

C305

BY-LAWS  
OF  
THE VILLAGE OF CARRIAGE CROSSING  
HOMEOWNERS' ASSOCIATION  
A NOT FOR PROFIT CORPORATION

ARTICLE I

NAME; OFFICE

The name of the corporation is THE VILLAGE OF CARRIAGE CROSSING HOMEOWNERS' ASSOCIATION, a not-for-profit corporation organized under the provisions of "The General Not for Profit Corporation Law" of the State of Missouri, Chapter 355, Missouri Revised Statutes (1978). The principal office of the corporation shall be located at 12400 Olive Street Road, Suite 102, St. Louis, Missouri, but meetings of Members, Directors, and committees may be held at such other places within St. Louis County, Missouri, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

The following words when used in these By-Laws, or in any amendment to these By-Laws, shall (unless the context clearly indicates otherwise) have the following meanings:

2.1 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, said Articles of Incorporation being incorporated herein as if fully set forth in these By-Laws.

2.2 "Association" shall mean and refer to The Village of Carriage Crossing Homeowners' Association, a not-for-profit corporation organized under the provisions of "The General Not for Profit Corporation Law" of the State of Missouri, and its successors and assigns.

2.3 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

2.4 "By-Laws" shall mean and refer to these By-Laws, as amended from time to time.

2.5 "Carriage Crossing" shall mean and refer to the property that is from time to time subject to the Carriage Crossing Declaration.

2.6 "Carriage Crossing Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for the Village of Carriage Crossing, and any amendments thereto duly recorded in the office of the Recorder of Deeds of St. Louis County, Missouri, said Carriage Crossing Declaration being incorporated herein as if fully set forth in these By-Laws.

2.7 "Declarant" shall mean and refer to The Villages of Cherry Hills Development Co., a Missouri general partnership, any assignee of The Villages of Cherry Hills Development Co. (if an appropriate document is executed and recorded assigning to such assignee all rights reserved to Declarant in the Declaration), or any entity succeeding to any

of Declarant's rights under the Declaration by foreclosure, by acceptance of a deed in lieu of foreclosure, or by any similar proceeding.

2.8 "Developer" shall mean and refer to any record owner of a Lot, who owns said Lot for purposes of improving and thereafter immediately selling such Lot to the general public. Declarant shall be deemed a Developer with respect to any Lots for which it holds record title. Developer shall also mean and refer to any assignee of a Developer (if an appropriate document is executed and recorded assigning to such assignee all rights reserved to the assigning Developer in the Carriage Crossing Declaration) or any entity succeeding to a Developer's rights under this Declaration by foreclosure, by acceptance of a deed in lieu of foreclosure, or by any similar proceeding.

2.9 "Director" shall mean and refer to a member of the Board of Directors of the Association.

2.10 "Lot" shall mean and refer to a portion of the Property designated as a lot on the subdivision plats of the Property.

2.11 "Member" shall mean and refer to every person or entity who holds membership in the Association.

2.12 "Mortgage" shall mean and refer to a first mortgage or a first deed of trust on any Lot, if the Association has been notified in writing of the existence of such mortgage or deed of trust.

2.13 "Mortgagee" shall mean and refer to any person or entity holding a first mortgage or first deed of trust on any Lot, if the Association has been notified in writing of the existence of such mortgage or deed of trust.

2.14 "Owner" shall mean and refer to the record owner (including a Developer), whether one or more persons or entities, of the fee simple title to any Lot, but shall exclude those having such interest merely as security for the performance of an obligation, such as any Mortgagee, until such Mortgagee (or other person) has acquired record title pursuant to foreclosure or any procedure in lieu of foreclosure.

2.15 "Property" shall mean and refer to all of the real property (including all improvements situated thereon) described on Exhibit A to the Carriage Crossing Declaration and depicted on Exhibit B to the Carriage Crossing Declaration, and all other real property (including all improvements thereon) that may later be subjected to the provisions of the Carriage Crossing Declaration in accordance with Section 11.5 of the Carriage Crossing Declaration.

2.16 "Restrictive Covenants" shall mean and refer to the restrictive covenants set forth in Article VII of the Carriage Crossing Declaration.

2.17 "Village Common Area" shall mean and refer to those portions of the Property identified as "Village Common Area" on Exhibit B to the Carriage Crossing Declaration and the

plats of the Property attached to any amendments to the Carriage Crossing Declaration, and all improvements located on such Village Common Area, including without limitation, all roads, sidewalks, structures, recreational facilities (if any), street lights, lakes (if any), landscaping, storm water ponds and storm water inlets, excluding only those areas within the Village Common Area dedicated to and accepted by public authorities. The Village Common Area shall include, however, all areas within the Village Common Area to be dedicated to public authorities but not yet accepted by such public authorities.

### ARTICLE III

#### MEETINGS OF MEMBERS; VOTING

3.1 Annual Meetings. The first annual meeting of the Members shall be held on the Property or at such other place in St. Louis County, Missouri as may be specified in the notice of the meeting, within one (1) year from the date of incorporation of the Association. Each subsequent annual meeting of the Members shall be held within ten (10) to fourteen (14) months following the previous annual meeting, on such date and at such time as set by the Board of Directors.

3.2 Special Meetings. Special meetings of the Members may be called at any time by the president or by a majority of the Board of Directors, or upon the written request of Members holding at least twenty-five percent (25%) of the

votes of any Class of membership entitled to be cast at such meeting.

3.3 Notice of Meetings. Unless otherwise provided in the Carriage Crossing Declaration, Articles of Incorporation, or elsewhere in these By-Laws, written notice of each meeting of the Members shall be given by or at the direction of the secretary to each Member entitled to vote at such meeting. Each such notice shall be hand delivered or mailed, postage prepaid, not less than ten (10), nor more than fifty (50), days before the date of such meeting, addressed to the Member at his address as it appears on the books of the Association. Such notice shall specify the date, time, and place of the meeting and, in the case of a special meeting, the purpose of the meeting.

3.4 Quorum. Unless otherwise provided in the Carriage Crossing Declaration, Articles of Incorporation, or elsewhere in these By-Laws, the presence at a meeting of Members (or of proxies) entitled to cast at least ten percent (10%) of the votes of each Class of membership shall constitute a quorum for any action. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereon shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or requested.

3.5 Proxies. Each Member entitled to vote may vote in person or by proxy executed in writing by the Member or his authorized attorney-in-fact. All proxies shall be in writing and filed with the secretary. No proxy shall be valid after eleven (11) months unless otherwise provided in the proxy. Additionally, each proxy shall be revocable (unless otherwise provided therein) and shall automatically be deemed invalid upon the sale, transfer or other disposition by a Member of the Lot entitling such Member to such vote. Nothing in this Section shall be construed to limit the term or irrevocability of the power-of-attorney granted to Declarant by each Developer pursuant to the terms of the Carriage Crossing Declaration.

3.6 Voting. Unless otherwise set forth in the Carriage Crossing Declaration, Articles of Incorporation, elsewhere in these By-Laws, or "The General Not for Profit Corporation Law" of the State of Missouri, a majority of the votes cast of the Members (present or represented by proxy at a meeting at which a quorum is present) shall be necessary for the adoption of any matter voted upon. No cumulative voting shall be permitted at any meeting, or in any vote, of the Members.

#### ARTICLE IV

##### BOARD OF DIRECTORS

4.1 Number. Until the first annual meeting of the Association, the affairs of the Association shall be managed by

a Board of three (3) Directors, who need not be Members. Beginning with the first annual meeting of the Association, the affairs of the Association shall be managed by a Board of six (6) Directors who need not be members.

4.2 Term of Office. At the first annual meeting, the Members shall elect two (2) Directors for a term of three (3) years, two (2) Directors for a term of two (2) years, and two (2) Directors for a term of one (1) year. At each annual meeting thereafter, the Members shall elect two (2) Directors for a term of three (3) years to fill the vacancies created by the expiration of the terms of the previous directors. Notwithstanding the foregoing, at such time as fifty percent (50%) of the Lots are sold to persons other than Developers, two (2) of such six (6) members of the Board shall be elected by all Members other than Developers; and at such time as ninety-five percent (95%) of the Lots are sold to persons other than Developers, four (4) of such six (6) members of the Board shall be elected by all Members other than Developers.

4.3 Compensation. Except as required by Section 10.7 of the Carriage Crossing Declaration, no Director shall receive compensation for any service he renders to the Association in his capacity as a Director. However, each Director shall be reimbursed for the actual reasonable expenses incurred by him in the performance of his duties as a Director.

4.4 Action by Written Consent. The Directors shall have the right to take any action in the absence of a meeting



which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

4.5 Indemnification. Each Director, in consideration of his services as such, shall be indemnified by the Association to the extent permitted by law against all loss, cost, damage, or expense reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, to which he may be a party by reason of his past or present role as a Director of the Association, unless such action, suit or proceeding was a result of his gross negligence or willful misconduct.

4.6 Nomination and Election of Directors; Removal.

4.6(1) Nominations; Nominating Committee.

4.6(1)(a) Nomination for election to the Board of Directors shall be made by the Nominating Committee. Nominations may also be made by any Member at the annual meeting.

4.6(1)(b) The Nominating Committee shall consist of three (3) persons, one of whom shall be a member of the Board of Directors whose term is not then expiring or, if it is expiring, who is not a candidate for reelection. The Nominating Committee shall be appointed by the Board of Directors no less

than sixty (60) days prior to each annual meeting of the Members, to serve until the close of such annual meeting. The Board of Directors shall indicate to the Nominating Committee, prior to such Committee making any nominations, which, if any, Director positions are to be voted upon by all Members other than Developers, as required by Section 2.3.2 of the Carriage Crossing Declaration and Section 6.2 of the Articles of Incorporation. The Nominating Committee shall make as many nominations (from among Members or non-members) for election to the Board of Directors as it shall, in its discretion, determine; provided, that in no event shall it nominate for election a fewer number of candidates than the number of vacancies that are to be filled at such annual meeting.

4.6(1)(c) Notwithstanding the foregoing terms of this Section 4.6(1), (i) no Member may be nominated to be a member of the Board of Directors if such Member is delinquent in the payment of any assessment for a period of thirty (30) days or more, and (ii) no person may be nominated to be a member of the Board of Directors unless such person has indicated in writing his willingness to become a candidate.

4.6(2) Election to the Board of Directors shall be by secret written ballot. At each such election the Members

or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to cast under the provisions of the Carriage Crossing Declaration and the Articles of Incorporation. The persons receiving the largest number of votes shall be elected, provided, however, that with respect to those Directors to be elected by all Members other than Developers, the person receiving the largest number of votes from the Members other than Developers shall be elected. At each such election, the Board of Directors then serving shall indicate which, if any, Director positions are to be voted upon by all Members other than Developers.

4.6(3) Removal; Vacancy. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members. In the event of the death, resignation, or removal of a Director, or in the event a Director's position is declared vacant pursuant to Section 4.8(2), a successor shall be selected by a majority vote of the remaining Directors to serve until the next annual meeting of the Association, at which time a new Director shall be elected to serve for the unexpired term of his predecessor.

4.7 Meetings of Directors.

4.7(1) Regular Meetings. Regular meetings of the Board of Directors shall be held at least once in each calendar year at a place, date and time as may be fixed from time to time by resolution of the Board. Additionally, the

Board of Directors shall be required to meet within fifteen (15) days following the annual meeting of the Association for the purpose of electing officers of the Association.

4.7(2) Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any Director, after not less than three (3) days' written notice either mailed or personally delivered to each Director. Such notice shall be deemed given when actually received.

4.7(3) Quorum. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business. Every act or decision of a majority of the Directors present at a meeting at which proper notice is given and at which a quorum is present shall be regarded as the act of the Board.

4.7(4) Action without Meeting. The Board of Directors shall have the right to take any action which they could take at a meeting by obtaining the written approval of all Directors in lieu of holding such meeting. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

4.8 Powers of the Board of Directors. The Board of Directors shall have the power to:

4.8(1) Exercise for the Association all powers, duties and authority vested in or given to the Association by

the Carriage Crossing Declaration, Articles of Incorporation, or these By-Laws, if not expressly reserved to the Members by any other provisions of such documents.

4.8(2) Declare the office of a member of the Board of Directors to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board.

4.8(3) Employ such agents, contractors or employees as the Board of Directors deems necessary, and to prescribe their duties.

4.9 Duties. The Board of Directors shall have the following duties:

4.9(1) To cause to be kept a complete record of its acts and the corporate affairs of the Association, and to present a statement of its acts and the affairs of the Association to the Members at the annual meeting of the Association, or at any special meeting of the Association, when such statement is requested in writing at least ten (10) days in advance by at least one-fourth (1/4) of any Class of Members who are entitled to vote.

4.9(2) To supervise all officers, agents, employees and committees of the Association, and to see that their duties are properly performed.

4.9(3) As more fully set forth in the Declaration:

4.9(3)(a) to prepare a budget for the Property and fix the amount of the annual assessments against each Lot, at least thirty (30) days in advance of fiscal year of the Association; and

4.9(3)(b) to send written notice to each Owner of the amount of the annual assessment (or prorated portion thereof, if applicable) for the first fiscal year of the Association that such Owner's Lot becomes subject to the provisions of the Carriage Crossing Declaration, as well as the amount of the assessment to serve as the contribution to the working capital fund of the Association pursuant to Section 3.4 of the Carriage Crossing Declaration; such written notice to be sent no later than ten (10) days after such Lot becomes subject to the provisions of the Carriage Crossing Declaration; and

4.9(3)(c) to send written notice of each assessment to each Owner (other than the notice required pursuant to Section 4.9(3)(b) hereof) at least thirty (30) days in advance of each fiscal year of the Association.

4.9(4) To issue, or cause an appropriate officer to issue, upon demand by any authorized person, a certificate setting forth the status of assessments against any Lot. A reasonable charge may be made by the Board for the issuance of

such certificates. A properly executed certificate as to the status of assessments on a Lot is binding on the Association as of the date of such certificate's issuance.

4.9(5) To procure and maintain adequate liability insurance, and to procure adequate hazard insurance on the Village Common Area.

4.9(6) To cause all officers or employees having fiscal responsibilities to be bonded, and to secure liability insurance covering the acts or omissions of Directors, officers, committee members, and employees, as the Board shall deem appropriate.

4.9(7) To cause the Village Common Area (except those portions of the Village Common Area the maintenance responsibilities for which have been expressly assumed in writing by the Villages of Cherry Hills Master Homeowner's Association) to be maintained in accordance with standards set forth in the Carriage Crossing Declaration.

4.9(8) To procure and maintain the hazard insurance on certain improvements located on the Lots, as specified by Section 4.1 of the Carriage Crossing Declaration.

4.9(9) To cause the exterior Lot improvements described in Section 2.4.5 of the Carriage Crossing Declaration to be maintained in accordance with such section.

4.9(10) To perform all other duties required by the Carriage Crossing Declaration, the Articles of Incorporation, or these By-Laws to be performed by the Board of Directors.

ARTICLE V

OFFICERS

5.1 Enumeration of Offices. The Association shall have a president, a vice president, a secretary, and a treasurer. Additionally, the Association may have such other offices as the Board of Directors may from time to time determine to be necessary or desirable.

5.2 Election of Officers. The initial officers of the Association shall be elected by the Board of Directors at its first meeting. Regular election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members, as set forth in section 4.7(1) of these Bylaws.

5.3 Term. The officers of the Association shall be elected annually by the Board, and each shall hold office for the term of one (1) year, unless he earlier resigns or is removed.

5.4 Special Appointments. The Board may elect such other officers as the Board deems necessary or desirable, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

5.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving



written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified in such notice.

5.6 Vacancies. A vacancy in any office may be filled by the Board of Directors at any meeting of the Board at which a quorum is present. The officer elected to fill such vacancy shall serve for the remainder of the term of the officer he replaces.

5.7 Multiple Offices. The offices of secretary and treasurer may be held by the same person. Except with respect to any person holding the offices of secretary and treasurer at the same time, no person shall simultaneously hold more than one office, except for special offices created pursuant to Section 5.4 above.

5.8 Duties. The duties of the officers are as follows:

5.8(1) President. The president shall preside over the meetings of the Board of Directors and of the Members, shall see that orders and resolutions of the Board of Directors are carried out, and shall sign all leases, mortgages, deeds and other written instruments to which the Association is a party. Additionally, the president shall perform such other duties as are prescribed by the Board of Directors.

5.8(2) Vice President. The vice president shall act in the place and stead of the president in the event of his

absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

5.8(3) Secretary. The secretary shall (i) record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members, (ii) keep the corporate seal of the Association, (iii) serve notice of meetings of the Board of Directors and of the Members, (iv) keep appropriate current records showing the names of the Members of the Association and their addresses, and (v) perform such other duties as are required by the Board of Directors.

5.8(4) Treasurer. The treasurer shall (i) receive and deposit in appropriate bank accounts all monies of the Association, (ii) disburse such funds as directed by resolution of the Board of Directors, (iii) sign all checks and promissory notes of the Association, (iv) keep proper books of account, (v) cause copies of the annual budget prepared by the Board to be made and presented to the membership at its regular annual meeting, and deliver a copy of it to the Members, and (vi) cause an audit of the Association's books to be made by a public accountant at the completion of each fiscal year and deliver a copy of the report of the auditors conducting such audit to the Members at its annual meeting.

5.9 Indemnification. Each officer, in consideration of his services as such, shall be indemnified by the Association

to the extent permitted by law against all loss, cost, damage and expense reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, to which he may be a party by reason of his past or present role as an officer of the Association, unless such action, suit or proceeding was a result of his gross negligence or willful misconduct.

## ARTICLE VI

### COMMITTEES

6.1 Architectural Review Committee. The Board of Directors shall appoint the Architectural Review Committee, which shall have the duties, functions and powers set forth in Article VI of the Carriage Crossing Declaration. The Architectural Review Committee shall initially be comprised of three (3) members but the number of such members may be increased or decreased by the Board from time to time provided that the number of such members shall never exceed seven (7) nor be less than three (3). The Board shall appoint one (1) member of the initial Architectural Review Board to serve a term of five (5) years, one (1) member to serve a term of four (4) years and one (1) member to serve a term of three (3) years. Upon the expiration of each such member's term, his replacement shall serve for a term of five (5) years. In the event the Board increases the number of members of the Architectural Review Committee, each additional member shall

serve a term of five (5) years from the date of his appointment. Each member of the Architectural Review Committee, in consideration of his services as such, shall be indemnified by the Association to the extent permitted by law against all loss, cost, damage and expense reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, to which he may be a party by reason of his past or present role as a member of the Architectural Review Committee, unless such action, suit or proceeding was a result of his gross negligence or willful misconduct.

6.2 Nominating Committee. The Nominating Committee shall have the duties and shall be appointed by the Board of Directors as provided in Section 4.6(1) of these By-Laws.

6.3 Other Powers. The Board of Directors shall have the power and authority to appoint such other committees as it, in its discretion, deems necessary or desirable.

## ARTICLE VII

### BOOKS AND RECORDS

The books, records, and papers of the Association shall be maintained at the principal office of the Association and shall be subject to inspection by any Member during reasonable business hours. The Carriage Crossing Declaration, Articles of Incorporation, and By-Laws of the Association shall be available for inspection by any Member at the principal

office of the Association. Additional copies of the Carriage Crossing Declaration, Articles of Incorporation and By-Laws may be purchased from the Association at a reasonable cost to be fixed by the Board of Directors.

#### ARTICLE VIII

##### ASSESSMENTS; FISCAL YEAR

8.1 Assessments. As more fully set forth in the Carriage Crossing Declaration, each Member is obligated to pay to the Association (i) an annual assessment, (ii) a one time assessment to serve as a contribution to the working capital fund of the Association, and (iii) special assessments, all in amounts to be fixed according to the provisions of the Carriage Crossing Declaration, which assessments are secured by a continuing lien on the Lot against which such assessments are made. Any assessment not paid on or prior to the due date shall be delinquent, and any assessment not paid within ten (10) days following the due date shall bear interest at the rate of two percent (2%) per month or the maximum rate permitted by law (if such maximum rate is less than two percent (2%) per month) until paid. In addition, the Association, in its discretion, may take any or all of the other remedies provided for in the Carriage Crossing Declaration, including bringing an action against the Owner personally obligated to pay such assessment, or an action to foreclose the lien against the delinquent Lot. Interest, costs, and reasonable attorneys'

fees of the Association incurred in any such action (or, if any such action is not actually brought, in preparation for such action) shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for such assessments by non-use of the Village Common Area or abandonment of his Lot.

8.2 Fiscal Year. The fiscal year of the Association shall begin on January 1 and end on December 31 of each year, except that the first fiscal year of the Association shall begin on the date of issuance of a certificate of incorporation for the Association by the Secretary of State of Missouri. Notwithstanding the foregoing, the Board of Directors shall have the power to change the fiscal year of the Association.

#### ARTICLE IX

##### AMENDMENTS; CONFLICTS

9.1 Amendments. These By-Laws may be amended or modified from time to time by the affirmative vote of a majority of each of the Classes of the Members present in person or by proxy at a meeting duly called for such purpose, except that until such time as the Class A membership is converted to Class F membership pursuant to the terms of the Carriage Crossing Declaration, any such amendment shall require the approval of the Federal Housing Administration or the Veterans Administration, to the extent each such agency holds, guarantees or insures any Mortgage.

9.2 Conflict. If there is any conflict between the provisions of the Carriage Crossing Declaration, the Articles of Incorporation, the By-Laws, or any of the rules and regulations adopted pursuant to the terms of such documents, the provisions of the documents earlier mentioned in this sentence shall govern.

IN WITNESS WHEREOF, we, the initial Directors of the Association, have adopted these By-Laws as the By-Laws of The Village of Carriage Crossing Homeowners' Association as of the 18th day of February, 1987.

                    / S /  
Benton Taylor

                    / S /  
Harry Morley

                    / S /  
Sidney L. Stone

155.00  
JK

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR THE VILLAGES OF CHERRY HILLS

THIS DECLARATION is made this 21st day of July, 1986,  
by THE VILLAGES OF CHERRY HILLS DEVELOPMENT CO., a Missouri  
general partnership (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the owner of a 202<sup>+</sup> acre tract of  
land located off of Old Manchester Road in St. Louis County,  
Missouri (hereinafter, the "Land").

B. The St. Louis County Council, by Ordinance No.  
11,877, approved on January 18, 1985, as amended by Ordinance  
No. 12,433, approved on January 10, 1986, has approved a  
development plan for the Land as a planned environment unit  
development under Section 1003.187 SLCRO 1974, as amended.

C. In accordance with the aforesaid Ordinance (as amended), Declarant desires to develop (or cause to be  
developed) on all portions of the Land other than the  
Commercial District (as hereinafter defined) a residential  
community consisting of (i) at least seven separate residential  
villages that will vary (from village to village) as to the  
size and types of homes constructed thereon and (ii) common  
areas improved by certain recreational amenities, green spaces,  
roads, street lighting, lakes, storm water ponds, storm water  
inlets and other improvements, all of which shall exist for the  
benefit and use of the residents of all of the aforesaid  
residential villages. Said development will be consistent in  
all material respects with (i) the "Site Development Concept  
Plan for The Villages of Cherry Hills," recorded among the land  
records of St. Louis County, Missouri in Plat Book 246, Page 9  
and (ii) the "Site Development Section Plan" heretofore  
submitted and approved by the St. Louis County Department of  
Planning; it being acknowledged, however, that the Site

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COUNTY OF ST. LOUIS )  
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Development Concept Plan and/or the Site Development Section Plan may be amended from time to time upon approval by the governmental authority having jurisdiction over the Land (said Site Development Concept Plan and Site Development Section Plan, as either may be amended from time to time, being hereinafter collectively referred to as the "Site Plan").

D. The Site Plan also contemplates the development of a Commercial District on the Land consisting of approximately 5.397 acres (hereinafter the "Commercial District"), which Commercial District is described on Exhibit C(1) attached hereto and shown on the plat attached hereto as Exhibit C(2). Declarant intends that the provisions of this Declaration shall not apply to the Commercial District or confer any rights or obligations upon owners or occupants of any portion of the Commercial District.

E. Declarant further desires to (i) ensure that the Site Plan, as it applies to all portions of the Land other than the Commercial District, will be adhered to until fully implemented, (ii) ensure the attractiveness of the residential community created pursuant to the Site Plan, (iii) provide for the enhancement of property values within said residential community, (iv) prevent nuisances to the residents of said residential community, (v) provide for the maintenance of the portions of the common areas, which, pursuant to this Declaration, are to be maintained by all owners within said residential community, (vi) ensure the maintenance of the common areas, which, pursuant to certain other declarations made by Declarant, are to be maintained by all owners within a particular village, and (vii) ensure that each village is effectively managed.

F. To accomplish Declarant's aforesaid objectives, Declarant wishes to subject all portions of the Land other than the Commercial District, in phases, to the covenants, conditions, restrictions, reservations, easements, servitudes,

liens and charges provided herein (collectively, the "Covenants and Restrictions").

G. Declarant has created THE VILLAGES OF CHERRY HILLS MASTER HOMEOWNERS' ASSOCIATION, a Missouri not-for-profit corporation, as the organization to which should be delegated and assigned the powers of (i) owning, maintaining and administering the portion of the aforesaid common areas to be maintained by all owners within the entire residential community, (ii) ensuring the effective management of each of the aforesaid villages and those portions of the common areas to be maintained by the owners within said villages, (iii) administering and enforcing the Covenants and Restrictions, and (iv) collecting and disbursing the assessments and charges required by this Declaration.

H. Declarant desires that the portion of the Land described on Exhibit A attached hereto and depicted on the plat attached hereto as Exhibit B shall be the first portion of the Land to be subjected to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the real property described on Exhibit A attached hereto and depicted on the plat attached hereto as Exhibit B, and any other real property subjected to the provisions of this Declaration, and all improvements situated on said real property, shall be held, sold and conveyed subject to the terms and provisions of the Covenants and Restrictions set forth in this Declaration, all of which shall run with such real property and shall be binding on all parties having any right, title or interest in such real property or any part thereof, and their heirs, personal representatives, successors and assigns. Declarant covenants, however, that the following work and improvements to the Property (as hereinafter defined) shall be completed by Declarant, at Declarant's sole cost and expense, and not at the expense of the Association or any Village Association (as such terms are hereinafter defined):

(i) the roughgrading of the unimproved areas located within the Property;

(ii) the construction and installation of the streets and roads to be located within the Property, as shown on the Site Plan;

(iii) the construction and installation of all sanitary sewers, storm sewers and utility lines required to serve the Property, as developed in accordance with the Site Plan;

(iv) the construction of an entrance monument for The Villages of Cherry Hills;

(v) the construction of an entrance monument for each Village (as hereinafter defined);

(vi) the construction of the tennis courts, clubhouses, recreational areas and swimming pools shown on the Site Plan;

(vii) the construction of the sidewalks on both sides of the Parkway that is to run through the Property, as shown on the Site Plan;

(viii) the landscaping along the aforesaid Parkway;

(ix) the installation of street lights along the aforesaid Parkway; and

(x) the construction of the surface water retention areas for the Property, as shown on the Site Plan.

Declarant further covenants that all sidewalks to be located on the Property in accordance with the Site Plan, other than the sidewalks on both sides of the Parkway, shall be completed by and at the sole cost and expense of a Developer (by virtue of a separate agreement between such Developer and St. Louis County, Missouri) and/or Declarant, and not at the expense of the Association or any Village Association.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration, or in any amendment to this Declaration, shall (unless the context clearly indicates otherwise) have the following meanings:

1.1 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association.

1.2 "Association" shall mean and refer to The Villages of Cherry Hills Master Homeowners' Association, a not-for-profit corporation organized under and pursuant to the laws of the State of Missouri, and its successors and assigns.

1.3 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

1.4 "By-Laws" shall mean and refer to the By-laws adopted by the Board of Directors.

1.5 "Cherry Hills" shall mean and refer to the property that is from time to time subject to this Declaration.

1.6 "Condominium Unit" shall mean and refer to each condominium unit to be contained within a garden condominium building site located within the Village to be known as "Victoria Crossing", provided such building site has been made a part of Cherry Hills. The Site Plan currently contemplates two hundred fifty-two (252) Condominium Units in twenty-one (21) buildings within Victoria Crossing. If the Site Plan remains unamended, each such building site made a part of the Property shall contain twelve (12) Condominium Units. If the Site Plan is amended to show a change in the number of Condominium Units within any such building site, then such number shown on the most recent amendment to the Site Plan shall govern with respect to the number of Condominium Units that are contained within any such building site comprising a part of the Property.

1.7 "Declarant" shall mean and refer to The Villages of Cherry Hills Development Co., a Missouri general

partnership, any assignee of such partnership (if an appropriate document is executed and recorded assigning to such assignee all rights reserved to Declarant in this Declaration), or any entity succeeding to such partnership's rights under this Declaration by foreclosure, by acceptance of a deed in lieu of foreclosure, or by any similar proceeding.

1.8 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and any amendments hereto duly recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri.

1.9 "Developer" shall mean and refer to (i) any record owner of a Lot who owns said Lot for purposes of improving and immediately thereafter selling the same to the general public, and (ii) any record owner of a garden condominium building site within Victoria Crossing and made a part of Cherry Hills who owns said building site for purposes of improving it with Condominium Units and immediately thereafter selling such Condominium Units to the general public. Declarant shall be deemed a Developer with respect to any Lots or such garden condominium building sites for which it holds record title. Developer shall also mean any assignee of a Developer (if an appropriate document is executed and recorded assigning to such assignee all rights reserved to the assigning Developer in this Declaration) or any entity succeeding to a Developer's rights under this Declaration by foreclosure, by acceptance of a deed in lieu of foreclosure, or by any similar proceeding.

1.10 "Living Unit" shall mean and refer to (i) any structure situated on a Lot, designed and intended for use and occupancy as a residence by a single family, or (ii) any Condominium Unit.

1.11 "Lot" shall mean and refer to a portion of the Property designated as a lot in (i) the recorded subdivision

plats of the Property, or (ii) any recorded display plats of the Property.

1.12 "Master Common Area" shall mean and refer to those portions of the Property identified as "Master Common Area" on Exhibit B and the plats of the Property attached to any amendments to this Declaration, and all improvements located on such Master Common Area, including without limitation, all roads, sidewalks, structures, recreational facilities (such as tennis courts and swimming pools), street lights, lakes, landscaping, storm water ponds and storm water inlets, excluding only those areas within the Master Common Area dedicated to and accepted by public authorities. The Master Common Area shall include, however, all areas within the Master Common Area to be dedicated to public authorities but not yet accepted by such public authorities.

1.13 "Member" shall mean and refer to every person or entity who holds membership in the Association.

1.14 "Mortgage" shall mean and refer to a first mortgage or a first deed of trust on any Lot or Condominium Unit within Cherry Hills, if the Association has been notified in writing of the existence of such mortgage or deed of trust.

1.15 "Mortgagee" shall mean and refer to any person or entity holding a first mortgage or first deed of trust on any Lot or Condominium Unit within Cherry Hills, if the Association has been notified in writing of the existence of such mortgage or deed of trust.

1.16 "Owner" shall mean and refer to the record owner (including a Developer), whether one or more persons or entities, of the fee simple title to any Lot or Condominium Unit which is a part of Cherry Hills, but shall exclude those having such interest merely as security for the performance of an obligation, such as any Mortgagee, until such Mortgagee has acquired record title pursuant to foreclosure or any procedure in lieu of foreclosure. Notwithstanding the foregoing, until

such time as a Declaration of Condominium for a garden condominium building site within Victoria Crossing and made a part of Cherry Hills is recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri, the record owner (including any Developer) of such building site shall be deemed the Owner of all Condominium Units to be located on such building site.

1.17 "Property" shall mean and refer to all of the real property (including all improvements situated thereon) described on Exhibit A hereto and depicted on the plat attached hereto as Exhibit B, and all other real property (including all improvements thereon) that may hereafter be subjected to the provisions of this Declaration pursuant to Section 8.5 of this Declaration.

1.18 "Restrictive Covenants" shall mean and refer to the restrictive covenants set forth in Article VI hereof.

1.19 "Village" shall mean and refer to each of the separate residential development areas of the Property identified as Villages on Exhibit B and the plats of the Property attached to any amendments to this Declaration.

1.20 "Village Association" shall mean and refer to each of the not-for-profit corporations organized under and pursuant to the laws of the State of Missouri, which, pursuant to separate Village Declarations, are delegated the powers of owning, maintaining and administering the Village Common Areas, administering and enforcing the Village Covenants and Restrictions, and collecting and disbursing the assessments and charges required by the Village Declarations.

1.21 "Village Board of Directors" or "Village Board" shall mean and refer to the Board of Directors of a Village Association.

1.22 "Village Common Area" shall mean and refer to those portions of the Property identified as "Village Common Area" on Exhibit B and the plats of the Property attached to

any amendments to this Declaration, and all improvements located on such Village Common Area, including without limitation, all roads, sidewalks, street lights, landscaping, storm water ponds and storm water inlets, excluding only those areas within a Village Common Area dedicated to and accepted by public authorities. The Village Common Area shall include, however, all areas within a Village Common Area to be dedicated to public authorities but not yet accepted by such public authorities.

1.23 "Village Covenants and Restrictions" shall mean and refer to the covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges provided in a Village Declaration.

1.24 "Village Declaration" shall mean and refer to the separate Declaration of Covenants, Conditions and Restrictions to which any of the Property comprising a Village or Village Common Areas is subjected.

## ARTICLE II

### THE ASSOCIATION

2.1 Membership. Every person or entity who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Condominium Unit. Ownership of such Lot or Condominium Unit shall be the sole qualification for membership. A Mortgagee who has acquired record title to a Lot or Condominium Unit pursuant to foreclosure or any procedure in lieu of foreclosure shall be entitled to exercise the Owner's rights in the Association with regard to such Lot or Condominium Unit. In the event a Declaration of Condominium has not been recorded with the Office of the Recorder of Deeds for St. Louis County, Missouri for a garden condominium building site within Victoria Crossing and made a part of Cherry Hills, then any holder of a first mortgage or first deed of trust on such building site who has acquired record title to



such building site pursuant to foreclosure or any procedure in lieu of foreclosure shall be entitled to exercise the Owner's rights in the Association with regard to such building site.

2.2 Voting Rights. The Association shall have the following classes of voting membership, provided that with respect to Classes B through H below, each such Class of Members shall be deemed to exist only when the Village (or portion thereof), to which membership to such Class applies, has been made a part of Cherry Hills:

(a) Class A: The Class A Members shall consist of all Developers, including Declarant, provided, however, that each Developer now or hereafter existing hereby irrevocably appoints Declarant (and Declarant's successors or assigns) as its attorney-in-fact to exercise all voting rights it holds as a Class A Member, until such time as seventy-five percent (75%) of the Lots or Condominium Units owned by such Developer have been sold to persons other than a Developer. The power of attorney granted herein is coupled with an interest in that Declarant is relying upon such power in subjecting the Property to this Declaration and this power shall survive the bankruptcy or dissolution of any Developer or the transfer by a Developer of any Lots or Condominium Units owned by such Developer to another Developer. Although this appointment is automatic by the terms of this Declaration, each Developer now or hereafter existing hereby agrees to execute such further assurances of this appointment as Declarant may request from time to time.

(b) Class B: The Class B Members shall be all Owners, excepting any Developer, whose Lots are located within the Village identified as "Arlington

Terrace" on Exhibit B and the plats of the Property attached to any amendments to this Declaration.

(c) Class C: The Class C Members shall be all Owners, excepting any Developer, whose Lots are located within the Village identified as "Oak Park" on Exhibit B and the plats of the Property attached to any amendments to this Declaration.

(d) Class D: The Class D Members shall be all Owners, excepting any Developer, whose Lots are located within the Village identified as "Audubon Village" on Exhibit B and the plats of the Property attached to any amendments to this Declaration.

(e) Class E: The Class E Members shall be all Owners, excepting any Developer, whose Lots are located within the Village identified as "Willow Glen" on Exhibit B and the plats of the Property attached to any amendments to this Declaration.

(f) Class F: The Class F Members shall be all Owners, excepting any Developer, whose Lots are located within the Village identified as "Carriage Crossing" on Exhibit B and the plats of the Property attached to any amendments to this Declaration.

(g) Class G: The Class G Members shall be all Owners, excepting any Developer, whose Lots are located within the Village identified as "Hunters Crossing" on Exhibit B and the plats of the Property attached to any amendments to this Declaration.

(h) Class H: The Class H Members shall be all Owners, excepting any Developer, whose Condominium Units are located within the Village identified as "Victoria Crossing" on Exhibit B and the plats of the Property attached to any amendments to this Declaration.

2.2.1 Each Class A Member shall be entitled to three (3) votes for each Lot or Condominium Unit in which it holds (or is deemed to hold) the ownership interest required for membership by Section 2.1 above. The Class A membership shall cease and be converted to the Class of membership applicable to the Village in which the Lots or Condominium Units then owned by any Developer, including Declarant, are located, with one vote for each Lot or Condominium Unit owned, upon the happening of the earlier to occur of the following events:

(i) When the total combined votes outstanding among the Class B through H Members equals the total votes outstanding among the Class A Members [provided, however, that Class A membership for each Lot or Condominium Unit owned (or deemed to be owned) by any Developer shall be automatically revived if Declarant subjects any additional Lots or garden condominium building sites to this Declaration; provided further, that such revived Class A membership shall be subject to later termination as provided in this Section 2.2.1], or

(ii) On that date which is seven (7) years following the date of recordation of this Declaration.

2.2.2 Each Class B through H Member shall be entitled to one (1) vote for each Lot or Condominium Unit in which it holds the ownership interest required for membership by Section 2.1 above.

2.2.3 When more than one person holds an ownership interest in any one Lot or Condominium Unit, all such persons shall be Members of the applicable Class of membership for such Lot or Condominium Unit, and the vote for such Lot or Condominium Unit shall be exercised as such persons determine among themselves, but in no event shall (i) more than one vote be cast with respect to any Lot or Condominium Unit entitling

the Owner(s) thereof to a Class B, C, D, E, F, G or H membership, or (ii) more than three votes be cast with respect to any Lot or Condominium Unit entitling the Owner(s) thereof to a Class A membership.

2.3 Voting Requirements and Directors of Association.

2.3.1 Unless otherwise set forth in this Declaration, the Articles of Incorporation or the By-Laws, or otherwise required by "The General Not-for-Profit Corporation Law" of the State of Missouri, (i) until such time as the Class A Membership in the Association ceases and is converted to other Classes of Membership pursuant to Section 2.2.1 of this Declaration and Section 5.2.1 of the Articles of Incorporation, a majority vote of the Members (present or represented by proxy at a meeting of the Members at which a quorum is present) shall be necessary for the adoption by the Association of any matter voted upon; and (ii) at such time as the Class A membership in the Association ceases and is converted to other Classes of membership as aforesaid, a majority of the votes of the Members (present or represented by proxy at a meeting of Members at which a quorum is present) of at least seventy-one percent (71%) of the Classes of Members then existing shall be necessary for the adoption by the Association of any matter voted upon. Thus, for example, if there are seven (7) Classes of Members existing at the time the Class A membership in the Association ceases and is converted to other Classes of membership as aforesaid, and each Class has fifty (50) votes present or represented by proxy at a meeting of Members at which a quorum is present, then unless otherwise set forth in this Declaration, the Articles of Incorporation or the aforesaid corporate statute, the approval of at least five (5) Classes of Members, by a vote within each Class of at least 26 to 24, shall be the minimum necessary vote for the adoption by the Association of any matter voted upon at such meeting. No

cumulative voting shall be permitted at any meeting of the Members or in any vote of the Members.

2.3.2 Until the first annual meeting of the Association (as set forth in the By-Laws), the affairs of the Association shall be managed by a Board of three (3) Directors, who need not be Members. The original three (3) Board members are identified in the Articles of Incorporation. From and after the first annual meeting until the annual meeting following the date on which the last Lot or Condominium Unit is sold by a Developer to a person other than a Developer, the affairs of the Board of Directors shall be managed by a Board of six (6) members who need not be Members. Such six (6) Board Members shall be elected by all of the Members and shall be the persons who receive the highest number of votes among all of the Members (as set forth more fully in the By-laws); provided, however, that at such time as fifty percent (50%) of the Lots or Condominium Units are sold to persons other than Developers, two (2) of such six (6) members of the Board shall be elected by the Members other than Developers; and at such time as ninety-five percent (95%) of the Lots or Condominium Units are sold to persons other than Developers, four (4) of such six (6) members of the Board shall be elected by the Members other than Developers. Beginning with the annual meeting of the Association following the date on which the last Lot or Condominium Unit is sold by a Developer to a person other than a Developer, the affairs of the Board shall be managed by a Board consisting of the same number of Directors as the number of Villages existing within Cherry Hills on the date of each annual meeting following such date such last Lot or Condominium Unit is sold. Each Class of membership shall elect one (1) of such Board members who, subject to Section 8.7, shall be an Owner or occupant of a Lot or Condominium Unit within the Village he represents. Except for the original three (3) Board members (who shall serve until the first annual meeting of the

Association), each Director shall serve for a term of one (1) year, or until a successor is elected, whichever is longer.

2.4 Powers and Duties: The Association shall have the following powers and duties:

2.4.1 To prevent any violation of and compel the performance of, and otherwise enforce any or all Restrictive Covenants which are imposed by the terms of this Declaration or which may hereafter be imposed on any part of the Property. Notwithstanding the foregoing, nothing contained herein shall be deemed to prevent any Owner from enforcing any Restrictive Covenant in his own name. The expenses and costs of any enforcement proceedings initiated by the Association shall be paid out of the assessments paid to the Association, as hereafter set forth; provided, however, that the foregoing authorization to use the assessments for such enforcement proceedings shall not preclude the Association from collecting such costs from an offending Owner, an offending Village Association, or an offending condominium homeowners' association;

2.4.2 To provide for the costs of operation, and the maintenance and repair of the Master Common Area;

2.4.3 To further improve the Master Common Area or any Village Common Area beyond those improvements constructed by Declarant at its sole cost and expense, provided however, that any improvement constructed by the Association on any Village Common Area shall require the approval of more than a two-thirds (2/3) vote of the Members (present or represented by proxy at a meeting of Members at which a quorum is present) of at least seventy-one percent (71%) of the Classes of Members then existing, including the Class of Members whose Lots or Condominium Units are located within the Village in which such improvement is to be located. Thus, for example, if there are seven (7) Classes of Members existing at the time a meeting of Members is called to consider whether the Association should

further improve the Village Common Area located within the Village of Arlington Terrace, and each Class has fifty (50) votes present or represented by proxy at such meeting, and such number of votes constitutes a quorum, then the approval of at least five (5) Classes of Members, including the Class B Members, by a vote within each Class of at least 34 to 16, shall be the minimum necessary vote for the approval of such improvement;

2.4.4 To use the Master Common Area, subject to the general rules and regulations established and prescribed by the Association;

2.4.5 To maintain the Master Common Area, including doing any act, thing or deed that is necessary or desirable in the judgment of the Association to maintain the Master Common Area in a neat and orderly fashion;

2.4.6 To remove any snow, ice and debris from all sidewalks located in the Public Right-of-Ways on the Property (provided that the foregoing shall in no way be construed to require the association to repair, restore or replace such sidewalks) and provide for the costs thereof;

2.4.7 To maintain (a) all grassy strips located in the Public Right-of-Ways on the Property in the same manner as the grassy area within the Master Common Area (provided that each Owner, pursuant to Section 6.4 hereof, shall maintain all grassy strips located in the Public Right-of-Ways which are contiguous to the sidewalks located on such Owner's Lot), (b) all storm sewers located on the Property until such time as the maintenance responsibilities for such storm sewers are accepted by applicable public authorities; and provide for the costs of the foregoing, and (c) all storm water control facilities within storm water control easements located on property adjacent to Cherry Hills, provided such easements are granted for the benefit of the owners of Cherry Hills.

2.4.8 To exercise all rights and control over any easements which the Association may from time to time acquire, including, but not limited to, those easements specifically reserved to the Association in Article VII of this Declaration;

2.4.9 To create, grant and convey easements upon, across, over and under the Master Common Area, including, but not limited to, easements for the installation, replacement, repair and maintenance of utility lines serving any Lots or Condominium Units or for such other purpose which the Association determines, within its reasonable discretion, will further the objectives set forth in Paragraph E of the Recitals to this Declaration, or is otherwise in the interest of the health, welfare and/or safety of the Owners and/or residents of Cherry Hills. The Association shall have the additional power of causing any Village Association to grant similar easements upon, across, over and under the Village Common Area owned by such Village Association, and each Village Association hereby covenants to grant any such easements upon request of the Association;

2.4.10 To create subsidiary corporations;

2.4.11 To employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

2.4.12 To employ from time to time such agents, servants and laborers as the Association may deem necessary for the purpose of exercising the powers, rights and privileges granted to it, including the power to employ a managing agent to administer the Association's affairs;

2.4.13 To make contracts for providing services to the Association, the Master Common Area, the Owners, the Lots or Condominium Units, including, if desired, contracting for trash collection on behalf of the Owners;



2.4.14 To enter upon individual Lots, or any building containing Condominium Units, or any Condominium Unit and correct any violation of the Restrictive Covenants;

2.4.15 To fix, levy, collect and enforce payment of all charges and assessments provided for in this Declaration;

2.4.16 To accept title to the Master Common Area, to hold and administer the Master Common Area for the benefit and enjoyment of the Owners and/or residents of Lots and Condominium Units and pay any real estate taxes and assessments levied on any portion of the Master Common Area out of the assessments hereinafter provided;

2.4.17 To make rules and regulations governing the use of the Master Common Area and all Village Common Areas, which the Association determines, within its reasonable discretion, will further the objectives set forth in Paragraph E of the Recitals to the Declaration, or will otherwise be in the interest of the health, welfare and/or safety of the Owners and/or residents of Cherry Hills, and to exercise such control over the use of the Master Common Area and Village Common Areas as deemed reasonably necessary by the Association to ensure compliance with such rules and regulations;

2.4.18 To cause all officers or employees of the Association having fiscal responsibilities to be bonded, and to secure liability insurance covering the acts or omissions of members of the Board of Directors, officers, committee members, and employees, as the Board of Directors shall deem appropriate;

2.4.19 To procure and maintain liability insurance and hazard insurance on the Master Common Area with coverages and in amounts which the Association deems necessary or prudent;

2.4.20 To enter into any agreements, oral or written, including license agreements or lease agreements, which in the judgment of the Board, enables the Association to

efficiently perform its obligations hereunder. Such agreements may include, without limitation, agreements with any Village Association, owners of property adjacent to Cherry Hills (or associations of such owners), or any governmental agency, to share employees or agents, or share or lease building space and equipment and the maintenance of such equipment;

2.4.21 To maintain any Village Common Area and do any act, thing or deed that is necessary or desirable, in the judgment of the Association, to maintain such Village Common Area in the manner required under the Village Declaration applicable thereto, if in the judgment of the Board, the Village Association responsible for such maintenance fails to do so; or to do any act, thing or deed, that is necessary or desirable, in the judgment of the Association, to enforce any Village Covenants and Restrictions, if in the judgment of the Board, the Village Association responsible for such enforcement fails to do so; provided however, that the foregoing powers shall not be exercised by the Association until it has given the offending Village Association written notice of such failure and an opportunity to cure the same within thirty (30) days of its receipt of such notice, unless a shorter period of time is reasonably required by the Association. Any expense incurred by the Association in exercising its authority pursuant to this Section 2.4.21 shall be reimbursed to the Association by the offending Village Association; and the Association shall have the right to enforce such reimbursement obligations pursuant to Section 9.1 hereof;

2.4.22 To employ from time to time a managing agent to administer a Village Association's affairs, if, in the judgment of the Board, a Village Association fails to adequately carry out its responsibilities set forth in its Village Declaration; provided however, that this power shall not be exercised by the Association until it has given the offending Village Association written notice of such failure

and an opportunity to cure the same within thirty (30) days of its receipt of such notice, unless a shorter period of time is reasonably required by the Association. The duration of the employment of the managing agent employed by the Association for a Village pursuant to this Paragraph shall extend until such time as the Association reasonably determines the applicable Village Association is able to carry out its responsibilities set forth in the Village Declaration applicable thereto. Any expense incurred by the Association in exercising its authority pursuant to this Section 2.4.22 shall be reimbursed to the Association by the offending Village Association; and the Association shall have the right to enforce such reimbursement obligations pursuant to Section 9.1 hereof;

2.4.23 To install monuments on the property lines of any Lot, the Master Common Area or any Village Common Area, in order to delineate the boundary lines of such Lot, the Master Common Area and/or such Village Common Area;

2.4.24 To exercise such other or additional rights as are conferred upon the Association pursuant to the terms of this Declaration.

### ARTICLE III

#### PROPERTY RIGHTS

3.1 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Master Common Area and any Village Common Area, which shall be appurtenant to and shall pass with the title to such Owner's Lot or Condominium Unit, subject to the following restrictions or reservations:

3.1.1 The right of the Association to establish rules and regulations governing the use of the Master Common Area and any Village Common Area;

3.1.2 The right of the Association to charge reasonable admission and other fees for the use of any recreational facility forming part of the Master Common Area or any Village Common Area;

3.1.3 The right of the Association to limit the number of guests of Members at any recreational facility forming part of the Master Common Area or any Village Common Area;

3.1.4 The right of the Association, in accordance with any applicable provisions of the Articles of Incorporation and By-laws, to borrow money for the purpose of improving the Master Common Area or any Village Common Area, and with the assent of more than a two-thirds (2/3) vote of the Members (present or represented by proxy at a meeting of Members at which a quorum is present) of a least seventy-one percent (71%) of the Classes of Membership then existing, to mortgage the Master Common Area or such Village Common Area, subject to this Declaration and the easement of enjoyment created hereby; provided however, that any mortgage or deed of trust granted by the Association on any Village Common Area must have been approved (by the aforesaid majority) by the Class of membership whose Members' Lots or Condominium Units are located within the Village in which such Village Common Area is located;

3.1.5 The right of the Association to suspend any Member's voting rights and such Member's right to use any recreational facilities constructed on the Master Common Area or any Village Common Area for any period during which the assessment against such Member's Lot or Condominium Unit remains unpaid for a period of at least ten (10) days beyond the due date, and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;

3.1.6 The right of the Association at any time and consistent with the then existing zoning ordinances of St. Louis County to dedicate or transfer all or any part of the Master Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, that no such dedication or transfer shall be effective unless it shall be approved by at least a majority of the votes of the Members (present or represented by proxy at a meeting of Members at which a quorum is present) of at least seventy-one percent (71%) of the Classes of Members then existing. Upon such affirmative vote, the officers of the Association shall execute the necessary documents. Notwithstanding the foregoing, no approval of the Members shall be necessary for the Association to make any dedications required to develop the Master Common Area in accordance with the Site Plan. The Association shall have the additional power of causing any Village Association, without the requirement of any approval of the Owners, to make any dedications required to develop such Village Common Area in accordance with the Site Plan;

3.1.7 The right of the Association to grant to any public utility, with or without payment to the Association, easements for the construction, reconstruction, installation, repair or necessary maintenance of utility lines through or over any portion of the Master Common Area. The foregoing shall not be construed, however, to permit any such public utility to acquire or damage any improvements situated upon the Master Common Area, without the payment of damages, if any, to the Association. The Association shall have the additional power of causing any Village Association to grant similar easements through any portion of its Village Common Area;

3.1.8 The right of the Association to lease or license all or any part of the Master Common Area or a Village

Common Area to non-Owners and non-residents of Cherry Hills, subject to the following conditions:

(i) no Owner or resident of Cherry Hills shall be denied the use of the Master Common Area or Village Common Area for any reason related to the granting of such lease or license;

(ii) all rules and regulations promulgated by the Association with respect to Owners and residents of Cherry Hills shall be applied equally to non-Owners and non-residents who are granted such leases or licenses;

(iii) all rules and regulations promulgated by the Association with respect to non-Owners and non-residents of Cherry Hills shall be applied equally to such non-Owners and non-residents; and

(iv) at any time after the recording of this Declaration, a majority of all Owners existing from time to time, may elect to allow or disallow usage of the Master Common Area or Village Common Area by non-Owners and non-residents of Cherry Hills, such election to be made at an annual or special meeting of the Members duly called.

3.2 Delegation of Use. Any Member may delegate such Member's right of enjoyment of the Master Common Area or any Village Common Area to the members of his family, his tenants, or any contract purchaser(s) who reside in such Member's Living Unit; provided that (i) written evidence of such delegation is filed with the Association, and (ii) the Member who delegates such right cannot use the Master Common Area or any Village Common Area on his own behalf as long as such delegation is in effect.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments. Every Developer for each Lot or Condominium Unit owned by it, hereby covenants and agrees, and each Owner (other than a Developer) of any Lot or Condominium Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (i) annual assessments or charges;
- (ii) a contribution to the working capital fund of the Association described in Section 4.4; and
- (iii) special assessments for capital improvements, or other specified items, such assessments to be fixed, established and collected from time to time as hereinafter provided.

All such assessments, together with interest as hereinafter provided, costs of collection, and reasonable attorneys' fees, shall be a charge on the land and, except as otherwise provided in Section 4.10 hereof, shall be a continuing lien upon the Lot or Condominium Unit against which each such assessment is made. If a Declaration of Condominium has not been recorded for the garden condominium building site within which is to be located the Condominium Unit for which an assessment is owing, then the lien described in the foregoing sentence shall be a continuing lien upon such building site until such Declaration of Condominium is recorded. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot or Condominium Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of furthering the objectives specified in Paragraph E of the Recitals to this Declaration, and otherwise for promoting the recreation, health, safety and welfare of the Owners and/or residents of Cherry Hills.

4.3 Determination of Annual Assessments. The fiscal year of the Association shall be based on the calendar year or any partial calendar year this Declaration is in effect. For each fiscal year of the Association this Declaration is in effect, the Board shall prepare a budget (hereinafter the "Budget") of the amounts the Board reasonably estimates will be necessary to adequately fulfill the Association's responsibilities hereunder during such fiscal year, such amounts to include, without limitation, adequate and reasonable reserves for repair and replacement of the improvements forming a part of the Master Common Area, and any improvements forming a part of the Village Common Area for which the Association has expressly accepted in writing maintenance responsibilities. Said Budget shall also take into consideration the portions of the Land expected to be added to Cherry Hills during such fiscal year. The Board shall also determine the assessments each Owner (including Developers) shall pay, which assessments, when added to the assessments of all other Owners, shall equal the total expenditures budgeted by the Board for such fiscal year. The assessment shall be uniform for each Lot or Condominium Unit within the same Village, but shall vary among the Lots or Condominium Units in different Villages, such difference being based upon the approximate relative size of the Lots and Condominium Units on the Property. In computing the annual assessment for the fiscal year, the Board shall determine a "Base Assessment", and the annual assessment for each Lot or Condominium Unit within a Village shall be the following percentage of the Base Assessment:



<u>Village</u>	<u>Assessment as Percentage of Base Assessment</u>
Arlington Terrace	85.6%
Audubon Village	100.0%
Oak Park	62.5%
Willow Glen	77.8%
Carriage Crossing	61.1%
Hunters Crossing	54.3%
Victoria Crossing	39.4%

4.4 Working Capital Fund. In addition to the annual assessment provided above, each Lot and Condominium Unit shall be subject to a one time assessment equal to twenty-five percent (25%) of the annual assessment for such Lot or Condominium Unit during the fiscal year such Lot or Condominium Unit is conveyed to a Developer other than Declarant, and with respect to those Lots or Condominium Units retained by Declarant, during the fiscal year Declarant begins construction activities on said Lots or Condominium Units for its own account. The assessment levied pursuant to this Section shall constitute a contribution to the working capital fund of the Association and shall not constitute an advance payment of any regular annual assessment pursuant to Section 4.3 or any special assessment pursuant to Section 4.5.

4.5 Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any fiscal year a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Master Common Area (or on any Village Common Area if the responsibility for such improvement has been expressly accepted in writing by the Association), or for any other specified purpose, provided that any such assessment shall be approved by a vote of at least a majority of the votes of the Members (who are voting in person or by

proxy at a meeting of Members duly called for such purpose) of at least seventy-one percent (71%) of the Classes of Members then existing, written notice of which (setting forth the purpose of the meeting) shall be sent to all Members not less than ten (10), nor more than fifty (50), days in advance of the meeting.

4.6 Rate of Special Assessment. Any special assessments shall be the same for each Lot or Condominium Unit within the same Village, but shall vary among Lots or Condominium Units within different Villages, according to the same relative percentages as set forth above with respect to regular annual assessments.

4.7 Quorum for any Voting Authorized under Section 4.5. At any meeting called for any purpose set forth in Section 4.5 of this Article IV, the presence at the meeting of Members (or of proxies) entitled to cast sixty percent (60%) of all of the votes of each Class of membership shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the notice requirements set forth in Section 4.5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

4.8 Date of Commencement of Annual Assessments and Working Fund Contributions; Due Dates.

4.8.1 The first annual assessment and the one-time assessment to serve as a contribution to the working capital fund of the Association provided for herein shall commence and be payable as to each Lot and Condominium Unit, on the date such Lot or the garden condominium building site in which such Condominium Unit is to be located is conveyed to a Developer other than Declarant, and with respect to those Lots or garden condominium building sites retained by Declarant, on

the date Declarant begins construction activities on said Lots or building sites for its own account. The first annual assessment applicable to each Lot or Condominium Unit shall be prorated according to the number of days remaining in the applicable fiscal year of the Association.

4.8.2 The Board shall send written notice of any annual assessment (other than the first annual assessment) to every Owner subject to such assessment at least thirty (30) days in advance of each fiscal year of the Association, and the due dates of such assessments shall be established by the Board. The Board may permit the assessment to be paid in monthly installments.

4.8.3 The Association shall, upon demand and at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot or Condominium Unit have been paid. A reasonable charge may be imposed by the Board for the issuance of these certificates. A properly executed certificate of the Association as to the status of assessments on a Lot or Condominium Unit is binding on the Association as of the date of such certificate's issuance.

4.9 Remedies of the Association for Nonpayment of Assessments.

4.9.1 If any assessment is not paid within ten (10) days after the due date, the assessment shall bear interest from the due date until paid at the rate of two percent (2%) per month, or the maximum rate permitted by law (if such maximum rate is less than 2% per month). The Association in its discretion may, in addition to the imposition of interest:

(i) impose a penalty as previously established by rule adopted pursuant to the provisions of the Articles of Incorporation or By-Laws;

(ii) accelerate the required payment date of the entire remaining annual assessment (if permitted to be paid in installments); or

(iii) bring an action at law against the Owner personally obligated to pay such assessments and/or foreclose the lien against which such sums have been assessed. Interest, costs and reasonable attorneys' fees of the Association incurred in any such action (or, if any such action is not actually brought, in preparation for such action) shall be added to the amount of such assessment.

4.9.2 No Owner may waive or otherwise escape liability for payment of any such assessments by nonuse of the Master Common Area or any Village Common Area, or abandonment of such Owner's Lot or Condominium Unit.

4.10 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of such Lot's or Condominium Unit's Mortgage, as defined in Section 1.14 hereof, provided such Mortgage was recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri prior to the date the applicable delinquent assessment was due. If a Declaration of Condominium has not been recorded for the garden condominium building site within which a Condominium Unit is to be located, then the lien of the assessments provided for herein shall also be subordinate to the lien of any first mortgage or first deed of trust on the garden condominium building site upon which such Condominium Unit is to be located until such time as such Declaration of Condominium is recorded. The sale or transfer of any Lot or Condominium Unit pursuant to a foreclosure sale or any proceeding in lieu thereof shall extinguish the lien of all assessments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Condominium Unit (or garden condominium building site) (or such transferee)

from liability for any assessments which become due after the date of such sale or transfer, or from the lien of such assessments accruing after such date.

4.11 Exempt Property. The following areas within the Property shall be exempt from the assessments provided for in this Article IV: (i) all areas dedicated to and accepted by any local public authority, by recordation of an appropriate document in the Office of the Recorder of Deeds of St. Louis County, Missouri; and (ii) the Master Common Area and all Village Common Areas.

## ARTICLE V

### ARCHITECTURAL REVIEW COMMITTEE

5.1 Composition. The Architectural Review Committee (sometimes herein referred to as the "ARC") shall be composed of a minimum of three (3) members and a maximum of seven (7) members, as determined by the Board. A member of the ARC may also be a member of the Board. Members shall serve staggered five (5) year terms, as determined by the Board.

5.2 Method of Selection. Members of the ARC shall be selected by the Board of Directors. As the terms of the ARC members expire, their replacements shall be appointed by the Board then serving. If a member of the ARC vacates his position, then the Board serving at the time such position is vacated shall, subject to Section 5.1, either eliminate such position of the ARC or appoint a replacement to serve during the unexpired portion of the term of the vacating ARC member.

5.3 Duties. The ARC is hereby authorized to regulate the initial construction of all Living Units and buildings containing Condominium Units within Cherry Hills, as well as all initial improvements to the Master Common Area or Village Common Areas by the Association or any Village Association (as opposed to Declarant). The ARC is also authorized to regulate the location of all fences, mailboxes and other structures

located on Lots, and all modifications or alterations to any improvements forming a part of the Master Common Area or Village Common Areas that exist from time to time. In performing its duties, the ARC shall act in a manner which, in its reasonable judgment, will (i) ensure the appropriate improvement of Lots and garden condominium building sites in accordance with the Site Plan; (ii) protect Owners against the erection of improvements on Lots or garden condominium building sites that would depreciate the value of such Owners' Lots or Condominium Units or the balance of the Property; (iii) prevent haphazard or unharmonious improvements on the Property; and (iv) in general, ensure high quality and harmonious development of improvements on the Property.

Accordingly, the ARC shall:

5.3.1 Review and approve, modify or disapprove, all applications of Owners (including Developers), Village Associations or the Association submitted pursuant to Section 6.7 for any of the following:

(i) initial construction of Living Units and buildings containing Condominium Units;

(ii) initial construction of improvements to the Master Common Area or Village Common Areas to be constructed by the Association or Village Association (it being acknowledged that the ARC shall have no authority over the initial construction of any improvements to be constructed by Declarant at Declarant's sole cost and expense);

(iii) alterations or modifications to any improvements forming a part of the Master Common Area and Village Common Areas from time to time (including any improvements originally constructed by Declarant); and

(iv) construction, location and placement of any fences, mailboxes or other structure on a Lot.

If the ARC fails to approve or disapprove any complete application within thirty (30) days of its receipt thereof, such application will be deemed to be approved, provided that no such automatic approval shall allow the applicant to undertake any construction contrary to the Site Plan, or any applicable law.

5.3.2 Periodically inspect the Property for compliance with all approvals granted pursuant to Section 5.3.1.

5.3.3 Adopt procedures for the exercise of its duties and enter them in an official procedures book, which shall be readily available for review by any Owner or Declarant; and

5.3.4 Maintain complete and accurate records of all actions taken.

5.4 Initial Construction by Developers After Conversion of Class A Membership. Notwithstanding any other provision of this Article V, after the Class A membership in the Association is converted to the other Classes of membership pursuant to Section 2.2.1, the initial construction of any Living Unit or any building containing Condominium Units by any Developer (including Declarant) shall not require the prior approval of the ARC, provided that such Living Unit or building is of a design and consists of materials that do not deviate in a material way from other Living Units or buildings within the Village in which such Living Units or building is to be located.

## ARTICLE VI

### RESTRICTIVE COVENANTS

6.1 All Lots and Condominium Units within the Property shall be used exclusively for residential purposes. Except for those related to real estate sales and construction by Declarant or any Developer, no sign, advertisement or

message shall be displayed or published which offers or implies commercial or professional services, or which might constitute any other kind of business solicitation in or from any Lot or Condominium Unit. Notwithstanding the foregoing, during the period of initial construction of Living Units and the sales thereof, Declarant and any Developer, may erect, maintain and operate real estate sales and construction offices, displays, signs and special lighting on the Lots owned by such Developer or portions of the garden condominium building sites owned by such Developer are located, or any portion of the Master Common Area or any Village Common Area approved in writing by Declarant.

6.2 No clothing, laundry, or wash shall be aired or dried outside any Living Unit or on any portion of a Lot.

6.3 No tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

6.4 No noxious or offensive activity shall be carried on upon any Lot or Condominium Unit, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the other Owners. Owners shall, at all times, maintain their Lots or Condominium Units and all appurtenances thereon in good repair and in a neat state. Except for flower gardens, shrubs and trees that are neatly maintained, all open areas of Lots improved by Living Units shall be improved with lawns or other materials approved by the ARC. All lawn areas shall be kept mowed and shall not be permitted to grow to a height in excess of four inches. Each Owner of a Lot shall also be responsible for (a) removing any snow, ice or debris from any sidewalk located on his Lot, and (b) for maintaining all grassy strips located in the Public Right-of-Ways which are contiguous to the sidewalks located on such Owner's Lot, in the same manner as such Owner is required to maintain the lawns on his Lot.

6.5 Subject to the Declarant's and the Developers' rights set forth in Section 6.1, no sign of any kind, whether



or not such sign is illuminated, shall be displayed to public view on any Lot or Condominium Unit or building in which Condominium Units are located.

6.6 No domestic or wild animal shall be kept or maintained in any Living Unit (or on any Lot), except for common household pets, such as dogs and cats, which shall be maintained in compliance with all St. Louis County and State of Missouri laws and regulations. Notwithstanding the foregoing, no household pets shall be kept, bred or maintained for commercial purposes, and no household pet shall be permitted to create a nuisance or annoyance to surrounding Living Units within Cherry Hills.

6.7 Except as permitted by Section 5.4, no Living Unit, building containing Condominium Units, improvements to the Master Common Area or any Village Common Area (except those constructed at the sole cost and expense of Declarant) shall be constructed; no fence, mailbox or other structure shall be constructed or placed on any Lot; and no improvement to the Master Common Area or Village Common Areas existing from time to time shall be altered or modified; unless and until application therefor is made to and approval is granted by the ARC. All such applications shall include the relevant plans and specifications related thereto (including elevation, material, color and texture), a site plan showing locations of improvements requiring grading modifications, and any other information reasonably required by the ARC. No application shall be considered complete until all such required information is submitted. In no event shall any above-ground pools be permitted on any Lot. No fences made of materials other than wood or in excess of four (4) feet in height shall be permitted on a Lot, provided, however, that the ARC will consider approving screened privacy fences for pools and patio areas.

6.8 All Living Units and buildings containing Condominium Units, and all fences, mailboxes and other structures on Lots, shall be maintained by the Owner or condominium homeowners' association holding record title thereto, in good condition and repair and in a manner not detracting from the value or appearance of the Property.

6.9 No exterior television, radio, or other communications antenna of any sort shall be erected or maintained on any portion of the Master Common Area or a Village Common Area without the written consent of the ARC; provided however, that the Association shall have the right to erect and maintain a master antenna or antennas on a portion of the Master Common Area, if the erection of such master antenna or antennas is approved by a majority of the votes of the Members (who are voting at a meeting of Members duly called) of at least seventy-one percent (71%) of the Classes of Members then existing. No exterior television, radio or other communication antenna of any sort shall be erected or maintained on the roof or exterior of any Lot or building containing Condominium Units without the written consent of the ARC. No satellite dish shall be permitted on any Lot or building containing Condominium Units.

6.10 No dilapidated vehicles, recreational vehicles, house trailers, or commercial or industrial vehicles such as, but not limited to, moving vans, trucks, tractors, trailers, vans (other than typical passenger vans), wreckers, hearses, buses, boats, boating equipment, mobile homes, or camping equipment, shall be parked on any streets within Cherry Hills, or the Master Common Area or any Village Common Area, or any Lot, except in enclosed garages on a Lot (if available to an Owner). No streets within Cherry Hills, or any portion of the Master Common Area or any Village Common Area or any Lot shall be used for the maintenance or repair of motor vehicles. The foregoing shall not prohibit an Owner of a Lot improved within

an enclosed garage from maintaining or repairing a motor vehicle owned by him or members of his family within such enclosed garage.

6.11 Any lease or rental agreement for a Lot or Condominium Unit shall be in writing and be subject to the requirements of this Declaration, the Articles of Incorporation, the By-Laws and all rules and regulations promulgated by the Association and/or the ARC. No Lot or Condominium Unit may be leased or rented for less than six (6) months.

6.12 The Board shall have the authority to adopt such rules and regulations with respect to Sections 6.1 through 6.11, inclusive, as it may from time to time consider necessary or appropriate.

6.13 The Board shall have the power and authority, acting for and on behalf of the Association, after ten (10) days' prior written notice to the Owner of the Lot or Condominium Unit or Village Association or condominium homeowners' association in violation of this Article, to take such action as it deems necessary to correct such violations, including entering on the offending Lot, building site of Condominium Units, Condominium Unit or Village Common Area and performing corrective action, all at the cost and expense of the Owner of the Lot or Condominium Unit or Village Association in violation of this Article, and such entry shall not constitute trespass by the Board or its agents. It is acknowledged that any Owner shall have the authority to enforce, in its own name, any of the Restrictive Covenants, including, without limitation, the provisions of Section 6.7 that prohibit the Association from undertaking certain construction activities not approved by the ARC.

ARTICLE VII

EASEMENTS

7.1 The Association, its directors, officers, agents and employees, all policemen, firemen, ambulance personnel, and all similar persons are hereby granted an easement to enter upon the Property (and any portion thereof including any Village Common Area) in the exercise of the functions provided by this Declaration and the Articles of Incorporation and By-Laws of the Association, in the event of emergencies, and in the performance of proper governmental functions.

7.2 Except in the case of any emergency, when access shall be immediate, the right of entry created by Section 7.1 shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, and with the permission of, any Owner or tenant directly affected by such entry.

7.3 Declarant, its agents and employees, and any Developer shall have a right of ingress and egress over the Master Common Area and any Village Common Area and the right to such other temporary uses of the Master Common Area and any Village Common Area as may be required or reasonably desirable (as determined by Declarant) in connection with the construction and development of the Property, as well as in connection with the construction and development of the Commercial District, all as contemplated by the Site Plan.

7.4 Declarant hereby reserves to itself, its successors and assigns, and Developers, a nonexclusive easement over any Lot, Condominium Unit, garden condominium building site, Master Common Area, or Village Common Area for the purpose of (i) installing, repairing or maintaining utility lines or areas located within the areas comprising the Land, including, but not limited to, storm water ponds and storm water inlets, sanitary sewers, gas lines, electric lines or

cables, water lines, telephone lines, street lights and the like, and (ii) conducting any construction activities required to develop the Commercial District in accordance with the Site Plan.

7.5 Declarant hereby reserves to itself, its successors and assigns, a perpetual and nonexclusive easement over any Lot, Condominium Unit, garden condominium building site or any portion of the Master Common Area for the purpose of landscaping any portion of the Master Common Area or Village Common Areas, or correcting the drainage of surface water on the Property to maintain the health, safety and appearance of the Property (such easements to include the right to cut trees, bushes, or shrubbery, or to cut or grade the land), or erecting and maintaining street intersection signs, street lights, directional signs, temporary promotional signs, permanent entranceways and signs, stone, wood or masonry walls on any portion of the Property.

7.6 To the extent that any portion of any improvement which is part of the initial improvements constructed by any Developer on a Lot or building containing Condominium Units (or repairs, restorations, or replacements of such improvements) encroaches on any other Lot or Condominium Unit, or the Master Common Area, or a Village Common Area, whether by roof or building projection or overhang, a valid easement for such encroachment shall exist. Each Owner shall have the right to enter upon a reasonable portion of such other Lot, or Master Common Area or Village Common Area at reasonable times for the purpose of performing repairs and maintenance to his Lot or Condominium Unit, provided that following such entering the Owner so entering promptly restores such other Lot, Master Common Area or Village Common Area to its condition immediately prior to such entry.

ARTICLE VIII

REQUIREMENTS OF ST. LOUIS COUNTY, MISSOURI

8.1 Conveyance to Association by General Warranty

Deed. Simultaneously with the recordation of each record subdivision plat of any portion of the Property, (i) Declarant shall convey to the Association, by general warranty deed, the Master Common Area shown on such plat, and (ii) Declarant shall convey to the applicable Village Association, by general warranty deed, the Village Common Area shown on such plat.

8.2 Duration of Declaration; Vacation of

Subdivision. The term of this Declaration shall be for the duration of the subdivision approved for the Property. In the event the subdivision is vacated, thereafter, fee simple title to the Master Common Area shall vest in the then Owners as joint tenants; and fee simple title to the Village Common Areas shall vest in the then Owners within the applicable Village as joint tenants. The rights of such joint tenants shall only be exercisable appurtenant to and in conjunction with their Lot or Condominium Unit ownership. Any conveyance or change of ownership of any Lot or Condominium Unit shall convey with it ownership in the Master Common Area and applicable Village Common Area, and no interest in the Master Common Area or the Village Common Areas shall be conveyed by an Owner except in conjunction with the sale of the Lot or Condominium Unit owned by him. The sale of any Lot or Condominium Unit shall carry with it all the incidents of ownership in the Master Common Area and applicable Village Common Area although such is not expressly mentioned in the deed conveying such Lot or Condominium Unit; provided, however, that no right or power conferred upon the Association shall be abrogated.

8.3 Eminent Domain. In the event it shall become necessary for any public agency to acquire all or any part of the Master Common Area or Village Common Area for any public

purpose during the period this Declaration is in effect, the Board of Directors are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary for that purpose. The Board of Directors are further authorized to cause the board of directors of any Village Association whose Village Common Area is subject to such acquisition to execute instruments necessary for such acquisition. Should acquisitions by eminent domain become necessary only the Board of Directors (and, if desired by the taking authority, the board of directors of the Village Association whose Village Common Area is subject to such acquisition) need be made parties, and in any event the proceeds received shall be held by the Association for the benefit of the Owners.

8.4 Ordinance Compliance. Notwithstanding any other provisions contained in this Declaration, the Board of Directors shall make suitable provision for compliance with all subdivision and other ordinances, rules and regulations of St. Louis County or any other municipality of which the subdivision may become a part and for such purposes, shall not be limited to the annual assessment provided for herein.

8.5 Amendment. During the first twenty (20) years following the recordation of this Declaration, this Declaration may be amended, modified or changed upon the approval of not less than ninety percent (90%) of the Members (present or represented by proxy at a meeting of the Members at which a quorum is present) of at least seventy-one percent (71%) of the Classes of Members then existing, provided such amendment, modification or change is approved by the Planning Director of St. Louis County, Missouri. After the first twenty (20) years following the recordation of this Declaration, this Declaration may be amended, modified or changed upon the approval of not less than seventy-five percent (75%) of the Members (present or

represented by proxy at a meeting of the Members at which a quorum is present) of at least seventy-one percent (71%) of the Classes of Members then existing. All amendments, modifications or changes to the Declaration shall be recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri. No such amendment, modification or change shall reduce or modify the obligation or right granted to or imposed upon the Association with respect to maintenance of the Master Common Area and the power to levy assessments or to eliminate the requirement that the management responsibilities of the Association be vested in a Board of Directors, unless some persons or entity is substituted for the Association and/or the Board of Directors with their responsibilities and duties in a manner approved by the Director of Planning of St. Louis County, Missouri. Notwithstanding the foregoing (i) Declarant shall have the right to unilaterally amend this Declaration (without the aforesaid approval of the Members or of the Planning Director of St. Louis County, Missouri) from time to time to phase in and subject additional portions of the Land to this Declaration, provided that such phasing-in is done in accordance with the Site Plan; and (ii) Declarant shall have the right to unilaterally amend this Declaration, subject to the approval of the Planning Director of St. Louis County, Missouri (a) to satisfy the requirements of the St. Louis County, Missouri Department of Planning, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Association ("Freddie Mac") or the Federal National Mortgage Association ("Fannie Mac"), or (b) prior to conveyance of any Lot or Condominium Unit in Cherry Hills to an Owner.

8.6 Above Ground Structures. No above-ground structure, other than required street lights, may be erected within a cul-de-sac, divided street entry island, or median



strip without the written approval of the St. Louis County Department of Highways and Traffic.

8.7 Vacancies on the Board of Directors. Where the provisions of this Declaration cannot be fulfilled by reason of unfilled vacancies on the Board of Directors, the St. Louis County Council may upon the petition of any concerned Owner or resident of a Lot or Condominium Unit, appoint one or more Board members to fill vacancies until such Board members are selected in accordance with the Declaration. Any person so appointed who is not an Owner or resident of a Lot or Condominium Unit shall be allowed a reasonable fee for his services by the order of appointment, which fee shall be levied as a special assessment against the property forming a part of Cherry Hills and which shall not be subject to any vote of the Members on special assessments contained in this Declaration or elsewhere.

8.8 Storm Water Retention Agreement; Assessment. The Budget required to be prepared by the Association, and the annual assessment to be levied against each Lot or Condominium Unit during each fiscal year, shall include, as a separate line item amount, monies necessary for the repair, operation and maintenance of storm water control easements located on (a) the Master Common Area and (b) any property adjacent to Cherry Hills, provided the easements on such adjacent property are granted for the benefit of the owners of Cherry Hills (including, but not by way of limitation, storm water detention basins), including all underground and above-ground facilities and pipes used in connection therewith and access easements to such storm water control easements. The aforesaid Budget and annual assessments shall include such separate line item amounts for storm water control easements until such easements shall be accepted for maintenance by the Metropolitan St. Louis Sewer District or other public authority, and all obligations

pursuant to this Section 8.8 shall cease and terminate in respect to any portion dedicated or conveyed to, and accepted by, any such Sewer District or other public authority.

## ARTICLE IX

### GENERAL PROVISIONS

9.1 Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any right, provision, covenant, or condition granted by this Declaration shall not constitute a waiver of the right of the Association or any Owner to enforce such right, provision, covenant, or condition in the future. All rights, remedies and privileges granted to the Association or to any Owner pursuant to any term, provision, covenant or condition of this Declaration shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising such remedy from exercising such other remedies as may be granted to such party by this Declaration, at law, or in equity.

9.2 Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Declaration.

9.3 Captions. The captions contained in this Declaration are inserted as a matter of reference only, and in no way limit or otherwise affect the scope, meaning or effect of any provision hereof.

9.4 Conflicts. If there is any conflict between the provisions of this Declaration, the Articles of Incorporation,

the By-Laws, or any of the Rules and Regulations adopted pursuant to the the terms of such documents, the provisions of the document earlier mentioned in this sentence shall govern.

9.5 Annexation of Additional Properties. Except as permitted in Section 8.5, additional property may be submitted to the provisions of this Declaration and thereby annexed to the Property if approved by at least two-thirds (2/3) of the votes of the Members (present or represented by proxy at a meeting of Members at which a quorum is present) of at least seventy-one percent (71%) of the Classes of Members then existing; and approved by the Director of Planning of St. Louis County, Missouri.

9.6 Federal Housing Administration/Veterans Administration Approval. Following the first conveyance of a Lot or Condominium Unit to an Owner, other than a Developer, until such time as the Class A membership in the Association shall be converted to other classes of membership as provided in Section 2.2.1, the following actions will require the approval of the Federal Housing Administration or the Veterans Administration:

9.6.1 Annexation of additional real property to Cherry Hills, other than property permitted to be annexed unilaterally by Declarant pursuant to Section 8.5 hereof;

9.6.2 Dedication of any portion of the Master Common Area or Village Common Area, other than any dedications required to develop the Master Common Area or Village Common Area in accordance with the Site Plan; and

9.6.3 Amendment of the Declaration, except as permitted to be unilaterally amended by Declarant pursuant to Section 8.5 hereof.

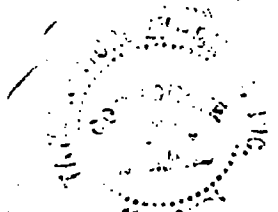
9.7 Commercial District. The provisions of this Declaration shall not apply to the Commercial District or confer any rights or obligations upon owners or occupants of any portion of the Commercial District.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first above written.

DECLARANT:

THE VILLAGES OF CHERRY HILLS DEVELOPMENT CO., a Missouri general partnership

By: Taylor-Morley-Simon, Inc., a Missouri corporation, general partner



ATTEST:

[CORPORATE SEAL]

By \_\_\_\_\_

By Benton E. Taylor  
Benton E. Taylor, Chairman

STATE OF MISSOURI )  
                          ) SS:  
COUNTY OF ST. LOUIS)

On this 21st day of July, 1986, personally appeared before me, a notary public in and for the County and State aforesaid, Benton E. Taylor, whose identity is well known (or satisfactorily proven) to me, and being by me duly sworn, did acknowledge before me under oath that he is the Chairman of TAYLOR-MORLEY-SIMON, INC., a Missouri corporation, a general partner of THE VILLAGES OF CHERRY HILLS DEVELOPMENT CO., a Missouri general partnership; that said instrument was signed and sealed on behalf of said partnership by authority of said partnership's agreement of general partnership and by authority of said corporation's Board of Directors; and that said instrument is the free act and deed of said partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County of St. Louis, State of Missouri, the day and year first above written.

Lietta B. Haenel  
Notary Public

My commission expires:

June 2, 1989



Lietta B. HAENEL NOTARY PUBLIC  
COUNTY OF ST. LOUIS STATE OF MISSOURI  
COMMISSION EXPIRES JUNE 2, 1989

EXHIBIT A TO DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR  
THE VILLAGES OF CHERRY HILLS

LEGAL DESCRIPTION

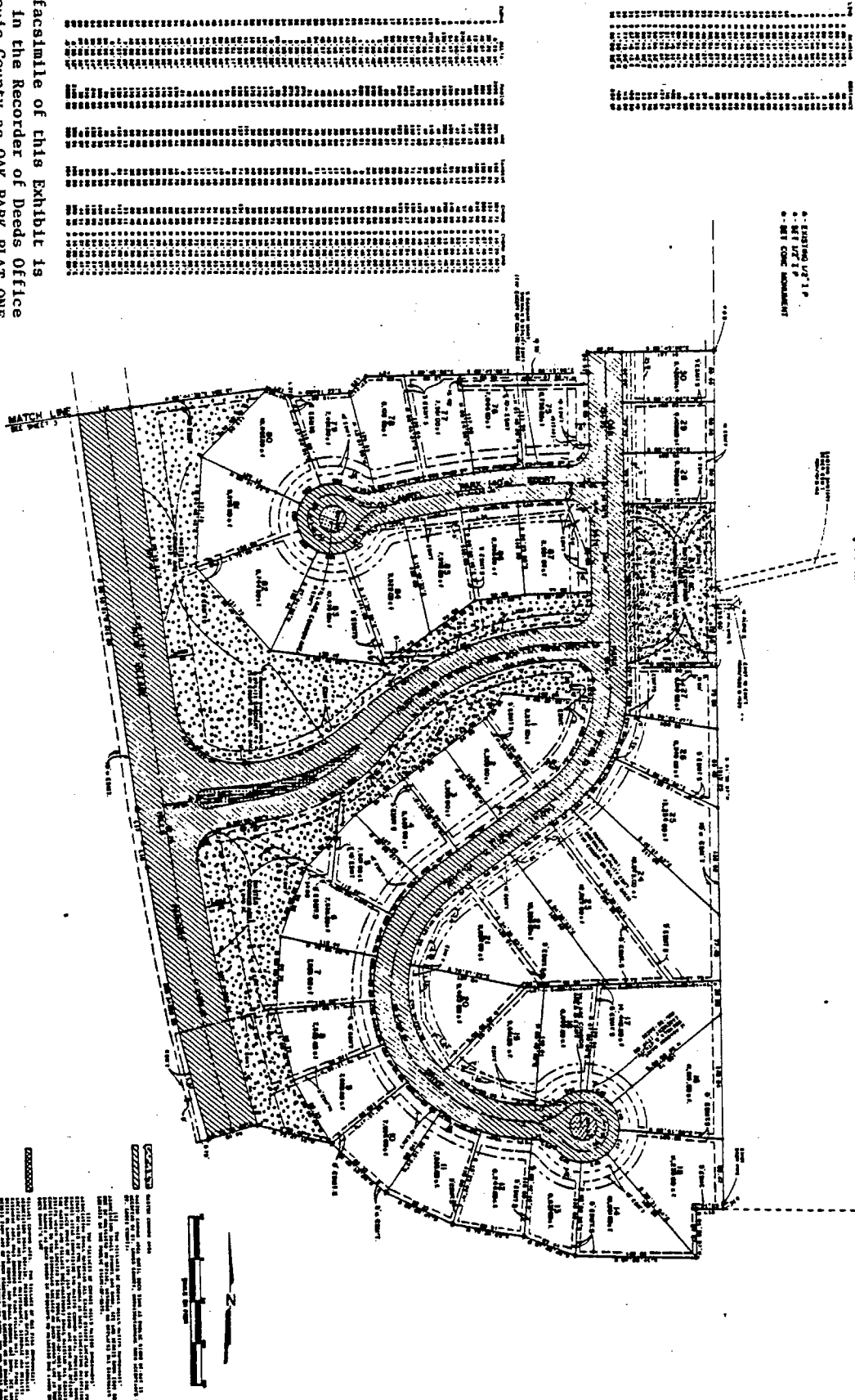
A tract of land in Sections 1 and 12, Township 44 North, Range 3 East of the 5th Principal Meridian, St. Louis County, Missouri, and being more particularly described as follows:

Commencing at the Northeast corner of the Northeast quarter of said Section 12; thence North 86 degrees 41 minutes 59 seconds West along the Northerly line of said Section 12 a distance of 1013.38 feet to a point on the Westerly line of a tract of land now or formerly conveyed to Mildred Kroenlein White, trustee for Richard Lee White, as recorded in Deed Book 5830, Page 443; thence South 01 degrees 35 minutes 57 seconds West along the Westerly line of said White tract 340.90 feet to the Point of Beginning of the herein described tract; thence South 01 degrees 35 minutes 57 seconds West, continuing along the Westerly line of said White tract 1015.23 feet to the Southwest corner of said White tract; thence departing said White tract North 87 degrees 08 minutes 41 seconds West 31.53 feet; thence South 01 degrees 35 minutes 57 seconds West 57.67 feet; thence North 87 degrees 08 minutes 41 seconds West 142.00 feet; thence North 67 degrees 45 minutes 45 seconds West 63.44 feet; thence North 78 degrees 30 minutes 03 seconds West 85.51 feet; thence North 62 degrees 08 minutes 47 seconds West 86.33 feet; thence North 45 degrees 12 minutes 25 seconds West 86.33 feet; thence North 73 degrees 47 minutes 15 seconds West 89.42 feet; thence South 75 degrees 21 minutes 23 seconds West 60.00 feet to a point of curvature to the right, for which the radius point bears North 75 degrees 21 minutes 23 seconds West 2250.00 feet; thence in a Northwesterly direction along said curve an arc distance of 329.39 feet to the point of tangency; thence North 06 degrees 15 minutes 21 seconds West 29.62 feet; thence North 07 degrees 41 minutes 17 seconds West 40.01 feet; thence North 06 degrees 15 minutes 21 seconds West 561.00 feet; thence South 83 degrees 44 minutes 39 seconds West 12.00 feet; thence North 06 degrees 15 minutes 21 seconds West 106.48 feet to a point of curvature to the right, said curve having a radius of 670.50 feet; thence along said curve an arc distance of 150.25 feet to a point of compound curvature to the right, said curve having a radius of 502.94 feet; thence along said curve an arc distance of 185.72 feet to the point of tangency; thence North 27 degrees 44 minutes 28 seconds East 61.37 feet to a point of curvature to the right, said curve having a radius of 658.00 feet; thence along said curve an arc distance of 419.50 feet to a point of reverse curvature to the left, said curve having a radius of 243.00 feet; thence along said curve an arc distance of 272.98 feet to a point of compound curvature to the left, said curve having a radius of 546.62 feet; thence along said curve an arc distance of 46.12 feet to a point of compound curvature to the left, said curve having a radius of 100.00 feet; thence along said curve an arc distance of 120.24 feet to a point of compound curvature to the left, said curve having a radius of 65.00 feet;

EXHIBIT A continued

thence along said curve an arc distance of 38.63 feet to a point on the curve; thence departing said curve North 17 degrees 52 minutes 06 seconds West 6.00 feet; thence South 72 degrees 07 minutes 54 seconds West 527.01 feet to a point on the Easterly line of a tract of land now or formerly conveyed to Lawrence W. Cardwell, Jr., as recorded in Book 6407, Page 554; thence North 01 degrees 10 minutes, 38 seconds along the Easterly line of said Cardwell tract 5.29 feet to a point on the Southerly line of Old Manchester Road, 60 feet wide; thence North 72 degrees 07 minutes 54 seconds East along the Southerly line of said Old Manchester Road 954.81 feet to the Northeasterly corner of the above said White tract; thence departing said Old Manchester Road South 01 degrees 16 minutes 52 seconds West along the Westerly line of said White tract 506.89 feet; thence departing the Westerly line of said White tract South 74 degrees 29 minutes 29 seconds East 170.94 feet; thence North 64 degrees 10 minutes 58 seconds East 119.42 feet; thence North 29 degrees 44 minutes 18 seconds East 88.41 feet; thence North 33 degrees 39 minutes 12 seconds West 60.47 feet to a point of curvature to the right, for which the radius point bears North 33 degrees 29 minutes 12 seconds West 317.00 feet; thence along said curve in a Southeasterly direction an arc distance of 43.83 feet to a point of reverse curvature to the left, said curve having a radius of 602.00 feet; thence along said curve an arc distance of 741.00 feet to the point of tangency; thence South 06 degrees 15 minutes 21 seconds East 180.03 feet; thence North 83 degrees 44 minutes 39 seconds East 162.87 feet; thence South 68 degrees 01 minutes 27 seconds East 26.18 feet; thence North 88 degrees 21 minutes 23 seconds East 69.51 feet; thence North 46 degrees 01 minutes 27 seconds East 27.21 feet; thence South 88 degrees 43 minutes 08 seconds East 260.00 feet; thence North 01 degrees 16 minutes 52 seconds East 24.53 feet; thence South 88 degrees 43 minutes 08 seconds East 147.16 feet to the Point of Beginning.

EXHIBIT B TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
 THE VILLAGES OF CHERRY HILLS  
 (THE "MASTER DECLARATION")



A larger facsimile of this Exhibit is available in the Recorder of Deeds Office for St. Louis County as OAK PARK PLAT ONE.

**LEGEND**

--- EXISTING LOT  
 - - - - - NEW LOT  
 . . . . . NEW COMMON ELEMENT

**NOTES**

1. THE VILLAGES OF CHERRY HILLS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE MASTER DECLARATION AND THE COVENANTS, CONDITIONS AND RESTRICTIONS THEREIN.

2. THE VILLAGES OF CHERRY HILLS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE MASTER DECLARATION AND THE COVENANTS, CONDITIONS AND RESTRICTIONS THEREIN.

3. THE VILLAGES OF CHERRY HILLS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE MASTER DECLARATION AND THE COVENANTS, CONDITIONS AND RESTRICTIONS THEREIN.

4. THE VILLAGES OF CHERRY HILLS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE MASTER DECLARATION AND THE COVENANTS, CONDITIONS AND RESTRICTIONS THEREIN.

5. THE VILLAGES OF CHERRY HILLS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE MASTER DECLARATION AND THE COVENANTS, CONDITIONS AND RESTRICTIONS THEREIN.

6. THE VILLAGES OF CHERRY HILLS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE MASTER DECLARATION AND THE COVENANTS, CONDITIONS AND RESTRICTIONS THEREIN.

7. THE VILLAGES OF CHERRY HILLS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE MASTER DECLARATION AND THE COVENANTS, CONDITIONS AND RESTRICTIONS THEREIN.

8. THE VILLAGES OF CHERRY HILLS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE MASTER DECLARATION AND THE COVENANTS, CONDITIONS AND RESTRICTIONS THEREIN.

9. THE VILLAGES OF CHERRY HILLS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE MASTER DECLARATION AND THE COVENANTS, CONDITIONS AND RESTRICTIONS THEREIN.

10. THE VILLAGES OF CHERRY HILLS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE MASTER DECLARATION AND THE COVENANTS, CONDITIONS AND RESTRICTIONS THEREIN.

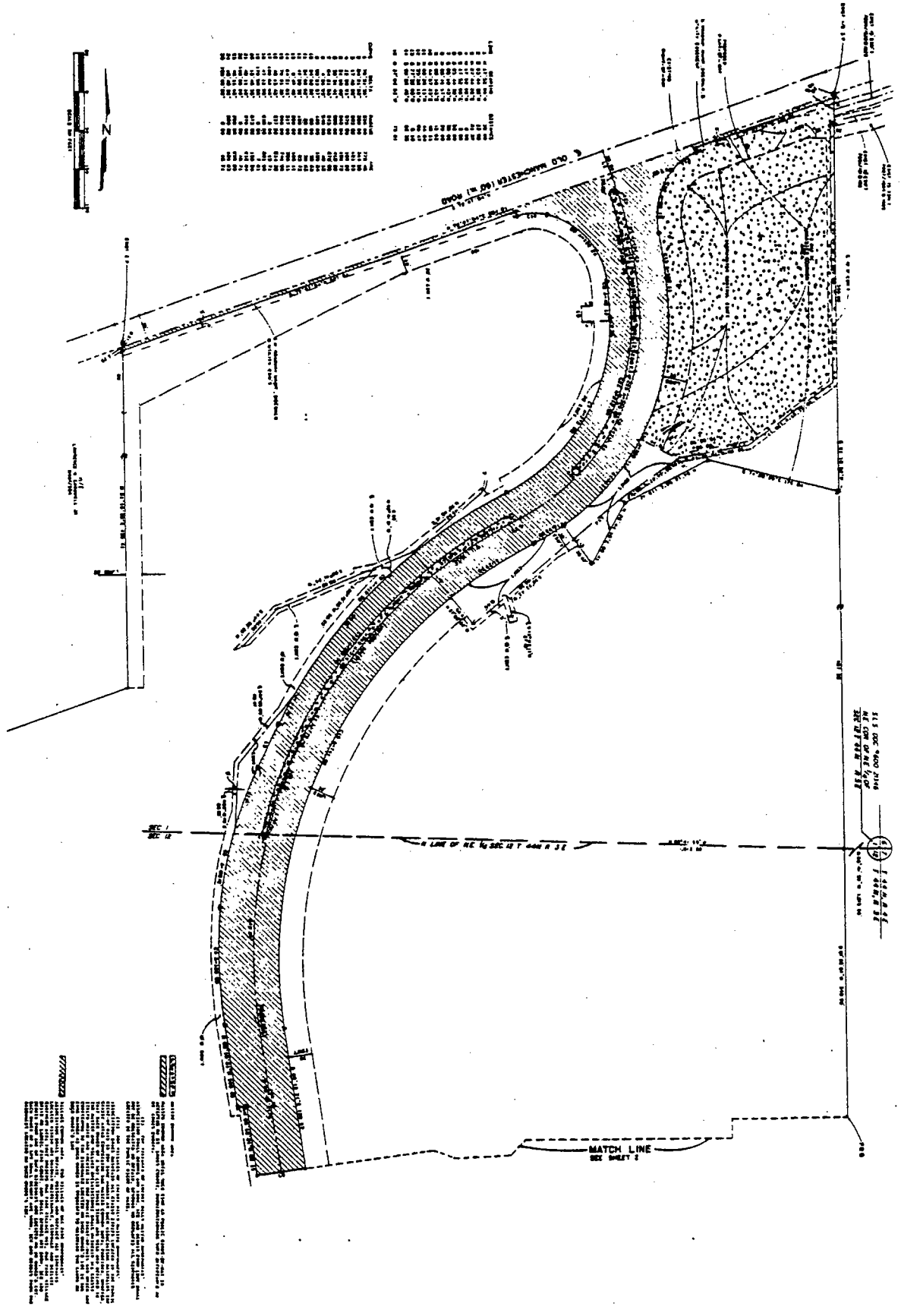




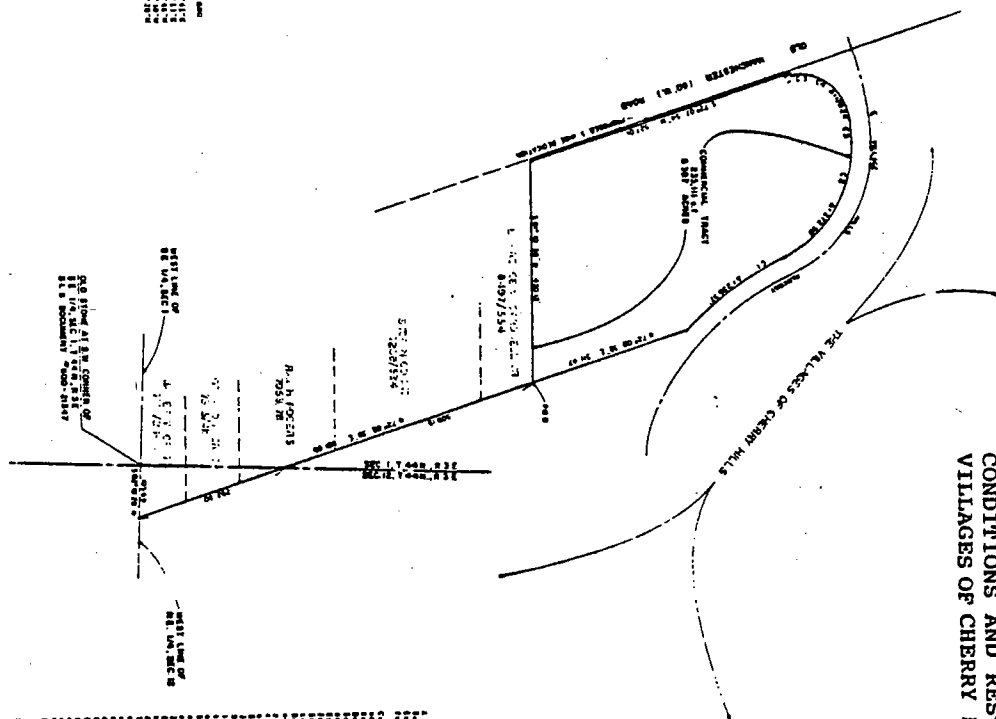
EXHIBIT C(1) TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE VILLAGES OF CHERRY HILLS

LEGAL DESCRIPTION  
THE VILLAGES OF CHERRY HILLS  
COMMERCIAL TRACT

A tract of land being part of the Southeast quarter of Section 1, Township 44 North, Range 3 East of the 5th Principal Meridian, St. Louis County, Missouri, and being more particularly described as follows:

Commencing at the Southwest corner of the Southeast quarter of said Section 1, said point being on the West line of a tract of land now or formerly conveyed to James W. Graham, as recorded in Deed Book 7157, Page 2390, of the St. Louis County Records; thence South 02 degrees 18 minutes 28 seconds West along the West line of said Graham tract and the West line of the Northeast quarter of Section 12, Township 44 North, Range 3 East, a distance of 105.69 feet; thence North 72 degrees 08 minutes 38 seconds East along the Southerly line of said Graham tract and the Southerly line of tracts conveyed to Gerald H. Grus, Book 7395, Page 411, and Ray H. Rogers, Book 7053, Page 78, a distance of 292.80 feet to a point on the South line of the Southeast quarter of said Section 1, said point being on the Southerly line of said Rogers tract; thence continuing along the last said course and the Southerly line of said Rogers tract and the Southerly line of tracts conveyed to Stop & Go, Inc., Book 7238, Page 524, and Lawrence W. Cardwell, Jr., Book 6407, Page 554, a distance of 509.15 feet to the Southeast corner of said Cardwell's tract, said point also being the Point of Beginning of the herein described tract of land; thence North 72 degrees 08 minutes 38 seconds East 311.47 feet to a point on a curve to the right, for which the radius point bears South 46 degrees 18 minutes 47 seconds East 658.00 feet; thence along said curve an arc distance of 236.37 feet to a point of reverse curvature to the left, said curve having a radius of 243.00 feet; thence along said curve an arc distance of 272.98 feet to a point of compound curvature to the left, said curve having a radius of 546.62 feet; thence along said curve an arc distance of 46.12 feet to a point of compound curvature to the left, said curve having a radius of 100.00 feet; thence along said curve an arc distance of 120.24 feet to a point of compound curvature to the left, said curve having a radius of 65.00 feet; thence along said curve an arc distance of 38.63 feet; thence departing said curve North 17 degrees 52 minutes 06 seconds West 6.00 feet to a point on the Southerly line of Old Manchester (proposed 5 feet wide dedication) Road, said point being a perpendicular distance of 35.00 feet from the existing centerline of said Old Manchester Road; thence South 72 degrees 07 minutes 54 seconds West along the proposed 5 feet wide dedication of said Old Manchester Road a distance of 527.01 feet to a point on the East line of the aforementioned Cardwell tract; thence South 01 degrees 10 minutes 38 seconds West along the East line of said Cardwell tract 430.12 feet to the Point of Beginning and containing 235,111 Square Feet, more or less, or 5.397 Acres, more or less.

EXHIBIT C (2) TO DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS FOR THE  
 VILLAGES OF CHERRY HILLS



LOT	AREA	OWNER	REMARKS
1	1.20	...	...
2	1.20	...	...
3	1.20	...	...
4	1.20	...	...
5	1.20	...	...
6	1.20	...	...
7	1.20	...	...
8	1.20	...	...
9	1.20	...	...
10	1.20	...	...
11	1.20	...	...
12	1.20	...	...
13	1.20	...	...
14	1.20	...	...
15	1.20	...	...
16	1.20	...	...
17	1.20	...	...
18	1.20	...	...
19	1.20	...	...
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39	1.20	...	...
40	1.20	...	...
41	1.20	...	...
42	1.20	...	...
43	1.20	...	...
44	1.20	...	...
45	1.20	...	...
46	1.20	...	...
47	1.20	...	...
48	1.20	...	...
49	1.20	...	...
50	1.20	...	...

THE VILLAGES OF CHERRY HILLS  
 P.E.U. COMMERCIAL TRACT

...

THE VILLAGES OF CHERRY HILLS P.E.U. COMMERCIAL TRACT	<b>JAMES B. DOUGLAS</b> CONSULTING ENGINEERS 1000 ... ...	THE VILLAGES OF CHERRY HILLS DEVELOPMENT COMPANY A MISSOURI GENERAL PARTNERSHIP
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Record of Deeds  
By Deputy Recorder

The undersigned Recorder of Deeds for said County and State, do hereby certify that the foregoing and annexed instrument or writing was filed for record in my office on the 25 day of July 1986 at 1:57 o'clock P.M. and is recorded in book 7456 Page 912

I have my hand and office seal on the day and year above written.

County of St. Louis

**FILED**

JUL 25 1986

At O'clock M  
RECORDER OF DEEDS  
ST. LOUIS COUNTY, MO

499

1986  
JUL 25

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR THE VILLAGE OF CARRIAGE CROSSING

THIS DECLARATION is made this 24<sup>th</sup> day of February, 1987, by THE VILLAGES OF CHERRY HILLS DEVELOPMENT CO., a Missouri general partnership (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the owner of a large portion of a 202<sup>1</sup>/<sub>2</sub> acre tract of land located off of Old Manchester Road in St. Louis County, Missouri (hereinafter, the "Land").

B. The St. Louis County Council, by Ordinance No. 11,877, approved on January 18, 1985, as amended by Ordinance Nos. 12,329, 12,433 and 12,896, approved on November 1, 1985, January 10, 1986 and October 31, 1986, respectively, has approved a development plan for all of the Land as a planned environment unit development under Section 1003.187 SLCRO 1974, as amended.

FILED FOR RECORD  
1987 FEB 24 PM 4:51

C. In accordance with the aforesaid Ordinance (as amended), Declarant desires to develop (or cause to be developed) on all portions of the Land other than the Commercial District (as hereinafter defined) a residential community consisting of (i) at least seven separate residential villages that will vary (from village to village) as to the size and types of homes constructed thereon, including, The Village of Carriage Crossing, and (ii) common areas improved by certain recreational amenities, green spaces, roads, street lighting, lakes, storm water ponds, storm water inlets and other improvements, all of which shall exist for the benefit and use of the residents of all of the aforesaid residential villages. Said development will be consistent with (i) the

said Office of the Recorder of Deeds in Book 7961, Page 1750, as further amended by Second Amendment thereto, recorded in said Office of the Recorder of Deeds in Book 7961, Page 1875, as further amended by Third Amendment thereto, recorded in said Office of the Recorder of Deeds in Book 7961, Page 1922, as further amended by Fourth Amendment thereto recorded in said Office of the Recorder of Deeds in Book 7972, Page 1342, and as further amended by Fifth Amendment thereto recorded on November 13, 1986 in said Office of the Recorder of Deeds in Book 8014, Page 662. All portions of the Land no longer owned by Declarant were subjected to the provision of said Declaration (as amended) prior to their sale by Declarant.

F. Declarant has created THE VILLAGES OF CHERRY HILLS MASTER HOMEOWNERS' ASSOCIATION, a Missouri not-for-profit corporation, which, pursuant to the terms of the Master Declaration, has been delegated and assigned certain powers and duties with respect to the entire community to be known as The Villages of Cherry Hills.

G. Declarant desires to further subject the portion of the Land to be known as "The Village of Carriage Crossing" (which portion is currently owned by Declarant), in phases, to the covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges (collectively the "Village Covenants and Restrictions") set forth in this Declaration, all for the purpose of (i) further ensuring the attractiveness of The Village of Carriage Crossing, (ii) further providing for the enhancement of property values within The Village of Carriage Crossing, (iii) providing for the maintenance of the portion of the aforesaid common areas which, pursuant to this Declaration, is to be maintained by the Owners of Lots (as such terms are hereinafter defined) within The Village of Carriage Crossing, and (iv) providing for the maintenance of and insurance on certain portions of the

"Site Development Concept Plan for The Villages of Cherry Hills", recorded among the land records of St. Louis County, Missouri in Plat Book 246, Page 9, as amended by that certain "Partial Amended Site Development Concept Plan for The Villages of Cherry Hills," recorded among the land records of St. Louis County, Missouri in Plat Book 258, Page 19, and (ii) the "Site Development Section Plan" heretofore submitted and approved by the St. Louis County Department of Planning, as amended; it being acknowledged that the Site Development Concept Plan and/or the Site Development Section Plan may be amended from time to time upon approval by the governmental authority having jurisdiction over the Land (said Site Development Concept Plan and Site Development Section Plan, as either may be amended from time to time, being hereinafter collectively referred to as the "Site Plan").

D. The Site Plan also contemplates the development of a Commercial District on the Land consisting of approximately 5.397 acres (hereinafter the "Commercial District"), which Commercial District is described on Exhibit C(1) attached hereto and shown on the plat attached hereto as Exhibit C(2). Declarant intends that the provisions of this Declaration shall not apply to the Commercial District or confer any rights or obligations upon owners or occupants of any portion of the Commercial District.

E. To ensure compliance with Declarant's development plan for said residential community, Declarant will subject the Land (other than the Commercial District), in phases, to certain covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges provided in a certain Declaration of Covenants, Conditions and Restrictions for The Villages of Cherry Hills, recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri, in Book 7950, Page 912, as amended by First Amendment thereto, recorded in

improvements constructed on Lots within the Village of Carriage Crossing.

H. Declarant has created THE VILLAGE OF CARRIAGE CROSSING HOMEOWNERS' ASSOCIATION, a Missouri not-for-profit corporation, as the organization to which is to be delegated and assigned the powers of (i) owning, maintaining and administering the portion of the aforesaid common areas to be maintained by the Owners within The Village of Carriage Crossing, (ii) administering and enforcing the Covenants and Restrictions set forth in this Declaration, (iii) collecting and disbursing the assessments and charges required by this Declaration, and (iv) maintaining certain portions of the improvements constructed on lots within the Village of Carriage Crossing and obtaining insurance coverage on such improvements.

I. Declarant desires that the portion of the Land described on Exhibit A attached hereto and depicted on the plat attached hereto as Exhibit B shall be the first portion of the Village of Carriage Crossing to be subjected to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the real property described on Exhibit A attached hereto and depicted in the plat attached hereto as Exhibit B, and any other real property subjected to the provisions of this Declaration, and all improvements situated on said real property, shall be held, sold and conveyed subject to the terms and provisions of the Covenants and Restrictions, all of which shall run with such real property and be binding on all parties having any right, title or interest in such real property or any part thereof, and their heirs, personal representatives, successors and assigns. Declarant covenants, however, that the following work and improvements to the Property (as hereinafter defined) shall be completed by Declarant, at Declarant's sole cost and expense, and not at the expense of the Association (as hereinafter defined):

(i) the roughgrading of the unimproved areas located within the Property;

(ii) the construction of streets and roads to be located on the Property as shown on the Site Plan;

(iii) the construction and installation of all sanitary sewers, storm sewers and utility lines required to serve the Property, as developed in accordance with the Site Plan;

(iv) the construction of an entrance monument for The Village of Carriage Crossing; and

(v) the construction of the surface water retention areas for the Property (as hereinafter defined), if any, as shown on the Site Plan.

Declarant further covenants that all sidewalks to be located on the Property in accordance with the Site Plan shall be completed by and at the sole cost and expense of a Developer (as hereinafter defined) (by virtue of a separate agreement between such Developer and St. Louis County, Missouri) and/or Declarant, and not at the expense of the Association.

## ARTICLE I

### DEFINITIONS

The following words when used in this Declaration, or in any amendment to this Declaration, shall (unless the context clearly indicates otherwise) have the following meanings:

1.1 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association.

1.2 "Association" shall mean and refer to The Village of Carriage Crossing Homeowners' Association, a not-for-profit corporation organized under and pursuant to the laws of the State of Missouri, and its successors and assigns.

1.3 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.



1.4 "By-Laws" shall mean and refer to the By-Laws adopted by the Board of Directors.

1.5 "Carriage Crossing" shall mean and refer to the property that is from time to time subject to this Declaration.

1.6 "Declarant" shall mean and refer to The Villages of Cherry Hills Development Co., a Missouri general partnership, any assignee of such partnership (if an appropriate document is executed and recorded assigning to such assignee all rights reserved to Declarant in this Declaration), or any entity succeeding to such partnership's rights under this Declaration by foreclosure, by acceptance of a deed in lieu of foreclosure, or by any similar proceeding.

1.7 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and any amendments hereto duly recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri.

1.8 "Developer" shall mean and refer to any record owner of a Lot who owns said Lot for purposes of improving and immediately thereafter selling the same to the general public. Declarant shall be deemed a Developer with respect to any Lot for which it holds record title. Developer shall also mean and refer to any assignee of a Developer (if an appropriate document is executed and recorded assigning to such assignee all rights reserved to the assigning Developer in this Declaration) or any entity succeeding to a Developer's rights under this Declaration by foreclosure, by acceptance of a deed in lieu of foreclosure, or by any similar proceeding.

1.9 "Living Unit" shall mean and refer to any structure situated on a Lot, designed and intended for use and occupancy as a residence by a single family.

1.10 "Lot" shall mean and refer to a portion of the Property designated as a lot in (i) the recorded subdivision

plats of the Property; or (ii) any recorded display plats of the Property.

1.11 "Lot Cluster" shall mean and refer to a group of two Lots, three Lots or four Lots, on which are constructed attached Living Units and attached Unit Garages.

1.12 "Master Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for The Villages of Cherry Hills, and any amendments thereto duly recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri.

1.13 "Master Association" shall mean and refer to The Villages of Cherry Hills Master Homeowners' Association, a Missouri not-for-profit corporation.

1.14 "Member" shall mean and refer to every person or entity who holds membership in the Association.

1.15 "Mortgage" shall mean and refer to a first mortgage or a first deed of trust on any Lot, if the Association has been notified in writing of the existence of such mortgage or deed of trust.

1.16 "Mortgagee" shall mean and refer to any person or entity holding a Mortgage.

1.17 "Owner" shall mean and refer to the record owner (including a Developer), whether one or more persons or entities, of the fee simple title to any Lot, but shall exclude those having such interest merely as security for the performance of an obligation, such as any Mortgagee, until such Mortgagee (or other person) has acquired record title pursuant to foreclosure or any procedure in lieu of foreclosure.

1.18 "Private Drive" shall mean and refer to each of the private drive areas located on the Property providing ingress and egress to and from the Unit Garages; each such Private Drive being designated as a Private Drive on Exhibit B and the plats of the Property attached to any amendments to this Declaration.

1.19 "Private Roadway" shall mean and refer to each of the private roadways located on the Property and dedicated as a Private Roadway on the recorded subdivision plats of the Property.

1.20 "Property" shall mean and refer to all of the real property (including all improvements situated thereon) described on Exhibit A hereto and depicted on the plat attached hereto as Exhibit B, and all other real property (including all improvements thereon) that may hereafter be subjected to the provisions of this Declaration in accordance with Section 7.5 of this Declaration.

1.21 "Restrictive Covenants" shall mean and refer to the restrictive covenants set forth in Article VII hereof.

1.22 "Village Common Area" shall mean and refer to those portions of the Property identified as "Village Common Area" on Exhibit B and the plats of the Property attached to any amendments to this Declaration, and all improvements located on such Village Common Area, including without limitation, all roads (if any), sidewalks, recreational facilities (if any), street lights, lakes (if any), landscaping, storm water ponds and storm water inlets, excluding only those areas within the Village Common Area dedicated to and accepted by public authorities. The Village Common Area shall include, however, all areas within the Village Common Area to be dedicated to public authorities but not yet accepted by such public authorities.

1.23 "Unit Garage" shall mean and refer to the structure situated on a Lot designed for use as an enclosed garage by the occupants of the Living Unit situated on the same Lot.

## ARTICLE II

### THE ASSOCIATION

2.1 Membership. Every person or entity who is an Owner shall be a Member of the Association. Membership shall

be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. A Mortgagee who has acquired record title to a Lot pursuant to foreclosure or any procedure in lieu of foreclosure shall be entitled to exercise the Owner's rights in the Association with regard to such Lot.

2.2 Voting Rights. The Association shall have two classes of voting membership, Class A and Class F:

2.2.1 Class A: The Class A Members shall consist of all Developers, including Declarant, provided, however, that each Developer now or hereafter existing hereby irrevocably appoints Declarant (and Declarant's successors or assigns) as its attorney-in-fact to exercise all voting rights it holds as a Class A Member, until such time as seventy-five percent (75%) of the Lots owned by such Developer have been sold to persons other than a Developer. The power of attorney granted herein is coupled with an interest in that Declarant is relying upon such power in subjecting the Property to this Declaration and this power shall survive the bankruptcy or dissolution of any Developer or the transfer by a Developer of any Lots owned by such Developer to another Developer. Although this appointment is automatic by the terms of this Declaration, each Developer now or hereafter existing hereby agrees to execute such further assurances of this appointment as Declarant may request from time to time. Each Class A Member shall be entitled to three (3) votes for each Lot in which it holds the ownership interest required for membership by Section 2.1 above. The Class A membership shall cease and be converted to a Class F membership, with one vote for each Lot owned, upon the happening of the earlier to occur of the following events:

(i) When the total combined votes outstanding among the Class F Members equals the total

votes outstanding among the Class A Members [provided, however, that Class A membership for each Lot owned by any Developer shall be automatically revived if Declarant subjects any additional Lots to this Declaration; provided further, that such revived Class A membership shall be subject to later termination as provided in this Section 2.2.1], or

(ii) On that date which is seven (7) years following the date of recordation of this Declaration.

Class F: The Class F Members shall be all Owners, excepting any Developer. Each Class F Member shall be entitled to one (1) vote for each Lot in which it holds the ownership interest required for membership by Section 2.1 above.

2.2.2 When more than one person holds an ownership interest in any one Lot, all such persons shall be Members of the applicable Class of membership for such Lot, and the vote for such Lot shall be exercised as such persons determine among themselves, but in no event shall (i) more than one (1) vote be cast with respect to any Lot entitling the Owner(s) thereof to a Class F membership, or (ii) more than three (3) votes be cast with respect to any Lot entitling the Owner(s) thereof to a Class A membership.

### 2.3 Voting Requirements and Directors of Association.

2.3.1 Unless otherwise set forth in this Declaration, the Articles of Incorporation or the By-Laws, or otherwise required by "The General Not-for-Profit Corporation Law" of the State of Missouri, a majority vote of the Members (present or represented by proxy at a meeting of the Members at which a quorum is present) shall be necessary for the adoption by the Association of any matter voted upon. No cumulative voting shall be permitted at any meeting of the Association or in any vote of the Members.

2.3.2 Until the first annual meeting of the Association (as set forth in the By-Laws), the affairs of the Association shall be managed by a Board of three (3) Directors, who need not be Members. The original three (3) Board members are identified in the Articles of Incorporation. From and after the first annual meeting of the Association, the affairs of the Board of Directors shall be managed by a Board of six (6) members, who need not be Members. Such six (6) Board Members shall be elected by all of the Members and shall be the persons who receive the highest number of votes among all of the Members (as set forth more fully in the By-Laws); provided, however, that at such time as fifty percent (50%) of the Lots are sold to persons other than Developers, two (2) of such six (6) members of the Board shall be elected by Members other than Developers; and at such time as ninety-five percent (95%) of the Lots are sold to persons other than Developers, four (4) of such six (6) members of the Board shall be elected by Members other than Developers. Except for the original three (3) Board members (who shall serve until the first annual meeting of the Association), the Board of Directors shall serve staggered terms of three (3) years, as set forth more fully in the Articles of Incorporation and the By-Laws.

2.4 Powers and Duties. The Association shall have the following powers and duties:

2.4.1 To prevent any violation of and compel the performance of, and otherwise enforce any or all Restrictive Covenants which are imposed by the terms of this Declaration or which may hereafter be imposed on any part of the Property. Notwithstanding the foregoing, nothing contained herein shall be deemed to prevent any Owner from enforcing any Restrictive Covenant in his own name. The expenses and costs of any enforcement proceedings initiated by the Association shall be paid out of the assessments paid to the Association, as hereafter set forth; provided, however, that the foregoing

authorization to use the assessments for such enforcement proceedings shall not preclude the Association from collecting such costs from an offending Owner;

2.4.2 To provide for the costs of operation and repair and the maintenance of the Village Common Area; excluding, however, the repair and maintenance of any improvements to the Village Common Area, the repair and maintenance responsibilities for which have been expressly assumed in writing by the Master Association;

2.4.3 To further improve any part of the Village Common Area beyond those improvements constructed by Declarant at its sole cost and expense, provided, however, that any improvements proposed to be constructed on the Village Common Area shall (i) be subject to the prior approval of the Board of Directors of the Master Association and shall be subject to the use by all residents of The Villages of Cherry Hills; and (ii) require the approval of more than a two-thirds (2/3) vote of the Members (present or represented by proxy at a meeting of the Members at which a quorum is present);

2.4.4 To maintain the Village Common Area (excluding any improvements described in Section 2.4.2 to be maintained by the Master Association), including doing any act, thing or deed that is necessary or desirable in the judgment of the Association to maintain the Village Common Area, in a neat and orderly fashion;

2.4.5 To paint (where applicable), repair, replace, and care for the following exterior Lot improvements, and provide for the costs thereof:

(a) Roofs, gutters, downspouts, and exterior building surfaces of Living Units and Unit Garages, excluding glass surfaces;

(b) Trees, shrubs, grass and walks installed by a Developer, excluding those areas for which the Association shall have no

*Garage Doors?*

maintenance responsibilities as described below;  
and

(c) Fences installed by a Developer.

The Association shall have no maintenance responsibilities for patio areas, or for grass, trees, shrubs, walks or other landscaping located within the fenced rear yard of each Lot, or for trees, shrubs or other landscaping planted by an Owner other than a Developer;

2.4.6 To maintain all grassy strips contiguous to Private Roadways and/or Private Drives, and provide for the costs thereof;

2.4.7 To enter upon any Lot for the purposes of repairing, replacing and maintaining utility lines or areas located on, over or under any Lot, including sanitary sewers and electric lines and cables; and provide for the costs thereof;

2.4.8 To create, grant and convey easements upon, across, over and under the Village Common Area, the Private Roadways and the Private Drives for the installation, replacement, repair and maintenance of utility lines serving any Lots or such other easements deemed necessary or desirable by the Master Association pursuant to its authority to cause the Association to grant easements upon, across, over and under the Village Common Area, the Private Roadways and the Private Drives;

2.4.9 To create subsidiary corporations;

2.4.10 To employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

2.4.11 To employ from time to time such agents, servants and laborers as the Association may deem necessary for the purpose of exercising the powers, rights and privileges granted to it, including the power to employ a managing agent to administer the Association's affairs;



2.4.12 To make contracts for providing services to the Association, the Village Common Area, the Owners or the Lots, including, if desired, contracting for trash collection on behalf of the Owners;

2.4.13 To enter upon individual Lots and correct any violation of the Restrictive Covenants;

2.4.14 To fix, levy, collect and enforce payment of all charges and assessments provided for in this Declaration;

2.4.15 To accept title to the Village Common Area, the Private Roadways and the Private Drives and to hold and administer the Village Common Area for the benefit and enjoyment of the Owners and/or residents of Lots, and all other owners and residents within The Villages of Cherry Hills, and pay any real estate taxes and assessments levied on any portion of the Village Common Area, the Private Roadways and the Private Drives out of the assessments hereinafter provided;

2.4.16 To cause all officers or employees having fiscal responsibilities to be bonded, and to secure liability insurance covering the acts or omissions of members of the Board of Directors, officers, committee members, and employees, as the Board of Directors shall deem appropriate;

2.4.17 To procure and maintain liability insurance and hazard insurance on the Village Common Area with coverages and in amounts which the Association deems necessary or prudent;

2.4.18 To install monuments on the property lines of any Lot or any Village Common Area, in order to delineate the boundary lines of such Lot and/or the Village Common Area;

2.4.19 To enter into any agreements, oral or written, including license agreements or lease agreements, which in the judgment of the Board enables the Association to efficiently perform its obligations hereunder. Such agreements may include, without limitation, agreements with the Master Association, any other homeowners' association within The

Villages of Cherry Hills or any governmental agency, to share employees or agents, or share or lease building space and equipment (including the maintenance of such equipment);

2.4.20 To exercise such other or additional rights as are conferred upon the Association pursuant to the terms of this Declaration;

2.4.21 To fully cooperate with the Master Association by granting such easements in connection with the Village Common Area, the Private Roadways and the Private Drives, and doing any act, thing or deed necessary to enable the Master Association to perform its duties and exercise its powers under the Master Declaration.

### ARTICLE III

#### COVENANT FOR MAINTENANCE ASSESSMENTS

3.1 Creation of the Lien and Personal Obligation of Assessments. Every Developer for each Lot owned by it, hereby covenants and agrees, and each Owner (other than a Developer) of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (i) annual assessments or charges; and
- (ii) a contribution to the working capital fund of the Association described in Section 3.4; and
- (iii) special assessments for any specified item, such assessments to be fixed, established and collected from time to time as hereinafter provided.

All such assessments, together with interest as hereinafter provided, costs of collection, and reasonable attorneys' fees, shall be a charge on the land and, except as otherwise provided in Section 3.10 hereof, shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal

obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

3.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of furthering the objectives specified in Paragraph G of the Recitals to this Declaration, and otherwise promoting the recreation, health, safety and welfare of the Owners and/or residents of Carriage Crossing.

3.3 Determination of Annual Assessments. The fiscal year of the Association shall be based on the calendar year or any partial calendar year this Declaration is in effect. For each fiscal year during which this Declaration is in effect, the Board shall prepare a budget (hereinafter the "Budget") of the amounts the Board reasonably estimates will be necessary to adequately fulfill the Association's responsibilities hereunder during such fiscal year, such amounts to include, without limitation, adequate and reasonable reserves for repair and replacement of the improvements forming a part of (i) the Village Common Area (except such improvements on the Village Common Area, the repair and maintenance responsibility for which have been expressly assumed in writing by the Master Association), and (ii) the exterior Lot improvements to be maintained by the Association pursuant to Section 2.4.5 hereof. Said Budget shall also take into consideration the portions of the Land expected to be added to Carriage Crossing during such fiscal year. The Board shall also determine the assessments each Owner (including Developers) shall pay, which assessments, when added to the assessments of all other Owners, shall equal the total expenditures budgeted by the Board for such fiscal year. The assessment shall be uniform for each Lot.

3.4 Working Capital Fund. In addition to the annual assessment provided above, each Lot shall be subject to a one

time assessment equal to twenty-five percent (25%) of the annual assessment for such Lot during the fiscal year such Lot is conveyed to a Developer other than Declarant, and with respect to those Lots retained by Declarant, during the fiscal year Declarant begins construction activities on said Lots for its own account. If the fiscal year during which a Lot is conveyed to a Developer other than Declarant (or during which Declarant begins construction activities on such Lot for its own account) is a partial calendar year, then the amount of the annual assessment used for purposes of computing the one-time contribution to be made pursuant to this Section 3.4 shall be increased to the amount such annual assessment would be if the fiscal year during which such Lot is conveyed to such Developer (or during which Declarant begins construction activities on such Lot for its own account) was a full calendar year. The assessment levied pursuant to this Section shall constitute a contribution to the working capital fund of the Association and shall not constitute an advance payment of any regular annual assessment pursuant to Section 3.3 or any special assessment pursuant to Section 3.5.

3.5 Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any fiscal year a special assessment applicable to that fiscal year only for any specified purpose, provided that any such assessment shall be approved by a vote of at least two-thirds (2/3) of each Class of Members who are voting in person or by proxy at a meeting of Members duly called for such purpose, written notice of which (setting forth the purpose of the meeting) shall be sent to all Members not less than ten (10), nor more than fifty (50), days in advance of the meeting.

3.6 Rate of Special Assessment. Any special assessments shall be fixed at a uniform rate for each Lot.

3.7 Quorum for any Voting Authorized under Section 3.5. At any meeting called for any specified purpose pursuant

to Section 3.5 of this Article III, the presence at the meeting of Members (or of proxies) entitled to cast sixty percent (60%) of all of the votes of each Class of membership shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the notice requirements set forth in Section 3.5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

3.8 Date of Commencement of Annual Assessments and Working Capital Fund Contributions; Due Dates.

3.8.1 The first annual assessment and the one-time assessment to serve as a contribution to the working capital fund of the Association provided for herein shall commence and be payable as to each Lot on the date such Lot is conveyed to a Developer other than Declarant, and with respect to those Lots retained by Declarant, on the date Declarant begins construction activities on said Lots for its own account. The first annual assessment to each Lot shall be prorated according to the number of days remaining in the applicable fiscal year of the Association.

3.8.2 The Board shall send written notice of any annual assessment (other than the first annual assessment) to every Owner subject to such assessment at least thirty (30) days in advance of each fiscal year of the Association and the due dates of such assessments shall be established by the Board. The Board may permit the assessment to be paid in monthly installments.

3.8.3 The Association shall, upon demand and at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be imposed by the Board for the issuance of these certificates. A

properly executed certificate of the Association as to the status of assessments on a Lot is binding on the Association as of the date of such certificate's issuance.

3.9 Remedies of the Association for Nonpayment of Assessments.

3.9.1 If any assessment is not paid within ten (10) days after the due date, the assessment shall bear interest from the due date until paid at the rate of two percent (2%) per month, or the maximum rate permitted by law (if such maximum rate is less than 2% per month). The Association in its discretion may, in addition to the imposition of interest:

(i) impose a penalty as previously established by rule adopted pursuant to the provisions of the Articles of Incorporation or Bylaws;

(ii) accelerate the required payment date of the entire remaining annual assessment (if permitted to be paid in monthly installments); or

(iii) bring an action at law against the Owner personally obligated to pay such assessments and/or foreclose the lien against which such sums have been assessed. Interest, costs and reasonable attorneys' fees of the Association incurred in any such action (or, if any such action is not actually brought, in preparation for such action) shall be added to the amount of such assessment.

3.9.2 No Owner may waive or otherwise escape liability for payment of any such assessments by nonuse of the Village Common Area or abandonment of such Owner's Lot.

3.10 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of such Lot's Mortgage, as defined in Section 1.15 hereof, provided such Mortgage was recorded in the

Office of the Recorder of Deeds of St. Louis County, Missouri prior to the date the applicable delinquent assessment was due. The sale or transfer of any Lot pursuant to a foreclosure sale or any proceeding in lieu thereof shall extinguish the lien of all assessments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot (or such transferee) from liability for any assessments which become due after the date of such sale or transfer, or from the lien of such assessments accruing after such date.

3.11 Exempt Property. The following areas within the Property shall be exempt from the assessments provided for in this Article III: (i) all areas dedicated to and accepted by any local public authority, by recordation of an appropriate document in the land records of St. Louis County, Missouri; (ii) the Village Common Area; (iii) all Private Roadways; and (iv) all Private Drives.

#### ARTICLE IV

##### INSURANCE

4.1 Insurance. At the time of the first conveyance of a Lot within a Lot Cluster to a person other than a Developer, the Association in its own name and for the use and benefit of the Owners, shall be required to purchase and maintain fire and extended coverage insurance policies, and if available an "all risks endorsement", insuring all of the improvements and structures erected or constructed on the Lots within said Lot Cluster, in amounts equal to the replacement value, as of completion of construction, of all such improvements and structures (with a standard mortgage clause in favor of Mortgagees, if any). Said policies may contain deductible amounts which, in the event of an insured loss under such policies, the Association shall be entitled to assess, on an equal basis, solely against the Owners of the damaged Living

Unit(s) and/or Unit Garage(s). Said policies shall contain a minimum thirty (30) day cancellation notice which notice shall be given to the Association, each Owner and each Mortgagee to whom a certificate of insurance has been issued, prior to any cancellation of said insurance. Said policies shall provide recognition of the insurance trust agreement contained herein, shall contain waiver of rights of subrogation against Owners, shall provide that said insurance coverage is not to be prejudiced by any act or neglect of an individual Owner or Owners which is not within the control of the Owners collectively and shall provide that said policy is primary in the event that any Owner has coverage for the same loss. The Association is further authorized to purchase any other insurance coverage in such amounts as the Board shall deem desirable. The premiums for the insurance policies required or permitted pursuant to this Article IV shall be the responsibility of the Association.

4.2 Insurance Certificate. The Board upon written request shall issue a certificate of insurance to any Owner or Mortgagee.

4.3 Appointment of Trustee. Declarant does herewith, on behalf of itself, and the future Owners of the Lots, irrevocably constitute and appoint the Board, the true and lawful insurance trustee to receive the proceeds of all fire and extended coverage insurance losses covering the Property and does herewith require of the Board that the Board, on purchasing any fire and extended coverage policy or policies, shall notify the insurance carriers in writing to make all loss proceeds payable to the Board, as trustee. The Board, as trustee, shall have full power and authority to adjust and collect all losses and to reimburse itself for reasonable expenses for such adjustment or collection. The Board, as trustee, shall have full power and authority to execute all



documents necessary on behalf of the Association and on behalf of the named insureds and to endorse all checks and drafts on behalf of the Association and on behalf of the named insureds. The Board, as trustee, shall hold the insurance proceeds in trust for Owners and lienholders as their interests may appear. The proceeds of all insurance policies shall be disbursed first for the repair or restoration of the damaged portion of the Property; second, if any proceeds remain after the Property has been completely repaired or restored, to the Owners of the damaged Living Unit(s) and/or Unit Garage(s), but only to the extent of any amounts paid by them as assessments for the deductible portion of the Association's property insurance policies, and third, if any proceeds remain, to the Association. The Board, as trustee, shall have the right (but not the obligation) to require any insurance proceeds to be disbursed only against surety bonds, completion guarantees, escrows or such other assurances as may satisfy the Board, as trustee. The Board, as trustee, shall have the right to resign or appoint a trustee as successor trustee with full power of substitution as a successor trustee with like powers. In the event that the Board, as trustee, fails to appoint a successor trustee, then the Association, by majority vote of the Members present or represented by proxy at a meeting of the Members at which a quorum is present, shall appoint said successor. Under no circumstances shall the Board, as trustee, be liable for any act or omission except for fraud or gross negligence. All insurance shall be placed with companies licensed in the State of Missouri.

4.4 Waiver of Claims. Anything herein to the contrary notwithstanding, the Association agrees that it shall make no claim against an Owner or occupant of a Living Unit for any loss or damage to a Living Unit and/or Unit Garage, even if caused by the act or neglect of an Owner or occupant, to the

extent that such loss or damage is covered by casualty or other insurance purchased by the Association.

#### ARTICLE V

##### DAMAGE; DESTRUCTION; REPAIR AND TERMINATION

5.1 General. Any improvement or structure for which insurance is required under Section 4.1 which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. If such repair or replacement would be illegal, the insurance proceeds for such improvements or structure shall be distributed to the Owner(s) of such improvement or structure, and such Owner's Mortgagee, as their interests may appear. As set forth in Section 4.1, the insurance obtained by the Association may contain certain deductibles which, in the event of an insured casualty under such policies, the Association shall be entitled to assess, on an equal basis, solely against the Owner(s) of the damaged Living Unit(s) and/or Unit Garage(s).

5.2 Personal Property Insurance; Improvements and Fixtures Added by Owner. The Association shall have no responsibility for maintaining insurance on the contents of a Living Unit or Unit Garage not affixed to such Living Unit or Unit Garage, or any improvements or fixtures added to a Living Unit or Unit Garage by an Owner other than a Developer, and shall have no responsibility for insurance on any personal property within a Living Unit or Unit Garage.

5.3 Waiver of Subrogation. Each Owner, by the acceptance of a deed for his Lot, waives and releases any and all claims which he may have against any other Owner, the officers and members of the Board, and the Declarant, and their respective employees and agents, for damage to his Living Unit or Unit Garage, or to any personal property located in his Living Unit or Unit Garage, caused by fire or other casualty,

to the extent that such damage is covered by casualty or other insurance, whether such insurance is purchased by the Association or such Owner.

5.4 Damage Caused by Unit Owner, Not Covered by Insurance. If, due to the negligence of an Owner, or of a member of his family or of a guest or other authorized occupant or visitor of such Owner, damage shall be caused to a Living Unit (or Living Units) and/or Garage Unit (or Garage Units) owned by others, or maintenance, repairs or replacements shall be required which would otherwise be the responsibility of the Association, then such Owner shall pay for such damage and such maintenance, repairs and replacements, to the extent not covered by insurance obtained by the Association.

#### ARTICLE VI

##### ARCHITECTURAL REVIEW COMMITTEE

6.1 Composition. The Architectural Review Committee (sometimes herein referred to as the "ARC") shall be composed of a minimum of three (3) members and a maximum of seven (7) members, as determined by the Board. A member of the ARC may also be a member of the Board. Members shall serve staggered five (5) year terms, as determined by the Board.

6.2 Method of Selection. Members of the ARC shall be selected by the Board of Directors. As the terms of the ARC members expire, their replacements shall be appointed by the Board then serving. If a member of the ARC vacates his position, then the Board serving at the time such position is vacated shall, subject to Section 6.1, either eliminate such position of the ARC or appoint a replacement to serve during the unexpired portion of the term of the vacating ARC member.

6.3 Duties. The ARC is hereby authorized to regulate any alteration or modification of the exterior design or appearance (including windows) of any Living Unit and/or Unit

Garage that exists on the Property from time to time. In performing its duties, the ARC shall act in a manner which, in its reasonable judgment, will (i) protect Owners against any alterations or modifications of the exterior design or appearance of Living Units and/or Unit Garages that would depreciate the value of such Owners' Lots or the balance of the Property; (ii) prevent haphazard or unharmonious alterations or modifications of the exterior design or appearance of Living Units and/or Unit Garages; (iii) in general, ensure that all alterations or modifications of the exterior design or appearance of Living Units and/or Unit Garages are high quality in nature and harmonious with the balance of the Property.

Accordingly, the ARC shall:

6.3.1 Review and approve, modify or disapprove all applications of Owners submitted pursuant to Section 7.9 for alterations or modifications of the exterior design or appearance of any Living Unit and/or Unit Garage that exists on the Property from time to time. If the ARC fails to approve or disapprove any such complete application within thirty (30) days of its receipt thereof, such application will be deemed to be approved, except that no such automatic approval shall allow the applicant to undertake any modification or alteration that is prohibited by the Site Plan or by law;

6.3.2 Periodically inspect the Property for compliance with all approvals granted pursuant to Section 6.3.1;

6.3.3 Adopt procedures for the exercise of its duties and enter them in an official procedures book, which shall be readily available for review by any Owner or Declarant; and

6.3.4 Maintain complete and accurate records of all actions taken.

ARTICLE VII  
RESTRICTIVE COVENANTS

7.1 All Lots within the Property shall be used exclusively for residential purposes. Except for those related to real estate sales and construction by Declarant or any Developer, no sign, advertisement or message shall be displayed or published which offers or implies commercial or professional services, or which might constitute any other kind of business solicitation in or from any Lot. Notwithstanding the foregoing, during the period of initial construction of Living Units and the sales thereof, Declarant and any Developer may erect, maintain and operate real estate sales and construction offices, displays, signs and special lighting on any part of the Property and on or in any building or structure now or hereafter erected on the Lots owned by such Developer.

7.2 No clothing, laundry, or wash shall be aired or dried outside any Living Unit or on any portion of a Lot.

7.3 No tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

7.4 No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the other Owners. Each Owner shall, at all times, maintain the rear yard of his Lot and all appurtenances thereon in good repair and in a neat state. Except for flower gardens, shrubs and trees that are neatly maintained, all rear areas of Lots shall be improved with lawns or other materials approved by the ARC. All lawn areas to be maintained by Owners shall be kept mowed and shall not be permitted to grow to a height in excess of four (4) inches.

7.5 Subject to Declarant's and the Developers' rights set forth in Section 7.1, no sign of any kind, whether or not such sign is illuminated, shall be displayed to public view on any Lot.

7.6 No domestic or wild animal shall be kept or maintained in any Living Unit (or on any Lot), except for common household pets, such as dogs and cats, which shall be maintained in compliance with all St. Louis County and State of Missouri laws and regulations. Notwithstanding the foregoing, no household pets shall be kept, bred or maintained for commercial purposes, and no household pet shall be permitted to create a nuisance or annoyance to surrounding Lots or to any other homes within The Villages of Cherry Hills.

7.7 Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the Lots.

7.8 No structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, no structure's exterior shall be permitted to remain in a damaged condition for longer than three (3) months.

7.9 No Living Unit and/or Unit Garage existing on the Property from time to time shall be altered or modified with respect to its exterior design or appearance unless and until application therefor is made to and approval thereof is granted by the ARC. All such applications shall include the relevant plans and specifications related to such alterations or modifications (including elevation, material, color and texture), a site plan showing locations of any alterations requiring grading modifications, and any other information reasonably requested by the ARC. No application shall be considered complete until all such required information is submitted. In no event shall any above-ground pools or free-standing storage sheds be permitted on any Lot. No fences

other than the fences initially constructed by a Developer, or comparable replacements thereof approved by the ARC, shall be permitted on a Lot.

7.10 No exterior television, radio, or other communications antenna of any sort shall be erected or maintained on any Lot or portion of the Village Common Area without the written consent of the ARC; provided however, that the Association shall have the right to erect and maintain a master antenna or antennas on a portion of the Village Common Area, if the erection of such master antenna or antennas is approved by Members of the Association pursuant to the provisions of Article III of this Declaration, and also approved by the Board of Directors of the Master Association. In no event may a satellite dish be permitted on any Lot.

7.11 No dilapidated vehicles, recreational vehicles, house trailers, or commercial or industrial vehicles such as, but not limited to, moving vans, trucks, tractors, trailers, vans (other than typical passenger vans), wreckers, hearses, buses, boats, boating equipment, mobile homes, or camping equipment, shall be parked on any streets within Carriage Crossing, or a Lot or the Village Common Area, except in a Unit Garage on a Lot. The foregoing shall not apply to commercial vehicles that may be temporarily serving a Lot. No Private Roadways or Private Drives within Carriage Crossing, or any portion of the Village Common Area or any Lot or any asphalt driveway located on any Lot shall be used for the maintenance or repair of motor vehicles. The foregoing shall not prohibit an Owner of a Lot from maintaining or repairing a motor vehicle owned by him or members of his family within the Unit Garage situated on such Lot.

7.12 Any lease or rental agreement for a Lot shall be in writing and be subject to the requirements of this Declaration, the Articles of Incorporation, the By-Laws and all rules and regulations promulgated by the Association and/or the ARC. No Lot may be leased or rented for less than six (6) months.

7.13 The provisions of Sections 7.5, 7.7 and 7.8 shall not apply to Declarant (or Declarant's assignee) or any Developer in connection with the development and construction of any Living Units which commences within seven (7) years from the date of submission of such Lot(s) or such portion of the Village Common Area to the provisions of this Declaration.

7.14 The Board shall have the authority to adopt such rules and regulations with respect to Sections 7.1 through 7.12, inclusive, as it may from time to time consider necessary or appropriate.

7.15 The Board shall have the power and authority, acting for and on behalf of the Association, after ten (10) days' prior written notice to the Owner of the Lot in violation of this Article, to take such action as it deems necessary to correct such violations, including entering on the offending Lot and performing corrective action, all at the cost and expense of the Owner of the Lot in violation of this Article, and such entry shall not constitute trespass by the Board or its agents. It is acknowledged that any Owner shall have the authority to enforce in its own name any of the Restrictive Covenants.

#### ARTICLE VIII

##### PARTY WALLS

8.1 Party Walls and Party Fences. Each wall or fence built as a part of the original construction of the Lots and placed on the demising boundary between any two adjoining Lots shall constitute a party wall or party fence, as the case may be. To the extent not inconsistent with the provisions of this Declaration, the statutes and case law of the State of Missouri with respect to party walls shall govern the respective rights and liabilities of the Owners of the Lots bordering such party walls or party fences, with the intent that each Owner of a Lot



bordering a party wall or party fence shall have the right to use such wall or fence, provided that such use does not interfere with the use and enjoyment of such wall or fence by the Owner of the adjoining Lot.

8.2 Easement for Encroachments. To the extent that any portion of any improvement which is a part of the initial improvements constructed by any Developer on a Lot (or repairs, restorations, or replacements of such improvements) encroaches on any other Lot, whether by roof or building projection or overhang, a valid easement for such encroachment shall exist. Each Owner of a Lot with a party wall bordering such Lot shall have an easement in common with the Owner of the other Lot adjoining such party wall to use all pipes, wires, ducts, cables, conduits and public utility lines located in the party wall and serving his Lot. Each such Lot shall be subject to an easement in favor of the Owner of the other Lot adjoining the party wall between such Lots to use the pipes, wires, ducts, cables, conduits and public utility lines located in the party wall and serving the adjoining Lot. The easements set forth in this Section 8.2 shall include the right of the Owner of the Lot benefited by such easements [or his agent(s)] to enter upon a reasonable portion of the adjoining Lot at reasonable times for the purpose of performing repairs or maintenance provided that following such entry the Owner so entering promptly restores such adjoining Owner's Lot to its condition immediately prior to such entry.

#### ARTICLE IX

##### EASEMENTS

9.1 The Association, its directors, officers, agents and employees, all policemen, firemen, ambulance personnel, and all similar persons are hereby granted an easement to enter upon the Property (and any portion thereof) in the exercise of

the functions provided by this Declaration and the Articles of Incorporation and By-Laws of the Association, in the event of emergencies, and in the performance of proper governmental functions.

9.2 Except in the case of any emergency, when access shall be immediate, the right of entry created by Section 9.1 shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, and with the permission of, any Owner or tenant directly affected by such entry.

9.3 Declarant, its agents and employees, and any "Developer" (as such term is defined under the Master Declaration) shall have a right of ingress and egress over the Village Common Area, the Private Roadways and the Private Drives and the right to such other temporary uses of the Village Common Area, the Private Roadways and the Private Drives as may be required or reasonably desirable (as determined by Declarant) in connection with the construction and development of the Property, any other portion of The Villages of Cherry Hills, or the Commercial District, all as contemplated by the Site Plan.

9.4 Declarant hereby reserves to itself, its successors and assigns, Developers and the Association a nonexclusive easement over any Lot or Village Common Area or Private Roadway or Private Drive for the purpose of (i) installing, repairing or maintaining utility lines or areas, including, but not limited to, storm water ponds and storm water inlets, sanitary sewers, gas lines, electric lines or cables, water lines, telephone lines, street lights and the like, and (ii) conducting any construction activities required to develop the Commercial District in accordance with the Site Plan.

ARTICLE X

REQUIREMENTS OF ST. LOUIS COUNTY, MISSOURI

10.1 Conveyance to Association by General Warranty Deed. Simultaneously with the recordation of each record subdivision plat of any portion of the Property, Declarant shall convey to the Association, by general warranty deed, the Village Common Area and the Private Roadways and Private Drives shown on such plat.

10.2 Duration of Declaration; Vacation of Subdivision. The term of this Declaration shall be for the duration of the subdivision approved for the Property. In the event the subdivision is vacated, thereafter, fee simple title to the Village Common Area, the Private Roadways and the Private Drives shall vest in the then Owners as joint tenants. The rights of such joint tenants shall only be exercisable appurtenant to and in conjunction with their Lot. Any conveyance or change of ownership of any Lot shall convey with it ownership in the Village Common Area, the Private Roadways and the Private Drives and no interest in the Village Common Area and/or any Private Roadway and/or any Private Drive shall be conveyed by an Owner except in conjunction with the sale of the Lot owned by him. The sale of any Lot shall carry with it all the incidents of ownership in the Village Common Area, the Private Roadways and the Private Drives although such is not expressly mentioned in the deed conveying such Lot; provided, however, that no right or power conferred upon the Association shall be abrogated.

10.3 Eminent Domain. In the event it shall become necessary for any public agency to acquire all or any part of the Village Common Area and/or the Private Roadways and/or the Private Drives for any public purpose during the period this Declaration is in effect, the board of directors of the Master Association are hereby authorized to negotiate with such public

agency for such acquisition and to execute instruments necessary for that purpose. The Board of Directors are also authorized to execute instruments necessary for such acquisition. Should acquisitions by eminent domain become necessary only the board of directors of the Master Association (and, if desired by the taking authority, the Board of Directors) need be made parties, and in any event the proceeds received shall be held by the Master Association for the benefit of all owners within The Villages of Cherry Hills.

10.4 Ordinance Compliance. Notwithstanding any other provisions contained in this Declaration, the Board of Directors shall make suitable provision for compliance with all subdivision and other ordinances, rules and regulations of St. Louis County or any other municipality of which the subdivision may become a part and for such purposes, shall not be limited to the annual assessment provided for herein.

10.5 Amendment. During the first twenty (20) years following the recordation of this Declaration, this Declaration may be amended, modified or changed upon the approval of not less than ninety percent (90%) of the Members (present or represented by proxy at a meeting of the Members at which a quorum is present), provided such amendment, modification or change is approved by the Planning Director of St. Louis County, Missouri. After the first twenty (20) years following the recordation of this Declaration, this Declaration may be amended, modified or changed upon the approval of not less than seventy-five percent (75%) of the Members (present or represented by proxy at a meeting of the Members at which a quorum is present). All amendments, modifications or changes to the Declaration shall be recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri. No such amendment, modification or change shall reduce or modify the obligation or right granted to or imposed upon the Association

with respect to maintenance of the Village Common Area, the Private Roadways and the Private Drives and the power to levy assessments or to eliminate the requirement that the management responsibilities of the Association be vested in a Board of Directors, unless some persons or entity is substituted for the Association and/or the Board of Directors with their responsibilities and duties in a manner approved by the Director of Planning of St. Louis County, Missouri. Notwithstanding the foregoing (i) Declarant shall have the right to unilaterally amend this Declaration (without the aforesaid approval of the Members or of the Planning Director of St. Louis County, Missouri) from time to time to phase in and subject additional portions of the Land to this Declaration, provided that such phasing-in is done in accordance with the Site Plan; and (ii) Declarant shall have the right to unilaterally amend this Declaration, subject to the approval of the Planning Director of St. Louis County, Missouri (a) to satisfy the requirements of the St. Louis County, Missouri Department of Planning, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Association ("Freddie Mac") or the Federal National Mortgage Association ("Fannie Mac"), or (b) prior to conveyance of any Lot to an Owner.

10.6 Above Ground Structures. No above-ground structure, other than required street lights, may be erected within a cul-de-sac, divided street entry island, or median strip without the written approval of the St. Louis County Department of Highways and Traffic.

10.7 Vacancies on the Board of Directors. Where the provisions of this Declaration cannot be fulfilled by reason of unfilled vacancies on the Board of Directors, the St. Louis County Council may upon the petition of any concerned Owner or resident of a Lot, appoint one or more Board members to fill

vacancies until such Board members are selected in accordance with the Declaration. Any person so appointed who is not an Owner or resident of a Lot shall be allowed a reasonable fee for his services by the order of appointment, which fee shall be levied as a special assessment against the property forming a part of Carriage Crossing and which shall not be subject to any vote of the Members on special assessments contained in this Declaration or elsewhere.

10.8 Storm Water Retention Agreement; Assessment. The Budget required to be prepared by the Association, and the annual assessment to be levied against each Lot during each fiscal year, shall include, as a separate line item amount, monies necessary for the repair, operation and maintenance of storm water control easements located on the Village Common Area (including, but not by way of limitation, storm water detention basins), including all underground and above-ground facilities and pipes used in connection therewith and access easements to such storm water control easements. The aforesaid Budget and annual assessments shall include such separate amounts for storm water control easements until such easements shall be accepted for maintenance by the Metropolitan St. Louis Sewer District or other public authority, and all obligations pursuant to this Section 10.8 shall cease and terminate in respect to any portion dedicated or conveyed to, and accepted by, any such Sewer District or other public authority.

## ARTICLE XI

### GENERAL PROVISIONS

11.1 Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner

to enforce any right, provision, covenant, or condition granted by this Declaration shall not constitute a waiver of the right of the Association or any Owner to enforce such right, provision, covenant, or condition in the future. All rights, remedies and privileges granted to the Association or to any Owner pursuant to any term, provision, covenant or condition of this Declaration shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising such remedy from exercising such other remedies as may be granted to such party by this Declaration, at law, or in equity.

11.2 Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Declaration.

11.3 Captions. The captions contained in this Declaration are inserted as a matter of reference only, and in no way limit or otherwise affect the scope, meaning or effect of any provision hereof.

11.4 Conflicts. The powers granted to the Association and the limitations imposed on Owners hereunder are intended to be in addition to those powers granted to the Master Association under the Master Declaration and limitations imposed by said Master Declaration and the rules and regulations promulgated thereunder; and any construction or enforcement of this Declaration (or any rules and regulations promulgated hereunder) shall be consistent with such intent to the greatest extent practicable. However, in the event of any conflict or ambiguity between the terms of the Master Declaration (and any rules or regulations promulgated thereunder) and this Declaration (and any rules or regulations promulgated hereunder), the terms of the Master Declaration

shall govern. If there is any conflict between the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any of the rules and regulations adopted pursuant to the terms of such documents, the provisions of the document earlier mentioned in this sentence shall govern.

11.5 Annexation of Additional Properties. Except as permitted in Section 10.5, additional property may be submitted to the provisions of this Declaration and thereby annexed to the Property if approved by at least two-thirds (2/3) of the votes of each Class of Members (present or represented by proxy at a meeting of Members at which a quorum is present); and approved by the Director of Planning of St. Louis County, Missouri.

11.6 Federal Housing Administration/Veterans Administration Approval. If the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") holds, guarantees or insures any Mortgage, then until such time as the Class A membership in the Association shall be converted to Class F membership as provided in Section 2.2.1, the following actions will require the approval of the FHA and/or VA (whichever such agency holds, guarantees or insures a Mortgage):

11.6.1 Annexation of additional real property to Carriage Crossing, other than the property permitted to be annexed unilaterally by Declarant pursuant to Section 10.5;

11.6.2 Dedication of any portion of the Village Common Area, other than dedications required to develop the Village Common Area in accordance with the Site Plan; and

11.6.3 Amendment of this Declaration, except as permitted to be unilaterally amended by Declarant pursuant to Section 10.5.

11.7 Commercial District. The provisions of this Declaration shall not apply to the Commercial District or confer any rights or obligations upon owners or occupants of any portion of the Commercial District.



IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first above written.

DECLARANT:

THE VILLAGES OF CHERRY HILLS DEVELOPMENT CO., a Missouri general partnership

By: Taylor-Morley-Simon, Inc., a Missouri corporation, general partner

ATTEST:

[CORPORATE SEAL]

By William Taylor Secy., Asst. Secy. and/or V.P. William Taylor, Sen. V.P.

By Benton E. Taylor Benton E. Taylor, Chairman

STATE OF MISSOURI ) )  
COUNTY OF ST. LOUIS ) ) SS:

On this 24 day of February, 1987, personally appeared before me, a notary public in and for the County and State aforesaid, BENTON E. TAYLOR, whose identity is well known (or satisfactorily proven) to me, and being by me duly sworn, did acknowledge before me under oath that he is the Chairman of TAYLOR-MORLEY-SIMON, INC., a Missouri corporation, a general partner of THE VILLAGES OF CHERRY HILLS DEVELOPMENT CO., a Missouri general partnership; that the foregoing instrument was signed and sealed on behalf of said partnership and said corporation by authority of said partnership's agreement of general partnership and by authority of said corporation's Board of Directors, and that said instrument is the free act and deed of said partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County of St. Louis, State of Missouri, the day and year first above written.

Marcia A. Pirtle  
Notary Public  
Marcia A. Pirtle

My commission expires:

7/20/90

EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE VILLAGE OF CARRIAGE CROSSING

A TRACT OF LAND IN SECTIONS 1 AND 12, TOWNSHIP 44  
NORTH, RANGE 3 EAST OF THE 5TH PRINCIPAL MERIDIAN, ST. LOUIS  
COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS  
FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 12; THENCE SOUTH 86 DEGREES 41 MINUTES 59 SECONDS EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 12 A DISTANCE OF 688.02 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND; THENCE NORTH 06 DEGREES 04 MINUTES 19 SECONDS EAST 58.72 FEET TO A POINT OF CURVATURE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 30.00 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 59.65 FEET TO A POINT ON SAID CURVE; THENCE NORTH 17 DEGREES 51 MINUTES 22 SECONDS WEST 53.26 FEET TO A POINT ON THE SOUTHERLY LINE OF A TRACT OF LAND NOW OR FORMERLY CONVEYED TO STOP-AND-GO, INC., AS RECORDED IN DEED BOOK 7238, PAGE 524 OF THE ST. LOUIS COUNTY RECORDS; THENCE NORTH 72 DEGREES 08 MINUTES 38 SECONDS EAST ALONG THE SOUTHERLY LINE OF SAID STOP-AND-GO, INC. TRACT AND THE SOUTHERLY LINE OF A TRACT OF LAND NOW OR FORMERLY CONVEYED TO LAWRENCE W. CARDWELL, JR., AS RECORDED IN DEED BOOK 6407, PAGE 554, OF THE ST. LOUIS COUNTY RECORDS, A DISTANCE OF 127.47 FEET TO THE SOUTHEAST CORNER OF SAID CARDWELL TRACT; THENCE CONTINUING ALONG THE LAST SAID COURSE 311.47 FEET TO A POINT ON A CURVE TO WHICH THE RADIUS POINT BEARS SOUTH 46 DEGREES 18 MINUTES 47 SECONDS EAST 658.00 FEET, SAID POINT BEING ON THE WESTERLY RIGHT-OF-WAY OF VILLAGE HILLS PARKWAY (VARIABLE WIDTH) AS RECORDED IN PLAT BOOK 250, PAGES 47 THROUGH 49, AS AMENDED BY AFFIDAVIT OF CONSENT RECORDED IN BOOK 7988, PAGE 1413, OF THE ST. LOUIS COUNTY RECORDS; THENCE ALONG SAID RIGHT-OF-WAY AND SAID CURVE IN A SOUTHWESTERLY DIRECTION AN ARC DISTANCE OF 183.13 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 27 DEGREES 44 MINUTES 28 SECONDS WEST 61.37 FEET TO A POINT OF CURVATURE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 502.94 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 185.72 FEET TO A POINT OF COMPOUND CURVATURE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 670.50 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 142.40 FEET TO A POINT ON A CURVE TO WHICH THE RADIUS POINT BEARS NORTH 65 DEGREES 10 MINUTES 12 SECONDS WEST 90.00 FEET, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY OF VICTORIA CROSSING DRIVE (VARIABLE WIDTH), A PRIVATE ROADWAY, AS RECORDED IN PLAT BOOK 251, PAGES 32 AND 33, AS AMENDED BY SURVEYOR'S AFFIDAVIT RECORDED IN BOOK 7966, PAGE 659, OF THE ST. LOUIS COUNTY RECORDS; THENCE ALONG SAID PRIVATE ROADWAY AND SAID CURVE IN A SOUTHWESTERLY DIRECTION AN ARC DISTANCE OF 69.89 FEET TO A POINT OF REVERSE CURVATURE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 138.46 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 111.16 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 23 DEGREES 19 MINUTES 28 SECONDS WEST 3.43 FEET TO A POINT OF CURVATURE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 140.41 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 39.61 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 07 DEGREES 09 MINUTES 34 SECONDS WEST 8.14 FEET; THENCE SOUTH 04 DEGREES 17 MINUTES 22 SECONDS WEST 20.02 FEET; THENCE SOUTH 07 DEGREES 09 MINUTES 34 SECONDS WEST 5.00 FEET TO A POINT OF CURVATURE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 584.31 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 14.09 FEET TO A POINT ON A CURVE TO WHICH THE RADIUS POINT BEARS NORTH 84 DEGREES 13 MINUTES 21 SECONDS WEST 32.00 FEET; THENCE ALONG SAID CURVE IN A NORTHWESTERLY DIRECTION AN ARC DISTANCE OF 25.49 FEET; THENCE NORTH 87 DEGREES 53 MINUTES 52 SECONDS WEST 162.21 FEET; THENCE NORTH 56 DEGREES 26 MINUTES 58 SECONDS WEST 43.98 FEET; THENCE NORTH 40 DEGREES 53 MINUTES 39 SECONDS EAST 31.50 FEET TO A POINT ON A CURVE TO WHICH THE RADIUS POINT BEARS NORTH 40 DEGREES 53 MINUTES 39 SECONDS EAST 112.00 FEET; THENCE ALONG SAID CURVE IN A NORTHWESTERLY DIRECTION AN ARC DISTANCE OF 61.08 FEET TO THE POINT OF TANGENCY; THENCE NORTH 17 DEGREES 51 MINUTES 22 SECONDS WEST 184.66 FEET TO A POINT OF CURVATURE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 30.00 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 47.12 FEET TO A POINT ON THE CURVE; THENCE NORTH 17 DEGREES 51 MINUTES 22 SECONDS WEST 24.00 FEET; THENCE NORTH 72 DEGREES 08 MINUTES 38 SECONDS EAST 280.00 FEET TO A POINT OF CURVATURE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 54.00 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 4.92 FEET TO THE POINT OF REVERSE CURVATURE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 20.00 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 24.89 FEET TO THE POINT OF TANGENCY; THENCE NORTH 06 DEGREES 04 MINUTES 19 SECONDS EAST 4.46 FEET TO THE POINT OF BEGINNING..

EXHIBIT C(1)  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE VILLAGE OF CARRIAGE CROSSING

LEGAL DESCRIPTION  
THE VILLAGES OF CHERRY HILLS  
COMMERCIAL TRACT

A tract of land being part of the Southeast quarter of Section 1, Township 44 North, Range 3 East of the 5th Principal Meridian, St. Louis County, Missouri, and being more particularly described as follows:

Commencing at the Southwest corner of the Southeast quarter of said Section 1, said point being on the West line of a tract of land now or formerly conveyed to James W. Graham, as recorded in Deed Book 7157, Page 2390, of the St. Louis County Records; thence South 02 degrees 18 minutes 28 seconds West along the West line of said Graham tract and the West line of the Northeast quarter of Section 12, Township 44 North, Range 3 East, a distance of 105.69 feet; thence North 72 degrees 08 minutes 38 seconds East along the Southerly line of said Graham tract and the Southerly line of tracts conveyed to Gerald H. Grus, Book 7395, Page 411, and Ray H. Rogers, Book 7053, Page 78, a distance of 292.80 feet to a point on the South line of the Southeast quarter of said Section 1, said point being on the Southerly line of said Rogers tract; thence continuing along the last said course and the Southerly line of said Rogers tract and the Southerly line of tracts conveyed to Stop & Go, Inc., Book 7238, Page 524, and Lawrence W. Cardwell, Jr., Book 6407, Page 554, a distance of 509.15 feet to the Southeast corner of said Cardwell's tract, said point also being the Point of Beginning of the herein described tract of land; thence North 72 degrees 08 minutes 38 seconds East 311.47 feet to a point on a curve to the right, for which the radius point bears South 46 degrees 18 minutes 47 seconds East 658.00 feet; thence along said curve an arc distance of 236.37 feet to a point of reverse curvature to the left, said curve having a radius of 243.00 feet; thence along said curve an arc distance of 272.98 feet to a point of compound curvature to the left, said curve having a radius of 546.62 feet; thence along said curve an arc distance of 46.12 feet to a point of compound curvature to the left, said curve having a radius of 100.00 feet; thence along said curve an arc distance of 120.24 feet to a point of compound curvature to the left, said curve having a radius of 65.00 feet; thence along said curve an arc distance of 38.63 feet; thence departing said curve North 17 degrees 52 minutes 06 seconds West 6.00 feet to a point on the Southerly line of Old Manchester (proposed 5 feet wide dedication) Road, said point being a perpendicular distance of 35.00 feet from the existing centerline of said Old Manchester Road; thence South 72 degrees 07 minutes 54 seconds West along the proposed 5 feet wide dedication of said Old Manchester Road a distance of 527.01 feet to a point on the East line of the aforementioned Cardwell tract; thence South 01 degrees 10 minutes 38 seconds West along the East line of said Cardwell tract 430.12 feet to the Point of Beginning and containing 235,111 Square Feet, more or less, or 5.397 Acres, more or less.