAT IS 30.0 FEET EASTERLY OF SAID CENTER LINE; THENCE SOUTHERLY PARALLEL WITH SAID CENTER LINE 198.0 FEET TO A LINE DRAWN PARALLEL WITH THE ORTH LINE OF SAID NORTHEAST ¼ FROM THE PINT OF BEGINNING; THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST ¼ 729.73 FEET TO THE POINT OF BEGINNING IN BATAVIA TOWNSHIP, KANE COUNTY, ILLINOIS.