

**DECLARATION OF RESTRICTIONS  
FOR PRAIRIE GRASS PRESERVE**

1-19-05  
8439307

DOCUMENT NO.

DOCUMENT TITLE

RECORDING AREA

**NAME AND RETURN ADDRESS**

George B. Erwin, III  
2300 North Mayfair Road  
Suite 1175  
Milwaukee, WI 53226

Parcel Identification Number

## **DECLARATION OF RESTRICTIONS FOR PRAIRIE GRASS PRESERVE**

**KNOW ALL PERSONS BY THESE PRESENTS;** that PRAIRIE GRASS PRESERVE, LLC is a limited liability company duly organized and existing under and by the virtue of the laws of the State of Wisconsin, (herein referred to as "*Developer*" which terms shall also include the duly authorized agent of Developer). Developer is the owner of the premises described as follows (herein referred to as "*Prairie Grass Preserve*").

**PRAIRIE GRASS PRESERVE**, being a subdivision of that part of the Southwest Quarter (SW 1/4) and Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 20, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin. Developer, intending to establish a general plan for the use, occupancy and enjoyment of Prairie Grass Preserve does hereby declare that, for the mutual benefit of present and future owners, Prairie Grass Preserve shall be subject to the following restrictions:

1. **General Purposes**. The purpose of this Declaration is to insure the best use and most appropriate development and improvement of each building site in the development; to protect owners of building sites against such use of surrounding building sites as will detract from the residential value of their property, to preclude, as far as practicable, poorly designed or proportioned structures; to obtain harmonious use of materials and color schemes, to insure a quality residential development; to encourage and secure the erection of attractive single-family homes in appropriate locations on building sites; to secure and maintain proper setbacks from streets and adequate free spaces between structures; and in general, to provide adequately for a high type and quality of improvement in the Development and thereby to preserve and enhance the value of investments made by purchasers of building sites in the Development. No warranty or guarantee is given by Developer that such goals will preserve or enhance the value of an investment made in the Development.
2. **General Applicability** Unless specifically stated otherwise within this Declaration, all of the restrictions stated in this Declaration are applicable to all lots in Prairie Grass Preserve which shall consist of 36 single-family and 29 duplex lots.
3. **Building Restrictions, Single-Family Lots** The following restrictions are applicable to all single-family lots.
  - a. Only one 1-story, 1 ½-story, 2-story, split-level or bi-level single-family residential building and attached garage may be erected per lot.
  - b. A single story Residence shall have a minimum of 2000 square feet of living area on the first floor.
  - c. A story and one-half Residence shall have a minimum of 2200 square feet of living area, with a minimum of 1500 square feet of living area on the first floor of the Residence.
  - d. A two-story Residence shall have a combined minimum of 2400 square feet of living area on the first and second floors of the Residence.
  - e. A split-level, bi-level or tri-level Residence shall have a combined minimum of 2400 square feet of living area on the upper two floors of the Residence.

- f. Attached garages must be attached to the home directly, by breezeway, or in the basement of the home, and must be constructed at the same time as the home. Side entry garages are encouraged, and may be required by developer.
- g. The house, garage and paved driveways to the garage must be completed within one year after the first start of construction.
- h. The minimum setback and offsets shall comply with the R-3 zoning requirements.
- i. There will be no outside storage of boats, trailers, buses, trucks, campers or other vehicles or items deemed unacceptable by the Developer.
- j. All building plans, the exterior design of each building and basic site features such as fences, garden structures children's play structures, satellite dishes, swimming pools, additions and other temporary or permanent structures which affect the overall environment of the Development, must be approved by the Developer in writing prior to construction, and prior to application for a building permit when one is required. All landscape plans including species list shall be approved in writing by the Developer and Milwaukee Area Land Conservancy prior to installation.
- k. One outdoor electric post-mounted lamp with photoelectric controls and at the discretion of the Developer, one mailbox, must be installed on each lot in a location designed by the US Post Office, at the time of construction of a residential building on that lot. The design of the lamp, post and mailbox is subject to approval of the Developer. The lot owner must maintain the lamp in a proper operating manner. If the lamp is not maintained, the Prairie Grass Preserve Homeowner's Association will perform maintenance and the cost of such maintenance will be an assessment against the lot owner, payable within ten (10) days after the assessment.

4. **Building Restrictions, Duplex Lots** The intent of the duplex restrictions is to create a grouping of architecturally correct duplex homes of different style and character that will compliment the single family homes permitted in Prairie Grass Preserve Subdivision. To that end, the following restrictions apply:

- a. No building elevations shall be duplicated within the duplex area.
- b. The minimum size of an individual unit shall be 1450 square feet in area (two units per building).
- c. Minimum architectural requirements shall include the following:
  - 1. 8/12 roof pitch on main roof.
  - 2. Balanced windows on all four elevations.
  - 3. Break-up of long roof lines and building planes.
  - 4. Window detailing including 5/4" trim or shutters.
  - 5. 5 1/2" corner boards.
  - 6. Paneled garage doors.
- d. The minimum setback and offsets shall comply with the R-7 zoning requirement.
- e. The duplex home, garage and paved driveways to the garage must be completed within one year after the first start of construction.
- f. There will be no outside storage of boats, trailers, buses, trucks, campers or other vehicles or items deemed to be unacceptable by the Developer.
- g. Garages must be attached to the duplex directly or by attached breezeway. Each duplex unit shall have a minimum of one two-car garage. One of the two garages must be side entry.

- h. All building plans, the exterior design of each building and basic site features such as landscaping, lighting, fences, garden structures, children's play structures satellite dishes, swimming pools, additions and other temporary or permanent structures or elements which affect the overall environment of the Development, must be approved by the Developer in writing prior to construction, and prior to application for a building permit when one is required. All landscape plans including species list shall be approved in writing by the Developer and Milwaukee Area Land Conservancy prior to installation.
- i. One outdoor electric post-mounted lamp with photoelectric controls, and at the discretion of the developer, one mailbox must be installed on each duplex lot in a location designated by the Post Office, at the time of construction of a residential building on that lot. The design of the lamp, post and mailbox is subject to approval of the Developer. The lamp must be maintained by the owner of the building or the condominium association, as applicable in a proper operating manner. If the lamp is not maintained, Prairie Grass Preserve Homeowner's Association will perform maintenance and the cost of such maintenance will be an assessment against the building owner or condominium association payable within ten (10) days after the date of the assessment.
- j. All duplex buildings (containing two dwelling units) shall at all times of occupancy have a minimum of one of the two units occupied by an owner of the subject real estate. The other unit may be a rental unit. This restriction shall not be construed as not permitting condominium duplexes.

5. **Wetlands Preservation** Delineated on the Final Plat of Prairie Grass Preserve are wetlands as mapped by the Developer ("Restricted Area"). The following restrictions apply to these wetlands:

- a. The lots affected by these wetland restrictions are: 1, 2, 3, 4, 5, 10, 11, 12, 13, 25, 26, 33, 34, 36, 37, 42, 43, 44, 45 and 48.
- b. Grading and filling shall be prohibited in the Restricted Area. At a location 30' off of the wetland line orange snow fence and silt fence will be installed and maintained until all landscaping is complete and an established growth of grass is present. At no time for any reason shall this fence line be crossed.
- c. The removal of topsoil or other earthen materials from these Restricted Areas shall be prohibited.
- d. The removal or destruction of any vegetative cover, i.e., trees, shrubs, grasses, etc., shall be prohibited in the Restricted Area, with the exception of the removal of dead, diseased or dying vegetation at the discretion of the landowner or silvicultural thinning or prairie or wetland restoration upon the recommendation of a forester or naturalist and the approval of the City of Franklin.
- e. Grazing by domesticated animals, i.e., horses, cows, etc. shall not be permitted in the Restricted Area.
- f. The introduction of plant materials not indigenous to the existing environment of the wetland preservation shall be prohibited in the Restricted Area.
- g. Construction of buildings or structures within the Restricted Area and 30 foot buffers is prohibited and any alterations to a pre-approved building envelope showing building setbacks will require the full approval of the City of Franklin.

6. **Signs** No sign or banner of any kind may be placed or displayed to public view on any lot,

except: 1) One sign not more than six square feet advertising the property for sale, and 2) One standard sign (showing the lot owner's name) as may be approved by the City for uniform use in terms of size, design, appearance and location for each lot in the Development and 3) Such signs as the Developer or the City may approve for placement on those lots affected by the entry landscaping for the purpose of advertising Subdivision.

7. **Lot Grading** Each lot owner must strictly adhere to and finish grade his lot in accordance with the Master Grading Plan on file in the office of the Subdivider and the office of the City Building Inspector unless a change is approved by the City Engineer. The Subdivider and/or the City and/or the agents, employees or independent contractors shall have the right but not the responsibility to enter upon any lot, at any time, for any purpose of inspection, maintenance, correction of any drainage conditions and the property owner is responsible for the cost of the same.
8. **Homeowner's Association** An incorporated association of the owners of single-family lots in Prairie Grass Preserve is hereby created for the purposes of managing and controlling Common Areas as defined below, and performing other duties as set forth herein for the common benefit of the Homeowners. This Owner's Association will formally be titled Prairie Grass Preserve Homeowner's Association, Inc. and is referred to herein as "*The Association*". The membership of The Association will be comprised of the Lot Owners or the authorized agents of the Lot Owners in the Development. Members of The Association are referred to herein as the "*Homeowners*". Residents and other lot owners of The Association are encouraged to join Milwaukee Area Land Conservancy, Inc., a U.S. Internal Revenue Code §501(c)(3) Conservation Organization ("MALC") as individuals and families at the regular dues rates by signing agreement to the MALC Mission Statement and Standards of Ethical Practice for Natural Area Management. As part of this commitment, MALC's liability insurance for the conservancy area will name The Association as co-insured. Likewise, The Association shall provide liability insurance for all other outlot and common areas naming MALC as co-insured. Annual assessments for Lot Owners shall include \$25.00 per lot contribution to MALC by the Association, which may be amended from time to time by the Association. The Association shall be entitled to one vote per separate MALC Agreement.
9. **Board of Directors**. The Association will be governed by a Board of Directors consisting of three directors. This Board of Directors is referred to herein as "*The Board*". The Board will conduct and manage all of the responsibilities of the Association. The members of the Board will be selected as detailed in the Bylaws of the Homeowner's Association.
10. **Board Meetings**. All meetings of the Board will be open to Homeowners and will be held upon not less than three (3) days prior written notice to all of the Homeowners except as otherwise provided in the Bylaws. Two (2) members of the Board constitute a quorum. Actions of the Board are by majority vote.
11. **Board Liability** Members of the Board are not liable to a Lot Owner or any other party for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the member or agents of employees of the Board.

The Association shall indemnify and hold the members of the Board harmless from and against any and all costs or expenses, including reasonable attorney's fees, in connection with any suit or other action relating to the performance of their duties hereunder.

12. **Common Areas Definition** Wherever used in this Declaration, the term Common Area means:
  - a. All landscaped areas contained within any lot or outlot subject to a landscape easement as depicted on the Final Plat for Prairie Grass Preserve.
  - b. Any storm water pipe retention or detention ponds or easement areas contained on private lots or outlots as depicted on the Final Plat for Prairie Grass Preserve or separate easement agreement.
  - c. Any area within the Subdivision that is designated as a Common Area on the Recorded Plat for Prairie Grass Preserve.
  
13. **Storm Water Retention Ponds** The storm water retention ponds located in Prairie Grass Preserve have been created by the Developer and were required by the City of Franklin to assist in the removal and retention of storm water from Prairie Grass Preserve. The lots adjacent to the retention ponds are: 13, 14, 15, 40, 43, 44, 45, 46, 47, 48, 49, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, and 63. The Association is responsible for the maintenance of the retention ponds, which includes, but not limited to, clean out of construction silt after 95% of the lots have their landscape completed, maintain vegetation around the ponds, and maintaining the inlets, the outlets and erosion protection for Prairie Grass Preserve. The storm water retention ponds are not intended to be used for swimming or recreational facilities, and any use of the storm water retention ponds for such use is strictly prohibited. Any persons entering on it or using the storm water retention ponds either intentionally or accidentally do so at their own risk. By purchase of a lot or unit in Prairie Grass Preserve, each Owner and its respective successors, assigns, heirs and personal representatives thereby waives to the fullest, extent permitted by law, any and all claims for liability against the Declarant, the Developer, Prairie Grass Preserve Homeowner's Association, The City of Franklin, and their respective agents, contractors, employees, officers, directors and shareholders, for injury or damage to person or property sustained in or about or resulting from the use or existence of the storm water retention ponds. In addition, each Owner (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Declarant, the Developer, Prairie Grass Preserve Homeowner's Association, The City of Franklin and their respective agents, contractors, employees, officers, directors and shareholders, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorney's fees) including those arising from any injury or damage to any person (including death) or property damage sustained in or about or resulting from their use or existence of the storm water retention ponds.
  
14. **House Grades & Lot Grading** Each Owner must adhere to and finish grade their lot to the recorded elevation on the Master Grading Plan, Plat of Survey or any amendment thereto approved by the City Engineer on file in the office of the City Engineer. Each Owner, at the time of home construction and finish grading, shall also be responsible for grading their lots so as to direct drainage toward the street or other established drainageways and to prevent an increase in drainage on to neighboring property. This shall be accomplished by creating the representative swales at the elevations shown on the Plat of Survey along the common lot line. If the existing conditions prevent the correct drainage the Plat of Survey will govern. The Developer and/or the

City and/or their respective agents, employees or independent contractors shall have the right to enter upon any lot, at any reasonable time, for the purpose of inspection, maintenance and correction of any drainage conditions and the Owner is responsible for the same.

15. **Utility Easements** Developer has the right to grant and convey easements to the City or to any public or private utility company upon, over, through or across those portions of any lot in the Development within 10 feet of any lot line for purposes of allowing the City or utility company to furnish gas, electric, water, sewer, cable television or other utility service to any lot or lots or through any portions of the Subdivision or for purposes of facilitating drainage of storm or surface water within or through the Subdivision. Such easements may be granted by Developer, in its own name and without the consent or approval of any lot Owner, until such time as Developer has conveyed legal title to all lots platted or to be platted in the Subdivision to persons other than a successor-Developer.
16. **Maintenance Easements** Lots 1, 2,3, 6, 7, 8, 15, 16, 17, 18, 19, 20, 24, 25, 26, 27, 31, 32, 33, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47, 51, 52, 53, 55, 56, 59, 60, 63, 64 and 65 in Prairie Grass Preserve have or will have drainage easements. These easements are restricted to only such areas, methods of access and duration as are reasonably required to perform necessary maintenance to the easements or storm sewer contained therein. With respect to the ponds, maintenance includes, but is not limited to, silt and sediment removal, trash removal, animal control and installation and maintenance of safety barriers or other devices as deemed necessary by the Developer, the City or the Homeowner's Association.
17. **No Agency for Other Owners** No Owner, other than members of the Association's Board, has any authority to act for the Association or the other Owners, as agent or otherwise, or to bind the Association or the other Owners to contracts, negotiable instruments or other obligations or undertakings of any kind.
18. **Service on Association** Service of process upon the Association for all matters must be made upon one of the members of the management committee of the Association or such legal counsel as the Association may designate to receive service of process by recording such designation with the Register of Deeds for Milwaukee County, Wisconsin.
19. **No Waiver of Rights** Any failure of the Association or the Board to enforce any provisions contained in this Declaration will not be deemed to be a waiver of the rights to do so, or an acquiescence in any subsequent action.
20. **Enforcement of Obligation by City** If the Association fails to discharge its duties under the Declarations within sixty (60) days of written demand to do so by the City, the City may enter the affected property to remedy same using its own employees or contracting with others, and taking such actions as is necessary in its sole discretion to correct it. All costs associated with such corrective action shall be levied as a special charge for current services against all properties benefiting therefrom, in accordance with Section 66.0627 or as a special assessment under Section 66.0703 of the Wisconsin Statutes, at the City's discretion. The performance of any such work shall not be deemed an act of dedication to the public, nor shall it constitute an assumption by the City of any duty to perform any other or further work. This paragraph may be

amended only with the express consent of the City.

21. **Amendments** This Declaration may be amended by recording in the office of the Register of Deeds for Milwaukee County, Wisconsin a document to that effect executed by the owners of at least sixty percent (60%) of all then-existing platted lots in the Development, and their mortgagors, with all signatures duly notarized. Any and all amendments to this document must be approved by the city of Franklin Common Council. Such amendment will become effective only upon recording. Notwithstanding the foregoing provisions of this Section, The Developer may amend this Declaration without the consent of any of the lot Owners solely to effect an expansion of Prairie Grass Preserve to include contiguous parcels of real estate as may be acquired by Developer from time to time, or to amend the Declaration for subsequent phases.
22. **Duration of Restrictions** These restrictions will be in force perpetually from the date hereof and will be deemed to run with the land, to bind the Owners and their heirs, successors and assigns and be enforceable by any Owner and to the extent permitted by Section 20 above, the City of Franklin.
23. **Conservation Agreement and Protective Covenants.** The Developer had deed Outlot 2 and Outlot 3 of the final plat to MALC for purposes of protection and enhancement of a remnant prairie and other natural features. Developer has entered into a Declaration of Deed Restrictions, Conservation Agreement and Protective Covenants concerning these outlots which are referenced therein as the Protected Property. Under the terms of that Agreement, portions of the Subdivision are restricted by covenants and prohibited uses. Enforcement of the restrictions and covenants are the responsibility of the Association as to areas outside the Protected Property and The MALC as to areas inside the Protected Property and the 30 feet adjacent to the Protected Property as detailed below. Those restrictions are [Note: The City of Franklin has other easement rights to property outside the Protected Property, arising from separate easement documents]:
  - a. The owners of the lots in the Subdivision and their invitees, and the general public shall not construct or make any development improvements or commence construction of any buildings or any structure within thirty (30) feet of the Protected Property unless approved by MALC and the City. All lands, whether owned by Homeowners or common space owned by the Association adjacent to or within thirty (30) feet of the Protected Property shall not have applied to the land any pesticides, as defined by s. 94.67, Wis. Stats., as it may be amended, The foregoing notwithstanding, birdhouses, benches, fences and other similar improvements may be placed in the thirty-foot buffer upon the approval of MALC, which approval shall not be unreasonably withheld.
  - b. The owners of the lots in the Subdivision and their invitees, and the general public shall not conduct any filling, dumping or depositing of any material whatsoever, including, but not limited to soil, yard waste or other landscape materials, ashes, garbage, or debris within the Protected Property except as part of the restoration, maintenance or protection of the Protected Property as conducted by MALC or as approved by the Wisconsin Department of Natural Resources, MALC and the City.



- c. The owners of the lots in the Subdivision and their invitees, and the general public shall not plant any vegetation whatsoever within the Protected Property unless authorized and supervised by MALC.
- d. The owners of the lots in the Subdivision and their invitees, and the general public shall not plant honeysuckle, purple loosestrife; both common and glossy buckthorn or other species listed on the WDNR invasive weed list or City's noxious weed list within the granted easement areas, stormwater detention basins, or on any residential site of the Prairie Grass Preserve Subdivision; or as part of any landscape approval for an individual lot or outlot within the Prairie Grass Preserve Subdivision.
- e. The owners of the lots in the Subdivision and their invitees, and the general public shall not plant any *native* herbs, shrubs, forbs, flowers or other plants, not including turf, that does not have the approval of MALC regarding the seed source as a native local genotype originating within a radius of fifty (50) miles of the Protected Property except as provided in Paragraph 9 of the Declaration of Deed Restrictions, Conservation Agreement and Protective Covenants.
- f. The owners of the lots in the Subdivision and their invitees, and the general public shall not remove any plant material, or animals from the Protected Property unless approved by the MALC's board of directors.
- g. The owners of the lots in the Subdivision and their invitees, and the general public shall not permit anyone to ride bicycles on the Protected Property.
- h. The owners of the lots in the Subdivision and their invitees, and the general public shall not permit anyone to operate snowmobiles, dune buggies, motorcycles, scooters, all-terrain vehicles or any other type of motorized vehicles within the Protected Property.
- i. The owners of the lots in the Subdivision and their invitees, and the general public shall not provide any person or organization with access for motorized vehicles for the purposes of maintaining stormwater basins through or across the Protected Property.
- j. The owners of the lots in the Subdivision and their invitees, and the general public shall not allow dogs within the Protected Property except guide dogs.
- k. The owners of the lots in the Subdivision and their invitees, and the general public shall allow MALC, its members, guests and invitees shared access of the areas granted for stormwater basin access as depicted in Exhibit B for purposes of maintenance, restoration, research, public education and enjoyment of the Protected Property.
- l. The owners of the lots in the Subdivision shall pay an annual \$25.00 assessment as amended from time to time by the Association (to adjust for the change in the Consumer Price Index, All Goods, Milwaukee Region or any similar successor index) to MALC to aid in the cost and expenses of MALC's discharge of its duties hereunder and pursuant to the Declaration of Deed Restrictions, Conservation Agreement and Protective Covenants.

Such fee shall be collected by the Homeowners Association and remitted to MALC on an annual basis commencing in 2005 and paid on or before December 31 of each year.

This Declaration is executed by the Developer's signature below and is effective upon recording by the Milwaukee County Register of Deeds.

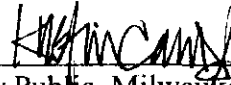
**Prairie Grass Preserve, LLC**

  
\_\_\_\_\_  
William W. Carity, Member

  
\_\_\_\_\_  
P. Kenneth Servi, Member

STATE OF WISCONSIN    )  
  ) ss.  
MILWAUKEE COUNTY    )

Personally came before me this 4 day of January, 2005, the above-named William W. Carity and P. Kenneth Servi, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

  
\_\_\_\_\_  
Notary Public, Milwaukee County, Wisconsin  
My Commission Expires 4.23.06

This document drafted by:  
William W. Carity  
Carity Land Corp.  
12720 West North Avenue  
Brookfield, WI 53005