

5700
20
800 n.e

DECLARATION OF COVENANTS AND RESTRICTIONS

OF
ASHBURY PARK

20000006021
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 02-07-2000 At 12:43 pm.
DEC COV RES 59.00

THIS DECLARATION, made as of the 27 day of December, 1999, by Ashbury Park, L.P., an Indiana Limited Partnership ("Declarant").

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the legal or equitable owner of the real estate located in Hamilton County, Indiana, described in Exhibit "A," upon which Declarant intends, but is not obligated, to develop a residential subdivision to be known as Ashbury Park (hereafter "Ashbury Park");

B. Declarant has or will construct certain improvements and amenities which shall constitute Community Area.

C. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Ashbury Park and for the maintenance of the Tract and the improvements thereon, and to this end desires to subject the Tract to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owner thereof.

D. Declarant deems it desirable, for the efficient preservation of the values and amenities in Ashbury Park, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, promoting the recreation, health, safety and welfare of the Owners of Lots in Ashbury Park and performing the duties and obligations required under this Declaration.

E. Declarant shall incorporate under the laws of the State of Indiana non-profit corporation known as Ashbury Park Homeowners Association, Inc., for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and

agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

1. Definitions: The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

"Architectural Review Board" means that entity established pursuant to this Declaration for the purposes therein stated.

"Articles" means the Articles of Incorporation of the Corporation, as amended from time to time.

"Ashbury Park" means the name by which the Tract shall be known.

"Assessments" means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws.

"Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws.

"Buffer Yard and Drainage Easement" means the part of Lot(s) so designated as Buffer Yard and Drainage Easement or BY/DE".

"Builder" means a person or entity engaged in the organized construction of a Residence on a Lot.

"Building Setback Lines or B.S.L." are established on the Plat between which lines and the nearest street right-of-way, no structure shall be erected.

"By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.

"Common Area" means: (1) those portions of the Property, including improvements thereto, facilities an personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter denied), and (2) items (if any) deemed Common Area for maintenance purposes only. Unless expressly sated to the contrary, the term common Area is used herein (whether or not so expressed) shall include all portions of the

Property designated on the Plat (as hereafter defined) as a "Block", "Common Area", or "C.A.". The Common Area to be conveyed to the Association at the time of the conveyance of the first Lot to an Owner is described in the Plat (as hereinafter denied). The Common Area is restricted from further development and shall be preserved as open space.

"*Community Area*" means (i) the Drainage System, (ii) the area designated on the Plat as Common Area, (iii) the Entry Ways, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section, (v) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots; and (vi) street lights and street signs, if any, installed by Declarant.

"*Corporation*" means Ashbury Park Homeowners Association, Inc., an Indiana non-profit corporation, its successors and assigns.

"*Declarant*" means Ashbury Park, L.P., its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

"*Development Area*" means the land described in Exhibit A (sometimes referred to herein as Tract).

"*Drainage Board*" means the Hamilton County Drainage Board, its successors or assigns.

"*Drainage System*" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, and the other structures, fixtures, properties, equipment and facilities located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"*Entry Ways*" means the structures constructed as an entrance to Ashbury Park or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles).

"Facilities" means the Common Area and all improvements, thereto (including landscaping) and all property owned by the Corporation.

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development Area, as such may be amended from time to time.

"Lot" means a platted lot as shown on a Plat.

"Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

"Maintenance Costs" means all of the costs necessary to keep the Facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility, and all expenses related to the performance of the duties of the Association under this Declaration.

"Member" means a Class A or Class B member of the Corporation and "Members" means Class A and Class B members of the Corporation.

"Mortgagee" means the holder of a first mortgage on a Residence.

"Non-Access Easement" means the area designated on a Plat over which vehicular ingress and egress is prohibited.

"Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Part of the Development Area" means any part of the Development Area not included in the Tract.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof

"Plat" means a final secondary plat of a portion of the Development Area recorded in the Office of the Recorder of Hamilton County, Indiana.

"Register of regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

"Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

"Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations and the Register of Regulations, as the same may from time to time be amended.

"Section" means that portion of the Development Area that is depicted on a Plat.

"Supplemental Declaration" means any Plat or supplementary declaration of covenants, conditions or restrictions that may be recorded and which extends the provisions of this Declaration to a Section and contains such complementary or supplementary provisions for such Section as are required or permitted by this Declaration.

"Tract" means the real estate described in Exhibit A.

"Zoning Authority" with respect to any action means the Director of the Department of Community Services of the City of Carmel or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act of the Director.

"Zoning Ordinance" means The Zoning Ordinance of City of Carmel/Clay Township, Indiana as amended.

2. Declaration. Declarant hereby expressly declares that the Tract shall be subject to these Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area. Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the Drainage System is accepted as a legal drain by the Drainage Board. After such date, the Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

4. Maintenance of Entry Ways and Community Area. The Corporation shall maintain the Entry Ways and the Community Area, and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way or within the Community Area shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Ashbury Park or a part thereof or a planting area within Ashbury Park. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision.

5. Construction of Residences.

(a) Land Use. Lots may be used only for residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be a greater number of Residences in Ashbury Park than depicted on the Plats. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "Special Use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(b) *Size of Residence.* No residence may be constructed on any lot unless such Residence, exclusive of open porches, attached garages and basements, shall have the minimum square footage of 1700 square feet.

(c) *Design and Building Materials.* Each residence shall have not less than a 7/12 roof pitch front to back, brick on all or a part of not less than 3 sides of the residence, and wood or similar siding.

(d) *Temporary Structures.* No trailer, shack, tent, board, basement, garage or other outbuilding may be located on the Tract.

(e) *Building Location.* No building may be erected between the building line shown on a Plat and the front Lot line.

(f) *Driveways.* All driveways shall be constructed of concrete or such other material as shall be approved by the Architectural Review Board, and shall be maintained free of debris.

(g) *Lights.* If street lights are not installed in Ashbury Park, then each Owner or his builder shall install and maintain a light in operable condition on his Lot at a location, having a height and of a type, style and manufacturer approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by the Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day.

(h) *Storage Tanks.* No gas or oil storage tanks shall be located on the Tract.

(i) *Construction and Landscaping.* All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the Board agrees to a later landscaping completion date. Unless a delay is caused by strikes, war, court injunction or acts of God, the Owner of any Lot which on the date of purchase from Declarant is not improved with a Residence shall commence construction of a Residence upon the Lot within 180 days from the date the Owner acquired title thereto and shall complete construction of such Residence within two hundred seventy (270) days after the date of commencement of the building process. Upon the failure of the foregoing to occur, Declarant may:

(i) re-enter the lot and divest the Owner of title hereto by tendering to the Owner or to the Clerk of the Circuit Court of Hamilton County the lesser of (i) the

same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance of the Lot the Owner may prove to have been incurred in connection with the commencement of construction of a Residence on the Lot or (ii) the then fair market value of the Lot as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Hamilton County Circuit or Superior Court;

(ii) obtain injunctive relief to force the Owner to proceed with construction of any Residence, a Lot Development Plan for which has been approved by the Architectural Review Board upon application by such Owner; or

(iii) pursue other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the lot within the time periods specified herein. For the purposes of this subparagraph (h), construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the Foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

(j) *Mailboxes.* All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacturer approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board. No attachments of any kind shall be permitted to the mailbox or post.

(k) *Septic Systems.* No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(l) *Water Systems.* No private or semi-private water supply system may be located upon any lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto.

(m) *Drainage.* In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, the "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within Ashbury Park may be included in a legal drain established by the Drainage Board. In such event, each Lot in Ashbury Park will be subject to assessment by the Drainage Board for the cost of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains, sump pump drains and downspouts shall not be outletted into streets or street rights-of-way. These drains shall be connected whenever feasible into a subsurface drainage tile. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

7. Maintenance of Lots.

(a) *Vehicle Parking.* No camper, motor home, truck, trailer, boat, motorcycle, bus, commercial vehicle of any kind, or disabled vehicle may be parked or stored overnight or longer on any Lot.

(b) *Signs.* Except for such signs as Declarant may in its absolute discretion display in connection with the development of Ashbury Park and the sale of Lots therein and such signs as may be located on the Community Area, no sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or may be displayed by a builder to advertise the property during construction and sale.

(c) *Fencing.* No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is located on a Landscape Easement or is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No chain link fence shall be erected upon a Lot. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions without respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of any Lake. All fences shall

be kept in good repair. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

(d) *Nuisances.* No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(e) *Garbage and Refuse Disposal.* No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers approved by the Architectural Review Board and out of public sight, except for the evening prior to and the day of garbage pickup. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(f) *Livestock and Poultry.* No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(g) *Outside Burning.* No trash, leaves, or other materials shall be burned upon a Lot.

(h) *Antennas and Receivers.* No satellite receiver, down-link, or exterior antenna shall be permitted on any Lot without the prior written consent of the Architectural Review Board. The Architectural Review Board shall not be obligated to give its consent to the installation of any exterior television antenna if television reception is available from underground cable connections serving the Lot or to the installation of any other exterior antenna if all Owners of Lots within 200 feet of the Lot upon which the proposed antenna would be erected do not consent in writing to the installation thereof.

(i) *Exterior Lights.* No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(j) *Electric Bug Killers.* Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(k) *Equipment.* No awnings shall be placed on any Residence, and no flagpoles, statues, yard ornaments, playground equipment or basketball goals shall be placed or maintained on any Lot.

(l) *Garage Doors.* All garage doors shall remain fully lowered and closed except when in use for ingress and egress to the garage.

(m) *Periodic Watering of Lawns.* Each lot owner shall water the lawn area of the lot on a regular basis sufficient to maintain a lush green yard. If an Owner fails to comply with this restriction, the Architectural Review Board shall have the right to water the lawn at the expense of the Owner thereof and the Architectural Review Board shall have a lien against the watered Lot for the expense thereof.

(n) *Maintenance of Lots Owned by Declarant.* Declarant shall have the responsibility to maintain all lots owned by Declarant.

8. *Ashbury Park Homeowners Association, Inc.*

(a) *Membership.* Each Owner shall automatically be a member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) *Powers.* The Corporation shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

(c) *Classes of Members.* The Corporation shall have two (2) classes of members as follows:

Class A. Every Person who is an Owner shall be a Class A member.

Class B. Declarant shall be a Class B member. No other person, except a successor to substantially all of the interest of Declarant in the Development Area, shall hold a Class B membership in the Corporation. The Class B membership shall terminate upon the resignation of the Class B member, when all of the Lots in the Development Area (as depicted on the General Plan of Development) have been sold, or on January 1, 2010, whichever first occurs.

(d) *Voting and Other Rights of Members.* The voting and other rights of members shall be as specified in the Articles and By-Laws, except that a Class B member shall have ten (10) votes for each Lot owned by the Class B member.

(e) *Reserve for Replacements.* The Board of Directors may establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(f) *Limitations on Action by the Corporation.* Unless the Class B Member and at least two-thirds (2/3) of the Mortgages (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Class A members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 10(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Community Area; or (vi) fail to maintain the Reserve or Replacements in the amount required by this Declaration.

(g) *Mergers.* Upon a merger or consolidation of another corporation with the corporation, its properties, rights and obligations may, as provided in its articles of incorporation or, alternately, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Tract together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Tract except as hereinafter provided.

(b) Termination of Class B Membership. Wherever in this Declaration the consent, approval or vote of the Class B member is required, such requirement shall cease at such time as the Class B membership terminates, but no such termination shall affect the rights and powers of Declarant set forth in this declaration.

9. Assessments:

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following: (1) General Assessments; (2) Architectural Control Assessments and (3) Special Assessments and Lot Maintenance Assessments (if applicable), such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots, for the improvement, maintenance and operation of the Community Area and Lots, and for the performance of the duties and responsibilities of the Corporation established by this Declaration.

(ii) Basis for Assessment.

(1) Lots Generally. Each lot owned by a Person other than the Declarant or Builder of a Residence shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant or Builder. No Lot owned by Declarant or the Builder of a Residence shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Change in Basis. The basis of assessment may be changed with the assent of the Class B member and of (i) two-thirds (2/3) of the Class A members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for

each first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid. The foregoing notwithstanding, until December 31, 2000, the uniform rate of the General Assessment for each Lot in the Tract shall be \$ 125 per month, payable on the first day of each calendar quarter, beginning on January 1, 2000.

(c) Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Class B member and of a majority of the votes of the Class A members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(d) Date of Commencement of Lot Maintenance Assessments. The Lot Maintenance Assessment shall commence with respect to assessable Lots on the first day of the month following conveyance of the first Lot in the Section to an Owner who is not Declarant. The initial General Assessment on an assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessments.

(e) Effect of Nonpayment of Assessments; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment or installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

(f) *Subordination of the Lien to Mortgages.* The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(g) *Certificates.* The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(h) *Annual Budget.* By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met.

(i) *Lot Maintenance Assessment.*

(i) *Purpose of Assessment.* The Lot Maintenance Assessment levied by the Association shall be used exclusively to perform the maintenance service for Lots one (1) through eighty-four (84) inclusive as provided for in paragraph twelve (12) of this Declaration.

(ii) *Basis for Assessment.*

- (1) *Lots Generally.* Each of the owners of Lots one (1) through eighty-four (84), except for Declarant or the Builder of a Residence shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.
- (2) *Lots Owned by Declarant or Builder.* No Lot owned by Declarant or the Builder of a Residence shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.
- (3) *Change in Basis.* The basis of assessment may be changed with the assent of the Class B member and of (i) two-thirds (2/3) of the Class A members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each

first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

- (iii) *Method of Assessment.* By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (i), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The Board of Directors shall establish the date(s) the Lot Maintenance Assessment shall become due, and the manner in which it shall be paid. The foregoing notwithstanding, until December 31, 2000, the uniform rate of the General Assessment for each Lot in the Tract shall be \$ 125 per month, payable on the first day of each calendar quarter, beginning on January 1, 2000.

10. Architectural Control

(a) *Architectural Review Board.* An Architectural Review Board consisting of two (2) or more persons as provided in the By-Laws shall be appointed by the Class B member. At such time as there is no Class B member, the Architectural Review Board shall be appointed by the Board of Directors.

(b) *Purpose.* The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) *Conditions.* Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board of a Lot Development Plan therefore. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Residence or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any person other than Declarant without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities

having jurisdiction over Ashbury Park, and no Owner shall undertake any construction activity within Ashbury Park unless all legal requirements have been satisfied.

Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

(d) *Procedures.* In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, if Declarant is no longer a Class B member, the Board of Directors' approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approval of a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds vote of the Directors then serving.

(e) *Guidelines and Standards.* The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

(f) *Application of Guidelines and Standards.* The Architectural Review Board shall apply the guidelines and standards established pursuant to subparagraph (e) in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.

(g) *Design Consultants.* The Architectural Review Board may utilize the services of architectural, engineering and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of a conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.

(h) *Exercise of Discretion.* Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be

conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

11. Community Area

(a) *Ownership.* The Community Area shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or any part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) *Density of Use.* Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon.

(c) *Obligations of the Corporation.* The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

(d) *Easements of Enjoyment.* No person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or any Supplemental Declaration executed by Declarant. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted.

(e) *Extent of Easements.* The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community Area;

(ii) the right of the Corporation to suspend the right of an Owner and all Persons whose right to use the Community Area derives from such Owner's ownership of a Lot to use such portions of the Community Area for any period during which any Assessment against his Lot remains unpaid for more than thirty (30) days after notice;

(iii) the right of the corporation to suspend the right of an Owner or any Person claiming through the Owner to use the Community Area for a period not to exceed sixty (60) days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations;

(iv) the right of the Corporation to mortgage any or all of the Community Area and the Facilities constructed therein for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon, pursuant to approval of the Class B member and two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose; and

(v) the right of the Corporation to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Class B member, if any, and the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each mortgage owned), agreeing to such dedication or transfer, has been recorded.

(f) *Additional Rights of Use.* The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and Facilities subject to such general regulations consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and included within the Register of Regulations.

(g) *Damage or Destruction by Owner.* In the event the Community Area, Residence or Lot is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area. If the Corporation shall undertake the repair of the damaged area, the repair shall be in a good and workmanlike manner, in conformance with the original plans and specifications of the area involved or as the area may have been modified or altered subsequently by the Corporation, in the discretion of the Corporation. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

(h) *Conveyance of Title.* Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon but notwithstanding any provision herein, the Common Area shall be conveyed to the Association not later than two (2) years from the date the Common Area or part thereof is subjected to this Declaration. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Corporation shall

not be liable for payment of taxes and insurance for such Community Area until title is conveyed.

12. Additional Duties and Responsibilities of the Association. The Association shall provide snow removal for all streets. The Association shall be responsible for the maintenance of the lawn of each lot, including grass mowing and fertilization, and leaf removal on each of the Lots numbered one (1) through eighty-four (84) inclusive on the Plat(s). The Lot Owner shall have the duty and responsibility to replace all dead plant material installed on his Lot. For the additional duties to be performed by the Association hereunder, the Association shall have a blanket easement upon, across, over, and under each Lot.

13. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the Office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, landscape easements and non-access easements, either separately or in any combination thereof, as shown on the Plats, which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, public utility companies and governmental agencies as follows:

(i) Drainage Easements ("DE") are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Ashbury Park and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction or any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements ("SE") are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Ashbury Park for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements ("UE") are created for the use of Declarant, the Corporation and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) 30' Buffer Yards are created for the use of Declarant to install plant material to provide a natural separation from adjacent real estate. Following the initial planting, the 30' Buffer Yard shall be maintained in its then natural state by the Owner of such Lot.

(v) Non-Access Easements ("NAE") are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County, but a concrete or asphalt driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of Declarant (and replacements thereof shall not be deemed a "structure" for the purpose of this Restriction.)

(b) *General Easement.* There is hereby created a blanket easement over, across, through and under the Tract for ingress and egress, installation, replacement repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain Facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition to which it was found. No sewers, electrical lines, water lines, or other utility service lines or Facilities for such utilities may be installed or relocated except as proposed and approved by Declarant prior to the conveyance of the first Lot to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms thereof. This blanket easement shall in no way affect any other recorded easements on the Tract and shall be limited to improvements as originally constructed, and shall not cover any portion of a lot upon which a Residence has been constructed.

(c) *Public Health and Safety Easements.* An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar persons to enter upon the Community Area in the performance of their duties.

(d) *Drainage Board Easement.* An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

(e) *Crossing Underground Easements.* Easements utilized for underground service may be crossed by driveways, walkways, Lake Access Easements and Community Area Access Easements provided prior arrangement are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios or other pavings, other than crossings, driveways, walkways, Lake Access Easements or Community Area Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or services to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) *Declarant's Easement to Correct Drainage.* For a period of ten (10) years from the date of conveyance of the first Lot, Declarant reserves a blanket easement and right on, over and under the ground to maintain and to correct drainage of surface water in order to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinions of Declarant an emergency exists which precludes such notice.

(g) *Water Retention.* The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (retention) of storm water within the drainage easements (DE) on such Owner's Lot.

(h) *Street Lights.* The owner of each Lot on which a street light is installed by Declarant consents to the placement of a street light on such Lot and agrees that the Corporation shall have the right to enter upon the Lot for the purpose of maintaining the street light.

14. *Declarant's Use During Construction.* Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in the Tract or the Development Area, upon such portion thereof as is owned or leased by the Declarant, upon such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices.

15. *Enforcement.* The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declaration, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions.

No delay or failure by any Person for failure either to abide by, enforce or carry out any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorney's fees, if it substantially prevails in such action.

16. *Limitations on Rights of the Corporation.* As long as there is a Class B member, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

17. *Approvals by Declarant.* As long as there is a Class B member, the following actions shall require the proper approval of Declarant: declarations within the Tract or of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration and any Supplemental Declaration; and changes in the basis for assessment or the amount, use and time of payment of the initial Assessment for the Community Area.

18. *Mortgages.*

(a) *Notice to Corporation.* Any Owner who places a first mortgage lien upon his Residence or the Mortgagee shall notify the Secretary of the Board of Directors of such Mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, any Supplemental Declaration, the Articles or the By-Laws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

(b) *Notices to Mortgagees.* The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph (a) above notice of any of the following:

(i) Any condensation or casualty loss that affects a material portion of the Community Area;

(ii) Any delinquency in the payment of any Assessment owned by the Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

(iii) Any lapse, cancellation or material modifications of any insurance policy of fidelity bond maintained by the Corporation;

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; and,

(v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Community Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Residence or (C) the purposes for which any Residence or the Community Area are restricted.

(c) *Notice of Unpaid Assessment.* The Corporation shall, upon request of a Mortgagee, a proposed mortgage, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.

(d) *Financial Statements.* Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

(e) *Payments by Mortgagees.* Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

19. *Amendments.*

(a) *Generally.* This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Class A members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required herein (ii) Declarant.

(b) *By Declarant.* Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to December 31, 2010. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized herein, Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) *Effective Date.* Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

20. *Interpretation.* The aforesaid titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

21. *Duration.* The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2020, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) year, unless changes in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

22. *Severability.* Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

23. *Non-Liability of Declarant.* Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to have agreed to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly

assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

24. Responsibility of Owners. Each Owner will preserve and maintain the part of the Buffer Yard and Drainage Easement located on such Owner's Lot. Consistent with the purpose of such area to provide a natural buffer between adjacent real estate and to facilitate storm water drainage.

25. Declaration of Streets. The part of the Plat designated as streets, if not heretofore dedicated, are hereby dedicated to the City of Carmel, Indiana, as public rights-of-way.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

Ashbury Park, L.P.,
an Indiana Limited Partnership,

By: Pittman Partners, Inc.,
General Partner

By: Steve A. Pittman
Steve A. Pittman, President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Steve A. Pittman, President of Pittman Partners Inc., the General Partner of Declarant, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions.

WITNESS my hand and Notarial Seal this 31 day of December, 1999

My Commission Expires: July 14, 2006
County of Residence: Hamilton
Notary Public, State of Indiana
Printed Name: Steve A. Pittman

This Instrument Prepared By:
James J. Nelson
Nelson & Frankenberger
3021 East 98th Street
Suite 220
Indianapolis, Indiana 46280



October 16, 2007

5900
25
Jawad

**AMENDMENTS TO THE
DECLARATION OF COVENANTS AND RESTRICTIONS
OF ASHBURY PARK**

These Amendments to the Declaration of Covenants and Restrictions of Ashbury Park were executed this 16th day of October, 2007, by the Ashbury Park Homeowners Association, Inc. ("Declarant").

WITNESSETH:

WHEREAS, the Ashbury Park subdivision was established by a certain "Declaration of Covenants and Restrictions" which was recorded on February 7, 2000 as **Instrument No. 20000006021** in the Office of the Recorder of Hamilton County, Indiana. Said Declaration together with all amendments and/or supplements thereto are hereafter referred to as the "Declaration"; and

WHEREAS, Plats filed with the Office of the Recorder of Hamilton County, Indiana established eighty-four (84) Lots numbered one (1) through eighty-four (84) and Common Areas comprising the Ashbury Park subdivision; and

WHEREAS, the original Declaration established the residential community with public streets, two (2) detention lakes, and private open spaces and landscaped areas for the benefit of such residential community known as Ashbury Park, which community was developed substantially in accordance with the site development plans approved by the Carmel City Plan Commission under Docket Numbers 73-99SP and 74-99SP; and

WHEREAS, the original Developer of Ashbury Park desired to provide for the preservation and enhancement of the property values, amenities and opportunities in Ashbury Park and for the maintenance of the subdivision and the improvements thereon, and to this end desired to subject the subdivision to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the subdivision and the future owners thereof; and

WHEREAS, the original Developer deemed it desirable, for the efficient preservation of the values and amenities in Ashbury Park, to create an agency to which would be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, promoting the recreation, health, safety and welfare of the Owners of Lots in Ashbury Park and performing the duties and obligations required under this Declaration; and

WHEREAS, the original Developer caused to be incorporated under the laws of the State of Indiana, a non-profit corporation known as Ashbury Park Homeowners Association, Inc., for the purpose of exercising such functions; and

201009560 AMND DECL \$61.00
03/03/2010 10:36:51A 25 PGS
Jennifer J Hayden
HAMILTON County Recorder IN
Recorded as Presented

Page 1 of 25

October 16, 2007

WHEREAS, under the terms of the Declaration, the Real Estate was, is and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens set forth in the Declaration. All of the above were and are declared to be in furtherance of a plan for the preservation and enhancement of the Real Estate, and were and are established and are agreed-upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the subdivision as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the subdivision, and upon their heirs, successors and assigns; and

WHEREAS, (unless otherwise indicated herein) the definitions and terms in these Amendments to the Declaration shall have the same meaning as in the original Declaration. Reference is specifically made to Article I of the Amended Declaration containing definitions of terms; and

WHEREAS, the "Class B" Member has resigned from the Corporation; and

WHEREAS, the Annual Meeting of the Ashbury Park Homeowners Association, Inc. was held on October 16, 2007; and

WHEREAS, one of the purposes of the Annual Meeting (as stated in the notice for the meeting) was for the Association's Members to vote upon the approval of the Amended and Restated Declaration of Covenants and Restrictions of Ashbury Park, dated 8/17/2007; and

WHEREAS, the Owners holding 74 votes were in attendance at the October 16, 2007 Annual Meeting, thus constituting a quorum (60% of the total number of votes entitled to be cast (111); By-Laws Article III, Section 3); and

WHEREAS, the Owners holding 86 votes who were in attendance or voted by absentee ballot at the October 16, 2007 Annual Meeting, voted in favor of adopting the Amended and Restated Declaration of Covenants and Restrictions of Ashbury Park, dated 8/17/2007; and

WHEREAS, these 86 Owners constitute more than two-thirds (2/3) of the 96 votes cast in person or by absentee ballot concerning this Amendment (Section 19, Paragraph (a) of the original Declaration of Covenants).

NOW, THEREFORE, the Declaration which is applicable to all Owners and residents within Ashbury Park is amended and restated as follows:

Page 2 of 25

October 16, 2007

**AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
OF ASHBURY PARK**

**ARTICLE I
DEFINITIONS**

The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

“APHOA” means the Ashbury Park Homeowners Association, Inc.

“*Architectural Review Board*” means that entity established pursuant to this Declaration and appointed by the Board of Directors for the purposes stated herein.

“*Articles*” means the Articles of Incorporation of the Ashbury Park Homeowners Association, Inc, as amended from time to time.

“*Ashbury Park*” means the name by which the subdivision is known.

“*Assessments*” means all sums lawfully assessed against the Members of the APHOA or as declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws.

“*Board of Directors*” means the governing body of the APHOA elected by the Members in accordance with the By-Laws.

“*Buffer Yard and Drainage Easement*” means the part of Lot(s) so designated as Buffer Yard and Drainage Easement or BY/DE.

“*Builder*” means a person or entity engaged in the organized construction of a Residence on a Lot.

“*Building Setback Lines or B.S.L.*” are established on the Plat between which lines and the nearest street right-of-way, no structure may be erected.

“*By-Laws*” means the Code of By-Laws of the APHOA, as amended from time to time.

“*Common Area*” means: (1) those portions of the property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the APHOA from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), and (2) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area is used herein (whether or not so expressed) shall include all portions of the Property designated

October 16, 2007

on the Plat (as hereafter defined) as a "Block", "Common Area", or "C.A.". The Common Area is restricted from further development and shall be preserved as open space.

"Community Area" means:

- (i) the Drainage System,
- (ii) the area designated on the Plat as Common Area,
- (iii) the Entry Ways,
- (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section,
- (v) any areas of land (a) shown on any Plat, or (b) described in any recorded instrument prepared by Declarant or its agents, or (c) conveyed to or acquired by the APHOA, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots; and
- (vi) street lights and street signs.

"Corporation" means Ashbury Park Homeowners Association, Inc., an Indiana non-profit corporation, its successors and assigns.

"Declarant" means the APHOA, its successors and assigns to its interest in the subdivision.

"Development Area" means the land that comprises the Ashbury Park subdivision (sometimes referred to herein as Tract).

"Drainage Board" means the Hamilton County Drainage Board, its successors or assigns.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, and the other structures, fixtures, properties, equipment and facilities located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from over and across the Tract including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"Entry Ways" means the structures constructed as an entrance to Ashbury Park or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles).

"Facilities" means the Common Area and all improvements thereto (including landscaping) and all property owned by the APHOA.

Page 4 of 25

October 16, 2007

"General Plan of Development" means that plan prepared by the developer and approved, if necessary, by appropriate public agencies that outlined the total scheme of development and general uses of land in the Development Area, as such may be amended from time to time.

"Lot" means a platted lot as shown on a Plat.

"Lot Development Plan" means

- (i) a site plan prepared by a licensed engineer or architect,
- (ii) foundation plan and proposed finished floor elevations,
- (iii) building plans, including elevation and floor plans,
- (iv) material plans and specifications,
- (v) landscaping plan, and
- (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alterations of a Residence or other structure or improvement thereon.

"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility, and all expenses related to the performance of the duties of the APHOA under this Declaration.

"Member" means a member of the APHOA. The Owner(s) of a Lot is a member.

"Non-Access Easement" means the area designated on a Plat as an Easement, but over which vehicles are prohibited from traveling.

Owner means a Person who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Plat" means a final secondary plat of a portion of the Development Area recorded in the Office of the Recorder of Hamilton County, Indiana.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors, as may from time to time be amended.

Page 5 of 25

October 16, 2007

"Reserve for Replacements" means a fund established and maintained by the APHOA to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

"Residence" means any structure intended exclusively for occupancy by a single family, including its private garage.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations, and the Register of Regulations, as the same may from time to time be amended.

"Section" means a portion of the Tract. The Developer established three (3) sections for purposes of building the subdivision.

- (i) Section 1 consists of Lots along Ashbury Drive and Lots 22-35 along Edison Way.
- (ii) Section 2 consists of the Lots along Allenhurst Circle and Belford Court, and Lots 36-41 and 66-71 along Edison Way.
- (iii) Section 3 consists of the land through which the pipeline runs. No construction is permitted on Section 3.

"Supplemental Declaration" means any Plat or supplementary declaration of covenants, conditions or restrictions that may be recorded and which extends the provisions of this Declaration to a Section and contains such complementary or supplementary provisions for such Section as are required or permitted by this Declaration.

"Tract" means the real estate that comprises the Ashbury Park subdivision.

"Zoning Authority" with respect to any action means the Director of the Department of Community Services of the City of Carmel or (where he lacks the capacity to take action or fails to take such action) the governmental body or bodies (administrative or judicial) in which authority is vested under applicable law to hear appeals from the Department, or review the Director's action or failure to act.

"Zoning Ordinance" means The Zoning Ordinance of City of Carmel/Clay Township, Indiana as amended.

ARTICLE II DECLARATION

Declarant hereby expressly declares that the subdivision shall be subject to these Restrictions. The Owner of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, or by the act of occupancy of any Lot shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such

Page 6 of 25

October 16, 2007

contract, each Owner acknowledges the rights and powers of the APHOA with respect to these Restrictions and agrees to keep, observe, comply with and perform such Restrictions and agreement.

ARTICLE III DRAINAGE SYSTEM

The Drainage System has been constructed for the purpose of controlling drainage within and adjacent to the subdivision. The APHOA shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

ARTICLE IV MAINTENANCE OF ENTRY WAYS AND COMMUNITY AREA

The APHOA shall maintain the Entry Ways and the Community Area, and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way or within the Community Area shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Ashbury Park or a part thereof or a planting area within Ashbury Park. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision.

ARTICLE V CONSTRUCTION OF RESIDENCES

A. LAND USE. Lots may be used only for residential purposes and only one Residence may be constructed thereon.

1. No portion of any Lot may be sold or subdivided such that there will be a greater number of Residences in Ashbury Park than depicted on the Plats.
2. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.
3. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "Special Use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot.
4. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

Page 7 of 25

October 16, 2007

B. SIZE OF RESIDENCE. No residence may be constructed on any lot unless such Residence, exclusive of open porches, attached garages and basements, shall have the minimum square footage of 1700 square feet.

C. DESIGN AND BUILDING MATERIALS. Each residence shall have not less than 7/12 roof pitch front to back, and a 12/12 roof pitch side to side. Exterior materials shall be brick (on all or a part of not less than 3 sides of the residence), and wood, concrete composite, or similar siding.

D. TEMPORARY STRUCTURES. No trailer, shack, tent, board, basement, garage or other outbuilding may be located on the Tract.

E. BUILDING LOCATION. No building may be erected between the building line shown on a Plat and the front Lot line.

F. DRIVEWAYS. All driveways shall be constructed of concrete or such other material as shall be approved by the APHOA Board of Directors, and shall be maintained free of debris.

G. LIGHTS. Each Owner shall maintain the coach lights at his garage entrance to ensure uniform illumination on each Lot. The coach lights shall be equipped with a photo electric cell or similar device to ensure automatic illumination from dusk to dawn each day.

H. STORAGE TANKS. No gas or oil storage tanks shall be located on the Tract.

I. CONSTRUCTION AND LANDSCAPING. All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board.

1. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the Architectural Review Board agrees to a later landscaping completion date.
2. Unless a delay is caused by strikes, war, court injunction or acts of God, the Owner of any Lot which on the date of purchase from the Developer is not improved with a Residence shall commence construction of a Residence upon the Lot within 180 days from the date the Owner acquired title thereto and shall complete construction of such Residence within two hundred seventy (270) days after the date of commencement of the building process.
3. Upon the failure of the foregoing to occur, the APHOA may:

Page 8 of 25

October 16, 2007

- a. obtain injunctive relief to force the Owner to proceed with construction of any Residence, a Lot Development Plan for which has been approved by the Architectural Review Board upon application by such Owner.
 - b. pursue other remedies at law or in equity as may be available to the APHOA.
4. The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the lot within the time periods specified herein.
5. For the purposes of this Article V, construction of a residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

J. MAILBOXES. All mailboxes shall be uniform and shall be of a type, color and manufacturer approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board. No permanent attachments shall be permitted to the mailbox or post. The Owner of each mailbox shall maintain it to compliment the neighborhood; if the mailbox is damaged or destroyed, the Owner shall promptly repair or replace it.

K. SEPTIC SYSTEMS. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

L. WATER SYSTEMS. No private or semi-private water supply system may be located upon any lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the Lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto.

M. DRAINAGE. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat.

October 16, 2007

1. To the extent not maintained by the Drainage Board, the "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale.
2. Lots within Ashbury Park may be included in a legal drain established by the Drainage Board. In such event, each Lot in Ashbury Park will be subject to assessment by the Drainage Board for the cost of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot.
3. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots.
4. Perimeter foundation drains, sump pump drains and downspouts shall not be outletted into streets or street rights-of-way. These drains shall be connected into a subsurface drainage tile.
5. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

**ARTICLE VI
MAINTENANCE OF LOTS**

A. VEHICLE PARKING. No camper, motor home, truck, trailer, boat, motorcycle, bus, commercial vehicle of any kind, or disabled vehicle shall be parked in the subdivision in excess of forty-eight (48) consecutive hours.

B. SIGNS. No sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale/rent. Open House signs must be removed immediately after the event. Any other sign must be approved by the Architectural Review Board.

C. FENCING. No fence, wall, screening device, hedge or shrub planting higher than twenty-four (24) inches shall be permitted between the front property line and the front building set-back line except where such planting is located on a Landscape Easement or is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence.

1. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge."
2. No chain link or wood fence shall be erected upon a Lot. Fences shall be made of black rod-iron and no higher than 4-feet, unless approved by the Architectural Review Board.
3. No fence shall be erected or maintained on or within any Landscape Easement.

Page 10 of 25

October 16, 2007

4. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board. The Architectural Review Board may establish design standards for fences and further restrictions with respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of any Lake.

5. All fences shall be kept in good repair.

6. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement.

7. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

D. NUISANCES. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

E. GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers approved by the Architectural Review Board and out of public sight, except for the evening prior to and the day of garbage pickup. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

F. ANIMALS. No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot; except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purpose.

1. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance.

2. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

3. Owners of dogs shall pick up and dispose of their droppings.

G. OUTSIDE BURNING. No trash, leaves, or other materials shall be burned upon a Lot.

H. ANTENNA AND RECEIVERS. Only direct broadcast satellite (DBS) dish antennas that are one meter (approximately 39") or less in diameter may be installed. Generally, no other types of antenna are allowed.

1. If installed, a DBS dish antenna must be installed solely within the boundaries of the Owner's Lot and located on the rear of the Owner's Residence unless the Architectural Review Board approves a variance.

Page 11 of 25

October 16, 2007

2. If acceptable quality signals can be received by placing the antenna inside a home without unreasonable delay or unreasonable cost increase, then outdoor installation is prohibited.

3. Such installed antenna shall be located in a place shielded from view from the street or from other homes, to the maximum extent possible; provided that nothing in this Restriction requires installation in an area where an acceptable quality signal cannot be received.

I. EXTERIOR MODIFICATIONS. Any new exterior structure (e.g., flag pole, bird house, screening device) or planting (e.g., trees, shrubs) over 24-inches-high requires approval by the Architectural Review Board.

J. EXTERIOR LIGHTS. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

K. ELECTRIC BUG KILLERS. Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

L. EQUIPMENT. No playground equipment or basketball goals shall be placed or maintained on any Lot.

M. GARAGE DOORS. All garage doors shall remain fully lowered and closed except when in use for ingress and egress to the garage.

N. PERIODIC WATERING OF LAWNS. Each Owner shall water the lawn area of the Lot on a regular basis sufficient to maintain a lush green yard. If an Owner fails to comply with this restriction, the Architectural Review Board shall have the right to water the lawn at the expense of the Owner thereof and the Architectural Review Board shall have a lien against the watered Lot for the expense thereof.

ARTICLE VII

ASHBURY PARK HOMEOWNERS ASSOCIATION, INC. (APHOA)

A. MEMBERSHIP. Each Owner shall automatically be a member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

B. POWERS. The APHOA shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

Page 12 of 25

October 16, 2007

C. VOTING AND OTHER RIGHTS OF MEMBERS. The voting and other rights of members shall be as specified in the Articles and By-Laws of the APhOA.

D. ANNUAL BUDGET. By a majority vote of the Directors, the APhOA Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met.

E. RESERVE FOR REPLACEMENTS. The APhOA Board of Directors may establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

1. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund, and the advice of such consultants as the Board may employ.

2. The Reserve for Replacements shall be deposited in a special account with a lending institution (the accounts of which are insured by an agency of the United States of America) or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

F. LIMITATIONS ON ACTION BY THE CORPORATION. Unless two-thirds (2/3) of the Members have given their prior written approval, the APhOA, the Board of Directors and the Owners may not:

1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (except as authorized by Article X, Section D). However, the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause.

2. Fail to maintain fire and extended coverage on insurable Community Area in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost).

3. Use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area.

4. Change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence.

Page 13 of 25

October 16, 2007

5. By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Community Area.

6. Fail to maintain the Reserve for Replacements in the amount required by this Declaration.

**ARTICLE VIII
ASSESSMENTS**

Each Owner of any Lot, by acceptance of a deed to the Lot, agrees to pay to the APHOA the following: (a) General Assessment; (b) Lot Maintenance Assessment; (c) Architectural Control Assessment; and/or (d) Special Assessments.

A. GENERAL ASSESSMENT.

1. Purpose of Assessment. The General Assessment levied by the APHOA shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots, for the improvement, maintenance and operation of the Community Area and Lots, and for the performance of the duties and responsibilities of the APHOA established by this Declaration.

2. Basis of Assessment. Each Lot shall be assessed at a uniform rate.

3. Change in Basis. The basis of assessment may be changed with the assent of sixty percent (60%) of the Members who are voting in person, by proxy, or by absentee ballot at a meeting of such Members duly called for this purpose.

4. Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in Article VII, Section D, fix the General Assessment for each assessment year of the APHOA at an amount sufficient to meet the obligations imposed by this Declaration upon the APHOA. The Board of Directors shall establish the date(s) the General Assessment (and Lot Maintenance Assessment) shall become due, and the manner in which it shall be paid.

5. Date of Commencement. The General Assessment (and Lot Maintenance Assessment) shall commence on the first day of the quarter following conveyance of a Lot to a new Owner.

B. LOT MAINTENANCE ASSESSMENT. The Lot Maintenance Assessment is collected as part of the General Assessment. The amount is determined by the cost specifically for the maintenance (e.g., mowing, snow removal) of the Lots.

October 16, 2007

1. Purpose of Assessment. The Lot Maintenance Assessment levied by the APHOA shall be used exclusively to perform the maintenance service for Lots one (1) through eighty-four (84) inclusive as provided for in Article XI of this Declaration.

2. Basis for Assessment. Each Lot shall be assessed at a uniform rate.

3. Change in Basis. The basis of assessment may be changed with the assent of sixty percent (60%) of the Members who are voting in person, by proxy, or by absentee ballot at a meeting of such Members duly called for this purpose.

C. ARCHITECTURAL CONTROL ASSESSMENT. The Corporation may levy an Architectural Control Assessment to defray the costs of reviewing changes to a Lot and/or Residence.

D. SPECIAL ASSESSMENT. In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person, by proxy, or by absentee ballot at a meeting of such members duly called for this purpose.

E. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE CORPORATION. Each Owner shall be personally liable for the payment of all Assessments levied by the APHOA Board of Directors. Where the Owner constitutes more than one (1) person, the liability of such persons shall be joint and several.

1. Upon the failure of an Owner to make payments of any Assessment within thirty (30) days after such is due, the Board of Directors, in its discretion, may:
 - a. Impose a uniform late charge, which will be considered an addition to the Assessment. The uniform late charge shall be in an amount determined by the Board of up to twenty-five percent (25%) of the amount of the Assessment.
 - b. Accelerate the entire balance of any unpaid Assessment for the remainder of the fiscal year or years, and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary.
 - c. Impose collection costs, if any, which the Association incurs from a Property Manager or Managing Agent for the processing of delinquent accounts.
 - d. Suspend the Owner's right to vote as provided in this Declaration.
2. If any Owner shall fail, refuse or neglect to make any payment of any Assessment, the lien for such Assessment on the Owner's Lot may be

Page 15 of 25

October 16, 2007

foreclosed by the Board of Directors for and on behalf of the APHOA as provided by law.

3. No Owner may waive or otherwise escape liability for the Assessment provided for herein by non-use of the Community Area or abandonment of his Lot.

G. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority.

1. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessment.
2. The extinguishment of such lien shall not relieve the prior Owner from personal liability for the incurred Assessment lien.
3. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

H. CERTIFICATES. The APHOA shall, upon demand by an Owner, at any time, furnish a certificate in writing for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met.

ARTICLE IX ARCHITECTURAL CONTROL

An Architectural Review Board consisting of three (3) or more persons as provided in the By-Laws shall be appointed by the APHOA Board of Directors.

A. PURPOSE. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

B. CONDITIONS. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the Residence located thereon shall be made or done without the prior approval of a Lot Development Plan by the Architectural Review Board.

1. Prior to the commencement by any Owner of construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot, or any plantings on a Lot, a Lot

Page 16 of 25

October 16, 2007

Development Plan shall be submitted to the Architectural Review Board for review and written approval. As used in this Article IX, "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than twenty-four (24) inches.

2. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Ashbury Park, and no Owner shall undertake any construction activity within Ashbury Park unless all legal requirements have been satisfied.
3. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board.

C. PROCEDURES. The Board of Directors may modify these procedures and may make additional procedures as it may deem necessary to guide Owners as to the requirements for proceeding with modifications to an Owner's Lot or Residence.

1. An Owner who wishes to make modifications to his Lot or Residence must submit one (1) copy of a Lot Development Plan to the Architectural Review Board. This copy shall be retained by the Architectural Review Board for its records.
2. The Architectural Review Board shall inform the APhOA Board of Directors of Lot Development Plans pending and the schedule for review and approval.
3. The Architectural Review Board shall approve, disapprove, or request additional information regarding a Lot Development Plan within thirty (30) days after all required information is provided to the Architectural Review Board.
4. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within the thirty (30) days, approval will be deemed to have been given.
5. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

D. GUIDELINES AND STANDARDS. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in Article IX, Section A to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors which may terminate or

Page 17 of 25

October 16, 2007

modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

E. APPLICATION OF GUIDELINES AND STANDARDS. The Architectural Review Board shall apply the guidelines and standards (established pursuant to Article IX, Section D) in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Architectural Review Board if resubmitted.

F. DESIGN CONSULTANTS. The Architectural Review Board may utilize the services of architectural, engineering and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of a conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants may, from time to time, represent Owners filing Lot Development Plans with the Architectural Review Board.

G. EXERCISE OF DISCRETION. The APHOA intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of Article IX, Section E, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

H. LIABILITY OF THE ARCHITECTURAL REVIEW BOARD. Neither the Architectural Review Board, the Board of Directors, the APHOA, nor any agent of any of the foregoing shall be responsible in any way for defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

ARTICLE X COMMUNITY AREA

The Community Area shall be privately owned by the Ashbury Park Homeowners Association, Inc.

A. DENSITY OF USE. The APHOA expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon.

Page 18 of 25

October 16, 2007

B. OBLIGATIONS OF THE APHOA. The APHOA, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

C. EASEMENTS OF ENJOYMENT. No person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or any Supplemental Declaration executed by the APHOA. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted.

D. EXTENT OF EASEMENTS. The easements of enjoyment created hereby shall be subject to the following:

1. The right of the APHOA to establish reasonable rules for the use of the Community Area.
2. The right of the APHOA to mortgage any or all of the Community Area and the Facilities constructed therein for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon. This right is pursuant to approval of sixty percent (60%) of the votes of the Members voting in person, by proxy, or by absentee ballot at a regular meeting of the APHOA or a meeting duly called for this purpose.
3. The right of the APHOA to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility. No such dedication or transfer shall be effective unless an instrument has been recorded that is signed by the appropriate officers of the APHOA acting pursuant to authority granted by sixty percent (60%) of the votes of the Members agreeing to such dedication or transfer, voting in person, by proxy, or by absentee ballot at a duly called meeting of the APHOA.

E. ADDITIONAL RIGHTS OF USE. The members of the family and the guests of every Owner who has a right of enjoyment to the Community Area and Facilities also have the right of enjoyment. This right is subject to such general regulations consistent with the provisions of this Declaration (and all Supplemental Declarations as may be established from time to time by the Corporation).

F. DAMAGE OR DESTRUCTION BY OWNER.

1. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner shall be responsible for repairing the damaged area.

Page 19 of 25

October 16, 2007

2. If the APHOA shall undertake the repair of the damaged area, the repair shall be in a good and workmanlike manner, in conformance with the original plans and specifications of the area involved or as the area may have been modified or altered subsequently by the APHOA, in the discretion of the APHOA.
3. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

**ARTICLE XI
ADDITIONAL DUTIES AND RESPONSIBILITIES OF THE APHOA**

A. LAWN MAINTENANCE. The Association shall be responsible for the grass mowing and fertilization of the lawn of each Lot.

B. SNOW REMOVAL. While the City of Carmel should provide timely snow removal for the streets, the APHOA may arrange and pay for private snow removal.

**ARTICLE XII
EASEMENTS**

A. PLAT EASEMENTS. In addition to such easements as are created elsewhere in this Declaration and as may be created by the APHOA pursuant to written instruments recorded in the Office of the Recorder of Hamilton County, Indiana, Lots are subject to a variety of easements (either separately or in any combination thereof as shown on the Plats), which are reserved for the use of the Owners, the APHOA, the Architectural Review Board, public utility companies and governmental agencies as follows:

1. Drainage Easements ("DE") are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Ashbury Park and adjoining ground and/or public drainage systems.
 - a. It shall be the individual responsibility of each Owner to maintain the drainage across his own Lot.
 - b. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction or any improvement, nor shall any grading restrict, in any manner, the waterflow.
 - c. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage, but neither the APHOA nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.
2. Sewer Easements ("SE") are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may

Page 20 of 25

October 16, 2007

be designed to serve Ashbury Park for the purpose of installation and maintenance of sewers that are part of said system.

3. Utility Easements ("UE") are created for the use of the APHOA and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

4. 30' Buffer Yards are created to provide a natural separation from adjacent real estate. Following the initial planting, the 30' Buffer Yard shall be maintained in its then natural state by the Owner of such Lot.

5. Non-Access Easements ("NAE") are created to preclude vehicle access from certain Lots to abutting rights-of-way, across the land subject to such easements.

6. The APHOA shall have a Blanket Easement upon, across, over and under each Lot for the purposes of performing its Additional Duties (Article XI).

7. Owners shall have Easement of Enjoyment to the Community Area (see Article X, Section E).

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended (or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County), but a concrete or asphalt driveway necessary to provide access to a Lot from a public street and a sidewalk shall not be deemed a "structure" for the purpose of this Restriction.

B. GENERAL EASEMENT. There is hereby created a blanket easement over, across, through and under the Tract for ingress and egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewer, gas, telephone, electricity, television, cable or communication lines and systems.

1. By virtue of this easement it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if such company restores the disturbed area as nearly as is practicable to the condition to which it was found.

2. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated except as proposed and approved by the Architectural Review Board.

Page 21 of 25

October 16, 2007

3. Should any utility furnishing a service covered by the general easement herein provided request a specific easement be separate recordable document, the APHOA shall have the right to grant such easement on the Tract without conflicting with the terms thereof.

This blanket easement shall in no way affect any other recorded easements on the Tract and shall be limited to improvements as originally constructed, and shall not cover any portion of a lot upon which a Residence has been constructed.

C. PUBLIC HEALTH AND SAFETY EASEMENTS. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar persons to enter upon the Community Area in the performance of their duties.

D. DRAINAGE BOARD EASEMENTS. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

E. CROSSING UNDERGROUND EASEMENTS. Easements utilized for underground service may be crossed by driveways, walkways, Lake Access Easements and Community Area Access Easements provided prior arrangement is made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios or other pavings, other than crossings, driveways, walkways, Lake Access Easements and Community Area Access Easements, and neither the APHOA nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or services to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

F. WATER RETENTION. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (retention) of storm water within the drainage easements (DE) on such Owner's Lot.

G. STREET LIGHTS. The owner of each Lot on which a street light is installed consents to the placement of a street light on such Lot and agrees that the APHOA shall have the right to enter upon the Lot for the purpose of maintaining the street light.

ARTICLE XIII ENFORCEMENT

The APHOA or any Owner shall have the right to enforce (by proceeding at law or in equity) all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declaration.

Page 22 of 25

October 16, 2007

A. LIABILITY FOR DAMAGE. The APHOA shall not be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions.

B. DELAY IS NOT DEEMED A WAIVER. No delay or failure by the APHOA or by any Person to enforce any of the Restrictions shall be deemed a waiver of the right to do so thereafter.

C. COSTS OF ENFORCEMENT. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorney's fees, if it substantially prevails in such action.

ARTICLE XIV AMENDMENTS

This Declaration may be amended at any time by an instrument signed by the appropriate officers of the APHOA acting pursuant to the authority granted by not less than sixty percent (60%) of the votes of the Members cast at a meeting duly called for the purpose of amending this Declaration. Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

ARTICLE XV INTERPRETATION

The aforesaid titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

ARTICLE XVI DURATION

The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2020, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changes in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

ARTICLE XVII

Page 23 of 25

October 16, 2007

SEVERABILITY

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

**ARTICLE XVIII
NON-LIABILITY OF DECLARANT**

The APHOA shall not have any liability to any Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence. An Owner, by an acceptance of a deed to a Lot, shall be deemed to have agreed to indemnify and hold the APHOA free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. The APHOA shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by the APHOA, and no duty of, or warranty by, the APHOA shall be implied by or inferred from any term or provision of this Declaration.

**ARTICLE XIX
RESPONSIBILITY OF OWNERS**

Each Owner will preserve and maintain the part of the Buffer Yard and Drainage Easement located on such Owner's Lot, consistent with the purpose of such area to provide a natural buffer between adjacent real estate and to facilitate storm water drainage.

(Signature Page follows)

Page 24 of 25

October 16, 2007

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above for the Amendments to the Declaration of Covenants and Restrictions of Ashbury Park.

Ashbury Park Homeowners Association, Inc.,
An Indiana Limited Partnership.

By: Kurt Paige
Kurt Paige
President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

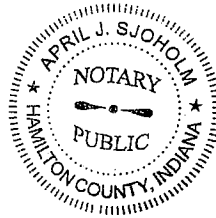
Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Kurt Paige who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions on behalf of such entity and by its authority for the purposes set forth therein.

WITNESS my hand and Notarial Seal this 26 day of Feb, 20 10.

My Commission Expires: 9.16.2014

County of Residence: Hamilton

[Signature]
Notary Public Signature
April J. Sjoholm
Printed Name



Prepared by Kurt Paige

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

(name) Brend W. Clayton

October 18, 2012

27

2013050142 DECL \$63.00
08/05/2013 01:14:05P 27 PGS
Mary L. Clark
HAMILTON County Recorder IN
Recorded as Presented

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
OF ASHBURY PARK**

This Amendment and restatement to the Declaration of Covenants and Restrictions of Ashbury Park were executed this 18th day of October, 2012, by the Ashbury Park Homeowners Association, Inc. ("Declarant").

WITNESSETH:

WHEREAS, the Ashbury Park subdivision was established by a certain "Declaration of Covenants and Restrictions" which was recorded on February 7, 2000 as **Instrument No. 20000006021**, and subsequently amended and recorded on March 3, 2010 as Instrument No. 2010009560 in the Office of the Recorder of Hamilton County, Indiana; and

WHEREAS, said Declaration together with all amendments and/or supplements thereto are hereafter referred to as the "Declaration"; and

WHEREAS, Plats filed with the Office of the Recorder of Hamilton County, Indiana established eighty-four (84) Lots numbered one (1) through eighty-four (84) and Common Areas comprising the Ashbury Park subdivision; and

WHEREAS, the original Declaration established the residential community with public streets, two (2) retention lakes, and private open spaces and landscaped areas for the benefit of such residential community known as Ashbury Park, which community was developed substantially in accordance with the site development plans approved by the Carmel City Plan Commission under Docket Numbers 73-99SP and 74-99SP; and

WHEREAS, the original Developer of Ashbury Park desired to provide for the preservation and enhancement of the property values, amenities and opportunities in Ashbury Park and for the maintenance of the subdivision and the improvements thereon, and to this end desired to subject the subdivision to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the subdivision and the future owners thereof; and

October 18, 2012

WHEREAS, the original Developer deemed it desirable, for the efficient preservation of the values and amenities in Ashbury Park, to create an agency to which would be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, promoting the recreation, health, safety and welfare of the Owners of Lots in Ashbury Park and performing the duties and obligations required under this Declaration; and

WHEREAS, the original Developer caused to be incorporated under the laws of the State of Indiana, a non-profit corporation known as Ashbury Park Homeowners Association, Inc., for the purpose of exercising such functions; and

WHEREAS, under the terms of the Declaration, the Real Estate was, is and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens set forth in the Declaration. All of the above were and are declared to be in furtherance of a plan for the preservation and enhancement of the Real Estate, and were and are established and are agreed-upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the subdivision as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the subdivision, and upon their heirs, successors and assigns; and

WHEREAS, (unless otherwise indicated herein) the definitions and terms in these Amendments to the Declaration shall have the same meaning as in the original Declaration. Reference is specifically made to Article I of the Amended Declaration containing definitions of terms; and

WHEREAS, the Annual Meeting of the Ashbury Park Homeowners Association, Inc. was held on October 18, 2012; and

WHEREAS, one of the purposes of the Annual Meeting (as stated in the notice for the meeting) was for the Association's Members to vote upon the approval of the Amended and Restated Declaration of Covenants and Restrictions of Ashbury Park, dated; and

WHEREAS, the Owners holding 74 votes were in attendance at the October 16, 2007 Annual Meeting, thus constituting a quorum (60% of the total number of votes entitled to be cast (111); By-Laws Article III, Section 3); and

WHEREAS, the Owners holding 86 votes who were in attendance or voted by absentee ballot at the October 16, 2007 Annual Meeting, voted in favor of adopting the Amended and Restated Declaration of Covenants and Restrictions of Ashbury Park, dated; and

WHEREAS, these 86 Owners constitute more than two-thirds (2/3) of the 96 votes cast in person or by absentee ballot concerning this Amendment (Section 19, Paragraph (a) of the original Declaration of Covenants).

Page 2 of 27

October 18, 2012

WHEREAS, the Owners holding 51 votes who were in attendance or voted by absentee ballot at the October 18, 2012 Annual Meeting thus constituting a quorum (60% entitled to be cast; By-Laws Article III, Section 3), voted in favor of adopting the Second Amended and Restated Declaration of Covenants and Restrictions of Ashbury Park, dated;

NOW, THEREFORE, the Declaration which is applicable to all Owners and residents within Ashbury Park is amended and restated as follows:

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
OF ASHBURY PARK**

**ARTICLE I
DEFINITIONS**

The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

“APHOA” means the Ashbury Park Homeowners Association, Inc.

“*Architectural Review Committee*” means that entity established pursuant to this Declaration and appointed by the Board of Directors for the purposes stated herein.

“*Articles*” means the Articles of Incorporation of the Ashbury Park Homeowners Association, Inc, as amended from time to time.

“*Ashbury Park*” means the name by which the subdivision is known.

“*Assessments*” means all sums lawfully assessed against the Members of the APHOA or as declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws.

“*Association*” means Ashbury Park Homeowners Association, Inc., an Indiana non-profit corporation, its successors and assigns.

“*Board of Directors*” means the governing body of the APHOA elected by the Members in accordance with the By-Laws.

“*Buffer Yard and Drainage Easement*” means the part of Lot(s) so designated on the plats as Buffer Yard and Drainage Easement or BY/DE.

“*Builder*” means a person or entity engaged in the organized construction of a Residence on a Lot.

Page 3 of 27

October 18, 2012

"Building Setback Lines or B.S.L." are established on the Plat between which lines and the nearest street right-of-way, no structure may be erected.

"By-Laws" means the Code of By-Laws of the APHOA, as amended from time to time.

"Common Area" means: (1) those portions of the property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the APHOA from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), and (2) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated

on the Plat (as hereafter defined) as a "Block", "Common Area", or "C.A.". The Common Area is restricted from further development and shall be preserved as open space.

"Community Area" means:

- (i) the Drainage System,
- (ii) the area designated on the Plat as Common Area,
- (iii) the Entry Ways,
- (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section,
- (v) any areas of land (a) shown on any Plat, or (b) described in any recorded instrument prepared by Declarant or its agents, or (c) conveyed to or acquired by the APHOA, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots; and
- (vi) street lights and street signs.

"Drainage Board" means the Hamilton County Drainage Board, its successors or assigns.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, and the other structures, fixtures, properties, equipment and facilities located in Ashbury Park and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from over and across Ashbury Park including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

Page 4 of 27

October 18, 2012

"Entry Ways" means the structures constructed as an entrance to Ashbury Park or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles).

"Facilities" means the Common Area and all improvements thereto (including landscaping) and all property owned by the APHOA.

"General Plan of Development" means that plan prepared by the original developer and approved, if necessary, by appropriate public agencies that outlined the total scheme of development and general uses of land in the Development Area, as such may be amended from time to time.

"Lot" means a platted lot as shown on a Plat.

"Lot Development Plan" means

- (i) a site plan prepared by a licensed engineer or architect,
- (ii) foundation plan and proposed finished floor elevations,
- (iii) building plans, including elevation and floor plans,
- (iv) material plans and specifications,
- (v) landscaping plan, and
- (vi) all other data or information that the Architectural Review Committee may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alterations of a Residence or other structure or improvement thereon.

"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation, management or improvement of the facility, and all expenses related to the performance of the duties of the APHOA under this Declaration.

"Member" means a member of the APHOA. The Owner(s) of a Lot is a member.

"Non-Access Easement" means the area designated on a Plat as an Easement, but over which vehicles are prohibited from traveling.

"Owner" means a Person who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Page 5 of 27

October 18, 2012

"Plat" means a final secondary plat of a portion of the Development Area recorded in the Office of the Recorder of Hamilton County, Indiana.

"Proxy" means a Member designating, in writing, another Member to vote on their behalf on any or all issues at any meeting of the Members.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors, as may from time to time be amended.

"Reserve for Replacements" means a fund established and maintained by the APHOA to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

"Residence" means any structure intended exclusively for occupancy by a single family, including its private garage.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations, the Plats, and the Register of Regulations, as the same may from time to time be amended.

"Section" means a portion of Ashbury Park. The Developer established three (3) sections for purposes of building the subdivision.

- (i) Section 1 consists of Lots along Ashbury Drive and Lots 22-35 along Edison Way.
- (ii) Section 2 consists of the Lots along Allenhurst Circle and Belford Court, and Lots 36-41 and 66-71 along Edison Way.
- (iii) Section 3 consists of the land through which the natural gas pipeline runs. No construction is permitted on Section 3.

"Supplemental Declaration" means any Plat or supplementary declaration of covenants, conditions or restrictions that may be recorded and which extends the provisions of this Declaration to a Section and contains such complementary or supplementary provisions for such Section as are required or permitted by this Declaration.

"Zoning Authority" with respect to any action means the Director of the Department of Community Services of the City of Carmel or (where he lacks the capacity to take action or fails to take such action) the governmental body or bodies (administrative or judicial) in which authority is vested under applicable law to hear appeals from the Department, or review the Director's action or failure to act.

"Zoning Ordinance" means The Zoning Ordinance of City of Carmel/Clay Township, Indiana as amended.

Page 6 of 27

October 18, 2012

ARTICLE II DECLARATION

It is expressly declared that the subdivision was, is and shall be subject to these Restrictions. The Owner of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, or by the act of occupancy of any Lot shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of the APHOA with respect to these Restrictions and agrees to keep, observe, comply with and perform such Restrictions and agreement.

ARTICLE III DRAINAGE SYSTEM

The Drainage System has been constructed for the purpose of controlling drainage within and adjacent to the subdivision. The APHOA shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

ARTICLE IV MAINTENANCE OF ENTRY WAYS AND COMMUNITY AREA

The APHOA shall maintain the Entry Ways and the Community Area, and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way or within the Community Area shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Ashbury Park or a part thereof or a planting area within Ashbury Park. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision.

ARTICLE V CONSTRUCTION OF RESIDENCES

A. LAND USE. Lots may be used only for residential purposes and only one Residence may be constructed thereon.

1. No portion of any Lot may be sold or subdivided such that there will be a greater or lesser number of Residences in Ashbury Park than depicted on the Plats of the last approval of the covenants dated October 16, 2007.

Page 7 of 27

October 18, 2012

2. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

3. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "Special Use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot.

4. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation. No industry, business, manufacturing, mercantile, storing, trade, or any commercial activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Ashbury Park property; provided, however, that an Owner may maintain an office or home business in the Residence if: (1) such office or business generates no significant number of visits or unreasonable parking usage (both as determined by the Board of Directors) by clients, customers or other persons related to the business; (2) no equipment or other items related to the business are stored, parked or otherwise kept outside such Owner's Residence; (3) there are no employees or independent contractors within the Residence other than the Owner or other resident; (4) such Owner has obtained approvals for such use as may be required by the appropriate local and state governmental agencies; (5) the Owner complies with all provisions of the City of Carmel ordinances, including the "home occupations ordinance"; and (6) all other provisions of this Declaration and the rules and regulations are complied with. The Board may require the Owner to pay any increase in the rate of insurance or other costs for the Association which may result from such use. No Residence shall be used or rented for transient, motel or hotel purposes.

B. SIZE OF RESIDENCE. No residence may be constructed on any lot unless such Residence, exclusive of open porches, attached garages and basements, shall have the minimum square footage of 1700 square feet.

C. DESIGN AND BUILDING MATERIALS. Each residence shall have not less than 7/12 roof pitch front to back, and a 12/12 roof pitch side to side. Exterior materials shall be brick (on all or a part of not less than 3 sides of the residence), and wood, concrete composite, or similar siding.

D. TEMPORARY STRUCTURES. No trailer, shack, tent, garage or other outbuilding may be located in Ashbury Park .

E. BUILDING LOCATION. No building may be erected between the building line shown on a Plat and the front Lot line.

Page 8 of 27

October 18, 2012

F. DRIVEWAYS. All driveways shall be constructed of concrete or such other material as shall be approved by the APHOA Architectural Review Committee , and shall be maintained free of debris.

G. LIGHTS. Each Owner shall maintain the coach lights at his garage entrance to ensure uniform illumination on each Lot. The coach lights shall be equipped with a photo electric cell or similar device to ensure automatic illumination from dusk to dawn each day.

H. STORAGE TANKS. No gas or oil storage tanks shall be located in Ashbury Park.

I. CONSTRUCTION AND LANDSCAPING. All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Committee.

1. All landscaping specified on the landscaping plan approved by the Architectural Review Committee shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the Architectural Review Committee agrees to a later landscaping completion date.
2. Unless a delay is caused by strikes, war, court injunction or acts of God, the Owner of any Lot which on the date of purchase from the Developer is not improved with a Residence shall commence construction of a Residence upon the Lot within 180 days from the date the Owner acquired title thereto and shall complete construction of such Residence within two hundred seventy (270) days after the date of commencement of the building process.
3. Upon the failure of the foregoing to occur, the APHOA may:
 - a. obtain injunctive relief to force the Owner to proceed with construction of any Residence, a Lot Development Plan for which has been approved by the Architectural Review Committee upon application by such Owner.
 - b. pursue other remedies at law or in equity as may be available to the APHOA.
4. The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Committee of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the lot within the time periods specified herein.
5. For the purposes of this Article V, construction of a residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim,

Page 9 of 27

October 18, 2012

paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

J. MAILBOXES. All mailboxes shall be uniform and shall be of a type, color and manufacturer approved by the Architectural Review Committee. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Committee. No permanent attachments shall be permitted to the mailbox or post. The Owner of each mailbox and post shall maintain them to compliment the neighborhood; if the mailbox or post is damaged or destroyed, the Owner shall promptly repair or replace it. If an Owner fails to comply with any part of this provision after written notice from the Board of Directors, the Association, through the Board of Directors or its agents, shall have the right and power to perform whatever work is necessary to achieve compliance. All costs incurred by the Association shall be at the expense of the applicable Owner, collectible in the same manner as collecting delinquent assessments as described in Article VIII of this Declaration.

K. SEPTIC SYSTEMS. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

L. WATER SYSTEMS. No private or semi-private water supply system may be located upon any lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the Lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto.

M. POWER SYSTEMS. No permanent power generator or any other on-site power system shall be installed or maintained on any Lot unless approved by the Architectural Review Committee.

N. DRAINAGE. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat.

1. To the extent not maintained by the Drainage Board, the "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale.

Page 10 of 27

October 18, 2012

2. Lots within Ashbury Park may be included in a legal drain established by the Drainage Board. In such event, each Lot in Ashbury Park will be subject to assessment by the Drainage Board for the cost of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot.
3. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots.
4. Perimeter foundation drains, sump pump drains and downspouts shall not be outletted into streets or street rights-of-way. These drains shall be connected into a subsurface drainage tile.
5. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

ARTICLE VI MAINTENANCE OF LOTS

A. VEHICLE PARKING. No camper, motor home, truck, trailer, boat, motorcycle, bus, commercial vehicle of any kind, or disabled vehicle shall be parked in the subdivision in excess of forty-eight (48) consecutive hours, unless within a garage.

B. SIGNS. No sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale/rent. Open House signs must be removed immediately after the event.

Political signs, of not more than four square feet, may be placed on any Lot no more than thirty (30) days prior to and no longer than five (5) days after a scheduled election. A maximum of two (2) political election signs per lot are allowed. Any sign, displayed on a Member's Lot five days post an election may be removed by the APHOA.

No signs, except temporary real estate open house ,annual community garage sales signs, may be placed in the Community area.

Any other sign must be approved by the Architectural Review Committee.

C. FENCING. No fence, wall, screening device, hedge or shrub planting greater than twenty-four (24) inches in height shall be permitted between the front property line and the front building set-back line except where such planting is located on a Landscape Easement or is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence.

1. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge."

Page 11 of 27

October 18, 2012

2. No chain link or wood fence shall be erected upon a Lot. Fences shall be made of black wrought -iron or aluminum and shall be no greater than 4-feet in height, unless approved by the Architectural Review Committee.
3. No fence shall be erected or maintained on or within any Landscape Easement.
4. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Committee. The Architectural Review Committee may establish design standards for fences and further restrictions with respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of any Lake.
5. All fences shall be kept in good repair.
6. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement.
7. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

D. NUISANCES. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

E. GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers approved by the Architectural Review Committee and out of public sight, except for the evening prior to and the day of garbage pickup. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

F. ANIMALS. No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot; except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purpose.

1. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance.
2. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.
3. Owners of dogs shall pick up and dispose of their droppings.

G. OUTSIDE BURNING. No trash, leaves, or other materials shall be burned upon a Lot.

H. ANTENNA AND RECEIVERS. Only direct broadcast satellite (DBS) dish antennas that are one meter (approximately 39") or less in diameter may be installed. Generally, no other types of antenna are allowed.

Page 12 of 27

October 18, 2012

1. If installed, a DBS dish antenna must be installed solely within the boundaries of the Owner's Lot and located on the rear of the Owner's Residence unless the Architectural Review Committee approves a variance.
2. If acceptable quality signals can be received by placing the antenna inside a home without unreasonable delay or unreasonable cost increase, then outdoor installation is prohibited.
3. Such installed antenna shall be located in a place shielded from view from the street or from other homes, to the maximum extent possible; provided that nothing in this Restriction requires installation in an area where an acceptable quality signal cannot be received.

I. EXTERIOR MODIFICATIONS. Any new exterior structure (e.g., flag pole, bird house, screening device) or planting (e.g., trees, shrubs) over 24-inches in height requires approval by the Architectural Review Committee.

J. EXTERIOR LIGHTS. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

K. ELECTRIC BUG KILLERS. Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

L. EQUIPMENT. No basketball goals, swing sets or other recreational equipment shall be placed or maintained on any Lot.

M. GARAGE DOORS. All garage doors shall remain fully lowered and closed except when in use for ingress and egress to the garage.

N. PERIODIC WATERING OF LAWNS. Each Owner shall water the lawn area of the Lot on a regular basis sufficient to maintain a lush green yard. If an Owner fails to comply with this restriction, the Architectural Review Committee shall have the right to water the lawn at the expense of the Owner thereof and the Architectural Review Committee shall have a lien against the watered Lot for the expense thereof.

ARTICLE VII

ASHBURY PARK HOMEOWNERS ASSOCIATION, INC. (APHOA)

A. MEMBERSHIP. Each Owner shall automatically be a member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

Page 13 of 27

October 18, 2012

B. POWERS. The APHOA shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

C. VOTING AND OTHER RIGHTS OF MEMBERS. The voting and other rights of members shall be as specified in the Articles and By-Laws of the APHOA.

D. ANNUAL BUDGET. By a majority vote of the Directors, the APHOA Board of Directors shall present an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met.

E. RESERVE FOR REPLACEMENTS. The APHOA Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

1. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund, and the advice of such consultants as the Board may employ.

2. The Reserve for Replacements shall be deposited in a special account with a lending institution (the accounts of which are insured by an agency of the United States of America) or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

F. LIMITATIONS ON ACTION BY THE ASSOCIATION. Unless two-thirds (2/3) of the Members have given their prior written approval, the APHOA, the Board of Directors and the Owners may not:

1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (except as authorized by Article X, Section D). However, the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause.

2. Fail to maintain fire and extended coverage on insurable Community Area in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost).

3. Use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area.

Page 14 of 27

October 18, 2012

4. Change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence.
5. By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Community Area.
6. Fail to maintain the Reserve for Replacements in the amount required by this Declaration.

ARTICLE VIII ASSESSMENTS

Each Owner of any Lot, by acceptance of a deed to the Lot, agrees to pay to the APHOA the following: (a) General Assessment; (b) Architectural Control Assessment; and/or (c) Special Assessments.

A. GENERAL ASSESSMENT.

1. Purpose of Assessment. The General Assessment levied by the APHOA shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots, for the improvement, maintenance and operation of the Community Area and Lots, and for the performance of the duties and responsibilities of the APHOA established by this Declaration.
2. Basis of Assessment. Each Lot shall be assessed at a uniform rate.
4. Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in Article VII, Section D, propose the General Assessment, including the Lot Maintenance Assessment, for each assessment year of the APHOA at an amount sufficient to meet the obligations imposed by this Declaration upon the APHOA, subject to approval by the Members. The Board of Directors shall establish the date(s) the General Assessment (and Lot Maintenance Assessment) shall become due, and the manner in which it shall be paid.
5. Date of Commencement. The General Assessment (and Lot Maintenance Assessment) shall commence immediately upon conveyance of a Lot to a new Owner.
6. The Lot Maintenance Assessment is determined by the cost specifically to perform the maintenance services for Lots one(1) through eighty-four (84) inclusive as provided for in Article XI of this Declaration.

Page 15 of 27

October 18, 2012

B. ARCHITECTURAL CONTROL ASSESSMENT. The Association may levy an Architectural Control Assessment to defray the costs of reviewing changes to a Lot and/or Residence.

C. SPECIAL ASSESSMENT. In addition to such other Special Assessments as may be authorized herein, the Association may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person, by proxy, or by absentee ballot at a meeting of such members duly called for this purpose.

D. FAILURE OF OWNER TO PAY ASSESSMENTS. No Owner may exempt himself or herself from paying General, Lot Maintenance, or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Community Area and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Community Area, or by abandonment of the Residence and Lot belonging to such Owner. Each Owner shall be personally liable for the payment of all General, Lot Maintenance, and Special Assessments and all other charges. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any General, Lot Maintenance, or Special Assessments when due, the lien for such assessment on the Owner's Residence and Lot may be foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any General, Lot Maintenance, or Special Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (1) impose a uniform monthly late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board;
- (2) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary; and
- (3) suspend such Owner's right to vote.

The Board may, at its option, bring a suit to recover a money judgment for any unpaid General, Lot Maintenance, or Special Assessments without foreclosing or waiving the lien securing the same. In connection with any effort to collect

Page 16 of 27

October 18, 2012

or in any action to recover a General, Lot Maintenance, or Special Assessment, regardless of whether litigation is initiated, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the Unit, not only the delinquent General, Lot Maintenance, or Special Assessments, but also all late charges imposed, all court costs, all costs of collection, charges, fees and expenses incurred by the Association with respect to such collection effort or action, including but not limited to charges, costs, fees or other expenses incurred by the Association to the Managing Agent for administering, monitoring or processing delinquent Owners' accounts, and reasonable attorney's fees. The Association need not accept any tender or a partial payment of an Assessment, or any installment of an Assessment, and all costs, expenses, charges and attorney's fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter. In addition, the Board shall have the power to adopt by Board resolution additional rules and regulations or delinquency procedures.

F. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority.

1. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessment.
2. The extinguishment of such lien shall not relieve the prior Owner from personal liability for the incurred Assessment lien.
3. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

G. CERTIFICATES. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Residence and Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

ARTICLE IX ARCHITECTURAL CONTROL

An Architectural Review Committee consisting of five (5) persons as provided in the By-Laws shall be appointed by the APHOA Board of Directors.

Page 17 of 27

October 18, 2012

A. PURPOSE. The Architectural Review Committee shall regulate the external design, appearance, use, location and maintenance of Ashbury Park and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

B. CONDITIONS. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the Residence located thereon shall be made or done without the prior approval of a Lot Development Plan by the Architectural Review Committee.

1. Prior to the commencement by any Owner of construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot, or any plantings on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Committee for review and written approval. As used in this Article IX, "plantings" does not include flowers, bushes, shrubs or other plants having a height of twenty-four (24) inches or less.
2. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Ashbury Park, and no Owner shall undertake any construction activity within Ashbury Park unless all legal requirements have been satisfied.
3. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Committee.

C. PROCEDURES. The Board of Directors may modify these procedures and may make additional procedures as it may deem necessary to guide Owners as to the requirements for proceeding with modifications to an Owner's Lot or Residence.

1. An Owner who wishes to make modifications to his Lot or Residence must submit one (1) copy of a Lot Development Plan to the Architectural Review Committee. This copy shall be retained by the Architectural Review Committee for its records.
2. The Architectural Review Committee shall inform the APHOA Board of Directors of Lot Development Plans pending and the schedule for review and approval.
3. The Architectural Review Committee shall approve, disapprove a Lot Development Plan within thirty (30) days after all required information is provided to, and actually received by, the Architectural Review Committee.

Page 18 of 27

October 18, 2012

4. In the event the Architectural Review Committee fails to approve, modify or disapprove in writing a Lot Development Plan within the thirty (30) days of all required information being submitted, approval will be deemed to have been denied.
5. A decision of the Architectural Review Committee may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving. A Member shall submit an appeal within seven (7) days to be acted upon by the Board of Directors no later than the second regularly scheduled meeting of the Board of Directors to occur after the submission of the appeal.

D. GUIDELINES AND STANDARDS. The Architectural Review Committee shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in Article IX, Section A to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

E. APPLICATION OF GUIDELINES AND STANDARDS. The Architectural Review Committee shall apply the guidelines and standards (established pursuant to Article IX, Section D) in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Committee shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Architectural Review Committee if resubmitted.

F. DESIGN CONSULTANTS. The Architectural Review Committee may utilize the services of architectural, engineering and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of a conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants may, from time to time, represent Owners filing Lot Development Plans with the Architectural Review Committee.

G. EXERCISE OF DISCRETION. The APHOA intends that the members of the Architectural Review Committee exercise discretion in the performance of their duties consistent with the provisions of Article IX, Section E, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Committee is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the

Page 19 of 27

October 18, 2012

evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

H. LIABILITY OF THE ARCHITECTURAL REVIEW COMMITTEE. Neither the Architectural Review Committee, the Board of Directors, the APHOA, nor any agent of any of the foregoing shall be responsible in any way for defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

ARTICLE X COMMUNITY AREA

The Community Area shall be privately owned by the Ashbury Park Homeowners Association, Inc.

A. DENSITY OF USE. The APHOA expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon.

B. OBLIGATIONS OF THE APHOA. The APHOA, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

C. EASEMENTS OF ENJOYMENT. No person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or any Supplemental Declaration executed by the APHOA. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted.

D. EXTENT OF EASEMENTS. The easements of enjoyment created hereby shall be subject to the following:

1. The right of the APHOA to establish reasonable rules for the use of the Community Area.
2. The right of the APHOA to mortgage any or all of the Community Area and the Facilities constructed therein for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon. This right is pursuant to approval of sixty percent (60%) of the votes of the Members voting in person, by proxy, or by absentee ballot at a regular meeting of the APHOA or a meeting duly called for this purpose.

Page 20 of 27

October 18, 2012

- 3. The right of the APHOA to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility. No such dedication or transfer shall be effective unless an instrument has been recorded that is signed by the appropriate officers of the APHOA acting pursuant to authority granted by sixty percent (60%) of the votes of the Members agreeing to such dedication or transfer, voting in person, by proxy, or by absentee ballot at a duly called meeting of the APHOA.

E. ADDITIONAL RIGHTS OF USE. The members of the family and the guests of every Owner who has a right of enjoyment to the Community Area and Facilities also have the right of enjoyment. This right is subject to such general regulations consistent with the provisions of this Declaration (and all Supplemental Declarations as may be established from time to time by the Association).

F. DAMAGE OR DESTRUCTION BY OWNER.

- 1. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, contractors, agents, or member of his family, such Owner shall be responsible for repairing the damaged area.
- 2. If the APHOA shall undertake the repair of the damaged area, the repair shall be in a good and workmanlike manner, in conformance with the original plans and specifications of the area involved or as the area may have been modified or altered subsequently by the APHOA, in the discretion of the APHOA.
- 3. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

**ARTICLE XI
ADDITIONAL DUTIES AND RESPONSIBILITIES OF THE APHOA**

A. LAWN MAINTENANCE. The Association shall be responsible for the grass mowing and fertilization of the lawn of each Lot.

B. SNOW REMOVAL. While the City of Carmel should provide timely snow removal for the streets, the APHOA may arrange and pay for private snow removal.

C. IRRIGATION SERVICE. The Association is responsible for spring turn on and fall shut down of the system on each Lot. Backflow testing will also take place during the spring. However, any repairs are the responsibility of the homeowner.

October 18, 2012

**ARTICLE XII
EASEMENTS**

A. PLAT EASEMENTS. In addition to such easements as are created elsewhere in this Declaration and as may be created by the APHOA pursuant to written instruments recorded in the Office of the Recorder of Hamilton County, Indiana, Lots are subject to a variety of easements (either separately or in any combination thereof as shown on the Plats), which are reserved for the use of the Owners, the APHOA, the Architectural Review Committee, public utility companies and governmental agencies as follows:

1. Drainage Easements ("DE") are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Ashbury Park and adjoining ground and/or public drainage systems.
 - a. It shall be the individual responsibility of each Owner to maintain the drainage across his own Lot.
 - b. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction or any improvement, nor shall any grading restrict, in any manner, the waterflow.
 - c. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage, but neither the APHOA nor the Architectural Review Committee shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.
2. Sewer Easements ("SE") are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Ashbury Park for the purpose of installation and maintenance of sewers that are part of said system.
3. Utility Easements ("UE") are created for the use of the APHOA and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.
4. 30' Buffer Yards are created to provide a natural separation from adjacent real estate. Following the initial planting, the 30' Buffer Yard shall be maintained in its then natural state by the Owner of such Lot.
5. Non-Access Easements ("NAE") are created to preclude vehicle access from certain Lots to abutting rights-of-way, across the land subject to such easements.
6. The APHOA shall have a Blanket Easement upon, across, over and under each Lot for the purposes of performing its Additional Duties (Article XI).
7. Owners shall have Easement of Enjoyment to the Community Area (see Article X, Section E).

Page 22 of 27

October 18, 2012

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended (or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County), but a concrete or asphalt driveway necessary to provide access to a Lot from a public street and a sidewalk shall not be deemed a "structure" for the purpose of this Restriction.

B. GENERAL EASEMENT. There is hereby created a blanket easement over, across, through and under Ashbury Park for ingress and egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewer, gas, telephone, electricity, television, cable or communication lines and systems.

1. By virtue of this easement it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on Ashbury Park and to excavate for such purposes if such company restores the disturbed area as nearly as is practicable to the condition to which it was found.

2. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated except as proposed and approved by the Architectural Review Committee.

3. Should any utility furnishing a service covered by the general easement herein provided request a specific easement be separate recordable document, the APHOA shall have the right to grant such easement in Ashbury Park without conflicting with the terms thereof.

This blanket easement shall in no way affect any other recorded easements on Ashbury Park and shall be limited to improvements as originally constructed, and shall not cover any portion of a lot upon which a Residence has been constructed.

C. PUBLIC HEALTH AND SAFETY EASEMENTS. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar persons to enter upon the Community Area in the performance of their duties.

D. DRAINAGE BOARD EASEMENTS. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter Ashbury Park and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

E. CROSSING UNDERGROUND EASEMENTS. Easements utilized for underground service may be crossed by driveways, walkways, Lake Access Easements

Page 23 of 27

October 18, 2012

and Community Area Access Easements provided prior arrangement is made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios or other pavings, other than crossings, driveways, walkways, Lake Access Easements and Community Area Access Easements, and neither the APHOA nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or services to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

F. WATER RETENTION. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (retention) of storm water within the drainage easements (DE) on such Owner's Lot.

G. STREET LIGHTS. The owner of each Lot on which a street light is installed consents to the placement of a street light on such Lot and agrees that the APHOA shall have the right to enter upon the Lot for the purpose of maintaining the street light.

ARTICLE XIII ENFORCEMENT

The APHOA or any Owner shall have the right to enforce (by proceeding at law or in equity) all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declaration.

A. LIABILITY FOR DAMAGE. The APHOA shall not be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions.

B. DELAY IS NOT DEEMED A WAIVER. No delay or failure by the APHOA or by any Person to enforce any of the Restrictions shall be deemed a waiver of the right to do so thereafter.

C. COSTS OF ENFORCEMENT. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorney's fees, if it substantially prevails in such action.

ARTICLE XIV AMENDMENTS

This Declaration may be amended or changed, in whole or in part, at any time upon approval by the Owners of a majority of the Lots who are in good standing. For purposes of this provision, "good standing" shall mean Owners who are no more than sixty (60)

Page 24 of 27

October 18, 2012

days delinquent on the payment of any Assessments as determined by the Board at the time of the aforesaid approval. All Owners must be given the opportunity to vote on the proposed amendment(s). Such approval for an amendment to this Declaration may be obtained:

- (a) at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws; or
- (b) by written consents or approvals received from the Owners; or
- (c) pursuant to any other procedure recognized under Indiana law, including those recognized under the Indiana Nonprofit Associations Act of 1991, as amended, including, but not limited to, written mail-in ballots; or
- (d) any combination of the above.

The President and Secretary of the Association shall execute the amendment, certifying that the Owners of a majority of the Lots who are in good standing approved such amendment. Thereafter, the amendment shall be filed with the Hamilton County Recorder.

ARTICLE XV INTERPRETATION

The aforesaid titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

ARTICLE XVI DURATION

The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Association, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2022, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changes in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in Ashbury Park.

Page 25 of 27

October 18, 2012

**ARTICLE XVII
SEVERABILITY**

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

**ARTICLE XVIII
NON-LIABILITY OF DECLARANT**

The APHOA shall not have any liability to any Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence. An Owner, by an acceptance of a deed to a Lot, shall be deemed to have agreed to indemnify and hold the APHOA free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. The APHOA shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by the APHOA, and no duty of, or warranty by, the APHOA shall be implied by or inferred from any term or provision of this Declaration.

**ARTICLE XIX
RESPONSIBILITY OF OWNERS**

Each Owner will preserve and maintain the part of the Buffer Yard and Drainage Easement located on such Owner's Lot, consistent with the purpose of such area to provide a natural buffer between adjacent real estate and to facilitate storm water drainage.

(Signature Page follows)

Page 26 of 27

October 18, 2012

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above for the Amendments to the Declaration of Covenants and Restrictions of Ashbury Park.

Ashbury Park Homeowners Association, Inc.,
An Indiana Not for Profit Corporation,

By: *Andrew J Weidekamp*
President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Andrew J Weidekamp who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions on behalf of such entity and by its authority for the purposes set forth therein.

WITNESS my hand and Notarial Seal this 3RD day of AUGUST, 2013.

My Commission Expires: 01/26/2018

County of Residence: HAMILTON

Sara J Burwell
Notary Public, Signature
SARA J. BURWELL
Printed Name



SARA J. BURWELL, Notary Public
Hamilton County, State of Indiana
My Commission Expires January 26, 2018

This instrument prepared by a committee of the Board of Directors of The Ashbury Park Home Owners Association as verified by Andrew Weidekamp, President.

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law."

(name) *Andrew J Weidekamp*