

DECLARATION OF RESTRICTIONS FOR ASBURY PARK
SECTION(S) TWO (2)
RECORDED IN PLAT AND SUBDIVISION BOOK 48, PAGES 108, & _____
JEFFERSON COUNTY, KENTUCKY

Asbury Park Development, LLC is now the owner and "DEVELOPER" of the following lots in Asbury Park.

Lots 19 through 45 plus open space and common areas, of section two, inclusive, as shown on the plat of Asbury Park, of record in Plat and Subdivision Book 48, Pages 108, and _____, in the office of the Clerk of Jefferson County, Kentucky.

For the mutual benefit of present and future owners of Lots in Asbury Park, DEVELOPER imposes restrictions upon the above described Lots as follows:

1. **PRIMARY USE RESTRICTIONS**
 - (a) No lot shall be used except for private single family residential purposes. No structure shall be erected, placed or altered, or permitted to remain on any lot except single-family dwellings designed for the occupancy of one family (including any domestic employees living on the premises), not to exceed two and one-half stories in height and containing a private garage for the sole use of the owner and occupants of the lot.
 - (b) There shall be no further subdividing of the 41 lots in Asbury Park Section(s) 2 to create any more than 41 lots. However, the lots in said section may be reduced by combining lots and re-subdividing into fewer lots.
 - (c) No portion of any lot shall be used for ingress or egress to another lot, unless approved by DEVELOPER.
 - (d) Lot(s) 117 - 121, 138 - 143 and 148-150 have been designated as open space or common areas. No homes or structures used for storage shall be built on these lots. No structures shall be constructed in these areas unless approved by the DEVELOPER or Homeowners Association. The care and maintenance of the open area(s) shall be the responsibility of the Homeowners Association.

2. **APPROVAL OF CONSTRUCTION AND LANDSCAPING PLANS**
 - (a) Plans and specifications for any building residence, or addition thereto, garage, fence, wall, driveway, mailbox, landscaping, other structure or improvement shall be submitted to and approved in writing by the DEVELOPER or any person or association to whom the DEVELOPER may assign the right. The plans shall be approved before any construction or placement or alteration has begun. Plans shall show the grade elevation, rear, front and side elevations and location of the improvement on the lot. Specifications shall include building materials to be used, and shall include but not be limited to:

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exterior veneer (brick, stone, siding), windows and doors, exterior paint color, roofing, landscaping materials and/or planting materials. Outdoor lighting shall be indicated on the drawing and designed so as not to create a nuisance for the neighbor(s).

(b) Roof pitch of any primary roof structure shall not be less than 6 inches vertical for every 12 inches horizontal.

(c) Building materials shall not be stored on a lot for more than sixty (60) days, unless a structure is under active construction on said lot.

(d) Minimum square footage of the residence shall be 2000 square feet. Basements (improved or unimproved) garages, porches (screened or unscreened), attics, and any unattached structure shall not be counted in the square footage minimum.

(e) Most of the lots have been designed for the placement of the garage in the rear of the lot. Service lanes give vehicles access to the rear of the lots and garages. For those lots that do not have access to a service lane, the garage doors for vehicular entrance can face the front of the lot, if the opening is behind the rear line of the house. All lots shall have at least a two-car garage.

(f) Fences will be an important part of the neighborhood feeling of Asbury Park. The type, design and placement of the fences shall be approved by the DEVELOPER or Homeowners Association. The lots that back up to Springdale Road may have fences in the rear of the lot, where the rear portion of the fence exceeds six feet in height. This would allow for the fence to be used as sound barrier, to help reduce the noise level from the roadway.

(g) All swimming pools shall be below the grade of the residence.

(h) All electronic receivers and transmitters including but not limited to "satellite dishes" or antennas shall not be visible from street or side yard.

(i) Setbacks for the building line of any structure shall conform to the minimum lines shown on the record plat. Sideline setbacks from adjoining property (between two residences) shall be a minimum of three feet. No permanent obstruction shall be built in this space between two residences, due to the need for this area between the front and rear of the adjoining houses to be used as a common easement. This easement would be used for the maintenance of each home. If the adjoining house were built on the setback line, this would allow for an area between the two houses of six feet. This six-foot area can be used by either resident for the purpose of maintaining or making repair or alterations to the resident's house. Any damaged caused by the resident to the neighbor's property, as a result of using this area, will be repaired by the resident.

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(j) DEVELOPER, in its sole discretion, shall have the right to review, accept, approve, deny or alter any of the above.

3. BUILDER QUALIFICATIONS

The general contractor constructing the residential structure on any lot shall have been in the construction business for a period of at least one year and must have supervised the construction of or built a minimum of six homes. DEVELOPER makes this requirement to maintain high quality of construction within the subdivision, and reserves the right to waive these standards of experience.

4. NUISANCES

No noxious or offensive trade or activity shall be conducted on any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

5. USE OF OTHER STRUCTURES AND VEHICLES

(a) No structure of a temporary character shall be permitted on any lot except temporary tool sheds or field offices used by a builder or DEVELOPER, which shall be removed when construction or development is completed.

(b) No outbuilding, trailer, basement, tent, shack, garage, barn or other structure other than the main residence erected on a lot shall at any time be used as a residence, temporarily or permanently.

(c) No trailer, truck, motorcycle, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any lot at any time unless housed in a garage or basement. No automobile which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street. No trailer, boat, truck or other vehicle, except an automobile, shall be parked on any street in the subdivision for a period in excess of twenty-four hours in any one calendar year.

(d) No automobile shall be habitually parked on any public right-of-way.

6. ANIMALS

No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic areas) may be kept, provided they are not kept, bred or maintained for any commercial or breeding purposes. All household pets, including dogs and cats, shall at all times be confined to the lot occupied by the owner of such pet. Existing leash laws shall be observed.

7. LANDSCAPING, DRIVEWAYS, TREES

(a) After the construction of a residence, the lot owner shall grade and sod that portion of the lot from the rear point of the residence to the street on both sides

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and in front. Additionally, on corner lots that portion from the side corner to the rear of the property line shall be sodded.

(b) On those lots that require a driveway to the front, the lot owner shall construct the driveway of either concrete or asphalt, with a concrete apron from property line to edge of pavement. This construction shall be completed within three months after completion of a single-family dwelling, weather permitting.

NOTE: The property line for all lots served by a service lane in the rear of the lot extend to the centerline of the service lane. The service lane is a common easement for the use and enjoyment of the residents, contractors, suppliers, utility companies, and life safety agencies or departments, such as police, fire and EMS.

(c) Consistency and uniformity of landscaping is important and will be monitored by the DEVELOPER and/ or the Homeowners Association. A scaled plan will be submitted to the DEVELOPER or the DEVELOPER'S designee for review and approval prior to beginning any new planting or alterations to existing plantings. This plan will show the quantity and type of species, and the color of the foliage or flowers. The plan will indicate the placement of the plantings and any alterations to the elevation of the yard. The plan will include any ponds, statuary, and structures. The plan will show a detailed layout of any lighting to be used, showing the location of the lights and their wattage.

(d) Upon an owner's failure to comply with this provision, DEVELOPER or any person or association to whom it may assign the right, may take such action as necessary to comply therewith, and the owner shall immediately upon demand, reimburse DEVELOPER or other performing party for all expenses incurred in so doing.

8. CLOTHES LINES, TENNIS COURTS

(a) No outside clothes lines shall be erected or placed on any lot.

(b) No tennis court shall be erected on any lot in the subdivision unless approved by the developer.

9. DUTY TO MAINTAIN PROPERTY

It will be the responsibility of the Homeowners Association to maintain that part of the front yard that extends beyond the landscaped area immediately adjacent to the house. It will also be the responsibility of the Homeowners Association to maintain that part of the rear yard that extends beyond the rear line of the garage (this does include the pavement area). It shall be the duty of the lot owner to maintain the landscaped area(s) and portion to the rear of the lot and side yard in a neat and attractive appearance. It shall be the duty of each lot owner to keep the lot free from weeds and trash, and to keep it otherwise neat and attractive in appearance. Should any owner fail to do so, then DEVELOPER (or any person or association to whom it may assign the right) may take such action as it deems appropriate, in order to make the lot neat and attractive, and

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the owner shall, immediately upon demand, reimburse DEVELOPER or other performing party for all expenses incurred in so doing.

10. BUSINESS, HOME OCCUPATIONS

No trade or business of any kind (and no practice of medicine, dentistry, chiropody, osteopathy, and like endeavors) shall be conducted on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Notwithstanding the provisions hereof or of Paragraph 1, a new house may be used by a builder thereof as a model home for display or for the builder's own office, provided said use terminates within eighteen months from completion of the house or upon such additional period of time as may be expressly agreed to in writing by DEVELOPER or any person or association to whom it may assign such right.

11. SIGNS

No sign for advertising or for any other purpose shall be displayed on any lot or on a building or a structure on any lot, except one sign for advertising the sale thereof, which shall not be greater in area than nine square feet; provided, however, DEVELOPER (i) shall have the right to erect larger signs when advertising the subdivision, (ii) to place signs on lots designating the lot number of the lots, and, (iii) following the sale of a lot, to place signs on such lot indicating the name of the purchaser of that lot. This restriction shall not prohibit placement of occupant name signs and lot numbers as allowed by applicable zoning regulations.

12. DRAINAGE

Drainage of each lot shall conform to the MSD approved drainage plans of DEVELOPER for the subdivision.

13. DISPOSAL OF TRASH

No lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash or garbage or other waste shall not be kept except in sanitary containers. Immediately after framing and during construction, a suitable trash container must be on site and all trash, construction debris, and other waste shall be placed in said container and disposed of periodically. There shall be no burying of building scraps.

14. UNDERGROUND UTILITY SERVICE

(a) Each property owner's electric utility service lines shall be underground throughout length of service line from Louisville Gas & Electric's point of delivery to customer's building; and title to the service lines shall remain in and the cost of installation, and maintenance thereof shall be borne by the respective lot owners upon which said service line is located.

Appropriate easements are hereby dedicated and reserved to each property owner, together with the rights of ingress and egress over abutting lots of

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properties to install, operate and maintain electric service lines to LG&E's termination points. Electric service lines, as installed, shall determine the exact location of said easements.

The electric and telephone easements shown on the plat shall be maintained and preserved in their present condition and no encroachment therein and no change in the grade or elevation thereof shall be made by any person or lot owner without the express consent in writing of Louisville Gas & Electric Company and Bell South Company.

(b) Easements for overhead transmission and distribution feeder lines, poles and equipment appropriate in connection therewith are reserved over, across and under all spaces (including park, open and drainage space area) outlined by dash lines and designated for underground and overhead facilities.

Above-ground electric transformers and pedestals may be installed at appropriate points in any electric easement.

In consideration of LG&E bringing service to the property shown on this plat, it is granted the right to make further extensions of its lines from all overhead and underground distribution lines.

15. DRAINS

No storm water drains, roof down spouts or ground water shall be introduced into the sanitary sewage system. Connections on each lot shall be made with watertight joints in accordance with all applicable plumbing code requirements.

16. COMMUNITY ASSOCIATION

Section 1 - Developer will incorporate and cause to be formed a Homeowners Association to be known as "ASBURY" HOMEOWNERS ASSOCIATION, INC". DEVELOPER will insure that a balance of \$3,000 will be maintained as a minimum balance at the point in time when 80% of the lots are built upon.

(a) The Community Association shall have the right and obligation to maintain all common areas and designated private roadways within the development. Maintenance shall include but not be limited to snow removal on the roadways, repair or replacement of landscaping or trees in the common area and right of ways, resurfacing and/or repairing of the roadways in the development.

(b) Community Association shall have the right to borrow money for the purpose of improving the common area or for constructing, repairing or improving any facilities located or to be located thereon.

(c) Community Association shall have the right to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Community Association, providing that the public agency authority or utility will accept same.

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DEVELOPER may dedicate utility or service easements at its sole discretion so long as there is in existence the Class B membership in accordance with Section 12.

Section 2 - The authorized representative of the Community Association or the Board shall be entitled to reasonable access to the individual lots as may be required in connection with the maintenance of, repairs or replacements within the common area, or any equipment, facilities or fixtures affecting or serving other lots or the common area to make any alteration required by any governmental authority.

Section 3 - Each lot's owner, except DEVELOPER, by acceptance of a deed for the lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Community Association (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as provided in Section 4. DEVELOPER shall be responsible for the maintenance costs of the Community Association, incurred over and above assessed amounts payable to the Community Association by the lots' owners, until DEVELOPER transfers control of the Community Association. The annual and special assessments, together with interests, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 4 - (a) The assessments levied by the Community Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and, in particular, for the acquisition, improvements and maintenance of properties, services and facilities devoted to this purpose, or for the use and enjoyment of the common area, including, but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, payment of taxes assessed against the common area, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Community Association when necessary and such other needs as may arise, and for the improvement and maintenance of the common area. Anything to the contrary herein notwithstanding, the Community Association and the lot owners shall be responsible for the maintenance of all common open space, private roads, islands in the right-of-way, and signature entrances, so long as the subdivision is used as a residential subdivision or until properly dedicated to a unit of local government. This provision shall not be amended.

Common areas, open space, private roads, islands in the right-of-way, and signature entrances shall not be dedicated to a unit of local government without the acceptance of the unit of local government involved and the approval of the

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Louisville and Jefferson County Planning Commission. This restriction shall not be amended without the approval from the Louisville and Jefferson County Planning Commission.

(b) Until Class B membership ceases and is converted to Class A membership pursuant to Section 13 of this Article IV, DEVELOPER or its nominee shall administer the assessments and receipts therefrom, which may only be used for the purposes generally benefiting ASBURY PARK, as permitted in this Declaration.

Section 5 - (a) Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be set at a rate not to exceed \$55.00 per month per lot. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than 25% above the maximum assessment for the previous year without a vote of two-thirds of each class of members pursuant to the Bylaws.

(b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. The Board of Directors shall determine when the assessments shall be paid.

Section 6 - In addition to the annual assessments authorized above, the Community Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto. Any such assessment shall have the assent of the members of the Community Association in accordance with the Bylaws.

Section 7 - Both annual and special assessments shall be fixed at a uniform rate for all lots except those owned by DEVELOPER. The Board of Directors may at its discretion waive the assessment for any year or part of a year for any lot not occupied as a residence.

Section 8 - The annual assessments provided for herein shall begin as to any lot subject to the assessment at the time the lot is occupied as a residence or six months following the conveyance of the title for the lot from the DEVELOPER to the purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year when the lot is first occupied as a residence.

Section 9 - Any assessment not paid by the due date shall bear interest from the due date at the maximum rate of interest when allowable by Kentucky law. The Community Association may bring an action at law against the owner personally obligated to pay the assessment, or foreclose the lien against the

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property, and interest, costs and reasonable attorney fees of such action or foreclosure shall be added to the amount of such assessments. 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.

Section 10 - The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien or liens provided for in the preceding sections. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien.

Section 11 - DEVELOPER and every owner of a lot, which is subject to an assessment, shall be a member of the Community Association. Such owner and member shall abide by the Community Association's Bylaws, Articles of Incorporation recorded in the Corporation Book, Page , in the office of the Clerk of Jefferson County, Kentucky, the rules and regulations, shall pay the assessments provided for in this Declaration when due, and shall comply with decisions of the Community Association's Board of Directors. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 12 - The Community Association shall have two classes of voting membership:

(a) **Class A**. Class A members shall be all lot owners, with the exception of DEVELOPER, and shall be entitled to one vote for each lot owned.

(b) **Class B**. The Class B member shall be DEVELOPER. The DEVELOPER shall be entitled to ten votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) Transfer of control by DEVELOPER no later than 20 years from the date of sale of the first lot to a lot owner other than DEVELOPER; or

(ii) When ninety percent of the lots, which may be developed on the property, described in Article I have been sold by DEVELOPER.

17. RESTRICTIONS RUN WITH LAND

Unless cancelled, altered or amended under the provisions of this paragraph, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them. These restrictions, with the exception of the common areas, open space and medians may be cancelled, altered or amended by the affirmative action of the owners of 75% of all lots.

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18. ENFORCEMENT

Enforcement of these restrictions, excepting paragraph 19, shall be proceeding of law or in equity, brought by any owner of real property in ASBURY PARK by the DEVELOPER, against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration or to recover damages.

19. INVALIDATION

Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

20. LOT DEVELOPMENT

(a) It is important that during any construction in Asbury Park all areas be neat in appearance. The DEVELOPER will coordinate with the contractor(s) and designate storage and parking areas for vendors, subcontractors or their employees.

(b) Contractors and material suppliers will be responsible for removal of mud on roadways when condition is caused by construction or deliveries of materials to the site. Contractors and material suppliers will be responsible for damage to curbing and paving caused by their tools or equipment.

(c) Contractors will be responsible for maintaining construction sites in a reasonably neat condition, including the removal and/or containment of all food and drink containers and any other personal debris that may be deposited on lot by subcontractors.

(d) Any cost to DEVELOPER resulting from noncompliance with above will be charged to contractors.

21. ASSIGNMENT OF RIGHTS

DEVELOPER shall assign all rights herein to ASBURY PARK Community Association, Inc., at the appropriate time.

WITNESS the signature of DEVELOPER on this 26 day of DECEMBER, 2002.

DEVELOPER:

WITNESS

ASBURY PARK DEVELOPMENT, LLC



Daird R. Jones

ROONEY HENDERSON

Signature

Printed Name

