



2021-14661

04/15/2021 10:54:06 AM

Recording fees paid:

\$190.00

Deb Houghtaling

Pages: 31

COUNTY CLERK/REGISTER OF DEEDS

By: JB

Submitter: CHARTER TITLE & ESCROW SERVIC

S-File



AMRC

**After Recording Return to:**

Larry A. Jobeun, Esq.  
Fullenkamp, Jobeun, Johnson & Beller, LLP  
11440 West Center Road, Suite C  
Omaha, Nebraska 68144

---

[Space above line for recording information]

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR ASHBURY HILLS**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Ashbury Hills (this "Declaration") is made this 14 day of APRIL, 2021, by Ashbury Hills Development, LLC, a Nebraska limited liability company, hereinafter referred to as "Declarant."

WHEREAS, Pursuant to Section 12.01 below, Declarant owns more than seventy-five percent (75%) of the votes of the Owners of those certain lots located in Sarpy County, Nebraska and more particularly described in Exhibit "A" attached hereto as a part hereof, said land together with such additional lands as shall be subjected to this Declaration being referred to as the "Property"; and

WHEREAS, the Declarant wishes to establish and assure a uniform plan for the development of the Property and to enhance and protect the economic and aesthetic value and desirability of the Property and the health, safety and welfare of the residents of the Property; and

WHEREAS, by this instrument, the Declarant desires to amend and restate, in its entirety, those certain Declaration of Easements, Covenants and Restrictions for Ashbury Hills adopted on October 29, 2020 and recorded in the Miscellaneous Records of the Register of Deeds Office of Sarpy County, Nebraska on November 3, 2020 as Instrument No. 2020-37033 (the "Prior Covenants"); and

WHEREAS, Declarant has the authority to establish this Declaration, which shall amend, restate and supersede all Prior Covenants, pursuant to Section 12.01 of the Prior Covenants; and

NOW THEREFORE, the Declarant declares that the Property is hereby subjected to and shall be held, sold, occupied, and conveyed subject to this Declaration.

The Declarant further declares that this Declaration and all amendments and supplements thereto shall run with the Property and shall be binding upon the Declarant, the Association, each Owner, their heirs, successors, and assigns and all parties claiming under them or under this Declaration and shall inure to the benefit of and be enforceable by the Declarant, the Association, each Owner, and all succeeding each Owner.

Ashbury Hills Homeowners Association, Inc., referred to herein as the "Association", has been or will be established as a homeowner's association incorporated in the State of Nebraska for the mutual benefit of the Owners and Residents of the Property.

### **Article I: Definitions**

The terms used above or hereafter in this Declaration which begin with capital letters (other than words which would be normally capitalized) shall have the meanings assigned to them in Article I of this Declaration.

**1.01 "Annual Assessments"** shall mean and refer to the Annual General Assessment and any Services Assessment which may be levied by the Association in each of its fiscal years pursuant to Article IV of this Declaration.

**1.02 "Annual General Assessment"** shall mean and refer to the annual charge shared by all Class "A" members established pursuant to Article IV of this Declaration.

**1.03 "Assessable Property"** shall mean and refer to all of the Property except such part or parts thereof as may from time to time constitute Exempt Property.

**1.04 "Association"** shall mean and refer to Ashbury Hills Homeowners Association, Inc., a Nebraska non-stock corporation, its successors and assigns.

**1.05 "Board of Directors" or "Board" or "Directors"** shall mean and refer to the Board of Directors of the Association and any board, group or entity of the successor or assign to the Association serving in a comparable capacity to the Board of Directors of the Association.

**1.06 "Class A Members"** shall mean and refer to all Owners other than the Class B Member (during the Development Period).

**1.07 "Class B Member"** shall mean and refer to the Declarant.

**1.08 "Class C Member(s)"** shall mean and refer to any Designated Builder.

**1.09 "Common Area" or "Common Area Facility"** shall mean and refer to all real property and the improvements thereon from time to time owned or leased by the Association for the common use and enjoyment of all the Members, including, but not limited to, the Ashbury Hills Club

(as defined in Section 2.02, below). Such property may (but need not) include any common areas, outlots, recreational facilities, parks and other open space land, lakes and streams, storm water management and drainage facilities, private streets not dedicated to Sarpy County, Nebraska or State of Nebraska, pathway and bikeway systems, and fencing on any Common Area. The Association shall be responsible for management and maintenance of all Common Areas.

**1.10 “Declarant”** shall mean and refer to the Ashbury Hills Development, LLC, a Nebraska limited liability company, its successors and assigns, as long as it owns at least one (1) Lot or during the Development Period whichever is later. No successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are assigned by Declarant to a designated party, in writing, or which pass by operation of law.

**1.11 “Declaration”** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Ashbury Hills as it may be amended from time to time or supplemented in the manner provided herein.

**1.12 “Designated Builder”** shall mean any person granted permission by the Declarant, in writing, to construct a Dwelling Unit on any Lot or Lots, unless such permission is revoked by the Declarant.

**1.13 “Development Guidelines or Guidelines”** shall mean the design and development guidelines and standards and the review and approval procedures prepared and issued from time to time by the Architectural Committee pursuant to Article V for the purpose of assisting the Owners and Residents in preparing building, landscaping, site and development plans for all of the real property and Improvements within the Ashbury Hills Subdivision.

**1.14 “Development Period”** shall mean and refer to the period commencing on the date of this Declaration first set forth above and terminating on the earlier of: (a) the date the last Lot in each and every phase of the Ashbury Hills Subdivision is conveyed to a third-party purchaser or (b) any earlier date specified by the Declarant in a written notice to the Association that the Development Period is to terminate on that date.

**1.15 “Dwelling Unit”** shall mean any portion of the Property, as improved, intended for any type of independent ownership for use and occupancy as a residence by one household and shall, unless otherwise specified, include within its meaning (in way of illustration, but not limitation) patio, single family detached, or zero lot line homes, as may be used and defined as herein provided or as provided in subsequent Declarations covering all or part of the Property.

**1.16 “Estate Lots”** shall mean and refer to those particular Lot(s) contained in the Property as described in Exhibit “B” attached hereto.

**1.17 “Exempt Property”** shall mean and refer to all land and Improvements and Common Area owned or controlled by the Association for so long as the Association shall be the owner or operator thereof.

**1.18 “Improvement”** shall mean and refer to:

(a) Any thing or object (other than trees, shrubbery, landscaping, and hedges less than two feet high) the placement of which upon any Lot may affect the appearance of such Lot, including, but not limited to, any building, single-family residence, garage, porch, shed, greenhouse, outbuilding, covered or uncovered patio, permanent grills and outdoor kitchens, swimming pool, fence, retaining wall, awning, sunscreen, solar heating or cooling device, solar electrical panels, wind mills, exterior air conditioning equipment, antenna larger than 18 inches in diameter, gazebo, dog house or animal structure, play house, clothes-line, ponds, recreational facilities (including portable basketball goals (except for one freestanding basketball backboard and standard as long as it is not attached to any portion of the Dwelling Unit)), curbing, paving of any kind, wall, signboard, wishing well, bird bath, statues, synthetic or artificial flora or fauna, artwork of any type, or manufactured displays that are intended for long term affixing to the Lot, or any other temporary or permanent improvement on such Lot, and no partially completed dwelling or temporary building and no trailer, tent, storage shed, shack or garage/carport on any Lot or in the Common Area shall be used a temporary or permanent residence;

(b) Any excavation, fill, ditch, swale, retaining wall, dam, or other thing or device which affects or alters the natural flow of surface waters from, upon, or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash, or drainage channel from, upon, or across any Lot, and any Lot; and

(c) Any change of more than six inches in the grade of any lot.

**1.19 “Land Development Activity”** shall mean and refer to any building, construction, reconstruction, or repair of a Dwelling Unit, roadways, curbing, sidewalks, utility services, or any other Improvement on a Lot or any other portion of the Property by the Declarant or by any Designated Builder.

**1.20 “Lot”** shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property, or any subdivided portion thereof, which has been subjected to this Declaration and upon which a Dwelling Unit or other Improvement could be constructed in accordance with applicable zoning ordinances and applicable laws of the State of Nebraska in effect from time to time. “Lot” shall not mean and refer to Common Area.

**1.21 “Member”** shall mean the Class A Members, the Class B Member and Class C Members of the Association.

**1.22 “Mortgagee”** shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. “Mortgage,” as used herein, shall include deeds of trust. “First Mortgagee” as used herein, shall mean a holder of a mortgage with priority over other mortgages. As used in this Declaration, the term “Mortgagee” shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term “institutional mortgagee” or “institutional holder” shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term “holder” or

“mortgagee” shall include the parties secured by any deed of trust or any beneficiary thereof.

**1.23 “Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of any Lots which is part of the Property but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

**1.24 “Person”** shall mean and refer to any individual, corporation, joint venture, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof, or any other separate legal entity.

**1.25 “Property”** shall mean and refer to that certain real property located in Sarpy County, Nebraska, more particularly described in Exhibit “A” attached hereto, together with such additional lands as may be subjected to this Declaration as annexed into the area from time to time by the Declarant during the Development Period.

**1.26 “Resident”** shall mean and refer to:

(a) Each individual occupying any Dwelling Unit pursuant to a lease agreement with the Owner thereof who, if requested by the Board of Directors, has delivered proof of such lease agreement to the Board of Directors;

(b) Members of the immediate family of such individual Resident or of an Owner who actually resides within the Property and in the same household with each such individual or Owner; and

(c) Any person who has a fixed place of habitation at a Dwelling Unit of any such individual or Owner to which, whenever he is absent, he has the intention of returning.

**1.27 “Sapphire Hills Lots”** shall mean and refer to those particular Lot(s) contained in the Property as described in Exhibit “B” attached hereto.

**1.28 “Services Assessment”** shall mean and refer to the charge or charges imposed upon a section, neighborhood, housing type, or subdivided parcel of the Property for certain services rendered pursuant to Article IV of this Declaration.

**1.29 “Special Assessment”** shall mean and refer to any special charge established pursuant to Article IV of this Declaration.

**1.30 “Villa Lots”** shall mean and refer to those certain parcels of real property located in Sarpy County, as further defined in and subject to, that certain Declaration of Covenants, Conditions and Restrictions for Ashbury Hills Villas, adopted November 23, 2020 and recorded in the Miscellaneous Records of the Register of Deeds Office of Sarpy County, Nebraska on December 2, 2020 as Instrument No. 2020-41297.

## Article II: Property Rights of Common Area

**2.01 Rights of Enjoyment of Common Area.** Each Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to his Lot. Each Owner is bound by the terms of the governing documents of the Association. Each Resident shall have a nontransferable right to use and enjoy the Common Area, which right shall terminate when such person ceases to have the status of a Resident. Such easements and rights shall be subject to the provisions below.

(a) The right of the Board of Directors to adopt, promulgate, enforce, and from time to time amend, reasonable rules and regulations pertaining to the use of the Common Area which shall enhance the preservation of such facilities and the safety and convenience of the users thereof. Such rules and regulations may include limitations on the number of guests of Owners and Residents who may use the Common Area at any one time.

(b) The right of the Board of Directors to establish and charge reasonable admission and any other fees for certain types of extraordinary uses of the Common Area.

(c) The right of the Board of Directors to suspend the voting rights and the right of any Owner or Resident to use all or any portion of the Common Area (with the exception of any streets or access ways) for a violation of this Declaration or for an infraction of the Board's rules and regulations for period(s) not to exceed 60 days or until such violation is cured.

(d) The right of the Board of Directors to suspend the voting rights and the right of any Owner or Resident to use the Common Area (with the exception of any streets or access ways but including parking areas) for so long as any Annual General Assessment, Services Assessment, or Special Assessment for such Lot remains unpaid and overdue.

(e) The Association may at any time mortgage, dedicate, or transfer all or a part of the Common Area to any public agency, authority, or other entity upon such terms and conditions as shall be agreed upon by such agency, authority, entity, or organization and the Board of Directors, including, without limitation, terms and conditions providing for the use of such Common Area by the public in general and terms and conditions pertaining to the maintenance and repair of such Common Area and the assessments of Owners and/or Residents for the costs of such maintenance and repair. No such dedication or transfer shall be effective, however, unless approved by 66 2/3% of the vote of the Class A Members at a meeting at which a quorum is present and, during the Development Period, by the Class B Member, except for the following which shall not require any Members' consent:

- (i) Granting easements which do not interfere with the intended Common Area use;
- (ii) Dedicating Common Area to a public authority;
- (iii) Conveying Common Area as part of boundary line adjustments with Lots; or
- (iv) Transferring Common Area pursuant to a merger or consolidation with a non-profit entity.

(f) The right of the Board of Directors to regulate parking on Common Area through the granting of easements, licenses, or promulgation of rules and regulations. In areas where parking is provided on private streets and parking bays owned by the Association, the right but not the obligation, of the Board to assign and reserve parking spaces for the exclusive use of individual Owners. All unassigned and/or visitor parking spaces shall be available on a first-come, first-served basis.

**2.02 Swimming Pool and Clubhouse.** The Declarant is currently the lawful owner of Lot 1, Ashbury Hills Replat Two, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska. The Declarant intends to construct a clubhouse, pool, and other improvements on Lot 1, Ashbury Hills Replat Two, which lot and improvements shall be known and referred to herein as "Ashbury Hills Club". For the purposes of this Declaration, the Ashbury Hills Club shall also be included within the definition of Common Area or Common Area Facility. The Declarant intends to convey and transfer Ashbury Hills Club to the Association, and the Association shall become the owner of Ashbury Hills Club. The purpose of Ashbury Hills Club is to provide a facility for Common Area Facility, consisting of the clubhouse, pool, fitness facility, and other recreational facilities for the Owners of a Dwelling Unit and their respective families, occupants, guests and invitees (and the Owners of any Dwelling Units and their respective families, occupants, guests and invitees of any other Phase of Ashbury Hills). Each Owner of a Dwelling Unit shall be a member of Ashbury Hills Club. Each Owner of an Improved Lot shall pay monthly membership dues in order to belong to Ashbury Hills Club ("Ashbury Hills Club Dues"). The monthly membership Ashbury Hills Club Dues shall be paid by the Owner of a Dwelling Unit as part of the Monthly Assessments charged by the Association under this Declaration. The initial monthly Ashbury Hills Club Dues shall be set by the Association's Board of Directors at the first regular meeting of the Association. Thereafter, the Association's Board of Directors shall set Ashbury Hills Club Dues on an annual basis, subject to its Bylaws. Ashbury Hills Club Dues are estimated not to exceed One Thousand Five Hundred Dollars (\$1,500.00) per year. In the event the Owner of a Dwelling Unit fails to pay his or her Ashbury Hills Club Dues, the Declarant, the Association shall have the authority and power to enforce the collection of Ashbury Hills Club Dues pursuant to these covenants, further, in the event of such nonpayment, the Association and/or the Declarant shall also have the right to not permit the Owner the use of Ashbury Hills Club during the period when such Ashbury Hills Club Dues are delinquent. The Declarant shall also have the right to establish, change, amend or revise Rules and Regulations for the operation and use of Ashbury Hills Club, which Rules and Regulations shall be in writing and provided to the Owner of a Dwelling Unit. Each Owner of a Dwelling Unit shall execute a statement acknowledging the receipt, review and acceptance of such Rules and Regulations, which receipt must be on file with Ashbury Hills Club in order for such Owners of a Dwelling Unit and their respective families, occupants, guests and invitees (and the Owners of any Dwelling Unit and their respective families, occupants, guests and invitees of any Phase within Ashbury Hills).

### **Article III: Association Membership, Voting Rights, Board of Directors**

**3.01 Organization of the Association.** The Association has been organized as a nonprofit corporation under the laws of Nebraska to:

(a) Provide for the acquisition, construction, management, maintenance, and care of the Common Area;

(b) Obtain, manage and maintain services for the Property, or sections thereof including, as necessary, and deemed by the Board of Directors, refuse collection, grass mowing and maintenance of the Common Area;

(c) Adopt, amend and repeal rules and regulations as it deems reasonable;

(d) Take other acts or action which would promote the health, safety or welfare of the Owners and Residents.

(e) Assigning, in full or in part (i) the Association's right, power and authority to declare, levy, collect and enforce assessments or otherwise exercise any powers or perform any acts or obligations on behalf of the Association with respect to declaring, levying, collecting or enforcing assessments, including, without limitation, the power to exercise any remedy to collect assessments, and (ii) proceeds derived from or collected pursuant to the Association's assessment power."

The Association is charged with such further duties and invested with such powers as are prescribed by law and set forth in the Articles of Incorporation of the Association and herein as all of the same may be amended from time to time. The Articles of Incorporation and Bylaws of the Association shall not be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. No part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of Common Area, and other than by a rebate of any excess Annual Assessment, Special Assessment or other dues, fees, or assessments) to the benefit of any Member or individual.

**3.02 Membership in the Association.** The Association shall have the following classes of membership:

(a) **Class A.** Class A Members shall be all Owners (with the exception of the Declarant as provided in Section 3.03(b) or any Designated Builder as provided in Section 3.03(c), below). A Person shall automatically become a Class A Member upon becoming an Owner and shall remain a Class A Member for so long as he or she is an Owner; and

(b) **Class B.** The Class B Member shall be the Declarant prior to the time a Lot is sold to a Designated Builder or such other third party. The Class B Member shall be exempt from paying any and all assessments which may be levied against a Lot within the Property.

(c) **Class C.** The Class C Member(s) shall be any Designated Builder(s). The Class C membership shall cease and be converted to Class A membership for the new Owner of the Lot at the time a Lot and Dwelling Unit is sold to an Owner or be converted to a Class A membership in the name of the Designated Builder at any time an Improvement on a Lot owned by the Designated Builder is occupied. The Class C Members shall be exempt from paying any and all assessments which may be levied against a Lot within the Property.

**3.03 Voting Rights of Members.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.



(a) Each Class A Member shall be entitled to one (1) vote on each matter submitted to the members for each Lot owned by such Class A Member which is not Exempt Property. If more than one Dwelling Unit is located on any Lot (which is not Exempt Property), the Class A Member owning such Lot shall be entitled to one (1) vote for each Dwelling Unit located on such Lot. Any Class A Member who is in violation of this Declaration, as determined by the Board of Directors in accordance with the provisions hereof and regulations established hereunder, shall not be entitled to vote during any period in which such violation continues. If a Lot shall be owned by more than one Owner, such Owners shall be deemed to constitute a single Class A Member as to such Lot and shall collectively be entitled to a single vote for such Lot (or for each Dwelling Unit located on such Lot) as to each matter properly submitted to the Members.

(b) The Class B Member shall be entitled initially to ten (10) votes for each Lot owned. The Class B membership shall terminate and become converted to (i) a Class C membership upon the sale of the last Lot to any Designated Builder, or (ii) to a Class A membership upon the sale of the last Lot to any third-party purchaser, or (iii) such earlier time as Declarant in its sole discretion determines.

(c) The Class C Member shall be entitled initially to four (4) votes for each Lot owned.

(d) Any vote of the Members shall be taken without regard to class of membership except in those instances requiring the affirmative vote or approval of each class of membership in accordance with this Declaration and the Articles of Incorporation or Bylaws of the Association.

**3.04 Board of Directors.** The business and affairs of the Association shall be managed by a Board of Directors elected by the Members without regard to class of membership. As long as the Declarant has the status of a Class B Member, it shall have the right to appoint three (3) Directors. Directors shall be elected by the Members in accordance with Article IV of the Bylaws of the Association. The number of Directors shall be determined in accordance with the provisions of the Bylaws of the Association; however, the number of Directors shall always be an odd number and shall in no instance be less than five (5) Directors and no more than seven (7) Directors.

**3.05 Adoption of Further Rules and Regulations.** The Board of Directors may make such rules and regulations consistent with the terms of this Declaration and the Association's Articles of Incorporation and Bylaws as it deems advisable with respect to any meeting of Members, proof of membership in the Association, evidence of right to vote, appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy, and other matters concerning the Association's operations. If the Board of Directors shall so determine and if permitted under applicable law, voting on elections and other matters, including any matters requiring the approval of the Class A Members as provided in this Declaration, may be conducted by mail, ballot, or reliable electronic means. The rules and regulations may govern and restrict the use of any area within the Ashbury Hills Subdivision; provided, however, that the same must be reasonable (both on their face and in the method of their enforcement) and also shall not discriminate among Members except to reflect their different rights as provided herein, shall not be inconsistent with this Declaration, the Articles or the Bylaws of the Association, and such rules and regulations shall not affect the use of any Lot that has been approved in accordance with the terms and conditions of this Declaration. Upon adoption, the rules and regulations shall have the same force and effect as if set forth herein. Such rules and regulations shall be uniformly enforced against all

applicable Persons.

**3.06 Limitation of Liability.** Neither the Association, nor the Declarant nor the Board of Directors shall be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any Lot or portion of the Common Area or its facilities, or from any wire, pipe, drain, conduit, or the like. Neither the Association, the Directors nor the Declarant, or its members, employees or agents, shall be liable to any Members for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Area or its facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or its facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

#### **Article IV: Covenant for Assessments**

**4.01 Creation of the Lien and Personal Obligation of Assessments.** The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association such Annual General Assessments, Services Assessments, and Special Assessments (the "Assessment" or collectively the "Assessments") as are established and are to be paid and collected as hereinafter provided. The Assessments, together with interest thereon, late fees, and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest thereon, late charges, and cost of collection thereof, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessments fell due. The personal obligation for delinquent Assessments shall pass to successors in title and both parties (seller and purchaser) shall be jointly liable therefor. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot or any Dwelling Unit thereon.

**4.02 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to carry out the business and responsibilities of the Association including, but not limited to:

- (a) The acquisition, construction, management, maintenance, and care, repair, or replacement of the Common Area and services;
- (b) Obtaining, managing, and maintaining services for the Property, or sections thereof including, as necessary, refuse collection;
- (c) Promoting the recreation, health, safety, and welfare of the Members;
- (d) All fees and charges related internet services provided under a community internet system; and

(e) Providing for grass cutting and lawn maintenance of all Common Area, maintenance of all recreational areas and facilities, and maintenance of all private streets located on the Property.

#### **4.03 Establishment of Annual General Assessment, Services Assessment and Ashbury Hills Club Assessment.**

(a) The Association shall levy in each of its fiscal years an Annual General Assessment and a Services Assessment if applicable, (hereinafter collectively referred to as the “Annual Assessments”) against each Lot owned by Class A Members, which is not Exempt Property. The amounts of such Annual Assessments shall be established by the Board of Directors, subject to the limitations imposed by Section 4.04, at least thirty (30) days in advance of each Annual Assessment Period. The first Annual Assessments on each Lot imposed pursuant to this section 4.03(a) shall be prorated from the date of conveyance to the end of the fiscal year of the Association.

(b) The amount of the Annual General Assessment shall be determined by the Board of Directors according to its estimate of the cost of providing services or rights of use which are common to all of the Lots subject to the provisions of this Section 4.03(d) and Section 4.04 below.

(c) A Services Assessment may be levied by the Board of Directors against certain Lots owned by Class A Members in the Estate or Sapphire Hills Lot sections of the Property or against any particular housing type (i.e., detached type Dwelling Units), for special services which the Association provides such areas. The amount of the Services Assessment shall be determined by the Board of Directors according to the estimated cost of providing services or rights of use to the Lots in such section, which services or rights are not enjoyed by all of the Members of the Association. The amount of a Services Assessment shall be the same to each Lot owned by Class A Members in any section but need not be uniform with the Services Assessment imposed upon Lots in other sections.

(d) Notwithstanding the foregoing, it is understood and acknowledged that the Owners of the Estate Lots located within the Property, with the exception of those Common Areas and Common Area Facilities which benefit the entire Property, shall only be responsible for those assessments based upon the cash requirements for the use, operation and maintenance of those Common Areas and Common Area Facilities which confer benefit upon the Estate Lots in accordance with the terms and conditions of this Declaration. It is further understood and agreed that the Owners of the Sapphire Hills Lots located within the Property, with the exception of those Common Areas and Common Area Facilities which benefit the entire Property, shall only be responsible for those assessments based upon the cash requirements for the use, operation and maintenance of those Common Areas and Common Area Facilities which confer benefit upon the Sapphire Hills Lots in accordance with the terms and conditions of this Declaration. Additionally, it is acknowledged and understood by all Owners that the Owners of the Villa Lots shall only be responsible for those assessments provided for in that certain Declaration of Covenants, Conditions and Restrictions for Ashbury Hills Villas, adopted November 23, 2020 and recorded in the Miscellaneous Records of the Register of Deeds Office of Sarpy County, Nebraska on December 2, 2020 as Instrument No. 2020-41297 (the “Villa Declaration”). Accordingly, there shall be four (4) operating budgets for the Ashbury Hills/Ashbury Hills Villas Subdivision, outlined as follows:

(i) The overall budget for Ashbury Hills Estate Lots and Sapphire Hills Lots,

and Ashbury Hills Villa Lots, which shall levy Annual General Assessments and Services Assessments, if any, on all Lots Owners and all Villa Lot Owners for the use, operation and maintenance of all Common Areas and Common Area Facilities which benefit all Lots and Villa Lots, including, but not limited to, the Ashbury Hills Club.

(ii) The Villa Lots budget, which shall levy assessments against the Villa Lot Owners as provided for in the Villa Declaration.

(iii) The Estate Lots budget, which shall levy Annual General Assessments and Services Assessments, if any, on all Estate Lot Owners for the use, operation and maintenance of all Common Areas and Common Area Facilities which confer special benefit on the Estate Lots.

(iv) The Sapphire Hills Lots budget, which shall levy Annual General Assessments and Services Assessments, if any, on all Sapphire Hills Lot Owners for the use, operation and maintenance of all Common Areas and Common Area Facilities which confer special benefit on the Sapphire Hills Lots.

(v) With the exception of the Villa Lots budget in Section 4.03(d)(ii) above, which is controlled by the Villa Declaration, within thirty (30) days after adoption of any proposed budgets, the Board of Directors shall provide a summary of each budget to all Lot Owners and Villa Lot Owners (if applicable), and shall set a date for a meeting of said Owners to consider ratification of each budget, which date shall not be less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of the Lot Owners and Villa Lot Owners (if applicable), vote to reject the budget, the budget is ratified, whether or not a quorum is present. In the event a proposed budget is rejected, the periodic budget last ratified by the relevant Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

**4.04 Special Assessments.** In addition to the Annual General Assessment and Services Assessment authorized above, the Board of Directors may levy in any fiscal year of the Association, a Special Assessment against Lots owned by Class A Members for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the Common Area or Common Area Facilities, including fixtures and personal property related thereto, or for any other purpose for which the Association is responsible. Such Special Assessment may be rescinded if, at a meeting called within 60 days of notice of the Special Assessment, the majority of the votes of each class of membership who are voting in person or proxy agrees. Special Assessments shall be imposed against Lots which are not Exempt Property in the same proportions as Annual General Assessments as provided in Sections 4.03(a), (b), (c) and (d).

**4.05 Date of Commencement of Assessments.** The Annual General Assessment and Services Assessment, if any, provided for in this Article IV shall commence for each Lot owned by a Class A Member and subjected to this Declaration from the date of conveyance to the end of the fiscal year of the Association.

**4.06 Repair and Replacement Reserve.** As a part of any Annual Assessment the Board of Directors shall obtain from Class A Members contributions to capital on a regular basis, which contributions will be used to establish a replacement and repair reserve. Such contributions shall be paid monthly or at such time as regular assessments are due and shall be in an amount to be designated from time to time by the Board of Directors. All of the funds shall be deposited in an 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 of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America or certificates of deposit in a federally insured lending institution. Such funds also may, in the discretion of the Board of Directors, be invested in money market funds which, although they themselves are not guaranteed by the United States Government, invest solely in United States Government securities (or in State bonds which are backed in principal by the State). The replacement reserve may be expended only for the purpose of the replacement and repair of the Common Area.

**4.07 Initial Working Fund.** The Board of Directors may collect a working capital contribution against the initial Owner of a Lot (other than the Declarant or any Designated Builder purchasing from Declarant) at the time of closing on the Lot. Such contribution, if collected, shall not exceed two (2) months of the Annual General Assessments and shall be utilized for commencing business of the Association and providing the necessary working fund for it.

**4.08 Notice and Due Dates.** Written notice specifying (a) the amount of each Annual General Assessment, Services Assessment and Special Assessment, and (b) the number and amounts of the installments by which each such Assessment is to be paid, shall be given to the Class A Members of each Lot subject thereto. Each installment of an Annual General Assessment, Services Assessment or Special Assessment shall be due on the first day of each assessment period as defined by the Board of Directors.

**4.09 Effect on Nonpayment of Assessments: Remedies of the Association.** Any Assessment not paid within thirty (30) days after the due date shall be delinquent and the Association may exercise any or all of the following remedies:

(a) Upon notice to the Owner declare the entire balance of any Annual General Assessment or Special Assessment due and payable in full;

(b) Charge interest and a late fee (as determined by the Board) for assessments which are not received by the thirtieth (30th) day of the assessment period;

(c) Bring an action at law or in equity against the Owners of the Lot to collect the same; and

(d) Record a lien against the Lot in the Office of the Sarpy County Register of Deeds. Such lien may be enforced by the Association in the same manner and to the same extent and subject to the same procedures as in the case of a foreclosure of a real property mortgage under the laws of Nebraska.

(e) Deny use of the Common Area and/or cease to provide any services furnished by the Association on behalf of the Owner for the benefit of the delinquent Owner's Lot.

The Owner personally obligated to pay the delinquent Assessment shall also be obligated to pay all attorneys' fees, court costs and administrative costs incurred by the Association in connection with the collection of such Assessment.

**4.10 Certificate of Payment.** The Association shall, upon written request by owner, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Annual General Assessments, Services Assessments and Special Assessments, if any, on a specified Lot have been paid. The Association shall furnish said certificate within ten (10) days of receipt of the written request. A properly executed certificate of the Association as to the status of Assessments on a Lot shall be binding upon the Association as of the date of its issuance.

**4.11 Subordination of the Lien to Mortgages.** The lien of the Annual General Assessments, Services Assessments and Special Assessments provided for herein shall be subordinate only to the lien of any mortgage or deed of trust. The sale or transfer of any Lot shall not affect the lien of such Assessments. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof for the benefit of any Mortgagee shall extinguish the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer shall relieve such Lot from liability as to any assessments thereafter becoming due or from the lien thereof. Notwithstanding the foregoing no sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof for the benefit of any Mortgagee shall be deemed to extinguish any mortgage or lien which the Association has itself placed upon any property owned by the Association.

## **Article V: Architectural Review and Architectural Committee**

**5.01 Composition and Appointment.** An Architectural Review and Covenants Committee (the "Architectural Committee") may be appointed and/or removed only by the Declarant during the Development Period and thereafter by the Board of Directors of the Association. The Architectural Committee shall initially consist of three (3) members, but may thereafter be increased or decreased in size by the Declarant during the Development Period and by the Board of Directors thereafter, from time to time. Members of the Architectural Committee shall serve for a term of one (1) year, or until their successors are elected and qualified. Any vacancy in the membership of the Architectural Committee shall be filled by the Declarant during the Development Period and by the Board of Directors to serve for the remaining portion of the term of the originally appointed member. If any vacancy shall occur, the remaining members of the Architectural Committee may continue to act until the vacancy has been filled. Except for members who have been designated by the Declarant during the Development Period, any member may be removed with or without cause by the Board of Directors. In the event that the Board of Directors shall fail to designate an Architectural Committee after the expiration of the Development Period, the Board of Directors shall serve as the Architectural Committee.

### **5.02 Powers and Duties.**

(a) The Architectural Committee shall serve as an architectural review board and shall regulate the external design, appearance, and location of the Lots and Improvements thereon so as to enforce the architectural provisions of this Declaration, enforce the requirements of the recorded

subdivision plats, deeds of subdivision, and to preserve and enhance values and to maintain a harmonious relationship among Improvements and the Property.

(b) The Architectural Committee shall serve in such other capacities as may be determined, from time to time, by the Board of Directors in enforcing the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association. Any decision or determination of the Architectural Committee may be appealed by a Member affected thereby to the Board of Directors.

**5.03 Submission of Plans to Architectural Committee for Approval.** Except for such Improvements as may be constructed by the Declarant or Improvements constructed by any Designated Builder, pursuant to plans which have first been approved by the Declarant, no Improvement of any kind whatsoever shall be commenced, erected, placed, moved onto, or permitted on any Lot, nor shall any existing Improvement upon any Lot be removed or altered in any way which materially changes the exterior appearance thereof (including change of exterior color) until plans and specifications therefore shall have been submitted to and approved in writing by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information as the Architectural Committee may reasonably require, but shall in all cases include:

- (a) A site plan showing the location of all proposed and existing Improvements on the Lot;
- (b) Exterior elevations for the proposed Improvements;
- (c) Specifications of materials, color scheme and other details affecting the exterior appearance of the proposed buildings; and
- (d) Description of the plans or provisions for landscaping or grading.

**5.04 Approvals/Disapprovals.** Any approval or disapproval of a requested action by the Architectural Committee shall be in writing. In denying any application, the Architectural Committee shall specify the reasons for such denial. The Architectural Committee may approve an application subject to such conditions and qualifications as the Board deems appropriate to enforce the architectural provisions of this Declaration.

**5.05 Basis for Approvals/Disapprovals.** The Architectural Committee shall have the right to disapprove of any application submitted to it, if any part of it is:

- (a) Not in accordance with this Declaration or the Development Guidelines;
- (b) Incomplete;
- (c) Not in compliance with relevant approval requirements or regulations of local, state, federal or other governmental agencies;
- (d) Deemed by the Architectural Committee to be contrary to the best interests of Ashbury Hills, the Owners or the Residents; or

(e) Incompatible with the architectural style, quality or aesthetics of existing Improvements or development plans for proposed Improvements, based in part on the criteria set forth in subsections (i) through (vi) below in this Subsection 5.05.

During the Development Period, the Architectural Committee shall have the right to withhold its approval of an application submitted to the Architectural Committee in its reasonable discretion. Thereafter, the Architectural Committee shall have the right to withhold its approval of an application submitted to the Architectural Committee in its reasonable discretion. In this connection, the Architectural Committee may also base its approval or disapproval on criteria which may include, but are not limited to, the following: (i) the adequacy of the building locations and dimensions on the Lot; (ii) conformity and harmony of external design with neighboring Improvements; (iii) relation of topography, grade and finish ground elevation of the Lot being improved to that of neighboring Lots; (iv) proper facing of main elevations with respect to nearby streets; (v) adequacy of landscaping; and (vi) conformity of the application to the purpose and general plan and intent of this Declaration. Any decision of the Architectural Committee made after Declarant is no longer entitled to appoint the members of the Architectural Committee, may be appealed to the Board. The decision of the Board shall be final. As long as Declarant is appointing the members of the Committee, any decision of the Committee shall be final.

**5.06 No Liability.** Neither the Declarant, nor its employees, members, managers or agents thereof, the Architectural Committee, the Board or the Association shall be liable in any way for any damage, loss or prejudice suffered or claimed by an Owner who submits an application. Any person or entity who submits an application shall forever defend, indemnify and hold the Declarant and its employees, members, managers or agents, and the Architectural Committee, the Board and the Association and its members, officers, directors and agents, harmless from all damage, loss or liability (including reasonable attorneys' fees) suffered or claimed by any third party on account of: (i) any defects in any plans, drawings, specifications or other documentation submitted in any application, or revised or approved in accordance with the foregoing provisions, or for any structural or other defects in any work done according to such plans, drawings, specifications or other documentation; (ii) the approval or disapproval of any application, whether or not defective; (iii) the construction or performance of any work, whether or not pursuant to an approved application; or (iv) the development of any Lot within Ashbury Hills. In addition thereto, neither the Declarant, nor its employees, members, managers or agents thereof, the Architectural Committee, the Board or the Association shall be responsible or liable in any way for any damage, loss or prejudice suffered or claimed by an Owner as the result of any authority granted herein or as the result of any action or failure to act with respect to any Improvements proposed, rejected, approved or constructed without the approval of the Architectural Committee.

In no event shall an approval by the Architectural Committee of any application, or any written or oral statements made by the Board or any officer, director or employee of the Association and/or the Declarant or any employee, member, manager or agent of Declarant, be deemed to constitute in any way any representations or warranties of any kind, express or implied, with regard to the application and any plans, drawings, specifications or other documentation constituting a part of the application, including without limitation representations or warranties regarding compliance with zoning, subdivision and land use laws, or compliance with any other applicable codes, regulations and laws, or with regard to fitness for a particular purpose.



**5.07 Failure of the Architectural Committee to Act.** If the Architectural Committee shall fail to act upon any request submitted to it within thirty (30) days after a complete submission thereof in a form acceptable to the Architectural Committee, such request shall be deemed to have been disapproved as submitted, and no further action shall be required. Submission of incomplete plans shall not be considered valid submissions triggering the deadlines stated above and shall not be recognized by the Architectural Committee or the Board of Directors. Additionally, if any additional information is requested by the Architectural Committee, the approval time may be extended so as to allow for additional information and documentation to be presented to the Architectural Committee.

**5.08 Rules, Regulations, and Policy Statements.** The Architectural Committee may recommend, from time to time, subject to the approval and adoption of the Board of Directors, reasonable rules and regulations pertaining to its authorized duties and activities under this Declaration and may from time to time issue statements of policy with respect to architectural standards and such other matters as it is authorized to act on. The Architectural Committee shall adopt rules of procedure, subject to the prior approval and adoption of the Board of Directors, which rules of procedure shall include provisions substantially to the following effect:

(a) The Architectural Committee shall hold regular meetings as necessary. Meetings of the Architectural Committee may be called by any one of the members of the Architectural Committee;

(b) A majority of the members of the Architectural Committee present at any meeting shall constitute a quorum;

(c) The Architectural Committee shall maintain minutes of its meetings and a record of the votes taken thereat;

(d) A copy of all minutes, rules, regulations, and policy statements of the Architectural Committee shall be filed with the records of the Association and shall be maintained by the Association. Except for copyrighted plans, documents, drawings, renderings, photographs and any other materials owned by a Designated Builder, architect, or the like, the Association shall make copies thereof available to any interested Member at a reasonable cost or shall make such minutes, rules, regulations, and policy statements available to any Member for copying; provided, however, unless otherwise required by law, the Association may dispose of any and all records that are no longer deemed reasonably necessary to be kept or maintained in the Board's sole discretion.

**5.09 Expenses of the Architectural Committee.** The Architectural Committee may charge reasonable fees for the processing of any requests, plans, and specifications including consultation with a professional. The Association shall pay all ordinary and necessary expenses of the Architectural Committee; provided, however no member of the Architectural Committee shall be paid any salary or receive any other form of compensation, at the expense of the Association except upon authorization by the Board and upon approval by: (a) 66 2/3% of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum of 15 percent is present; and (b) the Class B Member voting in person or by proxy at such meeting.

**5.10 Right of Entry.** The Association and the Architectural Committee through their authorized officers, employees, and agents shall have the right, but not the obligation, to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Improvement thereon is in compliance with the provisions of this Article and Article VI without the Association or the Architectural Committee or such officer, employee, or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

**5.11 Land Development Activity.** Notwithstanding any other provisions of this Declaration, any Land Development Activity (as defined in Section 1.15) shall not require the approval of or be subject to review by the Architectural Committee. This provision shall not be construed in any manner as a limitation upon the right of the Declarant to review and approve any plan or modification thereof of any home builder.

**5.12 Driveway Requirements.** Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Maximum driveway slope at the sidewalk intersections shall be no more than two percent (2%) cross slope within public right-of-way to provide for a tabled driveway cross slope that is compliant with ADA/PROWAG guidelines and City of Papillion Standards. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted. The Lot owner shall be responsible to provide adequate remedial measures to prevent street creep/driveway binding on any curved streets where the street abuts the driveway approach.

**5.13 Drainage Easements.** Each Lot Owner hereby grants to each and every other adjacent Lot Owner a mutual benefit drainage easement over each other's Lot and each Owner agrees that no Owner of a Lot shall construct any improvement, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon, or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash, or drainage channel from, upon, or across any Lot, without the express written approval of the Association. In no event shall any Owner of a Lot divert, alter or diffuse surface waters across another Lot Owner's Lot in a negligent manner.

**5.14 Construction Methods to Avoid "Drive-way Creep".** The driveway constructed on each Lot that is located on a public street which may be susceptible to street creep, including but not limited to curved streets, steeply sloped streets, T intersections, and/or cul-de-sacs, shall be constructed to accommodate the potential for street creep. The construction measures taken to accommodate for street creep may include, by way of illustration, larger expansion joints in areas susceptible to creep, placing full-depth expansion material at additional locations throughout the driveway and at the edge along any foundation or other concrete slab, such as a garage floor or sidewalk. In addition, the Owner of a Lot abutting a section of public street that may be susceptible to street creep may also address the street creep issue by placing two (2") inches of full-depth expansion material between the public street curb and the private driveway.

**5.15 Availability of Sanitary Sewer.** No building permits shall be issued and no construction shall commence on any Lot within the Property that does not have sanitary sewer service within either the sanitary sewer system of Sarpy County or the City. In addition, no Lot or Lots shall be further subdivided unless such newly created Lot or Lots are within either the sanitary sewer

system of Sarpy County or the City.

## **Article VI: General Restrictions on the Use of Lots and Improvements to be Made Thereon**

**6.01 Zoning Regulations.** The Property shall not be used for any purpose other than as permitted in the applicable zoning ordinances or the laws, rules, or regulations of any governmental authority in force and effect on the date of recording of this Declaration as the same may be hereafter from time to time amended. No building shall be erected, altered, placed, or permitted to remain on any such Lot other than one used as a single-family dwelling. This restriction shall not apply to any use for which a special exception under local government zoning ordinances or other governing regulations, as the same may be hereafter from time to time amended, is finally granted provided such use is approved in writing by the Architectural Committee. The right, however, to further limit or restrict the use of a particular Lot is reserved under the provisions hereof.

**6.02 Improvements.** The architectural character of all Improvements, or alterations, additions, or improvements thereof (other than interior alterations not affecting the external appearance of a Improvement) when visually related to each other and the surrounding natural environment shall be, in the opinion of the Architectural Committee, harmonious in terms of type, size, scale, form, color, and material. The repair, replacement, repainting, resurfacing, or restoration of any Improvement originally approved by the Architectural Committee or the Declarant shall not be subject to the review or approval of the Architectural Committee provided that, following any such repair, replacement, repainting, resurfacing, or restoration of any such Improvement, the external appearance of such Improvement shall be substantially identical with the appearance of said Improvement as originally approved. Except as otherwise herein provided, no Improvement shall be painted, surfaced, or resurfaced with any material unless and until approved in writing in accordance with objective Development Guidelines established by the Architectural Committee.

**6.03 Screens and Fences.** Except for any fence installed by the Declarant or the Association, no fence or screen shall be installed on a Lot except in accordance with the Development Guidelines established by the Architectural Committee and with the prior written approval of the Architectural Committee. Any fencing which may be installed by the Declarant or the Association in the Common Area shall be maintained by the Association. All fencing installed along 120<sup>th</sup> Street or 126<sup>th</sup> Street shall be consistent with respect to height, type and color.

**6.04 Signs and Lighting.** The location, color, nature, size, design, and construction of all private signs or private outdoor lights shall be approved in writing by the Architectural Committee before the installation thereof.

**6.05 Vehicles and Parking.** No commercial truck, construction equipment, commercial bus, taxicabs, or other commercial vehicle of any kind, boats, trailers, campers, recreational vehicles, motorcycles, or motor homes shall be parked in any visible location on the Property without the prior written approval of the Architectural Committee. Commercial vehicles shall be deemed to include cars and vans in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names exceeding five (5) square feet per side or containing visible commercial materials, cargo, tools, or equipment on the exterior of the vehicle or

that extend beyond the length or width of the vehicle. No visually offensive vehicle as determined of the Architectural Committee or disabled vehicle or vehicle on which current registration plates or other required permits such as inspection stickers are not displayed shall be visibly parked on any Lot or on Common Area. The light repair or routine maintenance of vehicles, boats, motorcycles, campers, trailers, or similar vehicles shall not be carried out in a manner that is visible from any Lot for longer than twenty-four (24) hours, and may never be carried out on the Common Area. The heavy repair or extraordinary maintenance shall not be carried out in a manner that is visible from any Lot or from any Common Area. The Association may enforce the provisions of this Section by towing any noncomplying vehicle at the vehicle owner's sole risk and expense. This provision shall not preclude commercial vehicles located on the property temporarily (less than 24 hours) to provide services to the Association or a resident or to trucks, construction equipment, commercial vehicles which are necessary for the construction of Improvements during the period of construction.

**6.06 Animals and Animal Shelters.** The maintenance, keeping, boarding, or raising of animals, livestock, or poultry regardless of number, is prohibited on any Lot or upon the Common Area, except for the keeping of guide animals and reasonable number of orderly domestic pets (e.g. fish, nonpoisonous reptiles, dogs, cats, or caged birds), not to exceed four (4) properly licensed pets which can regularly leave the Lot, subject to the rules and regulations adopted by the Board of Directors. Such pets or animals shall be permitted subject to the condition that they are not allowed to reasonably annoy and/or disturb the normal residential occupancy of the neighborhood or constitute a hazard to public health or safety. Such pets or animals shall not be kept or maintained for commercial purposes or for breeding. Animals shall not be permitted upon the Common Area except for orderly domestic pets accompanied by someone who can control the animal and unless carried, leashed, or under other positive control. Animal droppings shall be cleaned up by the Resident responsible for the animal being on the Property. If an animal's owner fails to clean up after his or her pet or fails to comply with leash laws or the requirements of the rules and regulations of the Association charges may be levied against the responsible party as allowed by law. Any Resident who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association and each Owner free and harmless from any loss, claim, or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Property. All animals shall be registered and inoculated as required by law. The appropriate governmental authorities shall have an easement and right of access across the Property to enforce local animal control laws and ordinances. No shelters for animals shall be erected.

**6.07 Garages.** No garage shall be utilized for any purpose other than the parking and storage of vehicles and other types of items normally stored in garages in first-class residential neighborhoods. No garage may be converted into or used for living or commercial space.

**6.08 Air, Water and Other Pollution.** No use of any Lot will be permitted which emits pollutants into the atmosphere, or discharges liquid or solid wastes or other harmful matter into any waterway in excess of environmental standards, which standards shall at a minimum meet the requirements of federal and state law and any regulations thereunder applicable to the Property, to be established by the Architectural Committee, and approved by the Board of Directors. No waste or any substance or materials of any kind shall be discharged into any private or public sewer serving the Property, or any part thereof, in violation of any regulations of any private or public

body having jurisdiction. No person shall dump garbage, trash, yard waste or other refuse, or any polluting and/or harmful gaseous, liquid or solid waste into any waterway or onto any Common Area or Lot owned by Owner, another Owner, the Declarant or any Designated Builder within the Property.

**6.09 Leases.** No Owner of a Lot or Dwelling Unit shall lease to another any such Lot or part thereof or any such Dwelling Unit unless such lease shall be in writing for an initial term of not less than six (6) months and shall expressly provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation, Bylaws, and rules and regulations of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under such lease. The Board of the Association shall be provided with copies of leases on request.

**6.10 Landscaping.** The land area not occupied by Improvements, hard-surfacing, vehicular driveways, or pedestrian paths, shall be kept planted with grass, trees, or shrubs or other ground covering or landscaping in conformance with the standards set by the Architectural Committee and approved by the Board of Directors. Such standards will take into consideration the need for providing effective site development to:

- (a) Enhance the site and building;
- (b) Screen undesirable areas or views;
- (c) Establish acceptable relationships between buildings and adjacent properties; and
- (d) Control drainage and erosion.

As required by the Architectural Committee, existing trees shall be retained, buffer areas maintained, and the natural contour of the land respected. Class A Owners shall be responsible for maintenance and replacement of any front and side yard trees. In the event an Owner fails, neglects or refuses to replace and/or maintain any front and side yard trees within such Owner's Lot, the Association shall have the right but not the obligation to replace and/or maintain the subject tree and levy a Special Assessment against such Lot and Owner for the cost of replacing or maintaining any such tree. The Architectural Committee reserves the right to require special treatment of slopes, and construction of retaining walls. Notwithstanding the foregoing, any clearing, grading, or other development work performed pursuant to any site development plan by the Declarant and approved by all appropriate governmental authorities for Declarant or for any Participating Builder shall not be subject to the review or approval of the Architectural Committee.

**6.11 Sidewalks.** Other than the Declarant, each Lot Owner and Designated Builder does hereby assume any and all responsibility for the construction, installation and maintenance, at Owner's or Designated Builder's expense, of public sidewalks parallel to each street which abuts the Lot or Lots owned by such Lot Owner or Designated Builder. All sidewalks shall be constructed, installed, maintained and replaced in accordance with the Development Guidelines and the rules and regulations of the Architectural Committee. Such sidewalks shall be constructed within thirty (30) days of substantial completion of the dwelling on the Lot, weather permitting.

**6.12 Maintenance and Use of Premises and Improvements.** Each Owner or Resident shall at all times keep his premises, buildings, improvements, and appurtenances in a safe, clean, neat, and sanitary condition. Appropriate maintenance shall include, but not be limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements all in a manner and with such frequency as is consistent with good property management, with the exception of those Lots on which the Association may provide maintenance of landscaping. All Owners of Lots on which stormwater management or storm drainage easements exist must keep such area free of debris, landscaping, or fences so as not to impede drainage. The Owner or Resident shall comply with all laws, ordinances, and regulations pertaining to health, safety, and pollution, and shall provide for storage and removal of trash and rubbish from his premises in a manner to be approved by the Architectural Committee or as provided for in the Rules and Regulations of the Association. No noxious or offensive activity shall be carried on or upon any Lot, nor shall anything be done on any Lot which may be or may become an annoyance or nuisance to the neighborhood or which endangers the health or unreasonably disturbs the quiet enjoyment of other Owners or Residents of the Lots.

**6.13 Trash and Garbage.** No garbage or trash cans or containers shall be permitted, unless they are completely screened from view, except on the designated day each week for pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any Dwelling Unit except when in actual use.

**6.14 Gardens.** Produce or vegetable gardens may only be maintained in rear yards in an area no larger than eight (8') by ten (10') feet.

**6.15 Above-Ground Swimming Pools.** No above-ground swimming pools shall be placed upon any Lot within the Subdivision.

**6.16 Outbuildings.** There shall be no "outbuildings" or "sheds" constructed upon any Lot within the Ashbury Hills Subdivision.

**6.17 Solar Panels:** Solar panels will be permitted as long as they are not visible from the front of the home. Solar panels must be approved by Architectural Committee.

**6.18 Front and Side Yard Trees.** A minimum of one 2.0"-3.0" caliper tree must be installed in each front yard and rear yard as soon as practicable after completion of construction. A minimum of two 2.0"-3.0" caliper trees must be installed in the street side yard of a corner lot within one year of completion of construction.

**6.19 Nuisance.** No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the Residents of adjacent Lots.

**6.20 Enforcement of Maintenance.** The Architectural Committee, or its agent, during normal business hours, shall have the right (after 10 days' notice, by regular or certified mail or posted on

door with a witness, to the Owner or Resident of any Lot involved, setting forth the maintenance action to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner or Resident) to do any and all maintenance work reasonably necessary in the written opinion of the Architectural Committee, to keep such Lot, whether unimproved, improved or vacant, in neat and good order, such cost and expense to be paid to the Association upon demand and collected in accordance with Article IV of this Declaration (the foregoing shall not apply to any Lot owned by the Declarant). The Architectural Committee, or its agent, shall further have the right (upon like notice and conditions) to trim or prune, at the expense of the Owner or Resident, any hedge, tree or any other planting that, in the written opinion of the Architectural Committee, by reasons of its location on the Lot, or the height to or the manner in which it is permitted to grow, is detrimental to the adjoining Lots contrary to the rules and regulations of the Architectural Committee, or is unattractive in appearance. The Association shall have the right to record a lien against any Lot for any expense incurred in maintaining any such Lot in accordance with this Section. Any lien recorded pursuant to this Section shall not be valid against a bona fide purchaser for value (or bona fide mortgagee) of the Lot in question unless a suit to enforce such lien shall have been filed in the court of record and notice thereof shall have been filed in the appropriate records of Sarpy County, Nebraska before the recordation among the records of Sarpy County, Nebraska of the deed (or mortgage or deed of trust) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage or deed of trust).

**6.21 Maintenance During Construction.** During construction it shall be the responsibility of each Owner and Designated Builder to ensure that construction sites are kept free of unsightly accumulation of rubbish and scrap materials, and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner. No burning of any trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Lot. All Owners and Designated Builders shall install adequate silt fencing and/or erosion control measures and shall use his, her or its best efforts to keep trash, refuse, yard waste, debris and pollutants of any and every type from being transferred to other Lots, Common Area or water way within the Property.

**6.22 Land Development Activity.** The foregoing provisions of Article VI shall not be applicable to Land Development Activity. Without limiting the generality of the foregoing exclusion, the Declarant and all Designated Builders shall have the right to carry on the following activities in connection with Land Development and construction and sale of Dwelling Units:

(a) To construct, install, operate, and/or maintain on the Property one or more construction or management control offices in Dwelling Units, field office trailers, or other temporary facilities; and

(b) To construct, install, operate and/or maintain one or more model homes (or Dwelling Units) and sales offices on the Property. Such models and offices may be owned or leased by the Declarant, by a Designated Builder or by any Person designated by the Declarant. Land Development and sales activity shall in all events be subject to the local zoning ordinances, building codes and all other applicable laws, rules, and regulations of governmental authorities.

**6.23 Flags.** The Board of Directors of the Association is authorized and reserves the right to regulate the size and type of flags which may be displayed on the property, including the right to prohibit the display of flags on the Property or the right to require the removal of flags, banners or

the like that the Board of Directors deems controversial or inappropriate in its sole discretion. The Board of Directors is also authorized to regulate, restrict or prohibit the erection and placement of flag poles on the Property and reserves the right to do so in its sole discretion.

### **Article VII: Withdrawable and Annexation of Real Estate**

During the Development Period, the Declarant shall have the unilateral right, without the consent of the Association or any Owner, Designated Builder or Mortgagee, to execute and record an amendment to the Declaration (i) withdrawing any portion of the Property which the Declarant owns from the operation of this Declaration; or (ii) to include additional real property into the development, or (iii) annexing any portion of the Property that becomes a buildable Lot, including any outlot. Any such annexation may be affected from time to time by Declarant or Declarant's assignee by recordation with the Register of Deeds of Sarpy County, Nebraska of a Declaration of Covenants, Conditions, Restrictions and Easements, executed and acknowledged by Declarant or Declarant's assignee, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration").

Upon the recording of any Subsequent Phase Declaration which includes additional property or expands the number of residential lots included in the Association, the additional property and/or lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of this Declaration, and the Owners of the additional residential lots shall be Members of the Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

### **Article VIII: Easements**

**8.01 Blanket Easement.** An easement is hereby retained in favor of the Association over the Lots and any Common Area for the installation of landscaping or construction of signage, a common cable television system, a common sprinkler, or any other item installed for the common enjoyment and/or benefit of the Owners (including, without limitation, electricity, gas, and telephone equipment). An easement is further granted for the purpose of the repair and maintenance of any of the foregoing items so constructed. Any entry upon any Lot or any area owned, controlled, or to be owned or controlled by the Association to effectuate the foregoing purposes shall not be deemed trespass. Each Owner and Resident covenants not to damage or destroy any portion of an item so constructed and shall hold the Association harmless from the cost of repairing or replacing any portion damaged or destroyed by such owner, his family, his guests or invitees.

**8.02 Association Easement.** The Board of Directors of the Association shall have the right to grant easements, rights-of-way, licenses, and similar interests over any part of the Common Area for any lawful purpose which the Board determines, in its sole discretion, to be in the best interests of the Association. The Association, the managing agent, and any other Persons authorized by the Board of Directors, are hereby granted the right of access over and through any portion of the Property (excluding any dwelling), in the exercise and discharge of their respective powers and responsibilities, including, without limitation, the right but not the obligation, to make inspections, correct any condition originating in a Lot or in the Common Area threatening another Lot or the



Common Area, correct drainage, perform installations or upkeep of utilities, landscaping or other improvements located on the Property for which the Association is responsible for upkeep, or correct any condition which violates the Association's governing documents. Each Owner and Resident shall be liable to the Association for the cost of all upkeep performed by the Association and rendered necessary by any act, neglect, carelessness, or failure to comply with the Association's governing documents for which such Owner is responsible.

**8.03 Declarant Easement.** An exclusive perpetual easement, and reasonable access thereto, is hereby reserved in favor of the Declarant, and its successors and/or assigns, to erect, install, construct, operate, maintain, repair and remove poles, wires, cables, conduit, and other related facilities and appurtenances thereof, above and below ground, and to extend thereto or therein wires and/or cables for the carrying or transmission of electric current for light, heat and power, and for the transmission of signals and sounds of all kinds, including signals provided by a cable television system, internet access system, telephone system, and/or any other communication system, and the reception related thereto, on, over, under, through and across a ten foot (10') strip of land abutting all interior and perimeter boundary lines of the Lot or any Lot-line easements set forth in the final plat of Ashbury Hills which is filed in the Register of Deeds of Sarpy County, Nebraska (Instrument No. 2019-11806), and any replat thereof.

#### **Article IX: [Intentionally Omitted]**

#### **Article X: Insurance**

**10.01 Insurance.** The Association's Board of Directors or its duly authorized agent shall obtain a public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and if reasonably available, directors' and officers' liability insurance, fidelity bond coverage and such other insurance as may be deemed reasonable and necessary by the Board of Directors of the Association. Cost of insurance coverage obtained for the Common Area shall be included in the Annual General Assessment, as defined in Article IV, Section 4.01. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefited parties.

#### **Article XI: Condemnation**

**11.01 Notice.** Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on its behalf or on the written direction of all Owners subject to the taking, if any,) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed in accordance with the direction of the Board of Directors or retained as working capital of the Association.

**11.02 Replacement Improvements.** If the taking involves a portion of the Common Area on

which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five percent (75%) of the Class A Members shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association.

## **Article XII: Amendment**

**12.01 General Amendments.** Subject to the other limitations set forth in this Declaration, this Declaration may be amended by an instrument approved by not less than seventy-five percent (75%) of the vote of the Owners at a duly convened meeting. The amendment instrument shall be recorded with the Sarpy County, Nebraska Register of Deeds. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording.

**12.02 Declarant Amendments.** Notwithstanding anything to the contrary herein contained, the Declarant reserves the right to amend this Declaration during the Development Period without the consent of any Owners, or any other persons claiming an interest in the Property or the Association if such amendment is necessary to: (a) bring this Declaration into compliance with any rule, regulation, or requirement of the Federal Housing Administration, The Federal National Mortgage Association, The Federal Home Loan Mortgage Corporation, Government National Mortgage Association or any federal, state or local governmental requirements; (b) make non-substantive, corrective changes; and/or (c) subdivide or create a lot line adjustment to reflect the relocation of boundary lines between the Common Area and any Lots or among any Lots, provided, however, that an approved subdivision or replat of the affected property is properly recorded.

## **Article XIII: General Provisions**

**13.01 Duration.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless amended or terminated as provided in this Article.

**13.02 Enforcement.** The Association, 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. Failure by the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The provisions of this Section shall be in addition to and not in limitation of any rights or remedies provided in other Sections of this Declaration.

**13.03 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions hereof, which provisions shall remain in full force and effect.

**13.04 Construction.** The Board of Directors shall have the right to construe the provisions of

this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding on all persons and entities benefited or bound by the provisions of this Declaration.

**13.05 Declarant's Disclaimer.** Declarant makes no warranties or representations that any plans regarding any future phases will be carried out, or that any Lot within any such phase or future phase will be committed to or developed for any particular use. In addition, while Declarant has no reason to believe that any of the provisions of this Declaration are or may be unenforceable, Declarant makes no representations as to enforceability. Declarant shall have no liability for the development of the Property or the enforcement of this Declaration.

**13.06 Headings.** The headings of the Articles and Sections of this Declaration are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

**13.07 Gender.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa.

**13.08 Termination of Declaration.** This Declaration may only be terminated by an instrument approved by not less than eighty percent (80%) of the vote of the Owners at a duly convened meeting.

**13.09 Amendments Affecting Assignees.** Notwithstanding any provision herein to the contrary, if any dues or assessments or the power to declare, levy, collect or enforce dues or assessments have been assigned by the Association, this Declaration shall not be amended in any manner without the express, written consent of such assignee.

**13.10 Amendment and Restatement.** This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Ashbury Hills shall amend, restate and supersede, those certain Declaration of Easements, Covenants and Restrictions for Ashbury Hills adopted on October 29, 2020 and recorded in the Miscellaneous Records of the Register of Deeds Office of Sarpy County, Nebraska on November 3, 2020 as Instrument No. 2020-37033.

**13.11 Future Development of Lot 165 and Phase III.** The Board of Directors, the Association, including all Owners and Designated Builders, understand, acknowledge and agree that Lot 165, Ashbury Hills, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska ("Lot 165") and Lots 134, 289 and Outlot "K" of the Ashbury Hills Preliminary Plat ("Phase III") are not subject to the terms, conditions, restrictions, covenants or easements set forth in this Declaration. Lot 165 is zoned Mixed-Use parcel under the Mixed Use Development Agreement approved by the Papillion City Council on May 21, 2019, by Ordinance No. 1802, and all of the use types customarily permitted under a Mixed-Use District, including, but not limited to, convenience self-storage, civic and commercial use types, may be permitted on Lot 165. The property within Phase III may be subdivided or combined into multiple parcels for multiple owners and no Owner or Designated Builder shall have the right to object to such subdivision or zoning of the property within Phase III, or any portion thereof, or to object to such use types under the Mixed-Use Zoning District, including, but not limited to, multi-family housing, it being understood and agreed that such Owners and Designated Builders are taking title to their Lots with these understandings.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument on the 6<sup>th</sup> day of April, 2021.

**DECLARANT:**

**Ashbury Hills Development, LLC**, a  
Nebraska limited liability company,

By: *Peter W. Katt*  
Name: Peter Katt  
Title: Administrative Member

STATE OF NEBRASKA    )  
  )ss.  
COUNTY OF SARPY    )

The foregoing instrument was acknowledged before me this 6 day of April 2021, by Peter Katt, Administrative Member of Ashbury Hills Development, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

*Kristin Vanis*  
Notary Public



**Exhibit "A"**

**Legal Description of Property**

Lots 1 thru 164, inclusive, and Outlots "A" thru "H", inclusive, Ashbury Hills, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

## **Exhibit "B"**

### **Legal Description of Estate Lots**

Lots 1 thru 57, inclusive, 62 thru 69, inclusive, 74 thru 89, inclusive, 122 thru 125, inclusive, Ashbury Hills, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

### **Legal Description of Sapphire Hills Lots**

Lots 58 thru 61, inclusive, 70 thru 73, inclusive, 90 thru 121, inclusive, 126 thru 164, inclusive, Ashbury Hills, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska; and Lot 44, Ashbury Hills Replat 1, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

**CONSENT TO AND RATIFICATION  
OF THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR ASHBURY HILLS**

The undersigned, River Oaks Development, LLC, a Nebraska limited liability company (the "Owner"), hereby consents to the above and foregoing Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Ashbury Hills ("Declaration"); agrees that the real property described as Lots 58 thru 61, inclusive, 70 thru 73, inclusive, 90 thru 121, inclusive, 126 thru 164, inclusive, Ashbury Hills, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska ("Sapphire Hills"), shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, operated, improved, mortgaged or otherwise encumbered subject to the provisions of this Declaration; Owner agrees that this Declaration and all of its provisions shall be and are covenants running with Sapphire Hills and shall be binding on the undersigned, its successors and assigns; and the undersigned hereby ratifies and approves of the recordation of this Declaration in the Office of the Sarpy County Register of Deeds against the real property legally described hereinabove.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this 14 day of APRIL, 2021.

OWNER:  
River Oaks Development, LLC,  
a Nebraska limited liability company  
By: [Signature]  
Name: Tom Katonek  
Its: ADMINISTRATIVE MEMBER

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF SARPY     )

Before me, a notary public, in and for said county and state, personally came Tom Katonek, the Administrative Member of River Oaks Development, LLC, a Nebraska limited liability company, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be their voluntary act and deed, on behalf of said limited liability company.

Witness my hand and Notarial Seal this 14 day of April, 2021.

[Signature]  
Notary Public

