

NAME

By resolutions of the Board of Directors of Hurstbourne Towne Homes Residents Association, Inc. and the Board of Directors of Highbaugh Enterprises Incorporated, dated June 23, 1976, Hurstbourne Towne Homes will also be known as and also referred to as:

“WESSEX PLACE AT HURSTBOURNE”

DEED OF RESTRICTIONS

1. Structures
2. Residential Use Only
3. All Commercial Activities Absolutely Prohibited
4. Set Back Line
5. Additions, Alterations or Improvements
6. Prompt Completion of Approved Additons, Alterations or Improvements Required
7. Disposal of Refuse
8. Nuisances Prohibited
9. Signs
10. Children’s Toys and Other Recreational Equipment
11. Fences, Walls Hedges
12. Insurance Required
13. Repair or Replacement of Damaged or Destroyed Improvements
14. Maintenance Association and Covenants for Maintenance Assessments
15. Exterior Maintenance Assessments, Covenants and Restrictions
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17. Construction and Enforcement of Restrictions
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20. Amendments
21. Executed in Counterpart

## DEED OF RESTRICTIONS

This declaration of restrictions WITNESSETH THAT:

WHEREAS, Highbaugh Enterprises Incorporated, a Kentucky corporation, on the 10<sup>th</sup> day of September, 1975 executed a certain Declaration of Restrictions of Hurstbourne Towne Homes, Section 1, recorded in Deed Book 4808, Page 150, as amended in Deed Book 4864, page 138, in the office of the Clerk of the County Court of Jefferson County, Kentucky, and

WHEREAS, at the time of the said execution of said Deed of Restrictions, Highbaugh Enterprises, Incorporated, was the owner of all lots in Hurstbourne Towne Homes, Section 1, Jefferson County, Kentucky, a play of which appears of record in Plat and Subdivision Book 31, Page 7, in the Office of the Clerk, aforesaid, and

WHEREAS, paragraph 21 of said Deed of Restrictions provides for alteration or amendment of same at any time, and from time to time upon the action of at least three-fourths (3/4) of the total number of lots in the subdivision.

WHEREAS, the improvements contemplated for this subdivision are what are commonly known as Town Homes; and WHEREAS, a peculiar interdependency exists between Town Homes which necessitates restrictions upon the use and maintenance of all houses and lots in this subdivision.

NOW, THEREFORE, the undersigns constituting the owners of \_\_\_\_\_ of the 50 lots comprising the subdivision, do hereby adopt the following Amended Deed of Restrictions and imposes same upon each and all lots platted in said subdivision, and makes the same subject to the following amended restrictions which are intended to be a neighborhood covenant to assure the continued residential character and aesthetic appeal of the subdivision, to wit:

1. Structures: No structures shall be erected, altered, placed, or permitted to remain on any lot in the subdivision except one single family private dwelling or residence, which shall be attached to and separated from the adjoining residences by a party wall on either side of the structure, or only on one side in the case of a dwelling which is a corner lot, attached or detached garages shall be allowed only as shown on the recorded plans, or as authorized as provided in Article 5. Of this Amended Deed of Restrictions. No

structure shall have more than two and one half stories not exceed 35 feet in height.

2. Residential Use Only: Each lot shall be known and described as a residential lot and shall be used exclusively for residential purposes, except Lot 24 which may be used for a clubhouse and/or recreation area.
3. All Commercial Activities Absolutely Prohibited: No trade or business of any kind (and no practice of medicine, dentistry, chiropody, osteopathy and like endeavors) shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, nor shall any horse, cow, hog, goat or similar animal nor any chickens, ducks, geese or other fowl be kept or maintained on said lot or any part thereof. Dogs and cats may be kept as pets but neither shall be kept for commercial or breeding purposes. Dogs, cats, and other pets shall at all times be confined to the lot occupied by the owner of a dog, cat, or other pet. Jefferson County Leash Laws require said pets to be confined to a leash and pet owner be responsible for excrement removal. Violations to be enforced as per Rules and Regulations. Owner must also make sure pet barking does not disturb neighbors.
4. Set Back Line: No structure shall be erected on the portion of any lot lying between the building lines as shown on the

recorded plans of the subdivision, and the front property line (for all lots) and the side property line (for corner lots), except bay windows and steps may project into said area, and open porches may project into said area not more than six feet.

5. Additions, Alterations or Improvements: No additions to, or alterations or improvements of, the original exterior architecture, design, or color of the structure on each lot may be made without the written approval of Hurstbourne Town Homes Residents Association, Inc. (hereinafter provided for and hereinafter called the "Association"), The Association shall require submission of a written statement of such proposed additions, alterations, or other improvements, including architects' plans and a schedule of materials to be used which specifies grade, quality, and color, and whatever other information the Association deems necessary to make an informed decision as to whether the proposed changes will harmonize with the appearance and utility of other existing structures in the subdivision and conform this Deed of Restrictions. In the event that the Association fails to act to approve or disapprove a written request for approval of proposed changes within thirty days after receipt of the request, the

property owner proposing such changes may deem such changes approved. The Association shall have no power to approve changes which violate these restrictions nor shall failure of the Association to disapprove changes entitle any property owner to act in contravention of them.

6. Prompt completion of Approved Additions, Alterations or Improvements Required: All additions, alterations, or improvements approved by the Association shall be completed as promptly as circumstances will permit. The Association may require, at the time of its approval, completion of such projects within a certain period.
7. Disposal of Refuse: No lot shall be used or maintained as a dumping ground for trash. Trash, garbage, or other waste shall not be kept except in sanitary closed containers. No incinerators or other equipment for the disposal of such material shall be permitted on the premises except a garbage disposal unit attached to the plumbing. There shall be no burning of trash or any kind of refuse on the premises of any lots in the subdivision.
8. Nuisances Prohibited: No noxious, offensive, or noisy activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become an annoyance or nuisance to the neighborhood.

9. Signs: No sign may be placed upon any house or lot except a single sign not exceeding three feet by three feet may be placed to advertise the availability of the property for rent or sale.

10. Children's Toys and Other Recreational Equipment: No person shall permit children's toys or other recreational equipment, including any two (2) or three (3) wheeled vehicle, whether or not used exclusively for recreational purposes, to remain in front of any house permanently or as a regular practice.

No motor boat, houseboat or other similar water borne vehicle, no mobile home or travel trailer, either with or without wheels, and whether or not self-propelled, no trailer, truck, or commercial or farm vehicle of any type, whether with or without wheels and no automobile which is inoperable, may be maintained, stored, parked or kept on any lot, (including, without limitation, any portion of a lot behind the garage or in an area designated as "access easement" on the subdivision plat showing the lot); except that the same may be kept within the enclosed garage on the lot; and none of the foregoing shall be habitually parked or kept on any street.

No trailer, tent, shack, barn or other outbuilding shall at any time be located on the property and any detached garage erected

or placed on any lot shall not be, at any time, used as a residence, temporary or permanently, and no structure of a temporary character shall be permitted on any lot.

Small satellite dishes are permitted as long as it is not visible from Wessex Place Street.

The foregoing shall not prevent contractors or owners from erecting or placing on any lot for temporary use during construction or development any facility, materials and equipment related thereto which shall be removed when construction or development is completed.

11. Fences, Walls, Hedges: No fence, wall or hedge for the purpose of dividing or enclosing lots shall be constructed or planted forward of the front elevation of the residential structure nor beyond the side elevation facing a side street of a residential structure on the corner lot, without the prior written approval of the Association.

12. Insurance Required: The owner of each lot shall insure all improvements, existing or hereafter placed upon his lot or lots, against loss by fire, tornado, and such other hazards, casualties, and contingencies, and at a minimum in such amounts as the Association shall from time to time require. Such insurance shall be made payable to the owner, or his nominee (which may be any mortgage holder), and the Association jointly and copies of

policies taken out pursuant to this provision shall be delivered by the purchaser to the Association Secretary at the time of the closing of the sale of the lot. Lots not changing ownership shall submit copies of the insurance policy by the first day of the Wessex Place Homeowners fiscal year. Owners in noncompliance will be refused use of common facilities.

13. Repair or Replacement of Damaged or Destroyed

Improvements: The owner of each lot shall promptly repair or replace any improvement on his lot which is damaged or destroyed in any manner whatsoever. Such repair or replacement shall conform to this Deed of Restrictions and shall be treated as an addition, alteration, or improvement under paragraph 5. Any proceeds from the insurance received in payment for the damage or destruction shall be disbursed only to cover the expenses of repair or replacement until such time as the repair or replacement is completed and paid for, at which time the balance remaining shall be paid to the owner or his nominee. Failure to abide by this provision shall entitle the Association to proceed as if the owner had failed to keep his lot in good repair and utilize the powers and procedures of paragraph 14 of this Deed of Restrictions.

14. Maintenance Association and Covenants for Maintenance

Assessments: The Articles of Incorporation of Hurstbourne Town Homes Residents Association, Inc. (herein called Association). Which articles may be amended from time to time, dated August 20, 1975, are recorded in Corporation Book 231, Page 313 in the office of the Clerk of the County Court of Jefferson County, Kentucky. Every owner of a Building Site in Hurstbourne Town Homes, shall be a member of the Association and by acceptance of a deed for any Building Site agrees to accept membership in, and does thereby become a member of, the Association. Such Owner and member shall abide by the Association's bylaws, rules and regulations, and shall pay the assessments provided for, when due, and shall comply with all decisions of the Association's Board of Directors.

The objects and purposes of the Association shall be set forth in its Articles of Incorporation and shall otherwise be to promote the social welfare and serve the common good and general welfare of its members, and may include maintenance and repair of the Common Properties, and maintenance and repair of streets, walkways, storm drains, basins, yards and other Common Property on the recorded plat of Hurstbourne Town Homes, and

shall include acceptance of Common Properties for purposes of operation, maintenance and repair.

It shall be the responsibility of the Association to maintain the Common Properties and failure of the Association to maintain them shall authorize any governmental authority concerned with maintenance of such areas to perform the required maintenance and have a claim upon said property for the reasonable expenses thereof, together with the right of such authority to enforce the restrictions herein relating to obligations concerning open space.

Each owner of a building site shall pay to the Association annual assessments and, when levied, special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as provided herein and in the Association's bylaws. The annual and special assessments, together with such interest thereon as provided, shall be a charge on the land and shall be a continuing lien upon the Building Site against which each such assessment is made. Each such assessment, together with such interest thereon as provided, shall also be the personal obligation of the person who is the owner of such property at the time when the assessment fell due.

The assessments levied by the Association shall be made and used for the purpose of promoting the health, safety and

welfare of the residents of the building sites and in particular for the improvement and maintenance of the property, for services and facilities for the property and for the persons residing therein; and improving and maintaining the common properties; including but not limited to, the payment of taxes and insurance on the common properties, and the repair, replacement and making additions thereto, and the maintenance of utility and other services, including garbage collection, if found to be necessary, and other comparable services and benefits; and for the cost of labor, equipment, materials, management and supervision thereof.

From and after January 1, 1977, the annual assessment may be increased or decreased as provided by the Association's Board of Directors for the next succeeding year or years. The Association's Board of Directors may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a greater or lesser amount.

In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement on the common properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of the Association's

members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty days in advance and which shall set forth the purpose of the meeting.

The Association's Board of Directors shall fix the due date and the amount of each assessment against each building site, which assessment period shall be at least thirty days in advance of such due date. At that time the Board of Directors shall prepare a roster of the building sites and assessments applicable thereto which shall be kept in the possession of the Association's secretary or other officer designated by the Board of Directors. Written notice of each assessment shall be sent to the owner at least thirty days prior to the due date. The Association shall, upon demand, furnish to any owner, a certificate in writing signed by an officer of the Association setting forth whether his particular assessment has been paid. Each certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with interest thereon, become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. An officer of the Association shall have the power to file or record

a notice of lien, or lis pendens, in the office of the Clerk of the County Court of Jefferson County, Kentucky. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation and shall be enforceable against him.

If an assessment is not paid within thirty days after the delinquency date, the assessment shall bear interest from the date of the delinquency at the statutory rate of interest applicable to judgments, and the Association may bring legal action against the owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided by law, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided to be fixed by the Court, together with the cost of the action.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the building sites subject to assessment; provide, that such subordination shall apply only to the assessments which have become due and payable prior to a sale, or transfer of such property pursuant to a judicial enforcement of the mortgage, or any proceeding in lieu of foreclosure and not to any assessments which become due thereafter, and provided further that a purchaser for value without notice shall not be bound by delinquent assessments unless due notice is filed as provided hereinabove.

The common properties shall be exempt from the assessments and the charge and lien created hereby.

15. Exterior Maintenance Assessments, Covenants and Restrictions: The Association will contract for unified grass cutting of all lots and common areas. The owner of each lot shall maintain the house and other improvements on his lot including that portion of the right-of-way between the property line and the pavement of the street, in a state of good repair, keep the driveway in good repair, keep the lawns mowed and free of trash, the garden free from weeds, and the premises as a whole in a general state of good repair and free from all eyesores of any description. Should any owner fail to comply with this provision the Association may by certified mail notify the owner of its intent to perform the maintenance at the owner's cost. If the owner so notified fails to make reasonable efforts to comply with this restriction within ten days after the receipt of such notice, the Association, when the Board of Directors deems it necessary, may provide the needed exterior maintenance upon any building site, including but not limited to the following: painting, repairing, replacing and caring of roofs, gutters, down



spouts, exterior building surfaces, trees, shrubs, lawns, walks and other exterior improvements.

The cost of such exterior maintenance shall be assessed against the building site upon which such maintenance is done and shall be added to and become an additional part of the annual maintenance assessment or charge to which such building site is subject hereunder and, as part of such annual assessment or charge, it shall be a lien on the property and an obligation of the owner and shall become due and payable in all respects as provided herein.

For the purpose solely of performing the exterior maintenance authorized by this Section, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any building site or exterior of any building at reasonable hours.

Should any owner feel that the Board of Directors has abused its discretion and ordered work done that was unnecessary, such owner may submit the question to those members actually present and attending the first annual meeting following the assessment for that work, or at a special meeting of the members which shall be called in accordance with the by-laws of the Association for such purpose at the request of such owner. If a majority of those attending by written vote agree with his position, said owner shall be relieved of such

assessment or portion thereof and the remaining cost shall be borne by the Association.

16. Party Walls: Walls between adjoining residential structures shall be party walls. With respect to a party wall adjoining a residence the owner of the residence shall have the following rights against the other owner adjoining the party wall and shall be subject to the corresponding duties to the other owner adjoining the party wall.

- a. The right to have the other owner adjoining the party wall bear half of the expense of maintaining the party wall.
- b. The right to have the other owner adjoining a party wall bear one-half the expense of repairing or rebuilding a party wall damaged or destroyed by any cause whatsoever, except that when such damage or destruction results from the negligence of either owner adjoining the party wall, the entire expense of repair or replacement shall be borne by the negligent party.
- c. The right at reasonable times to enter upon the premises of the other owner adjoining a party wall or to break through the party wall, or both, for the purpose of repairing or restoring sewer, water, or

other utilities, subject to the obligations to restore the wall to its previous structural condition, to pay for such restoration, and to pay the other owner the amount of any damages negligently caused by such repairing or restoring.

- d. The right to have the other owner adjoining the party wall refrain from altering or changing the party wall in any manner, interior decorations excepted.
- e. The right to an easement for party wall purposes in that part of the premises of the other owner on which the party wall is located.

17. Construction and Enforcement of Restrictions: All restrictions, conditions, and covenants contained in this Deed of Restrictions shall be construed as covenants running with the land and shall be binding upon the party hereto, its grantees, successors, and assigns, and all persons claiming under them. It is the purpose and intent hereof that such restrictions, conditions, and covenants shall, during the period of their existence, inure to the benefit and advantage of the owner or owners of any of the land as now shown on the plat of this subdivision, and the same may be enforced and violations thereof may be restrained by any of such owners and the Association, and if any of them, their heirs, successors, or assigns shall violate or attempt to

violate any of such restrictions, condition, and covenants during the period of their existence, it shall be lawful for any other person or persons owning any other lot in said subdivision or the Association to prosecute an action in any proper proceedings at law or in equity, against the person or persons violating or attempting to violate any such restrictions, condition, or covenants, either to prevent him or them from so doing or to recover damages or other relief for such violations.

18. Failure to Enforce Shall Not Constitute Estoppel or Waiver:

The failure or neglect on the part of the party hereto or any owner or owners of lots in this subdivision or the Association to demand or insist upon the observance of any of the foregoing restrictions, conditions, and covenants and to proceed for the restraint of violation thereof shall not be deemed a waiver of such violation or operate as an estoppel to restrain continuance thereof; but any such restrictions, conditions or covenants may be enforced at any time notwithstanding a violation thereof may have been suffered or permitted theretofore; not shall a waiver of any such restrictions, conditions, and covenants in any particular be deemed a waiver of any other default whether of the same or of a different nature.

19. Separability of Provisions: Invalidation of any of these restrictions, conditions, and covenants, by judgment or order shall in no wise affect any of the other restrictions, conditions, and covenants, which shall remain in full force and effect.
20. Amendments: These restrictions, conditions, and covenants may be altered or amended at any time and from time to time by the action of the owner or owners of at least three-fourths (3/4) of the fifty (50) lots in the subdivision, that is, thirty eight (38) owners. Owners may execute amendments by signing before a notary on a single sheet or on counterpart documents filed separately.
21. Executed in Counterpart: This instrument may be executed in counterpart, and each originally signed copy taken together shall be considered one document.

IN TESTIMONY WHEREOF, witness the signatures of the owners of \_\_\_\_\_ of the fifty lots in the subdivision here below or on counterpart documents filed concurrently.