

DECLARATION OF RESTRICTIONS,  
COVENANTS AND CONDITIONS  
OF  
CHERRY HILLS SUBDIVISION

ARTICLE I

PROPERTY SUBJECT TO THE CHERRY HILLS SUBDIVISION RESTRICTIONS

The Association hereby declares that all of the real property contained within the plat of CHERRY HILLS SUBDIVISION, recorded in Plat Book \_\_\_\_ page \_\_\_\_, Greene County Recorder's Office, is and shall be held, conveyed, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration, as amended or modified, is in furtherance of a general plan for the subdivision, improvement and sale of said real property and every part thereof. Except as provided herein, this Declaration shall run with all real property within CHERRY HILLS SUBDIVISION for all purposes and shall be binding upon and inure to the benefit of the Association and all Owners and their successors in interest.

ARTICLE II  
DEFINITIONS

Section 1: As used in this Declaration of Restrictions, Covenants and Conditions:

(a) "Association" shall mean and refer to CHERRY HILLS SUBDIVISION PROPERTY OWNERS ASSOCIATION, INC., its successors and assigns.

(b) "Common Area" shall mean all real property owned by the Association or designated or shown as Community Area, Common Area, or as open, detention or drainage area on a CHERRY HILLS SUBDIVISION final plat, as recorded, including any amendments or additions thereto, which shall include, but not be limited to, the landscaped portion of any street, medians, traffic islands or landscaped areas within any public or private streets within the subdivision, any private streets, entry roads, curb and gutter, sidewalks, gates and other improvements within the area which would have been public right-of-way if the streets were public.

(c) "Developer" shall mean Cherry Hills Development of Springfield, LLC, its successors and assigns and any entity designated by Cherry Hills Development of Springfield, LLC, as a Developer or successor.

(d) "Declaration" shall mean the "Declaration of Restrictions, Covenants and Conditions of CHERRY HILLS SUBDIVISION" and all other provisions set forth in this entire Document, as the same may from time to time be amended or modified.

(e) "Property" or "Properties" shall mean and refer to all of the real property contained within the plat of CHERRY HILLS SUBDIVISION, and any additional real

estate acquired by Developer and developed in conjunction with CHERRY HILLS SUBDIVISION, upon filing an amendment with the Greene County Recorder of Deeds which shall state the legal description of the additional real estate to be included in the Property.

(f) "Owner(s)" shall mean the record owner, whether one or more persons or entities, of a fee or undivided interest in any lot. The foregoing does not include any persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise in this Declaration, the term "Owner" shall not include a lessee or tenant.

(g) "Single Family Residence" shall mean a structure containing one dwelling only and occupied by not more than one family.

(h) "Lot" shall mean any parcel of real property designated as a Lot on any recorded Subdivision Plat within CHERRY HILLS SUBDIVISION or any additions thereto, with the exception of the Common Area.

(i) "Subdivision Plat" shall mean a recorded plat covering any or all of the Property referred to in this Declaration.

(j) "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

(k) "Board" shall mean the Board of Directors of the Association.

(l) "Corner Lot" shall mean any lot which abuts, other than at its rear line, upon more than one street.

(m) "CHERRY HILLS SUBDIVISION" shall mean the Property as set forth above.

(n) "Rules" shall mean and refer to those rules and regulations as passed and promulgated by the Association, or the Board acting on behalf thereof, under the authority granted by this Declaration, or the Articles of Incorporation or By-Laws of the Association.

### ARTICLE III PROPERTY RIGHTS

Section 1: Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreations facility situated upon the Common Area; the right of the Association to limit the number of guests of Members; the right of the Association to limit the Common Areas which may be used by guests of Members; the right of the Association to impose conditions under which Common Areas may be used by Members and/or their guests;

(b) The right of the Association to suspend any Owner's voting rights and the right to use the recreational facilities for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed ninety (90) days for any infraction of this Declaration, any Supplementary Declarations thereto, By-Laws of the Association or any Rules which may be imposed by the Association;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any governmental agency, authority, or public or private utility for such purposes, provided, however, Greene County provides written consent to such dedication, conveyance or transfer or the City of Springfield in the event the subdivision has been annexed into the City of Springfield; and

(d) The right of the Association to promulgate and enforce the rules and regulations in connection with the Properties described herein or any additions thereto.

#### ARTICLE IV

#### PROPERTY SUBJECT TO THE CHERRY HILLS SUBDIVISION RESTRICTIONS

Section 1: General Declaration Creating CHERRY HILLS SUBDIVISION. The Developer may develop CHERRY HILLS SUBDIVISION in phases, by subdivision into various Lots. The Developer may supplement or modify this Declaration with such additional covenants, conditions and restrictions as may be appropriate. The Developer's sale and conveyance of Lots is subject to this Declaration, as modified and amended. The Developer hereby declares that all of the real property within CHERRY HILLS SUBDIVISION, is and shall be held, conveyed, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration, as amended or modified, is in furtherance of a general plan for the subdivision, improvement and sale of said real property and is established for the purpose of enhancing the value, desirability, and attractiveness of said real property and every part thereof. All of this Declaration shall run with all of the real property within CHERRY HILLS SUBDIVISION for all purposes and shall be binding upon and inure to the benefit of the Developer, the Association, and all Owners and their successors in interest.

ARTICLE V  
THE CHERRY HILLS SUBDIVISION PROPERTY OWNERS ASSOCIATION

Section 1: Organization.

(a) The Association. The Association is a non-profit corporation organized and existing under the General Not-For-Profit Corporation Act of the State of Missouri, charged with the duties and invested with the powers prescribed by law and set forth in its Articles of Incorporation, By-Laws, and this Declaration. Neither the Articles nor By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(b) Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and the By-Laws.

Section 2: Powers and Duties of the Association. The Association shall have such rights, powers and duties as set forth in the Articles and By-Laws.

Section 3: Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of the Declaration, adopt, amend, and repeal rules and regulations governing the use of any Common Area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that such Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of such Rules as they may from time to time be adopted, amended or repealed, shall be made available to each Owner, at said Owner's request. Upon promulgation, said Rules shall have the same force and effect as if they were set forth in and were part of the Declaration.

Section 4: Personal Liability. No Member of the Board of Directors of any Committee of the Association, or any officers of the Association shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, or any other representative or employee of the Association, or the Architectural Committee, or any other Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted without willful or intentional misconduct.

Section 5: Responsibility for Common Areas. The Association shall have the responsibility for maintaining the Common Areas and shall be responsible for the payment of any taxes and insurance on the Common Areas. The Association will not be dissolved without the consent of the City of Springfield or the Greene County Commissioners

Section 6: Liability of Association for Vehicles. Neither the Association nor the Board shall assume any liability of any kind or nature with respect to any vehicles moving within or parked upon any portion of the Common Areas. Any person operating or parking any vehicles

within the boundaries of the Common Areas shall do so entirely at such person's risk and shall indemnify and hold both the Association and the Board harmless from and against any and all claims, demands, actions, causes of action and proceedings arising out of the presence of any such vehicle within the boundaries of the Common Areas.

## ARTICLE VI MEMBERSHIP AND VOTING RIGHTS

Section 1: Membership. Every Owner, either of a fee or undivided interest, of a Lot, which is subject to assessment by the Association, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

Section 2: Management. Members shall have no rights to manage the business affairs of the Association. The management of the Association is vested entirely in the Board of Directors as set forth in the Articles of Incorporation and By-Laws.

Section 3: Voting Rights. Voting members of the Association shall be all those members described in Section 1 hereof, including Developer for so long as Developer owns any interest in a Lot. Voting members, other than Developer, shall be entitled to one (1) vote for each Lot in which such member owns an interest; provided, however, that when two or more persons or entities hold undivided interests in any Lot all such persons or entities shall be voting members and the vote for such Lot shall be exercised as they, among themselves, determine, but such joint ownership shall not increase the vote which could otherwise be cast for such Lot. Developer shall be entitled to 150 votes for each Lot owned by Developer.

Any matter to be voted on by the voting members of the Association shall be determined by a majority of the votes cast; provided, however, that no vote shall be valid unless the Developer shall have cast its vote or shall have waived such right in writing for so long as Developer owns a Lot.

## ARTICLE VII COVENANT FOR ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligations of Assessments. Each of the Owner(s), except Developer, hereby covenants, and by acceptance of a deed for any Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall, to the full extent permitted by law, be a charge on the Lot of each of the Owner(s) and shall be a continuing lien upon each such Lot after such assessment is made, except for any Lot owned by Developer. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner(s) of each Lot, except for Developer, on the effective date of the assessments. The personal obligation for delinquent assessments shall not

pass to the successors in title of each Owner(s) other than Developer, but, nevertheless, the lien arising by reason of such assessment shall continue to be a charge and lien upon the land as above provided.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the general benefit, recreation, health, safety and welfare of the residents in CHERRY HILLS SUBDIVISION. Such purposes shall include, but shall not be limited to, and the Association's rights and powers shall include (in addition to the rights and powers set forth in this Declaration and in the Association's Articles of Incorporation and By-Laws) provision for the improvement, construction, repair, maintenance, care, upkeep and management of the Common Areas and the improvements and facilities thereon; and further, shall include the payment of any taxes and assessments, if any, which may be assessed and levied upon any property owned by the Association, together with all other costs and expenses related to the management and maintenance of the Common Areas. Nothing contained herein shall limit the associations rights and powers granted in this Article or granted elsewhere in this Declaration and the Articles of Incorporation and By-Laws of the Association.

Section 3: Annual Assessment.

(a) The initial annual assessment shall be not more than Twenty-five Dollars (\$25.00) per Lot, and shall commence at such time as is designate by the Board, and after thirty (30) days written notice to all Owner(s).

(b) The maximum amount by which an annual assessment may be increased each year, without a vote of the Members, is ten percent (10%) above the prior year's annual assessment except that in the event that the annual assessment is not sufficient to pay for the maintenance, taxes and insurance on the common area, an additional annual assessment will be made solely for the purpose of paying for the maintenance, taxes and insurance on the Common Area.

(c) No annual assessment shall be due from Developer, unless Developer agrees in writing to pay such assessments.

Section 4: Special Assessment for Capital Improvements. In addition to the annual assessments in Section 3 above, the Association may levy, in any assessment year, a special assessment. The purpose of the special assessment shall be for a capital improvement in the Common Area, or providing in whole or in part, for the cost of any reconstruction, repair or replacement of a capital improvement in the Common Area, including fixtures and property related thereto. The maximum special assessment shall be Fifty Dollars (\$50.00) per year, per Lot. Any special assessment shall require an affirmative vote of the majority of the voting members. Developer shall have no obligation to pay any special assessments.

Section 5: Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner, except Developer, shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and each agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for

collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner, except Developer agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, the assessment shall be deemed delinquent, and shall bear interest at the rate of eighteen percent (18%) per annum, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or, without any limitation by the foregoing, by either or both of the following procedures.

(a) Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against any Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner.

(b) Enforcement by Lien. There is, to the full extent permitted by law, hereby created a claim of lien, with power of sale, on each and every Lot within CHERRY HILLS SUBDIVISION to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots under these Restrictions, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of delinquency, an administration fee of One Hundred Dollars (\$100.00) to the Association, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time within thirty (30) days after the occurrence of any default in the payment of any such assessment, the Association or any authorized representative, may, but shall not be required to make a written demand for payment to the defaulting owner, on behalf of the Association. Said demand shall state the date and the amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim or lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or even without such a written demand being made, the Association may elect to file such a claim or lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

(1) The name of the delinquent Owner (as shown on the Association records);

(2) The legal description or street address of the lot against which claim of lien is made;

(3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, the One Hundred Dollars (\$100.00) administration fee, collection costs, and reasonable attorneys' fees;

(4) That the claim of lien is made by the Association pursuant to the Declaration; and

(5) That a lien is claimed against said Lot in an amount equal to the amount stated.

Upon (1) recordation of a duly executed original or copy of such a claim or lien, and (2) mailing a copy thereof to said Owner, the lien claimed thereon shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the liens which are hereinafter specifically described in Section 6. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust, with a power of sale, as set forth by the laws of the State of Missouri, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of the Members. The Association may acquire, hold, lease, mortgage, and convey any such Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the Association to the extent permitted by law. Each Owner, by becoming an Owner in CHERRY HILLS SUBDIVISION, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 6: Subordination of the Lien to Mortgages. The lien of the assessment 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. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VIII ARCHITECTURAL CONTROL

Section 1: Review by Committee. No structure, residence, accessory building, tennis court, swimming pool, fence, mailbox, driveway, wall, lot drainage works, awning, exterior area lighting or other improvements shall be constructed or maintained upon any Lot, and no addition or change to the exterior of a structure shall be undertaken, unless complete plans, specification and plot plans thereof showing the exterior design, height, building material and color scheme thereof, the location of the structure on the Lot plotted horizontally and vertically, the location of driveways and fencing, shall have been submitted to and approved in writing by the Architectural Committee. A copy of such plans,

specifications and plot plans as finally approved, shall be kept by the Architectural Committee. All fees and expenses incurred by the Architectural Committee shall be paid by the applicant.

Section 2: Duties. The Architectural Committee shall have the right, in its sole discretion, to refuse to approve any plans and specifications which are not suitable or desirable for aesthetic or other reasons and in passing upon such plans and specifications and without any limitations of the foregoing, it shall have the right to take into consideration the suitability of the proposed building, structure or other improvement of landscaping, in light of Developer's plans for CHERRY HILLS SUBDIVISION as a residential development of architectural design, color, texture and materials, the harmony of external design and location in relation to surrounding structures and topography and the effect of the improvements as planned on the outlook from adjacent or neighboring Lots. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee.

Section 3: Procedures.

(a) The Architectural Committee shall approve or disapprove all plans and requests within thirty (30) days after receipt by the Committee of all necessary information. In the event the Architectural Committee fails to take any action within thirty (30) days after a request and all necessary information has been submitted, approval shall be presumed and this Article shall be deemed to have been fully complied with.

(b) The Architectural Committee shall maintain written records of all applications submitted to it and of all actions taken. Plans, specifications, and other records and minutes of Committee actions shall be kept by the Committee for at least one (1) year.

(c) A majority vote of the Architectural Committee shall be necessary for approval of any request.

Section 4: Members of Committee.

(a) The Architectural Committee shall consist of two (2) Members appointed by Developer until January 1, 2006 and then by the Board of Directors of the Association. Members of the Committee are not required to be Owners.

Section 5: Non-Liability for Approval of Plans. Plans and specifications shall be reviewed by the Architectural Committee as to style, exterior design, appearance and location and shall not be reviewed for engineering or structural design or for compliance with zoning and building ordinances. By approving such plans and specifications, neither the Architectural Committee, the members thereof, the Association, the Board nor the Developer assume any liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. Neither the Architectural Committee, any member thereof, the Association, the Board nor the Declarants shall be liable to any Owner, prospective Owner, or other Person for any damage, loss or injury suffered or claimed on account of (a) the approval or disapproval

of any plans, drawings and specifications, whether or not defective, (b) the construction performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (c) the development, or manner of development, of any property within CHERRY HILLS SUBDIVISION, provided, however, that such action, with the actual knowledge possessed, was taken without willful or intentional misconduct. Approval of plans and specifications by the Architectural Committee is not and shall not be deemed to be a representation or warranty that said plans or specifications comply with applicable governmental ordinances and building codes.

Section 6: Inspection. Any member of the Architectural Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter upon any Lot in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with the approved plans and specifications.

## ARTICLE IX USE AND BUILDING RESTRICTIONS

Section 1: The following restrictions are imposed upon each residential Lot for the benefit of all owners and the Developer.

Section 2: Single-Family Residential Use. All Lots shall be used, improved and devoted exclusively as a one-family dwelling and no gainful occupation, profession, trade, or other nonresidential use shall be conducted on any such Lot. Nothing herein shall be deemed to prevent the leasing of any such dwelling from time to time, by the Owner thereof, subject to all of the provisions of the Declaration.

Section 3: Structures. All Lots shall be subject to the following restrictions:

(a) No structure whatever shall be erected, placed or permitted to remain on any Lot except a detached one-family dwelling, together with:

(1) an attached private garage, provided that the Architectural Committee, in its sole discretion, may give written consent to a detached garage; and/or

(2) a detached utility building of not more than 150 square feet. The overall appearance, materials and color of the building shall be compatible with the architectural style of the house, with an overall height of no more than ten (10) feet and the structure must first be approved by the Architectural Committee.

(b) The front of all dwellings shall be constructed of maintenance free materials, such as brick, stucco, or other approved materials approved by the Architectural Committee in writing. The front of dwellings may be constructed of a combination of

such materials, but all such materials must be approved by the Architectural Committee in writing, whether or not the materials are to be used in combination.

(c) All dwellings in CHERRY HILLS SUBDIVISION shall be of such size as to afford not less than 1,350 square feet of living space on the main entrance level, exclusive of open porches or garages.

(d) Roofs may be asphalt composition with a minimum of 6/12 pitch.

(e) Carports are not permitted.

Section 4: Animals. No animals, fowl, or livestock, other than a reasonable number of generally recognized house pets, shall be maintained on any property within CHERRY HILLS SUBDIVISION, and then only if they are kept solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No doghouse, structure or pen for the care, housing or confinement of any animal shall be constructed or maintained unless it is in a fenced rear yard, and is approved under Article VIII. Upon the written request of the Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this paragraph, a particular animal is a generally recognized house pet, or a nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein. Pets shall not be allowed loose or unsupervised on any part of the Properties and walking of pets shall be on a leash and allowed only on such portions of the Properties as the Board may prescribe by its Rules and Regulations.

Section 5: Antennas. No exterior antenna or other device for the transmission or reception of electronic signals shall be erected, used or maintained outdoors on any Lot, unless approved by the Architectural Committee, which shall have the sole discretion to decide such matters. Direct satellite dish receivers for television reception shall be permitted provided that the dish is firmly mounted to the house located on the Lot where it is installed, and provided that it is not larger than the 18" direct satellite dish presently marketed by RCA and the dish is so located that it is not visible from any location along and within six (6) feet above the street in front of the Lot where installed. All such direct satellite dish receivers, and the location and method for the mounting thereof, shall be approved by Architectural Committee before being installed.

Section 6: Improvements and Alterations. No building, fence, wall, residence or other structure shall be commenced, erected, improved, or structurally altered, without the prior written approval of the Architectural Committee. The exterior surface of a single family structure shall not be painted (other than painting with the same color of paint as previously existed) or changed in any manner without the prior written approval of the Architectural Committee (See Article VIII).

Section 7: Temporary Occupancy. No trailer, incomplete building, tent, shack or garage and no temporary building or structure of any kind shall be used at any time for a residence on any property within CHERRY HILLS SUBDIVISION. Temporary buildings or structures used

during the construction of a dwelling on any such property shall be subject to the rules of the Board and shall be removed immediately after the completion of construction.

Section 8: Motor Vehicles and Trailers.

(a) No mobile or motor home, trailer of any kind, truck larger than 1/2 ton, camper, boat, or permanent tent or similar structure shall be parked, kept, maintained or repaired upon any property or street (public or private) within CHERRY HILLS SUBDIVISION, between the hours of 12 midnight and 5: 00 A.M., in such a manner as will be visible from neighboring property; nor shall any motor vehicle of any kind be constructed, reconstructed or repaired on public or private property within CHERRY HILLS SUBDIVISION, provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs, or temporary construction shelters or storage facilities approved by the architectural control committee and used exclusively in connection with the construction of any improvement.

(b) Any motor vehicle which is, in the sole discretion of the Board, unsightly or not in keeping with motor vehicles owned by CHERRY HILLS SUBDIVISION residents, or is a service vehicle or pick-up truck with a camper top or similar top shall be parked in the garage overnight, and shall not be parked in CHERRY HILLS SUBDIVISION between the hours of 12 midnight and 5:00 a.m. in such a manner as will be visible from neighboring property.

Section 9: Motor Vehicles - Excessive Noise. If the Board determines that any motor vehicle is creating loud or annoying noises by virtue of its operation within CHERRY HILLS SUBDIVISION, such determination shall be conclusive and final that the operation, upon notice by the Board to the Owner or operator thereof, shall be prohibited within CHERRY HILLS SUBDIVISION.

Section 10: Landscaping and Lawns.

(a) Completion. Each Owner shall complete the landscaping required by the Architectural Committee prior to occupying the premises, unless the Architectural Committee shall approve a delay based on weather conditions.

(b) By Owner. Each Owner of a Lot within CHERRY HILLS SUBDIVISION shall keep all shrubs, trees, grass and plantings, including the area located between the boundary line of his property and the street on which such Owner's property abuts, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Each Owners shall keep a minimum of two (2) trees, each tree a minimum of ten (10) feet in height, in the front lawn of the Owner's lot, and shall place a strip of gravel, or other materials approved by the Architectural Committee, not less than three (3) feet in width along the front of the dwelling, in which shrubs shall be planted at intervals of not more than every five (5) feet. In the event that any Owner fails to maintain his lawn, landscaping or plantings as provided herein, the Association, or its agents, may enter upon said Lot and may do so, and the Owner shall reimburse the

Association for its costs, upon demand. The Association may enforce collection of same in the same manner as if such costs were an assessment and shall have all powers and rights to so collect as set forth in Article VII above.

(c) By the Association. The Association, and its agents, shall have the right, at any time, to plant, replace, maintain, and cultivate shrubs, trees, grass and plantings on the Common Area, and on any easements of record over an Owner's Lot. The Association or its authorized agents shall not be liable for trespass, for so doing.

Section 11: Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot within CHERRY HILLS SUBDIVISION, and no odors shall be permitted to arise therefrom so as to render any such Lot or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. The Board in its sole discretion shall have the right to determine the existence of any such nuisance and for the purposes of this Declaration such determination shall be conclusive.

Section 12: Repair of Buildings. No building, structure or fence upon any Lot within CHERRY HILLS SUBDIVISION shall be permitted to fall into disrepair, and each such building, structure or fence shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

Section 13: Trash Containers and Collection. No garbage or trash shall be placed or kept on any property within CHERRY HILLS SUBDIVISION except in covered containers of a standard type approved by the Association. The Association shall select a company for weekly trash disposal service for CHERRY HILLS SUBDIVISION. All residents of CHERRY HILLS SUBDIVISION shall be required to use this company and no other trash disposal service shall be permitted. In no event shall such containers be maintained so as to be visible from Neighboring Property except to make the same available for collection and then, only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot and no burning in the open will be permitted.

Section 14: Clothes Drying Facilities. Outside clothes lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot within CHERRY HILLS SUBDIVISION unless they are erected, placed or maintained exclusively within an area not visible from Neighboring Property.

Section 15: Encroachments. No tree, shrub, or planting of any kind on any Lot within CHERRY HILLS SUBDIVISION shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet, without the prior approval of the Architectural Committee.

Section 16: Machinery and Equipment. No machinery or equipment of any kind shall be placed, parked, operated or maintained upon or adjacent to any Lot within CHERRY HILLS SUBDIVISION except that:

(a) An Owner (or guest, invitee, licensee, tenant, lessee, family member, agent or employ thereof) may use such machinery or equipment as is usual and customary in connection with the use and maintenance of that owner's lot, or the improvements thereon.

(b) A builder or contractor constructing improvements for an owner may use such machinery or equipment as is usual and customary in connection with the construction of improvements on an owner's lot, provided that such machinery and equipment is actively being used by the builder or contractor and is stored or placed in an area approved by the architectural control committee, and that no trucks of any kind or nature shall be kept, parked or placed upon any lot or street (public or private) within CHERRY HILLS SUBDIVISION between the hours of 12:00 midnight and 5:00 A.M., unless permission to the contrary is temporary granted by the Architectural Control Committee, and

(c) The Developer or the Association may park, place, operate or maintain such machinery and equipment as may be required for the operation and maintenance of the Common Area.

Section 17: Restriction on Further Subdivision. No Lot within CHERRY HILLS SUBDIVISION shall be further subdivided by any owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by an Owner, without the prior written approval of the Developer. This provision shall not, in any way, limit Developer from subdividing any property owned by Developer. Such newly created parcel thereafter shall be considered as one Lot.

Section 18: Signs. No sign of any kind shall be displayed to the public view of any Lot except as follows and subject to the approval of the Architectural Committee:

(a) One sign of not more than five (5) square feet, advertising the property for sale or rent;

(b) Signs used by a builder to advertise the property during the construction and sales period;

(c) Signs of such shape, size and location as the Developer deems necessary for security control and to advertise CHERRY HILLS SUBDIVISION;

(d) One sign, not to exceed one (1) square foot in size, which may contain the name or names of the Owner or Owners and/or the dwelling unit number;

(e) Signs of such shape, size and location as the Architectural Committee may approve.

Section 19: Dwelling Size. The Architectural Committee shall exercise its best judgment to see that all structures, as to size, conform to and harmonize with the existing surroundings and structures.

Section 20: Building Location.

(a) No building shall be located nearer to any lot line than the minimum set back line shown on the recorded plat of CHERRY HILLS SUBDIVISION.

(b) The building location (horizontal and vertical) must be approved by the Architectural Committee.

Section 21: Fences.

(a) Fences are not encouraged but properly constructed and installed fences may be approved for construction by the Architectural Committee upon submission of plans and specifications. Fences shall be of the design, materials and specifications determined by the Architectural Committee.

(b) Chain link fences are not permitted.

(c) Privacy fences may not exceed seventy-two (72) inches in height.

(d) No fences in CHERRY HILLS SUBDIVISION shall extend nearer to the front wall of a house than fifty (50) percent of the distance of the house on each side. Supporting structures on all fences shall be placed on the side of the fence facing the property of the owner building the fence. On corner lots, the fence may extend from the house toward the street a maximum of five (5) feet.

(e) No fence or hedge shall be permitted between the front wall of the structure and the adjoining street or across the front yard. Notwithstanding the foregoing, the Architectural Committee may give specific written permission to an Owner to vary from the provisions of this subpart.

Section 22: Sales and Construction Office. Notwithstanding anything herein, Developer and its agents may establish temporary sales and/or construction offices and model homes, in CHERRY HILLS SUBDIVISION and may permit builders and realtors to establish the same. Any such office shall be removed upon the completion of the subdivision. Developer and its agents shall have the right to use the Common Area in conjunction with the sales and promotion of lots and houses in CHERRY HILLS SUBDIVISION.

Section 23: Easements. Easements are reserved as shown upon the recorded plat of CHERRY HILLS SUBDIVISION.

Section 24: Soil Removal. Soil may not be removed from the subdivision without the consent of the Developer.

Section 25: Garage Doors. The doors of all garages shall be kept closed at all times except when necessary for ingress and egress. The doors of all garages shall be installed with electric or battery powered opening and closing devices.

Section 26: Basketball Goals. No basketball goals shall be attached to the front of any dwelling or garage nor erected in any front yard or on the side of any street which abuts any corner lot.

Section 27: Outside Lighting. Spotlights, floodlights, or similar type high intensity lighting shall be designed, located and constructed so as to eliminate or significantly reduce glare on adjoining residences, and the Architectural Committee may direct that they be redesigned or eliminated if they determine that it is advisable. Other types of low intensity lighting which do not disturb the Owners or other occupants of the properties may be allowed.

Section 28: Mailboxes. Each Owner shall construct a mailbox which shall be completed prior to occupying the residence, and such mailbox shall pass to any purchaser of the Lot for which it is constructed or installed. The mailbox shall be of the design, materials and specifications approved by the Architectural Committee.

Section 29: Roofs. All roofs shall have an exterior surface which shall be approved by the Architectural Committee, in its sole discretion.

Section 30: Completion. A structure shall be completed within a reasonable time after commencement of construction. In the event of fire, windstorm, or other damage, a structure shall be repaired, remodeled, rebuilt or completely removed within a reasonable time.

Section 31: Common Area. Although Builders are also Owners, the recreation facilities in the Common Area are not for Builder's use or their family's use, unless they live in CHERRY HILLS SUBDIVISION.

Section 32: Remedies. In the event that an Owner (or guest, invitee, licensee, tenant, lessee, family member, builder, contractor, subcontractor, agent or employee thereof), shall violate, or permit to be violated, any of the provisions set forth in this Article, the Board shall cause to be delivered to said Owner a written Notice of Violation. Said Notice of Violation shall set forth the nature of the alleged violation and shall request that the violation be voluntarily terminated or remedied within a reasonable time from the mailing date of said Notice.

If after a reasonable time has elapsed from the date of said Notice, the violation has not been voluntarily terminated by the Owner, the Association shall have the authority to pursue and effect any and all procedures which may be calculated as reasonably necessary to remove and/or terminate the cause of said violation. This authority shall include, but shall not be limited to, the power to employ laborers to enter upon the premises of said owner for the purpose of removing and/or terminating the cause of said violation. If, by virtue of the exercise of the authority

granted herein, the Board shall incur expenses in connection with the process of removing and/or terminating said violation the Association may enforce collection of same in the same manner as if such costs were an assessment and shall have all powers and rights to so collect as set forth in Article VII above.

For purposes of administering this Section, the determination of whether a violation has been, or is being, committed and the determination of what time period constitutes a "reasonable time" allowable for voluntary termination of the same, shall be made by the Association after taking into consideration the facts and circumstances surrounding the particular violative situation, condition or occurrence.

## ARTICLE X CARE OF COMMON AREA

Section 1: Maintenance by Association. The Board of the Association may, at any time, as to any Common Area owned, leased or otherwise controlled by it, take the following actions without any approval of the owners being required:

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area.

(b) Construct, reconstruct, repair, replace or refinish any detention areas, or road improvement or surface upon any portion of such area used as a road, street, walk, driveway or parking area.

(c) To maintain and replace injured or diseased trees, shrubs, annuals, perennials, ground cover or other vegetation within any common area, traffic island, median or other landscaped area within any right-of way of any public or private street located within the subdivision to the extent that the Board deems necessary or desirable for the conservation of water and soil and for aesthetic purposes, and to the extent that the Greene County Highway Department deems necessary to maintain public safety. The Board of the Association shall be the sole judge as to the appropriate maintenance of all grounds within any common area, except any landscaped or planted areas within the right-of-way of any public or private street. Landscaping in road right-of ways within the subdivision shall be maintained to the satisfaction of the Greene County Highway Department. In the event the landscaping within any right-of way shall not be maintained by the Association to the satisfaction of the Greene County Highway Department, the County shall provide the Home Owners Association with written notification of any deficiencies. Whereupon the Association shall have thirty (30) days to correct any deficiencies. In the event the Association fails to correct any deficiencies in landscaping as delineate by the Greene County Highway Department, within thirty (30) days of receipt of notice, then in that event the County may either: (1) have the landscaping maintenance performed and the Homeowners Association shall be billed for the cost of

said landscaping, or (2) the County may remove the landscaping, median or landscaped area within any right-of-way in said subdivision.

(d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Common Area.

Section 2: Damage or Destruction of Common Area by Owners. In the event any Common Area wilfully or maliciously is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such owner does hereby authorize the Association to repair said damaged area, and the Association, at its option, shall so repair said damaged area. The cost for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as if such costs were an assessment and shall have all powers and rights to so collect as set forth in Article VII above.

## ARTICLE XI GENERAL PROVISIONS

Section 1: Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration as modified and amended. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3: Amendment.

(a) The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless otherwise amended as herein provided.

(b) Subject to subpart (e) hereof, this Declaration may be amended in whole or in part at any time within seven (7) years from the date of recordation of same by an instrument in writing executed by Developer, its successors or assigns.

(c) Subject to subpart (e) hereof, this Declaration may be amended at the end of the above mentioned seven year period by an instrument in writing executed by the Association, with the approval of a majority of the votes of the Board of Directors.

(d) No amendment shall be effective until it is recorded in the deed records of Greene County, Missouri.

(e) Any amendments of the Declaration pursuant to the provisions of Article X, Section 3(b) or (c) hereinabove, which would change any obligation to maintain any common area, storm water detention facilities, drainage area, or any landscaping within the right-of-way of any public or private street of the final plat of Cherry Hills Subdivision shall require the written approval of Greene County, Missouri or the City of Springfield, Missouri if Cherry Hills Subdivision is subsequently annexed into the City of Springfield, before it shall become effective.

Section 4: Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be Nuisance and may be enjoined or abated, whether or not the Relief sought is for negative or affirmative action, by Developer, the Association, or any Owner or Owners of Lots within CHERRY HILLS SUBDIVISION. However, any other provision to the contrary notwithstanding, only Developer, the Association, the Board of Directors, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of these Restrictions.

Section 5: Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within CHERRY HILLS SUBDIVISION is hereby declared to be a violation of these Restrictions and subject to any or all of the enforcement procedures set forth in these Restrictions.

Section 6: Remedies Cumulative. Each remedy provided by these Restrictions is cumulative and not exclusive.

Section 7: Delivery of Notices and Documents. Any written notice or other documents relating to or required by these Restrictions may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered the day after a copy of same has been deposited in the United States mail, postage prepaid, addresses as follows:

(a) If to the Association or the Architectural Committee, to the Registered Agent at his registered office: currently Mr. Jim Hutcheson, 1708 S. Ingram Mill Rd., Springfield, Missouri 65804.

(b) If to an Owner or Builder, to the address of any Lot within CHERRY HILLS SUBDIVISION, owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association.

(c) If to Developer, to its Registered Agent at its registered office: currently Charles B. Cowherd, Husch & Eppenberger, LLC, 750 North Jefferson, Springfield, Missouri 65802.

Provided, however, that any such address may be changed at any time by the party concerned by furnishing a written notice of change of address to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 8: The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property, included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, to the covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby.

IN WITNESS WHEREOF, the undersigned, Cherry Hills Development of Springfield, LLC, have caused this instrument to be executed on this \_\_\_\_ day of \_\_\_\_\_, 2000.

CHERRY HILLS DEVELOPMENT OF  
SPRINGFIELD, LLC

By: \_\_\_\_\_  
Jim Hutcheson, Managing Member



DESCRIPTION  
DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS  
OF  
CHERRY HILLS SUBDIVISION