

Plat recorded 12/22/2020 # 1886454

ASHBURY EAST SUBDIVISION

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Declaration of Conditions, Covenants, Restrictions and Easements

THIS DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS ("Declaration"), is made by ASHBURY EAST, LLC, a Wisconsin limited liability company ("Developer").

RECITALS

WHEREAS, the Developer is the owner of the real property located in the Village of Pleasant Prairie (the "Village"), County of Kenosha, State of Wisconsin, known as Ashbury East Subdivision; and

WHEREAS, the Developer desires to subject Ashbury East Subdivision, described on attached Exhibit A, including Outlot 1 as shown on the final plat, which is made a part hereof and described in Article II of this Declaration (the "Property"), being a part of the development, to conditions, covenants, restrictions, easements, liens and charges (hereinafter collectively referred to as "Covenants") set forth in this Declaration, each and all of which is and are for the benefit of the Property, the Developer, the Village and for each owner thereof and shall pass with ownership of such Property, and each and every parcel and lot thereof, and shall apply to and bind the successors in interest and any owner thereof; and

DECLARATION

NOW, THEREFORE, the Developer hereby declares that the Property is and shall be held, used, transferred, sold and conveyed subject to the "Covenants" hereinafter set forth.

**ARTICLE I
DEFINITIONS**

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- 1.1 "DEVELOPER" shall mean Ashbury East LLC, a Wisconsin limited liability company. The "Developer" may also have the responsibilities of the Architectural Control Committee, hereinafter called the "ACC", and vice versa, with respect to any required approval and review process under the Declaration.
- 1.2 "ASSOCIATION" shall mean and refer to Ashbury East Homeowners Association, Inc.
- 1.3 "PROPERTY" shall mean and refer to all existing properties within the subdivision as are subject to this Declaration.
- 1.4 "COMMON AREAS" shall mean all personal property and real property interests located within Ashbury East Subdivision including the Dedicated Storm Water Retention Basin



DOCUMENT
1886456

RECORDED
At Kenosha County, Kenosha WI 53140
JoEllyn H. Storz, Register of Deeds
December 22, 2020 11:41 AM
\$38.00
Pages 24

Recording Area

Name and Return Address

Thomas M. Santarelli
Madrigano, Aiello & Santarelli, LLC
1108 56th St.
Kenosha, WI 53140

24

From 91-4-122-084-0225

Parcel Identification Number (PIN)

and Storm Water Drainage, Access and Maintenance Easement Areas, Dedicated Landscaping and Signage, Access and Maintenance Easement areas and cul-de-sac island planting areas as shown on a final plat and as further described in and subject to Article IV.

- 1.5 "LOT" shall mean and refer to any buildable plot of land shown upon any recorded subdivision or lot line adjustment map or any certified survey map of the Property with the exception of the Common Areas.
- 1.6 "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Outlot; except that as to any Lot which is the subject of a land contract wherein the purchaser is in possession, the term "Owner" shall refer to such person instead of the vendor.
- 1.7 "MEMBER" shall mean and refer to all those Owners who are Members of the Homeowners Association as provided in Article V, Section 1.

ARTICLE II **PROPERTY SUBJECT TO THIS DECLARATION**

Existing Property. The Property, more particularly described on Exhibit A attached hereto and including Outlot 1 as shown on the final plat, which is and shall be held, used, transferred, sold, conveyed and occupied subject to this Declaration is located in Kenosha County, Wisconsin. The term "Existing Property" as used in these Declarations shall refer to all property which is subject to the provisions hereof.

ARTICLE III **GENERAL PURPOSES AND CONDITIONS**

- 3.1 General Purpose. The Property is subjected to these Declarations to insure the best use and the most appropriate development and improvement; to protect the Owners against such improper use of the Property as will depreciate the value thereof; to preserve, so far as practicable, the natural beauty of the Property; to provide for entrances to the Property; to guard against erection of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to guard against an excess of similar architectural styles, colors and elevations within proximity to adjacent and nearby housing units and thereby avoid housing monotony, to obtain harmonious color schemes; to insure the highest and best development of the Property; to encourage and secure the erection of attractive, substantial homes, with appropriate location on Lots; to prevent haphazard and inharmonious improvement of Lots; to secure and maintain proper setbacks from street and adequate free space between structures; to encourage, secure and maintain attractive and harmonious landscaping of Lots and Common Areas; and in general to provide adequately for a high type and quality for improvement in the Property and thereby to enhance the value of investments made by purchasers of Lots.
- 3.2 Initial Construction of Common Areas. Notwithstanding anything contained herein to the contrary, the Developer shall be responsible for the initial construction, installation and landscaping of the stormwater, drainage and retention areas, public sidewalks, public street trees and cul-de-sac islands and their related landscaping and lighting elements and landscaping areas along Bain Station Road (all as described below).

3.3 Land Use and Building Type.

- (a) No Lot shall be used for any purpose except for single-family residential purposes as defined by the Village Zoning Ordinance. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling not exceeding two (2) stories or thirty-five (35) feet in height, and a private attached garage for not less than two (2) cars as further described herein. Architectural styles that are deemed by the ACC, in the ACC's sole opinion, to be unusual, extraordinary, out of character with the subdivision or lacking sufficient exterior design elements or components are prohibited. Notwithstanding anything contained herein to the contrary, the Developer and any subsequent purchaser of a Lot may use such Lot for purposes of building model homes open to the public for inspection and/or sale subject to the requirements set forth herein and subject to the Village's approval.
- (b) Professional home occupations are permitted subject to the Village Zoning Ordinance and shall be further limited to the residents of the dwelling and no more than 1 non-resident employee; and shall be limited to occupations that see no more than 3 clients or customers per day at the dwelling.
- (c) State of Wisconsin Licensed and/or Certified in-home day cares are prohibited from operation within the Property. Occasional baby-sitting is permitted subject to Village Ordinances and State Statutes.

3.4 Architectural Control. No building, fence, wall, swimming pool, playground set, driveway, deck, sidewalk, landscaping, or other structure or improvement of any type (including antennae of any size or shape, whether freestanding or attached to another structure) shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition or improvement to or change or alteration of any Lot (including without limitation, adding a deck, patio, gazebo, pergola, sport court, or sidewalk, repainting or landscaping changes on existing homes for which plans have previously been approved) be made until the plans, specifications and plot plan showing the nature, kind, shape, height, materials, color and location of the same and the landscape layout described in Section 3.10 hereof shall have been submitted to and approved in writing as to quality, materials, harmony of exterior design and location in relation to other structures, topography and compliance with the provisions of this Declaration, by the Board of Directors of the Association, or by an ACC composed of three (3) representatives appointed by the Board (in either case hereinafter called the "Architectural Control Committee"). Owners must submit three (3) identical copies of all plans, specifications, surveys, plats and other required documents to the ACC. Owners shall submit a \$200.00 review fee payable to the Developer for the initial home construction. Notwithstanding anything to the contrary, as long as the Developer owns one or more Lots, the Developer reserves the right, but not the obligation, to carry out the functions of the ACC. No Owner shall request or obtain a building permit for a Lot from the Village without first obtaining the written approval of the plans and specifications from the ACC. In the event the ACC fails to approve or disapprove within thirty (30) days after the plans and specifications have been submitted to it, or in the event of disapproval, if no suit to enjoin the addition, alteration, or change or to require the removal thereof has been commenced before one (1) year from the date of completion thereof, then approval will not be required and this section will be deemed to have been fully complied with. The ACC shall have the right to waive minor infractions or deviations from these restrictions in cases of hardship or as otherwise determined by the ACC in its sole discretion. The ACC shall have the sole discretion to determine which of the dwelling size requirements of this Declaration applies to a particular proposed dwelling and whether the same has been met. The provisions of this Declaration are minimum requirements and the Developer, or ACC, may in its discretion, require stricter standards or, conversely, may relax standards

on a case by case basis if it reasonably determines that such modified standards are required for the benefit of the entire Property, provided such variance is not in conflict with the dedications and restrictive covenants running with the land as described on the final plat or the obligations imposed by the Declaration on Owners or the requirements of the Village ordinances. Further, the Developer may require reasonable alterations to be made to any of the plans to be submitted under this Declaration and said requirements shall be binding upon each and every Owner. In the event of ACC approval, no plans shall be altered or changed prior to submittal to the Village without ACC re-approval.

- 3.5 New Construction Only. No building shall be placed or permitted to remain on any Lot other than buildings newly constructed on the Lot; no previously constructed dwelling or structures shall be relocated to or situated upon any Lot without the written approval of the ACC. The Developer reserves the right to name Harpe Development, LLC as the Exclusive Builder in the Subdivision.
- 3.6 Dwelling Size. No dwelling shall be erected on any Lot having a ground area within the perimeter of the main building, or at or above finish grade elevation (exclusive of garages, porches, patios, breezeways and similar additions), measured along the exterior walls, of less than the following areas:
- (a) Not less than 1800 square feet for a one-story dwelling;
 - (b) Not less than 2000 square feet for a one and a half or two-story dwelling with a minimum first floor area of 1000 square feet;
 - (c) With respect to all other types of dwellings, not less than such areas, determined by the ACC, as are consistent with the foregoing and with other provisions hereof.

However, the ACC, in its sole discretion, reserves the right to make any deviation from the above requirements provided such variance is not in conflict with the requirements of Village Ordinances.

- 3.7 Grading, Building, Location and Lot Area.
- (a) Any grading of a Lot must conform to the approved Master Grading Plan ("Master Grading Plan") on file with the Village Community Development Department. All Lots shall have setbacks from the front lot line and from the interior lot lines of distances determined by the ACC but, in no event less than that set forth on the Final Plat and provided by applicable Village ordinance.
 - (b) The approved Master Grading Plan shall be used for the Lots. Plat of surveys shall show all the designed grade information including spot grades and proposed topographic contour information. The house style (i.e. rear basement exposures) for the lot shall match that required by the grading plan. For example if the master grading plan calls for a half or full exposed basement for the lot, the actual house style shall coincide with the lot plan. Adjustments of proposed topographic contours (within the lot) shall be made on the plat of survey based on actual building envelope dimensions and placement on the lot, however, the building placement shall work with matching the subdivision lot line grades. No adjustments of the grades shall be made without approval of the Village, Developer and affected adjacent landowners.
 - (c) Each Owner shall be responsible for insuring that drainage from said Owner's Lot adheres to the existing drainage patterns as set forth in the Master Grading Plan and that the Owner's construction and other building activity does not

interfere with or disrupt the existing or planned drainage patterns. The existing drainage pattern on a Lot shall not be changed significantly, and no change to the drainage pattern on other lands within the Property of Ashbury East Subdivision shall be caused by an Owner which varies from the Master Grading Plan as these plans are amended by the Developer from time to time, subject to Village approval. Minor changes from said Master Grading Plan, where these changes do not violate the purpose, spirit and intent of said Master Grading Plan shall be reviewed and may, if for good and sufficient reasons, be approved by the ACC and the Village; in all other cases, the approved grades shall be strictly adhered to. Lot owners shall be held responsible for any violation that will cause additional expense to the Developer or any other Owner to correct any grading problems.

- (d) Upon the approval of the building grades by the ACC, the applicant shall file the approved grades with the Village for its review, approval and issuance of permits prior to commencing any grading.
- (e) The Developer shall initially mass grade the Property and rough grade the Lots in accordance with the Master Grading Plan. Excess material generated from individual home construction on individual lots shall be hauled off site to an appropriate and suitable disposal site by the Lot Owner.

3.8 Zoning Laws, Etc. In addition to the provisions contained within this Declaration, all Lots and improvements thereon shall be subject to Village ordinances and applicable state and federal laws, as may be amended from time to time (hereinafter collectively referred to as "Laws"). No Lot shall be further divided, adjusted, or combined without the approval of the Village. The requirements under Village ordinances are not stated herein and, therefore, it shall be the sole responsibility of every Owner to understand and insure compliance with Village ordinances as the same may be amended from time to time. In the event of a conflict between the provisions of this Declaration and the Village ordinances and the Village ordinance is stricter than the provision contained herein, the Village ordinance shall control. Failure to mention a requirement, with respect to any Lot or other necessary approval in this Declaration, shall not imply that no such requirement exists with the Village and shall not constitute a waiver of such Village requirement and/or approval.

3.9 Landscape Requirements.

- (a) All plans for dwellings shall include a landscape plan which shall be subject to the approval of the ACC, shall be submitted in three (3) copies for approval prior to submission to the Village Building Inspector of the building plans for the dwelling and shall conform to the Landscape Standards. Such landscape plan shall include driveway, deck, patio, walkways and plantings such that a pleasing park-like appearance shall ultimately be accomplished in the Property and a uniform line of planting is avoided. Landscape planting for any dwelling as approved by the ACC shall be completed within one (1) year from the date of issuance of a verbal occupancy permit by the Village, except as set forth herein, and shall be properly maintained thereafter. In the event the landscaping is not maintained properly, in the opinion of the ACC, upon notification, the Owner of the Lot shall take adequate measures to properly maintain the landscaping. Refusal to comply with the maintenance requirement shall be considered a violation of this Section 3.10 of this Declaration and shall be subject to penalties as provided in Section 8.3. Any alterations to the approved landscape plan for a Lot shall be subject to the approval of the ACC. No trees, landscaping, or other planting existing on a Lot, except those in the location of the proposed dwelling,

patio, walks and driveways, shall be altered or removed without prior written approval of the ACC.

- (b) The Developer shall install parkway trees in the public road right-of-ways per the approved landscape plan and shall warranty said trees for a period of (2) years from the date of planting provided the Owner of the Lot in which the trees adjoin takes reasonable precautions to maintain, foster and promote its growth; should a tree die within the warranty period and it is determined by the Developer that the tree was harmed due to construction activity, grading, damage, lightning, wind, negligence or neglect, the warranty is void and the Owner shall be responsible for replacement; upon expiration of the warranty, Village ordinance requires each Owner to maintain the trees that adjoin the Lot; should a tree(s) die, the Owner shall promptly replace the tree(s) with a similar species, minimum of 2 ½" in diameter at the base and a minimum of 6' in height at the same approximate location.
- (c) Owners are responsible for maintaining the parkway terrace area, otherwise known as right of way or the area between the property line and the curb in front of each lot. In the event an Owner landscapes their Lot prior to the installation of curbs, any landscaping lying within the right of way will be destroyed during the installation and backfilling of the curbs and Owners are responsible for the cost of replacing or installing landscaping in the right of way after the curbs have been installed and properly backfilled.

3.10 Nuisances, Etc. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.

- (a) Trash, garbage, or other wastes shall not be kept except in sanitary containers and all such materials or other equipment for disposal of same shall be properly screened from public view. Outside trash, garbage or waste incinerators are prohibited. Trash shall not be placed curbside earlier than the morning of the scheduled day of collection.
- (b) No vehicle, truck, recreational vehicle, trailer, tent, shack, garage, barn, or other outbuilding or living quarters of a temporary character shall be permitted on any Lot at any time except as provided for within this Declaration.
- (c) No external antennae, including satellite dishes, excepting satellite dishes of not greater than twenty four (24) inches in diameter, television antenna or radio towers of any type for any purpose, shall be permitted on any Lot at any time without the prior written approval of the Architectural Control Committee.
- (d) Basketball goals shall be permanently direct-buried within 3ft. of the driveway. No goals shall be installed on any portion of the main dwelling or garage structures nor shall any portable goals be permitted. Support poles shall be black and the backboards shall be transparent (plexi-glass or plastic). The use of such goals shall be limited to 8 am to 10 pm.
- (e) Solar panels and collecting equipment including roof mounted wind turbines are prohibited on any Lot.
- (f) The installation, erection and use of clotheslines and similar devices and the placement or drying of clothing, linens, rugs or other items are prohibited outside the dwelling on any Lot.

- (g) Outdoor playground equipment including trampolines are prohibited except for swing sets, slides and similar apparatus constructed of primarily natural materials, with no bright or offensive colors and occupying no greater than 300 square feet of ground area are permitted.
 - (h) No person shall kindle, start, maintain or conduct outdoor burning or open fires, including but not limited to, the burning of trash, paper, cardboard, leaves or items that emit noxious or hazardous smoke as determined by the ACC, except a fire for outdoor cooking or recreation. The fire for cooking or recreation shall be in a grill, fireplace or other equipment specifically designed for outdoor residential use.
- 3.11 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that up to two (2) dogs and/or two (2) cats, or other small household pets (such as canaries or parakeets) or as otherwise approved by the ACC may be kept in a manner which will not disturb the type and quality of life and the environment of the Property. Dogs shall be kept on leashes at all times when outdoors and Owners shall immediately collect, remove and dispose of any dog waste from the Property. No animals shall be kept, bred, or maintained for any commercial purposes. Dog runs, dog houses, kennels or other shelters are prohibited. No dogs are permitted to remain outside overnight.
- 3.12 Mailboxes and Public Street Lighting.
- (a) Owner's shall purchase at Lot closing, and the Owner shall thereafter maintain, one (1) mailbox with newspaper box, which shall be installed at the street in clusters and at locations approved by the United States Postal Service. Individual newspaper boxes or other apparatus are prohibited in the parkway.
 - (b) Public Street Lighting will be installed at entrances and other locations within the Property as determined by the Village and We Energies shall maintain, repair or replace the street lights. The Developer shall make an initial estimated cash deposit with the Village equal to the first years billing costs for the public street lighting. Thereafter, the payment for the costs of the public street lighting, which includes the electric energy costs, monthly facility maintenance fees and Village administrative billing fee will be invoiced to the Association for payment. The street lighting deposit held by the Village will be evaluated each year based upon the previous years billing and shall be increased, if necessary, by the Association within 30 days of the Village's invoice.
- 3.13 Garages; Parking, Concrete Driveway Approaches and Sidewalks.
- (a) Each Lot shall have a private, enclosed garage attached to the dwelling, having not less than 528 square feet total for onsite storage of not less than two (2) automobiles for each one (1) family dwelling built upon such Lot and shall be connected to the street by a properly surfaced concrete or brick driveway (such driveway shall be installed and completed within one (1) year from the date of issuance of a verbal occupancy permit) The use of asphalt paving is prohibited.
 - (b) There shall be no outside parking of boats, snowmobiles, buses, trailers or recreational vehicles of any type, vehicles greater than 8' in height, vehicles with a gross vehicle weight rating exceeding 12,000 lbs., any vehicle not in regular use or not registered with the Department of Motor Vehicles; such personal property shall be stored in garages or off-site.
 - (c) No mountable curb cuts shall be permitted for driveways.

- (d) The location of garage door(s), whether front or side entry shall be eight (8) feet in height. Driveways shall be located a minimum of five (5) feet from the sideyard property line and access on corner Lots shall be limited per the Subdivision Plat.
- (e) Sidewalks will be installed by Developer on the north and south sides of 84th Place (only) in the right of way and Owners of Lot 1 and Lot 19 are responsible for the continued maintenance, repair and replacement of the sidewalks on the sides of their Lot. Sidewalks shall be kept clear. The Owner shall promptly each day remove all snow and ice which may have fallen or accumulated upon the sidewalk in front of their Lot. When ice is so formed that it cannot be removed, the Owner shall keep the same sprinkled with a material which will prevent the sidewalk from being dangerous to pedestrians. When sidewalks deteriorate and become hazardous as a result of cracking or heaving, Owner's shall promptly repair or if not repairable, replace the section(s) of sidewalk to Village specifications.

3.14 Roofing Material and Construction.

- (a) All dwellings proposed to be erected, altered, or modified shall specify on the construction plans roofing materials acceptable in quality to the ACC and the construction shall be carried out with such roofing material as approved by the ACC.
- (b) All dwellings shall have minimum roof pitches of 6:12 or as approved by the ACC.

3.15 Exterior Building Materials and Dwelling Quality.

- (a) All dwellings proposed to be erected, altered or modified shall, on the construction plans, denote natural exterior material(s), i.e. brick, stone, and EIFS, stucco, composite cement board or other similar materials acceptable to the ACC and the construction shall be carried out in accordance with the material as approved by the ACC. T-111, vinyl, wood, and aluminum are prohibited for use as the primary exterior surface. Aluminum, steel, wood or vinyl are permitted for soffits, windows and doors only.
- (b) The design, layout and exterior appearance of each dwelling proposed to be erected, altered, or modified shall be such that, in the opinion of the ACC at the time of approving of the building plans, the dwelling will be of a high quality and will have no substantial adverse effect upon property values. The ACC reserves the right to deny a building plan within 500 feet of where the same or similar plan was previously approved on the Property to avoid architectural monotony within the subdivision.
- (c) The proposed color schemes for a dwelling to be erected, altered, modified, or repainted with a new color scheme shall be submitted to the ACC for approval. It shall be the aim of the ACC to harmonize colors for not only the dwelling proposed, but to consider the effect of these colors and materials as they relate to other dwellings.
- (d) All color schemes, including the color of siding, roof, brick, or stone samples must be submitted for approval before construction commences.

- 3.16 Fences. Only fences decorative and see through in nature, such as wrought iron style, picket or split rail and standing no more than six (6) feet in height will be permitted. Plans including size, shape, material and location of such fences must be approved by the ACC prior to installation. Stockade, chain-link and privacy fences are prohibited. Fences are prohibited along Bain Station Road on Lot 6, Lot 7 and Lot 8. Fences may also be further prohibited or limited subject to easement holders' rights, policies and determinations. Fences are prohibited within the Village's storm drainage easements.
- 3.17 Pools. Above ground swimming pools of any style or type, temporary or otherwise are prohibited on any Lot. In ground swimming pools are permitted only with ACC prior written approval, which may be withheld if the proposed pool poses an adverse effect to existing trees, topography or neighborhood. The construction and installation of an ACC permitted swimming pool shall be governed by the ordinances in effect for the Village at the time a permit is requested. All pools require fences in the Village and are subject to Section 3.16.
- 3.18 Hot tubs. Outdoor hot tubs are permitted subject to ACC prior written approval. Above ground hot tubs shall be screened from public view and have exterior panels constructed of natural materials. Inflatable or otherwise temporary hot tubs are prohibited.

ARTICLE IV DEDICATION AND EASEMENT PROVISIONS

- 4.1 Easements-General. Certain Easements affecting the Property are recorded on the final plat for Ashbury East Subdivision in the office of the Register of Deeds of Kenosha County, Wisconsin. Each Lot shall be subject to any easement, dedication, restrictive covenant, or any other restriction granted (and/or retained) by the Developer on such final plat or hereafter to be granted (and/or retained) by the Developer or its successors and assigns to the Village, or the Ashbury East Homeowner's Association, or public or semi-public utility companies, for the erection, construction and maintenance of all poles, wires, pipes and conduits for the transmission of electricity, telephone and for other purposes, and for sewers, storm water drains, gas mains, water pipes and mains, and similar services, for performing any public or quasi-public utility function or for any other purpose that Developer or its successors and assigns may deem fit and proper for the improvement and benefit of the Property and for any other purpose as set forth in dedications and restrictive covenants on the final plat. The Owner of any Lot on which such easement area(s) are located may use such areas, together with the area between the roadway and their lot, for grass, plantings, driveways and other such uses as are described on the final plat and shall otherwise care for and maintain such area provided such uses shall not interfere with the improvements, their uses and purposes, and the uses and purposes of the Village; nor shall any improvements be placed within such areas without the prior written consent of the Developer, Village and/or any other party having an interest in the respective easement areas.
- 4.2 Dedicated Public Streets. The fee interest in the areas shown as a Dedicated Public Street on the final Plat (93rd Court and 84th Place) is hereby dedicated, given, granted and conveyed by the Developer to the Village of Pleasant Prairie, its successors and assigns (the "Village") for the construction, installation, repair, alteration, replacement, planting and maintenance of public street improvements, uses and purposes, including, without limitation, pavement, curbs and gutters, sidewalks, where they are required and being installed, street signs, street lights, street trees, sanitary sewerage system improvements, water system improvements, storm sewer and drainage system improvements, mailboxes, utility and communications facilities, cul-de-sac island landscaping, and for all related ingress and egress, construction, installation, repair, alteration, replacement, planting and maintenance activities. Such fee interest is subject to the following:

(1) a temporary nonexclusive easement coextensive with the areas of each such Dedicated Public Street, hereby retained by the Developer for the construction, installation, repair, replacement and maintenance of such public street improvements, uses and purposes, including, without limitation, pavement, curbs and gutters, sidewalks, street signs, street lights, street trees, sanitary sewerage system improvements, water system improvements, storm sewer and drainage system improvements, mailboxes, utility and communications facilities, cul-de-sac island landscaping and for all related ingress and egress pursuant to a Development Agreement entered into between the Developer and the Village dated as of _____ 2019 (subject to the rights of the Village to perform the same functions); and

(2) a nonexclusive easement hereby reserved by the Developer for the Ashbury East Homeowners Association, Inc. (Homeowners Association) or Owners of the Lots or Outlots shown on the final Plat which are adjacent to each such Dedicated Public Street for the required planting, mowing, watering and maintenance of grass within the grassy terrace area, for the maintenance and replanting of street trees and the clearance, maintenance, repair and replacement of sidewalks, required by the Village in the area between the roadway and their Lot or Outlot; for the replanting, watering, weeding and maintenance of trees and plantings within the 93rd Court cul-de-sacs; and for the construction, installation, repair, replacement, maintenance and use of such private driveways in the area between the roadway and their Lots or Outlot as are approved by the Village and as will not interfere with the public improvements, uses and purposes of the Village (all subject to the rights of the Village to perform the same planting, replanting, construction, installation, repair, clearance, maintenance and replacement functions). In the event of any conflict between the rights of the Village under its fee interest in the Dedicated Public Streets and the rights of the Developer, or of the Owners of any Lot, or Outlot 1, or of the Homeowners Association pursuant to the easements retained herein, the rights of the Village shall be deemed to be superior.

The Developer shall be responsible for all costs associated with the construction, installation, repair, alteration, replacement, planting and maintenance of the public street and related improvements, including, without limitation, pavement, curbs and gutters, cul-de-sac islands, sidewalks, where required by the Village, street signs, street lights, street trees, sanitary sewerage system improvements, water system improvements, storm sewer and drainage system improvements, mailboxes, utility and communications facilities, and cul-de-sacs landscaping referred to herein, in accordance with the terms and conditions of the Development Agreement on file with the Village Clerk until said public improvements are completed and inspected.

- 4.3 Dedicated Utility Easements. Easements coextensive with the areas shown as 12-foot Dedicated Utility Easement areas on the final Plat are hereby dedicated, given, granted and conveyed by the Developer ("the Grantor") to WE Energies f/k/a Wisconsin Electric Power Company, SBC f/k/a Wisconsin Bell, Inc. d/b/a Ameritech- Wisconsin and Time Warner Cable Inc. and their respective successors and assigns (collectively, the "Utility and Communications Grantees"), for the purposes of constructing, installing, operating, repairing, altering, replacing and maintaining utility and communication lines and other related facilities to serve the Lots or Outlot 1 (or portions thereof) shown on the final Plat and for any related ingress and egress. These easements shall also include the right to trim or cut down trees, bushes, branches, and roots as reasonably required so as not to interfere with the Utility and Communication Grantees use of the easement areas. To the extent possible, all such utility and communications lines and facilities shall be installed underground. Upon the installation of the utility cables and related appurtenances, the elevation of the existing ground surface within the easement areas shall not be altered by more than four (4) inches of final grade without the written approval of the Utility and Communications Grantees. The Grantor shall restore or cause to be restored, all such

land, as nearly as is reasonably possible, to the condition existing prior to installing such utilities within the communication easement areas on which such easements are located as does not interfere with the purposes of the utility and communications easements and the use of such easements by the Utility and Communications Grantees unless a separate agreement is entered into between the Grantor and Grantees regarding the transfer of the restoration and maintenance responsibilities to the Grantees. No buildings, fences, or structures of any kind shall be placed within the utility and communications easement areas without the prior written approval of the Utility and Communication Grantees.

The Village generally allows private utilities, including but not limited to electric and communications facilities, to be installed in public street right-of-ways with prior written approval from the Village, subject to the requirements of applicable Village ordinances and the requirements of such public uses and purposes of the Village. Further, each individual private utility, electric or communications company shall be responsible for promptly restoring the public street areas and public highway areas to their pre-existing condition, at its own cost, after any use of such areas. In the event the private companies do not restore the easement areas to a vegetatively stabilized condition, the Developer shall be ultimately responsible for the costs of such restoration and may pursue its remedies against the respective utility company(s). Under no circumstances shall any private utility, electric or communications company conduct any open cutting of public roadways after the crushed aggregate base course is installed without prior written approval of the Developer and the Village. Any such private utility or communications facilities shall be promptly relocated, at the cost of the individual utility, electric or communications company, upon written request of the Village, to serve the public functions and purposes of the Village in the public street area. In the event of any conflict between the rights of the Village and the rights of the private utility, electric or communications company in such public street areas, the Village's rights shall be deemed to be superior.

- 4.4 Dedicated Storm Water Drainage, Access and Maintenance Easements. Nonexclusive easements coextensive with the areas shown as either a Dedicated 10' or 20' Storm Water Drainage, Access and Maintenance Easement on the final Plat are hereby dedicated, given, granted and conveyed by the Developer to the Village for storm water management purposes, public and private drainageways, and for all related construction, installation, repair, alteration, replacement, landscaping, maintenance and ingress and egress. These storm water drainage easements shall be exclusive, except for: (1) such other easements as may be dedicated and conveyed herein with respect to the same area or any portion thereof; (2) such use, planting, care and maintenance responsibility of the easement areas which shall be required by the Owners of the Lots or Outlot on which such easements are located as will not interfere with the improvements, uses and purposes of the Village; and (3) such future driveway or other uses of the easement area as may be approved by the Village and subject to any conditions that the Village may impose. In the event of any conflict between the rights of the Developer, the rights of the Village pursuant to these easements and the rights of the Lot or Outlot Owners or other entities with respect to the Dedicated Storm Water Drainage, Access and Maintenance Easement areas, the Village's rights under these easements shall be deemed to be superior. Unless the Village exercises the rights granted to it hereunder with respect to the easements, the Village shall have no obligation to do anything pursuant to its rights under these easements.

The Developer shall be responsible for all costs associated with the construction and maintenance of public and private storm water management and drainageway improvements contained within these stormwater drainage nonexclusive easements until such time as the referenced Lots or Outlot are transferred in ownership and such maintenance responsibility is then transferred to the new Lot or Outlot Owner(s).

- 4.5 Outlot 1. A fee interest in the area shown as Outlot 1, Dedicated Storm Water Drainage, Retention Basin, Access and Maintenance Area on the Final Plat is hereby dedicated, given, granted and conveyed by the Developer to the Homeowners Association, its successors and assigns and its successors-in-title for the for storm water management and storm water retention purposes, public and private drainageways, storm water retention basin aerator/electrical maintenance, and for all related construction, installation, repair, alteration, replacement, landscaping, signage, maintenance, wetland preservation and protection, access and maintenance, ingress and egress. Outlot 1 shall be exclusive, except for: (1) the dedicated storm water drainage retention basin, access and maintenance easement hereby dedicated, given, granted and conveyed by Developer to the Village for stormwater management purposes; (2) such other easements as may be dedicated and conveyed herein with respect to the same area or any portion thereof; (3) such use, planting, care and maintenance responsibilities of the easement areas which shall be required by the Homeowners Association, collectively the Owners of Lots 1 through 19 shown on the Final Plat as it will not interfere with the improvements, uses and purposes of the Village. In the event of any conflict between the easement rights of the Developer or the easement rights of the Village pursuant to this Outlot 1 and the rights of either the Homeowners Association or the Lot Owners or other ownership entities with respect to Outlot 1, the Village's rights under the easements granted to it shall be deemed to be superior. Unless the Village exercises the rights granted to it hereunder with respect to any easement on Outlot 1, the Village shall have no obligation to do anything pursuant to its rights under the easements. The Developer shall be responsible for all costs associated with the installation and maintenance of the storm water drainage, retention basin, open space areas, landscape areas and wetland preservation or restoration areas contained within Outlot 1 until and unless it is transferred in ownership and such maintenance responsibility is then transferred to the new Outlot 1 Owner(s).
- 4.6 Temporary Easements Coextensive with Dedicated Public Streets. Temporary easements coextensive with the areas shown as Dedicated Public Streets on the final Plat are hereby dedicated, given, granted and conveyed by the Village to the Developer for roadway pavement and curb and gutter improvements, sidewalks, trees and plantings, sanitary sewer, water, storm sewer and drainage system improvements, and uses and purposes, and for all related ingress and egress, construction, installation, repair, alteration, replacement and maintenance activities until such improvements are inspected by, dedicated to and accepted by the Village. These easements shall be exclusive, except for such coextensive easements granted herein and for such use, planting, care and maintenance of the roadway terrace area by the Owners of Lots 1 through 19 and Owners of Outlot 1 as shown on the final Plat or other Village approved future roadway, street, driveway or other such use, as will not interfere with the uses and purposes of the Village, and is permitted by applicable Village Ordinances.
- 4.7 Dedicated Sanitary Sewer, Access, and Maintenance Easements. Easements coextensive with the areas shown as Dedicated 30' Sanitary Sewer, Access, and Maintenance Easements on the Final Plat on Lot 14 are hereby dedicated, given, granted, and conveyed by the Developer to the Village for public sanitary sewer system improvements, uses and purposes, and for all related ingress and egress, construction, installation, repair, alteration, replacement, and maintenance activities. The public sanitary sewer easements shall be exclusive, except for: (1) the Developer's temporary easements for the construction, installation, repair, alteration, replacement, and maintenance activities for the public sanitary sewer system improvements, uses and purposes, and for all related ingress and egress; (2) such other easements as may be dedicated on the Final Plat with respect to the same area or any portion thereof; and (3) such planting, care, and maintenance of the easement areas by the Owner of Lot 14 on which the easements are located as will not interfere with the improvements, uses and purposes of the Village. In the event of any conflicts between the rights of the Village

pursuant to this public sanitary sewer easement and the rights or other persons or entities with respect to the public sanitary sewer easement area, the Village's rights under these easements shall be deemed superior.

4.8 Dedicated Vision Triangle Easements. Nonexclusive easements coextensive with the areas shown as a Dedicated Vision Triangle Easement on the Final Plat are hereby dedicated, given, granted and conveyed by the Developer to the Village for the purposes of preserving and maintaining a clear field of vision, from a standpoint of motorists, over and across such areas. The rights of the Village pursuant to these easements shall take precedence over the rights of any other persons, associations or entities in these vision triangle easement areas.

4.9 Dedicated Storm Water Drainage, Access and Maintenance Easement. The Developer hereby covenants that the Owners of Lots 1 through 19 and the Owners of Outlot 1 shown on the final Plat shall have the obligation of maintaining the Storm Water Drainage, Access and Maintenance Easement areas on their respective Lots and the Stormwater Drainage, Retention Basin, Access and Maintenance Easement areas located within Outlot 1 shown on the Final Plat in a functional, neat and nuisance free condition to handle storm water in the Development. Such maintenance shall include, without limitation and as needed, grading, seeding or sodding, maintaining erosion control methods to protect the drainageways; ditching to reestablish design capacity; removing of trash, debris, leaves and brush; clearing, repairing and replacing inlets, outlets and catch basin structures; mowing; and weeding to prevent nuisance conditions. No driveways, fences, or structures shall be erected within the storm water drainage easement areas which blocks, diverts or re-routes the drainage flow or which might interfere with the Village's rights, unless express written approval is granted by the Village and subject to any such conditions as the Village may impose. The Developer shall be relieved of these maintenance obligations pertaining to storm water drainage maintenance activities upon the transfer of said Lots and the Outlot to the respective Owners who then shall perform such maintenance without compensation to the satisfaction of the Village. This covenant shall run with the land, shall be binding upon the Developer, its successors, assigns and successors-in-title of the Lots and Outlot, in their capacity as Owners of any such Lots or Outlots, and shall benefit and be enforceable by the Village.

To the extent that the Village performs any such storm water drainage maintenance activities, the Owners of the referenced Lots and Outlot, respectively, shall be liable for any costs which may be incurred by the Village, which the Village may recover from such owners as special assessments or special charges under Section 66.0627 (or successors or similar provisions) of the Wisconsin Statutes or otherwise according to law. Unless the Village exercises the rights granted to it in the Dedication and Easement Provisions on the final Plat with respect to the easements, the Village shall have no obligation to do anything pursuant to its rights under these easements.

4.10 Dedicated Sanitary Sewer, Access and Maintenance Easements. The Developer covenants that the Dedicated 30' Sanitary Sewer, Access and Maintenance Easements shown on Lot 14 on the final Plat hereby places restrictions on the lot because of the location of the public sanitary sewer main easement which was given, granted and conveyed by the Developer to the Village for public sanitary sewer purposes and system improvements, uses and purposes, and for all related and incidental ingress and egress, construction, installation, repair, alteration, replacements, plantings and maintenance activities to serve the Development as referenced in the Dedication and Easement language on the Final Plat. The Developer further covenants that there shall be no buildings, fences, parking areas, driveways or structures of any kind placed within the easement area unless expressly approved in writing by the Village. Furthermore, if the Village allows for the placement of fencing, parking areas, driveways or landscaping within the sewer and water easement areas granted to the Village and in the event that the

Village exercises its rights to maintain, repair or replace said sanitary sewer main, water main and related appurtenances, the Owner(s) of the affected property, not the Village, shall be responsible for any and all costs associated with the removal and or replacement of said fencing, parking areas, driveways or landscaping. This covenant shall run with the land, shall be binding upon the Owners, its successors, assigns and successors-in-title of the Lots, in their capacity as Owners of these Lots and shall benefit and be enforceable by the Village.

- 4.11 Right-of-way Landscape Maintenance. The Developer hereby covenants that the Owners of Lots 1 through 19 and Outlot 1, respectively shall have the obligation of maintaining and replacing the street trees located within 84th Place and 93rd Court right of ways, the street plantings within the 93rd Court cul-de-sac islands and the landscape plantings and grassy areas within Outlot 1 as shown on this Plat. Such maintenance shall include without limitation and as needed staking, mulching, weeding, pruning, watering, replanting, and removing of trash, debris, leaves and brush around the trees in order to prevent a nuisance condition. No driveways, signage, mail boxes, parking areas, structures or fences shall be erected within the right-of-way or cul-de-sac, which might damage the street trees or the cul-de-sac island plantings or might interfere with the Village's rights to maintain the public street improvements, unless approved by the Village. This covenant shall run with the land, shall be binding upon the Owners, its successors, assigns and successors-in-title of the Lots and Outlot, in their capacity as Owners of any such Lots and Outlot, and shall benefit and be enforceable by the Village. The Developer shall be relieved of these maintenance obligations pertaining to the street tree and cul-de-sac island planting maintenance activities upon the Village's inspection and acceptance of the street trees and cul-de-sac island plantings, the expiration of the two (2) year Developer warranty and the transfer of said properties to the Lot Owners who then shall perform such street tree maintenance and cul-de-sac island maintenance to the satisfaction of the Village. The Lot Owners shall continue to perform such maintenance and street trees and planting replacement as may be needed without compensation to the satisfaction of the Village.

To the extent that the Village performs any such landscaping related maintenance activities, the Owners of the Lots 1 through 19 and Outlot 1 shall be liable for any costs which may be incurred by the Village, which the Village may recover from such Owners as special assessments or special charges under Section 66.0627 (or successors or similar provisions) of the Wisconsin Statutes or otherwise according to law. Unless the Village exercises the rights granted to it in the Dedication and Easement Provisions on the Final Plat, the Village shall have no obligation to do any maintenance activities.

- 4.12 Landscaping Easement Maintenance. The Developer hereby covenants that the Owners of Lots 6, 7 and 8 shall have the obligation of maintaining and replacing the trees and plantings on Lots 6, 7 and 8 located within the Dedicated Landscaping, Access and Maintenance Easement Areas shown along Bain Station Road, and within Lots 6, 7 and 8 as shown on the final Plat. Such maintenance shall include without limitation and as needed, staking, mulching, weeding, pruning, watering, replanting, and removing of trash, debris, leaves and brush around the trees in order to prevent a nuisance condition. No driveways, signage, mail boxes, parking areas, structures or fences shall be erected within the easement areas, which might damage the trees or plantings or might interfere with the Village's rights to maintain the public street improvements. This covenant shall run with the land, shall be binding upon the Owners, its successors, assigns and successors-in-title of the Lots in their capacity as Owners of any such Lots and shall benefit and be enforceable by the Homeowners Association or the Village. The Developer shall be relieved of these maintenance obligations, pertaining to the landscaping obligations, landscape planting and grassy area maintenance and retaining wall activities upon the Village's inspection and acceptance of the trees and landscape plantings, the expiration of the two (2) year Developer warranty and the transfer of said

properties to Lot Owners or the Homeowners Association who then shall perform such tree maintenance and landscape maintenance to the satisfaction of the Village. The Homeowners Association shall perform such landscape maintenance and street trees and planting replacement as may be needed without compensation to the satisfaction of the Village.

To the extent that the Village performs any such landscaping related maintenance activities, the Homeowners Association, shall be liable for any costs which may be incurred by the Village, which the Village may recover from such Owners or Homeowners Association as special assessments or special charges under Section 66.0627 or successors or similar provisions) of the Wisconsin Statutes or otherwise according to law. Unless the Village exercises the rights granted to it in the Dedications and Easements language on the final Plat, the Village shall have no obligation to do any maintenance activities.

ARTICLE V **MEMBERSHIP AND VOTING RIGHTS**

- 5.1 **Membership.** Each Owner shall be a Member of the Association. Such Membership shall be appurtenant to and may not be separated from ownership of a Lot. Every Member of the Association shall have one (1) vote in the Association for each Lot owned by the Member. When more than one (1) person or entity hold an interest in a Lot, the vote shall be exercised as they themselves shall determine. So long as the Developer, or its successors and assigns shall own one (1) or more Lots, the authority and functions of the Board of Directors and the Architectural Control Committee shall remain in and be exercised solely by the Developer or its successors and assigns. When the Developer, or its successors and assigns, no longer owns one (1) or more Lots, or at the end of fifteen (15) years from the date of sale of the first Lot to be sold by the Developer, or the date the Developer elects voluntarily to turn over the Association to the Owners, whichever occurs first, the Developer shall promptly select three (3) Owners to serve on the Board of Directors of the Association until the next annual meeting of Members or until their successors have been duly elected. The Board of Directors, thereafter consisting of three (3) members, shall be elected by the Members at each annual meeting of Members. Members of such elected Board of Directors shall serve for one (1) year or until their successors have been duly elected. The members of the Board of Directors shall not be entitled to any compensation for their services as such members. Any Member who is delinquent in the payment of charges, assessments and special assessments charged to or levied against his Lot shall not be entitled to vote until all of such charges and assessments have been paid. Members shall vote in person or by proxy executed in writing by the Member. No proxy shall be valid after six (6) months from the date of its execution.

ARTICLE VI **PROPERTY RIGHTS IN THE COMMON AREAS**

- 6.1 **Owner's Easements of Enjoyment.** Subject to the provisions herein, every Owner shall have a right and easement of benefit and/or enjoyment in any Common Areas acquired by the Association which shall be appurtenant to and shall pass with the title to every Lot.
- 6.2 **Title to Outlots.** Title to Outlot 1 shall be conveyed by the Developer to the Homeowners Association by quit claim deed recorded at the Kenosha County Register of Deeds. Members shall have the rights and obligations imposed by this Declaration with respect to such Common Areas. The Entry Sign, if one is constructed, shall be located on easements for the benefit of the Association and the Entry Monuments shall be maintained, operated and administered by the Homeowners Association.

- 6.3 Extent of Owner's Easements. The rights and easements of benefit and/or enjoyment created hereby shall be subject to the following:
- (a) The right of the Homeowners Association, but subject to the prior written approval of the Village to dedicate or transfer all or any part of any Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors; and
 - (b) The right of the Homeowners Association, but subject to prior written approval of the Village, to mortgage any or all of the Common Areas and facilities constructed on the Common Areas for the purposes of construction or maintaining improvements or repair to Association land or facilities pursuant to approval of the Board of Directors.
- 6.4 Damage or Destruction of Common Areas by Owner. In the event any Common Area or any related appurtenances in the Common Area, or any portion of the parkway terrace, street tree or cul-de-sac plantings, curb, gutter, pavement, sanitary sewer, water, storm sewer, drainage or retention basin servicing the Property is damaged or destroyed by an Owner or any of his contractors, guests, tenants, licensees, agents, or members of his family, such Owner does hereby authorize the Developer, the Homeowners Association or the Village to repair said damaged areas; the Developer, the Homeowners Association or the Village, as determined by the Village, shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified and approved by the Village. If the Developer, the Homeowners Association or the Village exercises its rights to do so, it will assess the benefitted owners the amount necessary for such repairs, together with ten percent (10%) for overhead, shall be a special assessment upon the Lot of said Owner and shall accrue interest at the annual rate of eighteen percent (18%) unless paid in full within fifteen (15) days after notice to pay. Any such damage not caused by an Owner shall be the responsibility of the Homeowners Association.
- 6.5 Right to Enter and Maintain. The Developer and the Homeowners Association and the respective easement grantees are hereby granted an easement and, consequently, shall have the right to enter upon any Lot or Outlot 1, at reasonable notice to the Owner, for the purpose of repairing, maintaining, renewing, or reconstructing any utilities, facilities, retention areas, storm water drainage systems, sewer and water systems, impoundments or other improvements which benefit other Outlots, Lots or Ashbury East Subdivision as a whole, in addition to benefiting such Lot. If such Lot contains public utilities or facilities having an area-wide benefit which are maintained by the Village, the Village, following prior notification to the Developer may, if necessary, maintain such facilities in good working order and appearance, enter upon any Lot or Outlot 1 in order to repair, renew, reconstruct, or maintain such facilities or utilities and may assess the cost, if such cost is not traditionally assumed by the Village and/or prior to acceptance of such public improvements, to the Owners of the Lots and Outlot 1. No prior notification shall be required for emergency repairs.
- 6.6 Retention Pond. Storm water retention facilities, including the fountain aeration system, located within Outlot 1 have been designed as a storm water management and water quality device and are not intended as a recreational feature. Swimming, fishing, boating, ice skating and any other activity other than described herein is prohibited.
- 6.7 Disclaimer. Following the one year contractor's warranty, the Developer shall convey the above mentioned Outlot 1 to the Homeowners Association "as is" and without warranty, express or implied, of condition, quality of construction, fitness for a particular use or otherwise. The Homeowners Association shall be responsible for obtaining

adequate liability insurance for the Common Areas. The Developer shall have no liability for damage or injury to any persons or property arising from the existence or use of the Common Areas. The Homeowners Association shall indemnify and hold the Developer harmless against any and all claims relating to the Common Areas.

ARTICLE VII COVENANT FOR ASSESSMENTS

- 7.1 Creation of the Lien and Personal Obligation of Assessments. The Developer hereby covenants and each Owner of any Lot by acceptance of the deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant, assume and agree to pay to the Homeowners Association (1) annual general assessments or charges; (2) special assessments for capital improvements and repairs to the Common Areas; (3) special assessments for exterior maintenance to Lots and repairs to Common Areas; and (4) special assessments as provided in Sections 6.4 and 8.3. All such assessments, together with interest thereon and costs of collection thereof, including attorney's fees, shall be (a) a charge on the land and a continuing lien upon the Lot against which such assessment is made and (b) the personal obligation of the person who was the Owner of such property at the time of the assessment.

Notwithstanding any other provision in this Declaration to the contrary, the Developer shall not be liable to the Homeowners Association for the above mentioned assessments unless the Developer retains ownership of any Lot or Outlot 1. Every subsequent Owner, who has purchased a Lot from the Developer or any other Owner, shall be subject to the entire amount of the assessment due and shall pay the same or prorated amount in the year of closing to the Association. In the event the assessments collected under Article VII are insufficient to cover the cost of performing the obligations as are contained within this Declaration and as imposed by the final plat, and the Developer continues to own Lots, the Developer shall be responsible for up to one hundred percent (100%) of the extent necessary to cover the deficiency. Any further deficiency may be assessed against all of the Owners in the form of a special assessment under this Article VII.

7.2 Annual General Assessment.

- (a) Purpose of Assessment. The annual general assessment levied by the Homeowners Association each year shall be used exclusively to promote the recreation, health, safety and welfare of the Lot Owners and, in particular, for the improvement, construction, maintenance, policing, preservation and operation of the Common Areas, in accordance with the requirements set forth herein and those obligations and restrictive covenants set forth on the Final Plat including, but not limited to, the cost of labor, equipment, materials, insurance, management and supervision thereof and fees paid for auditing the books of the Homeowners Association and for necessary legal and accounting services to the Board of Directors.
- (b) Determination of the Assessment (Annual Dues). The Board of Directors shall prepare and annually submit to the Members a budget of expenses for the ensuing year for payment of all costs contemplated within the purposes of the annual general assessment described in Section 7.2(a). Upon adoption and approval of the annual budget by a majority of the Members, the Board shall determine the assessment by dividing the amount of the budget among all fully improved Lots equally. The rate of assessment shall not be limited by the amounts set forth in Wisconsin Statutes, § 779.70.
- (c) Method of Assessment. The assessment for each Lot shall be levied at the same time once in each year. The Board shall declare the assessments so levied due

and payable at any time after thirty (30) days from the date of such levy (with an option for payment in monthly installments if approved by the Board), and the Secretary or other officer shall notify the Owner of every Lot so assessed of the action taken by the Board, the amount of the assessment of each Lot owned by such Owner and the date such assessment becomes due and payable. Such notice shall be mailed to the Owner at last known post office address by United States mail, postage prepaid.

- (d) Date Commencement of Annual General Assessments. Annual general assessments shall commence on the date as determined by the Developer in its sole discretion.

7.3 Special Assessment for Capital Improvements and Repairs to Storm Water Drainage System/Retention Basin. In addition to the annual general assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year and not more than the next two succeeding years for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of capital improvements upon the Common Areas, including fixtures and personal property related thereto, and extraordinary expenses incurred in the maintenance and operation of the Common Areas and Facilities. Special assessments may also be levied to defray the costs of grading, dredging, stabilizing, replacing or repairing all pipes, fountains, drains, grates and other appurtenances (not otherwise owned by the Village) located within any Storm Water Drainage, Access and Maintenance Easement area or Storm Water Drainage, Retention Basin, Access and Maintenance Easement area.

7.4 Special Assessment for Exterior Maintenance to Lots.

- (a) Exterior Maintenance to Lots. In addition to the maintenance upon the Common areas described in Section 7.2, the Association may, at the request of the Owner of any Lot or in the event the Owner of any Lot fails to maintain the exterior of any buildings or improvements on the Lot or the Lot itself in reasonable condition, provide exterior maintenance upon each Lot as follows: (i) paint, repair, replace and care for roofs, gutters, down spouts, exterior improvement; and (ii) lawn cutting, shrub and tree trimming, driveway and walk shoveling and window cleaning. The Association, its agents, contractors and subcontractors shall have all necessary rights of ingress and egress to and from such Lot, building, or improvement with full right to do whatever may be necessary to perform any such maintenance, repair, or replacement.
- (b) Assessment of Cost. The cost of such exterior maintenance, together with ten percent (10%) for overhead, shall be assessed against the Lot upon which such maintenance is performed and, if not paid within thirty (30) days of written notice of the amount of such assessment, shall accrue interest at the annual rate of eighteen percent (18%). Such special assessment shall constitute a lien and obligation of the Owner and shall become due and payable in all respects as herein provided.

7.5 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage on the lot.

7.6 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein: (i) all properties not within any Lot to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (ii) all Common Areas; and (iii) all properties exempted from taxation by State, County or Village governments or entities upon the terms and to the extent of such legal exemption. Notwithstanding any

provisions herein, no land or improvements devoted to dwelling use shall be exempt from the assessments, charges, or liens.

- 7.7 Joint and Several Liability of Grantor and Grantee. Upon any sale, transfer, or conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor as provided in this Article up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Homeowners Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the Lot be conveyed subject to a lien for, any unpaid assessment against the grantor pursuant to this Article in excess of the amount therein set forth. If the Homeowners Association does not provide such a statement within fifteen (15) business days after the grantee's request, it is barred from claiming under any lien which was not filed prior to the request for the statement against the grantee.
- 7.8 Interest on Unpaid Assessment. Any assessment under this Article VII which is not paid when due shall thereafter, until paid in full, bear interest at the rate of eighteen percent (18%) per annum. In addition to the interest charges, a late charge of up to Fifty Dollars (\$50.00) per day may be imposed by the Board of Directors against an Owner if any balance in common expenses remains unpaid more than thirty (30) days after payment is due.
- 7.9 Effect of Nonpayment of Assessments: Remedies of the Association. No Owner may waive or otherwise escape liability for assessments by Homeowners' non-use of the Common Areas or abandonment of his Lot. If the Homeowners Association has provided for collection of assessments in installments, upon default on the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said assessment due and payable in full. If the assessment levied against any Lot remains unpaid for a period of sixty (60) days from the date of levy, then the Board may, in its discretion, file a claim for maintenance lien against such Lot in the office of the Clerk of Circuit Court for Kenosha County within six (6) months from the date of levy. Such claim for lien shall contain a reference to the resolution authorizing such levy and date thereof, the name of the claimant or assignee, the name of the person against whom the assessment is levied, a description of the Lot and a statement of the amount claimed and shall otherwise comply in form with the provisions of Wisconsin Statute § 779.70. Foreclosure of such lien shall be in the manner provided for foreclosure of maintenance liens in said statute or any successor statute.
- 7.10 Reduction of Assessments. Notwithstanding anything contained herein to the contrary, the Developer and/or Association shall not have the power to discontinue the collection of assessments and charges or reduce such assessments or charges to a level which, in the opinion of the Village, would impair the ability of the Developer, Association, or the Owner to perform the functions as set forth herein and in the Final Plat. Any proposed elimination or material reduction in the assessments or charges against Owners shall meet with the approval of the Village.

ARTICLE VIII **ENFORCEMENT, TERMINATION, MODIFICATION**

- 8.1 Right to Enforce. This Declaration and the covenants contained herein and on the Final Plat are enforceable only by the Developer and/or the Homeowners Association and/or the Village (the Village shall have the right, but not the obligation to enforce) or such person or organization specifically designated by the Developer, in a document recorded in the office of the Kenosha County Register of Deeds, as its assignee for the purpose thereof.

- 8.2 Manner of Enforcement. This Declaration and the covenants contained herein and on the Final Plat shall be enforceable by the Developer and its assigns, Homeowners Association and/or the Village in any manner provided by law or equity, including but not limited to one or more of the following:
- (a) Injunctive relief;
 - (b) Action for specific performance;
 - (c) Action for money damages as set forth in this Declaration or citation as authorized by Village ordinances; and
 - (d) Performance of these covenants by the Developer and its assigns, Homeowners Association and/or the Village on behalf of any party in default thereof for more than thirty (30) days, after receipt by such party of notice from the Developer or the Village describing such default. In such event, the defaulting Owner shall be liable to the Developer or the Village for the actual costs (plus ten percent [10%] for overhead) related to or in connection with performing these covenants.
- 8.3 Reimbursement. Any amounts expended by the Developer and its assigns, Homeowners Association and/or the Village in enforcing these covenants, including reasonable attorney fees, and any amounts expended in curing a default on behalf of any Owner or other party, shall constitute a lien against the subject real property until such amounts are reimbursed to the Developer, Homeowners Association and/or the Village, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.
- 8.4 Failure to Enforce Not a Waiver. Failure of the Developer and its assigns, Homeowners Association and/or the Village to enforce any provision contained herein shall not be deemed a waiver of the right to enforce these covenants in the event of a subsequent default.
- 8.5 Right to Enter. The Developer and its assigns, Homeowners Association and/or the Village shall have the right to enter upon any building site or other Lot within the premises for the purpose of ascertaining whether the Owner of said Lot is complying with these covenants and if the Developer and its assigns, Homeowners Association and/or the Village so elects under Section 8.2(d) for the purpose of performing obligations hereunder on behalf of a party in default hereof.
- 8.6 Village Authority. In the event the obligations contained herein and as continued in the Final Plat are not performed to the satisfaction of the Village, the Village shall have the right, but not the obligation, to perform such function and may assess any charges incurred in the performance of such covenants against the Homeowners Association and/or the Owners. Any amounts expended by the Village in enforcing these obligation, including reasonable attorney fees, and any amounts expended in curing a default on behalf of any Owner or other party, shall be paid by the Owner. In the event such amounts are not paid, the charges may be levied as a special assessment or special charge by the Village in Accordance with Wisconsin Statutes.
- 8.7 Dedications and Easement Provisions and Restrictive Covenants. Each and every Owner of a Lot shall be subject to and bound by the dedications, easements and restrictive covenants as are set forth on the Final Plat and contained herein.
- 8.8 Conflict and Failure to Mention. In the event of a conflict between the provisions of this Declaration and the Village ordinances, and the Village ordinances are stricter than the

provision contained herein, the Village ordinances shall control. Failure to mention a requirement, with respect to any Lot and single-family home to be built thereon, or other necessary approval in this Declaration shall not imply that no such requirement exists with the Village and shall not constitute a waiver of such Village requirement and/or approval. Each and every Owner shall be solely responsible to insure that the Village ordinances are adhered to and shall be subject to the appropriate Village approval process for construction of a single-family home on a Lot.

ARTICLE IX **GENERAL PROVISIONS**

- 9.1 **Term and Amendment.** Unless amended as herein provided, these Declarations shall run with the Property and be binding upon all persons claiming under the Developer and shall be for the benefit of and be enforceable solely by the Association for a period of fifty (50) years from the date this Declaration is recorded and shall automatically be extended for successive periods of fifty (50) years unless an instrument signed by the Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to terminate this Declaration in whole or in part. For the first fifteen (15) years following the date these Declarations are recorded, these Declarations may be amended, at any time by written declaration, executed in such manner as to be recordable, setting forth such annulment, waiver, change, modification, or amendment executed: (a) solely by the Developer, subject to Village approval, until such time as Developer conveys all Lots to other Owners (other than by multiple sale of Lots to a successor Developer), and thereafter (b) by Owners of seventy-five percent (75%) of the Lots (such Owners and percentage to be determined as provided in Article V), provided the written consent of the Developer or its successors and assigns is first obtained, so long as the Developer, or its successors and assigns shall own any lots. Subsequent to such fifteen (15) year period, these Declarations may be amended by written declaration executed by at least seventy-five percent (75%) of the Lots subject to this Declaration provided the prior written approval of the Village is obtained. Such written declaration shall become effective upon recording in the office of the Register of Deeds of Kenosha County, Wisconsin. All amendments shall be consistent with the general plan of development embodied in these Declarations.
- 9.2 **Notices.** Any notice required to be sent to any Member or Lot or Outlot Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Homeowners Association at the time of such mailings.
- 9.3 **Disclaimer.** The Developer shall not be responsible for the damage, loss or destruction to any vegetation or trees as a result of any infrastructure installation or improvements including but not limited to sewer, water, storm, sewer, drainage, gas pipes, electric, cable, telephone, curb, gutter, paving, sidewalks, grading, landscaping, signage or any other improvement for the benefit of the properties.
- 9.4 **Enforcement.** To the extent that other specific remedies are not provided herein, upon the occurrence of a violation of the covenants, conditions and restrictions set forth in these Declarations, the Homeowners Association shall give the Owner written notice of the violation and if such violation is not remedied within five (5) days after notice, or if a second occurrence of such violation shall occur within six (6) months of the original notice of such violation from the Homeowners Association, the Homeowners Association may levy a fine in the amount of Five Hundred Dollars (\$500.00) and an additional fine of One Hundred Dollars (\$100.00) for each day thereafter the violation continues. All fines levied by the Homeowners Association shall constitute a special assessment and a lien on the Lot of the Owner who caused the violation and if a fine is not paid within fifteen (15) days after written notice of such fine, the amount due shall accrue interest at the rate of eighteen percent (18%) annually. Enforcement of these covenants and

restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or recover damages, and against the land to enforce any lien created by these covenants. Failure of the Homeowners Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

- 9.5 Severability. Invalidation of any of the provisions of this Declaration, whether by court order or otherwise, shall in no way affect the validity or the remaining provisions which shall remain in full force and effect. Said invalid or illegal provision will be modified to reflect, as close as possible, the original intent of the former invalid or illegal provision, but in such a manner so as to make said provision valid and legal.

Signature Page to Follow

Exhibit A

Legal Description of Ashbury East Subdivision:

Lot 1 of Certified Survey Map No. 2859 (C.S.M. No. 2859), a recorded map in the office of the Register of Deeds for Kenosha County, Wisconsin on April 11, 2018 as Document No. 1816935 and being part of the Southwest 1/4 and part of the Southeast 1/4 of the Southeast 1/4 of Section 8, and part of the Northwest 1/4 and part of the Northeast 1/4 of the Northeast 1/4 of Section 17, all of Township 1 North, Range 22 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie, County of Kenosha and State of Wisconsin, and being more particularly bounded and described as follows:

Commencing at the Southeast corner of the Southeast 1/4 of said Section 8; run thence N03°17'20"W, 885.72 feet along the East line of the Southeast 1/4 of said Section 8; thence S89°53'45"W, 986.42 feet to the Northeast corner of Lot 1 of said C.S.M. No. 2859 and the point of beginning of this description; thence S00°06'26"E, 415.10 feet along the Easterly line of Lot 1 of said C.S.M. No. 2859; thence S03°22'44"E, 387.21 feet along the Easterly line of Lot 1 of said C.S.M. No. 2859; thence S21°58'23"E, 90.08 feet along the Easterly line of Lot 1 of said C.S.M. No. 2859; thence S00°32'04"E, 334.01 feet along the Easterly line of Lot 1 of said C.S.M. No. 2859 to the Southeast corner of Lot 1 of said C.S.M. No. 2859, the Northerly right-of-way line of Bain Station Road and a point of curvature to the right, having a Southerly convexity, a radius of 11483.94 feet and a chord bearing and distance of N88°09'59"W, 366.97 feet; thence Westerly 366.99 feet along the arc of said curve, along the Southerly line of Lot 1 of said C.S.M. No. 2859 and along the Northerly right-of-way line of said Bain Station Road to the Southwest corner of Lot 1 of said C.S.M. No. 2859; thence N02°36'11"W, 1149.28 feet along the Westerly line of Lot 1 of said C.S.M. No. 2859; thence N43°39'58"E, 81.28 feet along the Westerly line of Lot 1 of C.S.M. No. 2859 to the Northwest corner of Lot 1 of said C.S.M. No. 2859; thence N89°53'45"E, 302.43 feet along the Northerly line of Lot 1 of said C.S.M. No. 2859 to the Northeast corner of Lot 1 of said C.S.M. No. 2859 and the point of beginning of this description. Containing 430,923 square feet or 9.893 acres.