

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
HIGHLANDS PRAIRIE

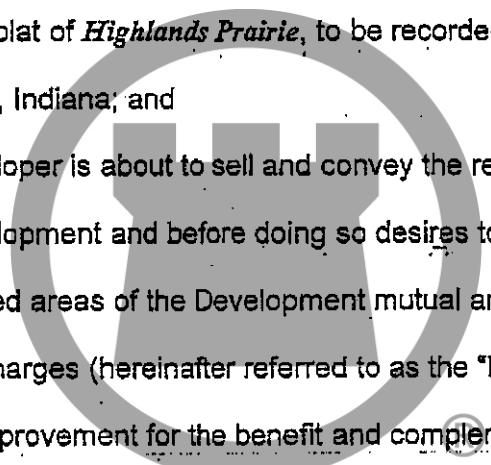
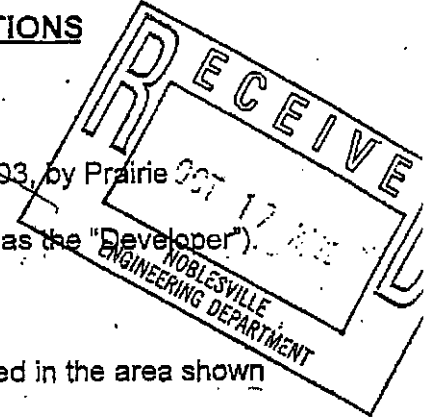
THIS DECLARATION made this 17 day of October, 2003, by Prairie Development, LP, an Indiana Limited Partnership (hereinafter referred to as the "Developer").

WITNESSETH:

WHEREAS, the Developer is the owner of all of the lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided and known as *Highlands Prairie* (hereinafter referred to as the "Development"), and will be more particularly described on the plat of *Highlands Prairie*, to be recorded in the Office of the Recorder of Hamilton County, Indiana; and

WHEREAS, the Developer is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future owners thereof;

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or



equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development. The Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat of the Developer of a particular lot or tract within the Development as shown on Exhibit "A", to exclude any real estate so shown from the Development, or to include additional real estate.

1. **Definitions.** The following are the definitions of the terms as they are used in this Declaration:

A. "Association" shall mean *Highlands Prairie Property Owners' Association, Inc.*, a not-for-profit corporation, the membership and powers of which are more fully described in paragraph 9 of this Declaration.

B. "Common Areas" shall mean any parcel of real estate which the

Developer or Association now or hereafter owns or otherwise holds for the common use and enjoyment of all owners.

C. "Lot" shall mean any parcel of residential real estate, excluding the Common Area described by the plat of the Development which is recorded in the Office of the Recorder of Hamilton County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer by a partner, or the Association by the President or Vice President thereof, and with respect to the Committee, by two members thereof.

President thereof, and with respect to the Committee, by two members thereof.

- E. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of an obligation.

2. **Character of the Development.**

- A. **In General.** Every Lot in the Development, excepting Common Areas, is a residential Lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential Lots except a single-family dwelling house and such outbuildings as are usually accessory to dwelling houses.

- B. **Residential Use of Accessory Outbuildings Prohibited.** No accessory outbuildings shall be erected on any of the residential Lots prior to the erection thereon of a single-family dwelling house, and in no event shall any such accessory outbuilding which may be constructed upon a residential Lot under these Restrictions ever be used as a residence or dwelling house or place for human occupancy.

- C. **Occupancy or Residential Use of Partially Completed Dwelling House Prohibited.** No dwelling house constructed on any of the residential Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of

whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties.

- D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-way, as defined in these restrictions, and also to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

3. Restrictions Concerning Size, Placement and Maintenance of Dwelling Houses and Other Structures.

A. Residential Set-Back Requirements.

- (i) In General. Unless otherwise provided in these Restrictions or on the recorded plat, no dwelling house or above grade structure shall be constructed or placed on any residential Lot in the Development except as provided herein.

- (ii) Definitions. "Side line" means a Lot boundary line that extends from the road on which a Lot abuts to the rear line of said Lot. "Rear line" means the Lot boundary line that is farthest from, and substantially parallel to, the road on which the Lot abuts, except that on corner Lots it may be determined from either abutting road.

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- (iii) Front and Rear Yard. The front, side, and rear yard set-back lines shall be as shown on the recorded Plat of *Highlands Prairie* or as required by the Zoning Ordinance and Subdivision Control Ordinance of the City of Noblesville, Hamilton County, Indiana.
- (iv) Fences. It is the goal of the Developer to keep all fencing and/or screening as harmonious as possible.

All fences must be approved by the Committee as to size, location, height, and composition, before they are installed. Fences shall be no nearer the front of a residence than they are to the rear foundation line of a home, except for decorative fences, Front fences may be placed parallel to the front foundation of a residence only if they do not cause unreasonable visual barriers.

B. Exterior Construction.[®]

- (i) The finished exterior of every building constructed or placed on any Lot in the Development shall be of material other than aluminum, vinyl, tar paper, rollbrick siding or any other similar material.

- (ii) All chimneys and flues must be of masonry construction.

- C. Heating Plants. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. No heat pumps, air conditioning units, or gas meters will be installed on the front of a home.

- D. Garages, Garage Doors, and Driveways. Every home in the Development must have at least a two (2) car garage, attached or detached in unusual situations, and of the same architectural design and material as the home. All driveways must be paved from their point of connection with the garage apron.
- E. Mailboxes. All mailboxes installed at the street to service lots in *Highlands Prairie* shall be a type, color and manufacture specified by the Developer.
- F. Individual Yard Lights Required on Each Lot in the Development. At the time that the owner of the Lot in the Development completes the construction of a home on his Lot, he shall install or cause to have installed one coach light on each side of the garage door of a design approved by the builder or Developer. The design, type and location of the yard light shall be subject to the approval of the Committee which may require, for the purpose of uniformity and appearance, that said yard light be purchased from the Developer for its designee.
- G. Landscaping. Each home shall have a minimum of two (2) street trees planted in the front yard along the Lot's street frontage. All Owners shall be required to place sod in the front yard upon completion of the construction of a dwelling unit on any Lot. For the purposes of this section the front yard shall be defined as that part of the yard which lies between the street right-of-way and the dwelling unit.

- H. Swimming Pools. Only permanent in-ground pools with professional construction will be permitted. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design. The use of plantings/screenings in the vicinity of a pool will be required to soften the visual and sound effect on adjacent properties. No pools shall be constructed in a ravine or drainage way.
- I. Play Equipment. Children's play equipment, such as sandboxes, swing and slide sets, temporary swimming pools having a depth of less than twenty-four inches (24"), playhouses, and tents shall not require approval by the Developer, provided such equipment is not more than six feet (6') high, maintained by the Lot Owner in good repair (including painting), and every reasonable effort has been made by the Lot Owner to screen or shield such equipment from view. Equipment higher than six feet (6') shall require approval by the Committee as to design, location, color, material and use.
- J. Solar Heating Systems. The Committee will carefully review solar heating plans to insure that their use and location have a minimum detrimental effect on adjoining properties. Only closed loop geothermal heating and cooling systems shall be permitted on lots in this development.

- K. Miscellaneous. All exterior lighting shall be directed in such a manner as not to create annoyance to adjacent properties. Lot owners shall keep garage doors closed at all times, except during the times of actual use of the garage facility.
- L. Inspection. The Committee may inspect work being performed to assure compliance with these Restrictions and applicable regulations.
- M. Diligence in Construction. Every building whose construction or placement on any residential Lot in the Development is begun shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.
- N. Prohibition of Used Structure. All structures constructed or placed on any numbered Lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.
- O. Maintenance of Lots and Improvements. The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly; and, specifically, such Owner shall:

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- (i) Mow the Lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds.
- (ii) Remove all debris or rubbish.
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (iv) Cut down and remove dead trees.
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (vi) Within sixty (60) days following completion of a house on a Lot, the Owner shall landscape the Lot, weather permitting.

P. Association's Rights to Performance Certain Maintenance. In the event the Owner of any Lot in the Development shall fail to maintain his Lot and any improvement situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of the Restrictions. The cost therefore to the Association shall be added to and become a part of the annual charge to which said Lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the

Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

4. **General Prohibitions.**

- A. **In General.** No noxious or offensive activities shall be carried on any Lot in the Development, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot in the Development.
- B. **Signs.** No signs or advertisements shall be displayed or placed on any Lot or structures in the Development without the prior written approval of the Committee, except for real estate sales signs.
- C. **Animals.** No animals shall be kept or maintained on any Lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.
- D. **Vehicle Parking.** No campers, trailers, boats or similar vehicles shall be parked on any street or Lot in the Development. No boat or truck, three-quarter (3/4) ton or larger in size, shall be parked for more than two (2) weeks in any calendar year on any Lot in the Development, unless the same shall be parked in such a manner that it is not visible to the occupants of other Lots in the Development, or the users of any street in the Development.

- E. Garbage and Other Refuse. No Owner of a Lot in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot except as may be permitted in subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.
- F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground and be subject to existing environmental regulations. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.
- G. Temporary Structures. No temporary structure of any kind, such as a house, Prairieer, tent, garage or other outbuilding shall be placed or erected on any Lot nor shall any overnight camping be permitted on any Lot.
- H. Ditches and Swales. It shall be the duty of the Owner of every Lot in the Development on which any part of any open storm drainage ditch, ravine, or swale is situated to keep such portion as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for the

installation of such property sized drainage culverts upon each Lot as may be required by local ordinances.

- I. Utility Service. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring. To the greatest extent possible, utility services shall be installed underground and in or adjacent to the right-of-way.
- J. Wells. Water wells shall be installed with the approval of the Committee and the governing public health authorities.
- K. Antenna and Satellite Dishes. Outdoor satellite dishes shall be permitted in the Subdivision; provided, however, that (i) the diameter of the satellite dish shall be no more than twenty-four inches (24"); (ii) only one (1) satellite dish shall be permitted on each Lot; and (iii) the Development Control Committee shall have first determined that the satellite dish is appropriately placed and properly screened in order to preserve property values and maintain a harmonious and compatible relationship among residence units in the Development.

5. Highlands Prairie Development Control Committee.

- A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and

topography and to provide for proper functioning of the storm drainage system for the real estate.

- (i) Generally. No dwelling, building, structure, including outbuildings or improvement of any type or kind shall be constructed or placed on any Lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by three (3) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and type of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall

require. There shall also be submitted, where applicable, the permits or reports required under this Declaration. The following drawings shall be considered minimum for approval study: foundation plan, floor plans, cross-sections, exterior elevations, interior evaluations, electrical drawings, and specifications for all materials to be used both inside and outside the house, building, structure or other improvement.

- (ii) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement when:
- a. The plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions or any rules, regulations or guidelines adopted by the Committee;
 - b. The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, in the sole opinion of the Committee, or
 - c. The proposed improvement, or any part thereof, would be in the opinion of the Committee be contrary to the

interests, welfare or rights of all or any part of other
Owners.

(iii) Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted

material shall be retained by the Committee for its permanent files. All

notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, 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 Committee does not make 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.

- D. Inspection. The Committee and the Developer may inspect work being performed to assure compliance with these Restrictions, applicable regulations and the Plat of the Real Estate.
- E. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

6. Rules Governing Building on Several Contiguous Lots Having One Owner.

Whenever two or more contiguous Lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with one single-dwelling house.

7. Ownership, Use and Enjoyment of Common Areas.

- A. The parcel designated as the Common Area on the plat of *Highlands Prairie* and any improvements constructed thereon shall be owned by the Highlands Prairie Property Owners' Association, Inc., an Indiana Not-for-Profit Corporation ("Association"). Every Lot Owner shall have a non-exclusive right and easement of enjoyment in common with all other Lot Owners in and to the Common Area which shall be appurtenant to and

shall pass with title to every Lot in the form of a right to and obligation of membership in the Association, subject to the following provisions:

- (i) the right of the Association to promulgate reasonable rules and regulations governing the use of the Common Areas;
- (ii) the rights of Developer as provided in this Declaration;
- (iii) all other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented;
- (iv) the rights of the Association to mortgage any and all of the Common Area, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;
- (v) the easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area for the benefit of its members; and
- (vi) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association.

B. Delegation of Use. Any owner may delegate, in accordance with the Bylaws and any reasonable and non-discriminatory rules and regulations promulgated from time to time by the Association and subject to the rights of others as set forth in this Declaration, his or her right to enjoyment of the Common Area to family members or to contract purchaser of his Lot or to guests.

C. Certain Obligations and Access Rights to the Common Area.

(i) The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control for the exclusive benefit of the Owners as provided herein, of the Common Area and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(ii) The Association shall have and is hereby granted an easement and right of access to all of the Common Area for the purpose of maintaining or repairing or causing the same to be maintained or repaired as is its obligation and duty under this Declaration. In addition, certain utility lines, sewer and other facilities and other improvements located within a Lot or a Common Area may serve other adjacent Lots. The Association and any member thereof whose enjoyment of the use and occupancy of his Lot is affected thereby, their respective officers, agents, employees and

contractors, shall have an easement thereto and shall have a right, at reasonable times and at any time in case of emergency, to go upon any Lot or Common Area for the purpose of maintaining or causing to be maintained or repaired any building, party wall, utility line, sewer or other facilities located thereon that serve another Lot. The Association shall also have and is hereby granted a general right of access to all of the Common Area and Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved to the benefit of Developer so long as

Developer owns more than one (1) Lot.

8. Drainage Utility, Sewer, Landscape and Other Development Easements.

Developer, for himself during development and thereafter unto the Association granted an easement for drainage, utilities, landscaping and signage over and across the areas designated on the Plat as Common Area.

9. Highlands Prairie Property Owners' Association, Inc.

A. In General. There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Highlands Prairie Property Owners' Association, Inc.", which is referred

to as the "Association." Every Owner of a residential Lot in the Development shall be a member of the Association and shall be subject to all requirements and limitations imposed in these Restrictions on other Owners of residential Lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual charge.

B. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Developer and shall be entitled to one (1) vote for each Lot owned.

When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one

(1) vote be cast with respect to any Lot.

Class B. The Class B Members(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever earlier occurs:

- a. On the date of the Developer sells the last Lot which it owns in the Development and the Developer no longer owns any Lots or land in the Development; or
- b. On Developer submitting its resignation as a Class B member; or

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- c. On January 1, 2014.
- C. Board of Directors. The members shall elect a Board of Director's of the Association as prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association.
- D. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party, with or without cause, and without any termination fee, by written notice of ninety (90) days or less.
- E. Responsibilities of the Association. The Association shall:
- (i) Maintain the landscaping, signage, and other facilities (except those maintained by public or private utilities), all as shown on the plat of *Highlands Prairie*, and shall keep such areas in a neat, clean and presentable condition at all times.
 - (ii) Landscape, maintain, improve and procure utilities (as the Association may determine desirable) for the Common Area.
 - (iii) Be responsible for the assessment and collection from Owners of the Owners' share of annual, special and working capital assessments.
 - (iv) Be responsible for the payment of taxes and assessments levied against and payable with respect to the Common Areas and

easement areas, and payment of any other necessary costs in connection with such areas.

- (v) Be responsible for all duties and obligations imposed upon the Corporation under the Declaration, Articles, Bylaws, and the recorded Plat of the Subdivision.
- (vi) Procure and maintain casualty insurance for the Common Area and the easement areas, liability insurance (including Directors' and officers' insurance) and such other insurance as it deems necessary or advisable.
- (vii) Contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

10. **Covenant for Assessments.**

- A. **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of a Lot in the subdivision, except as hereinafter set forth, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:
- (i) annual assessment or charges; (ii) special assessments for capital improvements and operating deficits; and (iii) start-up assessments as hereinafter set forth, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be a charge on

the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and improvements, operated or maintained by the Association and for which the Association is responsible, pursuant to paragraph 9E above.

C. Annual Assessments. Except as set forth herein, until June 1, 2005, the maximum annual assessments shall be Two Hundred Ten Dollars (\$210.00) per lot for each lot. Payment of annual assessments shall be in advance upon conveyance of a lot to an Owner. The annual assessment shall remain at Two Hundred Ten Dollars (\$210.00) unless modified as hereinafter set forth.

(i) From and after June 1, 2005, the maximum annual assessment may be increased each year not more than ten percent (10%)

above the maximum assessments permitted for the previous year, without a vote of the membership.

- (ii) From and after June 1, 2007, the maximum annual assessment may be increased more than ten percent (10%) above the maximum assessments permitted for the previous year by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting called for this purpose.
- (iii) The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby. The Board of Directors may permit payment of assessments on a monthly or quarterly basis.
- (iv) The due date for payment of annual assessments shall be June 1st of each year. The initial annual assessments shall commence on the date of recordation of the Plat of *Highlands Prairie*. The initial annual assessment for an Owner shall be adjusted according to the number of months remaining from the date of conveyance of a Lot to an Owner by Developer, to the next June 1st.
- (v) The Developer shall not be responsible for payment of any assessments for any Lots owned by Developer.
- (vi) Owners of Lots who are engaged in the business of constructing houses may apply to the Developer for a determination that they

own a Lot or Lots not for their own use but for resale. If the Developer determines that such is the purpose for which the Lot or Lots are held, the Owner shall not become a member of the Association and shall not be required to pay assessments. The determination shall terminate upon the first to occur of (a) revocation by the Developer or its successor in interest; (b) sale of the lot, or (c) occupancy of a residence on a Lot.

- D. Working Capital. At the closing of the initial sale of each Lot by Developer to an Owner (other than Developer or an Owner set forth under 11C(vi)), whether or not the Lot is then improved with a living unit, the purchaser of such Lot shall pay to the Association an amount equal to the annual assessment applicable to the Lot purchased, which amount shall be used by the Association as working capital to enable the

Association to have cash available to meet expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Such payment shall be in addition to an Owners' annual assessment.

- E. Special Assessments for Capital Improvements and Operating Deficits.

In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain

or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the asset of two-thirds (2/3) of the votes of both classes of members who are voting in person or by proxy at a meeting duly called for this purposes.

F. Notice and Quorum for Any Action Authorized Under Sections E and C(ii). Written notice of any meeting called for the purpose of taking any action authorized under Sections E and C-2 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

G. Effect of Non-Payment of Assessments; Remedies of the Association. Any charge levied or assessed against any Lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that Lot until paid in full and shall also be a personal obligation of the Owner or Owners of that Lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%)

per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The Owner of the Lot or Lots subject to the charge shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys fees, incurred by the Association in collecting the same. Every interest in such Lot, whether as an Owner or otherwise is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said Lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an Owner of a Lot in the Development is hereby notified that by the act of making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.

- H. Proof of Payment. The Association shall, upon demand of an Owner or mortgagee, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified Lot have been paid or that certain assessments against said Lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of

Directors of the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

- I. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. ®

- J. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member or associate member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member or associate member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the

violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, Bylaws or regulations of the Association.

11. **Remedies.**

- A. **In General.** The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any of these Restrictions.
- B. **Delay or Failure to Enforce.** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party) to assert any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

12. **Effect of Becoming an Owner.** The Owners of any Lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Developer, Committee and of the

Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant, agree and consent to an with the Developer, Committee and the Association and to and with the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

13. **Amendment of Declaration.**

A. **Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owner having in the aggregate at least a majority of the votes of all Owners.

(iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.

(iv) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or dwelling unit is subject to a first mortgage, the mortgagee shall be

notified of the meeting and the proposed amendment in the same manner as an Owner, if the mortgagee has given prior notice of its mortgage interest to the Board of Directors, in accordance with the provisions hereof.

- (v) Special Amendments. No amendments to this Declaration shall be adopted which changes (i) the applicable share of an Owner's liability for the common expenses or the method of determining the same, or (ii) the provisions of this Declaration with respect to casualty insurance to be maintained by the corporation, or (iii) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each and any of such circumstances, the unanimous approval of all Owners and of all mortgagees whose mortgage interests have been made known to the Board of Directors, in accordance with the provisions of this Declaration.

- B. Amendments by Developer Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Developer shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the corporation, the Board of Directors, any mortgagees or any other person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement this Declaration at any time and from time to time if such amendment or

supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and dwelling units, (c) to bring this Declaration into compliance with any statutory requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (e) to correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto or to implement the rights and options of Developer (or its nominee) as set forth herein. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Developer to vote in favor of, make, or consent to any amendments described in this paragraph 14 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a

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Lot or dwelling unit and the acceptable thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments. The right of the Developer to act pursuant to rights reserved or granted under this paragraph 14 shall terminate at such time as the Developer no longer holds or controls title to any part or portion of the Real Estate.

14. **Titles.** The titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only and none of them shall be used as an aid to the construction of any provision of the Restrictions. 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. ®

15. **Duration.** The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2020, 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 numbered Lots in the Development.

17. **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.

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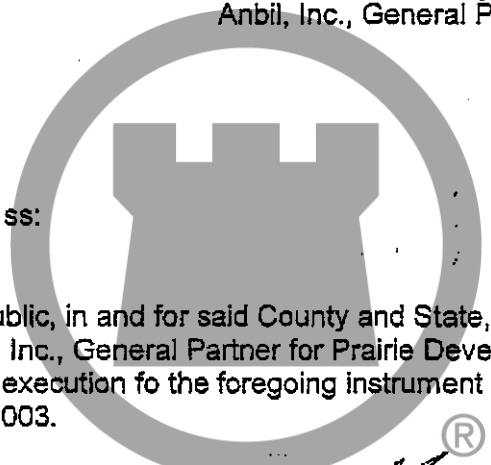
IN TESTIMONY WHEREOF, witness the signature of the Developer this 17 day of
October, 2003.

PRAIRIE DEVELOPMENT, LP, an Indiana
Limited Partnership

By: Keith Macy
Anbil, Inc., General Partner by Keith Macy

STATE OF INDIANA)
) ss:
COUNTY OF HAMILTON)

Before me, a Notary Public, in and for said County and State, personally appeared Keith
F. Macy, as President of Anbil, Inc., General Partner for Prairie Development, LP, Developer
herein, and acknowledged the execution to the foregoing instrument this 17 day of
October, 2003.



Kristina M. Davis
Notary Public
Kristina M. Davis

[seal]

CHICAGO TITLE

Resident of Hamilton County.
Commission expires 10/11/07

This instrument prepared by: William E. Wendling, Jr., CAMPBELL KYLE PROFFITT LLP, 650
East Carmel Drive, Suite 400, Carmel, Indiana 46032, (317) 846-6514.

EXHIBIT "A"

Perimeter LAND DESCRIPTION - Highlands Prairie

A part of the North Half of Section 29 and a part of the South Half of Section 20, both in Township 19 North, Range 5 East of the Second Principal Meridian, situated in Noblesville Township, Hamilton County, Indiana, and being more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 29, Township 19 North, Range 5 East; thence North 00 degrees 00 minutes 00 seconds East (basis of bearings) along the West line of said Northwest Quarter 740.63 feet; thence North 90 degrees 00 minutes 00 seconds East along the south line of Mallery Drive 470.00 feet to the Southeast corner of Craig Highlands Fourteenth Section recorded in Plat Book 7, Page 73 in the Office of the Recorder of Hamilton County, Indiana; thence North 00 degrees 00 minutes 00 seconds East along the East line of said Craig Highlands Fourteenth Section and the East line of Wagon Trail Drive 499.38 feet to the POINT OF BEGINNING of this description;

thence continuing North 00 degrees 00 minutes 00 seconds East along said East lines 350.62 feet to the point of curvature of a tangent curve to the right, said curve having a radius of 550.00 feet and being subtended by a long chord bearing North 03 degrees 18 minutes 20 seconds East 63.43 feet; thence Northerly along said curve to the right through a central angle of 06 degrees 36 minutes 40 seconds an arc distance of 63.46 feet to the Northeast corner of said Craig Highlands Fourteenth Section; thence North 83 degrees 23 minutes 20 seconds West along the North line of said Craig Highlands Fourteenth Section 235.22 feet (plat), 234.18 feet (measured) to a concrete monument at the Northwest corner of said Craig Highlands Fourteenth Section, said point being on the East line of Craig Highlands Twelfth Section as recorded in Plat Book 5, Page 88 of said recorder's office; thence North 00 degrees 00 minutes 00 seconds East along the East lines of said Craig Highlands Twelfth Section and Craig Highlands Seventh Section as recorded in Plat Book 3, Page 14 of said recorder's office 589.05 feet to the Northeast corner of said Craig Highlands Seventh Section and a point on the South line of Craig Highlands Sixth Section as recorded in Plat Book 2, page 264 in said recorder's office; thence North 80 degrees 49 minutes 30 seconds East (plat) North 80 degrees 45 minutes 05 seconds East parallel with the center line of State Road No. 37A (Allisonville Road) per Project 313, dated 1933, sheet 7 of 151 therein (measured) along the South line of said Craig Highlands Sixth Section and Craig Highlands Fifth Section as recorded in Plat Book 2, Page 254 in said recorder's office 1304.85 feet (Plat), 1305.12 feet (measured) to the Southwest corner of Craig Highlands Eighth Section recorded in Plat Book 3, Page 69 in said recorder's office; thence North 72 degrees 10 minutes 00 seconds East (Plat), North 72 degrees 05 minutes 35 seconds East (measured) along the South line of said Craig Highlands Eighth Section 390.20 feet to the Southeast corner of said Craig Highlands Eighth Section; thence North 17 degrees 13 minutes 00 seconds West (Plat), North 17 degrees 17 minutes 25 seconds West (measured) along the East line of said Craig Highlands Eighth Section 240.00 feet (Plat), 240.32 feet (measured) to a point on the center line of said Allisonville Road, said point being on a non-tangent curve to the left, having a radius of 5729.60 feet and being subtended by a long chord bearing North 70 degrees 22 minutes 57 seconds East 462.72 feet; thence Northeasterly along said center line and along said curve to the left through a central angle of 04 degrees 37 minutes 42 seconds, an arc distance of 462.84 feet to the point of tangency thereof; thence North 68 degrees 04 minutes 05 seconds East along said center line 783.08 feet; thence leaving said center line South 21

degrees 55 minutes 55 seconds East 40.00 feet to a point on the south approach right-of-way of Allisonville Road to State Road No 37 per project F 824(J), dated 1954, sheet 8 therein; thence the following (3) three courses are along said right-of-way, 1) North 82 degrees 08 minutes 08 seconds East 399.37 feet, thence 2) South 57 degrees 18 minutes 32 seconds East 154.21 feet, thence 3) South 12 degrees 01 minutes 02 seconds West 64.96 feet to a point on the westerly right-of-way of said State Road No. 37; thence South 52 degrees 31 minutes 45 seconds West along said right-of-way 814.10 feet to the point of curvature of a tangent curve to the left having a radius of 3907.16 feet, and being subtended by a long chord bearing South 40 degrees 30 minutes 32 seconds West 1627.40 feet; thence Southwesterly along said right of way line and said curve to the left through a central angle of 24 degrees 02 minutes 26 seconds an arc distance of 1639.40 feet to the Northeast corner of a five acre tract of ground currently in the name of the Roman Catholic Diocese of Lafayette-in-Indiana; thence South 90 degrees 00 minutes 00 seconds West along the North line of said five acre tract 1144.94 feet (record), 1144.91 feet (measured) to the Northwest corner of said five acre tract; thence South 00 degrees 00 minutes 00 seconds East along the West line of said five acre tract 175.10 feet; thence South 90 degrees 00 minutes 00 seconds West 200.00 feet to the POINT OF BEGINNING.

Containing 62.017 acres, more or less.

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CHICAGO TITLE