

**BILL OF ASSURANCE AND PROTECTIVE COVENANTS  
FOR BROOKHAVEN SUBDIVISION, PHASE I & PHASE II, A PLATTED  
SUBDIVISION IN LOWELL, BENTON, COUNTY, ARKANSAS**

Know All Men By These Presents:

That Jane Ruge Kinkade, as Trustee of the Jane Ruge Kinkade Trust dated July 13, 1993, as owner of all the lots in Brookhaven Subdivision, a platted subdivision in Lowell, Benton County, Arkansas, hereby enters the following restrictive covenants with respect to said subdivision.

**1. BUILDING LIMITATIONS:**

**a. Single Family Residence**

No structure shall be erected on said designed lots other than a single-family dwelling, not to exceed two stories in height and no dwelling shall be erected on said lot that contains less than 1800 square feet excluding porches, garages, and breezeways. Further, each dwelling shall have a private garage or carport, for not less than two (2) cars and shall have a concrete driveway with a minimum width of not less than 16 feet. No building shall be located on any lot nearer than thirty (30) feet to the front of the lot line.

**b. Multi-family Residences – Duplexes**

No structure shall be erected on said designated lot other than a two-family dwelling (duplex). No duplex shall be erected on said lot that contains less than 2000 square feet excluding porches, garages, and breezeways. Further, each dwelling shall have a private garage or carport, for not less than two (2) cars and shall have a concrete driveway with a minimum width of not less than sixteen (16) feet. No building shall be located on any lot nearer than thirty (30) feet to the front of the lot line.

**c. General Specifications**

No dwelling shall be erected with less than seventy-five (75) percent masonry finish. All main roof framing shall maintain a minimum angle of six on twelve (6x12) rise. Ingress and egress within Brookhaven Subdivision shall be by dedicated streets only.

**2. ARCHITECTURAL CONTROL COMMITTEE – HEREINAFTER KNOWN AS THE ACC:**

No building shall be erected or placed on any property until the construction plans and specifications and a plan showing the location of the structure on the property have been approved by the ACC. Such plans shall be submitted to the ACC at least fifteen

(15) days prior to commencement of construction of same, and the written approval of the ACC shall be required before commencement of construction. In this regard, it is the intention and purpose of the covenant to assure that the exterior design of all the dwellings and accessory buildings will be aesthetically compatible with the other dwellings and accessory buildings in the subdivision. The ACC for Brookhaven Subdivision consist of three (3) volunteer members for a period of four (4) years (two (2) terms).

**3. HOME OCCUPATIONS:**

Home occupations as defined by the Lowell City Code only, no exceptions.

*City of Lowell Ordinance: Sec. 16-200. - Residential accessory uses.*

**4. SIDEWALKS:**

All properties shall have sidewalks according to the specifications set by the City of Lowell. All sidewalks must conform with each adjacent property.

*City of Lowell Ordinance: Sec. 16-259. - Sidewalks.*

**5. FENCES:**

Fencing of front yards is prohibited, except that decorative wood or masonry fencing of a maximum height of three (3) feet may be constructed upon approval by the ACC. Rear yard fences must be of a decorative wood design. Chain link fences and other forms of wire fencing are specifically prohibited. Dog pens properly screened by walls, fences, or planting may be constructed and maintained in the rear yard or portion of any property. So that full back yard view can be utilized, lots 13, 14 and 15, Phase I, and Lot 10, 11, 12, 13, 14, and 15, Phase II will be permitted to use chain link fences on the rear property line, if desired. All other line fences must comply with fence requirements.

Exception Property Addresses:

Phase I

Lot 13 - 427 Lewis Cove

Lot 14 - 416 Lewis Cove

Lot 15 - 408 Lewis Cove

Phase II

Lot 10 - 600 Kinkade Place

Lot 11 - 608 Kinkade Place

Lot 12 - 614 Kinkade Place

Lot 13 - 618 Kinkade Place

Lot 14 - 708 Kinkade Place

Lot 15 - 720 Kinkade Place

**6. OFF STREET PARKING:**

All vehicles, except recreational vehicles of the respective property owners, shall be parked in the garage or driveway of the respective property. No inoperative motor vehicle of any nature shall be permitted to remain on any property in excess of seven (7) days and no operative or inoperative motor vehicles shall be permitted to park on the

street overnight. A petition must be submitted to the POA Board for any inoperative vehicle requiring more than a seven (7) day period stay. Recreational vehicles and equipment including but not limited to boats, motor homes, travel trailers, campers, and the like, shall not be parked or stored within twenty-five (25) feet of the front property line for a period exceeding three (3) days. No truck tractor, tractor trailer, or utility trailer parking is allowed in this subdivision.

*City of Lowell Ordinance: Sec. 28-35. - Parking of common carriers, trucks, tractors, recreational vehicles, trailers, boats, and boat trailers on public streets prohibited.*

**7. SIGNS:**

No sign, either permanent or temporary, of any kind shall be placed or erected on any property except that a single sign not more than five (5) square feet in size may be permitted upon property to advertise the same for sale or rent.

**8. TEMPORARY STRUCTURES:**

No trailer, tent, shack, garage, barn or other outbuilding erected on a building site covered by these covenants shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. This restriction does not prohibit the storing of recreational vehicles on the properties.

**9. OUTBUILDING:**

Outbuildings shall be restricted to **one (1) per property** in compliance with city guidelines. Outbuildings may be constructed on the backyard provided said outbuilding is no larger than ten (10) feet by twenty (20) feet and its design is compatible with existing structure. Design of outbuildings is subject to the approval of the ACC. Cabana structures or gazebos may be built and maintained within the building area on any property in the addition. The interior area of a detached cabana will not be included in the determination of the minimum dwelling sizes.

**10. LIVESTOCK AND POULTRY:**

No animals or livestock of any kind shall be raised, bred or kept on said property, except that dogs, cats or other household pets may be kept, provided they not become a nuisance to the adjoining property owners nor are they kept, bred, or maintained for any commercial purpose; and that such house-hold pets must be kept in accordance with the leash law of the city of Lowell, Arkansas.

*City Ordinance: Sec. 6-23. - At large within city limits deemed unlawful.*

*City Ordinance: Sec. 6-27. - Number of animals allowed upon premises, exceptions.*

*City Ordinance: Sec. 6-26. - Nuisance animals and hazardous animals.*

**11. EASEMENTS:**

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No trees, incinerators, buildings, pavement, or similar improvements shall be grown, built, or maintained within the easements. Owners are hereby put on notice that any structures or plant material in the easements are subject to removal.

*City Ordinance: Sec. 22-5. - Obstruction of public streets, alleys, sidewalks, easements, and rights-of-way.*

**12. NUISANCES:**

No noxious or offensive activities shall be carried on upon said properties nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, it being the express understanding that the Brookhaven Subdivision is for residential purposes only.

**13. BINDING EFFECT AND AMENDMENTS TO COVENANTS:**

All persons or corporations who now or shall hereafter acquire any of the properties in this subdivision shall be deemed to have agreed and covenanted with the owners of all other properties in this subdivision and with their heirs, successors and assigns to conform and observe the restrictions, covenants, and stipulations contained herein for a period as hereinafter set forth. These covenants may be amended at any time upon the affirmative vote of eighty (80%) percent of each property present for voting. It is expressly required that each property shall be given one (1) vote, and a vote of eighty (80%) percent shall be deemed sufficient to amend said covenants. No changes in the protective covenants shall be valid unless the same shall be placed on record in the office of the Recorder of Benton County, Arkansas, duly executed and acknowledged by the requisite number of property owners.

**14. DURATION OF COVENANTS:**

These covenants and restrictions shall run with the land for a minimum period of twenty-five (25) years, to be automatically extended for successive periods of five (5) years without further action unless terminated by a majority of the property owners in the development, casting votes as hereinabove set. It is the intent that these covenants promote the aesthetic value of Brookhaven Subdivision.

**15. COMMON PROPERTY:**

- a. All property owners, Phase I and Phase II, shall be owners of an equal portion of the undivided designed common area. Ownership of one or more residential properties does make joint ownership with other residential property owners automatic and non-revocable. Joint ownership of the common property does afford ownership characteristics expected, both use, design, and burden of

expense. All persons using the common area do so at their own risk. The POA will not be held liable for any accidents.

- b. A Property Owners Association (POA) was formed in 1993, for the purpose of governing and administering the common property. The annual POA dues shall be determined by the POA and will be used for the expressed purpose of maintaining the subdivision entrance, common area and payment of required insurance. Each property owner shall pay annual POA dues. Collection of these dues will be on a bi-annual or annual basis. POA dues are subject to change based on Brookhaven Subdivision POA needs and require a majority vote to change. A late fee of \$10.00 per month will be added on to any dues not paid by December 31<sup>st</sup> of each year.

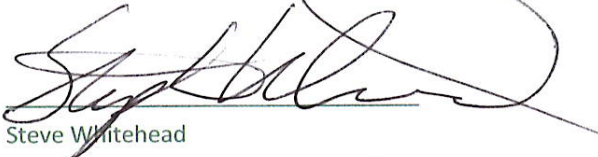
**16. HOME MAINTENANCE:**

All property owners will maintain their respective properties in a neat and attractive condition. If the majority of the property owners agree that a property is not being maintained to the standard of the subdivision, the POA may correct the problem(s) at the expense of the property owner. This includes the dwelling interior/exterior, outbuildings, and property landscape.

*This paragraph was voted on and approved on March 8, 1995.*

Updated 10/08/2020

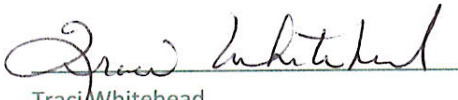
**Covenant and Bi-Law Update Committee:**



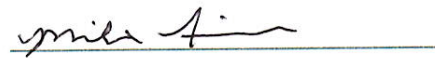
Steve Whitehead  
Brookhaven Property Owner President



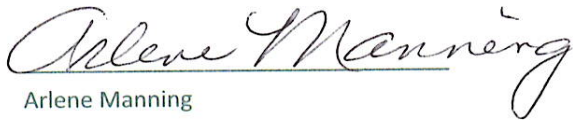
Joey Kebert  
Brookhaven Property Owner Secretary



Traci Whitehead  
Brookhaven Property Owner Treasurer

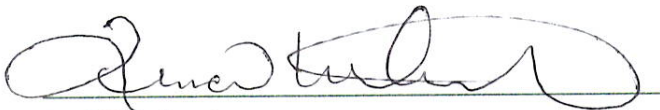


Mike Finn  
Brookhaven Covenant and Bi-Law Update Committee Member



Arlene Manning  
Brookhaven Covenant and Bi-Law Update Committee Member

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I, Traci Whitehead, Brookhaven Property Owner Treasurer confirm that all updates and changes to the Brookhaven POA Covenants were approved by at least 80% of the property owners present at the meeting on 10/08/2020. Next review of covenants will be in 2026.



Traci Whitehead  
Brookhaven Property Owner Treasurer



Before me on 16th day of  
October, 2020.  
My Commission 09/28/2027  
Wilma M. Verneti  
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**BI-LAWS OF THE  
BROOKHAVEN PROPERTY OWNERS ASSOCIATION INC.,  
AN ARKANSAS NON-PROFIT CORPORATION**

ARTICLE I  
**MEMBERSHIP**

Membership in the Brookhaven Property Owners Association shall be restricted to the owners of lots within Brookhaven. Each lot shall represent one membership.

ARTICLE II  
**MEETINGS OF THE ASSOCIATION**

1. **Meetings.** The Brookhaven Property Owners Association shall meet no less than once per year at a time and place to be determined by the Property Owners Association POA Board. Notice of time and place of such meeting shall be delivered to each member by regular mail or email no less than 14 days in advance of said meeting.

2. **Special Meetings.** Special meetings of the Brookhaven Property Owners Association may be called at any time by the POA Board and held upon proper notice by regular mail or email to the membership, not less than 14 days prior to such meeting.

3. **Notice of Meetings.** Written notice of any meeting of the Property Owners Association shall be given by regular mail or email to each member (one lot=one member) at the street address of that member's Brookhaven lot or at such other address as provided to the association by the member. In the event that ownership of any given lot rests in multiple parties in more than one household, the Association shall provide one written notice to any of such persons whose names appear on file with the Association at the Association's sole discretion. If the purpose of the meeting described in the notice is an annual meeting of the Property Owners Association, it shall be so stated in the notice. If the meeting is a special meeting, then the purpose of said special meeting shall be stated in the notice. All known issues that require a vote by members of the Property Owners Association at the next announced meeting will be listed on the written notice.

4. **Voting.** Each lot shall be entitled to one vote by its member or members in the Property Owners Association. Any member or members, owning more than one lot at the time of a vote, shall be entitled to multiple votes equivalent to the number of lots owned at the time of the meeting by said member. A majority vote of those voting lots represented by members present at the meeting shall be sufficient to pass any resolution or other matter placed to a vote before the meeting. A member of the Property Owners Association may

vote at any meeting of the Association by being present in person or by giving to some other person present at the meeting a written proxy bearing the member's original signature. In the event a silent vote is requested, ballots will be issued at that time.

5. **Calendar.** For accounting and officer term definitions, the Property Owners Association will divide the calendar year into Winter and Summer periods. The Winter period will be defined as the dates between January 1<sup>st</sup> and June 30<sup>th</sup>, and the Summer period will be defined as the dates between July 1<sup>st</sup> and December 31<sup>st</sup>.

### ARTICLE III **OFFICERS**

1. **General Positions.** The Property Owners Association shall have a President, Secretary, and Treasurer. These three positions make up the POA Board.
  
2. **General Powers.** The President shall preside over all meetings of the Property Owners Association, all meetings of the POA Board, and shall be authorized to call meetings of the POA Board. The Secretary shall maintain and record minutes of each meeting of the POA Board and the Property Owners Association and shall be responsible for preparation and mailing of proper notice, as required herein, of all meetings or other matters for which notice is required to membership. The Treasurer shall be responsible for maintaining accurate books and records of the finances of the Property Owners Association and shall give a treasury report at annual meetings. At any time, the books and records of the Treasurer shall be open to audit.
  
3. **Term.** Each officer shall serve in the position so appointed for a period of two (2) years. **Participation as an officer is mandatory for those members whose permanent residence is in the Brookhaven subdivision. All terms end on June 30<sup>th</sup> of odd numbered years. Officers shall be appointed once every two years by either a volunteer basis or random drawing.** Three lot numbers (each representing the lot number of the member's property) will be drawn randomly. The member whose lot number is drawn first will serve as President. The member whose lot number is drawn second will serve as Secretary for the next term. The member whose lot number is drawn last will serve as Treasurer for the next term. The lot numbers of the members that have not served as an officer will remain in the drawing until all qualified members have participated as an officer. When all members have served as an officer, then all lot numbers will be returned to the random drawing and the process of selecting officers recycles. Multiple lot owners will only have one lot number in the drawing. It is the responsibility of the Secretary to maintain an accurate history of past and present officers of the Brookhaven Property Owners Association.



4. **Vacancies and Resignations.** An officer may resign at any time by petitioning his or her written resignation to the remaining two officers. If the resignation is accepted by the two remaining officers, it is the responsibility of the resigning officer to relinquish all records, materials, and other items that are relevant to the position to one of the two remaining officers. In the event a vacancy occurs by resignation or any other reason, the position made vacant shall be filled by another random drawing of the lot numbers of those members who have not served as an officer during the current cycle. This random drawing will be held by the remaining two officers, and it is their responsibility to immediately notify the new officer of his or her appointment to the POA Board and to hand over any pertinent materials that are relevant to the position. The person appointed to fill such a vacancy shall serve out the remainder of the term vacated and shall step up in office as above described, as though originally appointed for the full term.

5. **Execution of Written Instruments.** The POA Board of the Property Owners Association is authorized to execute on behalf of the Association contracts or other written instruments.

6. **Checks and Notes.** Checks, notes, drafts, and demands for money shall be signed by any member of the POA Board of the Property Owners Association that are listed at the financial institute (names and signatures must be on file at the financial institute). Any checks or drafts over \$750.00 must be signed by two members of the POA Board.

7. **Removal.** Officers of the Property Owners Association may be removed for cause only by a majority vote of those members voting (including proxy votes) after proper notice of such question to the membership as set forth above.

#### ARTICLE IV **POA BOARD**

1. **Formation.** The POA Board shall be formed by the President, Secretary, Treasurer of the Property Owners Association.

2. **Powers of the Board.** The POA Board shall have the express authority to prepare an annual budget for the Property Owners Association and to propose the amount of annual assessments to members of the Property Owners Association for the purpose of facilitating the carrying out other duties of the Property Owners Association. The approval of the proposed annual Property Owners Association assessment must be by a majority of the membership present and voting (including proxy votes).

The POA Board shall further have the authority to initiate foreclosure on behalf of Brookhaven Property Owners Association upon any liens created by past due or unpaid POA dues or unpaid costs, as provided in the Protective Covenants of Brookhaven. In the event that the POA Board accrue added expenses and fees due to the pursuing of a delinquent account, all expenses will be added to the total amount due of the delinquent account.

ARTICLE V  
**POWERS AND DUTIES OF PROPERTY OWNERS ASSOCIATION**

The Property Owners Association shall have the authority through its officers to perform the following duties:

1. Maintenance of all common areas of the Property Owners Association.
2. Determine and collect annual assessments. Assessments are per PROPERTY, not per MEMBER. Assessments will be collected at the beginning of the Winter and Summer periods (as defined in Article II, Section 5). Bills over 90 days past due will be subject to collection.
3. Enforce the Protective Covenants and By-Laws of the Property Owners Association. The Protective Covenants are incorporated into the By-Laws.
4. Pay common area insurance (acquire insurance as may be deemed appropriate by the Board of Directors).
5. Perform any other activity necessary to promote and preserve the integrity, safety, and property values of Brookhaven Subdivision as the membership of the Property Owners Association may deem appropriate.
6. Pay property taxes on common area, if applicable or required.

ARTICLE VI  
**AMENDMENT AND EFFECTIVE DATE**

These By-Laws may be adopted, amended, or repealed at any meeting of the general membership by a majority vote thereof, of those members present. These By-Laws shall be effective on the day and year indicated herein below, same being the date upon which these By-Laws were approved by majority vote of those person eligible for membership in the Property Owners Association as set forth above.

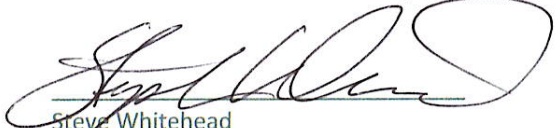
DATED this 10<sup>th</sup> day of October, 2020

BROOKHAVEN PROPERTY OWNERS ASSOCIATION

Updated 10/08/2020

User Name: VILLI  
CERTIFICATE OF RECORD  
STATE OF ARKANSAS, COUNTY OF BENTON  
I hereby certify that this instrument was  
Filed and Recorded in the Official Records  
L202068831 10/23/2020 1:07:24 PM  
Brenda DeShields, Circuit Clerk  
BENTON CO, AR FEE \$65.00

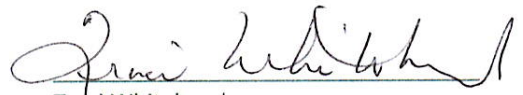
**Covenant and Bi-Law Update Committee:**



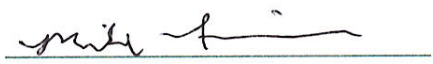
Steve Whitehead  
Brookhaven Property Owner President



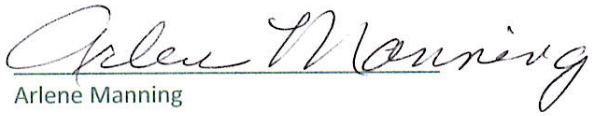
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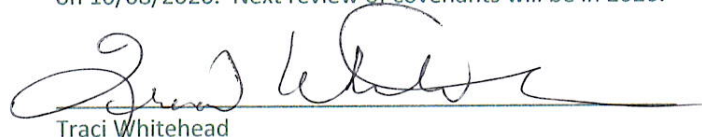


Mike Finn  
Brookhaven Covenant and Bi-Law Update Committee Member

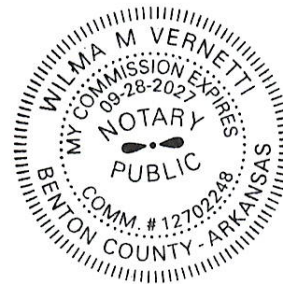


Arlene Manning  
Brookhaven Covenant and Bi-Law Update Committee Member

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Traci Whitehead  
Brookhaven Property Owner Treasurer



Before me on 11th day of  
October, 2020, my commission  
09/28/2027  
Wilma M Verneti