

**DECLARATION OF RESTRICTIONS
FOR
HERITAGE GLEN SUBDIVISION
CITY OF SPRING HILL
MIAMI COUNTY, KANSAS**

KNOW ALL MEN BY THESE PRESENTS, that Kenneth G. Butler, Karen A. Butler, George E. Butler, Jr. and Vera Lea Butler, subsequently referred to herein as the “Declarant Owners”, are the owners of the following described real estate property, to-wit:

All property included in the Final Plat [the “Plat”] of Heritage Glen [including lots 1 through 31], a subdivision located in Section 26, Township 15 South, Range 23 East in the City of Spring Hill, Miami County, Kansas, according to the final plat thereof filed for record on July 11, 2005, and recorded on Slide No.216-11 in the office of the Miami County Register of Deeds, hereinafter referred to as the “Subdivision”.

WHEREAS, for the purpose of securing orderly and uniform improvements and to cause the Subdivision to be developed into an outstanding residential community; to ensure the best use and the most appropriate development and improvement of each building site thereof; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of the Subdivision; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to ensure the highest and best development of the Subdivision; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain proper setbacks from streets, and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvement in the Subdivision, thereby to enhance the values of investments made by purchasers of building sites therein, and

WHEREAS, the Declarant Owners desire to provide the necessary means to better enable them and their grantees to accomplish these purposes.

NOW, THEREFORE, in consideration of the premises, the Declarant Owners do hereby declare that the Subdivision is held and shall be conveyed subject to the covenants, restrictions and limitations hereinafter set forth.

1. PERSONS BOUND BY THIS DECLARATION

All persons, corporations, and other entities owning or hereinafter acquiring fee simple title to any lots in the Subdivision [the “Owners”] shall be taken to hold and agree and covenant with the Declarant Owners, and with their successors and assigns, to conform to and observe the following covenants, restrictions, and stipulations as to use thereof and the construction of

residences and improvements thereon.

2. CITY OF SPRING HILL ORDINANCES TO APPLY

The Subdivision shall be subject to all requirements of the Unified Zoning Ordinance and Subdivision Regulations as adopted by the City of Spring Hill, Kansas. Where more stringent requirements are set forth in this “Declaration of Restrictions” said requirements as stated herein shall prevail.

3 LAND USE AND BUILDING TYPE

[a] No lot in the Subdivision shall be improved, used or occupied except for private residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling, not to exceed three stories in height above ground, plus an attached private garage for at least two but not more than three cars. All residences permitted hereby shall be initially new construction. No building shall be moved onto any such lots.

[b] No dwelling or residence shall be occupied until fully completed, and the exterior of such dwelling or residence must be fully completed within eight [8] months after the first earth excavation is started. In the event of fire, windstorm, or other damage, no building shall be permitted to remain in a damaged condition longer than three [3] months.

[c] No lot shall in any way be subdivided.

4. NUISANCES, ACTIVITIES, AND MISCELLANEOUS PROHIBITED ITEMS

[a] No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance, or nuisance to the neighborhood, including mechanical work on automotive or other equipment of any kind. No prohibition is contained in this paragraph against minor repair work being accomplished in the garage of the completed residence on any lot or within an outbuilding on any lot.

[b] No cars, buses, boats, trucks, race cars, wrecked vehicles, modified stock cars, trailers, or vehicles that are not in operating condition or whose presence might make an unsightly appearance shall be allowed to be parked or left on any lot or within any street right of way for more than forty eight [48] hours. No trash, old appliances, junk, garbage, or other refuse shall be allowed to accumulate on any lot in the subdivision. Outside trash burning shall not be permitted except on lots being developed or on lots on which residences are being constructed. In such cases, burning shall be done in accordance with requirements of the City.

[c] No radio or television antenna, satellite dish, tower, or structure shall be located in front of any completed dwelling. The maximum height of said antennas, satellite dishes or towers, when located back of the front of a dwelling, shall not be more than ten [10] feet higher than the roof of any dwelling structure on the lot.

[d] Trash, garbage, or other waste or refuse shall not be kept except in sanitary containers in clean and sanitary condition, and shall be at all times kept in an area not exposed to public view, except during the day or days designated for regular trash service, at which time the containers and other trash and refuse may be placed at such designated places as determined by a regularly designated trash service.

[e] No exterior Christmas lights and/or holiday decorations may be erected or maintained on any lots hereby restricted, except between November 15th and January 31st of the following year.

[f] Any property owner or property subject to the restrictions herein set forth may construct, for their personal use, one in-ground swimming pool; no above-ground swimming pools shall be permitted.

[g] No storage buildings or play houses shall be allowed. Dog houses, not exceeding thirty two [32] square feet in size, will be permitted and shall be located behind the house and a minimum of ten [10] feet from any property line.

[h] All basketball goals shall be on free-standing poles, and shall not be attached to any residence or building. Poles, nets, hardware, backboards and braces shall be kept in good condition.

5. ARCHITECTURAL CONTROL

[a] No building, fence or wall shall be commenced, erected, placed, or altered on any lot until the builder has received written approval from the Architectural Control Committee as to quality of workmanship and materials, harmony of exterior design with the subdivision theme, and as to location with respect to topography and finish grade elevation. The submittal by the builder to the Architectural Control Committee requesting approval shall include construction plans, specifications and plot plan [prepared in accordance with requirements of the City of Spring Hill], showing the location of said proposed improvements on the lot.

[b] The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee fails to approve or disapprove the plans and specifications within forty-five [45] days after they have been submitted to it, the plans and specifications shall be deemed approved.

[c] The Architectural Control Committee shall consist of two members. Initially the committee shall be composed of Kenneth G. Butler and George E. Butler, Jr., two of the Declarant Owners. If one of the two committee members becomes unavailable for service, then sole capacity to serve will rest with the other. If both members become unavailable for service, then the committee responsibility shall transfer to the remaining Declarant Owners or to their successors. The Architectural Control Committee shall review all new construction within the Subdivision and shall remain active until all initial dwellings in the Subdivision have been constructed. Upon completion of all initial dwellings, the committee shall no longer function and all matters pertaining to changes to interior or exterior dwelling and/or building lot modifications shall be referred to and completed in compliance with requirements of the City of Spring Hill Zoning and Subdivision Regulations and applicable Building Code requirements.

6. DWELLING SIZE

Any residence consisting of a single level above ground shall contain a minimum of sixteen hundred [1600] square feet of enclosed floor area; any residence consisting of one and one-half, two or three levels above ground shall contain a minimum of one thousand [1000] square feet of enclosed floor area on the first level above ground and an overall minimum total of eighteen hundred [1800] square feet of enclosed area in the 1 ½, two or three above ground levels. The words "floor area" as used herein shall mean and include areas of the residence enclosed and finished for all year occupancy, computed on the outside measurements of the residence, and shall not mean or include any patio areas, basement, garage, carports, porches or attics.

7. BUILDING LOCATION

[a] Building Lines [designated as B/L on the Plat] are shown on the Plat. These lines parallel street right-of-way lines and are located 35 feet [measured at right angles] therefrom. On corner lots, side building lines shown on the Plat are located 25 feet from street right-of-way lines. No building shall be located on any lot so that any portion of said building encroaches beyond these building lines.

[b] Rear setback and interior side line setback distances required for the Subdivision shall conform with requirements of the subdivision plat and the City of Spring Hill Zoning Ordinance.

[c] For purposes of this covenant, eaves, steps, patios and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on one lot to encroach upon another lot.

[d] All provisions contained in paragraphs 7[a] through 7[c] above shall pertain to any and all primary residences, garages and swimming pools.

8. EASEMENTS

[a] Utility Easements have been reserved across lots included in the Plat and are designated on the Plat as "U/E". Easements designated as Landscape Easements are shown on the Plat as "L/E". Landscape Easements are shown on the two lots, 1 and 31, at the Victory Road entrance to the Subdivision.

[b] A license has been granted to designated utility companies and to the City of Spring Hill, their agents, employees, assigns and successors, to enter upon, construct and maintain public utilities and drainage facilities under designated utility easement areas.

[c] No structure, planting or other material shall be placed or permitted to remain within designated utility easements which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

9. TEMPORARY STRUCTURES

No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

The keeping of a mobile home, either with or without wheels, on any part of the Subdivision is prohibited. A recreational vehicle, travel trailer, motor boat, house boat or other similar water borne vehicle may be maintained, stored, or kept on any parcel in the Subdivision only if housed completely within an attached garage.

10. SIGNS

No sign of any kind shall be displayed to the public view on any lot except project identification signs as approved by the Architectural Control Committee, one professional sign and/or one political sign per candidate of not more than two square feet, one sign of not more than ten square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction or sales period.

11. DWELLING DESIGN AND CONSTRUCTION REQUIREMENTS

The Declarant Owners have established the following requirements in order to create an outstanding and distinctive residential community. All dwellings within the Subdivision shall, therefore, be designed and constructed so as to comply with the requirements set forth in paragraphs below.

- [a] Sidewalks, four [4] feet in width, shall be constructed across the street frontage on each lot.
- [b] Dwellings shall contain a minimum of three [3] bedrooms, one of which, the master suite, shall be located on the first floor. Each dwelling shall provide a minimum of two and one-half [2 ½] baths.
- [c] The architectural style of each dwelling shall adhere to the craftsman, arts and crafts, bungalow type theme. This theme shall also be carried into the design of other exterior features of the dwelling including garage facade, porch exteriors, windows, dormers, etc.
- [d] Each dwelling shall include a front porch large enough to accommodate six [6] people comfortably in chairs. Porches shall be trimmed out with craftsman, arts and crafts style.
- [e] Construction materials and methods, including all heating and cooling systems and equipment, windows, appliances and other pertinent items, shall meet all requirements for compliance with the US EPA Energy Star program and all dwellings shall be tested for compliance when completed. Copies of the Energy Star requirements will be made available by the Architectural Control Committee when requested. All exterior walls shall be constructed with a minimum R-19 insulating value.
- [f] Exterior siding shall be brick or stone masonry, stucco, wood lap siding, wood shingle siding, concrete siding [lap, sheet, or shingle] or other materials subject to written approval of the Architectural Control Committee. Wood sheet siding, vinyl and steel siding will not be considered acceptable materials.
- [g] All typical roofing materials will be considered acceptable except 3-tab single layer composite shingles. All roofing shall match the architectural style of the dwelling and shall be warranted by the manufacturer for a minimum of thirty [30] years.
- [h] Electrical receptacles to accommodate exterior Christmas lights, switched to the front coat closet, shall be installed in the front soffit of each dwelling. One flood

light fixture with timer shall be installed on the front of each dwelling to illuminate a porch-mounted flag

[i] Each dwelling shall have an attached or detached private garage for not less than two [2] nor more than three [3] cars. Garages may be tandem-loaded or may be located behind the dwelling. In all cases, the garage shall be offset at least two [2] feet back of the front building wall of the dwelling [not the front wall of the front porch]. The intent of these requirements is to de-emphasize the garages. The exterior front facade of each garage which faces the street shall match the exterior front decor of the dwelling. Decorative garage doors will be required.

[j] The driveway for each lot shall contain sufficient paved area for the off street parking of at least three [3] cars and shall extend from the garage front to the back face of the curb and gutter at the street. All driveways shall be paved with Portland Cement concrete.

[k] No tank or similar structure for the storage of fuel or any other fluid substance shall be installed or maintained above the ground on any of the lots hereby restricted.

[l] Water, electric, telephone, cable television and any other utility lines shall be located underground within each lot.

[m] The lots covered by this “Declaration of Restrictions” are included under the “Residential Incentives” program sponsored by the Kansas City Power and Light Company [KCPL]. As such, each dwelling constructed on said lots shall be equipped with a system of “electric heat” in compliance with KCPL requirements. ”Electric Heat” shall be defined as an add-on total electric or ground-source heat pump; forced air furnace; baseboard heating system; or through-the-wall heating system. The heating system proposed for any dwelling shall be specified clearly on plans submitted to the Architectural Control Committee for review and must be approved in writing prior to the commencement of construction of each dwelling.

12. FENCES AND LANDSCAPING

[a] All fences shall be subject to approval by the Architectural Control Committee as described in paragraph 5. Fences shall also conform with requirements of the City of Spring Hill.

[b] Any fence erected, kept, or maintained around any of said lots or any part thereof shall be in keeping with the design and architecture of the dwelling upon such lot and shall be of ornamental nature. No such fence shall be more than four [4] feet in height. Any fence erected in front of any dwelling shall not exceed three [3] feet

in height.

[c] All fences shall be constructed of wood or PVC materials. Chain link or other wire fencing [chicken wire, barbed wire, mesh, etc.] will not be permitted.

[d] Upon completion of any dwelling hereunder, including walks, driveways, patios, and other approved appurtenances and planter beds, all area in the lot which is not built upon shall be sodded with fescue or blue grass sod. The builder shall plant shrubs and other landscaping materials at least along the front elevation of the dwelling. The Declarant Owners have already planted trees at the front property line. The builder shall plant at least two more trees within each lot as part of the dwelling construction. All trees, shrubs, and other plant materials shall meet the requirements of the City of Spring Hill Zoning and Subdivision Regulations as previously described herein.

[e] All plant materials, sod and trees planted on each lot shall be maintained by the lot owner or dwelling occupant and shall be replaced when or if necessary.

13. DURATION OF RESTRICTIONS AND RIGHT TO ENFORCE

[a] These restrictions [covenants] are to run with the land and shall be binding on all parties and all persons claiming under them. The Declarant Owners reserve the right to revise these restrictions at any time until all lots in the Subdivision are sold. After all lots have been sold, the Owners of not less than two-thirds of the lots herein described may modify and amend this Declaration or release all of the Subdivision from any one or more of said restrictions at any time by agreement in writing duly executed and acknowledged by such Owners and filed for record in the office of the Register of Deeds, Miami County, Kansas.

[b] Enforcement of the provisions of these Restrictions shall be by proceedings at law or in equity against any corporation, person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

[c] Invalidation of any one of these covenants by judgement or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

THE FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS
FOR
HERITAGE GLEN SUBDIVISION
CITY OF SPRING HILL
MIAMI COUNTY, KANSAS
Section 26, Township 15 South, Range 23 East

The following amendments are hereby incorporated into the originals recorded at the Miami County, Kansas Register of Deeds in Book 936, Page 41, recorded on November 28, 2005.

Item 1 - Modify the second sentence of paragraph 3.[a] to read as follows: “No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed three stories in height above ground, plus an attached *or detached* private garage for at least two but not more than three cars.”

Item 2 – Remove paragraph 11. [a] in its entirety and replace with the following: “*Concrete sidewalks shall be constructed in accordance with City of Spring Hill specifications across the street frontage on each lot on both sides of 225th Terrace and both sides of Jefferson Street. On Jefferson Street and on the south side of 225th Terrace the sidewalk width shall be four [4] feet. On the north side of 225th Terrace the sidewalk width shall be five [5] feet. The front lot corner between lots 15 and 16 shall be the transition point between the five [5] foot width sidewalk and the four [4] foot width sidewalk. The developer shall construct and pay for a connecting five [5] foot wide sidewalk within the pedestrian easement between lots 15 and 16 from the 225th Terrace cul-de-sac to the existing City asphalt trail at the west property line of Heritage Glen. Individual lot owners are responsible for sidewalk construction along the streets. The uphill edge of all street sidewalks shall be located three [3] feet inside the right-of-way line, leaving a four [4] foot green space between the back of curb and all four [4] foot wide sidewalks and a three [3] foot green space between the back of curb and all five [5] foot wide sidewalks.*”

Item 3 - Remove the first sentence of paragraph 11.[b] and replace with the following two sentences: “Dwellings shall contain a minimum of three [3] *finished* bedrooms. *Bedrooms may be located on any floor of the residence and all basement bedrooms shall meet building code egress requirements.*”

Item 4 – Add the following sentence to the end of paragraph 11.[c]: “*Floor plans may be duplicated within the Subdivision; however all front elevations shall be significantly different, as determined by the Architectural Control Committee.*”

Item 5 - Remove paragraph 11.[e] in its entirety and replace with the following: “*Construction in accordance with US EPA Energy Star program requirements is optional. This program is encouraged within Heritage Glen as a superior construction system that incorporates recycled*

materials and reduces energy consumption by 50 percent or more. Copies of the Energy Star requirements and assistance with interpretation and implementation of requirements will be made available by the Architectural Control Committee upon request.”

Item 6 – Add the following sentence to the end of paragraph 11.[i]: *“Detached garages shall be designed and constructed to match the residence in quality, materials and color(s).”*

SIGNATURE AND ACKNOWLEDGMENT

IN WITNESS WHEREOF, Kenneth G. Butler, Karen A. Butler, George E. Butler, Jr. and Vera Lea Butler have executed these presents this 29th day of January, 2007.

Kenneth G. Butler

Karen A. Butler

George E. Butler, Jr.

Vera Lea Butler

INDIVIDUAL ACKNOWLEDGMENT

STATE OF KANSAS }
 }
 } SS.
COUNTY OF JOHNSON }

BE IT REMEMBERED, That on this ____ day of _____, 2007, before me, the undersigned, a Notary Public within and for the County and State aforesaid, came Kenneth G. Butler and Karen A. Butler, who are personally known to be the identical persons who executed the above and foregoing instrument and who acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Notary Public

My Appointment expires _____

INDIVIDUAL ACKNOWLEDGMENT

STATE OF KANSAS }
 }
COUNTY OF JOHNSON } SS.

BE IT REMEMBERED, That on this ____ day of _____, 2007, before me, the undersigned, a Notary Public within and for the County and State aforesaid, came George E. Butler, Jr. and Vera Lea Butler, who are personally known to be the identical persons who executed the above and foregoing instrument and who acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Notary Public

My Appointment expires _____