

THE FARM AT GARNET HILL
HOMES ASSOCIATION DECLARATION

THIS DECLARATION, made this 12th day of November, 2014, by J&A Real Estate, L.L.C., hereinafter referred to as "Declarant" or "Developer".

WHEREAS, Declarant is the owner and or developer of the Lots of THE FARM AT GARNET HILL, a subdivision of land in the City of Overland Park, Johnson County, KS, lots numbered 1 through 46 in plats one, two, three, four, five & six; and

WHEREAS, Declarant now desires to create and maintain a residential neighborhood possessing features of more than ordinary value.

NOW, THEREFORE, to provide the means necessary to achieve such a purpose, the developer does now hereby subject the above described lots as shown on the aforesaid plats, to the covenants, charges and assessments set forth, contained and provided for in this Declaration.

Definition of Terms Used.

1. The word "Street" shall mean any road, street, boulevard, court, circle, drive, avenue or a terrace of whatever name, which is shown on, the plat of THE FARM AT GARNET HILL
2. The term "Properties" as used in this Declaration shall mean and refer to the real property described above, and such additions thereto as may hereinafter be brought within the jurisdiction of the association.
3. The term "Association" shall mean and refer to the homes association authorized and to be created hereunder, its successors and assigns, to be known as THE FARM AT GARNET HILL
4. 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.
5. The term "Lot" shall mean either any numbered lot as platted, or any tract or tracts of land as conveyed, which may consist of one or more adjacent Lots or part of one or more adjacent numbered Lots 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, and refer to any plot of land shown upon any recorded subdivision, plat, survey or map of the property.
6. The word "Common Area" 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, lakes, green buffers, walkways and pathways, soccer fields, 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.

Section 1 - Membership and Voting Rights.

The Owners of all of the Lots together with the Owners of any other land which may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided for, shall be members of an Association, which is hereby created and established, to be known as the "Association". The Association shall be entitled to be incorporated under the laws of the State of Kansas, as a corporation not organized for profit. Membership in the Association shall be limited to the owners of land within the boundaries of the subdivision as it exists from time to time. The Association shall be the sole judge of the qualifications of its members and of the right to participate in its meetings and proceedings. The Association may adopt bylaws and elect such officers and board of directors as may be specified in the bylaws.

Section 2 - Land Entitled to Benefits.

No land shall be entitled to any of the benefits, improvements or services provided by this Association unless the Owner or Owners thereof shall have subjected their land to the terms of this Declaration and to the assessments herein provided for.

Section 3 - Other Lands - How they May be Added.

Developer may from time to time add to the subdivision such land as is now or hereafter owned or approved for addition by said Developer, provided that land so added to the subdivision shall at that time be bound by all of the terms of this Declaration and any future modifications thereof. The Association may unite or combine with any other association similarly organized, operating on a similar basis, and having jurisdiction of land lying within Johnson County, Kansas.

Section 4 - Voting Rights.

The Association shall have two classes of voting membership:

A. Class A members shall be persons as defined in Section 1 with the exception of Developer but including the Additional Owners. Class A members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for each Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

B. The Class B member shall be the Developer, its successors or assigns. The Class B

membership shall be entitled to five votes for each Lot in which it holds the interest required for membership by Section 1, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (1) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
- (2) On December 31, 2015.

Section 5 – Maintenance of the Common Areas

A. The Association, Developer and DR shall maintain the Common Areas. The Developer may, at its discretion, convey easement rights to the Common Areas to the Association. At the discretion of the Developer, additional Common Areas may be conveyed to the Association, at which time the Association shall accept title and/or easements thereto and cause the evidence thereof to be properly recorded in the Office of Recorder of Deeds, Johnson County, Kansas. Daniel Quinn, the Developer Representative and or their associates shall be herein referred to as “DR”. The Association will also maintain amenities located within the county right-of way and which are considered as Common Areas for purposes of this Association Agreement.

B. The Association shall have the following additional rights pertaining to the Common Areas:

- (1) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not too exceed thirty (30) days for any infraction of the published rules and regulations;
- (2) The rights of the Association to charge reasonable, service charges, utility charges and other fees for the use of the Common Areas;
- (3) The right of the Developer of the Association to contract with utility companies or utility entities to provide necessary utility services including without limitation, the installation, maintenance, repair and replacement thereof;
- (4) The right of the Developer or of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes.
- (5) The right of the Development or the Association to grant and release easements and rights-of-way through, over and across the Common Areas for the installation, maintenance and inspection of roads, streets, alleys and lines for public water, sewer, drainage, gas, fuel, oil, or other utilities; and
- (6) The right of the Association to establish reasonable rules and regulations,

from time to time, concerning access to as well as the use and enjoyment of Common Areas by the member.

Section 6 - Powers and Duties of the Association.

The Association shall have the following powers and duties, which it may exercise and perform whenever, in its discretion, it may deem them necessary or desirable, to wit:

A. To enforce, either in its own name or in the name of any Owner within the subdivision, any and all restrictions which have been or hereafter may be imposed upon by the Association, Developer and DR, any of the land in the subdivision, either as originally placed thereon or as modified subsequently. This right of enforcement shall not serve to prevent such changes, releases or modifications or restrictions or reservations being made by the parties having the right so to do under the terms of the deeds, declarations, contracts or plats in which such restrictions and reservations are set forth; nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for. Nothing herein contained shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing in his own name any such restrictions.

B. To manage and control as Trustee for its members all public improvements upon and to the land in the subdivision, or improvements in Common Areas, provided that such management and control of said improvements shall at all time be subject to that exercised by any City, Township, County and State in which land within the subdivision is located.

C. To care for, spray, trim, protect and replant trees on all streets and in other public places or Common Areas in the subdivision; to care for, protect and replant shrubbery, re-sow grass, and replace sod in streets set aside for general use of Owners in the district, or to which such Owners have access and the use thereof, or on landscaped easements along roadway frontage.

D. To mow, care for, maintain and remove rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgement of the officers of the Association to keep any vacant and unimproved property in the subdivision neat in appearance and in good order.

E. To provide for maintenance of any pedestrian ways, gateways, entrances, fountains, gardens, lighting, water sprinkling systems, landscaped areas within Monument Area right-of ways and platted landscape easements, fences and ornamental features now existing or which may hereafter be erected or created in said subdivision in any street or park or on any land set aside for the general use of Owners in the subdivision.

F. To provide such lights as the Association may deem advisable on streets, pedestrian ways, entrances, Common Areas or other features in other public places or semipublic places.

G. To exercise control over such easements as it may require from time to time.

H. To acquire and own title to such real estate as may be reasonably necessary in order to carry out the purpose of the Association and promote the health, safety, welfare and recreation of Owners in the subdivision; to pay taxes on real estate and facilities owned by it; and to pay such taxes as may be assessed against land in public or semi-public places within the subdivision.

I. To levy and collect the assessments which are provided for in this Declaration.

J. To establish reasonable rules and regulations regarding exterior maintenance for residences within the subdivision

K. To acquire, provide, and maintain such policy or policies of insurance as may be reasonable, necessary or desirable by the Board of Directors for the protection of the Association or the protection and indemnity of the Association and its Members with reference to commons areas. In this connection, the Association may maintain, to the extent available and affordable, if necessary, - the following policies of insurance:

(i) casualty and property insurance in an amount equal to the full replacement value of improvements on the Common Areas, including real and personal property, with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, and if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or the equivalent, insuring against any loss, risk or damage by fire, earthquake or other hazards and casualties covered by standard extended coverage endorsement insurance including sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, hail damage and water damage, as well as any other risks as may be customarily and ordinarily covered with respect to Common Areas owned by homes associations;

(ii) comprehensive public liability insurance coverage insuring against any and all risks with regards to the Common Areas and improvements thereon insuring the Association with such limits of not less than \$1,000,000 covering all claims for multiple or single occurrences, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles and vehicles, liability for property of others, and, if applicable, host liquor liability and such other risks as shall customarily be covered with respect to Common Areas owned and/or maintained by homes associations. Such liability policies shall insure and indemnify the Association and all Owners with regards to such risks relative to the Common Areas; and

(iii) public liability insurance coverage to cover all reasonably insurable risks associated with the maintenance of the amenities and the covenants addressed herein, and which shall sufficiently indemnify the developer in conjunction with any claim relating to the aforesaid amenities.

L. To dedicate and transfer all or any part of the Common Area to any public or private agency, authority or governmental agency or utility for such purposes and subject to such conditions as may be established by the Developer.

M. To create, grant and convey easements upon, across, over, through and under the Common Areas for ingress, egress, installation, replacement, repairing and maintaining all utilities or other such facilities including, but not limited to, water, sewers, natural gas, telephones, electricity, television cable systems and the like.

N. To establish and publish rules and regulations to regulate and control the Owner's use and enjoyment of the Common Areas as well as such other activities as affect the Members' quiet and peaceful residency of the Lots with the District.

O. To establish and maintain an architectural control committee, said committee to initially function at the discretion of the developer, to assist the developer in the approval of building plans, fence plans, out building plans, and other plans as may be required by the Declaration of Restrictions for THE FARM AT GARNET HILL At such time as the developer agrees in writing, then the architectural control committee shall assume full responsibility for architectural control.

Section 7 - Method of Providing General Funds.

A. For the purpose of providing a general fund to enable the Association to exercise the powers, maintain the improvements and render the services herein provided for all properties if any, within the boundaries of the subdivision as now or hereafter constituted may be subject to an annual assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the respective Owners of the assessable land subject thereto as soon as any improved property constructed upon the lots herein or hereafter included in the Association are occupied. The Association may from year to year fix and determine the total amount required in its general fund and may levy and collect an initial annual assessment not exceeding \$500.00 per Lot for the first year. The annual HOA dues shall begin at an amount of \$650 per year. All building sites, consisting of either platted or unplatted land, which are now or may hereafter become a part of the subdivision as herein provided for, shall be at least of such size as will under the restrictions of record, if any there be permit the erection of a residence thereon except for any dedicated common-areas. For the purpose of levying this assessment, the Association shall be the sole judge as to what may from time to time constitute a building site under the provisions of this paragraph as soon as any improved property constructed upon the lots herein or hereafter included in the Association are occupied by residents therein. The annual assessment is for the purpose of, including, but not limited to, the maintenance of the Common Areas and associated utility expenses year to year.

B. The annual assessment upon each Lot or building site as aforesaid may be increased by an amount not to exceed 10% above the initial assessment, referenced above in paragraph 7.A., and not to exceed a 10% increase of that incrementally increased initial assessment amount for each

subsequent year, which the Association may levy and collect from year to year. Any such increase shall be approved, at a meeting of the members specifically called for that purpose and held prior to the date on which the assessment is levied for the year for which such increase is proposed by a majority of the members present at such meeting. Whenever the Association may deem it advisable to submit to the members a proposal for increasing the amount of the annual assessment for a particular year, it shall notify the members of the Association of the time and place at which the meeting is to be held and the fact that an increase in the amount of the annual assessment is to be voted upon at such meeting.

C. The first assessment thereafter shall be due and payable upon January 1st. Thereafter, the annual assessment for ensuing calendar years shall be fixed and levied on or before January 1st of that calendar year and shall be due and payable on February 1st of the calendar year for which the assessment pertains. It will be the duty of the Association to notify all Owners of assessable Lots on or before that date, giving the amount of the assessment on each Lot owned by them and the date when such assessment is due. Failure of the Association to levy the assessment prior to said time shall not invalidate any later assessment made for that particular year nor shall failure to levy an assessment for any one year affect the right of the Association to do so for any subsequent year. When the assessment is made subsequent to January 1 of any year it shall become due and payable not later than thirty (30) days from the date of levying the assessment. Prior to the first assessment hereinabove provided for, if the trustee shall deem it necessary for the purpose of carrying out the terms of this Declaration, it shall have the right to make a partial assessment within the limits herein provided for.

D. An emailed, written or printed notice deposited in the United States Post Office, with postage thereon prepaid, and addressed to the respective Owners at the last address listed with the Association shall be deemed to be sufficient and proper notice for these purposes or for any other purpose of this Declaration where notices are required.

Section 8 - Lien on Real Estate.

A. The assessment shall become a lien on the real estate against which it is levied as soon as it is due and payable as above set forth, provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage which may hereafter be placed on said real estate securing payment of a mortgage loan. In the event of failure of Owner to pay an assessment on or before the first day of February following the levy, such assessment shall bear interest at the rate of ten (10) per cent per annum.

B. Within thirty (30) days from the date of levying the assessment for the fiscal year during which and for which the assessment is levied, the assessment shall become delinquent and payment of both principal and interest, together with the copies of collection thereof, may be enforced as a lien on said real estate in proceedings in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suits to enforce such liens before expiration thereof. The Association may at its discretion file certificates of nonpayment of assessments in the office of the Register of Deeds whenever any such

assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the Owner or Owners of the property described therein a fee equal to the then current fee charged for the filing of documents and certificates relative to the nonpayment of assessments or the release of the same, which fee is hereby declared to be a lien upon the real estate described in said certificate, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage. Such fee shall be collectible in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

C. Such liens shall continue for a period of five (5) years from the date of delinquency and no longer, unless within such time suit shall have been instituted for collection of the assessment, in which case the lien shall continue until termination of the suit and until sale of the property under execution of the judgment establishing same.

Section 9 - Expenditures Limited to Assessments for Current Year

The Association shall at no time expend or agree to expend more money within any one fiscal year than the total amount of the assessments which are properly and lawfully levied for that particular year, plus any surplus which it may have on hand from previous assessments or any reserve accounts established and funded for specific purposes; nor shall said Association enter into any contract binding the assessment of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contracts for utilities; it being the intention that the assessment for each year shall be applied as far as practicable toward payment of obligations of that year, and that the Association shall have no power to make a contract affecting the assessment of any future or subsequent year except for utilities.

Section 10 - Association to Notify Members of Address.

The Association shall notify all Owners of land in the subdivision as it may exist from time to time, of the addresses of such Owners as listed with said Association of the official address of said Association, the place, time and purposes of the regular and special meetings of the Association, and the place where payments shall be made and other business in connection with said Association may be transacted, and in the case of any change of such address the Association shall notify all the Owners of the land in the subdivision, insofar as their addresses are listed with the Association, of the new address.

Section 11 - Temporary Trustee.

Prior to actual organization or incorporation of the Association contemplated by the terms of this Declaration, the Developer as Temporary Trustee for the Association shall have the right at its option to perform the duties, assume the obligations, levy and collect the assessments, and otherwise exercise the powers herein given to the Developer, in the same way and manner as though all of such powers and duties were herein given directly to Declarant. The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided

for without the written consent of Declarant., its successors or assigns, and its relinquishment of its rights as temporary trustee.

Section 12 - To Observe All Laws - Conflicts.

Said Association shall at all times observe all State, County, City and other laws, and if at any time any provisions of this Declaration shall be found to be in conflict therewith then such parts of this Declaration shall be deemed to be null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations and provide such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration, subject, however, to the limitations on its rights to contract as herein stipulated. The terms of this document shall survive in perpetuity.

Section 13 - Amendment.

By written consent of the Owners of two-thirds of the Lots within the district as then constituted, evidenced by a Declaration duly executed and acknowledged by such Owners and recorded in the office of the Register of Deeds of Johnson County, Kansas, this instrument may be modified and amended.

Section 14 - Covenants Running with the Land.

All of the provisions of this Declaration shall be deemed to be covenants running with the land, and shall be binding upon Developer, and upon its successors, assigns and grantees.

IN WITNESS WHEREOF Developer has caused this instrument to be executed by its authorized agent, the day and year first above written.

J&A REAL ESTATE, L.L.C.

By: Jeff Myers
Jeff Myers, Managing Member

STATE OF KANSAS)

)SS:

COUNTY OF JOHNSON)

On this 12 day of November, 2014, before me appeared Jeff Myers, to me personally known, who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

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

Kari Peteanu
Notary Public

My appointment expires:

1-13-2018

