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BOOK 777 PAGE 942

**DEDICATION  
and RESTRICTIONS  
of SUMMER WIND of HEARTLAND  
PHASE 1**

The undersigned, Jagoe Development, LLC, a Kentucky limited liability company, of 3624 Wathens Crossing, Owensboro, Daviess County, Kentucky 42301, (the "Developer"), is the owner of certain real estate lying and being in Daviess County, Kentucky, known as Summer Wind of Heartland, Phase 1, (the "Subdivision"), which is shown and described on Plat of record in Plat Book 33, page 10, of the Daviess County, Kentucky, Court Clerk's Office.

For the enjoyment of the residents and the purpose of promoting the development of the Subdivision, the undersigned does hereby dedicate for public use the streets and easements shown upon the recorded Plat of the Subdivision.

In addition to the restrictions imposed under and by all existing zoning ordinances of the City of Owensboro, Kentucky, and the rules and regulations of the Owensboro Metropolitan Planning Commission, the undersigned does hereby establish and place upon the lots in the Subdivision, the following restrictions.

The word "Unit" and the word "Phase" as used herein are intended as synonymous.

Section 1. Dedication. The Developer hereby dedicates to the City of Owensboro the streets, greenbelts, pocket parks, parks, and retention basins as may be shown on said Plat.

Section 2. Building Location. All buildings (including accessory buildings) erected shall conform to the building set-backs for front, side and rear yards and all public utility easements as provided on the recorded Plat; no building may be erected or maintained between such lines and property lines of the lots. Where building setback lines are not indicated on the recorded Plat, there shall be a five (5) foot side line restriction, meaning that no building including storage buildings, shall be placed nearer than five (5) feet to the side property line.

Section 3. Dwelling Quality and Size. The floor area of a dwelling, including a second floor, shall not be less than 1,200 square feet. Such minimums shall be exclusive of porches, breezeways and any attached garage. No building shall be constructed to be more than two and one-half (2-1/2) stories in height. All dwellings and structures shall have siding of brick, stone, stucco, vinyl, aluminum, wood or wood products, cement products or like products which may be available in the future, or a combination of any two or more of these materials.

Section 4. Driveways. All driveways shall have a permanent constructed surface of concrete or bituminous asphalt.

Section 5. Appearance of Lots. The front yard areas shall be kept neat and clean. All trash containers, junk, immobilized autos, bicycles and any other items must be stored in the side or back yard and out of view from the street. Basketball goals placed in front yard shall be 20 feet or more from street curb, not attached to the home.

Section 6. Vehicles. The owners of lots in the Subdivision shall not park or permit others to park vehicles or trailers which total over eight (8) feet in height or more than twenty (20) feet in length or any immobile motor vehicles on a permanent or regularly reoccurring basis in the drives, front yards, streets or alleys in the Subdivision. The vehicles referred to in this section include, but are not limited to, semi-trucks and trailers, large vacation vehicles, two-ton or larger trucks, boats and trailers and similar vehicles. No minibikes, go-carts, or vehicles of similar noise or speed shall be operated on sidewalks or any other property covered by this Dedication and Restrictions, nor shall any such vehicles be operated upon any vacant land within said Subdivision.

Section 7. Fences. Fences erected in the rear and side yards shall not be higher than the lesser of eight (8) feet or the height permitted by the Owensboro Metropolitan Planning Commission. Only ornamental fences may be constructed, and any of said fences constructed in front of any building setback line along a street, may not exceed three and one-half (3-1/2) feet in height. Ornamental fences may include attractive wood, masonry, ornamental iron, and similar fences, but

not chain link or woven wire fencing. Small dog runs or pens in rear yards may be chain link or woven wire but must be set back 5 feet or more from the property lines.

Section 8. Care of Property, Drainage and Easements. A good turf shall be established and maintained and each lot owner shall be responsible for maintenance and grade elevation of the drainage swales. The Developer has established certain grades for the Subdivision as required by the Planning Commission. Accordingly, it shall be the sole responsibility of each lot owner to maintain their drainage easements and swales to provide proper surface water drainage for the Subdivision. If a lot owner does not maintain its drainage easement and swales to provide proper surface water drainage, either the Developer, Builder, Homeowners Association or any lot owner, the drainage on whose lot is adversely affected by the failure to maintain drainage easements and/or swales, may bring suit to compel the lot owner to perform said maintenance and shall be entitled to its reasonable attorney's fees for bringing the suit. If at any time access to an easement by any utility or public agency is necessary, the lot owner shall be responsible for removal of any obstruction at the lot owner's expense.

All areas upon the recorded Plat of the Subdivision which are designated as easements thereon are hereby reserved for the use of any and all public utilities and for the installation of water, sewer and gas mains, for drainage above or underground, electric facilities and surface water drainage, subject at all times to the proper authorities. No structures or other improvements, planting or other materials shall be erected or permitted to remain within said easements which may damage or interfere with the installation and maintenance of the utilities and drainage. The easement area of each lot shall be maintained continuously by the owner of said lot so as not to change the intended direction of flow of surface water within said easement as said direction of flow is set forth in the site plan for the Subdivision filed with the Planning Commission. Any existing creeks, spillways, storm inlets, outflow structures, or other drainage way within the Subdivision shall be maintained by each lot owner affected thereby in its present condition so as to maintain thorough and clear surface water drainage along said waterway at all times, such lot owner being responsible to maintain that portion

of said waterway which is located upon said owner's respective lot. Water from downspouts or other surface water drainage systems shall not be drained into or connected with the sanitary sewer system serving the lots in the Subdivision.

Section 9. Residential Purposes. All lots shall be used for purposes allowed by the Owensboro Metropolitan Planning Commission in the residential zone for the Subdivision, except that model homes, sales or construction buildings or trailers of the Developer or its designated builders may be placed upon the lots. No building shall be erected, altered, placed or permitted to remain on any lot other than (i) one detached single-family residence; (ii) detached garage or carport; and (iii) one storage building not to exceed two hundred (200) square feet with exterior walls not to exceed eight (8) feet in height, as measured from the surface of the floor, excluding gables. All structures on a lot shall be color coordinated with one or more of the same colors as the dwelling, including siding and roofs.

Section 10. Trade or Activity. Except as set forth herein and except for development and promotion of The Heartland and home construction activities, no noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 11. Temporary Structures. No trailer, garage, garage-apartment, barn, tent, shack or other buildings in the Subdivision shall at any time be used as a residence, nor shall any structure of a temporary character be used as a residence. This restriction shall not be construed to prohibit the building of a detached garage to be used as a garage or storage building.

Section 12. Plat Changes. Except as hereinafter provided, no lot or lots shall be subdivided (a) except as such may become necessary in order to correct minor changes resulting from errors of survey in the platting of the Subdivision or (b) unless the lot or lots resulting from such subdivision shall have a minimum of not less than that allowed by governmental bodies. In either of the events described in this section, the Developer may (a) subdivide or resubdivide lots without the consent of any other lot owners; and (b) make other modifications to the recorded Plat of the

Subdivision, including modifications to building setback lines or easements as may be permitted by applicable zoning ordinances without the consent of other lot owners.

Section 13. Yard Signs and Mailboxes.

(1) Advertising signs may be placed in front of homes only. No real estate signs (except for signs designating the name of the Subdivision), yard sale, political or other signs shall be placed in the dedicated sign easements, islands or rights-of-way. Any signs so placed may be confiscated and disposed of in any way by anyone.

(2) Replacement of mailboxes shall be with mailboxes which are as nearly similar to the original boxes and supporting installation in construction and color as practicable.

Section 14. Subdivision Signs and Landscaping. The Heartland directional and informational wood and/or vinyl signs will remain until the Developer or its successor removes them. Easements for the installation and maintenance of brick entrance signs and other Subdivision signs (the "Signs") are reserved and are as shown on the recorded Plat of the Subdivision (the "Sign Easements"). No structure, improvement or driveway, except for originally-installed signs, lighting and landscaping related structures, shall be located in or on the Sign Easements without the written consent of the Design Review Committee or its assignees. The Signs and landscaping located within the Sign Easements shall not be changed or altered without the express written consent of the Design Review Committee or its assignee. The obligation to remove debris and cut grass from the Sign Easements shall be the obligation of the owner of the lot upon which any Sign Easement is located. The Signs, trees and shrubs which are located in the Sign Easements shall be maintained, repaired and replaced by the Heartland Homeowners Association, except trees and shrubs behind a brick wall shall be maintained by the homeowner. The homeowner shall replace trees behind the brick wall entrances which die or have enough dead growth that they are unsightly, except that it is not required to replace trees if the remaining trees have reached sufficient size that it is not practicable to plant more trees and shrubs in the particular area.

Section 15. Homeowners Association. All record owners of lots in the Subdivision shall automatically be members of and subject to the obligations, rules, regulations, assessments and Bylaws of The Heartland Homeowners Association, Inc., which shall include all subdivisions of Heartland whether now established or hereafter established (the Association). The Association shall be responsible for repair, maintenance, improvement and replacement of the following in Sign Easements: Heartland signs; lighting; and for trees, shrubs and flower beds in front of Signs. The Homeowners Association may perform other maintenance work along East Byers Avenue and East 26<sup>th</sup> Street as it sees fit. By Contract dated March 18, 1997, and approved in Municipal Order No. 13-97, the Developer's predecessor in title agreed that the Subdivision should be annexed into Owensboro and the City of Owensboro agreed to maintain greenbelt areas, all parks, pocket parks, street islands shown on drawings attached to the Contract and retention basins. If the City fails to maintain these areas in accordance with the Contract between the City of Owensboro and Developer, then the Homeowners Association shall be responsible for maintaining them and/or performing maintenance in addition to that done by the City of Owensboro. The Homeowners Association may supplement the maintenance performed by the City of Owensboro.

The Developer shall look after the Homeowners Association's duties, including collecting fees and maintaining properties, until it gives written notice, forwarded by United States First Class Mail to each resident of each lot in the Unit notifying them that management of the Homeowners Association shall thereafter become the responsibility of the owners and that they should call a meeting to organize the Homeowners Association.

Each lot owner in the Subdivision shall have one vote in the Association. The Association is a non-profit corporation and shall be governed by the Bylaws of the Association and any properly passed rules and regulations of the Association. If a lot is sold on installment contract, the owner, for purposes hereof, shall be the purchaser under the installment contract rather than the record title owner. The Association may meet once a year, or more frequently, and may elect such officers as it sees fit at said meeting. The annual meeting shall be held on the first Saturday after

Labor Day each year at 7:00 p.m., prevailing time, at Heartland Park gazebo, or at such inclement weather location as is posted at Heartland Park gazebo at least one hour before meeting, unless a different location is stated in the written notice of the meeting. No further notice shall be required for annual meetings. The Association shall give notice of special meetings to members by United States First Class Mail deposited in the mail at least 20 days before a meeting.

The Developer may add other phases to Summer Wind and/or other Subdivisions to the overall development known as Heartland, and may add all such units or phases and/or Subdivisions to the Heartland Homeowners Association as plats are approved by the Owensboro Metropolitan Planning Commission and recorded for the units, phases and/or Subdivisions. The Developer may fix initial assessments for any such addition.

The Association may make assessments against the lots for performance of the duties required of the Association and in this document. Assessments for Summer Wind, Phase 1, shall be the sum of \$65.00 per year, or any part of the year, for any person who acquires a lot prior to April 1, 2004 and \$65.00 per year or any part of the year for any person who acquires a lot prior to April 1, 2005. Beginning with April 1, 2005, assessments may be increased by no more than 10% per year. Assessments may exceed 10% per year if approved by a vote of the majority of the members attending a duly noticed meeting of The Heartland Homeowners Association, Inc. each year thereafter, or if the Homeowners Association is required to perform any of the responsibilities of the City of Owensboro. The assessment shall apply to all lots, whether owned by the Developer or whether owned by others.

The Association shall have a lien for any unpaid assessments. All assessments shall be subordinate to any mortgage lien on any lot.

The Association may bring suit to enforce any lien. Each assessment shall bear interest at the rate of 18% per annum, and the Association may recover reasonable attorney's fees required in the collection of any assessment.

Section 16. Design Review Committee. The Design Review Committee shall have the absolute right, in its unquestioned discretion, to make all decisions regarding compliance with the restrictions of Sections 13 and 15 as pertaining to the greenbelt.

The Developer or its successors shall be the Design Review Committee until it gives notice to the current residents of the Subdivision and any other Subdivisions or Phases in Summer Wind by United States First Class Mail notifying them that The Heartland Homeowners Association, Inc. shall call a meeting of the members to elect a Design Review Committee. The notice shall state the names of the Subdivisions to which said notice has been sent and shall state the street address and telephone number of the office of the Developer where there is maintained a list of the addresses of the residents to whom such notice was sent. It shall also state any other Subdivisions of Heartland which have already elected members to the Design Review Committee and the names of such committee members. Until Heartland has been completely developed by the Developer, The Heartland Homeowners Association, Inc. shall notify the Developer of the names and addresses of each member of the Design Review Committee. The members of the Design Review Committee shall serve for one (1) year and new members shall be elected by a majority vote of the members of The Heartland Homeowners Association, Inc. attending a duly noticed meeting each year thereafter. There shall be one Design Review Committee member from each Subdivision within Heartland except that where, as in the case of Summer Wind, each Phase of a community is a Subdivision, there shall be one Design Review Committee member from the total of all Subdivisions or Phases making up Summer Wind or other community having more than one Phase, but the same overall title for the community.

The Design Review Committee's approval or disapproval as required in these Restrictions shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove, within thirty (30) days after plans and specifications have been submitted to it, approval shall not be required and the related Restrictions shall be deemed to have been fully

complied with. If an owner fails to submit plans and specifications but proceeds to construction, then approval need not be granted until plans and specifications have been submitted.

Section 17. Amendment by Developer. At any time before a lot or lots are sold, the Developer may amend this Dedication and Restrictions so as to add or remove restrictions for any unsold lot or lots. The consent of any other lot owners shall not be required for the Developer to add or remove restrictions as provided in this section.

Section 18. Remonstrate or Petition. By acceptance of title to any lot in this Subdivision, the lot owner agrees that he, she or it shall not object, remonstrate or petition against the Developer in any undertaking which the Developer deems beneficial to developing the Subdivision.

Section 19. Injunctive Relief. Each and all of the covenants, restrictions and conditions contained herein shall inure to the benefit of all owners of lots in this Subdivision, jointly and severally, and may be enforced by them or by any of them, in any court of competent jurisdiction by injunction or other appropriate legal remedy. The party adjudged to have violated any of said restrictions shall be liable to the aggrieved party for reasonable attorney's fees and court costs, which shall be fixed by the court hearing said matter. The owner of any lot in this Subdivision shall have the right to enforce said covenants, conditions and restrictions without proof of pecuniary damage to their own property in this Subdivision or otherwise.

Section 20. Binding Effect. The restrictions set forth herein shall run with the land and shall be binding upon all persons claiming interest therein.

Section 21. Invalidation of Restrictions. In the event any one of the restrictions set forth herein shall be declared void by the judgment of a court of competent jurisdiction, such judgment shall in no wise affect any other restrictions herein contained.

Section 22. Termination of Restrictions. These restrictions shall continue in full force and effect for a period of thirty (30) years from the date this Dedication and Restrictions is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The

restrictions, conditions, covenants and agreements may be terminated at the end of the thirty (30) years or each of the successive ten (10) year periods by vote of not less than seventy-five (75%) percent of the lot owners in Summer Wind of Heartland, Phase 1, except that all provisions regarding Sections 13, 15, 16 and 17 shall survive unless so terminated or amended by vote of seventy-five (75%) percent of the total members of all Subdivisions of Heartland. Any such amendment must be recorded in the Office of the Daviess County, Kentucky, Court Clerk.

IN WITNESS WHEREOF, said Jagoe Development, LLC has caused this instrument to be executed by its duly authorized officer, this 16<sup>th</sup> day of January, 2004.

JAGOE DEVELOPMENT, LLC

By: Ralph W Wible  
Ralph W. Wible, attorney-in-fact  
See Lease, Etc. Book 141, page 676

COMMONWEALTH OF KENTUCKY  
COUNTY OF DAVIESS

The foregoing instrument was signed and acknowledged before me by Ralph W. Wible, attorney-in-fact, for Jagoe Development, LLC, a Kentucky limited liability company, for and on behalf of said corporation, on this the 16<sup>th</sup> day of January, 2004.

Karen V. Bell  
Notary Public, Kentucky State at Large  
My Commission Expires: 9/13/07

THIS INSTRUMENT PREPARED BY:

Ralph W Wible  
Ralph W. Wible  
Attorney At Law  
326 St. Ann Street  
Owensboro, Kentucky 42303  
(270) 684-3522

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