
The Village of Cherry Hill

A Traditional Neighborhood Development

Town Center

DECLARATION

of

Charter, Easements, Covenants and Restrictions

The Cherry Hill Group, L.L.C., a Missouri Limited Liability Company, to be known as the "Founder," makes this Town Center Declaration this ____ day of _____, _____.

STATEMENT OF PURPOSE:

A. The Village of Cherry Hill is a new mixed-use community in Boone County, Missouri. The Master Plan for The Village of Cherry Hill calls for creation of a new community, with walkable streets, plazas and greens, and a range of housing types and businesses. The Master Plan comprises both the Neighborhood, which is the primarily residential portion, and the Town Center, which brings together a mixture of commercial and residential uses.

B. Town Center is designed to combine various uses in dynamic fashion. At street level, Town Center mixes retail stores, restaurants and service establishments. Subject to applicable City Ordinances, pushcarts, kiosks and special events add further variety to the street scene. Offices, artists' workshops and studios and other uses may fill in the outlying portions of the Town Center and the second floor of the core area. Residential units for those who enjoy the

stimulation of an urbanized environment top most of the buildings and bring life to the area around the clock.

C. The master plan and its execution allows residents of The Village of Cherry Hill to freely walk or bicycle from their homes to the shops and restaurants without barriers or unnecessary circumlocutions.

D. The Founder hopes and intends the following:

- That residents of The Village of Cherry Hill will enjoy the conveniences and activity offered by the Town Center and the vitality it lends the entire community.
- That the occupants of the residential units within the Town Center will enjoy the recreational facilities and community spirit offered by The Village of Cherry Hill.
- That all residents of The Village of Cherry Hill will work together cooperatively to improve their community.

E. All of The Village of Cherry Hill shall be subject to the Master Deed Restrictions which, among other things, establish architectural review.

F. The Neighborhood is to be governed by a separate Declaration of Charter, Easements, Covenants and Restrictions (as amended from time to time, the "Residential Declaration").

G. The special circumstances of the Town Center require a new declaration and association to allow both its inclusion as an integral part of The Village of Cherry Hill and its efficient operation as a busy commercial area. Accordingly, the Founder intends to establish this Town Center Declaration to establish the Town Center Association and a Merchants' Council, to regulate Town Center and to provide for its maintenance.

H. **To assure access to recreational facilities, the residential units within the Town Center shall be submitted on a limited basis to the terms of the Residential Declaration, by separate Supplemental Declaration, and are members of the Residential Association, rather than the Town Center Association. However, this Town Center Declaration provides residential unit owners with certain easements for access and use of their property and the Town Center Commons, and regulates the uses of their property.**

DECLARATION:

The Founder hereby establishes the Town Center as all of that property in Boone County, Missouri, described on Exhibit A, and submits the Town Center to this Town Center Declaration, which shall run with the land and be binding

upon all parties having any right, title or interest in it, and which shall inure to the benefit of every owner of the Town Center or any portion of it and to the benefit of the Founder.

ARTICLE I: | Definitions

1.1 Articles. “Articles” are the Articles of Incorporation of the Town Center Association, which are attached as Exhibit C to this Declaration.

1.2 Assessments. “Assessments” is the collective term for the following charges:

(a) General Assessment. The “General Assessment” is the amount allocated among all Members to meet the Town Center Association’s annual budgeted expenses, as described in Section 10.2. However, nothing contained in this Declaration shall prohibit the Town Center Association from allocating different percentages of assessment to the various Commercial Parcels. eg., retail, office and child care classifications.

(b) District Assessment. A “District Assessment” as discussed in Section 10.4 pays for special services or capital improvements approved by a District.

(c) Individual Parcel Assessment. An “Individual Parcel Assessment” is a charge made to a particular Parcel Owner for charges relating only to that Parcel, as provided in Section 10.5.

(d) Special Assessment. A “Special Assessment” may be charged to each Parcel for capital improvements or emergency expenses.

1.3 Board. “Board” is the Board of Directors of the Town Center Association.

1.4 Bylaws. “Bylaws” are the Bylaws of the Town Center Association. The form of the initial Bylaws, as proposed, is attached as Exhibit D to this Declaration.

1.5 Commercial Parcel. A “Commercial Parcel” is defined as a permanent, enclosed space which is not intended for residential use plus any additional land, ownership and use of which is intended to accompany the enclosed space. It shall include retail, office and child care classifications.

1.6 Commons. “Commons” comprise the real property and nonexclusive easement rights granted by the Founder under this Declaration for the common

use and enjoyment of all Owners. "Commons" also include any improvements on that real property or easement areas, all personal property for the Owners' common use, and any other property of any type specifically designated as Commons. The Commons may include sidewalks and other portions of privately-owned lots which are designed and approved by the Design Review Board for use by all Owners, if an easement is so granted. The initial Commons are described at Exhibit B to this Declaration. It is anticipated that the Commons shall include parking areas, walkways, landscaped areas, public restrooms and other facilities. The Commons are not dedicated for use by the general public.

1.7 Design Review Board. The "Design Review Board" is the panel established by the Master Deed Restrictions to review building design and modification.

1.8 District. A "District" is a portion of Town Center designated by The Village of Cherry Hill Design Code as having a certain character or serving a particular function. For areas in which no Districts have been defined, the Board may designate District boundaries for the purpose of District improvements under Section 9.7 or redevelopment under Section 13.2.

1.9 Founder. The "Founder" is The Cherry Hill Group, L.L.C., a Missouri Limited Liability Company, its successors and assigns, or any successor or assign of all or substantially all of its interests in the development of The Village of Cherry Hill. The Founder may also be an Owner for so long as the Founder is record owner of any Parcel.

1.10 Master Deed Restrictions. All of The Village of Cherry Hill is subject to the "Master Deed Restrictions," which the Founder has recorded at Official Records Book _____, Page _____ of the public records of Boone County, Missouri. The Master Deed Restrictions establish architectural control, reserve certain rights to the Founder and place other restrictions on the use of the property.

1.11 Merchants' Council. The "Merchants' Council" is established by Article VIII of this Town Center Declaration to promote business activity. The Merchants' Council is unincorporated but may be incorporated at a later time.

1.12 Member. Each Commercial Parcel Owner is a "Member" of the Town Center Association, as provided in Article VII of this Declaration. Temporary Parcel Owners and lot owners who pay assessments shall also be considered Members.

1.13 Mortgagee. A "Mortgagee" is any institutional lender which holds a bona fide first mortgage encumbering a Parcel as security for the performance of an obligation. The term "institutional lender" specifically includes a bank, savings and loan association, a mortgage lending company, an insurance company, and the Federal National Mortgage Association or similar agency.

1.14 Owner. "Owner" is the record owner, whether one or more persons or entities, of the fee simple title to any Parcel. Owners shall not include those having such interest merely as security for the performance of an obligation.

1.15 Parcel. The term "Parcel" shall comprise Residential Parcels, Commercial Parcels (retail, office and child care) and Temporary Parcels.

1.16 Residential Association. The Residential Association is The Village of Cherry Hill Association, Inc., a Missouri not-for-profit corporation established by the Residential Declaration.

1.17 Residential Declaration. "Residential Declaration" is the Declaration of Easements, Covenants and Restrictions for The Village of Cherry Hill, as recorded at Volume _____, Page _____ of the Public Records of Boone County, Missouri, as amended from time to time.

1.18 Residential Parcel. A "Residential Parcel" shall be defined as a residential condominium unit or other separately leaseable space intended for residential purposes, whether permanent or transient, plus any additional space or land, ownership and use of which is intended to accompany the enclosed space. A portion of a Commercial Parcel which is used primarily for residential purposes (such as residential space within an artist's studio) may, at the request of the Parcel Owner and the agreement of the Town Center Association, be considered a Residential Parcel even though it does not have a separate entrance.

1.19 Supplemental Declaration. "Supplemental Declaration" is any declaration which may be recorded by the Founder or the Town Center Association in accordance with Article II to annex Additional Property to the Town Center.

1.20 Temporary Parcel. A "Temporary Parcel" is a pushcart, kiosk or other easily movable sales, office or information services space. A "Temporary Parcel" may also be a separate, enclosed building of up to 125 square feet which is not secured to the ground on a permanent foundation.

1.21 Town Center. The Town Center is all that property which has been made subject to this Declaration.

1.22 Town Center Association. The Town Center Association is The Village of Cherry Hill Town Center Association, Inc. a Missouri not-for-profit corporation. The articles of incorporation and bylaws for the Town Center Association are attached as Exhibit C to this Town Center Declaration. The Town Center Association membership comprises owners of commercial property. The Town Center Association is not intended to be deemed a residential homeowners' association under state law.

1.23 Town Center Declaration. "Town Center Declaration" is this instrument.

ARTICLE II: | Property Subject to this Declaration; Development Plan

2.1 Initial Property. The real property which shall be held, transferred, conveyed and occupied subject to this Declaration consists initially of that described on Exhibit A to this Town Center Declaration.

2.2 Annexation of Additional Property. The Founder shall have the right, but not the obligation, from time to time in its sole discretion, to annex any contiguous property, property any portion of which is within one-half mile of any portion of the Town Center (including any property separated from the Town Center by a public street, body of water or other property) or any other property with a reasonable relationship to the Town Center. If the property is owned by an entity other than the Founder, the supplemental declaration shall be signed by the owner of the property and by the Founder. The new property may be added to an existing District, or a new District may be created. A supplemental declaration adding the additional property shall become effective upon being recorded in the county's public records. The supplemental declaration may modify or add to the provisions of this Town Center Declaration if needed to reflect the different character of the additional property.

2.3 Withdrawal of Property. The Founder reserves the right to withdraw property from Town Center so long as all Owners within the area to be withdrawn consent, and appropriate access to the remaining portions of Town Center is preserved.

ARTICLE III: | Relationship to Residential Association

3.1 Recorded Instrument. Residential Parcels located in the Town Center are hereby made subject to the Residential Declaration.

3.2 Residential Association Membership. Owners of Residential Parcels shall be members of the Residential Association, shall pay mandatory assessments to the Residential Association secured by a lien on the Parcel and shall have the right to use the recreational facilities of The Village of Cherry Hill. Residential Parcel Owners shall not be members of the Town Center Association. Further, the Parcels located on Lots 4D and 4E of the Town Center shall be subject to Assessment by the Neighborhood Association for maintenance and snow removal costs (and not by the Town Center Association for said maintenance or snow removal) for the following roadway, the "Lot 7 Roadway":

THE FOLLOWING TRACT BEING LOCATED WITHIN THE VILLAGE OF CHERRY HILL AND DESCRIBED ON THE MASTER



PLAN AREA, EXHIBIT A TO THE MASTER DEED RESTRICTIONS:

ALL OF THE TRACT SHOWN AS THE PROPOSED 18-FOOT ROADWAY BY SAID PLAT AND LYING WITHIN LOT 7.

Further, the Parcels located on Lots 4D and 4E of the Town Center shall be responsible for maintenance and snow removal costs for the sidewalk located between the Lot 7 Roadway and the Lot lines of Lots 4D and 4E.

3.3 Cooperation. An amount equal to one-third of the assessment paid by each Town Center Residential Parcel to the Residential Association shall be paid by the Residential Association to the Town Center Association as a contribution toward maintenance of Town Center Association Commons, which are enjoyed both by the Residential Parcel Owners and other members of the Residential Association. Further, an amount equal to 15% of the assessment paid by Lot 4C, the Child Care Facility, to the Town Center Association shall be paid by the Town Center Association to the Residential Association in consideration of the right of Child Care Facility to use the Swimming Facility located on Lot 142A and the common areas located within the Residential Neighborhood. Owners of Residential Parcels shall not be members of the Town Center Association, and the Town Center Association shall have no power to assess or lien Residential Parcels. Where this Declaration would impose an Individual Parcel Assessment, the Town Center Association may request the cooperation of the Residential Association which may, after notice and hearing, impose the Individual Parcel Assessment.

3.4 Limitation. The Residential Association shall have no responsibility for maintenance of Town Center or regulation of its Commons, which shall be the responsibility of the Town Center Association. If in any instance the provisions of this Town Center Declaration are in conflict with the provisions of the Residential Declaration, the provisions of the Town Center Declaration shall apply.

**ARTICLE IV: | Master Deed Restrictions;
Design Review**

4.1 Master Deed Restrictions. The Master Deed Restrictions establish The Village of Cherry Hill Design Code as the guide for all construction within The Village of Cherry Hill, provide for a Town Architect to administer The Village of Cherry Hill Design Code, and create The Village of Cherry Hill Design Review Board. All construction or modification, any tree removal or any material alteration of the landscaping or topography of any Lot or Commons must be approved in advance by The Village of Cherry Hill Design Review Board.

4.2 Assignment to Association. The Master Deed Restrictions provide for the Founder to appoint the Town Architect and the other members of the Design

Review Board during the development period. As provided in the Master Deed Restrictions, at the end of the development period, a separate Design Review Board for Town Center shall be established. The Founder may assign to the Town Center Association the right to select the members of the Town Center Design Review Board. Upon such assignment or if for any reason the Founder is unable or unwilling to perform its powers under Articles II and III of the Master Deed Restrictions, the provisions of Articles II and III of the Master Deed Restrictions shall become part of this Declaration as if originally included. At that time, the Town Center Association shall have and assume the responsibility of appointing a Town Architect and members of the Town Center Design Review Board and enforcing all violations of Articles II and III of the Master Deed Restrictions within Town Center with all of its powers under the Master Deed Restrictions and this Declaration.

**ARTICLE V: | Commons: Easements,
Maintenance and Regulation**

5.1 Owners' Easement of Enjoyment.

(a) Generally. All Owners are hereby granted a nonexclusive easement for the appropriate and intended use of the initial Commons, as described at Exhibit B to this Declaration, and any additional Commons which the Founder may add by supplement to this Town Center Declaration or by a Grant of Easement designating the property as Commons under this Declaration. All such easements shall be nonexclusive and freely relocatable by the Founder, unless the grant of easement clearly states otherwise. The Commons are not dedicated for use by the general public. The Founder may, but is not obligated to, convey to the Town Center Association fee title to the Commons at any time.

(b) Right of Access. Each Owner shall have a right of access over the Commons to the Owner's Parcel. However, such access easement may be limited to designated pedestrian access from designated parking areas to the Parcel.

(c) Residential Use. Any Owner of a Residential Parcel may delegate, subject to the provisions of this Declaration and the Rules and Regulations, his right to enjoyment of the Commons to the Owners of his family, his tenants or his guests who reside in the Residential Parcel or are accompanied by the Owner.

(d) Commercial Use. All tenants of the Owner of a Commercial Parcel and all customers, clients, suppliers and other business invitees of the Owner or tenant shall have a right and easement in the streets, parking, walkways and other portions of the Commons reasonably necessary for access to the Owner's property. The Town Center Association shall establish from time to time the extent to which business invitees shall enjoy a right to use any parks or other recreational facilities which are included in the Commons. All rights are subject

to the provisions of this Declaration and the Rules and Regulations, including without limitation Town Center Association's right to regulate traffic and parking.

5.2 Maintenance; Capital Improvements.

(a) Maintenance. The Town Center Association shall be responsible for the management, control and improvement of the Commons (including without limitation common signage, common area lighting and electricity) and shall keep the Commons attractive, clean and in good repair.

(b) Capital Improvements. With the consent of the Founder, which is not to be unreasonably withheld, the Town Center Association may make capital improvements to the Commons and may modify the uses of the Commons. If the capital improvement is to be paid by Special Assessment, it must be approved by a majority of the Owners, by assessment interests, other than the Founder. Any repair or replacement of existing improvements shall not be considered a capital improvement.

5.3 Street Regulation; Security.

(a) Responsibility. Subject to applicable City Ordinances, The Town Center Association may make rules and regulations concerning driving and parking within Town Center.

(b) Permitted Regulation. The Town Center Association may charge a fee for parking or limit the length of time a car may be parked, and may construct speed bumps, post speed limit or other traffic signs and take any other reasonable measures to discourage excessive speed and encourage safe driving. The Town Center Association may assign or reserve parking and may require that owners or employees of businesses park at a distance from the business during business hours.

(c) Vehicles. The Town Center Association may regulate or prohibit the parking within Town Center of trucks, buses or recreational vehicles, oversize vehicles, boats, vehicles which display advertising or the name of a business, and vehicles which are not in good running condition.

(d) Residential Use. Owners of Residential Parcels shall be assured reasonable parking access. It is acknowledged that there shall be limited numbers of parking spaces and that accommodations will need to be made and revised from time to time to balance the needs of residential owners and commercial users. If necessary to assure reasonable parking access, the Town Center Association shall set aside reserved parking areas for owners of Residential Parcels; however, such owners are not assured an individual assigned parking space or that there will be sufficient spaces to guarantee a parking place at all times during periods of unusually high usage. The Town

Center Association may issue decals or other identification to residential owners and shall take reasonable steps to assure appropriate use of reserved spaces.

(e) Enforcement. The Town Center Association may enforce any violation under this section in accordance with Section 11.13 and may tow or bar admittance to offenders. Any fees or fines collected under this section shall be contributed to the general fund of the Town Center Association to offset expenses.

(f) Additional Services. The Town Center Association may, but is not required to, provide roving patrols, an information station or other visitor assistance.

(g) Limitation of Liability. The Town Center Association shall use reasonable judgment in providing services, maintaining the Commons and streets and enforcing traffic control measures, but the Town Center Association and Founder do not make any representation concerning security or safety or assume any liability for any loss or injury.

5.4 Damage or Destruction of Commons by Owner. If any Owner or any of his guests, tenants, licensees, agents, employees or Owners of his family damages any of the Commons, the Owner hereby authorizes the Town Center Association to repair the damage. The cost of repair shall be the responsibility of that Owner and shall become an Individual Parcel Assessment payable by the responsible Owner. The Town Center Association may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Owner shall be jointly and severally liable. Owner shall not be liable for damage caused by a customer or client unless Owner contributed to the cause of the damage.

5.5 Open-Air Market and Festivals. The Founder reserves, for itself or its various assigns, the right to use portions of the Commons as designated in The Village of Cherry Hill Design Code as an open-air market for the rental of space for pushcarts, kiosks, stands or similar temporary sales structures. Such uses may be for special events or on a recurring or daily basis. Founder also reserves, for itself or its various assigns, the right to use portions of the Commons as designated in The Village of Cherry Hill Design Code for festivals or other events intended to enrich and enliven the community. Founder further reserves a right of access through the Commons for all such purposes. Founder may, but is not obligated to, assign such rights to the Town Center Association at any time.

5.6 Modification of Commons.

(a) Further Improvements. The Founder reserves the right to modify the design of the Commons and to make further improvements.

(b) Withdrawal of Commons. Unless the deed or grant of easement from the Founder to the Town Center Association for a specific portion of the Commons states otherwise, the Founder reserves the right to withdraw property from the Commons and establish privately owned parcels on the withdrawn property so long as appropriate parking and access is preserved as determined by the Founder in Founder's sole and absolute discretion.

(c) No Commercial Use. Except as specifically permitted by this Declaration, there shall be no commercial use of the Commons, nor shall the Commons be subdivided or sold.

**ARTICLE VI: | Relationship Between Parcels;
Other Easements**

6.1 Relationship between Parcels.

(a) Structural Party Walls. Each Owner grants to the Owner of each adjacent Parcel the right and easement to maintain and to utilize any exterior or interior wall of a building which forms a party wall between them. A wall will be considered a party wall only if it provides structural support for more than one building. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner whose building faces such wall surface. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's Parcel or the wall itself. The cost of any other repairs to the party wall shall be shared by the adjacent Owners.

(b) Exterior Walls along a Lot Line. An exterior wall which supports a single building along a property line, or which encloses a courtyard, shall not be considered a party wall, and the Owner of the building or courtyard which includes the wall shall be responsible for maintenance of the wall. The Owner shall have an easement over the adjoining property as reasonably necessary to maintain the wall. The Owner of the adjoining property may make reasonable use of the portion of the wall facing his property, so long as such use does not weaken or structurally damage the wall and so long as the use, if visible from outside the property, has been approved by the Design Review Board.

6.2 Boundaries. Parcels may not be subdivided or separated into smaller Parcels, or any portion of a Parcel separately conveyed, except by the Founder or with the specific consent of the Design Review Board. However, this shall not prohibit leases, nor shall it prohibit corrective deeds or similar corrective instruments, nor shall it prohibit consent to the development of a parcel as a condominium. The Founder shall have the right to modify subdivision plats to make adjustments to boundary lines with consent only of those Owners whose boundaries are to be changed.

6.3 Easements of the Town Center Association. The Founder hereby specifically reserves to the Founder the following rights and easements and hereby grants to to the Town Center Association the following nonexclusive easements:

(a) Streets. A nonexclusive easement for use of the streets, parking lots and driveways.

(b) Utility Easements. A blanket easement upon, across, over, through, and under the Town Center for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, television, cable or communication lines and other equipment. By virtue of this easement the Town Center Association, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of his Lot.

(c) Police Powers. A blanket easement throughout the Town Center for private patrol services, and for police powers and services supplied by the local, state and federal governments.

(d) Drainage. A blanket easement and right on, over, under and through the ground within the Town Center to maintain and to correct drainage of surface water and other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health, safety or appearance or to comply with governmental requirements. The Town Center Association shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable.

(e) Encroachment. An easement for any improvements constructed on the Commons which encroach on any Parcel, whether due to any minor deviation from the subdivision plat of the Town Center or the settling or shifting of any land or improvements.

(f) Maintenance of Commons. To the extent reasonably necessary, an easement over any Parcel for maintenance of the Commons.

**ARTICLE VII: | The Town Center
Association**

7.1 Duties. The Town Center Association shall maintain the Commons, shall perform all other duties required by this Declaration, and shall enforce the terms of this Declaration. The Town Center Association may also maintain public rights-of-way and other public or private properties located within reasonable

proximity to Town Center if its deterioration would affect the appearance of or access to Town Center.

7.2 Additional Powers. Within the Town Center, the Town Center Association may provide any service allowed by law to be provided by a commercial property owners' association organized as a not-for-profit corporation. If requested by at least 10% of the Members, the offering of the additional service under this Section 7.2 shall be repealed by majority vote of the Members.

7.3 Membership. Every Owner of a Commercial Parcel shall be a mandatory Member of the Town Center Association. Temporary Parcel Owners and lot owners who pay assessments shall also be considered Members. Membership shall be appurtenant to and may not be separated from title to any Parcel. As provided in Article III, Owners of Residential Parcels shall not be members of the Town Center Association but shall be members of the Residential Association.

7.4 Voting Rights. Commercial Parcels shall be assigned one vote for each assessment paid, which may be a fractional vote.

7.5 Exercise of Vote. When more than one person holds an interest in any Parcel, all such persons shall be Members. However, the number of votes for that Parcel shall not be increased, and the Members must determine among themselves how the Parcel's vote may be exercised. Corporations, partnerships and other entities shall notify the Town Center Association of the natural person who shall be considered a Member of the Town Center Association and exercise its vote. An Owner may by written agreement appoint a tenant to exercise the Parcel's voting rights which, in the case of a Commercial Parcel, shall be either the business owner or the manager of the business conducted in the Commercial Parcel. Such assignment may expire after a specified term and in any case may be revoked by the Owner by delivery to the Town Center Association of a signed revocation.

7.6 Board of Directors.

(a) Initial Selection by Founder. The Founder shall appoint and remove the initial officers and members of the Board and shall elect a majority of the Board until sixty days after 75% of the Parcels other than outbuildings indicated by the Master Plan have been completed and conveyed to Owners other than the Founder. Any land within the Master Plan Area which is developed but which is not submitted to this Declaration shall be removed from the Master Plan for purposes of this calculation. The Founder may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the control period, in which case the Founder reserves the right to record an instrument specifying that, until the time Founder would have been required to end control of the Board, certain actions of the Association or Board must be approved by the Founder before they become effective.

(b) Owner Representative. No later than sixty days after at least six (6) buildings (not including outbuildings) have been completed and conveyed to Owners other than the Founder, Parcel owners other than the Founder shall have the right to elect at least one member of the Board.

(c) Compensation. Directors shall receive no compensation for their services unless expressly provided for in resolutions adopted by the Members, but may be reimbursed for expenses.

7.7 Contracts. The Town Center Association may contract with the Founder or any other party for the performance of all or any portion of the management of the Town Center Association and its maintenance and repair obligations. The cost of the contract shall be included within the General Assessment, District Assessment, Special Assessment or Individual Parcel Assessment as applicable. The Town Center Association may require that Owners contract for certain routine exterior maintenance, in order to provide a uniform level of care. The Town Center Association also may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Town Center Association, the cost of which would be assessed to that Owner as an Individual Parcel Assessment. The terms and conditions of all such contracts shall be at the discretion of the Board.

7.8 Additional Provisions. Additional provisions concerning the operation of the Town Center Association and the Board are contained in the Articles and Bylaws.

**ARTICLE VIII: | Merchants'
Council**

8.1 Purpose. The Merchants' Council shall promote the Town Center for the mutual benefit of all businesses. Its responsibilities shall include advertising, special event programming and other promotional activities and all commercial signage for Town Center other than signs on individual businesses.

8.2 Organization. Members of the Merchants' Council do not need to be Members of the Town Center Association and shall include Commercial Parcel Owners, business owners and managers conducting businesses within the Town Center. The Merchants' Council shall originally operate as a committee of the Town Center Association. However, the Commercial Parcel Owners may, by majority vote, choose to incorporate the Merchants' Council and operate it as a separate entity.

8.3 Membership; Board of Directors. The Merchants' Council's Board of Directors shall be selected by the Board of Directors of the Town Center Association from among the Merchants' Council membership. The Commercial

Parcel Owners may, by majority vote, adopt bylaws for the Merchants' Council's operation, which may include a different method of selecting a board of directors.

8.4 Funding. The Merchants' Council Board of Directors shall propose an annual budget to the Town Center Association, which shall fund the Merchants' Council activities. At the discretion of the Town Center Association, the Merchants' Council shall be entitled to receive at least 4% but no more than 15% of the assessments contributed by Commercial Parcels. The Merchants' Council may also receive revenue from special events and services.

8.5 Consent of Founder. So long as the Founder selects a majority of the board of directors of the Town Center Association, all actions of the Merchants' Council shall be subject to the Founder's review and approval, which shall not be unreasonably withheld or delayed.

**ARTICLE IX: | Town Center Association
Budget**

9.1 Fiscal Year. The fiscal year of the Town Center Association shall begin January 1 of each year, unless the Board selects a different fiscal year.

9.2 Budget Items. The budget shall estimate total expenses to be incurred by the Town Center Association in carrying out its responsibilities. These expenses shall include, without limitation, the cost of wages, materials, insurance premiums, services, supplies and other expenses for the rendering of all services required by this Declaration or properly approved in accordance with this Declaration. The budget may also include reasonable amounts, as determined by the Board, for working capital for the Town Center Association and for reserves. If the Commons are taxed separately from the Parcels, the Town Center Association shall include such taxes as part of the budget. Fees for professional management of the Town Center Association, accounting services, legal counsel and other professional services may also be included in the budget.

9.3 Reserves. The Town Center Association may build up and maintain reserves for working capital, contingencies and replacement of the Commons, which shall be included in the budget and collected as part of the annual General Assessment. Extraordinary expenses not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose unless approved by a majority vote of the Members. If the reserves are inadequate for any reason, including nonpayment of any Member's assessment, the Board may at any time levy an emergency Special Assessment. If there is an excess of reserves at the end of the fiscal year and the Board so determines, the excess may be returned on a prorata basis to all Members who are current in payment

of all assessments due the Town Center Association, or may be used to reduce the following year's assessments.

9.4 Preparation and Approval of Annual Budget.

(a) Initial Budget. The Founder shall determine the budget for the fiscal year in which a Parcel is first conveyed to an Owner other than the Founder.

(b) Subsequent Years. Beginning with the year in which a Parcel is first conveyed to an Owner other than the Founder and each year thereafter, at least one month before the end of the fiscal year, the Board shall, by majority vote, adopt a budget for the coming year and set the annual General Assessments at a level sufficient to meet the budget. At least two weeks before the fiscal year to which the budget applies, the Board shall send to each Member a copy of the budget in reasonably itemized form, which shall include the amount of General Assessments payable by each Member.

(c) Approval. If General Assessments are to be increased to greater than 125% of the previous year's General Assessment which was not a year in which General Assessments were guaranteed in whole or in part by Founder, and at least 10% of the Members request review within thirty (30) days after the budget is delivered to Members, the Board shall call a meeting of the Members to present the budget and to answer any questions. After presentation, the budget shall be deemed approved unless the percentage required to transact business is present and the budget is rejected by a majority of the Members present. If the budget is rejected, the Board shall approve a new budget within ten (10) days and send a copy to each Member.

9.5 Effect of Failure to Prepare or Adopt Budget. The Board's failure or delay in preparing or adopting the annual budget for any fiscal year, or review of the budget under Section 9.4 (c), shall not waive or release a Member's obligation to pay General Assessments whenever the amount of such assessments is finally determined. In the absence of an annual Association budget each Member shall continue to pay the assessment at the rate established for the previous fiscal period until notified otherwise.

9.6 Capital Improvements. Any substantial capital improvement to the Commons approved by the Board must be ratified by a majority of the Members. If the substantial capital improvement is approved by the Members, the Board shall determine whether it shall be paid from General Assessments or by Special Assessment. A capital improvement shall be considered substantial if the cost to the Town Center Association of the improvement is more than six percent (6%) of the Town Center Association's annual budget, or if, when added to other capital improvements for the fiscal year, totals more than ten percent (10%) of the Town Center Association's annual budget. Approval of the Design Review

Board is required for all capital improvements. This paragraph shall not limit the right of the Founder to make improvements to the Commons.

9.7 District Improvement. Any District or Districts may, by two-thirds (2/3) vote of the Members within that District or Districts and approval of the Board, vote to assess themselves for capital improvements to Commons which will primarily benefit that District or Districts. Any assessment so approved shall be assessed to all Owners within that District or Districts as an Individual Parcel Assessment. If more than one District is to vote, the Board shall determine whether approval and assessment is to be by District or by the combined group of Districts. If a group smaller than a District wishes to be assessed for capital improvements, all of those being assessed must agree to the assessment.

9.8 Accounts. Reserves shall be kept separate from other Association funds, either in a single account for all reserves or separated by purpose. All other sums collected by the Board with respect to Assessments and charges of all types may be commingled in a single fund.

**ARTICLE X: | Expenses;
Assessments**

10.1 Obligation for Assessments. Except as specifically exempted by this Declaration, each Owner of property within Town Center, by acceptance of a deed or other transfer instrument, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the following (collectively, "Assessments"):

- (a) General Assessments for expenses included in the budget,
- (b) Special Assessments for the purposes provided in this Declaration,
- (c) District Assessments if applicable and
- (d) Individual Parcel Assessments for any charges particular to that Parcel,

together with a late fee and interest, as established by the Town Center Association, and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought. Upon default in the payment of any one or more installments, the Town Center Association may accelerate the entire balance of such Assessment, which shall be declared due and payable in full.

10.2 Amount of General Assessments. Owners shall pay General Assessments based on the following formulas:

(a) Residential Parcels. Owners of Residential Parcels shall not pay assessments to the Town Center Association. However, as provided in Section 3.3, one-third of the amount paid by each Town Center Residential Parcel to the Residential Association shall be contributed to the Town Center Association to assist in maintenance costs.

(b) Commercial Parcels. General Assessments for Owners of Commercial Parcels shall be calculated (rounded to the nearest whole General Assessment) and paid as follows: for retail space, one General Assessment for each 200 square feet of net leasable square footage; for office space, one General Assessment for each 250 square feet of net leasable square footage, and for child care, one General Assessment for each 300 square feet of net leasable square footage, all as defined in Section 10.7.

(c) Temporary Parcels. Each Temporary Parcel shall pay an amount determined by the Town Center Association, not to exceed one General Assessment per year, which shall be prorated to reflect the number of days per year the Temporary Parcel is in use. Temporary Parcels which are used for information or other non-revenue-producing purposes shall not pay assessments.

(d) Unimproved Lots. Lots which have been conveyed to an entity other than the Founder and which do not have a building which is substantially complete shall pay a General Assessment equal to 30% of the total General Assessment for the Lot based upon the same being fully developed as described in the CP Plan. However, if the Owner shall violate the provisions of Section 4.2 of the Master Deed Restrictions, the Owner shall be obligated to pay and shall thereafter pay until compliance with Section 4.2 is had twice the full assessment for an improved Lot and in addition the Founder shall have the right to pursue all other enforcement remedies provided in these Restrictions and the Master Deed Restrictions.

(e) Exempt Parcels. Parcels which are used by non-profit or governmental entities primarily for the benefit of Town Center residents or guests may be exempt from Assessments or pay reduced Assessments as determined on an annual basis by the Town Center Association. The Commons are not subject to assessment.

(f) Founder's Parcels. During the "Guarantee Period," as defined below, the Founder shall be excused from payment of assessments on improved Parcels if the Founder guarantees to Parcel owners that their Assessments shall not exceed the amounts shown in the then-current estimated operating budget. If the Founder offers such a guarantee, the Founder agrees to pay any Common Expenses incurred during the Guarantee Period which exceed the amount produced by Assessments during that time. The "Guarantee Period" may begin at Founder's discretion at any time within the first three years after the recording of this Declaration in the public records of Boone County, Missouri and shall end

at the beginning of the next fiscal year. The Guarantee Period shall then be automatically extended for successive six-month periods up to an additional five years unless terminated upon written notice by the Founder to the Association at least 30 days before the end of the then-current Guarantee Period. During the Guarantee Period, the General Assessments may be increased by up to 15% per year.

10.3 Differing Allocations. However, nothing contained in this Declaration shall prohibit the Town Center Association from allocating different percentages of assessment to the retail, office and child care classifications.

10.4 District Expenses.

(a) Capital Improvements. Any District may, by majority vote of the Owners within that District and approval of the Town Center Association, vote to assess all of its Owners for capital improvements to Commons which will primarily benefit that District. If appropriate to all of the buildings within the District and if approved by the Design Review Board, the District may vote to assess its Owners for improvements to portions of the Parcels or buildings visible to the public.

(b) Additional Services. Any District may, by majority vote of the Owners within that District and approval of the Town Center Association, vote to assess themselves for maintenance or services in addition to those normally provided by the Town Center Association. Such maintenance or services may be to portions of the Parcels or buildings visible to the public as well as the Commons.

(c) Combined Districts; Smaller Groups. Districts may be combined or join together for such assessments. If more than one District is to vote, the Town Center Association shall determine whether approval and assessment is to be by District or by the combined group of Districts. If a group smaller than a District wishes to be assessed for capital improvements or services, all of those being assessed must agree to the assessment.

(d) Assessment Levy. Any assessment so approved shall be assessed to all Owners within that District or designated group as an Individual Parcel Assessment.

10.5 Individual Parcel Assessments. The Town Center Association may levy at any time an Individual Parcel Assessment against a particular Parcel for the purpose of defraying, in whole or in part, the cost of any special services to that Parcel, for expenses approved by that District in accordance with Section 10.4, or any other charges designated in this Declaration as an Individual Parcel Assessment.

10.6 Allocation of Special Assessments. Special Assessments, and Individual Parcel Assessments for District charges, shall be allocated among Parcels as a uniform percentage of the General Assessment for that Parcel.

10.7 Definition of Net Leasable Commercial Square Footage. For purposes of calculating the General Assessment, net leasable commercial square footage shall include all heated or air-conditioned space which may be used for commerce, office, storage and other support areas for the commercial use, measured to the center of the wall. Commercial Parcel square footage shall not include any Residential Parcels, or any stairwells or walkways used primarily to access residential space. At the discretion of the Town Center Association, decks and other un-air-conditioned space which are used on a regular basis for commerce may also be considered as part of the square footage and assessed at a reduced rate, depending on use. The amount of assessed square footage for a particular Commercial Parcel shall be as determined by the Town Center Association in its reasonable discretion.

10.8 Determination by Town Center Association. The Town Center Association may establish rules for the definition and calculation of building square footage, assessment of unimproved lots, determination of residential or type of business use and other matters relating to assessment. The Town Center Association's agent may enter and examine buildings at reasonable times for assessment purposes. An Owner shall have the right to a hearing before the Town Center Association to appeal an assessment evaluation; however, the decision of the Town Center Association is final.

10.9 Payment of General Assessments. The Town Center Association shall set the date or dates such assessments become due and may provide for collection of assessments annually or in monthly, quarterly or semiannual installments. The annual General Assessments shall begin on the day of conveyance of the first Parcel to an Owner other than the Founder, prorated to the month of closing.

10.10 Effect of Nonpayment of Assessment; Remedies

(a) Personal Obligation. All Assessments, together with any late fee, interest and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought (collectively, the "Assessment Charge") shall be the personal obligation of the person or entity who was the Owner of the Parcel at the time when the assessment was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Parcel.

(b) Creation of Lien. The Assessment Charge shall also be charged on the land and shall be a continuing lien upon the Parcel against which the Assessment Charge is made, which may be enforced upon recording of a claim of lien. This lien, in favor of the Town Center Association, shall secure the

Assessment Charge which is then due and which may accrue subsequent to the recording of the claim of lien and prior to entry of final judgment of foreclosure. Any subsequent owner of the Parcel shall be deemed to have notice of the Assessment Charge on the land, whether or not a lien has been filed.

(c) Suit for Payment; Foreclosure of Lien. The Town Center Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge, or may foreclose the lien in a manner similar to foreclosure of a mortgage lien, or both. The Town Center Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Parcel foreclosed at such foreclosure sale and to acquire, hold, lease, mortgage and convey the Parcel.

(d) Subordination of the Lien to Mortgages. The lien of the Assessment Charge shall be inferior to the first mortgage lien of any Mortgagee. Sale or transfer of any Parcel pursuant to foreclosure of such a mortgage (or, if approved by the Town Center Association, acceptance of a deed in lieu of foreclosure) shall extinguish the lien as to payments which became due prior to the sale or transfer. The transferees of such Parcel shall be liable for any assessments coming due after the sale or transfer.

(e) Other Remedies. The Town Center Association shall have the right to assess fines and suspend the voting rights and right to use of the Commons by an Owner for any period during which any Assessment against his Parcel remains unpaid.

10.11 Certificate of Payment. The Town Center Association, upon request of any Owner, shall furnish a certificate stating whether any assessments are owed by that Owner. Such certificate, when signed by an officer of the Town Center Association's corporate entity, may be relied upon by a good faith purchaser or mortgagee as conclusive evidence of payment of any assessment therein stated to have been paid.

10.12 Bookkeeping; Use of Funds. The Town Center Association shall maintain a general fund and shall keep books and records of its expenses in performing its duties under this Declaration. All assessments, fines and other moneys collected under this Declaration shall be used only for maintenance, repair and replacement of the Commons, reserves, capital improvements and other uses authorized by this Declaration, including legal and professional fees and a reasonable administrative fee to the Town Center Association.

ARTICLE XI: | Regulation of Residential and Commercial Use

11.1 Permitted Uses. Permitted uses for Parcels, which may include residential use or retail, office, restaurant or other commercial use, shall be determined by the Founder based on the size, shape and location of the parcel within the

overall design for the District and for Town Center. At the Founder's discretion, the Founder shall make the determination of record at the time of the parcel's addition to the Town Center, or at any time up to and including the time of conveyance of the parcel to someone other than the Founder. **If the Founder fails to make such a determination of record, the approval of the building or modification under the design review procedures of the Master Deed Restrictions may describe permitted uses.**

11.2 Generally. Each Owner, by acceptance of a deed to property within the Town Center, recognizes that Owner's property is part of the Town Center and the larger community of The Village of Cherry Hill. Within the Town Center, the proper balance of types of retail stores and other businesses, as well as the quality of those businesses, is critical to the success of the Town Center and the entire community of The Village of Cherry Hill. The conditions of this Declaration regarding operation of the business upon an Owner's Parcel within the Town Center are part of the consideration for the granting of easements for use of the Commons to Owners and the granting of a deed from the Founder to Owners other than the Founder. These restrictions shall run with the land and be binding upon Owner, successors and assigns and any tenants.

11.3 Types of Business.

(a) Review. To assure an appropriate mix of varied, quality establishments, the Town Center Association may establish standards for various aspects of Owner's business. The Town Center Association shall have the right to approve all prospective businesses and proposed substantive changes in existing businesses including without limitation the type and/or nature of the proposed business or proposed changes in business. Such standards may differ for different parts of the Town Center, and may apply to an individual store or on a block-by-block basis, in which case standards may be different for opposite sides of the street, corner buildings or for different sizes or types of buildings.

(b) Real Estate Offices. The Founder reserves the right to exclusive operation of real estate sales, rental or management offices within Town Center, which may be considered a deed restriction for the entire Town Center property and shall be part of the consideration for the sale of property within Town Center. No real estate sales, rental or management offices, whether for residential, vacation or commercial properties, may operate within Town Center without the express, written consent of the Founder, which may be arbitrarily withheld.

11.4 Name of Business; Advertising.

(a) Review. The Town Center Association shall have the right to review in advance and approve the name, logo or any identifying symbols to be used with the business.

(b) Use of Name "The Village of Cherry Hill." The name "The Village of Cherry Hill" is a trade name owned by the Founder. An Owner may use the name "The Village of Cherry Hill" to describe the location of the business, and may advertise a business as being located "in The Village of Cherry Hill." If requested by the Founder, Owner shall accompany such use with a symbol or explanation concerning trademark or service mark registration of the name "The Village of Cherry Hill." Owner may not use the name "The Village of Cherry Hill" in any other manner without the express permission of the Founder, which may be arbitrarily denied.

(c) Approval of Advertising. All advertising for the business to be conducted on the Parcel, whether for print, television, radio, handbills, outside sign or other media, shall be subject to the Town Center Association's standards and regulations. The Town Center Association may prohibit or regulate the distribution of handbills within the Town Center.

(d) Signage. A business shall display on the exterior of the building or upon any exterior glass surfaces or within 24 inches of any window only those signs, advertising placards, names, insignia, trademarks, descriptive material or other identification which are specifically approved by the Town Center Association and, as applicable, The Village of Cherry Hill Design Review Board. No hand-lettered signs may be displayed unless professionally prepared.

11.5 Appearance, Hours of Operation. The Town Center Association may regulate store displays and general decor, days and hours of operation. The entrance and interior of the business shall be kept immaculately clean and inviting in appearance at all times. Wall and floor coverings, displays and all other furnishings shall be maintained in first-class condition.

11.6 Staff. All personnel who may be viewed by patrons shall be appropriately dressed, well groomed and courteous.

11.7 Leases.

(a) Commercial Parcels. The provisions of this Town Center Declaration, including but not limited to this Article XI, shall be deemed included in any lease of commercial space within the Town Center. The Town Center Association shall have the right to review all Commercial Parcel leases in advance. If any tenant is in violation of these provisions the Town Center Association may enforce these provisions against the Owner, the tenant or both, and is granted the right as Owner's agent and attorney in fact in accordance with Section 11.13 to evict any tenant in violation of these provisions. However, nothing contained in these Declarations shall require the Founder and/or Town Center Association to protect any parcel owner or tenant from competition (with respect to exclusivity of business type or business product) or to act as a competition watchdog for any parcel owner or tenant (with respect to exclusivity of business type or business product) nor shall the Founder or Town Center

Association be liable in any manner to any parcel owner or tenant for any such lack of exclusivity or competition.

(b) **Residential Parcels.** Residential Parcels may be rented, subject only to reasonable rules and regulations as promulgated by the Town Center Association, which may be modified from time to time. No rule or regulation shall establish a minimum lease term. The Town Center Association shall have the right to review leases to assure compliance with this Declaration.

(c) **Generally.** The Town Center Association may prohibit the leasing of any Parcel while the Owner is in default in the payment of Assessments; if the Parcel is leased in violation, the Town Center Association may attach rentals and may evict the tenant as if it were a tenant violation under paragraph 11.13 (c).

11.9 Prohibited Uses.

(a) **Nuisances, Unlawful Use.** No nuisance or immoral, improper, offensive or unlawful use shall be permitted to exist or operate on any Parcel. The Town Center Association may from time to time define and determine unacceptable uses. All laws, building codes, orders, rules, regulations or requirements of any governmental agency having jurisdiction shall be complied with, by and at the sole expense of the Owner.

(b) **Insurance.** Nothing shall be done or kept on any Parcel or the Commons which will increase the rate of, or result in cancellation of, insurance for the Commons or any other Parcel or its content, without the prior written consent of the Town Center Association.

(c) **Soliciting.** The Town Center Association may regulate or prohibit soliciting within the Town Center.

(d) **Time Sharing.** No time-share ownership of Parcels is permitted without the Town Center Association's approval. For this purpose, the term "time-share ownership" shall mean a method of ownership of an interest in a Parcel under which the exclusive right of use, possession or occupancy of the Parcel circulates among the various owners on a periodically reoccurring basis over a scheduled period of time. Leasing a building or ownership of a Parcel by a corporation, partnership or other entity or by not more than four individuals or married couples will not normally be considered time-share ownership.

(e) **Camping.** Camping shall be prohibited within Town Center.

11.10 **Attractiveness and Safety of Parcels.** Each Owner shall keep all parts of his Parcel in good order and repair and free from debris. The Town Center Association may regulate placement and maintenance of garbage and trash containers, and fuel or gas storage tanks, and other matters affecting the

attractiveness or safety of Parcels. In addition to the provisions of paragraph 11.4 (d) concerning business signage, no sign, advertisement or notice of any type or nature whatsoever (including "For Sale" or "For Rent" signs) shall be erected or displayed on any Parcel or portion of the Commons unless specifically permitted by the Town Center Association. Garage doors shall be kept closed except when automobiles are entering or leaving the garage. No obstruction to visibility at street intersections shall be permitted.

11.11 Pets. Pets may be kept by an Owner on his Parcel but only if such pets do not cause an unsafe condition or unreasonable disturbance or annoyance within the Town Center. Each Owner shall be held strictly responsible to immediately collect and properly dispose of wastes and litter of his pets. The Town Center Association reserves the right to regulate the number and size of pets; to prohibit the keeping of animals other than customary household pets, which it may define, acting reasonably; to designate specific areas within the Commons where pets may be walked and to prohibit pets on other areas; to require pets to be on leash; and to restrict the rights of tenants to keep pets.

11.12 Rules and Regulations. The Town Center Association may from time to time adopt rules or amend previously adopted rules and regulations governing the details of the operation, use, maintenance and control of the Parcels, Commons and any facilities or services made available to the Owners. This right shall include without limitation the right to approve rental agents, contractors and sub-contractors who do business within The Village of Cherry Hill. Rules and Regulations shall take effect immediately upon approval by the Board, or at a later date selected by the Board. If requested by at least 10% of the Members, a meeting of Members may be called and any Rule or Regulation may be repealed by majority vote of the Members. A copy of the Rules and Regulations adopted from time to time shall be posted in a conspicuous place within Town Center or furnished to each Owner.

11.13 Enforcement.

(a) Owner's Responsibility. Each Owner and Owners' family members, guests and tenants shall conform and abide by the covenants contained in this Declaration and any Rules and Regulations which may be adopted from time to time by the Town Center Association. Each Owner shall be responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner.

(b) Notice, Hearing and Fines. Any Owner who is believed to be in violation of this Declaration or the Rules and Regulations shall be given notice and an opportunity to be heard. After such hearing, the Town Center Association shall have the right to assess fines, up to a maximum of \$500 for a single violation or \$50 per day for a continuing violation (to be adjusted according to increases in the cost of living) and may restrict the Owner's use of the Commons for up to sixty (60) days or until remedied, whichever is longer. However, the

primary goal of this provision is not to punish but to conciliate and resolve problems. The Town Center Association may suggest or approve agreements and withhold the requirement of paying a fine if the agreement is honored. Fines shall be charged against the Parcel as an Individual Parcel Assessment. Any fines collected shall be contributed to the general fund of the Town Center Association.

(c) Tenant Violations. If a tenant is believed to be in violation of the Declaration or Rules and Regulations, the Town Center Association shall notify the Owner and tenant and provide an opportunity for hearing. If the Town Center Association determines after notice and opportunity for hearing that a tenant has violated this Declaration or Rules and Regulations, the Town Center Association may assess fines against the Owner as provided in paragraph (c). In addition, if the violation continues for ten days after notice to the Owner of the findings, or if the tenant materially violates either Declaration or Rules and Regulations more than once in any one-year period, the Town Center Association shall have the right to evict the tenant. Each Owner by acceptance of a deed irrevocably appoints the Town Center Association as its agent and attorney-in-fact in such an eviction action. All costs related to such action shall be charged to the Owner as an Individual Parcel Assessment.

(d) Corrective Action for Parcel Maintenance. If the Town Center Association determines after notice and hearing that any Owner has failed to maintain any part of the Parcel (including the yard and any wall, fence, building, garden structure or other structure) in a clean, attractive and safe manner, in accordance with the provisions of this Declaration and applicable rules and regulations, the Town Center Association shall notify the Owner of its findings and may assess fines as provided in paragraph (c). If the violation continues for ten days after notice to the Owner, the Town Center Association shall have the right without liability to enter upon such Parcel to correct, repair, restore, paint and maintain any part of such Parcel and to have any objectionable items removed from the Parcel. The Town Center Association may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action shall be assessed to the Owner as an Individual Parcel Assessment.

(e) Pets. After notice and hearing, the Town Center Association may find that a pet causes an unsafe condition or unreasonable disturbance or annoyance and may require the Owner or tenant to take steps to cure or limit the offensive condition. If such steps are ineffective, if the Owner or tenant fails to cooperate or if the pet is considered to create an unsafe condition, the Town Center Association may require that an Owner or tenant permanently remove the pet from the Town Center.

(f) Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively. The Town Center Association shall

also have the right to bring suit to enforce the Declaration and Rules and Regulations, as described in Section 14.3.

**ARTICLE XII: | Insurance;
Casualty**

12.1 Review of Coverage. The Board shall review limits of coverage for each type of insurance at least once each year.

12.2 Casualty Insurance. The Board may obtain and, if additional Commons with significant insurable improvements are added to Town Center, shall be required to obtain and maintain, casualty insurance on the Commons for fire damage. Endorsements for extended coverage, vandalism, malicious mischief, flood and windstorm should be obtained where available at reasonable cost. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than 80% of the insurable value (based upon replacement) of the improvements constructed on the Commons.

12.3 Public Liability. The Board may obtain public liability insurance in such limits as the Board may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Commons. At the Board's discretion, such coverage may include easements, such as walkways, which benefit the Association. Whenever practicable, such insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board or other Owners.

12.4 Director Liability Insurance. The Board may obtain liability insurance insuring against personal loss for actions taken by members of the Board and advisory members in the performance of their duties. Such insurance shall be of the type and amount determined by the Board in its discretion.

12.5 Other Coverage. The Board shall obtain and maintain workman's compensation insurance if and to the extent necessary to meet the requirements of law, and such other insurance as the Board may determine or as may be requested from time to time by a majority vote of the Members.

12.6 Parcel Coverage.

(a) Generally. Each Owner shall obtain casualty insurance for improvements on the Parcel. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than 80% of the insurable value (based upon replacement) of the improvements. If requested, Owners shall provide evidence of such insurance to the Town Center Association.

(b) Commercial Parcels. The Town Center Association may require Commercial Parcels to carry additional insurance, including but not limited to comprehensive general liability and, where applicable, liquor liability and special coverage for machinery and equipment.

(c) Leased Parcels. Residential Parcels which are leased to the public may also be required to carry liability insurance.

12.7 Repair and Reconstruction after Fire or Other Casualty.

(a) Commons. If fire or other casualty damages or destroys any of the improvements on the Commons, the Board shall arrange for and supervise the prompt repair and restoration of the improvements, unless other plans are approved by the Design Review Board or the area is to be redeveloped as provided in Section 13.3. The Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves.

(b) Parcels. If fire or other casualty damages or destroys a building or any other improvements on a Parcel, the Owner of that Parcel shall immediately proceed to rebuild and restore the improvements to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the Design Review Board or the area is to be redeveloped as provided in Section 13.3. If the Owner fails to clean and secure a Parcel within 30 days after a casualty, the Town Center Association may, in accordance with the provisions of Section 11.13 (d), remove debris, raze or remove portions of damaged structures and perform any other clean up the Town Center Association deems necessary to make the Parcel safe and attractive. The cost of such clean-up shall be assessed to the Parcel Owner as an Individual Parcel Assessment.

ARTICLE XIII: | **Amendment, Dedication, Redevelopment and Termination**

13.1 Amendment.

(a) By Members. This Declaration may be amended at any time by an instrument signed by the president or vice president and secretary of the Town Center Association, certifying approval in writing by two-thirds (2/3) of the total votes. Rights reserved to the Founder may not be amended without the specific consent of the Founder.

(b) By the Founder. The Founder specifically reserves the absolute and unconditional right to amend this Declaration without the consent or joinder of any party (i) to conform to the requirements of the Federal Home Loan

Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of home loan mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, or (iii) to clarify the Declaration's provisions or correct errors.

(c) Limitation. Whenever any action described in this Declaration requires approval of greater than two-thirds (2/3) of the total votes, amendment of that provision shall require the same percentage vote as would be required to accomplish that action directly.

(d) Recording. Any amendment shall take effect upon recording in the public records.

13.2 Dedication. The Founder or the Town Center Association shall have the right to convey title to or dedicate the streets and any other Commons to the appropriate public agency or authority.

13.3 Redevelopment.

(a) Purpose. If Town Center should ever be struck by a severe natural disaster, all or a portion of Town Center might be destroyed and need to be rebuilt. In general, after any casualty loss, improvements are to be rebuilt in accordance with the original plan. Alternatively, this section provides a method for redevelopment in accordance with a new plan when two-thirds of the owners, the Founder and a majority of the mortgagees agree that it is necessary and desirable to do so. This super-majority approval is designed to protect individual property owners' rights and expectations in their property. However, when such consensus is achieved, this section allows redevelopment, while continuing to protect the dissenting owners by assuring payment to them of fair market value, plus a relocation allowance. The same method may be used when, after long periods of time, changing uses and conditions make redevelopment desirable.

(b) Definitions. Redevelopment is the process of rebuilding all or a portion of the Town Center Districts, known as a Redevelopment Area, in accordance with a revised master plan, combined with the offer to purchase the property of any dissenting Parcel Owners. A Redevelopment Area must be a defined, logical section for redevelopment comprising a District or Districts, or all of the Town Center Districts. The plan may allow buildings which are currently in serviceable condition to remain but require that such buildings, if rebuilt or remodeled in the future, to be rebuilt in accordance with the redevelopment plan. The plan for redevelopment may include termination of the Declaration for the Redevelopment Area. If the Declaration is terminated for a Redevelopment Area, the Founder may sell or donate to the Owners within the Redevelopment Area the Commons located there, reserving access and use easements as appropriate.

(c) Redevelopment; When Available. Redevelopment shall be available only upon the occurrence of one of the following:

(i) Any time after thirty (30) years from the recording of this Declaration, or

(ii) Upon a casualty loss destroying at least two-thirds, by value, of the insurable improvements, either within all of the Districts, or within a Redevelopment Area. If the necessary approvals are not obtained within ninety (90) days after the casualty, the damage must be repaired in accordance with Section 12.2 (“Repair and Reconstruction after Fire or Other Casualty”).

(d) Approvals. Redevelopment requires the consent in writing of Owners representing two-thirds of the Owner’s assessment interests within the Redevelopment Area, as applicable; Mortgagees holding mortgages on a majority, by assessment interests, of the Parcels encumbered by mortgages; and the Founder. If the plan is approved, consenting Owners must rebuild in accordance with the redevelopment plan, and, unless the plan provides otherwise, must participate in the purchase of dissenting Owners’ Parcels.

(e) Redevelopment Corporation. The plan may include formation of a redevelopment corporation or other entity to purchase the Parcels of dissenting Owners. Unless otherwise agreed, the consenting Owners would be required to contribute to the capital of the redevelopment corporation in proportion to their General Assessments, as a portion of all consenting Owners. The plan may authorize the Town Center Association, on behalf of the redevelopment corporation, to collect the Owners’ shares as an Individual Parcel Assessment.

(f) Option to Purchase. Upon approval of the redevelopment plan, the redevelopment corporation or other designee of the consenting Owners shall deliver an option to purchase to all remaining Owners of Parcels within the Redevelopment Area. The option to purchase must be delivered in person or by registered mail to each Owner of a Parcel to be purchased. The recipient of such an option shall, within 30 days, choose either to join the consenting Owners, or to sell the Parcel to the consenting Owners. Failure to agree to the sale within 30 days shall be deemed to be agreement to join the consenting Owners. The sale price shall be paid in cash or upon terms approved by the seller, and the sale shall be closed in a timely fashion following determination of the sale price.

(g) Price. The price for each Parcel to be purchased shall be its fair market value determined by agreement between the seller and the designee of the consenting Owners within 30 days of the delivery or mailing of the notice. In the absence of agreement, the purchasing Owners and the selling Owners shall each select a real estate appraiser, which appraiser shall then choose a third appraiser, and the purchase price shall be the average (mean) of the three appraisals. The fair market value of the property shall be determined in its

present, as-is condition, subject to the Declaration, and the seller shall be entitled to any insurance proceeds attributable to that Parcel distributed on account of the casualty loss. The expense of the appraisals and all closing costs shall be paid by the purchaser.

(h) Relocation Allowance. In addition to the purchase price, the purchaser shall pay to the seller a relocation allowance of five percent (5%) of the purchase price.

(i) Enforcement. A judgment of specific performance of the purchase based upon the determination of the price by the appraisers may be entered in any court of competent jurisdiction.

(j) Limitation. If necessary for this section's validity under the Rule Against Perpetuities or similar law, this option shall expire 90 years from the time of recording of this Declaration, or whatever greater time period allowed by law.

13.4 Duration; Termination. The covenants and restrictions and other provisions contained in this Declaration shall run with and bind the Town Center and shall inure to the benefit of and be enforceable by the Town Center Association, the Founder and all Owners of property within the Town Center, their respective legal representatives, heirs, successors or assigns for twenty years, and shall be automatically extended for each succeeding ten year periods unless an instrument signed by Owners representing 90% of the votes in the Association shall have been recorded and consent of the Founder, agreeing to terminate the Declaration as of a specified date.

This Declaration may also be terminated in any of the following ways:

(a) Unanimous Consent. The Declaration may be terminated at any time by the consent in writing of all Owners and the Founder.

(b) Dedication of Commons. The Declaration may be terminated by two-thirds vote of the Owners and consent of the Founder, if the Commons have been accepted for dedication or taken by eminent domain by the appropriate unit of local government.

(c) Redevelopment. The Declaration may be terminated for all or a part of the Town Center in accordance with the redevelopment provisions of Section 13.3.

13.5 Rerecording. Unless this Declaration is terminated, the Town Center Association shall rerecord this Declaration or other notice of its terms at intervals necessary under Missouri law to preserve its effect. If the Town Center Association fails to rerecord this Declaration, the Founder or any Owner may do so.

13.6 Condemnation. If all or part of the Commons is taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Town Center Association.

ARTICLE XIV: | General Provisions

14.1 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of the Town Center as an integral part of The Village of Cherry Hill but with separate needs as an area of primarily commercial character. If necessary in the event of a conflict, the provisions shall be interpreted in the manner which gives the Town Center the greatest autonomy.

14.2 Invalidity. The invalidity of any part of this Declaration shall not impair or affect the validity or enforceability of the rest of the Declaration, which shall remain in full force and effect.

14.3 Enforcement of Declaration.

(a) Enforcement. Suit may be brought against any person, persons or entity violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, and against his or its property to enforce any lien created by this Declaration. To enforce this Declaration or the Rules and Regulations, the Founder, the Town Center Association, the Merchants' Council or any Owner may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity.

(b) No Waiver. Failure to enforce any provision of this Declaration or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.

(c) Legal Fees. Any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Founder, the Town Center Association or the Merchants' Council in the enforcement of any of the provisions of this Declaration, whether or not suit is brought, may be assessed as an Individual Parcel Assessment to the Owner against whom such action was taken.

14.4 Assignment of Founder Rights. Founder may assign all or any portion of its rights or obligations at any time to a successor or assign, or to the Town Center Association. If Founder conveys all of its property within Town Center without assigning its rights, then the Founder's rights shall be automatically assigned to the Town Center Association.

14.5 Notices. Any notice required to be sent to the Owner shall be deemed to have been properly sent when mailed, postage prepaid, or hand delivered to the Parcel and, if different, to the last known address of the person who appears as Owner of the Parcel as that address is stated on the records of the Town Center Association at the time of the mailing.

14.6 Gender and Number. The use of the masculine gender herein shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

14.7 Consent of Mortgagees.

(a) When Consent Required. This Declaration contains provisions concerning various rights, priorities, remedies and interests of Mortgagees. Such provisions are to be construed as covenants for the protection of the Mortgagees on which they may rely in making loans secured by a mortgage on a Parcel. Accordingly, no amendment or modification of this Declaration specifically impairing such rights, priorities, remedies or interests of a mortgagee shall be adopted without the prior written consent of Mortgagees as provided in paragraph (b). This section shall not be construed, however, as a limitation upon the rights of the Founder or the Owners to make amendments which do not adversely affect the Mortgagees.

(b) Percentage Required. Wherever consent of the Mortgagees is required, it shall be sufficient to obtain the written consent of Mortgagees holding a lien on two-thirds or more of all Parcels encumbered by a mortgage, unless a smaller percentage is specified.

(c) Timely Response. Any such required consent shall be given promptly and shall not be unreasonably withheld. Any consent not given or denied within 30 calendar days of receipt of request for consent shall be deemed given.

14.8 Law to Govern. This Declaration shall be construed in accordance with the laws of the State of Missouri.

IN WITNESS WHEREOF, the undersigned does hereby make this Town Center Declaration and has caused this Town Center Declaration to be executed as of the day and year first above written.

**The Cherry Hill Group, L.L.C.,
A Missouri Limited Liability
Corporation:**

MEMBERS:

FINLEY:

ROY FINLEY BUILDING AND
DEVELOPMENT, INC.,
a Missouri Corporation

By: _____
ROY R. FINLEY, President

ATTEST:

KATHLEEN FINLEY, Secretary

GINSBURG:

DONALD GINSBURG

SHARON F. GINSBURG

KLIETHERMES:

KLIETHERMES HOMES &
REMODELING, INC.,
A Missouri Corporation

By: _____
DANIEL J. KLIETHERMES,
President

ATTEST:

Secretary

