



BONNIEWOOD

Bonniewood Association, Inc.

DECLARATION OF RIGHTS AND RESTRICTIONS

Recorded in the Jefferson County Court House
Dec. 18, 1984 - Book 5469, Page 231-240
Modified Oct. 26, 1998 and filed for record
in the Jefferson County Court House
Oct. 27, 1998 - Book 7129, Page 0040-0042

-- AND

RULES AND REGULATIONS

BONNIEWOOD SUBDIVISION

DECLARATION OF RIGHTS AND RESTRICTIONS

THIS DECLARATION, made this 10th day of December, 1984, by BROWNSBORO HILL CORP., a corporation of Louisville, Jefferson County, Kentucky.

WITNESSETH:

WHEREAS, Brownsboro Hill Corp. is the owner of the property shown on the plat of BONNIEWOOD (the "property"), a subdivision in Jefferson County, Kentucky, filed for record on December 18, 1984, in the office of the Clerk of Jefferson County, Kentucky, and recorded in Plat and Subdivision Book 35 at Page 7; and

WHEREAS, Brownsboro Hill Corp. is now developing BONNIEWOOD as an outstanding and prestigious residential area.

NOW, THEREFORE, to provide the means necessary to achieve such purpose and to enhance and protect the value and attractiveness of said area, Brownsboro Hill Corp. does now and hereby subjects the Property, as shown on the aforesaid plat, to the covenants, conditions, easements, restrictions, charges and assessments (collectively referred to as "Restrictions") set forth, contained and provided for in this Declaration, such Restrictions to be covenants running with the land which shall be binding upon and inure to the benefit of all parties having any interest in the Property.

DEFINITIONS OF TERMS USED

(1) "Association" shall mean the not-for-profit corporation, known as the BONNIEWOOD ASSOCIATION, INC., incorporated under the laws of Kentucky by Brownsboro Hill Corp. for the purpose of taking the fee simple title to the Common Areas and managing, maintaining and controlling the Common Areas and Maintenance Easement Areas in accordance with the provisions hereof.

(2) "Bonniewood" shall mean the real estate development located in Jefferson County, Kentucky, the plat of which is recorded in Plat and Subdivision Book 35 at page 7 in the Office of the Clerk of Jefferson County, Kentucky.

(3) "Common Areas" shall mean the areas dedicated to non-exclusive common use and benefit of the Owners, their tenants, licensees and invitees, including, but not by way of limitation, private streets, service drives, driveways, open parking areas, landscaped areas, walks, curbs, lawns, gardens, open areas, recreational facilities and all necessary appurtenances to each such item and so designated by the Association from time to time, and shall include the areas so designated on the plat.

- (4) "Developer" shall mean Brownsboro Hill Corp., a Kentucky corporation, its successors and assigns.
- (5) "Lot" shall mean each single family residential lot which comprises a part of the Property as shown on the recorded subdivision plat.
- (6) "Maintenance Easement Area" shall mean that portion of each Lot which is to be maintained by the Association as described in Section 8.4 hereof, which portion excludes the Residence Site.
- (7) "Owner" shall mean the record owner, whether one or more persons or other legal entities, of fee simple title to any Lot in Bonniewood, but excluding a mortgagee having merely a security interest.
- (8) "Private Streets" shall mean the streets in Bonniewood not dedicated to public use.
- (9) "Residence Site" shall mean that portion of each Lot on which the Owner's residence, garage and enclosed patio are located, which portion will be designated when the Lot is conveyed to the Owner by Developer contemporaneously with the conveyance by the Owner to the Association of easements dedicating the remainder of the Lot to be part of the Maintenance Easement Area, all pursuant to the provisions of Section 8.4 hereof.

ARTICLE 1

MEMBERSHIP IN ASSOCIATION

Until the Developer has sold the last Lot in Bonniewood or such earlier date as the Developer may determine, Developer shall exercise all voting rights in the Association. Subject to the foregoing:

Section 1.1 Each Owner shall be a member of the Association and shall be entitled to the benefits and subject to the obligations of membership, but the Owners, if more than one, of each Lot, shall be entitled to only one vote. Membership in the Association shall be mandatory for the Owner or Owners of each Lot and no Owner shall be permitted or allowed to disclaim said membership and the duties, obligations and benefits thereof nor withdraw from the Association for any reason.

Section 1.2 The membership and right to vote of any Owner who is delinquent in the payment of any assessment or charge duly imposed by the Association shall be suspended until such delinquency has been cured and any penalties reasonably imposed have been paid.

Section 1.3 The Association shall be the sole judge of the qualifications of its members and of their right to participate in the vote at its meeting and proceedings in accordance with its Articles of Incorporation and By-Laws. The exercise of voting rights, whether in person or by proxy, shall be governed by the By-Laws of the Association.

ARTICLE II

LAND ENTITLED TO BENEFITS

No land shall be entitled to any of the benefits, improvements or services provided by the Association unless subjected to the terms and conditions of this Declaration and to the assessments herein provided for; provided, however, that nothing in this Declaration shall be construed as dedicating any land for any purpose, including but not limited to the private streets and other ways or means of access to, ingress from BONNIEWOOD, to the public, except those specifically so dedicated of record; if any.

ARTICLE III

ADDITIONS TO LAND

Developer may from time to time add to the land subject to this Declaration such other land owned by it, as it in its discretion may determine, which additional land shall be entitled to all of the benefits of the land initially subject hereto, including access to and use of the Common Areas and utility easements; provided, however, that (1) any such additional land shall be subject to and bound by all of the terms and conditions of this Declaration and any future modifications thereof, and (2) any such additional land must be adjacent to the property

ARTICLE IV

POWERS AND DUTIES OF THE ASSOCIATION

Section 4.1 Duties.

The Association shall have the following duties:

- a. To maintain and repair the Common Areas, and to replace items therein when necessary, all of which includes but is not limited to private streets, grass areas, flower gardens, shrubs, trees, plants, landscaping, curbs, fences, drainage and lighting facilities, parking areas, recreational facilities and other parts and accessories thereof.
- b. To pay all real estate taxes and special assessments levied against the Common areas.

- c. To obtain and provide public liability insurance with respect to the Association's activities and the Common Areas, as set forth herein in Article VI.
- d. To do such other matters as may from time to time be necessary to maintain the quality and appearance of the Common Areas and Maintenance Easement Areas.
- e. To maintain and repair the Maintenance Easement Areas, (excluding walkways and driveways from the roadways to the Residence Site on each Lot and flowers planted in the Maintenance Easement Areas by a homeowner), and to replace items therein when necessary, all of which includes but is not limited to grass, shrubs, plants and trees, and to provide for snow removal for walkways and driveways in the Maintenance Easement Areas. Damaged or diseased trees will be replaced with a tree of the same variety and size provided that the replacement tree is not required to have a trunk larger than 3 inches in diameter.

Section 4.2 Powers.

The Association shall have the following powers:

- a. To fix, levy and collect assessments, both general and special, as Common Areas costs or otherwise, against each Owner and his respective Lot as hereinafter set forth in Article V to perform its duty to maintain and repair the Common Areas and Maintenance Easement Areas and to replace items therein when necessary pursuant to Section 4.1(a) hereof.
- b. To collect and pay as a Common Areas costs such real estate taxes and special assessments as are levied against the Common Areas, as hereinafter set forth in Article V.
- c. To collect as a Common Areas costs and pay the premiums for such public liability or other insurance deemed necessary by the Association, as hereinafter set forth in Article VI.
- d. To employ a Management Company to carry out in whole or in part the duties or powers of the Association as set forth herein and to collect as a Common Areas cost and pay the fee of such Management Company, all as set forth in the By-Laws of the Association.
- e. To provide and maintain such on-site security measures, if any, as may be deemed necessary or appropriate by the Association, including but not limited to burglar and fire alarms, fences, gatehouse control, intercom system, guards, and any other security measures, facilities and personnel deemed necessary or appropriate by the Association; and to fix, levy and collect as a Common Areas cost the cost of maintaining the aforementioned security measures, facilities and personnel, if and when installed or utilized, but the Association shall not be liable for the failure to

install or utilize any such measure, facility or personnel or for any alleged act or omission in connection with any measure, facility or personnel which may be installed or utilized.

- f. To establish and publish such rules and regulations from time to time which it deems necessary or appropriate for the enjoyment by the Owners and for the protection of the Common Areas and the Maintenance Easement Areas, and to amend said rules and regulations as it deems necessary or appropriate.
- g. To contract for garbage and trash removal for all Lots.
- h. To perform, install and maintain any and all other functions, measures and items deemed necessary by the Association for the convenience, benefit and enjoyment of the Owners, and to fix, levy and collect as a Common Areas cost or otherwise any assessments necessary to pay the cost of the foregoing .

Section 4.3 Subdivision Bond.

The Developer has contributed the sum of \$3,000 to the Association. None of said money may be used for maintenance or construction of improvements required by construction plans approved by the Jefferson County Department of Public Works and Transportation until the Developer's Subdivision Commitment and Bond have been relaxed or released by the Louisville and Jefferson County Planning Commission.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1 Creation of the Lien and Personal Obligation for Assessment.

Each Owner, by acceptance of the deed for his respective Lot in Bonniewood, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to pay to the Association assessments or charges to be fixed, established, levied and collected at the times and in the amounts determined by the Association, which assessments shall include but not be limited to the Common Areas costs described in Article IV hereof and other items necessary for the Maintenance, repair or replacement of the Common Areas and Maintenance Easement Areas, and any other expense of the Association's carrying out its duties, powers and purposes. If there is more than one Owner of a particular Lot, each such Owner shall be jointly and severally liable to the Association for all assessments or charges against that particular Lot. The assessments, both general and special, together with such late charges thereon and such costs of collection thereof as may be necessary, as hereinafter provided, shall be a charge on the land and any improvements thereon and shall be a continuing lien upon the property against which each such assessment is made.

Section 5.2 Payment of Assessments.

The assessment for each Lot shall be established by the Association on the basis that the assessments shall be borne equally by each Lot, provided that so long as a Lot is unimproved it may be assessed at a lower rate to reflect the lower level of services rendered. Assessments shall be due on the first day of each calendar month (or such other date as may be designated by the Association in the notice of Assessment) and shall be deemed delinquent after the fifteenth day following such due date. All computations relating to obligations to be performed under this Declaration shall be accomplished in accordance with accepted accounting practices and, as part of the Common Areas cost, the Association shall prepare, or cause to be prepared, a written report of its operations for each calendar year and a copy of such written report shall be given to the Owner of each Lot.

Section 5.3 Special Assessments.

The cost of repairing, maintaining, correcting, or painting a particular Residence Site, shall be billed as a special assessment to the Owner thereof, and the amount specified in the billing shall be paid within fifteen days of such billing, in the event such work is performed by the Association after the failure of the Owner to correct any violations of Section 8.2 hereof within 10 days after notice of such violation.

Section 5.4 Late Charge.

If an assessment or special assessment is not paid before becoming delinquent, the Association may exact a late charge in such amount as may from time to time be established by the Association's Board of Directors and such late charge shall become a lien on a defaulting Residence Site as any other assessment until paid. Late charges, when collected, shall be credited to the Common Areas fund.

Section 5.5 Foreclosure of Lien.

If any assessment made pursuant to the provisions hereof by the Association remains unpaid for thirty (30) days after the date upon which it is due, it may be foreclosed by suit by the association in a like manner as a mortgage of real property. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey any property acquired as a result of a successful bid. Suit to recover money charged for unpaid assessments may be maintained without foreclosing or waiving the lien securing same. The Association shall be entitled to collect its reasonable attorney's fees incurred in any such suit.

Section 5.6 Waiver of Use.

No Owner may except himself or his property from liability for his assessment by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his property.

Section 5.7 Lien Statement.

The purchaser of a Lot subject to any lien arising under this Declaration prior to the date of his purchase and the recording of his deed shall take title to the Lot subject to the lien; provided, however, that any such purchaser may request a written statement from the Association as to whether a lien exists against such Lot and such written statement, executed by any two of the President, Secretary or Treasurer of the Association, shall be conclusive as to the facts stated therein as against the Association and may be relied on by the purchaser and the mortgagee or assignee of a mortgage upon that Lot.

Section 5.8 Priority of Lien.

The lien created by Section 5.1 hereof shall be subordinate to (1) all ad valorem taxes on the respective Lot and (2) the lien of a recorded first mortgage on such Lot. The sale or transfer of any Lot pursuant to foreclosure of a recorded first mortgage, or voluntary conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer, but the Association shall have a lien upon the proceeds from such foreclosure or sale junior only to said recorded first mortgage. No such sale or transfer shall relieve the Lot from assessments thereafter becoming due.

ARTICLE VI

INSURANCE

The Association shall obtain public liability insurance covering all of the Common Areas and insuring the Association and the Owners in such amounts as the Association may determine from time to time. The Association may obtain such other insurance as it deems desirable. Premiums for the payment of all such insurance shall be chargeable as a Common Areas cost to be assessed against and paid by the Owners, as provided herein. Each Owner shall be responsible for obtaining and paying for his personal liability insurance and any insurance against fire and other perils to his residence, contents and automobiles.

ARTICLE VII

(Article VII was deleted by a consent modification October 20, 1998)

ARTICLE VIII

EASEMENTS AND RESTRICTIONS

Section 8.1 Each Lot in Bonniewood shall be used only for single family residential purposes, shall not be further subdivided, and shall be subject to such limitations and conditions as may be contained herein or in the Association's By-Laws.

Section 8.2 The exterior of each residence shall be maintained by the Owner in an attractive and well-kept manner. No alteration in the exterior appearance of any residence may be made without the prior written consent of the Association.

Section 8.3 Improvements on any Lot shall be constructed, changed or altered only in strict accordance with the plans and specifications previously submitted to and approved by Developer, (by the Association after the Developer's voting rights have transferred to the Owners), and shall comply with the following:

- a. The Residence Site shall be located so as to conform with building setback lines and utility easements shown on the recorded plat.
- b. The improvements constructed on any Lot shall have exterior construction only of brick, stone, stucco, wood or a combination of the foregoing.
- c. No residence shall be more than thirty-five (35) feet above ground, at the front of the residence.
- d. The ground floor and total square footage of each residence on any Lot, exclusive of open porches, unfinished basements, patios and garages, shall not be less than the following:
 - (i) two thousand (2,000) square feet on the ground floor for a one story residence, with a minimum of two thousand five hundred (2,500) square feet total; or
 - (ii) one thousand six hundred (1,600) square feet on the ground floor for a two story residence, with a minimum of two thousand five hundred (2,500) square feet total.

For purposes of this subsection d., the term "ground floor" means the first floor totally above ground level, and the term "story" means those floors totally above ground level at the front of the residence. The Developer may, in its discretion, permit any residence to contain up to ten percent fewer square feet (ground floor and/or total) than would otherwise be required above.

Developer and/or the Association may delegate their powers, in whole or in part, to an Architectural Review Committee, and may establish a reasonable fee to defray such costs incurred in considering and acting upon any proposed plans and specifications. In order to minimize confusion and complications, and in order to maintain a high quality of construction, Developer and/or the Association reserves the right to designate approved contractor(s) who shall be the exclusive contractor(s) authorized and permitted to construct residences upon Lots in Bonniewood.

Section 8.4 It is contemplated that at the time of sale of each Lot by the Developer to an Owner, a portion of the Lot will be designated as "Residence Site" and another portion as "Maintenance Easement Area". The portion to be designated "Residence Site" will consist of the ground upon which the Owner's residence, including garage and enclosed patio, are to be constructed. The other portion, to be designated "Maintenance Easement Area", will consist of the remainder of such Lot. There will be conveyed by the Owner to the Association a maintenance easement granting the exclusive right to landscape and maintain the Maintenance Easement Area, and to prescribe rules limiting the Owner's rights to use the Maintenance Easement Area in any manner so as to interfere with the performance by the Association of such duties and powers.

Section 8.5 Every Owner, his tenants, licensees and invitees, shall have in common with all Owners, their tenants, licensees and invitees, the non-exclusive right and easement of passage over the Private Streets for entrance and egress to such Owner's Residence Site and the enjoyment of other Common Areas, all subject to such reasonable rules and restrictions as the Association may impose. The roads in Bonniewood shall not be dedicated to or maintained by the public except by agreement of all Owners and approval by the Louisville and Jefferson County Planning Commission after finding that the roads meet all standards required for a newly created public road.

Section 8.6 Every Owner shall have a non-exclusive right and easement of enjoyment in and of the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, and which is subject to the provisions of this Declaration and subject to the Association's Articles, By-Laws, rules and regulations.. Said right and easement of enjoyment may be exercised by members of the Owner's family. An Owner may, with the approval of the Association, delegate his right of enjoyment in the Common Areas to his tenants who occupy his Residence Site.

Section 8.7 No Lot or Common Area shall be used in any manner or for any purpose in violation of such rules and regulations which may be in effect from time to time, as adopted by the Association. The Association shall have the power to establish rules and regulations concerning the use of Lots and Common Areas, and to amend such from time to time. Such rules and regulations may include, but shall not be limited to, the following subjects: signs; appearance of exterior of any improvements and alterations thereto; radio, television or other antennae; animals; activities or items visible from the exterior of any Residence Site; limitation of such activities as yard sales, garage sales or auctions; parking; traffic; storage of boats, trailers, trucks, other vehicles or objects; mailboxes; garbage and refuse containers and disposal; conditions under which snow or ice removal will be conducted; noise; exterior lighting fixtures; fences.

Section 8.8 For the purpose of providing easements for utilities and various services to Residence Sites, Maintenance Easement Areas, and Common Areas, Developer shall have and does hereby reserve unto itself, its successors and assigns in title, (which shall be the Association after the Developer's voting rights have transferred to the Owners), the right to grant easements to locate, construct, maintain and use, and to authorize the location, construction, maintenance and use on, such portions of the Common Areas, as it may designate for drains, sanitary and storm sewers, gas and water mains and lines, electrical and telephone lines, cable television conduits and line, community television antenna lines, fire warning and security systems, and other utility lines and conduits for any and all purposes.

Section 8.9 The Owner of each Lot is responsible for maintaining and repairing any and all utility lines, underground drains or sewers, driveways, walkways, fences and lighting installed by or for such Owner in the Maintenance Easement Area of such Owner's Lot. Flowers or flower gardens may be planted by the Owner in the Maintenance Easement Area of a Lot only with the prior written permission of the Association and shall be maintained by such Owner.

Section 8.10 A party wall easement is hereby established over that part of any Lot on which any part of a common wall between improvements on adjoining Lots is constructed, together with the right to maintain and restore any such party wall, and such party wall may contain plumbing lines, vent stacks for plumbing and heating, electricity pipes and conduits and fireplace flues, serving improvements using such party wall. Said party wall easement shall be a cross-easement in favor of each Lot involved with such common walls.

ARTICLE IX

ENFORCEMENT

Developer, the Association, and also any Owner or Owners shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the provisions set forth above, in addition to any ordinary legal action for damages, and failure of Developer, the Association, or any Owner or Owners,

to enforce any of the provisions set forth herein at the time of its violation shall in no event, be deemed to be a waiver of the right to do so thereafter.

ARTICLE X

BINDING EFFECT; RELEASE OR MODIFICATION

The restrictions contained herein are and shall be deemed to be covenants running with the land and shall be binding on all parties having any interest in any portion of the property and all successors in title thereto, together with their heirs, administrators, executors, successors or assigns. Provided, however, at any time whatsoever this Declaration or any provisions hereof may be modified, altered or terminated upon the written consent of Owners of two-thirds (2/3rds) or more of the Lots and Developer, (so long as Developer continues to be an Owner). Any such agreement modifying, altering or terminating these Restrictions shall be recorded in the Office of the Clerk of Jefferson County, Kentucky, which recorded instrument may be executed by the Association on behalf of all consenting Owners.

ARTICLE XI

SEPARABILITY

Invalidation of any provision set forth herein or any part thereof by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or any part thereof as set forth herein, but they shall remain in full force and effect.

IN WITNESS WHEREOF, Brownsboro Hill Corp., has by authority of its Board of Directors, caused this instrument to be executed by its President, this 10th day of December, 1984.

Brownsbor Hill Corp.
by: J. A. PARADIS
President

Attest:
P. A. Riddle
Secretay

Commonwealth of Kentucky
County of Jefferson
Acknowledged before me by J.A. Paradis, Jr. as President of Brownsboro Hill Corp. on this 10th day of December, 1984.

My Commission expires 7-11-87
Ernest W. Williams
Notary Public, State at Large.