

MULBERRY RIDGE

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

Diane Developers, Inc., a Missouri corporation, hereinafter referred to as “Developer”, being the owner of all of the hereinafter described property, does hereby declare, create, impose and place upon the following described real estate, to-wit:

All of lots 1 through 59, inclusive, in
Mulberry Ridge, a subdivision in Christian
County, Missouri, according to the recorded
plat thereof,

Hereinafter referred to as “Subdivision”, the following covenants, conditions and Restrictions, any and all of which are hereby termed “Restrictions”. All of said Restrictions are made jointly and severally for the benefit of and shall be binding upon the present title holders to said lands, as well as all other persons, firms, or corporations who may from time to time own, hold, lease, rent or purchase said lands or any part thereof, and their respective heirs, assigns, and successors, said Restrictions to operate as covenants running with said lands, into whomsoever hands they or any part of them shall come. The same are hereby made and declared to be easements and cross-easements in fee and annexed to said lands, and this shall be so even if said Restrictions are omitted from any deed or instrument of conveyance of said lands or any part thereof. Said Restrictions shall be construed independently, and the invalidation of any one or more of the Restrictions by any court of competent jurisdiction in no way shall alter any of the other Restrictions, but they shall remain in full force and effect. The failure promptly to enforce any of the Restrictions shall not

bar their enforcement. Said Restrictions shall be enforceable by injunction, mandamus, or other proceeding at law or in equity against any present or future party or parties infringing, violating, or attempting to infringe or violate, or omitting to abide by said Restrictions, and in addition hereto, any present or future holder or owners, occupant or occupants, of said lands or any part thereof may recover damages for the breach, infringement, or violation of any such Restrictions:

1. Additional lands may become subject to the declaration by supplemental declaration in the following manner:
 - a. The Developer, or the successors and assigns, shall have the right, but not the obligation, to bring additional properties under the terms and conditions of these Restrictions and therefore subject to them, regardless of whether said properties are presently owned by the Developer provided the same are adjacent to or have any common boundary or are on the opposite side of any common street of property already subject to these Restrictions. Any additions will be of similar quality and aesthetically compatible to the then existing properties and otherwise conform generally with the provisions of this declaration. Such proposed additions, if made, shall become subject to all these Restrictions except for such modifications as contained in the supplemental declaration. Under no circumstances shall this declaration or and supplemental declaration bind the Developer, or its successors and assigns, to make the proposed additions or to adhere to any general plan of development
 - b. The additions authorized hereunder shall be made by filing of record a supplemental declaration with respect to such property and the owners, including the Developer, of lots in such additions shall immediately be entitled to all privileges herein provided.
 - c. Such supplemental declarations, if any, may contain such complementary additions and modifications of the covenants, conditions, and Restrictions contained in this declaration as may be necessary to reflect the different character. If any of the added properties as are not inconsistent with the general scheme of this declaration. In no event, however, shall such supplemental declarations

revoke, modify , or add to the covenants, conditions, and Restrictions established by this declaration of any supplemental declaration with respect to the then existing property subject thereto.

2. No lot shall be used except for residential purposes. Not more than one dwelling house shall be constructed on any one lot and each dwelling house shall be designated for and used as the residence of only one family, each dwelling house shall have an attached garage of sufficient size to accommodate two or more standard size automobiles. Carports are not allowed.
3. The original construction of a house upon a lot requires the written approval by the Developer of the plans and specifications for such house and any . . . structures or improvements, including fences, and landscaping. Requests for approval shall be submitted in writing to the Developer. Construction shall be strictly in accordance with the plans and specifications therefore. The Developer may appoint a builder's design committee to assist Developer in approval of original construction. No construction shall commence prior to the Developer's approval.
4. After the original construction is complete on a lot, no changes to the structure(s) on the lot shall be made, other than for necessary maintenance or repairs thereto, nor shall the exterior finish(s)) materials or paint colors be changed until the plans and specifications for said changes shall have been submitted in writing to the Developer and approved in writing as to harmony of external design and location in relation to surrounding structures and topography y the Developer, unless the Developer

shall no longer own any lots in the subdivision or shall abandon in writing its privileges under this paragraph in either of such cases the submittal shall be to and approval secured by the architecturally control committee of the Board of Directors of the Association. Such committee shall be composed of three (3) or more representatives appointed by the Board of Directors of the Association. In the event the Developers or the committee fails to approve or disapprove the plans and specifications within thirty (30) days after they have been properly submitted to it in accordance with reasonable rules and regulations which may be promulgated therefore, approval will not be required and this provision will be deemed to have been fully complied with.

5. no existing house or any other building shall be moved and placed upon any lot without the Developer's approval.
6. no structure of a temporary nature, trailer, basement, tent, shack, garage, barn, or other outbuildings shall be used on the property at any time as a residence, either temporary or permanent. This prohibition shall not apply to temporary facilities and sales offices of the Developer which may house security guards.
7. no noxious or offensive trade or activity shall be carried on in any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighbors.
8. no animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other animals commonly recognized as household pets may be kept, provided

- they are not kept, bred, or maintained for any commercial purpose. All dogs must be changed, fenced in, or kept inside the house with no more than any two on any one lot. Pets must be kept so as not to become a nuisance or endanger the property or persons in subdivision. A finding by the Developer or by an Association Board of Directors that a pet has become a nuisance or endangers others or their property, after notice to the violator and opportunity for hearing, shall be conclusive.
9. No structures shall be maintained for a pen or shelter for animals outside the house on any lot, other than one dog house with exterior dimensions of not more than four feet by five feet, set next to and at the rear of the house.
 10. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, and signs used by the Developer, or its designated representatives, to advertise the property in subdivision during the residential construction, development, and sale.
 11. No basketball goals, fixed or portable, shall be placed or used on any lot, except basketball goals are permitted in the yard in back of a house on a lot.
 12. The owner of each lot shall be responsible for keeping his or her front yard and driveway free of debris and junk, except for trash pickup day, and sidewalks on his or her property free of snow and ice.

13. All firewood shall remain in the back of each home or inside the garage
14. The lawns, yards, shrubbery, and tress of all lots in subdivision shall be maintained in a neat and clean condition with the grass being properly mowed and tress and shrubbery properly trimmed at all times. No lot owner shall allow grass to grow higher than six inches in height. If this provision is violated the Association may cut the grass and the cost of cutting said grass may be levied on the lot as an enforcement and become a lien on said property and the costs shall be also the personal obligation of the lot owner.
15. No garbage or trash shall be placed or kept on any lot within the subdivision except in an enclosed container of a standard type approved by the Association. The Association shall select a company for not less than weekly trash disposal service within the subdivision. All residence of the subdivision shall be required to use this company and no other regular trash disposal service shall be permitted within the subdivision. In no event shall trash containers by maintained so as to be visible from neighboring lots except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, and garbage shall be removed from all lots at least weekly and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any lot and no burning in the open will be permitted on any lot.

16. The doors of all garages shall be kept closed at all times except when necessary of ingress or egress.
17. No dwelling shall be leased, or rented for longer than one (1) year without the prior written permission of the Developer or its successors.
18. Recreational vehicles (travel trailers, campers, motor homes, motor coaches, boats, etc.) may not be parked or stored in the public streets of the subdivision, nor parked or stored outside on any lot of the subdivision unless parked or stored in the yard area behind a house thereon, except for an occasional period of time not exceeding twenty four hours in any one month.
19. In order to provide for the maintenance, repair, use and improvement of the common areas within the subdivision and to provide for the control thereof by the owners of lots within the subdivision and the assessment of those lots as necessary to provide the funds for such maintenance and upkeep, the following provisions and Restrictions are adopted:
 - a. The Association. The Association shall mean the Mulberry Ridge Property owners' Association, a non-profit corporation formed under the general not for profit corporation act of the State of Missouri. The Association shall have all powers and duties set forth in these Restrictions, its articles of incorporation, its by-laws, applicable laws, statutes, ordinances, and governmental rules and regulations; and shall have in addition to its express powers, all other powers reasonably necessary or appropriate to the exercise of its express powers. The Association may not be voluntarily dissolved without the prior written consent of the county of Christian, State of Missouri, all as set forth in its articles of incorporation.
 - b. Express Powers and Duties. Without limiting the foregoing general powers and duties of the Association, the Association is expressly authorized in its discretion and on behalf of the owners of lots in the subdivision, by action of

its Board of Directors, unless otherwise provided or required by the articles of incorporation or statutes of Missouri, to do any or all of the following:

- i. To adopt, amend, publish, and enforce reasonable rules and regulations relating to the possession, use and enjoyment of the common areas and facilities thereon, hereafter the common areas, of the subdivision and to enforce the Restrictions in this document set forth and to act as a successor to the Developer with respect to the Developer's authority and responsibilities under this document set forth.
- ii. To obtain legal, accounting, contracting, and other professional services necessary or desirable to carry out the duties of the Association.
- iii. To obtain such types of insurance coverage in such amounts for the common property that the Association deems desirable and to obtain comprehensive general liability automobile coverage, workman's compensation coverage, and such other and different types of insurance in such amounts as the Association may from time to time determine to be desirable to carry out its duties.
- iv. To levy, collect, and enforce assessments against lots in the subdivision in the manner provided herein in order to pay for the use, improvement, maintenance and repair of the common areas and to acquire equipment, materials, supplies, or personnel as necessary or desirable in connection therewith, or to otherwise provide for the carrying out of the duties of the Association.
- v. To cause an external review by an independent public accountant to be conducted of the accounts and financial records of the Association.
- vi. To cause to be opened and maintain such accounts in such financial institutions as may be desirable for keeping or investment of funds of the Association.
- vii. To provide for the use, repair, maintenance and improvement of the common properties

within the subdivision and to acquire equipment, materials, supplies, or personnel as necessary or desirable in connection therewith.

- viii. To enter into contracts with and to delegate authority to a management agent for all or any portions of the rights, duties, and obligations of the Association
 - ix. To do any other lawful act deemed by the Board of Directors of the Association to be necessary, desirable, or appropriate for the conduct of the responsibilities, rights, and duties of the Association.
- c. **Liability Limited.** Neither the Association nor any managing agent shall be responsible for acts or omissions to act which do not amount to gross negligence or willful misconduct or for the acts or omissions to act of any owner of any lot in the subdivision or for breach of any obligation by any such owner. Notwithstanding the duty of the Association to provide for the maintenance, repair, use and improvement of the common areas which duty shall be owed to the subdivision in general and not to any specific individual – the Association shall not be liable for injury or damage caused by any latent condition in the property comprising the common area nor for any injury or damage caused by the elements or by other owners, occupants, or person.
- d. **Membership of the Association.** Each owner of a lot in the subdivision, including the Developer, shall be a member of the Association so long as they retain an ownership interest. The membership of each lot owner is pertinent to and inseparable from ownership of the lot and shall be automatically transferred upon the transfer of lot ownership, except any transfer or conveyance for the purpose of securing the performance of an obligation. Except as provided herein, memberships in the Association are not transferable.
- e. **Voting rights.** Every member of the Association other than the Developer shall be entitled to one vote for each lot owned and the Developer shall be entitled to ten votes for each lot owned. A vote as to any lot is not divisible. When more than one person or entity owns a lot the vote shall be exercised as the several owners shall determine.
- f. **Common properties.** All property acquired by the Association, whether real, personal, or mixed, shall be held, utilized, and disposed of by the Association as common property for the use and benefits of owners of lots in the

subdivision. Except as otherwise specifically provided any expense of the Association or of the Developer for acquisition, administration, maintenance, operation repair or replacement of the common properties shall be treated as and paid for as part of a common expense of the Association.

- g. Advance of common property by Developer. It is contemplated that the Developer will construct or provide the initial common property within the subdivision. The Developer shall, within a reasonable time after the completion of construction thereon of any improvements, cause to be conveyed to the Association free from any encumbrances or liens the lands and appurtenances to become common property. Other than for the cost of acquisition and initial construction of the improvements thereon, the Developer shall be entitled upon such conveyance to any costs or expenses the Developers shall have incurred for maintaining or repairing or replacing the common areas after the initial construction and acquisition and prior to the conveyance to the Association. After conveyance of the common properties by the Developer to the Association, the Developer shall have no further responsibility therefore in any respect whatsoever and the cost of ownership, administration, use, maintenance, repair, taxes or other expenses incident to the common property after conveyance to the Association shall be the obligation of the Association and shall be paid from assessments as herein provided along with other expenses as may be authorized to be paid from such assessments.,
- h. Owner easement of enjoyment. Every owner of a lot in the subdivision shall have a right and easement of enjoyment in and to the common properties and such easements shall be appurtenant to and shall pass the title of every lot in the subdivision subject to the following Restrictions:
 - i. The Association may limit the number of guest or owners who may use the common properties and adopt other reasonable limitations on the use of the common properties.
 - ii. The Association may charge fees for the use of the common property.
 - iii. The Association may borrow money for the purpose of improving the common properties or to maintain the same and in aid thereof to mortgage said property except that the rights of the mortgagee to the common property will be subordinate to storm water detention facilities required by a public agency to be located upon the common property and the

rights of the owners of the lots and their easement of enjoyment granted herein unless there should be a default under the mortgage or deed of trust.

- iv. The Association to suspend the voting rights and use of common property for violation of these Restrictions or as provided in its By-Laws.
- v. The right of the Association to dedicate or transfer all or any part of the common properties to a public agency, authority, or utility for such purposes and subject to such contingencies as may be determined by the Board of Directors of the Association.
- vi. The subdivision requirements imposed by any public agency or agencies for storm water detention, open space or other requirements as a condition of approval and recording of the plat of the subdivision.
- i. Lessee's Right of Enjoyment. Notwithstanding anything herein to the contrary the easement of enjoyment of an owner may be transferred to a lessee who shall occupy the lot of such owner under a written lease agreement, provided:
 - i. A copy of the lease agreement is made available to the Association.
 - ii. The owner shall be jointly and severally liable with the lessee for any breach of the duties and responsibilities of an owner under these Restrictions.
 - iii. During the period of such lease delegation the lessee shall have such easement of enjoyment in lieu of the owner.
 - iv. Such delegation shall be otherwise subject to reasonable rules and regulations as the Board of Directors of the Association shall establish.
- j. Assessments. Each owner of a lot by acceptance of a deed therefore whether or not it shall be so expresses in any such deed shall be deemed to covenant and agreed to pay to the Association 1) annual assessments, 2) special assessments and 3) enforcements assessments, such assessments to be fixed, established, and collected by the Association from time to time as hereinafter provided by action of its Board of Directors.

The annual, special assessments and enforcement assessments, together with interest thereon and cost of collection thereof as hereinafter provided, shall be a continuing charge and lien upon the lots against which each such assessment is made.

- i. The assessments levied hereunder by the Association shall be used exclusively for 1) the purpose of maintaining, repairing or improving the common property and for paying expenses related thereto, including the payment of taxes thereon, 2) for the reasonable cost of the administration of the Association and the conduct of its rights, duties, and obligations and particularly it shall be used for the upkeep of the storm water detention facilities or other facilities required by any public agency to be located upon the common properties, and 3) for the expenses of the Association related to enforcement of these Restrictions, and 4) to pay for the costs of the common trash collection service.
- ii. The Board of Directors may establish an initial maximum annual assessment and a period of time for which that maximum annual assessment may not be increased, or in the alternative, the maximum amount by which it may be increased in such period of time. If such a maximum annual assessment and time shall be established, it shall not be changed except by the unanimous consent of every owner of every lot in the subdivision. Otherwise the amount of the annual assessment shall be in the discretion of the Board of Directors of the Association as they find to be reasonably necessary to carry out the duties, obligations, and rights thereof.
- iii. In addition to the annual assessments, the Association may levy in any assessment year special assessment(s) applicable for that year only for the purpose of paying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of any capital improvement upon the common properties as shall be specified in the assessment. In the event that the Board of Directors determines that it may be desirable to establish such a special assessment it shall, prior to establishing such assessment, give written notice to all of

the owners of the lots within the subdivision which may be given by mailing a copy of such proposed special assessment addressed to the occupant or owner of each street address within the subdivision. Said notice shall set forth the time of the meeting of the Board of Directors in which the special assessment will be considered and the Board of Directors shall, prior to acting thereon, give reasonable opportunity for the owners of lots within the subdivision to express their opinions relating to the proposed special assessments or to make inquiry concerning the need therefore at such meeting of the Board.

- iv. The annual assessment shall be established in the month of January of each year at a meeting of the Board of Directors called for such purpose; provided, however, should the Board fail to make the assessments in the month of January it shall not prohibit the making of the annual assessment at some later date. Annual assessments shall be due and payable if to be paid in a lump sum on or before the sixtieth (60th) day from the date of the making of the assessment. Now written notice of the assessment shall be required. In the event that the Board of Directors authorizes an assessment to be paid in installments, it shall come due at such times and in such amounts as determined by the Board of Directors. The Association shall furnish upon request by an owner a certificate signed by an officer of the Association setting forth whether assessments on a specific lot in the subdivision have been paid. For persons purchasing a lot from the Developer, the annual assessment shall be pro-rated on the basis of the number of months yet remaining in the calendar year excluding the month in which the sale of the lot was concluded. Special assessments shall be due and payable as provided in the special assessment and shall likewise be pro-rated for the initial purchaser of a lot.
- v. If any assessment is not paid on the date when due or when any partial payment is due, then the total of such assessment shall be delinquent and the Association shall have the right to declare the entire assessment immediately due and payable together with

interest thereon at the date the Board of Directors may have established, and the Association may recover as well, the costs of collection, including a reasonable attorney's fee. The Association will have a lien from January 1st each year against every lot in the subdivision subject to assessment for the amount thereof for assessments made or to be made in that calendar year which lien shall continue until the assessments shall be fully paid including costs, if any, for collection, and may sue to foreclose the lien or may sue the owner of the lot personally for the amount of the assessment and neither remedy shall be exclusive of the other.

- vi. The lien of an assessment provided for herein shall be subordinate to the lien of a first mortgage or deed of trust now or hereafter placed upon any lot subject to assessment; however, the ordinary sale or transfer of the lot shall not effect the assessment lien. The sale of any lot in the subdivision by foreclosure of any mortgage or deed of trust shall extinguish any existing assessment lien, but no such sale or transfer shall thereafter relieve the lot from liability for such assessment(s) made after the date of the sale or transfer.
- vii. The following property subject to these declarations shall be exempt from annual or special assessments:
 - a. All properties dedicated to and accepted by any local authority or utility.
 - b. Common properties.
 - c. Utilities.
 - d. Utility easements or other similar easements.
 - e. A lot until the initial house has been constructed thereon and conveyed to the initial purchaser thereof.
 - f. Any reserved properties shown on the subdivision plat of record.

20. These Restrictions and covenants shall run with and bind the land for a term of thirty years from the date these Restrictions and covenants are recorded, unless otherwise terminated, amended, or modified as herein provided, after which time they shall be automatically extended for successive periods of ten years unless otherwise terminated, amended or modified as herein provided.
21. These Restrictions and covenants may be terminated, amended or modified by the Developer at any time that Developer retains ownership of at least four lots then subject to these Restrictions. If Developer owns less than four lots, then these Restrictions and covenants may be terminated, amended or modified by a vote of the owners representing at least sixty percent of the lots in the subdivision, provided, however, that any such termination, amendment or modification shall be in writing, acknowledged and duly recorded.