



Debra J. Register  
Register of Deeds  
Riley County, Kansas  
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Receipt #: 96286 Total Fees: \$20.00  
Pages Recorded: 4  
Date Recorded: 4/6/2009 3:34:19 PM

**Prairie Lakes Unit 3  
Declaration of Restrictions**

WHEREAS, Overlay Properties, Inc. (hereinafter referred to as the "Developers"), has filed with the Register of Deeds of Riley County, Kansas a plat of land as an addition to the City of Manhattan, Riley County, Kansas, which addition is known as Prairie Lakes Unit 3, at Plat Book K, Page 563;

AND WHEREAS, said plat creates the Prairie Lakes Unit 3 addition, composed in part of the described lots and tracts situated within the boundaries of said plat.

AND WHEREAS, the Developers are the owners of all of the lots and tracts within the boundaries of the said plat, and the Developers now desire to place certain restrictions upon those lots and tracts therein which are specifically hereinabove described, all of which restrictions shall be for the use and benefit of the Developers as the present owners thereof and for their future grantees and assigns.

NOW THEREFORE, the Developers, for and in consideration of the benefit for themselves, their successors and assigns, and their future grantees, hereby agree that those lots and tracts which the boundaries of Prairie Lakes Unit 3 (hereinafter referred to as the "Development"), together with all lots and tracts which may hereafter added to such Development as hereinafter provided, are hereby restricted as to their use in the manner hereinafter set forth.

1. **Definition of Terms.** All terms used herein shall be defined by, and interpreted in accordance with the <sup>Unit 3</sup> ~~Prairie Lakes/Homes Association~~ Declaration, filed with the Riley County Register of Deeds, and binding upon said Development.

2. **Persons Bound.** All persons, corporations and entities who may own or shall hereafter acquire any interest in any above-described lot or tract in the Development shall be bound by, and shall observe the following covenants, restricts, and stipulations contained herein for a period of twenty (20) years from the date upon which these Restrictions are recorded, at which time these covenants and restrictions shall be automatically extended for a period of ten (10) years, unless by a vote of the majority of the then owners of the lots in said subdivision it is agreed to change such restrictions in whole or in part, it being understood that an owner shall be entitled to cast as many votes as he may own lots in said subdivision.

3. **Land Use.** No lot shall be used except for residential purposes. No business or commercial enterprise of any nature shall be conducted on or from any lot; provided, always, however, that the Developers reserve the right to maintain, or allow to be maintained, a real estate sales office upon any lot for the purpose of promoting, advertising for sale, showing and selling lots and properties, either improved or unimproved, situated both within and without the boundaries of

the said plat.

4. Dwelling Size. No one-story dwelling shall be permitted on any lot which does not contain at least one thousand (1,000) square feet of floor area on the main floor, excluding garages (basement area shall not be included in said computation of said square feet). A multi-level, single-family dwelling must contain at least eight hundred (800) square feet on the main level. Duplex buildings shall have a minimum of 500 square feet on the main level of each unit. Garage areas and basements shall not be considered to be living space or main floor area in any of the classifications in this paragraph.

5. Construction. No structure shall be constructed except in compliance with the following requirements. Additionally, no structure shall be constructed unless prior written approval is obtained from the Developers or its designee, which approval may be withheld at the Developers' (or its designee's) sole discretion. Plans showing the list of exterior materials, roof pitch, front elevation, site plan, floor plan, and finished drainage plan shall be submitted to the Developers along with each request for approval. All material used for the construction of the dwelling shall be new and construction must be completed within twelve (12) months from commencement of said construction. All structures shall have a minimum roof pitch of 5/12. All garages shall be attached to the dwelling, but may be separated by a breezeway. No manufactured home, mobile home, modular home, or factory-built home (as defined by K.S.A. 58-4202) may be moved to, assembled or installed on any lot in the Development.

6. Building Location. All building locations and setbacks shall conform with the zoning ordinances of the City of Manhattan, Kansas.

7. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently, and any builder's shack constructed to facilitate the building of a house shall be removed within a reasonable length of time after the house is complete.

8. Outbuildings. No detached garage, carport, or other outbuildings shall be allowed without the prior written approval of the Developers or its designee, which approval may be withheld at its sole discretion.

9. Outside Antennas, Dishes, Solar Devices, and Clotheslines. No radio or television antennas, satellite dishes, or solar collectors shall be installed or maintained on any lot except in the rear yard of such lot. No exterior clotheslines or poles of a permanent nature may be erected or maintained on any lot.

10. Animals and Pets. No wild or semi-wild mammals or reptiles, and no livestock or poultry of any kind, may be kept or maintained on any lot. Dogs, cats, and other domesticated household pets may be kept provided that no more than two of any one species shall be permitted.



11. Automobiles, Vehicles, Boats and Trailers. No recreational vehicle, camper, trailer, boat, or any inoperative vehicle may be stored or parked on any lot (except within an enclosed garage), or upon the adjoining street, for a period of more than 12 hours. No commercial-type vehicle or truck shall be stored or parked on any lot (except within an enclosed garage) or upon the adjoining street for a period of more than four (4) hours, except where such vehicle belongs to a business making a delivery to, or performing work on the property. Nothing in this section shall be construed to prohibit the regular and routine parking of private passenger vehicles (including passenger vans and pickup trucks smaller than 3/4 ton) which are in running condition, on the driveway of any lot, or upon any adjoining street. Operational vehicles otherwise prohibited by this section which belong to temporary guests of the owner of any lot shall be permitted for periods not exceeding two (2) weeks in duration.

12. Nuisances. No noxious or offensive activity, as defined by the owners of a majority of the lots hereby restricted, 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.

13. Weeds and Grass. Noxious weeds must be controlled, and shall not be allowed to grow unchecked. Grass shall be mowed on a regular basis and as needed to keep the grass no longer than six (6) inches in height. In the event of a violation of the restrictions of this section, the Developers or its designee may cause the yard to be treated and assess the cost back to the owner of the lot.

14. Refuse. Refuse shall be in an enclosure so as not to appear unsightly, and shall not be left in the front of any dwelling except when necessary to provide for its disposal by a refuse company. Residents in the area shall not place grass cuttings, trash, play equipment, or machinery on any lots in this subdivision not owned by them.

15. Enforcement. The restrictions herein shall run with the land and shall bind the present owners, their successors and assigns, and all parties claiming by, through or under them shall be taken to hold, agree and covenant with the owners of the lots hereby restricted to conform to and observe said restrictions. If the parties hereto, or any of them, or their heirs, successors or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other persons owning any real property situated in said Development, or the Prairie Lakes Homes Association to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from doing so or to recover damages or other dues for such a violation. The owners of each lot shall be deemed to have granted an easement across each lot for the purposes of enforcing the restrictions hereto.

16. Amendment by Developers. For a period of three years following the filing of this Declaration of Restrictions, the Developers shall have the absolute and uncontroverted right to amend these restrictions from time to time without the consent of any owner or holder of any first mortgage. Thereafter, Developers shall continue to have the absolute and uncontroverted right to amend these restrictions until Developers no longer own any lot in the Development, unless such rights are earlier relinquished in writing by the Developers, after which the rights of the Developers

shall cease and immediately vest in the Prairie Lakes Homes Association. Until such rights of Developer have terminated or are relinquished as set forth herein, the Developers shall have the right, at its option, to perform the duties, assume the obligations, levy and collect assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were hereby given directly to the Developers. The Association shall not assume any of the rights herein provided for without the written consent of the Developers.

Invalidation to any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Overlay Properties, Inc. has hereunto caused this Declaration of Restrictions to be executed on this 6<sup>th</sup> day of April, 2009 by its President.

Overlay Properties, Inc.

Russel Weisbender, Pres.  
By: Russel Weisbender, President

STATE OF KANSAS, COUNTY OF RILEY, SS:

This instrument was acknowledged before me on this 6<sup>th</sup> day of April, 2009, by Russel Weisbender, President of Overlay Properties, Inc., a Kansas Corporation.

(Seal)



Kathryn A. Herde  
Notary Public

My commission expires 1-21-12.



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**Prairie Lakes Unit 3  
Homes Association Declaration**

THIS DECLARATION, is made on this 10<sup>th</sup> day of April, 2009, by Overlay Properties, Inc. (hereinafter referred to as the "Developers"),

WHEREAS, the Developers are the owners of all the Property described in the plat of land known as Prairie Lakes, Unit 3, an addition to the City of Manhattan, Riley County, Kansas, filed with the Register of Deeds of Riley County, Kansas at Plat Book K, Page 563;

WHEREAS, the Developers are now developing the above described land, and desire to create and maintain a residential neighborhood possession features of more than ordinary value the community in which said land is situated.

NOW THEREFORE, in order to assist themselves, their successors and assigns, and their future grantees, in providing the necessary means to bring about the development of the above described land, the Developers do hereby subject all of the above described lots and tracts located within the boundaries of Prairie Lakes Unit 3 as shown on the recorded plat thereof, to the covenants, charges and assessments set forth and contained in this Declaration, subject, however, to the limitations hereinafter provided.

**SECTION 1. DEFINITION OF TERMS USED:**

1. The term "Association" as used herein shall mean and refer to the Prairie Lakes Homes Association.
2. The term "Common Areas" as used herein shall be deemed to mean any tract hereinabove specifically described and located within the Development as it exists from time to time, which tracts if any shall be owned, managed and maintained by the Association for the use, benefit and enjoyment of the present and future owners of land within the Development.
3. The word "Declaration" as used herein shall mean this document.
4. The word "Developers" as used herein shall mean Overlay Properties, Inc. and the successors and assigns thereof.



5. The term "Development" as used in this Declaration shall mean all of the above-described lots and tracts situated within the boundaries of Prairie Lakes Unit 3,

together with all lots and tracts which may be hereafter added to such Development as hereinafter provided.

6. The word "lot" as used herein shall mean any numbered lot as platted and made subject to this Declaration, and upon which a residence may be erected in accordance with the Restrictions hereinafter defined. With respect to those parcels identified by a lot number and additionally by a letter (eg. Lot 87 A), each such parcel shall be deemed a separate lot for the purposes of this document.

7. The term "Owners" as used herein shall mean those persons, groups or entities who or which may from time to time own lots within the Development.

8. The term "Restrictions" as used herein shall specifically include those contained within the "Prairie Lakes/<sup>Unit 3</sup>Declaration of Restrictions" which has been concurrently herewith filed of record in the office of the Register of Deeds, Riley County, Kansas, and all amendments thereto. In the event of the future addition of lots and tracts to the Development as hereinafter provided, the term "Restrictions" as used herein shall, as to only those lots and tracts so added which are not made specifically subject to the aforesaid Prairie Lakes/<sup>Unit 3</sup>Declaration of Restrictions, specifically include those contained within that document which is similarly entitled as a declaration of restrictions, which is applicable to and encompasses such added lots and tracts, and which has been concurrently so recorded with the recording of the instrument which subjects such lots and tracts to this Declaration.

## SECTION 2. MEMBERSHIP IN ASSOCIATION:

The Owners of all of the lots hereinabove described, together with the owners of any other land that may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided, shall be the members of an association which is by this Declaration created and established, to be known as "Prairie Lakes Homes Association". The Association shall be incorporated under the laws of the State of Kansas as a corporation not for profit. Membership in the Association shall be limited to the Owners of land within the boundaries of the Development as it exists from time to time.

**SECTION 3. VOTING RIGHTS:**

The Association shall have two (2) classes of voting membership, as follows:

1. Class A. Each Owner, with the exception of the Developers, of a lot upon which a dwelling has been constructed shall be a Class A member. Each Class A member shall be entitled to one (1) vote for each such lot owned in fee simple title by him, her, them or it. When more than one person holds an interest or interests in the fee simple title to any such lot, all such persons shall collectively be considered a single member and the vote for such lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one (1) vote be cast with respect to any such lot.

2. Class B. The Class B members shall be the Developers. The Class B member shall be entitled to three (3) votes for each lot within the Development owned in fee simple title by them.

The voting rights of any Class A member shall be suspended for any period during which any assessment, including interest and fees, against his, her, their or its lot remains unpaid. The Association shall have the right to charge reasonable fees and determine the rules for the use of any recreational facility located within any Common Area. Except as hereinbefore provided, the Association shall otherwise be governed by the sole judgment of the qualifications of its members and of their rights to participate in its meetings and proceedings.

**SECTION 4. LAND ENTITLED TO BENEFITS:**

No land shall be entitled to any of the benefits, improvements or services provided by this Association unless the fee owner thereof, with written consent of the Developers, shall have subjected his, her, their or its land to the terms of this Declaration and to the assessments provided for herein.

**SECTION 5. OTHER LANDS - HOW THEY MAY BE ADDED:**

The Developers, their successors and assigns, may from time to time add to the Development such other land as is now or hereafter owned or approved for addition by them, provided that the land so added to the Development shall at that time be bound by all of the terms of this Declaration and all amendments thereto.

**SECTION 6. USE OF COMMON AREAS:**

The Owners of land within the Development shall have the exclusive right to the use of any and all Common Areas within the Development as may from time to time exist, subject to the Agreement Creating a Restrictive Covenant on Real Estate, filed of record with the Riley County Register of Deeds, creating a public right to flowage of surface water across the Common Area, and creating certain obligations to maintain the drainage structures referred to therein. The Association shall have the right and the power to make, revoke and/or amend reasonable rules and regulations which shall govern the use of Common Areas within the Development, and to enforce all of the same, subject always to the provisions of the Restrictions applicable thereto.

**SECTION 7. POWERS AND DUTIES OF THE ASSOCIATION:**

1. The Association shall have the following powers and mandatory duties:

(a) To care for, spray, trim, mow, protect, replace and replant trees, shrubbery, bushes, flowers, and grass in the Common Areas within the Development.

(b) To provide for the maintenance and/or repair of the lake retention structures and maintain the drainage and retention structures to ensure proper flowage of surface water. Additionally, the Association shall provide for the maintenance of any improvements, ponds, streams or natural water-courses which now exist or which may hereafter be included, created or erected in any Common Area within the Development.

(c) To provide for the maintenance and repair of any gateways, entrances, ornamental features, pedestrian bridges or walkways, now existing or which may hereafter be erected or created in said Development on any Common Area within the Development.

(d) To acquire and own the title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay taxes and other liabilities on such real estate as may be owned by it.

(e) To enforce, either in its own name or in the name of any Owner within the Development, any or all building restrictions which may have been heretofore, or may hereafter be, imposed upon any of the land in such Development, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications as are permissible in the deeds, declaration, plats or



certificate of survey in which such restrictions or reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as provided for herein. Nothing herein contained shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing in his own name any such restrictions.

(f) To manage and control as trustee for its members all improvements located upon any Common Area within the Development, provided that such management and control of said improvements shall at all times be subject to that had and exercised by the city, county and state, or any one of them, in which the lands within the Development are located.

(g) To mow, care for, maintain and remove rubbish from vacant and unimproved lots and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved lot and the parking in front of any such lot in the Development neat in appearance and in good order; and to assess against and collect from the Owner of any such lot the costs and expenses thereof.

(h) To exercise control over such easements as it may acquire from time to time.

(i) To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

(j) To levy and collect the assessments and fines which are provided for in this Declaration.

2. The Association shall have the following additional powers and duties which it may exercise and perform whenever in its discretion it may deem it necessary or desirable, to-wit:

(a) To provide such lights as the Association may deem advisable on gateways, entrances or other features, and in other public or semi-public places, when such facilities are not available from any public source.

(b) To build and maintain such pedestrian bridge and picnic areas on the Common Area as the Association may deem advisable.

(c) To contract for duly qualified security services for the purpose of providing such security and protection as the Association may deem necessary or desirable in addition to that rendered by public authorities.

**SECTION 8. METHOD OF PROVIDING GENERAL FUNDS:**

1. For the purpose of providing a general fund to enable said Association to exercise the powers and maintain the improvements and render the services herein provided for, each lot within the Development upon which a dwelling has been constructed and at any time theretofore occupied as a residence, shall be subject to an annual general fund assessment which may be levied by the Association from year to year, which assessment shall be paid to the Association annually, or at such other times as the Association may determine, in advance by each respective Class A member. The Association may from year to year fix and determine the total amount required in this general fund and may levy and collect an annual assessment, the initial amount of which shall not exceed Three Hundred Dollars (\$300.00), for each lot owned by a Class A member upon which a dwelling has been constructed and is then or has been at any time theretofore occupied as a residence; that in respect to the year in which a dwelling is first constructed on a lot covered by this Declaration, the assessment for that year shall be prorated to the first day of the month in which such dwelling is first occupied as a residence.

2. The maximum annual assessment upon each Lot as aforesaid may be increased on all the lots in the Development from one year to the next to an amount not exceeding one hundred ten percent (110%) of the amount of the annual assessment for the previous year; provided, however, that at a meeting of members specially called for that purpose, in advance of the first day of any assessment year, a greater increase may be approved by affirmative vote of a majority vote of the total combined votes of all Class A and Class B members present in person or by proxy at such meeting.

3. Unless the amount of any annual assessment is specifically limited by the resolution in which it has been established, the resolution establishing that assessment shall continue to be effective until rescinded or superseded by a subsequent resolution which specifically establishes a new annual assessment amount effective upon the first day of the next succeeding assessment year.

4. It is recognized that during the period of time this Declaration may be in effect, that circumstances may exist in which it may become appropriate for the benefit of all members of the Association that the Association levy and collect a special assessment against each aforesaid lot and from each member of the Association. It is, therefore, provided that at a meeting of the members specifically called for that purpose, in advance of the first day of any assessment year, that the



association may, by resolution approved by affirmative vote of sixty percent (60%) of the total combined votes of all Class A and Class B members present in person or by proxy at such meeting, levy and collect a special assessment in the amount, for the specific purpose and for the specific period of time stated in such a resolution, payable in one or more installments at the time or times provided within such resolution. Any such special assessment may be for any Association purpose, including without limitation a deficit (actual or projected) in the general funds of the Association, extraordinary damage or catastrophe to any Common Area, for anticipated liabilities that exceed the general funds, or for capital improvements upon any Common Area.

5. Whenever the Association may deem it advisable to submit to the members a proposal under either Paragraphs 2 or 4 of this Section, it shall notify the members of the Association of such meeting, giving the time and place at which it is to be held and describing generally the annual or special assessment proposed to be voted upon at such meeting; and such notice must be given not less than thirty (30) days preceding the date established for such meeting.

6. Within fifteen (15) days from the levying of each assessment, the Association shall notify all Owners of assessable lots of the amount of such assessment. Failure of the Association to levy a new or amended assessment prior to January 1<sup>st</sup> of any assessment year shall constitute an automatic levy on December 1<sup>st</sup> of the preceding year of the amount of the general assessment levied for that assessment year or the most recent assessment year for which the Association last by appropriate resolution established such a levy amount. In no event shall the failure to levy a new or amended assessment for any year affect the right of the Association to do so for any subsequent year. In the event that an assessment is levied subsequent to the 1<sup>st</sup> day of December which precedes any assessment year, then such assessment shall not become due and payable earlier than thirty (30) days from the date of levying the assessment. The Association may elect to permit collections of assessments in quarterly or semi-annual payments in lieu of the annual payments provided for herein.

7. A written or printed notice, deposited with the United States postal service, with first class postage prepaid thereon, and addressed to the respective Owners entitled to notice, at the last address therefor shown in the records of the Association, shall be deemed to be sufficient and proper notice for these purposes, or for any other purpose under this Declaration for which notice may be required, unless otherwise provided herein.

8. The Owner of each lot subject to assessment under this Declaration shall, by acceptance of a deed of conveyance to such lot, be deemed to have agreed and does hereby agree to pay to the Association all assessments placed against such lot in accordance herewith, and said Association is hereby granted the power and right to proceed against such Owner personally for the collection of said assessments; and said right shall be in addition to and not to be construed as a limitation upon the remedies and rights of said Association otherwise herein granted.

**SECTION 9. LIEN ON REAL ESTATE:**

1. Any assessment provided for herein shall automatically become a lien upon each lot against which it is levied as soon as it becomes due and payable as above set forth; provided, however, that such lien shall be inferior or subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on any such lot. In the event of failure of any of the Owners to pay such assessment on or before the date upon which it becomes due and payable, then such assessment shall from that date be deemed to be delinquent and shall bear interest at the maximum rate of interest then allowed in Kansas on non-UCC second mortgage notes.

2. Any assessment not paid on or before its due date, together with accrued interest thereon as above provided, shall constitute a continuing lien upon and against the lot upon which the unpaid assessment was levied, and it may be enforced at any time thereafter by foreclosure as a lien on such lot, in the same manner as which mortgages may be foreclosed upon in this State, in proceedings in any court in Riley County, Kansas having jurisdiction of suits for the enforcement and foreclosures of mortgages and liens against real estate. It shall be the duty of the Association to collect such assessments and bring such suits as may be appropriate or necessary to enforce the payment thereof. The association may in its discretion file appropriate notices or certificates of non-payment of assessments, or lien statements in the office of the Register of Deeds whenever any such assessments are delinquent. The validity, force or effect of any such lien shall not be dependent upon the filing of any such notice, certificate or lien statement. Any such notice, certificate or lien statement shall not be filed any earlier than the sixtieth (60<sup>th</sup>) day following the date upon which the assessment first becomes delinquent. For each notice, certificate or lien statement so filed, the Association shall be entitled to collect from the Owners of each lot described therein a fee equal to one hundred percent (100%) of the amount of the assessment,



which fee is hereby declared to be, and to constitute upon such filing, a lien upon the lot(s) so described in any such notice or certificate, provided that such a lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate. Such fee shall bear interest and shall be collectible, and such lien shall be enforceable, all as provided for original assessments under Section 8 and this Section 9.

3. Such foregoing liens shall be enforceable and shall be subject to an action of foreclosure for a period of five (5) years following the date of each delinquency unless an action to foreclose such lien is then pending in a court of competent jurisdiction, in which case the lien shall not expire until a final adjudication thereon by such court.

**SECTION 10. EXPENDITURES LIMITED TO ASSESSMENT FOR CURRENT YEAR:**

The Association shall not expend more money within any calendar year than equals the total amount of assessments for that particular year plus any surplus which it may have on hand from previous assessments. The Association shall not enter into any contract whatsoever which obligates or commits the assessments of any future year to the payment of any obligation represented thereby, and no such contract shall be valid or enforceable against the Association except for contracts for utilities. It is the intention herein that the assessments for each year shall be applied as far as practicable toward the payment of obligations incurred for that year.

**SECTION 11. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS:**

The Association shall notify all Owners of lots in the Development as it may exist from time to time, insofar as the addresses of such Owners are listed with said Association, of the official address of said Association, the place and time of the regular meetings of the Association, and the place where payment shall be made and any other business in connection with said Association may be transacted. In the event of any change in any of the foregoing, the Association shall notify all Owners thereof.

**SECTION 12. EXPANSION OF DEVELOPMENT:**

The Developers anticipate that it will hereafter cause to be platted additional land owned by it and situated within Section 6, Township 10 South, Range 8 East, Riley County, Kansas, which such additional land may be made subject to this Declaration and may contain, among other areas, additional lots and additional Common Areas as herein defined but with reference to the

recorded plat upon which such lands may be shown. Upon such future platings, and the making of such additional lands subject to this Declaration, the Development as herein defined shall then be expanded to include such lands, and the lots thereby described and the owners thereof, and the Common Areas if any thereby described, shall all become subject to the covenants, charges and assessments set forth and contained in this Declaration in the same fashion as though all of the same had been included within the original Development and subjected hereto at the time of original recording of this Declaration.

**SECTION 13. TEMPORARY TRUSTEE:**

Prior to the actual organization or incorporation of the Association contemplated by the terms of this Declaration, the Developers shall have the right at their option to perform the duties, assume the obligations, levy and collect the assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all such powers and duties were hereby given directly to the Developers. The Association contemplated by the terms of this Declaration shall not assume any of the rights and powers herein provided without the consent of Developers and its relinquishment in writing of its rights and powers as temporary trustee. The Developers may, at any time hereafter, by an appropriate written instrument made expressly for that purpose, assign or convey to any person, group or entity all of the rights, reservations and privileges reserved by them under this Section, and upon such assignment or conveyance being made, their successors, assigns or grantees shall have the same power to assign or convey such rights, reservations and privileges as are herein reserved in the Developers.

**SECTION 14. TO OBSERVE ALL LAWS:**

Said Association shall at all times observe all applicable State, County, Municipal and other laws or regulations which may be applicable to the conduct of its affairs under this Declaration. Should any provision(s) of this Declaration be determined to be in conflict therewith or in violation thereof, then such provisions(s) of this Declaration as may be found to be in conflict with law shall be stricken from this Declaration unless a court of competent jurisdiction can, by a finding of clear purpose and intent of this Declaration, reform any such provision(s) so as to eliminate any such conflict or violation of law and to give force and effect thereto in furtherance of the clear purpose and intent hereof. In no event shall the conflict or violation of law of any



provision(s) of this Declaration otherwise affect in any manner this instrument or the other provisions herein contained. The Association shall have the right and power to make such reasonable rules and regulations, and to otherwise provide the means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration.

**SECTION 15. AMENDMENT BY DEVELOPER:**

The Developer shall have the absolute and uncontroverted right to amend these declarations from time to time or waive the enforcement thereof without the consent of any owner of the holder of any first mortgage. Any waiver must be made in advance and in writing; provided however, nothing shall prevent the Developer from subsequently approving or ratifying in writing any item or requiring its enforcement.

**SECTION 16. AMENDMENT:**

By vote of not less than sixty percent (60%) of the total combined votes of all class A and class B members entitled to vote within the Development, evidenced by an appropriate instrument duly executed and acknowledged by such Owners and recorded in the office of the Register of Deeds of Riley County, Kansas, this Declaration may at any time hereafter be modified and amended.

**SECTION 17. HOW TERMINATED:**

This Declaration may be terminated, and all of the land now or hereafter affected may be released from all of the terms and provisions hereof, by vote of not less than three-fourths (3/4) of the total combined votes of all class A and class B members entitled to vote within the Development, evidenced by an appropriate instrument duly executed and acknowledged by such Owners and recorded in the office of the Register of Deeds of Riley County, Kansas.

**SECTION 18. COVENANTS RUNNING WITH THE LAND:**

All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon the Developers and upon the successors, assigns and grantees thereof, and upon all subsequent successors, assigns and grantees in title to the land subject hereto.

**SECTION 19. DEVELOPER ACTING FOR ASSOCIATION:**

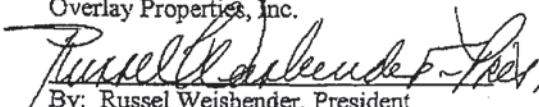
For a period of three years following the filing of this Declaration, Developers shall have absolute control over the Association, and shall have the right at its option to perform the duties,

assume the obligations, levy and collect assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were hereby given directly to the Developer. Thereafter, Developers shall continue to have absolute control over the Association until Developer no longer owns any lot in the Development, unless such rights and powers are relinquished as set forth below. During any period of exclusive control by Developers of the Association, Class A members shall take no action pursuant to Sections 3, 16, or 17 herein. At such time as Developers no longer own any lots in the Development, or has relinquished its rights and powers over the Association, Class A members may participate in the management of the Association as set forth in Sections 3, 16, and

The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of the Developer and its written relinquishment of such rights. the Developer may, by appropriate agreement made expressly for that purpose, assign or convey to the Association all of the rights, reservations and privileges reserved by it in this Declaration, and upon such assignment or conveyance being made, the Association shall exercise and assume such rights.

IN WITNESS WHEREOF, Overlay Properties, Inc. has hereunto caused this Homes Association Declaration to be executed on this 16<sup>th</sup> day of April, 2009 by its President.

Overlay Properties, Inc.

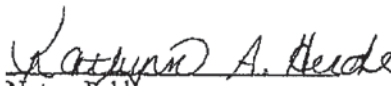
  
By: Russel Weisbender, President

STATE OF KANSAS, COUNTY OF RILEY, SS:

This instrument was acknowledged before me on this 16<sup>th</sup> day of April, 2009, by Russel Weisbender, President of Overlay Properties, Inc., a Kansas Corporation.

(Seal)



  
Notary Public

My commission expires 1-21-12.

**FIRST AMENDMENT TO PRAIRIE LAKES UNIT 3  
HOMES ASSOCIATION DECLARATION**

This First Amendment to Prairie Lakes Unit 3 Homes Association Declaration is made this 14th day of April, 2009 by Overlay Properties, Inc.

WITNESSETH, Overlay Properties, Inc., as Developer, caused to be recorded the Prairie Lakes Unit 3 Homes Association Declaration, which Declaration was recorded with Register of Deeds of Riley County, Kansas, on April 6, 2009 in Book 836, Page 6788 et seq, covering real estate described in the plat of land known as Prairie Lakes Unit 3, filed with the Riley County Register of Deeds at Plat Book K, Page 563;

WHEREAS, pursuant to Paragraph 15 of said Prairie Lakes Unit 3 Homes Association Declaration (hereinafter sometimes called the "Declaration"), the Developer was given the absolute and uncontroverted right to amend said Declaration; and

WHEREAS, the Declarant now desires to amend said Declaration by amending Paragraphs 7 and 8 of the Declaration;

Unit 3

NOW THEREFORE, Declarant hereby amends the Prairie Lakes/Homes Association Declaration by amending Paragraphs 7 and 8 of said Declaration to read as follows:

**"SECTION 7. POWERS AND DUTIES OF THE ASSOCIATION:**

1. The Association shall have the following powers and duties which may be implemented by the Association at its discretion:

(a) To care for, spray, trim, mow, protect, replace and replant trees, shrubbery, bushes, flowers, and grass in the Common Areas within the Development.

(b) To provide for the maintenance and/or repair of the lake retention structures and maintain the drainage and retention structures to ensure proper flowage of surface water, as more fully set forth in the Agreement Creating a Restrictive Covenant on Real



Debra J. Register  
Register of Deeds  
Riley County, Kansas  
Book: 836 Page: 7070  
Receipt #: 96524 Total Fees: \$28.00  
Pages Recorded: 6  
Date Recorded: 4/8/2009 4:21:18 PM



Estate, filed September 22, 2006 in Book 825 at page 7364, et seq, in the Office of the Register of Deeds of Riley County, Kansas. Additionally, the Association shall provide for the maintenance of any improvements, ponds, streams or natural water-courses which now exist or which may hereafter be included, created or erected in any Common Area within the Development.

(c) To provide for the maintenance and repair of any gateways, entrances, ornamental features, pedestrian bridges or walkways, now existing or which may hereafter be erected or created in said Development on any Common Area within the Development.

(d) To acquire and own the title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay taxes and other liabilities on such real estate as may be owned by it.

(e) To enforce, either in its own name or in the name of any Owner within the Development, any or all building restrictions which may have been heretofore, or may hereafter be, imposed upon any of the land in such Development, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications as are permissible in the deeds, declaration, plats or certificate of survey in which such restrictions or reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as provided for herein. Nothing herein contained shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing in his own name any such restrictions.

(f) To manage and control as trustee for its members all improvements located upon any Common Area within the Development, provided that such management and control of said improvements shall at all times be subject to that had and exercised by the city, county and state, or any one of them, in which the lands within the Development are located.

(g) To mow, care for, maintain and remove rubbish from vacant and unimproved lots and to do any other things necessary or desirable in the judgment of the officers of

the Association to keep any vacant and unimproved lot and the parking in front of any such lot in the Development neat in appearance and in good order; and to assess against and collect from the Owner of any such lot the costs and expenses thereof.

(h) To exercise control over such easements as it may acquire from time to time.

(i) To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

(j) To exercise such rights to amend the Declaration of Restrictions recorded on April 6, 2009 in Book 836 at page 6784 in the Office of the Register of Deeds of Riley County, Kansas, as are assigned to it by Developer pursuant to Paragraph 16 of said Declaration of Restrictions.

(k) To levy and collect the assessments and fines which are provided for in this Declaration.

2. The Association shall have the following additional powers and duties which it may exercise and perform whenever in its discretion it may deem it necessary or desirable, to-wit:

(a) To provide such lights as the Association may deem advisable on gateways, entrances or other features, and in other public or semi-public places, when such facilities are not available from any public source.

(b) To build and maintain such pedestrian bridge and picnic areas on the Common Area as the Association may deem advisable.

(c) To contract for duly qualified security services for the purpose of providing such security and protection as the Association may deem necessary or desirable in addition to that rendered by public authorities.

#### **SECTION 8. METHOD OF PROVIDING GENERAL FUNDS:**

1. For the purpose of providing a general fund to enable said Association to exercise the powers and maintain the improvements and render the services herein provided for, each lot within the Development upon which a dwelling has been constructed and at any time theretofore occupied as a residence, shall be subject to an annual general fund assessment which may be levied by the Association from year to year, which assessment shall be paid to the Association annually, or at such other times as the Association may

determine, in advance by each respective Class A member. The Association may from year to year fix and determine the total amount required in this general fund and may levy and collect an annual assessment, the initial amount of which shall not exceed Three Hundred Dollars (\$300.00), for each lot owned by a Class A member, except that there shall be no assessment owed as to lots owned by the permitted assignees of Developer. For purposes of this paragraph, "permitted assignee of Developer" shall be defined as the trustees of any intervivos trust created by shareholders of Developer, and any corporation in which a shareholder of Developer owns 51% or more of the corporation. The assessment owed by a Class A member shall be prorated to the first day of the month in which the Class A member takes title to the lot, or in the case of an installment contract, the first day of the month in which the closing of the installment contract occurs.

2. The maximum annual assessment upon each Lot as aforesaid may be increased on all the lots in the Development from one year to the next to an amount not exceeding one hundred ten percent (110%) of the amount of the annual assessment for the previous year; provided, however, that at a meeting of members specially called for that purpose, in advance of the first day of any assessment year, a greater increase may be approved by affirmative vote of a majority vote of the total combined votes of all Class A and Class B members present in person or by proxy at such meeting.

3. Unless the amount of any annual assessment is specifically limited by the resolution in which it has been established, the resolution establishing that assessment shall continue to be effective until rescinded or superseded by a subsequent resolution which specifically establishes a new annual assessment amount effective upon the first day of the next succeeding assessment year.

4. It is recognized that during the period of time this Declaration may be in effect, that circumstances may exist in which it may become appropriate for the benefit of all members of the Association that the Association levy and collect a special assessment against each aforesaid lot and from each member of the Association. It is, therefore, provided that at a meeting of the members specifically called for that purpose, in advance of the first day of any assessment year, that the association may, by resolution approved by affirmative vote of sixty percent (60%) of the total combined votes of all Class A and Class B members present in person or by proxy at such meeting, levy and collect a



special assessment in the amount, for the specific purpose and for the specific period of time stated in such a resolution, payable in one or more installments at the time or times provided within such resolution. Any such special assessment may be for any Association purpose, including without limitation a deficit (actual or projected) in the general funds of the Association, extraordinary damage or catastrophe to any Common Area, for anticipated liabilities that exceed the general funds, or for capital improvements upon any Common Area.

5. Whenever the Association may deem it advisable to submit to the members a proposal under either Paragraphs 2 or 4 of this Section, it shall notify the members of the Association of such meeting, giving the time and place at which it is to be held and describing generally the annual or special assessment proposed to be voted upon at such meeting; and such notice must be given not less than thirty (30) days preceding the date established for such meeting.

6. Within fifteen (15) days from the levying of each assessment, the Association shall notify all Owners of assessable lots of the amount of such assessment. Failure of the Association to levy a new or amended assessment prior to January 1<sup>st</sup> of any assessment year shall constitute an automatic levy on December 1<sup>st</sup> of the preceding year of the amount of the general assessment levied for that assessment year or the most recent assessment year for which the Association last by appropriate resolution established such a levy amount. In no event shall the failure to levy a new or amended assessment for any year affect the right of the Association to do so for any subsequent year. In the event that an assessment is levied subsequent to the 1<sup>st</sup> day of December which precedes any assessment year, then such assessment shall not become due and payable earlier than thirty (30) days from the date of levying the assessment. The Association may elect to permit collections of assessments in quarterly or semi-annual payments in lieu of the annual payments provided for herein.

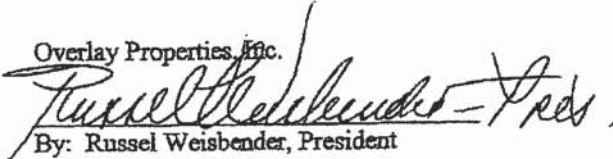
7. A written or printed notice, deposited with the United States postal service, with first class postage prepaid thereon, and addressed to the respective Owners entitled to notice, at the last address therefor shown in the records of the Association, shall be deemed to be sufficient and proper notice for these purposes, or for any other purpose under this Declaration for which notice may be required, unless otherwise provided

herein.

8. The Owner of each lot subject to assessment under this Declaration shall, by acceptance of a deed of conveyance to such lot, be deemed to have agreed and does hereby agree to pay to the Association all assessments placed against such lot in accordance herewith, and said Association is hereby granted the power and right to proceed against such Owner personally for the collection of said assessments; and said right shall be in addition to and not to be construed as a limitation upon the remedies and rights of said Association otherwise herein granted."

The Developer hereby ratifies and confirms the remaining terms and conditions of  
Unit 3  
the Prairie Lakes/Homes Association Declaration, except as herein amended.

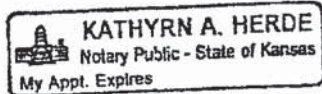
Overlay Properties, Inc.

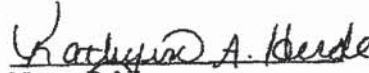
  
By: Russel Weisbender, President

STATE OF KANSAS, COUNTY OF RILEY, SS:

This instrument was acknowledged before me on this 6<sup>th</sup> day of April, 2009, by Russel Weisbender, President of Overlay Properties, Inc., a Kansas Corporation.

(Seal)



  
Notary Public

My commission expires 1-21-12.

To: Russel Weisbender  
RE: Pond Recommendations

### **Homeowner's Pond Management Tips**

#### **Non-Point Pollution Control Measures**

This category is cumbersome to say, but each body of water should maintain efforts to insure water quality throughout the life of the impoundment. These facets of management deal with controlling pollution throughout the drainage. These measures require the cooperation of residents living in the drainage and visitors to the water. Since, this can be difficult most of this work is completed by informing the public on the dangers of pollution and the benefits of maintaining or improving the quality of life in the area. The City of Manhattan should also be of assistance with ideas and brochures since Non-Point pollution controls are also their goals in storm water management.

- Discourage littering through education and example.
- Apply all yard fertilizers, pesticides, herbicides and other household chemicals as directed on the label to assist in maintaining water quality. Fertilizers can promote unwanted aquatic vegetation, insecticides can cause fish kills and herbicides are a deterrent to water quality.

#### **Shoreline management**

- To insure shoreline access, become diligent at removing trees that will invade the shoreline. This job is easy when the invaders are small. Trees and shrubs popping up along the shoreline is a natural process. However, you do not want the shoreline to become lined with mature trees that block the view and angler access.

#### **Fish Stocking**

- Stocking fish is not recommended. The pond already contains a species composition that will benefit the fishery. Unwanted species introduction will detract from the fishery.
- The fish community will need periodic maintenance stockings of 10 to 12 inch channel catfish to insure fishable densities. Stocking 40 to 50 fish an acre per year would be my recommendation. This function will be completed by Ks. Wildlife & Parks as long as the fishery remains in the program.



### **Aquatic Vegetation**

Aquatic vegetation is common part of the habitat. Aquatic vegetation will provide habitat for fish and their prey. The fish community will perform at a higher level with some available vegetation. Aquatic vegetation in moderation will also assist in maintaining water clarity by reducing wave action and precipitating silt. However, when in excess, vegetation will restrict fishing access and deter aesthetics. To control aquatic vegetation the first line of defense is to maintain the Non-point pollution controls and avoid heavy fertilization. However, there are 3 methods to alleviate excess vegetation. These are mechanical, chemical and biological.

- There may be an opportunity to stock white amur (grass carp) to control aquatic vegetation via biological method. I would not stock a lot of fish, since these fish will consume all the vegetation when stocked in excess and destroy aquatic habitat. It should be noted that these grass carp could move over the dam during high water flows and the investment will be lost. Therefore, these fish can be risky in this flow through system. I would not stock more than 20 fish to see if they will stay in the area. Using grass carp is not an immediate solution and is a long term control. Grass carp need to be at least 10 to 12 inches long or the bass will just consume them. Grass carp are semi-expensive.
- Mechanical method means you have to drag it out. This can be done with a hand rake, throw rake or dragging a wide heavy object to remove the vegetation in small areas.
- Chemical applications can be risky. You must use approve aquatic herbicide according to the label. Many of these chemicals can be rather expensive to apply. The rooted vegetation is hardest and most expensive to remove. The floating algae that floats and move with the wind is easier and cheaper. Applying chemicals to a large section of infected area could induce an oxygen depletion due to decaying vegetation in the water. Therefore, chemicals should be applied in small areas each time to avoid possible stinky fish kills.

### **Length and Creel Limits on Fish**

- The largemouth bass is the main predator in the fishery and is responsible for maintaining balance in the sunfish population. Without adequate abundance in this species the sunfish population would be over abundant and result in slow growth. Therefore, a 15 inch statewide minimum length limit on this species has been implemented. Immediately, returning sub-legal fish will result in minimal hook mortality and assist in maintaining the predator base. Returning fish to the water also maintains a good catch and release bass fisheries to the benefit of the recreational fishery and angler.
- The channel cat fishery must be maintained with supplemental stocking of 10 to 12 inch fish. The pond is not big enough to support all the probable fishing activity at this location. Therefore, a daily creel limit of 2 fish will spread out the fishing success to more anglers.
- A creel or length limit will not be necessary on the sunfish population.

### **Fish Attractors**

Fish attractors or commonly called brushpiles, do attract fish to an area, but do not increase fish production in the pond as a whole. Therefore, I would not recommend placing fish attractors into the water. I anticipate a lot of young anglers and some other anglers may not agree with the location of the attractor.