

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
TURTLE CREEK SUBDIVISION, NOW RESERVE AT L'ESPRIT
OLDHAM COUNTY, KENTUCKY**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TURTLE CREEK SUBDIVISION ("Amendment") is made, imposed and declared as of this 01st day of March, 2006, by TURTLE CREEK DEVELOPMENT LIMITED PARTNERSHIP, a Kentucky limited partnership, PO Box 43607, Louisville, Kentucky 40253 ("Developer").

WITNESSETH:

WHEREAS, Developer is the current owner/developer of lots in a certain residential subdivision formerly known as "TURTLE CREEK SUBDIVISION, SECTION 1" and now known as Reserve at L'Esprit, Section 1 (Plat Book 6, Page 59) as shown on plat of same of record in Plat Book 6, Page 59, in the Office of the Clerk of Oldham County, Kentucky (the "Subdivision"); and

WHEREAS, Developer desires to amend the Declaration of Covenants, Conditions and Restrictions for Turtle Creek Subdivision (the "Declaration") of record in Restriction Book 8, Page 74 in the office of the clerk aforesaid, as it applies to the properties shown on Plat Book 6, page 59, to change the name to the Reserve at L'Esprit; and

NOW, THEREFORE, in accordance with the foregoing preambles, which are hereby incorporated herein, Developer hereby declares as follows:

1. Pursuant to Paragraph 18 of the Declaration, the name of the subdivision shall hereafter be Reserve at L'Esprit. Any and all references to "Turtle Creek" in the Declaration of Covenants, Conditions and Restrictions referenced above as it affects the property shown on Plat Book 6, page 59 shall be changed to Reserve at L'Esprit.

WITNESS the signature of Developer by its duly authorized representative as of the day, month, and year first above written.

**TURTLE CREEK DEVELOPMENT
LIMITED PARTNERSHIP**

By: Michael E. Posateri
Name: Michael E. Posateri
Title: Asst. Managing Partner


COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The foregoing instrument was subscribed, sworn to, and acknowledged before me by Michael E. Pusateri as Asst. managing Partner of TURTLE CREEK DEVELOPMENT LIMITED PARTNERSHIP, on behalf of the company, this 8th day of March, 2006.

My Commission expires: October, 2008

Anne Muller
Notary Public, State at Large, Kentucky

THIS INSTRUMENT PREPARED BY:


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BOOK R9 PAGES 261 - 262

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
TURTLE CREEK SUBDIVISION**

Landcraft, Inc. of Louisville, Kentucky, a Kentucky corporation, (hereinafter referred to as "Developer"), is the owner of the lots in Turtle Creek Subdivision, lots 1 through 50, Deed Book _____, Page _____, Subdivision Plat Book P6, Page 35 in the office of the County Clerk of Oldham County, Kentucky.

For the mutual benefit of present and future owners, their heirs, representatives, successors, and assigns, of lots in Turtle Creek Subdivision, Developer and Grantor imposes restrictions upon the above-described lots as follows:

1. PRIMARY USE RESTRICTIONS

All lots shall be used for residential purposes only and not more than one single-family residence shall be erected on any lot.

2. BUILDING LOCATION

No building on any lot shall be located nearer the property lines of any lot than:

- (i) The building lines shown on a recorded plat,
- (ii) As prescribed for a plat by the regulations of the Oldham County Planning Commission in effect at the time of commencement of construction of building on the lot. In the event of a change in the requirements of the Oldham County Planning Commission, Developer shall have the right to establish a different location for the building lines by provision for same in deeds of conveyance of the lot or lots in which such a change is effective.

3. MINIMUM FLOOR AREA

(a) Any residential structure erected on any lot in this section shall have at least a two-car attached garage and shall contain a Living Space of not less than:

- (i) 1800 square feet for a one-story dwelling;
- (ii) 2000 square feet for a one and a half story dwelling; and
- (iii) 2400 square feet for a two-story dwelling.

(b) Any residential structure erected on any lot in this section that has an "full" or "wrap around" Covered Front Porch of at least eight feet (8') of depth may use up to 150 square feet of the porch area in the total minimum dwelling square footage number.

Page 2

Paragraph 6

3~~rd~~ sentence

refers to

(see Section 5-b)

Should read?

(see Section 6-b)

(c) A dwelling's Living Space does not include square footage in the Garage, Basement, Decks or Porches (with the noted exception in Section 3-b above).

4. **BUILDER APPROVAL**

It is the lot owners responsibility, prior to plan submittals, to have their builder approved by the Developer. Lot owners will not be allowed to build their own homes unless it can be proved to the Developer that the owner possesses the experience and ability to do so.

5. **CONSTRUCTION AND DELIVERY VEHICLES WITH EMPTY AND/OR LOADED WEIGHTS OF TWENTY-TWO (22) TONS OR GREATER**

All vehicles that weigh TWENTY-TWO (22) TONS OR MORE must enter Turtle Creek Subdivision from Old Sligo Road to Fort Pickens Road to subdivision. Further, said vehicles must exit the subdivision using Fort Pickens Road to Old Sligo Road. The driver(s), owner(s) and/or company(s) for which said vehicles are performing work or services that violate this provision will be given two (2) written warnings from the developer. Upon a third violation of this provision the offending driver(s), owner(s) and/or company(s) for which said vehicles are performing work or services will be barred from entering into Turtle Creek Subdivision until such time that said driver(s), owner(s) and/or companies for which said vehicles are performing work or services make adequate provision to the Developer that further violations of this provision will not occur. This may require the driver(s), owner(s) and/or companies for which said vehicles are performing work or services to post a road bond to use Fort Pickens Road. In the event that the driver(s), owner(s) and/or companies for which said vehicles are performing work or services fail to satisfy the Developer in this regard and continue to enter Turtle Creek, the Lot Owner where deliveries and/or pick ups are made will be issued a written notice that the driver(s), owner(s) and/or companies for which said vehicles are performing work or services have be barred from entering Turtle Creek Subdivision. Further, said Lot Owner will be held responsible and a stop work order issued until such time that the Lot Owner makes provisions to the Developer that further violations will not occur. This may entail the Lot Owner posting a Road Bond on Fort Pickens Road.

6. **APPROVAL OF CONSTRUCTION PLANS AND RELATED STRUCTURES**

(a) It is the purpose of the Developer to provide that residences and other improvements constructed or placed in Turtle Creek be of good design and suitable materials. The Developer must approve the plans and specifications for the construction or placement of any building, retaining wall, fence, wall, or any other structure, and for the grading of the land, before the work is begun. Three copies of the submittals (see Section 5-b) must be left with the Developer and the Developer shall have the right to refuse in whole or in part any such plans and specifications that are deemed not to be suitable or desirable. The Developer shall

take into consideration the suitability of the proposed structures to the sites upon which they are to be constructed or placed, the harmony with the surroundings, the preservation of the natural setting, and the effect of the proposed structure on other structures, roadways and/or trees. If a residence is started prior to receiving written approval a stop work order will be immediately put on the structure until all the approvals are obtained. The Oldham County Planning and Zoning Commission shall be instructed to not approve building permits not certified by the Developer.

(b) In addition to the specific requirements set forth elsewhere herein, prior to commencement of construction on any lot the following items must be submitted to the Developer for written approval:

- i. All construction plans including all Elevations,
- ii. Building specifications (including the materials and colors to be used),
- iii. A plan showing the grade elevation and the site location of the structure on the lot,
- iv. A plan showing the location and specifications for any driveways,
- v. A written Erosion and Sediment control plan,
- vi. A written tree preservation plan detailing the building envelope and measures to preserve the trees outside of that building envelope.

(c) The exterior building material of all structures shall be brick, stone, brick veneer, stone veneer, or a combination of the same. However, Developer recognizes that the appearance of other exterior building materials (such as siding, stucco, Exterior Insulation and Finish Systems such as Dryvit, etc.) may be attractive and innovative on such housing styles as Victorians, Colonials, Early American Farm Houses, Bungalows, houses with "full" covered front porches and so on. Accordingly, Developer reserves the right to approve in writing the use and color of other exterior building materials. All exterior building materials must extend to the grade.

(d) The primary roof pitch of any residential structure shall not be less than eight (8) inches vertical for every twelve (12) inches of horizontal for structures with more than one story and eight (8) inches vertical for every twelve (12) inches horizontal for one-story structures. At Developer's sole discretion, modern or contemporary structures may be approved with lower roof pitches.

(e) Building materials cannot be stored on a lot for more than thirty (30) days unless a structure is under active construction on said lot.

(f) No Gazebo or Play House may be constructed on any lot in Turtle Creek without the written permission of the developer prior to construction of said structure. No other type of outbuilding or accessory structure may be constructed on any lot unless first obtaining a variance from Oldham County.

- (g) All mailbox and newspaper holders placed on any lot shall be of a design designated by Developer.
- (h) The construction on any lot of a structure known as a bi-level or tri-level residence shall not be permitted without the written permission of the Developer.
- (i) Further, no fence or wall of any type may be more than six (6) feet high. No fence shall be chain link material.
- (j) No garage vehicle entrance shall face the street to which the front of the residence faces. Garage vehicle entrances shall face either the side or rear lot line.
- (k) No dwellings may front onto Turtle Creek Parkway except lots 1, 49 and 50.
- (l) No driveways shall access onto Turtle Creek Parkway except those on Lots 1, 49 and 50.
- (m) No driveways may encroach into the forty (40) foot side yard setback along Turtle Creek Parkway except lots 1, 49 and 50 without written permission of the Developer.
- (n) No driveways may access Fort Pickens Road.
- (o) No structure may be built or placed within the forty (40) foot side yard setback along Turtle Creek Parkway without written permission of the Developer.
- (p) No above ground pools shall be constructed on any lot.
- (q) Retaining Walls visible from the street shall have a brick or stone facing.
- (r) Wherever approval of developer is provided for in this Declaration, clearing, construction or placement shall not commence unless the Developer has granted written approval.

7. **COMPLIANCE WITH THE LAW AND DEED RESTRICTIONS**

- (a) Every structure erected upon any lot shall comply strictly with all applicable laws, building codes and regulations as they may now exist or may exist at the time construction is commenced, as the case may be.

(b) If any lot owner fails to comply with any of the provisions of the Declarations, Covenants and Deed of Restrictions of Turtle Creek, the Developer, its successors, assigns, officers, agents, employees and contractors, may, without notice, enter upon the lot and take such actions as they in their sole discretion deem necessary or appropriate in their discretion to cause such compliance. Such lot owner, upon demand, shall immediately reimburse Developer for all costs and expenses incurred in order to comply herewith, and such costs and expenses shall constitute a lien on the lot and improvements, which lien shall be prior and superior to all other liens and claims against such lot to the fullest extent permitted by law, except liens of the first mortgage holder

8. **EASEMENTS**

Easements are reserved as shown on a recorded plat for various utility installations and maintenance and for other purposes shown on such plat.

9. **UTILITY SERVICE INSTALLATION**

The owner of the lot shall be solely responsible for installing any utility lines in accordance with all lawful requirements, and the expense and any fees therefore to any municipal agency, corporation, or utility company shall be at the sole expense of the lot owner. All utilities servicing any structure on any lot shall be built underground unless other prior permission is obtained in writing from the Developer.

10. **STREET CUTS OR TUNNELING UNDER STREETS**

The lot owner is ultimately responsible for anyone cutting or tunneling under a street or road in Turtle Creek Subdivision. When cutting and/or tunneling occurs, the street, to the degree affected, must be promptly repair and restore to its original condition and at such person's or lot owner's own risk and expense, and this shall not create any liability on the Developer, express or implied.

11. **DUTY TO MAINTAIN THE LOT**

(a) From and after the date of purchase of a lot until construction of a single-family residence is started, Developer shall have the right to perform all maintenance on the lot, including but not limited to mowing. Each owner shall be assessed an annual fee payable quarterly to cover all operating and maintenance dues which shall include a rate to mow all undeveloped lots.

(b) From and after the date construction of a single family residence on a lot is started, it shall be the duty of each lot owner to keep the grass on the lot properly cut, to keep the lot free from weeds and trash, and to keep it otherwise neat and attractive in appearance. Should any owner fail to do so, then Developer

may take such action as it deems appropriate, including mowing, in order to make the lot neat and attractive, and the owner shall, immediately upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, together with allowable statutory interest, and the Developer shall have a lien on that lot and the improvements thereon to secure the repayment of such amounts. Such lien may be enforced by foreclosure against that lot and the improvements thereon, but such lien shall be subordinate to any first mortgage thereon.

(c) During construction the owner shall require any person performing the construction work to provide a large garbage and waste container from an approved garbage collector for disposal of all food containers, waste building material or other disposable material so that the building premises are kept clean and no waste is allowed to be blown onto the premises of others. Developer may waive the requirements of a trash container and require a trash and burn pit if such alternative does not create a nuisance to the community. Any permitted burning will be in strict adherence to the Oldham County Burning Ordinances.

12. EROSION AND SEDIMENT CONTROLS

(a) Each lot owner shall be responsible for making certain that any contractor or subcontractor who performs any construction on such owner's lot adheres to and regularly notifies suppliers and subcontractors of their obligation by virtue of this Declaration to adhere to any current erosion control ordinance and follows these guidelines:

- (i) Leave as much vegetation intact as possible on the lot during construction.
- (ii) Install silt fences or straw bales embedded four (4) inches into grade on the lot at beginning of construction as needed to prevent sediment from leaving the lot in any direction, and if appropriate, divert upstream run-off from the lot, and in all cases comply with subdivision drainage plans;
- (iii) Install and maintain gravel drive with extra length for a wash-off area for all deliveries and installation coincident with beginning excavation on the job site;
- (iv) Discourage trucks from entering onto the lot other than on the gravel drive;
- (v) When conditions warrant, pump or convey concrete or plasticizer or other methods to avoid mud on the streets;
- (vi) Backfill and rough grade the lot as soon as possible in the construction process and establish final grade as soon as practical; and
- (vii) Shovel and sweep the streets as needed in front of the lot to prevent any buildup of mud or dirt in drainage swales or on the street.

(b) All construction plans and specifications submitted for approval pursuant to this Declaration with regard to any lot shall specify erosion control precautions to be used during and after construction of all improvements on such lot for the entire duration of such construction and thereafter as may be necessary or required, and each lot owner shall prevent any and all construction materials, erosion, or other debris or waste of any kind from blowing, running, or otherwise being present on any adjoining property or any other lot during and as necessary after construction. Requirements shall include, as necessary and as may be required by law, such steps as are necessary to control run-off, erosion, or the relocation of any debris, water, waste, or other material.

(c) If any lot owner fails to comply with the provisions of this section of the Declarations, the Developer, its successors, assigns, officers, agents, employees and contractors, may, without notice, enter upon the lot and take such actions as they in their sole discretion deem necessary or appropriate in their discretion to cause such compliance. Such lot owner, upon demand, shall immediately reimburse Developer for all costs and expenses incurred in order to comply herewith, and such costs and expenses shall constitute a lien on the lot and improvements, which lien shall be prior and superior to all other liens and claims against such lot to the fullest extent permitted by law, except liens of the first mortgage holder. Developer may further disqualify such lot owner's builder as an approved builder for purposes of this Declaration, or with respect to such lot, whereupon the lot owner must obtain the services of another approved builder for completion of construction or related activities.

13. DRAINAGE

(a) Drainage as originally constructed in the subdivision shall not be changed without Developer's prior written approval.

(b) It is the responsibility of the lot owner upon completion of the residence or any subsequent structure, including decks and landscaping, to repair any damaged drainage structures, including drainage swales. Said drainage structures shall be rebuilt to their original design specifications.

(c) The lot owner is responsible for maintaining Proper drainage during construction.

(d) Driveway culverts shall be of a size and material acceptable to the Oldham County Engineer and installed in a manner that does not impede drainage.

(e) Driveway culverts are to have brick or stone headwalls

(f) Upon a lot owner's failure to comply with the provision hereof, the Developer may take such action as Developer in its sole discretion, deems necessary to comply herewith at such lot owner's sole expense. Such lot owners, upon demand, shall immediately reimburse Developer for all costs and expenses incurred in order to comply herewith, and such costs and expenses shall constitute a lien on the lot and improvements thereon, which lien shall be prior and superior to all other liens and claims against such lot to the fullest extent permitted by law, except that said lien shall be inferior and subordinate to liens of the first mortgage holder.

14. SODDING, SEEDING AND DRIVEWAYS

(a) Unless otherwise approved in writing by the Developer, within thirty (30) days after the construction of a residence, a lot owner shall grade the entire lot or so much of it as has been disturbed during construction and sod the lot from the rear of the residence to the paved street or streets, except for areas covered by the residence, paved areas and landscaped areas.

(b) In areas that are seeded, adequate silt and sediment control must be put in place and maintained until silt and sediment run-off is no longer a problem.

(c) Each lot owner shall construct the finished paved driveway within three (3) months, weather permitting, after completion of a single-family dwelling. All driveways must be finished in concrete or asphalt.

(c) Upon a lot owner's failure to comply with the provision hereof, the Developer may take such action, as Developer, in its sole discretion, deems necessary to comply herewith at such lot owner's sole expense. Such lot owner, upon demand, shall immediately reimburse Developer for all costs and expenses incurred, including any court costs or attorney's fees incurred, in order to comply herewith, and such costs and expenses shall constitute a lien on the lot and improvements thereon, which lien shall be prior and superior to all other liens or claims against such lot to the fullest extent permitted by law, except that said lien shall be inferior and subordinate to liens of the first mortgage holder.

15. LANDSCAPING AND TREES

(a) Upon completion of a dwelling the lot owner shall landscape the yard spending a minimum \$1000.00 exclusive of the required sodding.

(b) Upon the construction of a residence, the lot owner shall cause to be planted in the front yard of such lot a "Canopy Tree" having a trunk diameter of at least two (2) inches and an "Ornamental Tree" having a trunk diameter of at least two (2) inches. (A second canopy tree may be planted in lieu of an ornament

tree.) The species of these trees are to be acceptable to and approved by the developer prior to planting.

(c) Except for placement of the residence and driveway no tree shall be removed or destroyed during construction. The preservation of existing trees is of the utmost importance. Any trees removed or destroyed during or after construction shall be replaced with suitable new trees.

(d) Upon a lot owner's failure to comply with the provision hereof, the Developer may take such action as Developer, in its sole discretion, deems necessary to comply herewith at such lot owner's sole expense. Such lot owners, upon demand, shall immediately reimburse Developer for all costs and expenses incurred in order to comply herewith, and such costs and expenses shall constitute a lien on the lot and improvements thereon, which lien shall be prior and superior to all other liens and claims against such lot to the fullest extent permitted by law, except that said lien shall be inferior and subordinate to liens of the first mortgage holder.

16. USE OF OTHER STRUCTURES AND VEHICLES

(a) No mobile home, motor home, tent, shack, garage or other outbuilding placed or erected on the property at any time shall be used as a residence temporarily or permanently. No trailer, boat recreational vehicle or similar vehicle shall be parked on any lot or anywhere on the property for a period in excess of twenty-four (24) hours in any one calendar year unless fully enclosed within a garage, the only exception being a builder actively engaged in the construction of a building on the property. Treehouses shall not be permitted anywhere on the property.

(b) No partially completed house shall be used as a residence temporarily or permanently. A Certificate of Occupancy shall indicate completion.

(c) No commercial vehicle or truck shall be parked on any lot or anywhere else on the property other than by a business making a delivery or by a builder actively engaged in the construction of a building on the property or unless fully enclosed within a garage.

(d) No vehicle shall be parked on any street for a continuous period of more than twenty-four (24) hours.

(e) No non-operative vehicles shall be parked or permitted to remain in any driveway, on any street or public right-of-way for a continuous period of more than twenty-four (24) hours.

17. DUTY TO COMPLETE, REPAIR AND REBUILD - REMEDIES

(a) Each owner of a lot shall, at their sole cost and expense, repair their residence, keeping the same in condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

(b) If all or any portion of a residence is damaged or destroyed by fire, or other casualty, the owner shall, with all due diligence, promptly rebuild, repair or reconstruct such residence in a manner which will substantially restore it to its apparent condition immediately prior to the casualty.

(c) When construction or reconstruction is once begun, work thereof must be pursued diligently and completed within one (1) year. If for any reason work is discontinued and there is not substantial progress towards completion for a continuous three (3) month period, then the Developer shall have the right to notify the owner of record of the premises of its intentions herein, enter upon the premises, and take such steps as may be required to correct an undesirable appearance, specifically including the right to demolish a partially completed structure and remove the debris from the lot; the reason for such correction shall be solely in the discretion of the Developer and may include, but not be limited to, purely aesthetic grounds. The owner of the property shall be liable for all costs incurred in any such action. The total cost thereof shall be a lien on his property, which lien may be foreclosed in the manner provided for in these Articles and by the laws of the State of Kentucky. Nothing herein shall be construed to interfere with the rights of a mortgage holder to have a reasonable time to foreclose on a property in default and take or assign ownership of same. However, upon securing clear title said mortgage holder or other buyer must commence diligent construction towards completion within three (3) months of securing title.

18. NUISANCES AND HUNTING

(a) No noxious or offensive trades or activities 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. No chickens, ducks, geese, or other fowl, and no swine, cattle, goats, horses, or other like animal shall be kept on any lot.

(b) No hunting or trapping of any type of animal shall be permitted on any lot or other property in Turtle Creek Subdivision except by professional "Critter Ridders".

19. SIGNS

No sign for advertising or any other purpose shall be displayed on any lot or on any building except a sign for advertising the sale or rent thereof, and not

sign shall exceed nine (9) square feet in area, except Developer who shall have the right to erect larger signs for purposes of advertising the property generally.

20. CLOTHES LINES

No outside clotheslines shall be erected or placed on any lot.

21. ANTENNA

(a) No antenna (except for standard small television antenna, other small receivers and transmitters) shall be erected or placed on any lot or structure unless Developer approves its design and placement.

(b) A single satellite dish shall be permitted on each lot only if less than twenty-four (24) inches in diameter and only if not visible in any respect from the street on which the lot fronts. Otherwise satellite dishes shall not be permitted on any lot. Also, large or unusual antenna shall not be permitted on any lot.

22. BUSINESS AND HOME OCCUPATIONS

No trade, business or profession shall be conducted on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Notwithstanding the provisions hereof, a new or existing house may be used by the builder thereof as a model home for display or for the builder's own office, provided said use terminates within three (3) years from completion of such house. The date of the Building Permit shall be considered the start of construction.

23. ENTRANCE OF SUBDIVISION

The entrance to the subdivision and such walls, fences, or identification signs or markers as are installed by the Developer shall be maintained by the Developer until such time as the Developer, in his discretion, relinquishes control to the Turtle Creek Homeowners Association, at which time the Association shall maintain the entrance to the subdivision. The location and construction of signs constituting or identifying the entranceway to Turtle Creek Subdivision or any section thereof are permissible notwithstanding the provisions of this Declaration.

24. RESIDENTS MAINTENANCE ASSOCIATION; ASSESSMENTS

(a) Every owner of a lot in Turtle Creek Subdivision (and such other sections which Developer shall by future deed restrictions so provide) shall be a member of the Community Association (hereinafter referred to as the "Association"), and by acceptance of a deed for any lot 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, shall pay the assessments provided for, when due, and shall comply with the decisions of the Association's Board of Directors. The Developer or its nominee shall administer the assessments and receipts therefrom which may only be used for purposes generally benefiting Turtle Creek Subdivision. Developer shall administer the matters included in the provision for the Association until 90% of the lots in Turtle Creek Subdivision have been sold by Developer and then Developer shall turn over control of the Community Association to three lot owners other than the Developer. Developer may turn over the control sooner at Developer's discretion.

(b) The objects and purposes of the Association shall be as set forth in its bylaws and further shall include but not necessarily be limited to the promotion of the social welfare and common good of the members. The objects and purposes of the Association, its duties and its rights shall include, unless such obligations, purposes, duties or rights are assumed by any governmental agency or instrumentality having jurisdiction thereof, the regular and special construction, maintenance, repair, inspection and protection of the streets, common areas, crosswalks, storm drainage system, basins, sewage disposal and treatment, together with any structures or appurtenances necessary thereof, water system, lines and structures and appurtenances necessary thereto, entrances, and any other commonly used areas, structures or appurtenances as shown on the plats of said subdivision or otherwise, and the acceptance of all common areas for the purpose of operation, maintenance, supervision and repair. The Association is specifically empowered to enact and enforce as otherwise provided herein, any special or regular assessment for the purpose of carrying out its functions and obligations, and if any function or the Association shall be for the exclusive benefit of one or more but not all lots in the subdivision to pro-rate such assessment equally among the lot or lots for which the exclusive benefit exist or to which the exclusive benefit enures.

(c) Any assessment levied by the Association shall be used only for purposes generally benefiting the Association, and shall constitute a lien upon the lot and improvements against which each such assessment is made. This lien shall be subordinate to the lien of any first mortgage or vendor's lien on the lot and shall be enforceable against the real estate and improvements by foreclosure or otherwise.

(d) The initial assessment hereunder shall be \$350.00 per year which shall be prorated from the date the lot owner takes or acquires title to the lot, shall be in said amount until such time as the Board of Directors may increase or decrease the assessment or otherwise provide. The Board of Directors of the Association shall determine the amount of and fix the due date of each subsequent assessment. Developer is not subject to the annual fee.

(e) In the absence of or in the event of the failure of the Board of Directors to set, enforce, or collect the assessments called for under this paragraph, then said assessments may be set, increased, decreased, collected, enforced and applied as set out herein by affirmative vote of owners of fifty-one (51%) percent of the lots in Turtle Creek Subdivision.

25. RESTRICTIONS RUN WITH THE LAND; POWER OF ATTORNEY/GRANT OF PROXY; ENFORCEMENT

(a) Unless cancelled, altered or amended as provided for herein, this Declaration is to run with the land and shall be binding all parties claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten (10) years, unless an instrument, signed by a majority of the current owners of all lots in Turtle Creek Subdivision, has been recorded agreeing to change this Declaration in whole or in part. Prior thereto, this Declaration may be cancelled, altered or amended at any time by the affirmative action of the owners of seventy-five (75%) percent of the lots in Turtle Creek Subdivision which are subject to this same Declaration.

(b) There shall be no dedication of any open space or common area without first having received approval from the Oldham County Planning Commission. Anything to the contrary in these restrictions notwithstanding, the Association shall maintain all common areas, open spaces, entrances, medians, trails, etc. so long as the property is used as a residential subdivision.

(c) Enforcement of this Declaration shall be by proceeding at law or in equity, brought by Developer, by any lot owner, by any owner of real property in Turtle Creek Subdivision or by the Homeowners Association referred to hereinabove against any party violating or attempting to violate any restriction, to restrain violation, to direct restoration and/or to recover damages. Failure of the Developer, the Homeowners Association referred to hereinabove, or any lot owner to demand or insist upon observance of any provision of, or to proceed for restraint of violations hereof, shall not be deemed a waiver of a violation or of the right to seek enforcement of any provision of this Declaration in the future. Any such lot owner, owner of real property in Turtle Creek Subdivision and/or the Homeowners Association referred to hereinabove enforcing this Declaration shall be entitled to recover all costs and expenses incurred in connection with such action, including without limitation, court costs, costs and reasonable attorney's fees. Any award of damages received by the Developer or the Homeowners Association in connection with any such action, and all costs and expenses incurred by Developer or the Homeowners Association in connection therewith, shall constitute a lien upon the lot, of equal priority to the lien for assessments referred to in these Declarations and any award of damages received by any lot owner in connection with any such action shall accrue to the sole benefit of the Turtle Creek Subdivision Homeowners Association.

(d) All liens created and/or imposed against a lot pursuant to the provisions of this Declaration may be enforced in accordance with the applicable provision of Kentucky law, including the judicial foreclosure thereof and sale of lot encumbered thereby with the lot owner and any other person responsible therefore remaining liable for any deficiency.

(e) Further, in any matter required by or prohibited by this Declaration of Restrictions that is subject to an omission or violation by a lot owners, his agents, assigns, builders or contractors, the Developer or the Homeowners Association may, in its sole discretion, cure such omission or violation as set out herein or as appropriate, and the expense for curing such omission or violations, including court costs and reasonable attorney's fees, shall constitute a lien upon the lot(s) upon which such omission or violation was cured by action of the Developer or Association.

26. **ASSIGNMENT BY SUCCESSOR TO DEVELOPER**

(a) To the extent not prohibited by law or by this Declaration, Developer shall have the right to assign any of its rights and duties as set forth in this Declaration to any other person or entity or to the Turtle Creek Homeowners Association described hereinabove.

(b) Any such assignee of Developer shall succeed to and shall have the same rights and duties as Developer has as set forth in this Declaration, and to that extent, wherever the term "Developer" is used in this Declaration, such term shall also refer to successors or assign of Developer.

27. **INVALIDATIONS AND SEVERABILITY**

Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any of the other provisions hereof which shall remain in full force and effect. Each provision of these restrictions is severable.

28. **SUPPLEMENTAL DECLARATION**

(a) Developer may, from time to time, elect in its discretion, and without need for consent of any other person or entity, to record with respect to this Section of Turtle Creek Subdivision a Supplemental Declaration of Covenants, Conditions and Restrictions (a "Supplemental Declaration") in the office of the Clerk of Oldham County, Kentucky, pursuant to which Supplemental Declaration Developer may impose on the section subject thereto rights, privileges, covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitude, easements, assessments, charges, and liens and provision other than those set forth in this Declaration, which may be more restrictive than those set forth in this Declaration as Developer may elect in its sole discretion, and which shall control in addition to the provisions of this

Declaration, taking into account the unique and particular aspects of the proposed development of the section covered thereby, provided, that any of the same imposed by such Supplement Declaration shall not materially adversely affect the existing single-family residential nature of the other sections of Turtle Creek Subdivision. A Supplemental Declaration may further provide for a subassociation for such section and for the right of such subassociation to assess lot owners within such section and to place liens upon the lots therein. For the purposes described in such Supplemental Declaration, the terms "Subassociation" shall mean any Kentucky profit or non-profit corporation or any unincorporated association, and the successor and assigns of any of the same, organized and established or authorized pursuant to, or in connection with, one or more Supplemental Declarations, to benefit the lot owners within the section burdened by the applicable Supplemental Declaration. Upon filing of a Supplemental Declaration in the aforesaid Clerk's office, the section subject thereto shall be subject to all of the rights, privileges, covenants, conditions, restriction, limitations, reservations, exceptions, equitable servitude, easements, assessments, charges and liens, and other provisions set forth in this Declaration, except, to the extent, if any, specifically stated in the Supplemental Declaration which may add to or further restrict but not otherwise limit or conflict with the provision sets forth in this Declaration.

29. **AMENDMENTS TO ARTICLES AND BYLAWS OF THE HOMEOWNERS ASSOCIATION**

Except to the extent an amendment thereto may conflict herewith, the Articles and Bylaws of the turtle Creek Subdivision Homeowners Association may be amended from time to time in accordance with the provisions thereof.

30. **NON-LIABILITY OF THE DIRECTORS AND OFFICERS**

Neither Developer or its successors or assigns, its directors or officers, nor the directors or officers of the Turtle Creek Subdivision Homeowners Association, shall be personally liable to any of the lot owners for any mistake of judgment or fact or for any other acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or actual fraud. The lot owners shall indemnify and hold harmless each of the directors and officers of the Turtle Creek Subdivision Homeowner Association and their respective heirs, executors, administrators, personal representatives, successors and assigns, for act or omissions of any nature whatsoever while acting in their official capacity and otherwise in accordance with the Articles and/or Bylaws of the Association.

31. **BINDING DETERMINATION**

In the event of any dispute or disagreement with or between any lot owner(s) relating to, or of any other disputes, disagreements or questions

regarding the interpretation or application of the provisions of this Declaration or the Articles or Bylaws of the Turtle Creek Subdivision, the determination thereof (a) by Landcraft, Inc. for so long as Landcraft, Inc. owns any lot or any portion of Turtle Creek Subdivision, and (b) thereafter by the Board of Directors of the Turtle Creek Subdivision Homeowners Association, shall be final and binding on each and all such lot owners

32. **COMMUNITY ASSOCIATION EASEMENT**

Developer hereby grants and conveys to the Turtle Creek Homeowners Association an easement in, or, under, over, above, across and through the entirety of the property for the use and benefit of the Association in order to permit the Association in or upon such portions of the property as are reasonably necessary to discharge the rights and obligations of the Association enumerated in this Declaration, which shall be exercised only to the extent reasonably necessary and appropriate to discharge those obligations.

33. **INCORPORATION BY REFERENCE ON RESALE**

Upon the sale or other transfer of any lot, any deed purporting to effect such transfer shall contain a provision incorporation by reference the covenants, conditions, restrictions, charges, liens, assessment and other provisions set forth in this Declaration; provided, however, that the failure of any such deed to so incorporate by reference this Declaration shall not affect the validity of such deed nor shall it be deemed to release the lot conveyed thereby from the effect of this Declaration.

34. **NOTICES**

Upon purchase of any lot the purchaser thereof shall notify Developer and the Turtle Creek Subdivision Homeowners Association in writing, sent to the address of Developer set forth above (or to such other address or to such other entity as shall be designated by Developer and/or the Homeowners Association, whether by notice to lot owners or by the filing of a statement and/or declaration in the aforesaid Clerk's office), of such purchase and shall set forth in writing the then existing address of such purchaser and the lot purchased. Any notice required to be sent to any lot owner pursuant to the provisions of this Declaration shall be deemed to have been properly given upon personal delivery, or when mailed, by ordinary mail, post-paid, to the last known address of the person or entity which appears as the lot owner on the records of Developer or of the Homeowners Association at the time of such mailing or as specified on the deed of the lot to such lot owner.

