

SUPPLEMENTARY DECLARATION OF RESTRICTIONS

MOCKINGBIRD GARDENS, SECTION 2C, THE ESTATES

PLAT AND SUBDIVISION BOOK 112, PAGE 6

JEFFERSON COUNTY, KENTUCKY

THIS SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOCKINGBIRD GARDENS, SECTION 2C, THE ESTATES (the "Declaration") is made this 31ST day of August, 1995, by Brownsboro Development Company, a Kentucky general partnership with its principal office and place of business located at c/o Main Street Realty, 111 West Washington Street, Louisville, Kentucky 40202 (the "Developer").

WHEREAS, Developer is the Owner of certain real property in Jefferson County, Kentucky, which is to be developed as a residential subdivision; and

WHEREAS, the aforesaid real property is subject to a Declaration of Covenants, Conditions and Restrictions which regulates the manner in which said property may be held, sold and conveyed, which document is titled "Declaration of Restrictions, Mockingbird Gardens, Section I," (the "Declaration of Restrictions") and is of record in Deed Book 5885, Page 911, in the Office of the Jefferson County Court Clerk as same has been hereinbefore amended and may be hereafter amended from time to time; and

WHEREAS, Article II of the aforesaid Declaration of Restrictions provides that additional residential property and common areas may become subject to that Declaration of Restrictions by filing with the Office of the Clerk of Jefferson County, Kentucky, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to said additional property; and

WHEREAS, the Developer desires to make the following described real property subject to said Declaration of Restrictions in the manner provided;

NOW, THEREFORE, Developer hereby declares that all of the property described in this instrument, and such additional property as may be hereafter made subject to this Declaration pursuant to Article II, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the real property. The easements, restrictions, covenants and conditions shall run with the real property and be binding on all parties having any right, title or interest in it, their heirs, successors and assigns, and shall inure to the benefit of each owner.

ARTICLE I -- DEFINITIONS

Except where terms are expressly defined otherwise herein, the following words, when used in this Declaration, shall have the following meanings:

Section 1. The "Board of Directors" or "Board" shall mean and refer to the elected body of the Homeowners Association having its normal meaning under Kentucky nonprofit corporation law.

Section 2. "Common Area(s)" shall mean and refer to all real property and all necessary appurtenances thereto which the Homeowners Association and/or Developer now or may hereafter own for the non-exclusive common use and enjoyment of the Owners of Lots as shown as open space on the final recorded

subdivision plat of Mockingbird Gardens and as may be more particularly described in this Declaration. The Common Areas may include, but not be limited to, tennis court(s), swimming pool(s), clubhouse facilities, a pedestrian access path to the Chenoweth Elementary School property and to the retention basin area, any wall or signature fence located at, within or surrounding Mockingbird Gardens, and all street, roadways, and rights-of-way constructed in Mockingbird Gardens for access to individual Lots. Common Area shall also include open or common areas or space so designated on any plats of real property annexed to Mockingbird Gardens in accordance with Article II, Section 2, or previously recorded as other sections of Mockingbird Gardens.

Section 3. "Homeowners Association" shall mean and refer to Mockingbird Gardens Homeowners Association, Inc., a Kentucky nonprofit corporation, its successors and assigns, or any other entity created by the Developer to fulfill the purposes set forth herein for the Homeowners Association.

Section 4. "Developer" shall mean and refer to Brownsboro Development Company, its successors and assigns.

Section 5. "Lot(s)" shall mean and refer to that portion of the real property described in Article II, Section 1, intended for use and occupancy as a residence by a single family and shown on the Plat as Lots 142-161, provided that the term shall also include any and all platted lots intended by Developer for use and occupancy as single family residences on additional property annexed to Mockingbird Gardens pursuant to Article II, Section 2.

Section 6. "Member" shall mean and refer to any person as described in Article V, Section 1 holding membership in the Homeowners Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of Mockingbird Gardens but excluding any party holding the fee simple title merely as a security for the performance of an obligation.

Section 8. "Plat" shall mean and refer to the Plat of Mockingbird Gardens, Section 2C, The Estates, of record in Plat and Subdivision Book _____, Page _____, in the office of the County Clerk of Jefferson County, Kentucky.

Section 9. The term "residential property" shall mean and refer to all real property intended by the Developer for use and occupancy as single family residences as evidenced by Lots shown on the Plat.

Section 10. "Mockingbird Gardens" shall mean and refer to the real property described in Article II, Section 1 of this Declaration of Restrictions and in Article II, Section 1 of the Declaration of Restrictions for Mockingbird Gardens, Section 1, of record in Deed Book 5885, Page 911, as amended and supplemented pursuant to instruments of record in Deed Book 6202, Page 120 and Deed Book 6313, Page 001, (including the real property described in Article II, Section 1, therein) and Deed Book 6360, Page 676, and Deed Book 6471, Page 705, (including the real property described in Article II, Section 1, therein) and Deed Book 6495, Page 819 (including the real property described in Article II, Section 1, therein) in the Office of the Clerk of Jefferson County, Kentucky, and such additional real property as may be annexed in accordance with Article II, Section 2 of this and other Declaration of Restrictions and Supplementary Declaration of Restrictions hereinabove described.

ARTICLE II--PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is subject to this Declaration is located in Louisville, Jefferson County, Kentucky, and is more particularly described as follows:

BEING Lots 142 through 161 inclusive, as shown on the plat of Mockingbird Gardens, Section 2C, The Estates of record in Plat and Subdivision Book 472, Page 6, in the Office of the Clerk of Jefferson County, Kentucky.

BEING a part of the property acquired by Developer by Deed dated August 29, 1988, of record in Deed Book 5800, Page 985, in the Office of the Clerk of Jefferson County, Kentucky.

Certain property has previously been recorded as other sections of Mockingbird Gardens, pursuant to the Declaration of Restrictions which property has been identified above in Article I, Section 10 all in the office aforesaid; whereby said property is subject to covenants, conditions and restrictions substantially the same as those imposed by this Declaration. As provided for in such earlier declarations, this Declaration extends the common scheme of management of Mockingbird Gardens to the property described herein.

Section 2. Additions to Existing Property. Additional residential property and Common Areas may become subject to this Declaration, or may be annexed to the real property subject to this Declaration, as follows:

(a) Developer intends to make this section containing 20 Lots a part of a larger community being developed in accordance with current plans and known as Mockingbird Gardens. Additional land described in Deed recorded in Deed Book 5800, Page 985, in the Office of the Clerk of Jefferson County, Kentucky, may be included by Developer as additional sections of Mockingbird Gardens within 20 years from the date hereof.

(b) Developer reserves the right to create cross easements and to restrict all of the properties according to the terms of this Declaration. The Common Area initially covered by this Declaration shall inure to the benefit of the Owners of any new Lots within Mockingbird Gardens which may become subjected to this Declaration or a similar set of deed restrictions, and any additional Common Area shall inure to the benefit of the Owners of Lots in Mockingbird Gardens recorded earlier, each to enjoy the Common Area of the other and to have and to hold the same as if each new Lot had been developed and subjected to this Declaration simultaneously.

(c) All additions shall be made by filing with the Office of the Clerk of Jefferson County, Kentucky, a Supplementary Declaration of Covenants, Conditions and Restrictions ("Supplementary Declaration") with respect to the additional property which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to such property; provided, however, that the Developer, at its discretion, may amend this Declaration in lieu of filing such Supplementary Declaration to extend the scheme of the covenants, conditions and restrictions of this Declaration to any additions that are initially Common Area. The Supplementary Declaration may contain additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

(d) Additional residential property and Common Areas, not presently a part of Mockingbird Gardens but adjacent to and contiguous with property, whether or not currently owned by Developer, may be annexed to Mockingbird Gardens by Developer.

ARTICLE III--USE RESTRICTIONS

Section 1. Primary Use Restrictions. No Lot shall be used except for private single family residential purposes. No structure shall be erected, placed, altered or permitted to remain on any Lot except single family dwellings designed for the occupancy of one family not to exceed two and one-half stories in height and containing a garage for the sole use of the owner and occupants of the Lot. "Family," as used in this Section 1, shall include any domestic servants living on the premises.

Section 2. Rules of Common Area. The Board of Directors of the Homeowners Association is hereby authorized to adopt rules and regulations concerning the use of the Common Area, facilities and structures located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Homeowners Association to all Owners. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule or requirement shall be specifically overruled, canceled or modified by the Board or the Homeowners Association in a regular or special meeting by a majority of the total votes entitled to be cast at that meeting. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure, as provided in Article V.

Section 3. Clothes Lines; Fences and Walls; Tennis Courts; Swimming Pools; Antennae and Receivers/Transmitters; Firewood.

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

(b) No fence or wall of any nature may be extended toward the front or street side property line beyond the front or side wall of the residences (unless specifically authorized by Developer); all fences, except as constructed by Developer, shall be constructed of brick, stone or iron or other materials, which other materials have received prior written approval by Developer as set forth below; the finished side of a fence or wall shall face away from the Lot upon which such fence is constructed. All fences, as structures, are subject to prior written plan approval by Developer under Section 5 of Article IV of this Declaration. No wire or chain link fences are permitted in Mockingbird Gardens except for tennis court fences permitted under section 3(c) below and except as constructed by Developer on any portion of the perimeter of Mockingbird Gardens. The Owner of any Lot on which any fence is constructed, whether the fence was constructed by the Owner or Developer, shall be obligated to maintain such fence and keep such fence in a neat appearance, except where the Developer or Homeowners Association exercises its right to maintain such fence.

(c) No tennis court fence shall be erected on any Lot in Mockingbird Gardens unless (i) the fencing is coated with black or green vinyl, and (ii) the plan for such fence has been approved by the Developer in writing pursuant to Section 3(b) above.

(d) Any landscaping performed by Lot Owners shall not interfere with the ability of the Developer or the Homeowners Association from maintaining, repairing or constructing any perimeter fence, as defined in Article IV, Section 5(c) of this Declaration. The Lot Owner shall, prior to the planting or installation of any landscaping, submit to the Developer or Homeowners Association as the case may be a description or rendering of the location and description of such landscaping in relation to the perimeter fence, if such fence exists.

(e) No above ground swimming pools or exterior spas, including but not limited to hot tubs and jacuzzis, shall be erected or placed on any Lot unless its design and placement are approved in writing by Developer, which approval shall be within the sole and absolute discretion of the Developer.

(f) No exterior antennae (except for a standard small television antennae not exceeding five (5) feet in height) or microwave or other receivers and transmitters (including those currently called "satellite dishes") shall be erected or placed on any Lot unless the site design and placement are approved in writing by Developer, which approval shall be within the sole and absolute discretion of the Developer.

(g) No firewood shall be stored in a location that is visible from the front of the Lot on which it is stored.

Section 4. 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 sales or field offices used by Developer, which shall be removed when construction or development is completed.

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

(c) No trailer, truck, motorcycle, commercial vehicle, recreational 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 continuously parked or kept on any Lot (except in the garage) in Mockingbird Gardens. No trailer, boat, truck, recreational vehicle or other vehicle, except an automobile, shall be parked on any street in Mockingbird Gardens for a period in excess of an aggregate of twenty-four hours in any calendar year.

(d) No automobile shall be habitually or continuously parked on any street or right-of-way in Mockingbird Gardens.

Section 5. 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.

Section 6. Animals. No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any Lot, for any commercial purposes, except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area) may be kept, providing they are not kept, bred or maintained for any commercial purposes. All household pets, including dogs and cats, shall at all times be confined to the Lot occupied by the Owner of such pet; provided, however, that household pets may be walked within Mockingbird Gardens so long as such animals are at all times under the control of a resident or tenant.

Section 7. Disposal of Trash. No Lot shall be used or maintained as a dumping ground of rubbish, trash or garbage. Trash, garbage or other waste shall not be kept except in sanitary containers.

Section 8. Drainage. Drainage of each Lot shall conform to the general drainage plans of Developer for Mockingbird Gardens. No storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewage system. Basement or sub-surface living area floor drains (except shower stall drains), shall not be discharged into the sanitary sewer system. Plumbing connections on each Lot shall be made with watertight joints in accordance with all applicable plumbing code requirements.

Section 9. Business; Home Occupations. No trade or business of any kind (including any practice of medicine, dentistry, chiropody, osteopathy and other like endeavors) shall be conducted on any Lot. Notwithstanding the provisions hereof or of Section 1 of Article III, 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 twelve (12) months from completion of the house or upon such additional period of time as may be expressly agreed to in writing by Developer. Provided, further, that until such time as the Developer has sold all of its Lots, it may maintain a sales office within Mockingbird Gardens.

Section 10. 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 or rent thereof, which shall not be greater in area than nine (9) square feet; provided, however, Developer shall have the right to (i) erect larger signs when advertising Mockingbird Gardens, (ii) place signs on Lots designating the lot number of any Lot, and (iii) following the sale of a Lot, place signs on such Lot indicating it has been sold and the name of the purchaser of that Lot. This restriction shall not prohibit placement of an occupant name sign and lot numbers as allowed by applicable zoning regulations.

Section 11. Duty to Repair and Rebuild.

(a) Each Owner shall, at the Owner's sole cost and expense, repair his residence, keeping the same in 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, then Owner shall, with all due diligence, promptly rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to the condition which existed immediately prior to the casualty.

Section 12. Duty to Maintain Lot.

(a) After the date of purchase, but prior to the start of construction on any Lot, Developer shall have the option to require each Owner to keep the grass on the Lot properly cut, to keep the Lot free from weeds and trash and to keep it otherwise neat and attractive in appearance or, Developer may elect to perform all maintenance on the Lot, including but not limited to mowing. If Developer elects to perform such maintenance, each owner shall be assessed an annual fee payable within 30 days of the receipt of an invoice therefor, at the rate of \$20.00 per month, (or \$240.00 per year), beginning with the month of the date of purchase, for the first two (2) years following the date the lot owner acquires title to a lot; thereafter, Developer may assess the lot owner at an amount Developer determines necessary to maintain the lot.

(b) From and after the date construction starts on any Lot, it shall be the duty of each Owner to keep the grass on the Lot properly cut, to keep the Lot free from weeds and trash and to keep it otherwise neat and attractive in appearance.

(c) Should any Owner fail to perform the required maintenance, then Developer may take such action as it deems appropriate, including mowing, in order to make such Lot neat and attractive, and the Owner shall, immediately upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, together with allowable statutory interest, and Developer shall have a lien on that Lot and the improvements thereon to secure the repayment of such amounts. Such lien may be enforced by foreclosure against that Lot and the improvements thereon, but such lien shall be subordinate to any first mortgage lien thereon.

(d) The Owner shall indemnify and hold harmless the Developer or the Homeowners Association (after the Developer has transferred all rights and obligations to said Homeowners Association) for any liability, loss, or damage as a result of the entry by the Developer or an agent of the Homeowners Association onto the Owner's Lot in accordance with subparagraphs (a), (b), or (c) of this Section 12.

Section 13. Underground Utility Service.

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

Appropriate easements are hereby dedicated and reserved 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 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 Owner without the express written consent of LG&E and South Central Bell Telephone Company and their respective successors and assigns.

(b) 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 area) outlined by dash lines on the plat 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.

(c) The electric and telephone easements hereby dedicated and reserved to LG&E and South Central Bell Telephone Company, as shown on the recorded Plat, shall include easements for the installation, operation and maintenance of cable television service to the Owners, including the overhead and/or underground installation and service of coaxial cables, cable drop wires, converters, home terminal units and other necessary or appropriate equipment, as well as easements for the installation, operation and maintenance of future communication, telecommunication and energy transmission mediums.

ARTICLE IV -- ARCHITECTURAL CONTROL

Section 1. Building Materials: Roof: Builder.

(a) Except as provided in this Section 1(a), the exterior building material of all structures shall extend to ground level and shall be either brick, stone, brick veneer or stone veneer or a combination of same, and be subject to the right of the Developer to approve the color and style of such material. Developer further recognizes that the appearance of other exterior building materials (such as wood siding and stucco) may be attractive and

innovative and reserves the right to approve in writing the use of other exterior building materials and to permit such alternative exterior building materials to extend within six (6) inches of ground level; provided, however, that any space between the end of the exterior building material and ground level shall be stuccoed.

(b) The primary roof pitch of any one story residential structure shall not be less than seven (7) inches vertical for every twelve (12) inches horizontal. The primary roof pitch for any one and one-half or two story residential structure shall not be less than six (6) inches vertical for every twelve (12) inches horizontal. However, the roof pitch for dormers on a one and one-half story house may be less if approved in writing by Developer.

(c) Developer reserves the right of prior approval of each general contractor, contractor, or builder which proposes, or is contracted with, hired, or otherwise retained by any Owner, to build a residential structure on any Lot, which approval must be obtained prior to the commencement of any such construction in Mockingbird Gardens. Developer reserves this right of prior approval in order to ensure (i) the maintenance of a high quality construction within Mockingbird Gardens, (ii) that the economic value of other Lots and structures within Mockingbird Gardens will not be impaired by the construction of residential structures not of the same comparable quality as now exists in Mockingbird Gardens, and (iii) the maintenance of the existing high aesthetic quality of Mockingbird Gardens. Developer's approval of any general contractor or builder for any particular Lot shall not be considered approval to build on any subsequent Lot, nor does the Developer waive any right to disapprove any general contractor or builder on any subsequent Lot, because of approval on a previous Lot.

(d) Any approval by Developer of any general contractor, contractor or builder shall in no manner whatsoever serve as a guarantee, warranty or representation of the quality of workmanship by said general contractor, contractor or builder, or of the ability of said general contractor, contractor or builder to fully perform the work for which the Owner contracted, nor of the Owner's satisfaction therewith.

(e) Building materials shall not be stored on a Lot for longer than sixty (60) days unless a structure is under active construction on said Lot.

Section 2. Setbacks. No structure shall be located on any Lot nearer to the front Lot line or the street side Lot line than the minimum building setback lines shown on the recorded Plat of Mockingbird Gardens, except steps may project into said areas, and open porches may project into said areas not more than six (6) feet. No structure shall be located on any Lot nearer to nonstreet side Lot lines than twelve (12) feet on one side and twelve (12) feet on the other side; provided, however, that Developer, in its sole discretion, may permit non-street side lot lines of six (6) feet on each side. Developer may vary the established building lines, in its sole discretion, where not in conflict with applicable zoning regulations.

Section 3. Minimum Floor Areas. The following shall be the minimum floor areas for homes to be constructed after this Declaration is recorded:

(a) The total floor area of a one story house shall be a minimum of 3,000 square feet.

(b) The first floor area of a one and one-half story house shall be 2,300 square feet. The total floor area of a one and one-half story or tri-level house shall be a minimum 3,500 square feet.

(c) The total floor area of a two-story house shall be a minimum of 3,500 square feet.

(d) Basement areas (finished and unfinished), garages, decks, and open porches shall not be included in calculating floor areas.

Section 4. Garages; Carports.

(a) The openings or doors for vehicular entrances to any garage located on a Lot shall not face the front Lot line unless otherwise approved in writing by the Developer. All Lots shall have at least a two car garage unless otherwise approved in writing by the Developer. No detached garages are allowed unless otherwise approved in writing by Developer. All garages shall have doors that must be maintained by the Owner in usable condition. Garages, as structures, are subject to prior plan approval under Section 5 of this Article IV.

(b) No carport shall be constructed on any Lot in Mockingbird Gardens.

Section 5. Approval of Construction, Fencing and Landscaping Plans.

(a) No structure may be erected, placed or altered on any Lot until the construction plans and building specifications and a plan consisting of (i) a survey of the Lot prepared by a land surveyor, licensed in the Commonwealth of Kentucky; (ii) the location and specifications of all improvements including any building, fence, wall, or other structure on the Lot; (iii) the grade elevation (including rear, front and side elevations); (iv) the type of exterior materials (including delivery of a sample thereof); (v) the location and size of the driveway, which shall be concrete, asphalt, brick or driveway pavers, and the driveway apron which shall be concrete; (vi) a landscape plan, as set forth in subparagraph (b) of this Section 5, shall have been approved by Developer in its sole discretion; and (vii) such other data as the Developer may request. In addition to the foregoing, no structure may be erected, placed or altered on any Lot until a plat plan depicting the location of all improvements, set backs and easements has been approved by Developer in its sole discretion. In reviewing any proposed structure or landscape plan, Developer shall have the right to take into consideration the suitability of the structure or landscape plan to the site, the harmony thereof with the surroundings, and the effect of the structure or landscape plan on the view from adjacent or neighboring Lots or Common Areas. Developer, in its sole discretion, shall have the right to accept or reject construction plans and building specifications solely on the basis of aesthetics.

(b) The landscape plan referred to in Subparagraph (a) of this Section 5 shall show the size and location of trees, shrubs and other plantings then existing or to be planted on the Lot as required by Section 6 of this Article IV. Each landscape plan for a Lot submitted to Developer shall obligate, and this Declaration does so obligate, the Owner to install (to the extent the same are not already located on the Lot) trees, shrubs and other plantings and which plantings shall be completed prior to occupancy. To maintain the aesthetic quality of Mockingbird Gardens, Lot Owners shall not interfere with the natural growth of any and all trees planted by the Developer or Homeowners Association.

(c) Developer shall have the right to install, construct, maintain, repair, replace and beautify perimeter fencing along the boundaries of Mockingbird Gardens. References to "perimeter fencing" in this subsection shall include any fencing along the boundaries of the property described in Article II, Section 1 and additional property referred to in Article II, Section 2, but such references shall not include the currently existing chain link fence on Lot 87 above the quarry. Developer reserves an easement over, under and across each Lot for the purpose of constructing and installing perimeter fencing. Developer further reserves to itself, its successors and assigns an easement over, under and across each Lot on which perimeter fencing is constructed for the purpose of maintaining, repairing and beautifying the perimeter fencing. A Lot Owner shall not impair or alter the condition or appearance of the perimeter fencing in any manner whatsoever unless the Lot Owner obtains the

prior written approval of Developer or the Homeowners Association after Developer transfers all rights and obligations to the Homeowners Association. References in this subsection to perimeter fencing shall not obligate Developer to construct or install perimeter fencing along any boundary of Mockingbird Gardens.

(d) References to "Developer" in this Article IV shall include any entity, person or association to whom Developer may assign the right of approval. References to "structure" in this Section 5 shall include, but not be limited to, any building (including a garage), fence, wall, antennae (except for standard small television antennae not exceeding five (5) feet in height), microwave and other receivers and transmitters (including those currently called "satellite dishes"), swimming pool(s) and tennis court(s).

Section 6. Landscaping; Sidewalks; Driveways; Trees.

(a) After the construction of a residence, the Owner shall promptly grade and sod, or, as an alternative to sod, plant another type of groundcover subject to the prior written approval of Developer on the front and sides of the house and seed and straw the rear of the house.

(b) Each Owner shall cause a sidewalk to be constructed on the Lot no later than the date of completion of a residence on the Lot, provided, however, that each Owner shall cause a sidewalk to be constructed on the Lot when residences have been constructed on 80% of the Lots, whether or not the Owner has begun construction on that particular Lot. Sidewalk construction shall be in accordance with uniform design standards to be provided by Developer

(c) Each Owner shall brick, driveway paver or concrete the driveway (provided, however, Developer shall have the right to approve other materials or surfaces), and concrete the driveway apron up to the edge of the sidewalk within three months after completion of a single family dwelling; provided, however, that the concrete driveway apron shall extend to and meet with the edge of the driveway where no sidewalk has been constructed and the Developer shall determine in its sole discretion the point at which the apron and the driveway shall meet.

(d) Prior to occupancy of any residence and unless otherwise permitted by the express written approval of the Developer, the Owner shall cause to be planted two (2) trees (at least two to two and one-half inches in caliper) in the front yard of the Lot. The foregoing notwithstanding, Developer may, at its sole discretion, plant the trees required to be planted in the front yard of the Lot. In addition, the Owner shall cause to be planted two (2) trees (at least two to two and one-half inches in caliper) in the rear yard of the Lot. Developer retains the right, in its sole discretion, to determine the location of any and all trees on the Lot. No tree shall be removed from any Lot without the prior written approval of Developer.

(e) Upon an Owner's failure to comply with the provisions of this Section 6, Developer may take such action as necessary to cause the Owner to comply therewith or such other actions as Developer shall deem appropriate, and the Owner shall immediately, upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, together with allowable statutory interest, and Developer shall have a lien on that Lot and the improvements thereon to secure the repayment of such amounts. Such lien may be enforced by foreclosure against that Lot and the improvements thereon, but such lien shall be subordinate to any first mortgage thereon.

Section 7. Subdividing Lots. No Owner of a Lot shall subdivide any Lot in Mockingbird Gardens without the prior written consent of the Developer.

Section 8. Mail and Paper Delivery Boxes; Hedges. Each Owner shall be required to purchase mail and paper delivery boxes (including the standards, brackets, poles and name signs) which shall have been designated by the Developer for use in Mockingbird Gardens; however, Developer may require each Owner to purchase all mail and paper delivery boxes (including the standards, brackets, poles and name signs) from a supplier selected by Developer in its sole and absolute discretion. The Developer shall, in its sole and absolute discretion, determine the location, size, color, design, lettering and all other particulars of all mail and paper delivery boxes, and the standards, brackets, poles and name signs for such boxes, that are to be used in Mockingbird Gardens, in order to ensure uniformity in appearance with respect to these items. No hedge shall be planted on any Lot unless its design and location are approved in writing by Developer in its sole and absolute discretion.

ARTICLE V -- HOMEOWNERS ASSOCIATION

Section 1. Membership. Developer and every Owner of a Lot which is subject to an assessment shall be a Member of the Homeowners Association. Such Owner and Member shall abide by the Homeowners Association's Bylaws, Articles of Incorporation recorded in Corporation Book 397, Page 294, in the Office of the Clerk of Jefferson County, Kentucky, and rules and regulations adopted by the Homeowners Association, shall pay the assessments provided for in this Declaration when due, and shall comply with the decisions of the Homeowners 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 2. Classes of Membership. The Homeowners Association shall have two classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners with the exception of Developer, and shall be entitled to one vote for each Lot owned. In the event that the Owner is more than one person or entity, votes shall be apportioned as provided herein. If the ownership of a Lot is held by an Owner and an Owner's spouse, joint with right of survivorship, each spouse shall have a one-half vote in the Homeowners Association. If ownership of a Lot is held by any multiple parties, other than as described in the immediately preceding sentence, each shall have a fractional share of one vote based on the percentage of his ownership of the Lot. Owners of each Lot shall keep on file with the Secretary of the Homeowners Association a notice of the fractional votes to which each Owner is entitled. In no event shall any Lot be entitled to more than one vote.

(b) **Class B.** The Class B Member shall be the Developer. Developer shall be entitled to twenty (20) 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 first occurs:

(i) Transfer of control by the Developer to the Homeowners Association, as referred to in this Article V. Section 3, which must occur no later than twenty (20) years from the date of the conveyance of the first Lot to an Owner other than the Developer; or

(ii) At such time as ninety-five percent (95%) of the total number of Lots which may be developed on the property described in Article II, Section 1 and on any additional residential property annexed from time to time in accordance with Article II, Section 2 and on any previously recorded sections of Mockingbird Gardens have been conveyed to and are concurrently owned by Owners other than Developer.

Section 3. Transfer. The Homeowners Association shall accept any and all rights, obligations or property owned by the Developer at such time and from time to time as Developer expressly conveys any such rights, obligations or property to the Homeowners Association by executing and delivering to the Homeowners Association such appropriate instrument(s) conveying such rights, obligations or property.

Section 4. Purpose of Assessments: Roadway Maintenance.

(a) The assessments levied by the Homeowners Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and in particular for the acquisition, lease, improvement 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 cost of repairs, replacements and additions, the cost of labor, including labor for snow removal, equipment, materials, management and supervision, payment of taxes assessed against the Common Areas, the procurement and maintenance of insurance in accordance with the Bylaws of the Homeowners Association, the employment of attorneys to represent the Homeowners Association when necessary and such other needs as may arise, for such other payments as may be set forth in the Articles or Bylaws of the Homeowners Association and for the improvement and maintenance of the Common Areas. The Homeowners Association shall maintain, operate, repair, and replace, unless such obligations are assumed by a municipal or governmental agency having jurisdiction thereof, the Common Areas, open spaces, pedestrian access path to Chenoweth Elementary School, emergency entrance to and from the retention basin, entranceways, streets, medians, including but not limited to cobblestones in medians, trees along roadways, storm drains and basins and any recreational facilities leased or acquired by the Homeowners Association, including, without limitation, tennis courts, swimming pools and clubhouse facilities. If the Homeowners Association fails at any time to maintain any of the Common Areas, Developer may perform any maintenance which Developer believes in its sole discretion is necessary and the Homeowners Association shall reimburse Developer for expenses Developer incurs on such maintenance. References in the Declaration to specific types of Common Areas does not obligate the Developer to provide such areas.

All streets, roadways and rights-of-way in Mockingbird Gardens including, but not limited to, the driveway connecting Mockingbird Gardens Drive with the rear parking lot of the business formerly known as Bauers Restaurant and located at 3612 Brownsboro Road, shall be operated, maintained and repaired at the discretion, under the control and as an expense of the Homeowners Association, unless such obligations, or any one of them, are assumed by any successor, including any municipal or governmental agency having jurisdiction thereof.

(b) Until Class B membership ceases and is converted to Class A membership pursuant to Section 2 of this Article V, Developer or its nominee shall administer the assessments and receipts therefrom, which may only be used for purposes generally benefitting Mockingbird Gardens, as permitted in this Declaration.

(c) Pursuant to an agreement between the Developer and Jefferson County, Kentucky, dated December 27, 1989, the Developer agreed to reconstruct an old stone wall on the Crescent Hill Golf Course property adjacent to the entrance of Mockingbird Gardens to act as a barrier between the two properties. Further, the Developer agreed to maintain and repair the said stone wall in perpetuity and to maintain an insurance policy in a face amount of \$15,000 insuring the stone wall against casualty loss. Anything herein to the contrary notwithstanding, at such time as the Developer shall assign the aforesaid contract to the Homeowners Association, the Homeowners Association shall accept such assignment and assume the obligations contained therein. Notwithstanding Section 1 of Article VI hereof, this provision may not be amended without the consent of Fiscal Court of Jefferson County, Kentucky, or its successor.

(d) Developer may construct certain recreational facilities including without limitation a clubhouse, tennis court(s) and swimming pool(s) on property near the Property (the "Amenities Area") and at such time hereafter as Developer may deem appropriate the Developer may transfer and convey the Amenities Area or certain non-exclusive rights therein to the Homeowners Association and the Homeowners Association shall accept said property or rights.

Section 5. Uniform Rate of Assessment; Amount. Both annual and special assessments shall be fixed at a uniform rate for all Lots except those owned by Developer whose Lots shall be exempt from any assessment. The Board of Directors of the Homeowners Association may at its discretion waive the assessment or a part thereof for any year or part of a year for any Lot not occupied as a residence. The initial assessment hereunder shall be \$50.00 per month per Lot, beginning with the month of the date of purchase of each Lot, to be paid at the rate of \$600.00 per calendar year and payable in one lump payment within 30 days after delivery of an invoice therefor, which invoices shall be issued at any time after January 1st of each such year. The Board of Directors of the Homeowners Association may from time to time increase or decrease the assessment.

Section 6. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Homeowners Association may levy, in any assessment year, a special assessment 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 be applicable to the construction, reconstruction, repair or replacement of capital improvements performed in any year and shall have the assent of the Members of the Homeowners Association in accordance with the Bylaws of the Homeowners Association.

Section 7. Assessments: Creation of the Lien and Personal Obligation. Each 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 Homeowners Association (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as provided in this Article V. The annual and special assessments, together with interest, costs and reasonable attorneys' fees (which may be required to enforce said assessments), 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 attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

Section 8. Subordination of the Lien to First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on the Lot. 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 9. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall begin as to any Lot subject to the assessment at the time of the conveyance of the Lot from Developer to the Owner. 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 10. Effect of Nonpayment of Assessments; Remedies of the Homeowners Association. Any assessment not paid by the due date shall bear interest from the due date at the maximum rate of interest then allowable by Kentucky law. The Homeowners Association may bring an action at law against the Owner

personally obligated to pay the assessment, or foreclose the lien against the 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 that Owner's Lot.

Section 11. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot. The Common Areas are hereby made subject to the Homeowners Association. The Developer retains an easement across or onto any Lot for the purpose of maintaining Common Areas which, for the sole purpose of maintenance, includes all sides of walls constructed by the Developer or the Homeowners Association. Any entranceways to Mockingbird Gardens are part of the Common Area subject to maintenance by the Homeowners Association. The right of enjoyment is subject to the right of the Homeowners Association 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 Homeowners Association, provided such dedication or transfer is approved and accepted by the public agency, authority or utility, where such acceptance or approval is necessary. 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 2 of this Article V.

Section 12. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Homeowners Association, his right of enjoyment to the Common Area to the members of his family or to his tenants or contract purchasers who reside on the Owner's Lot. Membership in the Homeowners Association may not be conveyed separately from ownership in the Lot.

Section 13. Homeowners Association's Right of Entry. The authorized representative of the Homeowners Association or the Board of Directors of the Homeowners Association shall be entitled to reasonable access to the individual Lots as may be required in connection with the preservation of property on an individual Lot or in the event of any emergency or in connection with the maintenance of, repair or replacement within the Common Area, of any equipment, facilities or fixtures affecting or serving other Lots or the Common Area or to make any alteration required by any governmental authority.

ARTICLE VI -- GENERAL PROVISIONS

Section 1. Restrictions Run with Land; Amendment. Unless canceled, altered or amended under the provisions of this Section 1, these covenants, conditions, and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by a majority of Owners prior to the date of extension is placed of record in the Jefferson County Clerk's office canceling such automatic extension. The covenants, conditions or restrictions of this Declaration may be canceled, altered or amended by the Developer acting alone at any time before all rights and obligations vested in the Developer are transferred by Developer to the Homeowners Association pursuant to Article V, Section 3. Thereafter, these restrictions may be canceled, altered or amended at any time by the affirmative vote of the owners of two-thirds (2/3) of the Lots subject to these restrictions. No cancellation of, alteration of or amendment to any covenant, condition or restriction shall take effect until the Owners of two-thirds (2/3) of the Lots subject to these restrictions file in the Office of the Jefferson County Clerk an Amendment to the Declaration of Restrictions describing such cancellation of, alteration to or amendment to such provision herein. No amendment shall be effective to release the Homeowners Association from its responsibility to maintain private rights-of-way or other Common Areas, unless a successor is appointed and accepts such responsibilities. There shall be no transfer of any roadway or common area to a unit of local government without

the prior approval of that unit of local government and the Louisville and Jefferson County Planning Commission, or its successor.

Section 2. Severability; Modification. The provisions of this Declaration are severable. If any provision or portion thereof shall be held or adjudged invalid or unenforceable, the remaining provisions or portions thereof shall not be invalidated thereby, but shall remain in full force and effect.

While the covenants, conditions or restrictions set forth above are considered to be reasonable in all circumstances, it is recognized that covenants, conditions or restrictions of this nature may fail for reasons unforeseen, and accordingly it is hereby declared that if any of such covenants, conditions or restrictions shall be adjudged void as going beyond what is reasonable in all circumstances, the said covenant, condition or restriction shall apply with such modifications as may be necessary to make it valid and effective.

Section 3. Non-liability of the Directors and Officers. Neither Developer nor the directors and officers of the Homeowners Association shall be personally liable to the Owners of the Lots for any mistake of judgment or for any other acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The Owners shall indemnify and hold harmless the Developer and each of the directors and officers of the Homeowners Association and their respective heirs, executors, administrators, successors and assigns from and against any damage, costs and/or other expenses (including reasonable fees of counsel of the indemnified party's choice) arising out of or in connection with any actions taken in good faith in accordance with this Declaration.

Section 4. Enforcement. Enforcement of these restrictions shall be by proceeding of law or in equity, brought by any Owner or by Developer against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration and/or to recover damages. Failure of any Owner or Developer to demand or insist upon observance of any of these restrictions or covenants, or to proceed for restraint of violations, shall not be deemed a waiver of a violation, or the right to seek enforcement of these restrictions.

Section 5. Amendments to Articles and Bylaws of the Homeowners Association. Nothing in this Declaration shall limit the right of the Homeowners Association to amend, from time to time, its Articles of Incorporation and Bylaws.

Section 6. Board of Directors of the Homeowners Association's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the property subject to this Declaration, or any questions of interpretation or application of the provisions of this Declaration or the Bylaws of the Homeowners Association, the determination thereof by the Board of Directors of the Homeowners Association shall be final and binding on each and every such Owner.

Section 7. Developer's Right of Approval. At any time that the Developer is granted a right of approval herein such right of approval shall be exercisable within the sole and absolute discretion of the Developer.

WITNESS the signature of Developer by its duly authorized agent this 31st day of August, 1995.

BROWNSBORO DEVELOPMENT COMPANY,
a Kentucky general partnership

By: JFD CORPORATION

By: Kenneth L. Payne

Title: Vice President

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me on the 31st day of August, 1995 by Kenneth L. Payne, Vice President of JFD Corporation, a general partner of Brownsboro Development Company, a Kentucky general partnership.

Notary Public, State at Large, KY

My commission expires: My Commission Expires Aug. 24, 1997

Rebecca Y. Harkins
NOTARY PUBLIC

THE FOREGOING INSTRUMENT WAS
PREPARED BY:

John G. Treitz, Jr.
OGDEN NEWELL & WELCH
1200 One Riverfront Plaza
Louisville, Kentucky 40202
(502) 582-1601

0045170.01

Document No: 1995115013
Lodged By: MOCKINGBIRD GARDENS
Recorded On: Sep 22, 1995 11:49:18 A.M.
Total Fees: \$38.00
Transfer Tax: \$0.00
County Clerk: Rebecca Jackson
Deputy Clerk: STACIE