

**FIRST AMENDMENT TO
RESTRICTIONS BENWOOD
SUBDIVISION
PHASE II**

22017862

8 PGS:AL-RESTRICTIONS	
DINA BATCH: 295096	12/07/2022 - 01:58 PM
MORTGAGE VALUE:	0.00
TRANSFER VALUE:	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	40.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	42.00

STATE OF TENNESSEE, BRADLEY COUNTY
DINA SWAFFORD
REGISTER OF DEEDS

IF "ENVARIABLE "SWITCHES ON" : " " THE PROPERTY "SWITCHES ON" - 1984-1985-1986

This First Amendment to Restrictions of Benwood Subdivision Phase II (this "**Amendment**") amends those certain Restrictions of Benwood Subdivision Phase II, of record in Book 245, Page 623, in the Register's Office of Bradley County, Tennessee (the "**Restrictions**").

The Restrictions are amended to delete Paragraph 13 thereof in its entirety and to substitute the following in lieu thereof:

13. **SWIMMING POOLS.** In order to preserve to the extent possible, the aesthetics of the Subdivision, to maintain a pleasant and desirable environment, to establish and preserve a harmonious design for the Subdivision, and to promote and protect the value of the Subdivision properties, this Section 13 shall govern the construction and installation of swimming pools. No swimming pool, whether in-ground or above-ground, spa, hot tub, or prefabricated pool greater than 24 inches deep (each of which is referred to herein as a "**Pool**") may be installed or altered prior to the issuance thereof of a permit by the Benwood HOA Board upon the recommendation of the Architectural Review Committee (hereafter referred to as "**ARC**"). An application for a permit to install or alter a Pool shall be accompanied by construction and architectural plans for the Pool, which must contain the following information and meet the following requirements (the "**Plans**"):

a. A dimensioned site plan, drawn to a minimum scale of $1/8" = 1'0"$, on a minimum of 18" X 24" and maximum paper size of 24" X 36" paper shall be submitted with the application for the Pool permit.

b. The plan shall include all of the following information:

i. A separate site drainage plan shall be included as part of the submittal plan.

The site drainage plan shall include all the following items:

- Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection that does not create a hazard. Lots shall be graded to drain surface water away from foundation walls.
- The grade shall fall a minimum of (6) inches within the first (10) feet from a structure. Exception: Where lot lines, walls, slopes, or other physical barriers prohibiting (6) inches of fall within (10) feet, drains or swales shall be constructed to ensure drainage away from the structure. Impervious surfaces within (10) feet of the building foundation shall be sloped above and shall apply from the building's foundation a minimum of 2 percent away from the building

ii. The location of the proposed Pool, property lines, easements, recorded rights-of-ways, and the location of all underground and overhead utilities on the lot to contain the Pool shall be indicated on the submitted plan. The location of the proposed Pool shall be dimensioned on the plan to show the rear property line setback, side yard setbacks, and dimensioned clearances from all the existing and proposed structures.

- iii. All existing and proposed structures, patio covers, pool houses, cabanas, changing rooms, decks, pool slides, grotto structures, fireplaces, fencing, retaining walls, and other relevant site characteristics adjacent to the Pool area shall be indicated on the submitted plan.
- iv. All Pools and Pool equipment and appurtenances proposed to be constructed or installed shall be shown on the site plan with dimensions to all property lines and structures. Such equipment shall be located at least (15) feet from any habitable openings of a structure on the adjacent property, and at least ten (10) feet from all property lines, whether rear or side. Size, location, and materials for gas, electrical, and water services to the Pool equipment shall be shown on the site plan.
- v. Construction or location of any decorative items such as statues, ornaments, and fountains shall be indicated on the submitted plan and are subject to review by the ARC.
- c. The architectural and design review shall be directed towards preventing excessive or unsightly grading, indiscriminate clearing of the subject property, removal of trees and vegetation which could cause disruption of natural water courses, and ensuring that the Plans indicate a visually pleasing setting for the proposed Pool and related structures.
- d. Pools shall be installed by a licensed and insured professional Pool installer.
- e. Prior to commencing construction of any Pool, the Owner(s) shall have the responsibility to ensure that any permitting required by applicable governmental authorities, including but not limited to any building permit, land disturbance permit, plumbing permit, electrical permit, or any other permit as may be required by the appropriate governmental authorities. Owners shall have the responsibility of ensuring compliance with all applicable laws, ordinances, rules and regulations in the design, construction, and use of the Pool.
- f. An electrical permit will be obtained and electrical equipment required will be installed by a licensed and insured electrician underground as per paragraph 17 of the Restrictions. Electrical work will be inspected by Bradley County.
- g. All Pools and Pool equipment and appurtenances shall be located in the rear yard of the lot. As used in these Restrictions, "rear yard" means the area extending the full width of a lot measured between the rear line of the lot and the rear line of dwelling on the lot.
- h. Pools shall conform to the side yard setback requirement, and all Pools and Pool equipment and appurtenances shall be located in the rear yard of the lot at least 10 feet from any septic tank, septic field, building, fence or property line/property boundary marker (either rear or side marker). Owners are responsible for ensuring that any Pool or surrounding deck, fence, changing area, or other accompanying structure does not in any way encroach on a neighboring property or common area.

i. Pool may not be located over any underground sewer, septic tank, field lines or any other utilities. Pool water shall not be discharged onto a septic field. Pool water may not be discharged onto any neighbor's property.

j. There shall be a privacy fence surrounding the rear yard of all lots containing a Pool with a gate to open outwards away from the Pool and equipped with a locking device. Such fences shall not be less than 5 feet in height from ground level. The location, appearance, and materials to be used in all fences must be approved in advance by the ARC. Chain link fencing, including that which has been modified in an attempt to make it private, will not be approved. Fencing must also comply with any applicable state, federal, county, or municipal law or ordinance regarding safety requirements for Pool fencing and access and Owner(s) shall be responsible for ensuring such compliance.

k. Each property owner shall be responsible for maintaining the fence in good repair and condition. Any portion of a fence that has missing or damaged members, is leaning out of plumb or what has become unsightly due to lack of paint or other finish shall be considered to be in substandard condition.

l. Above-ground Pools shall have a security ladder in place that must be locked or removed when not in use. An alarm shall be installed on the Pool according to the Tennessee state code which will sound at 50 dB or greater when an object greater than 15 pounds enters the water.

m. A deck may be installed around an above-ground Pool in compliance with this section. If no deck is installed the owner shall landscape the perimeter of the Pool so as to improve aesthetics.

n. The homeowner must keep the Pool clean and chemically treated according to the Tennessee Department of Health guidelines.

o. Should an Owner(s)'s residence become vacant, Owner(s) shall be required to drain the Pool and keep it drained during the period of such vacancy so as to prevent health and safety hazards.

p. The plan for installation must be approved by the ARC prior to commencement of Pool installation.

q. Construction or Installation of the Pool and all equipment and appurtenances shall be completed within 60 days of commencement unless otherwise approved in advance by the ARC.

r. Proof of liability insurance from Owner's insurance company which includes covering bodily injury arising out of the pool shall accompany this plan.

s. Two copies of all Plans and related data shall be furnished to the ARC. One copy shall be retained in the records of the ARC. The other copy shall be returned to the Property Owner marked "approved" or "disapproved" after analysis by the ARC. For example, the ARC may approve construction of a Pool and equipment and appurtenances in stages if so desired by the Owner.

t. The ARC shall establish a fee sufficient to cover the expense of reviewing Plans and related data upon submission and to compensate any consulting architects, landscape architects, urban designers or attorney's retainers. The Fee initially established by this Amendment shall be Three Hundred Fifty and no/100ths Dollars (\$350.00) for each plan submission. The ARC shall have the right to increase this amount not more than once per year and not in excess of ten percent (10%) in any subsequent twelve (12) month period.

u. The ARC shall notify Owner of its initial review of the plan within 30 days of receipt of said plan, including whether the plan has any gross omissions or if there is a need to consult with any architects, landscape architects, urban designers or attorney as referenced in paragraph "t."

v. No approval by the ARC shall be deemed to have been given unless such approval is in writing. Approvals shall be dated and shall not be effective for construction commenced more than six (6) months after such approval unless a different expiration date is specifically stated in the approval. If construction of the proposed Pool shall not have commenced within six (6) months of approval, the approval shall no longer be valid.

w. Refusal of approval of Plans, location or specification may be based by the ARC upon any ground which is consistent with the objectives of these Covenants, including purely aesthetic considerations, so long as such ground is not arbitrary and capricious.

x. Disapproved Plans and related data shall be accompanied by a reasonable statement of items found unacceptable. Owner shall have sixty (60) days to resubmit a plan to the ARC without incurring an additional fee.

y. Once the ARC approves the Plans, the Pool and its appurtenances shall be constructed in substantial conformity with the approved Plans. At all times during the construction of the Pool, the ARC or an authorized agent thereof shall have access to the construction site for the purpose of inspection and confirmation that the construction is in substantial conformity with the approved Plans.

aa. No approval of the plans and specifications for a Pool or its location shall be construed as representing or implying that such plans or specifications, or standards will, if followed, result in a properly designed Pool. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence or improvement thereto will be built in a good and workmanlike manner.

bb. Neither the Benwood Homeowners' Association, Inc. nor its ARC shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved under these Restrictions nor for any defects in construction pursuant to such plans and specifications nor for any personal injury or property damage arising out of the operation or use of any Pool. The Owner(s) shall have sole responsibility for compliance with approved plans and does hereby, by acceptance of title to property subject to these Restrictions, agree to protect, defend, indemnify, and hold harmless the ARC and the Benwood Homeowners' Association, Inc. from any and all claims, damages, losses, liens, judgments, penalties, expenses, including reasonable attorneys' and consultants' fees, and liabilities arising out of or relating to any injury to any person or loss of or damage to property that occurs as a result of or in connection with (i) any defect in such plans and specifications or (ii) the Owner's Pool or its equipment and appurtenances. The Benwood Homeowners' Association, Inc. reserves the right to prohibit the Owner's builder and/or general contractor from going to or upon the site in the event it is determined that failure to comply with approved plans is intentional or due to negligence under the above-mentioned circumstances. The Owner(s) hereby agree(s) that the exercise of these rights shall not constitute a denial of Owner(s)'s property rights and shall not give rise to a cause of action for damages by the Owner(s).

cc. The ARC has authority to obtain the services of a licensed and insured Pool installer or licensed and insured electrician to inspect any violation. Owner(s) shall be responsible for all inspection costs.

FIRST AMENDMENT TO RESTRICTIONS BENWOOD SUBDIVISION PHASE II

This document was prepared by Deborah Drake, President Benwood Homeowners' Association, INC. and Tawnia Laconca, owner of lot # 56, Phase II Benwood Subdivision. Legal counsel was provided by Phillip Whitaker, attorney with Baker Donelson, Bearman, Caldwell & Berkowitz, PC.

I hereby affirm that my name and address are as follows:

Name: Deborah Drake

Address: 300 Webb Lane NE

City: Cleveland State: TN Zip: 37323

Preparer's signature Deborah Drake

This instrument was acknowledged before me on the

05th day of December year 2022

Savanna L McClain

Notary Public, Bradley County

My Commission Expires 02-11-2026



My Commission Expires Feb. 11, 2026

FIRST AMENDMENT TO RESTRICTIONS BENWOOD SUBDIVISION PHASE II

This document was prepared by ~~Deborah Drake~~ Deborah Drake, President Benwood Homeowners' Association, INC. and Tawnia Laconca, owner of lot # 56, Phase II Benwood Subdivision. Legal counsel was provided by Phillip Whitaker, attorney with Baker Donelson, Bearman, Caldwell & Berkowitz, PC.

I hereby affirm that my name and address are as follows:

Name: Tawnia Laconca
Address: 331 MacMillan Rd NE
City: Cleveland State: TN Zip: 37323
Preparer's signature Tawnia Laconca

This instrument was acknowledged before me on the

6th day of December year 2020

Nicole K Stence
Notary Public, Bradley County

My Commission Expires March 24, 2024

