

MULBERRY HILL ESTATES

AMENDMENT TO

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

THIS AMENDMENT made as of the \_\_\_\_\_, 2017 by, J&A LENDING,  
LLC

WITNESSETH;

WHEREAS, J&A Lending, LLC (hereinafter referred to as "Developer"), have heretofore executed a plat of the Lots inclusive of the first plat of MULBERRY HILL ESTATES, a subdivision in Johnson County, Kansas, including lots 1 – 22, which plat was recorded on the 20<sup>th</sup> day of April, 2004, in Book 200404 at Page 009525 in the office of the Register of Deeds for Johnson County, Kansas and;

WHEREAS, said plat dedicates to the public all of the Streets and roads shown on said plat for use by the public; and

WHEREAS, the Developer is the Owner of the subdivided lots shown on the aforesaid plat of MULBERRY HILL ESTATES and now desires to place certain restrictions on the numbered Lots so those owned and shown on said plat to preserve and enhance the values, desirability and attractiveness of the development and improvements constructed thereon and to keep the use consistent with the intent of the Developer, all of which restrictions shall be for the use and benefit of the present Owner thereof and its future grantees, successors and assigns;

NOW, THEREFORE, in consideration of the premises, the Developer for itself and for its successors and assigns, and for its and their future grantees, hereby agrees and declares that the Lots, tracts and land of MULBERRY HILL ESTATES, as shown on the aforesaid plat, shall be and the same are hereby restricted as to their use and otherwise in the manner hereinafter set forth as amended,

Section 3: section (c): 1 story residence (ranch style home) at least 2400 square feet main level

Section 3: (adding) section (d): Reverse 1 ½ story floor plan with at least 2400 square feet total main level and 800 finished lower level

Section 5: (adding) Solar panels must be in-roof style of construction and must not be visible from the road that faces the front of residence.

Section 8: (adding) section (f): Once residence construction has commenced, lot owners have twenty-one months to complete the project.

Section 10: (replacing) section (B-VI): Dog runs and the use of chain link fences are no longer acceptable.

Section 11: (replacing) section (c): No vehicle shall be parked, left, or stored in the street for more than a 24 hour time period (Operable, well maintained vehicles have no time period restrictions in driveway). No inoperable vehicle shall be permitted on the premises for more than a 24 hour time period. No trailer, bus, van, camper, or similar apparatus shall be parked, left, or stored in the driveway or street for more than a 72 hour time period, and shall be removed from the premises after said time (not moved or repositioned to different location on premises).

Section 11: (replacing) section (j): Fuel storage tank may be maintained if buried and non-visible from road (only propane and / natural gas containers)

Section 15: (adding) section (b): Builder must provide dumpster or trash truck for excess building materials and must also meet the county requirements for clean streets, silt fences, etc. Builder must also maintain a portable restroom for crew during duration of construction. Reasonable building hours for projects is 7:00am – 7:00pm.

Section 16: (replacing) Owners shall submit all landscaping plans, at the same time as residence floor plan, for committee approval. Owner shall install a lawn irrigation system at least 50 feet all around residence and 20 feet on either side of the driveway prior to owner's occupancy. Owner can install grass sod or seed, but must have groundcover on any seeded portion. Owner must have sod / seed down by the time of occupancy, dependent of weather, and fully established turf within one year. Committee approval is required for removal of healthy trees 4 inches in caliper or greater. Dead trees or bushes may be removed at owner's discretion.

#### CAPTIONS AND HEADINGS

Captions given to various Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof.

#### SEVERABILITY,

Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions, or any part thereof, but they shall remain in full force and effect.

IN WITNESS WHEREOF, J&A Lending, LLC. has caused this Amendment to the Declaration of Restrictions to be executed this day.

J&A Lending, L.L.C.

By: \_\_\_\_\_

Managing Member

STATE OF KANSAS        )  
                              ) ss.  
COUNTY OF JOHNSON    )

Before me, this \_\_\_ day of January, 2017, the undersigned, a Notary Public in and for said county and state, personally appeared Jeffrey Myers, known to me to be the person who executed the foregoing instrument in writing and being first duly sworn, acknowledged the execution of the same as a voluntary act for the uses and purposes therein set forth with full knowledge of its content and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

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\_\_\_\_\_  
\_\_\_\_\_  
Notary Public

My Commission Expires:

This instrument filed by  
Security Land Title Company

## MULBERRY HILL ESTATES

## DECLARATION OF COVENANTS, CONDITIONS &amp; RESTRICTIONS

THIS DECLARATION, made as of the Nov. 9<sup>th</sup>, 2004 by GARNET HILL,  
L.L.C.

WITNESSETH;

WHEREAS, Garnet Hill, L.L.C. (hereinafter referred to as "Developer"), have heretofore executed a plat of the Lots inclusive of the first plat of MULBERRY HILL ESTATES, a subdivision in Johnson County, Kansas, including lots 1 - 22, which plat was recorded on the 20<sup>th</sup> day of Apr. 1, 2004, in Book 200404 at Page 009525 in the office of the Register of Deeds for Johnson County, Kansas and;

WHEREAS, said plat dedicates to the public all of the Streets and roads shown on said plat for use by the public; and

WHEREAS, the Developer is the Owner of all the real estate shown on the aforesaid plat of MULBERRY HILL ESTATES and now desires to place certain restrictions on the numbered Lots so owned and shown on said plat to preserve and enhance the values, desirability and attractiveness of the development and improvements constructed thereon and to keep the use consistent with the intent of the Developer, all of which restrictions shall be for the use and benefit of the present Owner thereof and its future grantees, successors and assigns;

NOW, THEREFORE, in consideration of the premises, the Developer for itself and for its successors and assigns, and for its and their future grantees, hereby agrees and declares that all of the Lots, tracts and land of MULBERRY HILL ESTATES, as shown on the aforesaid plat, shall be and the same are hereby restricted as to their use and otherwise in the manner hereinafter set forth.

SECTION IDEFINITION OF TERMS USED,

For purposes of this Declaration, the following definitions shall apply:

- (a) The term "Street" shall mean any street, road, circle, boulevard, drive, avenue or terrace of whatever name which is shown on said plat of MULBERRY HILL ESTATES.
- (b) The term "Developer" shall mean Garnet Hill, L.L.C., its successors and assigns.

- (c) The term "Lot" shall mean either any numbered lot as platted, and upon which a Residence is being, or will be erected, in accordance with the restrictions hereinafter set forth, or as set forth in the individual deeds from the Developer or from its successors and assigns.
- (d) The term "Owner" shall mean the record owner in fee simple of any Lot, including the Developer, and for purposes of all obligations of the Owner hereunder, shall include all family members and tenants of such Owner and all of their guests and invitees.
- (e) The term "District" shall mean all of the above-described Lots in MULBERRY HILL ESTATES, all Monument Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.
- (f) The term "Monument Areas" shall mean (i) Street right-of-ways, (ii) Streets and Street islands, (iii) gateways, entrances, monuments, lighting and other similar ornamental areas and related utilities, sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any Street or along any Street, and any easements related thereto, including, but not limited to, those areas identified on the recorded plat of the District as "Landscape Easements (L/E)" and "Ingress-Egress Easements" (iv) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment thereof is intended for all of the Owners within the District, whether or not any "Monument Area" is located on any Lot.
- (g) The word "Residence" shall mean a single-family dwelling occupied by an Owner.
- (h) The word "Footprint" shall mean all that area within the perimeter measurement of a structure at ground level only.
- (i) The word "Screen" or "Screened" shall mean to partition in a manner such that one cannot see through the partition.
- (j) The term "Exterior Structure" shall mean any structure erected or maintained on a Lot other than the Residence, or any Carriage House, as such is defined in Section 9 hereof, associated therewith, and shall include, without limitation, any

deck, gazebo, greenhouse, barn, doghouse, dog-run or other animal shelter, outbuilding, fence, privacy Screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, basketball goal, basketball court, swing set, trampoline, sand box, playhouse, tree house or other recreational or play structure.

(k) The term "Homes Association" shall mean the Kansas not-for-profit corporation if formed by the Developer for the purpose of serving as the homes association for the District.

## SECTION 2

### USE OF LAND, SUBDIVIDING,

(a) None of the Lots hereby restricted may be improved, used or occupied for other than single-family, private residential purposes, and no duplex, flat or apartment house, although intended for Residential purposes, may be erected thereon. No residential building which has previously been at another location shall be moved onto any Lot. No "earth" homes shall be permitted. No trailer or outbuilding erected on any Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any Residence of a temporary character be erected on any of such Lots or used for human habitation; provided, however, that nothing herein shall prevent the Developer or others (including, without limitation, builders and real estate sales agencies) authorized by the Developer from erecting temporary buildings and using such temporary buildings or any Residence for model, office, sales or storage purposes during the development of the District.

(b) No Lot shall be divided or subdivided except by the Developer. If an Owner owns contiguous Lots, they may be combined into a single homesite but only upon obtaining the prior written approval of the Architectural Committee (each such approved combination of Lots being called a "Combined Lot"); provided, however, (i) a Combined Lot shall be deemed only one Lot; (ii) the Owner of each Combined Lot shall be entitled to the rights of only one Community Association Membership in respect of all such Lots so combined. In addition, once two or more Lots have been so combined to form a Combined Lot they shall remain as such,

and the Owner thereof shall not be permitted at any time to rent, sell or otherwise transfer or convey less than all of such Combined Lot.

### SECTION 3 SIZE OF RESIDENCES,

Minimum square footage requirements for Residences, not including any garage or basement area, to be built on a Lot shall be:

- A. 2 story Residence – 3,200 square feet with at least 1,800 square feet of living area on the first floor with the master bedroom on the second floor.
- B. 1 ½ story Residence – 3,000 square feet with at least 1,800 square feet of living area on the first floor with the master bedroom on the first floor.
- C. 1 story Residence (Ranch type home) at least 2,600 square feet.

Measurement of the living area shall be calculated exclusive of any porches, garages, attics and basement area. Each Residence must have a private, attached, fully enclosed, side-entry garage for not less than three vehicles. The interior walls of all garages must be finished with quality materials. Garages shall have the same architectural treatment and be constructed of the same materials as the house proper. Basement garages are prohibited as the sole automobile garage. If basement garages are constructed, there shall be no hard surface, only grass turf or landscaping adjoining the basement garage.

### SECTION 4 SETBACK OF RESIDENCES

No part of any Residence, except as hereinafter provided, may be erected or maintained on any of the Lots nearer to the Street than is the building line on said plat of MULBERRY HILL ESTATES on the Lot or Lots on which such Residence is erected. Reference is made herein to the building line for the purpose of determining the locations of any Residence with reference to the adjoining Street or Streets and in case of relocation of any of said Streets, changes may be made by the Developer in any of said building lines; provided, that such building lines shall in no case be established nearer to the new location of any of said Streets than are the building lines shown on said plat with reference to the present location of said Streets; and

provided further, that the Developer shall have and does hereby reserve the same privilege of changing the location of any such new building lines so established as it has in the case of those shown on said plat; and provided further, that the widening of any of said Streets shall not, for the purpose of these restrictions, be deemed to be a relocation of such Street. The side and rear building setback lines of every Lot is a minimum of twenty-five (25) feet.

## SECTION 5

### BUILDING MATERIAL REQUIREMENTS.

No Residence may be of a prefabricated, modular construction - commonly known as a modular home. Exterior walls of all Residences and all appurtenances thereto, and all barns, greenhouses, carriage houses and outbuildings, shall be solid siding of the following material: stucco, brick, stone, natural wood shingles or lap siding (NOT any 4x8 sheet siding of wood or composition/manufactured material), or any combination thereof, or such other natural materials as may be deemed by the Architectural Committee in writing to be compatible therewith. Vinyl exterior lap siding may be permitted in the discretion of the Architectural Committee on the sides and rear of the Residence after submission, review and written approval by the Architectural Committee of the actual product requested. All windows shall be constructed of insulated glass, wood, metal clad, vinyl clad or any combination thereof. All exterior doors shall be functional. All roofs shall be covered with wood, slate, tile, concrete shingles, dimensional composition or asphalt shingles (a minimum of a 40 year warranty with distinct reveal edge texture) except as otherwise expressly permitted by the Architectural Committee in writing. Any building products that may come into general usage for dwelling construction of comparable quality and style in the area after the date hereof may be acceptable if approved in writing by the Architectural Committee. All wood exteriors, except roofs, shall be covered with a workmanlike finish of two coats of high quality primer and paint, stain or natural wood treatment. No building shall be permitted to stand with its exterior in an unfinished condition for longer than five months after commencement of construction. All exterior basement foundations and walls which are exposed above final grade shall be covered with siding compatible with the structure or, at the Architectural Committee's discretion, painted the same color as the Residence.

## SECTION 6

### FREE SPACE REQUIRED

The main body of any Residence, including attached garage, attached greenhouses, ells and porches, enclosed or unenclosed, covered or uncovered, on any of the Lots, hereby restricted, shall, (a) not occupy more than eighty percent (80%) of the width of the Lot on which it is erected, measured in each case from the further from the street of (i) the building line as shown on the aforesaid plat or as established by the Developer in the conveyance of such Lot, or (ii) the front building line of the Residence, and (b) any such Residence, shall be set back a distance not less than Twenty-Five (25) feet from each of the side and/or rear Lot lines of the Lot on which such Residence is erected. All enclosed buildings, garages, out-buildings and improvements, but not including fences, shall be not less than Twenty-Five (25) feet from the Lot line. No enclosed buildings, garages, out-buildings, fences or improvements are allowed within the boundaries of any landscape easements as such are shown on the plat of the District. All Exterior Structures, including fences, shall be located behind the front building line of the Residence. No Exterior Structures, except fences, shall be located within any building line setback, drainage area or drainage easements, as such are shown on the Plat of the District.

## SECTION 7

### PRIOR APPROVAL OF PLOT AND BUILDING PLAN

(a) Notwithstanding compliance with the provisions of Section 3, Section 4 and Section 5 above, no Residence or Exterior Structure may be erected upon or moved onto any Lot unless and until 2 sets of building plans, materials & specifications, site plans, landscape plans, front and rear elevations, Lot grading plans, and exterior color scheme have been submitted to and approved in writing by the Architectural Committee. No change or alteration to the above plans shall be made until such change or alteration has been submitted to and approved in writing by the Architectural Committee. One set of plans shall be returned to Owner signed and dated. All building plans and plot plans shall be designed to minimize the removal of

existing trees, shall designate those trees to be removed and shall protect those trees that are to remain.

(b) Following the completion of construction of any Residence or Exterior Structure, no exterior colors or general landscaping thereof shall be changed and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by the Architectural Committee. All replacements of all or any portions of a structure; because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be the same material as the original structure unless the changes have been submitted to and approved in writing by the Architectural Committee.

(c) No changes in the final grading of any Lot shall be made without the written approval of the Architectural Committee. No additional ponds or lakes can be constructed within the District by an Owner without express written consent of the Developer.

## SECTION 8 CONSTRUCTION PERIOD REQUIREMENTS

During the period that construction is being undertaken on a Lot, the following minimum measures will be required to minimize disturbance to adjacent sites and/or the District:

(a) Temporary lighting shall follow standards for permanent lighting as described in this Declaration.

(b) No dumping of construction materials, waste or trash shall occur in the District.

(c) No cleaning of cement trucks shall occur within the District.

(d) Each Lot shall be maintained in a clean and orderly manner during Construction. Owner, for itself and its general contractors and subcontractors, agrees not to store, dump or place, temporarily or otherwise, on any part of the District or adjacent areas (other than the Lot), any soil, rock, material or other debris resulting from or used in connection with the construction of the Residence or other improvements on the Lot.

(e) Owner, for itself and its general contractors and subcontractors, agrees to abide by all provisions and requirements of *Kansas Water Pollution Control General Permit for Stormwater Runoff from Construction Activities*.

(f) Owner shall properly maintain the appearance of the Lot, including mowing, seeding and spraying all grass and weeds at the same intervals and in the same manner as an occupant of a Residence on a Lot would. The ongoing condition of the Lot should maintain or enhance its natural beauty and be as attractive as possible. In addition, Owner must remove any mud or debris that appear on the adjacent street(s) as a result (partially or otherwise) of Owner's activities.

(g) At the time of construction of the Residence, Owner shall grade the Lot in accordance with the master grading plan approved by the County, any related grading plan furnished by Developer for the District and any specific site grading plan for the Lot approved by Developer. Owner shall be responsible for establishing a specific site grading plan for the Lot (and its relationship to nearby lots) in accordance with such master and district grading plans and coordinating with the other nearby lots (including, without limitation, the matching of all proper grades at lot lines), regardless of when houses are, were or will be constructed on those lots.

## SECTION 9 CARRIAGE HQUSE

"Carriage House" shall mean a structure (i) not more than fifty (50) feet distance from the Residence, (ii) constructed in a similar quality and appearance to the Residence, (iii) having a minimum of a two car garage, (iv) having a maximum Footprint of not more than 40% of the Residence footprint and (v) being no taller than the Residence.

## SECTION 10 EXTERIOR STRUCTURE,

(a) No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot except (i) with and pursuant to the advance written approval of the Architectural Committee, and (ii) in compliance with the additional specific restrictions set forth in subsection (b) below; provided, however, that any further approval by the Architectural Committee shall not be required for any Exterior Structure erected by or at the request of the Developer or any Exterior Structure that has been specifically approved by the Developer prior to the issuance of a temporary or permanent certificate of occupancy as part of the residential construction plans

approved by the Developer and has been built in accordance with such approved plans. The total footprint of all Exterior Structures, combined, shall not exceed the footprint of the Residence.

(b)

(i) All residential fences and privacy Screens (other than any installed by the Developer) shall be consistent with the standard designs, heights and materials to be selected by the Developer or the Architectural Committee. No fence on any Lot shall exceed six (6) feet in height. All fences and privacy Screens shall be constructed with the finished side out. Privacy style fencing and privacy Screens shall be limited to an area behind the rear building line of and directly attached and adjacent to the Residence, except for dog runs. Privacy style fencing shall not be permitted as perimeter fencing. No metal (other than wrought iron ornamental), chain link (except as specifically allowed for below), metal farm fencing or similar fence or privacy Screen shall be permitted. The use of chain link fencing is allowed for dog runs, which must be fully screened, and tennis or sport courts. Any new fence to be constructed must (i) attach to, and match the characteristics of, any previously existing fence, or (ii) be not less than six (6) feet from a previously existing fence.

(ii) All basketball goals shall be consistent with the standard designs and materials to be selected by the Architectural Committee. No more than two (2) basketball goals shall be permitted on any Lot. All basketball goals shall be located behind the front building line of the Residence.

(iii) All recreational or play structures (other than basketball goals) shall be located behind the back building line of the Residence.

(iv) No above-ground swimming pools shall be permitted. All pools and hot tubs shall be fenced or otherwise adequately screened. All pools and hot tubs shall be kept clean and maintained in operable condition.

(v) All outside doghouses and other animal shelters shall be located behind the back building line of the Residence.

(vi) The total footprint of all doghouses and dog-runs shall not exceed

Two Hundred (200) square feet per Lot.

(vii) No Exterior Structure that is prohibited under **Section 11** below shall be permitted under this **Section 10**.

## SECTION 11

### BUILDING OR USES OTHER THAN FOR RESIDENTIAL PURPOSES:

#### NOXIOUS ACTIVITIES, MISCELLANEOUS.

(a) Except as otherwise provided in **Section 2** above, no Residence or Exterior Structure shall ever be placed, erected or used for retail business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in the Residence in accordance with the applicable ordinances of Johnson County, Kansas.

(b) No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or Monument Area, nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood. Each Owner shall properly maintain their Lot in a neat, clean and orderly fashion. All Residences and Exterior Structures shall be kept and maintained in good condition and repair at all times.

(c) No vehicle, trailer, bus, van, camper, boat or similar apparatus shall be parked, left or stored in any yard. No vehicle shall be parked, left or stored in any driveway or Street for more than a twenty -four hour period. No trailer, bus, van, camper, boat or similar apparatus shall be parked, left or stored in any driveway or Street for more than a seventy-two-hour period. It is the intent of the parties hereto that all automobiles shall be kept in an enclosed garage, with garage doors closed, whenever possible. Motorized vehicles shall not be operated on any Monument Area, other than in the Street. Motorized vehicles shall not be operated on any landscape easement, as such is shown on the Plat of the District, other than for the purpose of maintaining such landscape easement.

(d) No television, radio, citizens' band, short wave or other antenna, solar panel, clothes line or pole, or other unsightly projection, with the exception of satellite dishes as allowed for below, shall be attached to the exterior of any Residence or erected in any yard. No satellite dish with a diameter greater than Eighteen Inches (18") will be installed or maintained upon any Lot, and must be screened from view from all streets. Should any part or all of the restriction set forth in the preceding sentence be held by a court of competent jurisdiction to be unenforceable because it violates the First Amendment or any other provision of the United States Constitution, the Architectural Committee shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the District and any such regulations shall be binding upon all of the Lots.

(e) No spotlights, floodlights, or other lighting shall be placed or utilized upon any Lot in a manner which unreasonably interferes with the enjoyment of adjoining Lots. Tennis court flood lights are prohibited. Exterior lighting must have approval by the Architectural Committee prior to installation.

(f) Each Owner shall install and erect, at the Owners expense, a mailbox of a design and construction approved by the Architectural Committee. The mailbox shall be designed and made of materials and a style similar and/or complimentary to the Residence. It shall be approximately 4' tall but no greater than 5' tall. Prior written approval of the design of the mailbox, its stand, structure, monument and location of installation must be granted by the Architectural Committee.

(g) No horn, whistle, siren or bell, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Residence or in any yard.

(h) All residential service utilities shall be underground.

(i) In the event of vandalism, fire, windstorm or other damage, no buildings shall be permitted to remain in damaged condition for longer than three months.

(j) No fuel storage tank may be maintained on any of the Lots hereby restricted.

(k) No driveway shall be constructed in a manner as to permit access to a Street across a rear Lot line. Driveways must be constructed of concrete, asphalt, brick or pavers. No Lot will be permitted to have more than two (2) driveway access points to Streets. No driveway access point to the Street shall be permitted within 150 feet of any Street intersection. Culverts underneath driveways must, (i) use reinforced concrete pipe end sections, or (ii) must be faced, on both the inlet and outlet, with headwalls, built of substantial materials such as stone, stucco or brick, which match the characteristics, materials and style of the Residence.

(l) No permanent or temporary sign of any kind shall be displayed to the public view, or from any Lot, except for the following temporary signs ("Permitted Signs": (i) such signs as may be used by Developer in connection with the development and sale of Lots in the District; (ii) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (iii) such signs advertising the Residence as being for sale. In the event of a resale of a vacant lot by an Owner, the offering real estate sign must only display the information of the Developer's brokerage company; or (iv) signs promoting political candidates but only 30 days before and five days after the day of election. Permitted Signs shall not exceed five square feet in total area or be more than three feet in height.

(m) No structure of a temporary character, trailer, tent, shack, garage, barn or other out-building shall be used on any Lot at any time as a Residence, either temporarily or permanently.

(n) No garage will be permitted to be enclosed for living or used for purposes other than storage of automobiles and related customary uses.

(o) The Owner of each Lot upon which landscape easements exist, as such appear and are identified on the Plat of the District, at all times and at the Owner's expense, shall (i) provide adequate erosion control, (ii) properly maintain, repair and replace any fence erected by or for the Developer, (iii) properly maintain all vegetation, including grass, trees, shrubs and ground cover. No fencing or other obstruction may be placed on or over any such landscape easement

by the Owner of any Lot on which such easement exists, and no Owner may remove any fencing erected by or for the Developer from such easements.

- (p) No hunting or discharge of firearms shall be permitted in the District.
- (q) All Lots shall be included in a sewer district, should one be created. Owners shall connect to it and use its services, should a community waste treatment system be provided or sewer's lines extended by Johnson County Wastewater. Owners shall pay the necessary hook up fees, assessments and charges associated with using the waste treatment services.
- (r) No mineral exploration for natural gas, oil or any other kind shall be permitted within the District.

## SECTION 12

### ANIMALS.

No more than two outside (2) dogs, two inside (2) dogs and four (4) cats per Lot are permitted. Dogs are not permitted to leave the Owner's Lot to roam the District without its Owner. The Owner of any animal is responsible for keeping full control of its animals within the District at all times. Developer (and after all Lots in the District have been sold, then the Homes Association) may approve the keeping of other appropriate animals, and their amount, upon written request by Owner.

## SECTION 13

### BURNING OF TRASH AND OTHER WASTE PROHIBITED. CARE OF STREET OBSTRUCTIONS.

No trash or other waste may be burned on any of the Lots hereby restricted. No fence, wall, hedge, shrub or tree planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways will be placed or permitted to remain around any intersection of Street and driveway by the Street property line connecting by way of the line of sight points at twenty five (25) feet from the Street to driveway.

## SECTION 14

### MONUMENT AREAS & LANDSCAPE EASEMENTS

(a) The Developer and its successors, assigns, and grantees, as Owners of Lots in the District, shall have the right of enjoyment in and to all of the Monument Areas, but only for the intended use. Such rights shall be subject to the rights of any Owners, or governmental authority or any utility therein or thereto. Monument Areas shall include a small portion of bermed, landscaped areas on each corner at the entryway and street islands.

(b) The Developer covenants and agrees to convey all of its easement, rights, title and interest in the Monument Areas (other than any recreational facilities, the conveyance of which is addressed in the MULBERRY HILL ESTATES Homes Association Declaration) to the Homes Association, without any cost to the Homes Association, not later than one month after the Developer has sold all, or at the Developer's discretion, substantially all, of the Lots in the District.

(c) Any ownership rights or easements of the Homes Association in any Monument Area and the right of enjoyment of the Owners in the District as to any Monument Area shall be subject to the right of the Developer to convey sewage, water, drainage, maintenance and utility easements over, under, upon and through such Monument Area, as provided in **Section 15** Below.

(d) No Owner shall improve, destroy or otherwise alter any Monument Area without the express written consent of the Association.

(e) Any gates or similar security facilities that may be installed as or in a Monument Area shall be constructed and operated in a manner so as to permit access at all times by emergency vehicles and be subject to approval by Johnson County.

(f) No motorized or terrain vehicle may be operated at any time on any Monument Area covered by these restrictions.

(g) No pollution of any lake or waterway shall be allowed. No boats shall be left overnight on any lake or waterway. No motor or mechanically propelled boat or float shall be allowed on any lake or waterway.

(h) The Developer and the Homes Association shall have the right to make additional rules, regulations and restrictions pertaining to the use of any Monument Area.

SECTION 15  
EASEMENTS FOR PUBLIC UTILITIES, DRAINAGE: LOT MAINTENANCE

(a) The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way shown on the recorded plat of the District or any Monument Area. All utility easements and right-of-way shall inure to the benefit of all utility companies, including, without limitation, the Johnson County Unified Wastewater District, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners in the District and the Homes Association as a cross easement for utility line or service maintenance. The Developer shall have and does hereby reserve for itself, its successors and assigns and the Homes Association and its successors and assigns an easement over and through all unimproved portions of each Lot in the District for the purpose of performing the duties of the Homes Association and maintaining any Monument Area. No water from any roof, downspout, basement or garage drain or surface drainage shall be directed on to another Lot.

(b) Each Owner shall be required to maintain their Lot both prior to home construction and during occupancy of their Residence. The Lot Owners must maintain and finish mow, on a regular, seasonal basis (a minimum of one mowing per week during growing season), all manicured areas. The manicured area shall always include a minimum of fifty (50') feet of Lot frontage from the edge of road but may include the entire Lot. All Lots, including adjacent areas within road right-of-ways, shall be kept mowed by the Owner so as to present a neat appearance at all times. Lot Owners shall finish mow and manicure

their lawn and maintain strict weed control. No burning of grass, fields or any part of the district is allowed.

## SECTION 16 LANDSCAPE & TREES

Owner shall invest at least 8% of the cost of the Residence on exterior landscaping around the Residence and install grass sod and a lawn irrigation system at least 50 feet all around the Residence and 20 feet on either side of the driveway prior to Owner's occupancy. The lawn irrigation system is installed for the intent and purpose of watering the lawn in growing season to keep it healthy and green. Written permission is required from the Architectural Committee before removing any trees two inches (2") in caliper or greater. Appropriate construction procedures shall be followed to protect and preserve trees, shrubs and other native landscaping which may exist on the construction site or on adjacent or nearby sites. Owner shall promptly replace any tree on the Lot that is damaged or destroyed during the construction process.

## SECTION 17 ARCHITECTURAL COMMITTEE,

(a) Membership: The Developer shall select, as its sole discretion, the members of the Architectural Committee. The Developer may elect or call on the advice of such professionals as an architect, landscape architect, home builder or engineer. Said Architectural Committee's mailing address shall be: 10823 W. 164th St., Olathe, KS 66062 or assigns. A majority of the Architectural Committee may designate a representative to act for them. The Developer shall not be entitled to any compensation for services performed pursuant to this Section. At such time as there shall have been built single family Residences on one-hundred percent (100%) of the lots hereby restricted, the Developer may resign and said Homes Association would appoint its successors.

(b) Procedure: The committee shall have thirty (30) days after receipt of the last to be received of the plans and specifications required to be approved by it, in accordance with Section 7 above, to give its approval or disapproval. The committee's approval or disapproval

as required in this section shall be in writing by the (i) Developer prior to its resignation from the Architectural Committee, or (ii) the designated representative of the Architectural Committee after the resignation of the Developer from the Architectural Committee. In the event that the Architectural Committee, or the designated representative of the Architectural Committee, fail to approve or disapprove within thirty (30) days after plans and specifications have been submitted to them or him or, in any event, if no suit to enjoin the construction has been commenced prior to the completion hereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

(c) Non-Liability of Committee: By its approval of plans and specifications, the Architectural Committee shall not be deemed to have approved the same for engineering design, or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Homes Association, any of its members, its officers, its Board nor the Developer assumes any liability or responsibility therefor and shall be held harmless for any defect in any structure constructed from such plans and specifications. Neither the Architectural Committee, any members thereof, the Homes Association, its officers, its Board nor the Developer shall be liable and held harmless to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (iii) the development, or manner of development, of any property within the Community. Approval of plans and specifications by the Architectural Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances and regulations including, but not limited to, zoning ordinances and building codes.

## SECTION 18

### COVENANTS RUNNING WITH LAND, ENFORCEMENT.

The agreements, restrictions and reservations herein set forth are and shall be, covenants running with the land into whomsoever hands any of the property in the District shall come. The Developer, its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions and reservations; provided, however, that no person shall be obligated to enforce any such agreements, restrictions and reservations. No agreement, restriction or reservation herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during its or his seizing of title to such Lots; provided, however, that the immediate grantee from the builder of the Residence on a Lot shall be personally responsible for breaches committed during such builder's ownership of such Lot. The Developer, its successors and assigns, and all other Owners of any of the Lots and the Homes Association, shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions and reservations herein set forth, in addition to any action at law for damages. The failure to enforce any of the agreements, restrictions or reservations herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

## SECTION 19

### DURATION OF RESTRICTIONS, AMENDMENTS,

Each of the restrictions and covenants herein set forth shall continue and be binding upon the Developer and upon its successors, assigns and grantees, until January 1, 2088, and shall automatically be continued thereafter for successive periods of twenty (20) years each; provided, however, that the Owners of the fee simple title to more than Ninety percent (90%) of the Lots hereby specifically restricted and enumerated in this instrument may release all of the land which is hereby restricted from any one or more of the restrictions herein set forth on January 1, 2088, or at the end of any successive twenty (20) year period thereafter, by executing and acknowledging an appropriate agreement or agreements, in writing for such purpose, at least one year prior to the original expiration date or to a subsequent expiration date, whichever is

applicable, and filing the same for record in the office of the Register of Deeds for Johnson County, Kansas.

The provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time, by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by the Developer if it is the only Owner, or by the Developer and a majority of the Owners of the lots, excluding those owned by the Developer. For the purposes of this paragraph, the term Developer shall include the Developer and its successors in interest by merger, consolidation, reorganization.

SECTION 20  
EXTENSION OF DISTRICT,

The Developer shall have, and expressly reserves the right, from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent lands as it may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof, provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in good faith.

SECTION 21  
ASSIGNMENT OF DEVELOPER'S RIGHTS

The Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey, transfer and set over to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for all purposes be the Developer hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors

and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities hereunder.

## SECTION 22

### CAPTIONS AND HEADINGS

Captions given to various Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof.

## SECTION 23

### SEVERABILITY,

Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions, or any part thereof, but they shall remain in full force and effect.

IN WITNESS WHEREOF, Garnet Hill, L.L.C. has caused this Declaration of Restrictions to be executed this day .

(Continued on next page.)

LOTS 1-22 INCLUSIVE, MULBERRY HILL ESTATES, FIRST PLAT, A SUBDIVISION IN  
JOHNSON COUNTY, KANSAS.

20041112-0004959 11/12/2004  
P 23 of 23 10 22:04 AM  
Rebecca L Davis T20040107004  
Johnson Co ROD B 200411 P 004959



By: 

Managing Member

STATE OF KANSAS

Ss.

COUNTY OF JOHNSON

BE IT REMEMBERED, that on this 9<sup>th</sup> day of November, 2003, <sup>4</sup>  
before me, the undersigned, a Notary Public in and for the County and State aforesaid, came  
Daniel W. Quinn, Managing Member of Garnet Hill, L.L.C. is personally  
known to me to be the same person who executed the foregoing instrument on behalf of such  
company, and such person duly acknowledged the execution of the same to be the act and  
deed of such company.

WHEREOF, I have set my hand and affixed my official seal the day of written.

  
Notary Public

Print or Type Name:

CHRISTINE A. ALGEO  
NOTARY PUBLIC  
STATE OF KANSAS  
My Appt. Exp. 2/20/05