

Henry Co. Deed BK 185 P 897

**THIRD AMENDMENT AND RESTATEMENT**  
**OF THE**  
**L'ESPRIT MASTER DECLARATION OF EASEMENTS,**  
**COVENANTS AND RESTRICTIONS**

RETURN TO:  
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**PREAMBLE TO**

**THIRD AMENDMENT AND RESTATEMENT OF THE L'ESPRIT**

**MASTER DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

The purposes and objectives of the Third Amendment and Restatement of the L'ESPRIT Master Declaration of Easements, Covenants and Restrictions for L'ESPRIT are to provide for:

- A. The conservation of the natural environment applicable to the land which will comprise L'ESPRIT;
- B. The continuation and enhancement of the landscape elements and other aesthetic additions to L'ESPRIT;
- C. A means for controlling and preserving the architectural designs of L'ESPRIT;
- D. The means of maintaining all those physical parts of the Development which, if not properly sustained, would adversely affect the L'ESPRIT environment;
- E. The perpetuation of the original purposes and objectives through the establishment of a corporate entity assigned such responsibility; and
- F. The means for maintaining and enhancing the property values of L'ESPRIT landowners in a unique Community.

**THIRD AMENDMENT AND RESTATEMENT OF THE L'ESPRIT  
MASTER DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

**THIS THIRD AMENDMENT AND RESTATEMENT** is made and entered into as of the 6th day of July, 1995, by and among such of the owners of record of the tracts of the L'Esprit Property as set out on Exhibit A hereto who have executed this **THIRD AMENDMENT AND RESTATEMENT** in the spaces provided, and the L'Esprit Property Owners Association, Inc., a Kentucky not-for-profit corporation (the "Association") (those owners who have executed this **THIRD AMENDMENT AND RESTATEMENT** and the Association being herein collectively referred to as the "Third Amendment and Restatement Declarants").

W I T N E S S E T H:

WHEREAS, by instrument dated August 8, 1983, Kentucky Park, Inc. ("Developer") subjected certain real property known as L'Esprit in Oldham and Henry Counties, Kentucky, to the L'Esprit Master Declaration of Easements, Covenants and Restrictions, which instrument is of record in Restriction Book 3, Page 157, in the Oldham County Clerk's Office, and in Deed Book 145, Page 303, in the Henry County Clerk's Office; and which instrument has been amended by First Amendment to the L'Esprit Master Declaration of Easements, Covenants and Restrictions of record in Restriction Book 4, Page 56, in the Oldham County Clerk's Office, and in Deed Book 158, Page 511, in the Henry County Clerk's Office; and which instrument has been further amended by Second Amendment to the L'Esprit Master Declaration of Easements, Covenants and Restrictions of record in Restriction Book 4, Page 596, in the Oldham County Clerk's Office, and in Deed Book 167, Page 295, in the Henry County Clerk's Office (as amended, the "Master Declaration"); and

WHEREAS, the Third Amendment and Restatement Declarants collectively own more than seventy-five percent (75%) of the acreage encompassed within the "L'Esprit Property" as defined in the Master Declaration and as shown by the plats thereof which are of record in Plat Cabinet 4, Slides 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, in the Oldham County Clerk's Office, and in Deed Book 145, Pages 294, 295, 296, 297, 298, 299, 300, 301, and 302, in the Henry County Clerk's Office (the "Original Plats"); and

WHEREAS, the Third Amendment and Restatement Declarants have elected to declare that the owners, mortgagees, occupants and other persons acquiring any interest in the L'Esprit Property shall at all times enjoy the benefits of, and shall at all times hold their interests subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the

cooperative aspect of ownership and to facilitate the proper administration of the L'Esprit Property and to further the goals and objectives set forth in the Preamble hereto; and

WHEREAS, Third Amendment and Restatement Declarants intend that all L'Esprit Property and all buildings or other improvements erected thereon shall be subject to certain covenants, restrictions and easements; and

WHEREAS, the Third Amendment and Restatement Declarants desire to amend and restate the aforementioned Master Declaration;

NOW, THEREFORE, for the mutual benefit of the present and future owners of the L'Esprit Property, the Third Amendment and Restatement Declarants do hereby amend and restate the Master Declaration in its entirety, and impose the covenants, conditions and restrictions, as follows:

#### ARTICLE 1.

##### PROPERTY SUBJECT TO DECLARATION AND EASEMENTS

1.01 Property Subject To This Declaration. The L'Esprit Property, being that property shown on the plats of record in Plat Cabinet 4, Slides 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, in the Oldham County Clerk's Office, and in Deed Book 145, Pages 294, 295, 296, 297, 298, 299, 300, 301 and 302, in the Henry County Clerk's Office, is and shall be held, transferred, sold, conveyed and occupied subject to this "Declaration."

1.02 Easements and Restrictions as Shown by Plat. The L'Esprit Property is and shall further be held, transferred, sold, conveyed, and occupied subject to all easements and restrictions as shown by the plats of the property of record in Plat Cabinet 4, Slides 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, in the Oldham County Clerk's Office, and in Deed Book 145, Pages 294, 295, 296, 297, 298, 299, 300, 301 and 302, in the Henry County Clerk's Office. The easements as shown by said plats are for the use and benefit of the owners, occupants, and invitees of the L'Esprit Property; utility companies supplying services to the L'Esprit Property, their agents and employees; such parties as may be designated by the recorded plats; and such other third persons as may be designated by the L'Esprit Property Owners Association, Inc., as hereinafter constituted. The L'Esprit Property is further subject to such rights of ingress and egress as may be reasonably necessary or required for the installation, upkeep, maintenance and repair of all utilities or amenities to be installed or located within the easements hereinafter referred to.

## ARTICLE 2.

### RESTRICTIONS RELATED TO USE OF L'ESPRIT PROPERTY

2.01 Primary Development Tracts. Tracts 100 through 170, inclusive, and Tracts KPI 1, KPI 2, KPI 3, and KPI 4, of the L'Esprit Property as shown by the Original Plats are declared to be "Primary Development Tracts" and shall be used exclusively for:

(i) Raising, training, breeding, propagation, treatment, care and sales of horses or other livestock;

(ii) Raising of agricultural products incident to a successful farm operation such as corn, grains and grass crops;

(iii) Such living quarters as may be reasonably connected to farming operations;

(iv) Churches, parish halls, temples, convents, monasteries, conference centers, exhibition halls, governmental, educational or charitable institutions, including, but not limited to, colleges or universities and associated living quarters such as dormitories and Offices;

(v) Residential developments and/or units, whether incidental to any other use permitted in this Declaration or independent of any other permitted use; provided that within the Visual Zone as set forth in Section 3.03 of this Declaration, no multi-family development, apartments, condominiums, cluster subdivision buildings or zero-lot line buildings are permitted;

(vi) Clubhouses, country clubs and golf courses;

(vii) Riding academies and stables;

(viii) Veterinary hospitals and such kennels as may be required to service said hospitals only;

(ix) Recreational, athletic and/or resort facilities and centers, including associated hotels, housing or other guest lodging;

(x) Accessory buildings, the use of which is purely incidental and subordinate to that of the main buildings located on a tract, and accessory uses which are customarily incidental and subordinate to the principal use or building located on a tract; and

(xi) Combinations of one or more of the aforementioned permitted uses.

2.02 Service/Commercial Tract: Individual tracts or combinations of tracts with common boundaries may be considered for Service/Commercial Tract designation by the

L'Esprit Property Owners Association, Inc. A Service/Commercial Tract may be used for all purposes for which Primary Development Tracts may be utilized pursuant to Section 2.01 above. A Service/Commercial Tract may also be used for any and all other commercial purposes as may be determined and permitted by the L'Esprit Property Owners Association, Inc., including, but not limited to, shopping facilities, livestock sales centers, pavilions, offices and office buildings, motels or motel facilities, and restaurant facilities; the construction, development and use all shall be at the sole discretion of the L'Esprit Property Owners Association, Inc.

Tract KPI 1 of the L'Esprit Property as shown by the original plat is declared to be a Service/Commercial Tract.

2.03 Easements, Rights-of-Way, and Bridle Paths: Those portions of the L'Esprit Property so designated by the recorded plats of the Property shall be subject to all restrictions, notes, and stipulations set forth thereon. In addition thereto, the following additional restrictions shall apply to Rights-of-Way and Bridle Paths:

(i) No fences or other structures shall be constructed within the right-of-way of any public roadway within the L'Esprit Property.

(ii) No fences, structures, or obstructions of any type shall be permitted within or across any area designated as a Bridle Path by the recorded plats.

(iii) No motorized vehicles other than authorized maintenance vehicles or equipment shall be permitted within any area designated as a Bridle Path by the recorded plats.

Notwithstanding any provision of this Declaration or any recorded plat to the contrary (including the Original Plats), Bridle Paths as shown by any recorded plats may be relocated by the owners of tracts of the L'Esprit Property upon which they are located, provided that a plan for such relocation is submitted to and approved in writing by the L'Esprit Property Owners Association, Inc., which approval shall not be unreasonably withheld so long as:

(i) the new location provides unobstructed access, substantially equivalent to that originally provided by that portion of the Bridle Paths being relocated;

(ii) a recordable perpetual easement, signed by all parties having an interest in the property subject thereto, has been delivered to the L'Esprit Property Owners Association, Inc. for recordation; and

(iii) adequate provisions have been made for the fencing of the new easement area.

## ARTICLE 3.

### RESTRICTIONS RELATED TO THE IMPROVEMENT OF THE L'ESPRIT PROPERTY

3.01 Architectural Control Committee: An Architectural Control Committee for L'Esprit Property is hereby constituted. The Architectural Control Committee may act by a majority vote and a majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member, the remaining members shall have full authority to designate a successor. The Architectural Control Committee shall become a standing committee of the L'Esprit Property Owners Association, Inc. with membership thereafter to be determined pursuant to Rules and Regulations to be adopted by its Board of Directors.

3.02 Plan Approval: No building, structure, or fence shall be erected, placed or altered on any tract composing the L'Esprit Property until the exterior materials, paint (color), roofing material, construction plans and specifications and a tract plan showing the location of the proposed improvements have been approved by the Architectural Control Committee. The roofing materials shall be wood-shake shingles, slate, simulated slate, copper, metal or asphalt shingles. All plans and specifications and the tract plan may be (a) mailed to the Architectural Control Committee by certified mail, return receipt requested, at the above address or such other address as may be designated by the Architectural Control Committee from time to time after notice to all property owners, or (b) personally delivered to the Association office. In the event the Committee or its designated representative fails to approve or disapprove within sixty (60) days after plans and specifications and tract plan have been submitted, or in the event no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and related covenants shall be deemed to have been fully complied with. In the event the Architectural Control Committee disapproves the plans and specifications or the tract plan, no construction shall be commenced until such time as revised plans and specifications and/or tract plan have been resubmitted and approved as hereinabove provided.

Plans for buildings, structures, pools, barns or fences shall be professionally drafted, and subdivisions shall be drafted by an engineer or registered surveyor in a form required by local governmental agencies and shall be submitted for approval by the Architectural Control Committee.

The plan approval and review procedures for improvement of the L'Esprit Property will further require permits from the governmental agencies with jurisdiction. The building codes and standards for all governmental agencies having authority over same must be met prior to the start of construction; and the approval of the Architectural Control Committee shall in no way be construed to imply that applicable governmental standards have been satisfied.

Following completion of construction for each set of plans and specifications approved as herein provided, an as built survey along with final plans and specifications shall be provided to the Architectural Control Committee.

**3.03 Visual Zone and Setback Requirements:** The "Visual Zone" shall be an area extending three hundred (300) feet to either side of all roadway centerlines within the L'Esprit Property, (except for Tracts Numbered 157-166 and Tract Number 127 for which the Visual Zone will be one hundred fifty (150) feet from the roadway centerline, and Tracts KPI 2 and KPI 3 for which the Visual Zone shall be an area extending three hundred (300) feet from the centerline of L'Esprit Parkway and three hundred (300) from the centerline of Ky. 153, and except for Tract KPI 4 for which the Visual Zone shall extend three hundred (300) feet from the roadway centerline of Old Sligo Road); and all structures, landscaping, lighting, signage, entries and roads will be more rigidly controlled by the Architectural Control Committee within the Visual Zone.

The minimum Setback requirement for all permanent buildings on a tract, other than guard houses, shall be one hundred fifty (150) feet from the centerline of the abutting roadway, and shall be seventy-five (75) feet from the side and rear lines of a tract. Provided, however, no permanent building other than a guard house or a single family residence shall be permitted on any tract within the Visual Zone. It is further provided, however, that existing improvements within the Visual Zone or within the side and rear setback requirements may remain in place so long as the same shall be remodeled and landscaped in accordance with guidelines to be established by the Architectural Control Committee.

Provided, however, notwithstanding the foregoing, for tracts of the L'Esprit Property containing seven (7) acres or less, the "Visual Zone" shall extend only one hundred fifty (150) feet from the edge of the right-of-way of any adjoining roadway, the minimum setback requirement for all permanent building improvements, other than guard houses, shall only be one hundred (100) feet from the edge of the right-of-way of any adjoining roadway, and no nearer than fifty (50) feet from the side and rear lines of such tract. Provided, further however, the Architectural Control Committee may, for good cause shown, permit reasonable variances in the Visual Zone and Set Back requirements as set forth in this Section.

Roadway constructed through the visual zones shall NOT change the setbacks for structures in the visual zone.

Visual zone and setback requirements contained in the preceding paragraph of this Section 3.03 shall pertain to the Service/Commercial Tract designated pursuant to Section 2.02 hereof.

Any new tracts created by a subdivision of any tract of the L'Esprit Property which abuts a new road (i.e., a road other than those roads shown by the Original Plats) and which does not abut any of the roads shown by the Original Plats shall be subject to setback requirements contained within laws and ordinances to which such tracts are subject for a permanent building, provided that such setback requirements shall be at least seventy-five (75) feet from the edge of the front property line or right-of-way of any adjoining roadway, and shall be at least fifty (50) feet from the side property line or rear property line. Exceptions to setback requirements for permanent buildings in a subdivision of any tract abutting a new road may be considered by the Architecture



Control Committee in instances where considerable greenspace or recreation space is proposed.

3.04 Minimum Standards for Approval of Proposed Improvements to Primary Development Tracts:

(i) Residence within Visual Zone. Residences within the Visual Zone shall have a minimum fully enclosed ground floor area devoted to living purposes, exclusive of porches, terraces and garages ("living area") of 2,000 square feet; and if the said residence is a 1½ story Cape Cod, the minimum living area shall be 2,200 square feet with a minimum of 1400 square feet on the ground floor; and if the said residence is 2-story, the minimum living area shall be 2,400 square feet with a minimum of 1200 square feet on the ground floor.

(ii) Requirements Applicable to All Residential Units. The exterior walls of all residential units shall be of brick, stone or wood. All roofing shall be of the type hereinabove stated and shall be dark (black, slate gray or dark brown); with only such other colors as may be approved by the Architectural Control Committee in its sole discretion.

(iii) Farm Structures. No barns, sheds or other outbuildings shall be permitted in the Visual Zone except for existing structures which have been remodeled and/or landscaped to meet the requirements of the Architectural Control Committee for such existing structures. No such farm structure shall exceed 30,000 square feet on the ground floor nor shall any such structure exceed 60 feet in height. Provided, however, larger structures may be approved by the Architectural Control Committee for construction on tracts of more than 100 acres. All exterior materials and colors shall be only as approved by the Architectural Control Committee, which shall be in harmony with other colors approved for use on improvements on the tract in question.

(iv) Mobile Homes, Trailers, Modular Units and Construction Buildings. No structures of the type above stated shall be permitted within the Visual Zone at any time. Such structures may exist outside the Visual Zone only by permit from and upon such conditions as may be established by the Architectural Control Committee.

(v) Other Structures and Improvements.

i. Signage. No sign of any kind shall be displayed within one hundred fifty (150) feet of the right-of-way of any roadway shown by the Original Plats on any Primary Development Tract except one (1) sign advertising the property for sale or rent, and except for one (1) sign at each entrance identifying the farm, development or other use or occupant thereof. All signs and sign locations within the area described in the preceding sentence must be approved by the Architectural Control Committee prior to installation on any tract. Such signs shall not exceed the maximum size requirement of three feet by four feet, with a maximum of fifty-four (54) inches above grade at top of sign with only such larger signs as may be specifically approved by the Architectural Control Committee. The signage limitations contained herein shall not prevent the use

of bronze plaques or cut stone engravings integrated with the entryway design which may be used to announce the name of a farm, development or other permitted use hereunder.

ii. Fencing. The only fence that will be allowed within the Visual Zone and on the perimeter boundary of the L'Esprit Property is a four (4) board wood fence that is painted black. Fences outside the Visual Zone other than a four board wood fence that is painted black shall be only of such design, materials and colors as may be approved by the Architectural Control Committee. The recommended height for all fences is 54 inches; provided, however, no fence shall be erected with a height of less than 48 inches or greater than 60 inches.

iii. Entrances and Entrance Structures, Including Gates, Gatehouses, and Lighting. Walls, gatehouse and guard structures shall be of stone, brick, or wood construction with any roofing materials limited to woodshakes, slate, simulated slate, copper, metal or asphalt shingles. Paint colors are to be restricted to those approved and used for the residences and/or other structures previously constructed on the Individual Horse Farm in question.

Gate and fence structures are to be limited to 10 feet in height (with exception for roofs of guardhouses which may be a maximum height of 14 feet to ridge line). Gates at all Individual Horse Farm entrances shall be of one color, which may be selected to identify the farm as approved by the Architectural Control Committee.

Lighting at entrances shall be included on any plans and specifications submitted to the Architectural Control Committee and shall be subject to the approval thereof. All lighting placed on standards must be of style and type as approved for use on the L'Esprit Property by the Architectural Control Committee.

iv. Landscaping. Existing trees shall be protected particularly in wooded and drainage areas and along creeks. No tree larger than 8 inches in circumference may be cut without a permit from the Architectural Control Committee. Provided, however, any tract owner may submit a forestry plan to the Architectural Control Committee which, if approved, shall obviate the need for individual permits for cutting of trees.

v. Septic Systems. Sewage shall be disposed of only by and through a septic system designed by a qualified professional with adequate dimensions and capacity and of a type approved by the Health Department or an approved municipal, governmental agency or private service, if available. Any discharge of treated wastewater into creeks or bodies of water shall have approval or permits from government agencies. No untreated sewage, trash, or garbage shall be emptied, discharged or permitted to drain into any body of water within L'Esprit. All toilet facilities must be a part of the residence, garage, employee housing or barn and shall be of modern flush type and connected with a proper septic tank system or sewer system. Provided, however, portable toilets may be used in connection with construction activities, sales or other public gatherings to be conducted or held on any tract in accordance with this Declaration.

vi. Other Structures. Structures on Primary Development Tracts other than those addressed in the preceding paragraphs of this Section, but which are permitted pursuant to Article 2 shall be subject to such guidelines as may be reasonably adopted by the Architectural Control Committee with full consideration given to the different nature and function contemplated for such structures and which are in general aesthetic conformity with the requirements for other structures set forth in this Declaration.

vii. Drives and Access Roads. The location of all driveways, entranceways or other access points to any tract shall be subject to approval of the Architectural Control Committee and the governmental agency, if any, having or asserting jurisdiction. The lesser of the first one hundred (100) feet or the entire length of all driveways, entranceways or other access points to any tract shall be of concrete or asphalt construction and shall provide for proper drainage, all of which shall be designed and constructed to applicable county or state standards. The concrete or asphalt surface as required by the preceding sentence shall be installed within six (6) months of completion of the initial roadbed construction.

viii. Residential Structures shall not be constructed with the rear of the structure facing deeded right-of-way. Any exception may be considered by the Architecture Control Committee.

3.05 Five-Acre Tracts. Any sell off or subdivision of a primary development tract on existing roads, and no new roads being constructed, shall be a minimum of five acres with road frontage a minimum of 300 feet.

3.06 Tracts Designated as Service/Commercial Tracts: Improvements on tracts so designated shall be in general conformity with the aesthetic guidelines adopted by the Architectural Control Committee for improvements to be erected on Primary Development Tracts. However, all specific guidelines for such improvements shall be as adopted by the Architectural Control Committee with full consideration given to the different nature and function of each such tract.

#### ARTICLE 4.

##### RESTRICTIONS RELATING TO RECEIVING AND ISOLATION OF HORSES

4.01 Receiving of Horses: The respective owners of each Individual Horse Farm tract shall be responsible for the receiving of all horses which are to be boarded or cared for thereon, including the obtaining and review of current interstate health certificates. Each such owner shall indemnify and hold all other owners and the Association (as defined in Section 5.01 hereof) harmless from any loss or liability arising out of or with respect to the failure of such owner to exercise ordinary care in the receiving of horses and/or the obtaining and review of appropriate health papers for horses entering the L'Esprit Property.

4.02 Isolation of Horses: If a horse is within the L'Esprit Property and becomes ill with a contagious disease, the owner of the tract upon which the horse is located shall

be responsible for the isolation of said horse so as to prevent the spread of disease to the greatest extent possible. Each owner shall indemnify and hold all other owners and the Association (as defined in Section 5.01 hereof) harmless from any loss or liability arising out of or with respect to the failure of such owner to exercise ordinary care in the isolation and care of horses with contagious diseases.

## ARTICLE 5.

### L'ESPRIT PROPERTY OWNERS ASSOCIATION

5.01 Association: In order to carry out the intent and purposes hereof, a corporation to be known as L'Esprit Property Owners Association, Inc. (the "Association") has been organized pursuant to Chapter 273 of the Kentucky Revised Statutes.

5.02 Membership: Each record owner of a tract of the L'Esprit Property shall be a member of the Association. When more than one person or entity are the Owners of a tract, all such persons or entities shall be members of the Association. For purposes of determining ownership and resulting membership, ownership will be deemed to have vested upon delivery of a duly executed Deed or Contract for Deed to the grantee or vendee. The legal title retained by a vendor selling under a Contract for Deed shall not qualify such vendor for membership. Foreclosure of a Contract or repossession for any reason of a tract sold under Contract shall terminate the vendee's membership, whereupon all rights to such membership shall revert in the vendor.

Each Owner and any tenant by acceptance of his Deed, Contract for Deed or Lease, whether or not it shall be so expressed in any such Deed, Contract for Deed or Lease, shall be deemed to covenant and agree to be bound by and to observe the terms and provisions of this Declaration, the Association's Articles of Incorporation, its Bylaws and the Rules and Regulations promulgated from time to time by the Association, its Board of Directors and/or officers.

5.03 Voting Rights: Members shall have voting rights based upon the amount of acreage of the L'Esprit Property owned by each. Each member shall be assigned the number of votes corresponding to the number of acres owned by it rounded to the nearest whole number. Where there is more than one owner of a particular tract, such owners shall designate one individual to cast all votes allocated to the tract in question. No splitting of votes allocated to ownership of an individual tract shall be permitted or recognized.

5.04 Maintenance and Repair: The Bylaws of the Association and the Rules and Regulations adopted by it will contain provisions for the operation, maintenance, upkeep, painting, repair, re-surfacing, landscaping, mowing, alteration, replacement, improvement, and/or use of the following:

(i) All roads originally constructed by the Developer for ingress and egress to and from the tracts comprising the L'Esprit Property; unless and until such time

as the county, state or other political subdivision having authority over same shall accept responsibility for the maintenance and repair of same.

(ii) All entranceways, rights-of-way along roads within the L'Esprit Property, and bridle paths as established by easements for same upon the recorded plats of the L'Esprit Property.

(iii) All recreational facilities, maintenance facilities, or other common facilities, if any, which may or have been constructed or dedicated for such purpose within the L'Esprit Property.

(iv) All common lighting, electrical, water, or other common facilities installed as a part of the L'Esprit development.

Maintenance and care of all fences constructed by the Developer on the L'Esprit property, consisting of fencing around the outside perimeter of the L'Esprit Property (or along the interior boundary of bridle paths which abut the outside perimeter of the L'Esprit Property) and along the right-of-way of all public roadways within the L'Esprit Property, shall be the responsibility of the individual owners upon whose property such fences are located. Provided, however, should any such individual owners fail to properly maintain any such fences, the Association shall promptly make any needed repairs or repainting, with the cost of same to be charged to the owner so failing to maintain same, which charges shall be deemed to constitute a special assessment pursuant to Section 5.06 hereof.

The individual owners of each tract of the L'Esprit Property shall be responsible for the maintenance, upkeep and care of the property owned by them. Each tract shall be maintained in a clean and orderly condition, properly seeded and mowed, with access drives properly drained and paved to the extent of 100' from the edge of pavement of all adjoining rights-of-way, and all structures maintained in good repair. All tracts shall also be maintained free of safety hazards to the extent possible. In the event the Maintenance Committee of the Association shall determine that a tract is not being maintained as herein provided, the president or vice president of the Association shall notify the owner(s) of such tract of the condition requiring maintenance repair or removal, and shall further notify such owner(s) that they have twenty (20) days within which to correct such condition. In the event the owner(s) of such tract fails to take the required action to correct the offending condition within the time provided, the Association shall be entitled to take such action as shall be reasonable or necessary in order to remedy such condition, with the cost of same to be charged to the owner(s) so failing to maintain, repair or correct same, which charges shall be deemed to constitute a special assessment pursuant to Section 5.06 hereof.

5.05 Assessments: The Bylaws of the Association shall contain provisions for the levying and the lien of assessments on members for the providing of such monies, as and when the same may be required from time to time, for the purposes set forth in this Article and for the purpose of enforcing the terms of this Declaration as set forth by Section 5.06 hereof. Each owner by acceptance of his respective Deed or Contract for

Deed, shall be deemed to have covenanted and agreed to pay to Association the assessments provided for in such Bylaws, whether or not such covenant or condition shall be so expressed in any such Deed or other conveyance.

**5.06 Lien and Personal Obligation for Assessments:** Periodic and special assessments, together with such interest thereon and any costs of collection thereof as hereinafter provided, shall be and constitute a continuing lien upon the tract against which each such assessment is made. In addition, each such assessment shall be the personal obligation of the person(s) or entity(ies) owning a tract at the time the assessment is made. If an assessment is not paid within 30 days from the date of notification thereof as provided to the property owner, such assessment shall become delinquent and shall bear interest from its due date until paid at the rate of two (2%) percent per annum greater than the stated prime rate of PNC Bank, Kentucky, Inc. as the same may change from time to time. The Association shall file in the Office of the Oldham County Clerk or the Henry County Clerk, within ninety (90) days after the date such delinquency occurs, a written statement as to the amount of the delinquent assessments, together with interest thereon. In the event such delinquent assessments are paid in full, the Association shall execute and file a proper release of such lien.

Without in any way limiting the foregoing remedy, the Association, may bring an action at law to enforce payment of a delinquent assessment against the owner personally responsible therefor. The lien herein provided may be enforced and foreclosed in the manner provided by law with respect to liens on real property. In the event the Association should prevail in any action to enforce payment, the owner shall be liable for the Association's court costs and disbursements together with reasonable attorney's fees, and all such costs, disbursements and fees shall be further secured by the lien herein provided.

**5.07 Subordination of Lien:** The lien for assessments provided for above shall be subordinate to the lien of any taxes or special assessments as well as the lien resulting from sums unpaid on a note secured by a first mortgage or first deed of trust of record, but shall be prior to any other liens or encumbrances recorded or unrecorded.

## ARTICLE 6.

### MISCELLANEOUS PROVISIONS

**6.01 Refuse:** No portion of L'Esprit Property shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste. Trash, garbage or other waste shall not be kept except in sanitary containers. Incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

**6.02 Fires.** No open fire will be permitted on the L'Esprit Property without a permit from the Board of Directors of the Association and from any governmental agency having jurisdiction over same.

6.03 Mailboxes. The locations of mail boxes shall be as determined by the Architectural Control Committee.

6.04 Flood Plains: All tract owners are responsible for a determination of flood plain areas on the tract owned by them.

6.05 Nuisances, Etc.: No noxious or offensive activity shall be carried on within the L'Esprit Property nor shall anything be done or permitted which will constitute a public nuisance therein; or shall any firearms be discharged without supervision. Firearms as used herein shall be construed to mean rifles, shotguns, pistols, cannons, explosives, air rifles, BB guns, or similar devices.

6.06 Business or Commercial Activities: No tract within the L'Esprit Property shall be used at any time for business or commercial activities other than as authorized or permitted by Sections 2.02 and 2.03 of this Declaration or as permitted in connection with or incidental to the primary use being conducted upon the subject property in conformity with this Declaration.

## ARTICLE 7.

### ENFORCEMENT OF COVENANTS

7.01 Summary Abatement: Whenever the Board of Directors of the Association shall find and determine that there shall have been erected on any tract any structure which is in violation of these covenants, the Board of the Association or its designees, shall have the right to enter upon the tract where such violation has been found to exist, and to summarily abate and remove at the expense of the owners thereof, any structure, situation or condition that may exist on said property contrary to the intent and meaning of these covenants. Neither the Association or its agents, assigns or designees shall be deemed guilty in any manner of trespass for such entry, abatement or removal, and by acceptance of a Deed or Contract for Deed subject to these covenants, the owner of any such tract expressly consents to such entry. Costs and expenses of such entry, abatement, and removal, shall be and remain a lien upon the tract, by recording a written statement in the Office of the Oldham County Clerk or the Henry County Clerk as provided in Section 5.06 hereof.

7.02 Judicial Enforcement: Without limiting the foregoing remedy, if an owner shall suffer or permit a violation or threaten to violate any covenant herein contained, any other owner of a tract of the L'Esprit Property may institute proceedings at law or equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages actual and punitive, together with reasonable attorney's fee for such violation.

The Board of Directors of the Association, upon finding that a violation of these covenants exists or is threatened, and upon failure or refusal of the owner of the tract upon which such violation exists or is threatened to comply herewith, shall institute proceedings at law or equity to recover damages for the violation or to restrain such

violation or threatened violation or to modify or remove structures fully or partially completed in violation of these covenants, and to recover damages actual and punitive, together with reasonable attorney's fee and costs incurred in connection with enforcing these covenants. Costs of maintaining any such action shall be obtained from a fund to be established by the Association pursuant to its assessment power under Section 5.05 hereof. Such "Enforcement of Covenant Fund" shall not exceed the sum of \$20,000.00 in reserve at any one time. Failure of the Association or any owner to enforce any covenant or restriction herein appearing, shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE 8.

### TERM OF COVENANTS, AMENDMENTS, SEVERABILITY AND RE-SUBDIVISION OF EXISTING TRACTS

8.01 Term and Amendments: This Declaration shall constitute covenants and restrictions running with the land hereinabove described, and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date of the date of recordation of this Third Amendment and Restatement after which time said covenants shall be automatically extended for successive periods of ten (10) years. Provided, however, that this Declaration may be amended, altered or rescinded at any time by an instrument signed by the owners of seventy-five (75) percent of the acreage encompassed within the L'Esprit Property.

8.02 Partial Invalidity: The invalidity of any of the restrictions herein set forth or the failure to enforce any of such restrictions at the time of its violation shall in no event affect the continued viability or enforcement of any of the other restrictions nor be deemed a waiver of the right to enforce the same thereafter.

8.03 Tract Subdivision: Subject to Section 3.03 of this Declaration, re-subdivision of any tract as constituted by the Original Plats or any subsequent amendment shall be permitted subject to any approvals required of governmental authorities provided that:

(i) no new tract created shall be less than one (1) acre except in connection with a re-subdivision for purposes of developing residential units, in which case individual tracts may be less than (1) one acre provided that the overall density of units shall not exceed one (1) unit per gross acre (including all road right-of-ways, open spaces, golf courses, lakes, recreational facilities, etc.) within the development in question,

(ii) all tracts created shall be served by properly constructed, paved access roads which, if other than the roads originally constructed by Developer as shown on the Original Plats, must be maintained by the owners of the tracts served thereby or by government agency, and not the Association, and

(iii) the subdivision plan of said tract, together with a survey and engineering drawing of roads, utilities, water, drainage, easements, set backs and all other features required by or submitted to governmental agencies, shall be approved by the



Architectural Control Committee and the Board of Directors of the L'Esprit Property Owners Association, Inc. prior to submitting said subdivision plans to the governmental agency having jurisdiction for approval. The approvals of the Architectural Control Committee and Board of Directors of the L'Esprit Property Owners Association, Inc. shall not be unreasonably withheld. Provided, however, any re-subdivisions resulting in more than ten (10) new tracts shall be deemed a "Subdevelopment" which shall be subject to the provisions of the Section concerning Future Development of this Declaration.

In the event there is no governmental agency approval required for subdivision, the approval of the subdivision plan must nonetheless be obtained from the Architectural Control Committee and the Board of Directors of L'Esprit Property Owners Association, Inc.

Any of the L'Esprit Property re-subdivided pursuant to the provisions of this Section shall remain at all times subject to the provisions of this Declaration.

## ARTICLE 9.

### FUTURE DEVELOPMENT

9.01 Future Development Parcel or Parcels: Owners of tracts of L'Esprit Property, their successors and assigns, may want to subject additional land to this Declaration. A survey must be presented to the Board of Directors of the Association for their consideration. If approved, the property owner then by filing of record a Supplementary Declaration of Easements, Covenants and Restrictions which shall extend the scheme of the covenants, easements and restrictions of this Declaration to such "Future Development Parcel or Parcels." Such Supplementary Declaration may contain such complementary additions and variations of the covenants, easements and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of such added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify, or add to the covenants established by this Declaration within the original L'Esprit Property.

9.02 Application to Additional Property: From and after the effective date upon which any Future Development Parcel or Parcels shall be subjected to the terms and provisions of this Declaration, as provided in this Article, the Owner or Owners of tracts therein shall have all of the rights, powers, privileges, duties and obligations with respect thereto as though said Future Development Parcel or Parcels was originally included as a part of the L'Esprit Property. From and after the effective date upon which any Future Development Parcel or Parcels shall be subjected to the terms and conditions of this Declaration, as above provided, the Association shall have all of the rights, powers, duties and obligations with respect to the Property included within such Future Development Parcel or Parcels as are herein provided with respect to like-types of tracts which are subject to this Declaration, and such additional Owners shall be members of the Association and shall have all of the rights, duties and obligations and be subject to all the restrictions herein provided with respect to the Owners originally subjected to this

provisions herein set forth and the rules and regulations adopted hereunder then in effect with respect to the L'Esprit Property shall be deemed to have been granted, adopted, provided or imposed, as the case may be, upon the land within the Future Development Parcel or Parcels, with the same force and effect as though such Future Development Parcel or Parcels had originally been a part of and included within the L'Esprit Property.

9.03 Mergers: In the event of a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property referred to herein, together with the covenants and restrictions established upon any other land as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration within the Property subject hereto.

9.04 Future Development of L'Esprit Property: In the event any owner of one or more tracts of the L'Esprit Property shall desire to further subdivide and develop all or any portion of the property owned by it and in connection therewith shall desire to impose additional restrictions and/or create a separate owners association ("Subassociation") with respect thereto (herein a "Subdevelopment"), such owner may do so provided that:

(i) Any required subdivision approvals as set forth in the Section concerning Tract Subdivision of this Declaration shall have been obtained;

(ii) None of the additional restrictions imposed upon the Subdevelopment shall serve to remove any of the provisions of this Declaration from that portion of the L'Esprit Property within the Subdevelopment; however, such additional restrictions may further restrict such property and/or add complementary additions to this Declaration;

(iii) All roads, street lights or other subdivision improvements required in connection with such Subdevelopment shall be installed at the sole cost and expense of the owner developing same, which construction shall be to the standards required by governmental agencies with authority over such property except to the extent a greater standard may be imposed by other provisions of this Declaration; and separate provisions are made for the maintenance and repair of all new subdivision improvements within the Subdevelopment, which repair and maintenance shall not be the responsibility of the Association; and

In the event more than ten (10) new tracts are created in connection with any Subdevelopment, a Subassociation with respect thereto must be created and constituted in connection therewith.

When a Subassociation is created with respect to any Subdevelopment, the purchasers of tracts within such Subdevelopment shall be deemed to have irrevocably appointed the Subassociation as their proxy for purposes of receiving all notices from the Association and for casting all votes allocated to such portion of the L'Esprit Property pursuant to Section 5.03 hereof. A Subassociation shall designate to the Association, in

writing, from time to time, the person authorized to cast the votes allocated to such Subassociation.

The assessments provided for by Section 5.05 hereof shall, as to the property encompassed within a Subdevelopment for which there is a separate Subassociation, be billed by a single invoice to such Subassociation. The Subassociation shall be responsible for allocating the amount of such assessment and collecting same from the owners of tracts within such Subdevelopment. Notwithstanding the foregoing, however, individual properties and owners within a Subdevelopment shall be individually liable to and subject to a lien in favor of the Association, as provided for in Section 5.06 hereof, for any unpaid assessments allocated to such owners and properties by this Subassociation. In the event any Subassociation shall fail to pay the entire amount of any assessment billed to it, when due, the Subassociation shall, within thirty (30) days thereafter, certify to the Association, in writing, the names, addresses and tract numbers of all owners failing to pay that portion of the Subassociation's assessment allocated thereto, together with the amounts thereof, whereupon the Association may file a lien therefor as provided in Section 5.06 hereof.

The Third Amendment and Restatement Declarants hereby reaffirm their intention to substitute this Third Amendment and Restatement of the L'Esprit Master Declaration of Easements, Covenants and Restrictions in full for the Master Declaration of record in Restriction Book 3, Page 157, in the Oldham County Clerk's Office, and Deed Book 145, Page 303 in the Henry County Clerk's Office, as amended in Restriction Book 4, Page 56 and Restriction Book 4, Page 596, both in the Oldham County Clerk's Office, and in Deed Book 158, Page 511 and Deed Book 167, Page 295, both in the Henry County Clerk's Office, which Master Declaration is now of no effect.

IN WITNESS WHEREOF, the Third Amendment and Restatement Declarants have hereunto executed and made this Third Amendment and Restatement of the L'Esprit Master Declaration of Easements, Covenants and Restrictions as of the date and year first above written.

This document shall be executed in separate counterparts, the total signature pages added to this document comprising the full, complete, and final recordable instrument.

**L'ESPRIT PROPERTY OWNERS  
ASSOCIATION, INC.**

By: Ronald R. Henson  
Title: President

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

Acknowledged, subscribed and sworn to before me by Donald L. Mason, as President of **L'ESPRIT PROPERTY OWNERS ASSOCIATION, INC.**, a Kentucky not-for-profit corporation, on February 28, 1995. My commission expires: 8/6/96.

Linda Keltor  
NOTARY PUBLIC, KENTUCKY STATE AT LARGE

THIS INSTRUMENT WAS PREPARED BY:

**GREENEBAUM DOLL & McDONALD**

By: \_\_\_\_\_  
Glenn A. Price, Jr.

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