

DECLARATION OF RESTRICTIONS
OF
BRIAR HILL ESTATES, SECTION II

The undersigned, ROBERT A. JONES, BRUCE J. ROTH TRUSTEE FOR CARLA C. JONES FAMILY TRUST, BRUCE J. ROTH TRUSTEE FOR LEE S. CLORE FAMILY TRUST, AND CLORE AND JONES COMPANY, a Kentucky General Partnership, all of PO Box 8, Crestwood, Kentucky, hereinafter referred to as Owners or Developers, do this 16th day of October, 1991, hereby adopt the following as restrictions for Briar Hill Estates, Section II, located near Crestwood, in Oldham County, Kentucky.

WHEREAS, Developers are the owners of certain real property in Oldham County, Kentucky, which is to be developed as a residential subdivision and

WHEREAS, Owners intend to establish a general and orderly plan for the use, occupancy and enjoyment of said subdivision,

NOW THEREFORE, WITNESSETH: The undersigned, being the owners of all the lots in Briar Hill Estates, Section II, situated near Crestwood, in Oldham County, Kentucky, do hereby adopt the following restrictions and covenants, which restrictions and covenants shall apply to all of the lots of said Briar Hill Estates, Section II, as shown on Plat of same recorded in Plat Book 5, Page 25 of the Oldham County Court Clerk's Office, to wit:

1. **Single Family Dwellings:**

All lots as shown on Plat in Briar Hill Estates Section II shall be used for residential purposes only, with no more than one (1) dwelling house designed for occupancy for a single family to be erected on any one (1) lot.

2. **Minimum Square Footage:**

No residence shall be erected on said lots having less than the following minimum square footage requirements, excluding porches, carports, garages, breezeways, attic, basement, etc.:

- a) Full two (2) story residence, a minimum of 1,200 square feet on the main floor and 1,200 square feet on the second floor
- b) One (1) floor plan residence, 2,000 square feet on the main floor.
- c) Bi-level floor plan residence, 1,600 square feet on the main floor, with a minimum of 2,500 square feet total.
- d) Tri-level floor plan residence, minimum of 2,500 square feet, combined total of the three (3) levels.
- e) One and one-half (1 ½) story floor plan residence, 1,500 square feet on the main floor, with a minimum of 2,200 square feet total.

The developers reserve the right to approve or disapprove any type residence not covered under the above floor plans. Whenever any questions arise as to the classification of any proposed structure or its compliance with the provisions of these restrictions, the decision of the developers shall be final.

3. **Garages:**

All residences must have an attached or built in garage, which shall accommodate at least two (2) automobiles. All garages must open to the side or rear of the residences, except that the developers may permit a garage to open to the front of the residence, if, in the developers' sole judgment, such opening is justified by the physical considerations of the lot.

4. **Exteriors:**

Residences erected shall have exterior walls of brick, brick veneer, stone, stone veneer, clap board, aluminum or vinyl siding, approved plywood, or any combination thereof. Use of these materials (including the color thereof) or other materials not specifically mentioned, shall first meet the approval of the developer. Application for approval must be submitted in accordance with item 5 of these restrictions.

5. **Improvements:**

- a) No improvements, structures or other appurtenances shall be placed, constructed or permitted to remain upon any lot in Briar Hill Estates until the plans (including all elevations) and specifications (including exterior building materials) shall have been first submitted to and approved by the Developer. Developer reserves the right to approve or disapprove, in his sole discretion, the architectural design of any building or structure. The term "appurtenances" shall mean anything placed, constructed or permitted to remain upon any such lot. Approval granted hereunder shall be void after six (6) months unless renewed or construction is commenced in accordance with said plans.

Plans for any additions to a residence, or for the construction of guest quarters, barns, or other out buildings shall also be submitted to the developers for approval. The developers, in their sole discretion may approve or disapprove the style, type, size or construction of any such structure. No structure shall be constructed on any lot unless it conforms to all the restrictions contained herein and to all regulations of the Oldham County Planning and Zoning Commission, the Department of Health and all other laws and regulations affecting the use and occupancy of said property. It is further provided that all structures and related landscaping, including tennis courts and swimming pools, shall be completed within twelve months from the date the building permit is issued or construction started, whichever shall have first occurred.

- b) No fence or wall structure or other improvement shall be erected, placed or altered on any lot until the construction plans, and/or specifications, shall have been first approved by the developers. No fence or wall of any nature may extend toward the front or street side property line beyond the front or sidewall of the residence. All fence materials and design of same must be approved by the developers, provided, however, that chain link and/or wire fences shall not be permitted as boundary line fences.
- c) The exterior building materials of all structures shall extend to ground level unless otherwise permitted by the developers.

- d) All driveways must be properly paved within two years of substantial completion of the residence and must be constructed of asphalt, concrete or some other appropriate hard surface material approved by the developers.

It is the intent of these provisions to insure that the residences and all improvements placed upon any lot shall be suited to the site on which placed, and in harmony with the overall scheme of the subdivision and the character and design of improvements placed upon other lots in Briar Hill Estates. Any approval or disapproval made by the developers, unless arbitrarily or capriciously made for reasons other than as stated herein, shall not be overruled by any tribunal.

6. **Temporary Structures as a Residence:**

No house trailers, basements, tents, garages or out buildings or temporary structures shall be used as a residence on any site.

7. **Conspicuous Vehicles:**

No trailer, mobile home, motor home, truck, inoperable vehicle, motorcycle, commercial vehicle, camper trailer, camping vehicle (including an R.V.) or boat shall be parked or kept on any lot at any time unless housed properly in a garage or basement. No vehicle designed or intended for use or customarily used principally for commercial or recreational purposes nor any vehicle conspicuously decorated so as to indicate an actual commercial or recreational use shall be parked, stored, kept or left standing upon any lot or street, except, in the case of commercial vehicles during periods when actually necessary for the furnishing of services to the owner or owners of lots in said subdivision. No vehicle shall be continuously or habitually parked on any street or public right of way. Provided, however, that this provision shall not restrict the developers, their heirs or assigns, the right to maintain a temporary sales office of any kind for the sale of lots in the subdivision.

8. **Animals and Livestock:**

No animals or livestock, other than ordinary household pets, and no animals of any description which constitute a nuisance or a threat or danger to persons or property shall be kept on any lot, nor shall animals of any description be kept for boarding, breeding or commercial purposes.

9. **Noxious or Offensive Conditions:**

No noxious or offensive conditions or activities shall be permitted or carried on upon any property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, or a violation of any federal, state or county regulation or law affecting the use or occupancy of said property.

10. **Commercial Advertising:**

No commercial advertising shall be allowed within the subdivision, except that one sign for advertising the sale or rent of the property shall be permitted. This restriction, however, shall not apply to contractors who are constructing residences, subcontractors working on any of the lots, or financial institutions actually financing the construction of the project, during the period of construction.

11. **Lot Maintenance:**

All lots shall be properly cut and/or weeded and maintained. The developers reserve the right to approve or disapprove the general appearance or condition of any lot. If an owner fails to maintain a lot, the developers reserve the right to mow or perform other necessary services on same and charge the owner a reasonable cost for the work, which charge shall constitute a lien upon the property.

12. Motorcycles, Motor Bikes and Scooters:

No motorcycle, motor bike, motor scooter, mini bike, go-cart or any other motor driven vehicle of a similar nature shall be operated on driven off the streets of the subdivision. No such motor driven vehicle shall be operated on the streets in such a manner as to cause a nuisance, and same shall be equipped with a lawful, suitable and efficient muffler at all times. All state, county and local ordinances shall be observed.

13. Streams, Creeks and Drainage:

No owner of a lot shall permit any stream, creek, drainage ditch or culvert located upon or in the right of way adjacent to his lot, to become filled in, obstructed or damaged in any way which will prevent the normal flow and drainage of water. All grading of lots shall be accomplished in such a way so that surface water shall not be diverted or directed onto an adjoining lot. The damming of any stream or creek shall be prohibited, unless approved by the developers and all lot owners affected thereby (which shall include all owners of lots downstream from the proposed dam).

No owner shall deposit or permit to be deposited any grease, oil, gasoline, detergent, pesticide, poison or other deleterious material into any stream or creek either directly or indirectly. Streams and creeks are on private property. No creek rock shall be removed nor shall the creek be traversed without the owner's prior consent.

14. Commercial Enterprises:

No commercial activity, business or commerce of any kind shall be carried on upon any lot, except for construction of improvements as permitted herein.

15. Right-of-Way on Private Lots:

The purchaser of each lot agrees that he will not use or permit the use of said lot, nor sell any portion thereof, for a passageway leading from the road to any adjoining property outside the subdivision. Although this restriction also applies to the developers in regard to any subdivision lots owned; developers, however, reserve the right to extend any existing right of way through property not a subdivision lot or where applicable, to link the roads to further subdivision development. Purchasers agree that the roads may be used for present and future construction traffic and equipment, and to provide access to any future sections, provided that such use is not prohibited by Oldham County Planning and Zoning rules, regulations, requirements or directives.

It is understood and agreed that roads were constructed by the developers and that they, their successors or assigns, are exempt from any present or future fees for use of the roads (except any applicable tax imposed by governmental authority), and shall not be restricted from the use of the roadways in any respect.

16. Swimming Pools, Clothes Lines, Antennae and Receiver/Transmitters:

- a) No above ground swimming pools (except small children's toy pools) shall be erected or placed on any lot unless its design and placement are approved in writing by developers, which approval shall be within the sole and absolute discretion of developers and may be arbitrarily and unreasonably withheld.
- b) No outside clotheslines shall be erected or placed on any lot.
- c) No antennae (except for standard small television antennae) or microwave and other receivers and transmitters (including those currently called "satellite dishes") shall be erected or placed on any lot unless its design or placement shall be approved by developers, which approval shall be within the sole discretion of the developers and may be arbitrarily and unreasonably withheld.

17. Duty to Repair and Rebuild:

- a) Each owner of a lot shall, at his sole cost and expense, keep his residence under normal repair, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.
- b) If all or any portion of a residence is damaged or destroyed by fire or other casualty, the owner shall, with all due diligence, promptly rebuild, repair or reconstruct such residence in a manner which will substantially restore it to its condition immediately prior to the casualty, or shall promptly clear the lot of all debris, and shall restore the lot as close as possible to its original condition.

18. Dumping and Rubbish:

No lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash, garbage or other waste shall be kept in sanitary containers.

19. Road Maintenance Assessment:

It is anticipated that the responsibility for the maintenance of the subdivision roads will be assumed by the county upon their completion and upon the approval and acceptance by the Oldham Fiscal Court. If for any reason this responsibility is not assumed by the county or some other governmental agency, or if after assuming such responsibility, the governmental agency relinquishes such responsibility or fails to properly carry out such responsibility, developers, their successors or assigns, may assess a road maintenance fee for a sum not to exceed \$75.00 annually for each unimproved lot and \$175.00 annually for each improved lot. These charges shall be prorated to the time of purchase of said lot and/or commencement of construction. The proceeds from said annual assessment shall be applied to the repair, maintenance, safety, and beautification of the subdivision roads and road right-of-ways. Proceeds from said annual assessment shall be expended as stated herein at the discretion of the developers, their successors or assigns. Provided, however, that the developers shall not be responsible for the payment of any such charges.

The foregoing annual charge shall constitute a lien on each lot until paid, however, this lien shall be second and inferior to any valid first mortgage or vendor's lien against any lot, and the developers hereby subordinate same.

It is understood and agreed that the aforementioned assessment will continue until the maintenance of said roads is assumed by Oldham County or some other public authority. In the event that a public authority assumes responsibility for the roads and roadways, then the monies in the road maintenance fund, unless otherwise required by law, shall be transferred to trustees or homeowner's association and may then be used as otherwise provided herein in items 20 and 21.

20. Homeowner's Association:

There is hereby created the Briar Hill Estates Homeowner's Association (The "Association"). Every owner of a lot in Briar Hill Estates, Section II shall be a member of the Association, and automatically by acceptance of a deed for any lot agrees to accept membership in, and does thereby become a member of the Association. This organization shall administer the road maintenance fund as established in item 19 and/or shall administer the assessments or fees for the street lighting, watering systems, landscaping and general beautification and maintenance of the common areas and right-of-ways as further stated in item 21 herein. Members shall abide by the Association's by-laws, rules and regulations and shall pay any fees or assessments as are established. Any existing road fund or other assessment as provided for by these Restrictions may be transferred to the Association.

Additionally, said Association may assess its own fees for those items as stated in items 20 and 21 herein to properly cover the necessary expense for same. The Association shall also allow owners of lots in the first section of Briar Hill Estates and any future sections to become member of the Association and may combine their association with any association or group set up for that function. It is understood that all such assessments or fees, except as is designated strictly for the maintenance of the roads under item 19, shall be used for the landscaped entrance to the subdivision in Briar Hill Estates as well as all other right-of-ways and common areas of Briar Hill Estates, regardless of the section. Members of the Association shall have one vote per lot as shown on the recorded plat of the subdivision, provided however, that such vote is subject to any limitations and rules as established by the Association. In the event any lot may be owned by more than one person or entity, each such person or entity shall be entitled to a pro-rated fraction of the one vote to which each lot is entitled.

The object and purposes of the Association shall be to promote the general welfare and serve the common good of its members and the residents of all sections of the Briar Hill Estates Development, and may include maintenance and repair of streets, lights, watering systems, sidewalks, storm drain entrances, performance of snow removal, and the acceptance of any open space for the purposes of operation, maintenance, protection and repair.

21. Street Lighting and Other Common Facilities:

The developers shall have the right to install and otherwise make available such common facilities and services as required by any governmental agency or which they may deem reasonable and necessary for the general health, safety, welfare or convenience of the residents and owners of Briar Hill Estates, Briar Hill Estates Section II any further section of Briar Hill estates which are subsequently developed.

Such common facilities shall include, but not be limited to, street lighting, entrance lighting, watering systems, street signs, flowers, shrubbery and maintenance of same. The developers, their successors or assigns, may establish such assessment as deemed necessary to cover the maintenance and use of such facilities or items placed in Briar Hill Estates, Briar Hill Estates Section II and all further sections of Briar Hill Estates. The foregoing charges as well as any assessments listed in item 20, shall constitute a lien on each lot until paid, however, this lien shall be second and inferior to any valid first mortgage or vendor's lien against any lot, and the developers hereby subordinate same.

All assessments or fees (including those outlined in item 20 assessed by any homeowner's association) not paid when due shall bear interest at the legal rate as provided by law.

22. Utilities:

Each property owner's electric utility service lines shall be underground throughout the length of the service line from Louisville Gas and 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 owner upon which said service line is located.

Appropriate easements are hereby dedicated and served to each property owner, together with the right of ingress and egress over abutting lots or properties to install, operate and maintain electric service lines to Louisville Gas and Electric'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 election thereof shall be made by any person or lot owner without the express consent in writing of Louisville Gas and Electric Company and South Central Bell Telephone Company.

Easements for overhead electric 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 are) 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 Louisville Gas and Electric bringing service to the property shown on the plat, it is granted the right to make further extensions of its lines from all overhead and underground distribution lines.

23. Amendment of Restrictions:

During the first ten years from date hereof, these restrictions may be altered or abolished by an agreement between the developers and the owners of 51% of the total lots in the subdivision, (including those owned by the developers), acknowledged and recorded as a Deed of Conveyance, and such alteration or abolition shall thereafter be binding upon all owners of the lots in the subdivision.

After ten years, any of the restrictions may be altered or abolished by the owners of 51% of the lots in the subdivision, acknowledged and recorded as hereinabove stated.

24. Enforcement of Restrictions:

These restrictions may be enforced by any of the following individuals or entities: lot owner, subdivision association, taxing district for the subject property (if permitted by law), the developers, their successors or assigns. Any failure to enforce, either promptly or otherwise, any of the restrictions or covenants contained herein or as shown on the recorded Plat, shall not be deemed a waiver of the right to enforce thereafter, and the invalidation of any of the covenants or restrictions contained herein by Judgment of any competent Court shall not affect any of the other restrictions and covenants, and they shall remain in full force and effect.

The cost of enforcing any of these restrictions, including a reasonable attorney fee, shall be awarded at the discretion of the Court, to the prevailing party.

25. Binding:

All the restrictions and provisions herein shall be deemed to be covenants running with the land and binding upon the parties hereto, their heirs, successors and assigns and to each purchaser, his heirs, successors and assigns and shall be in full force and effect from the date of execution of same by the developers.

26. Developers' Right of Approval:

The developers' right of approval as stated herein shall not terminate upon the sale of all the lots in the subdivision, provided, however, that the developers reserve the right to assign any and all of their rights and responsibilities hereinabove stated including, but not limited to, all discretionary authority associated with such rights.

Approvals and/or assignments of any rights retained by developers herein may be made by Robert A. Jones or Lee S. Clore (as a general partner of Clore and Jones Company) for and on behalf of all owners/developers.

27. Invalidation of Covenants:

Invalidation of any one of these covenants by judgment or court order shall not affect the validity of any other provisions herein.

Signed by Robert A. Jones, Bruce J. Roth, Lee S. Clore and notarized by Susan M Draper on October 16th, 1991.

Document prepared by Raymond R. Roelandt
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