

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE ENCLAVE AT LOCHMERE ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (hereinafter referred to as the "Declaration") is made this the 8<sup>th</sup> day of July, 2013 by Ball Homes, LLC, a Kentucky limited liability company whose address is 3609 Walden Drive, Lexington, Kentucky 40517 (hereinafter referred to as the "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of certain property located in Lexington-Fayette County, Kentucky which is being developed as a residential community known and referred to as "The Enclave at Lochmere Estates", which property is more particularly described in Exhibit "A" attached hereto and incorporated by reference herein (the "Property"); and

WHEREAS, the Property was previously subject to certain Covenants, Conditions and Restrictions for the Enclave at Andover Estates, as amended, of record at Deed Book 2443, page 335; Deed Book 2806, page 433; and Deed Book 3105, page 19, of record in the Office of the Fayette County Clerk (hereinafter the "Prior Restrictions"); and

WHEREAS, the Prior Restrictions have been cancelled by the "Cancellation of Covenants, Conditions and Restrictions for the Enclave at Andover Estates" recorded simultaneously herewith and of record at Deed Book ~~3106~~ page ~~130~~<sup>130</sup> in the aforesaid Clerk's office; and

WHEREAS, pursuant to the Prior Restrictions, The Enclave at Andover Estates Homeowner Association, Inc. was formed for the purpose of maintaining and administering the common areas, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, notwithstanding the cancellation of the Prior Restrictions, said Association is still in existence, is in good standing, has been renamed The Enclave at Lochmere Estates Homeowners Association, Inc. and is to be the homeowners association for the Property as provided hereinafter; and

WHEREAS, the Developer proposes to establish a general plan for the use, occupancy and enjoyment of the Property; and

WHEREAS, the Developer further proposes to provide for the use, enjoyment and maintenance of the "Common Area", as hereinafter defined; and

WHEREAS, portions of the Property have been subdivided into single family residential lots and Common Areas as more particularly shown on the Amended Final Record Plat of Lochmere Estates (Maple Ridge), Unit 1-A, Section 1(a), of record at Plat Cabinet R, Slide 60 and on the Amended Final Record Plat of Lochmere Estates (Maple Ridge), Unit 1-B, Section

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1(a), of record at Plat Cabinet R, Slide 61 all in the Office of the Fayette County Clerk and which property is more particularly described at Exhibit "B" attached hereto and incorporated by reference herein;

WHEREAS, the balance of the Property will be subdivided into single family lots pursuant to amended final record plats to be recorded subsequent to the recordation of the Declaration and which properties will be subjected to the provisions of the Declaration by a "Subsequent Amendment";

NOW, THEREFORE, Developer hereby declares that the real property described at Exhibit B shall be held, sold, and conveyed subject to the covenants, conditions, and restrictions contained herein, which covenants, conditions, and restrictions shall run with the land and shall bind all parties having or acquiring any right, title, or interest in said real property, their heirs, successors, successors-in-title, and assigns and shall be for the benefit of each owner of any portion of such real property.

## ARTICLE I

### DEFINITIONS

1.1 "Association" shall mean and refer to the Enclave at Andover Estates Homeowners Association, a Kentucky non-profit corporation, its successors and assigns.

1.2 "Board of Directors" or "Board" shall be the elected body of the Association having its normal meaning under Kentucky corporate law.

1.3 "By-Laws" shall mean and refer to the By-Laws of the Association, as they may be amended from time to time.

1.4 "Common Area" shall mean and refer to those areas designated as "H.O.A." or "H.O.A. A. Open Space" areas on the Plat or Plats, including medians, pedestrian access ways, as well as any improvements and facilities located thereon, to be devoted to the common use and benefit of the Owners of the Lots, and such other areas as may be required to be maintained by the Association as shown on the Plat or Plats, and any areas so designated by the Developer.

1.5 "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, for general purposes, including any reasonable reserve, all as may be found necessary and appropriate by the Board pursuant to this Declaration, the By-Laws and the Articles of Incorporation of the Association.

1.6 "Community-Wide Standard" shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard may be more specifically determined and set forth by the Board.

1.7 "Developer" shall mean and refer to Ball Homes, LLC, a Kentucky limited liability company, or its successors, successors-in-title or assigns who take title to all or any portion of

the Property for the purpose of development or sale and who are designated as Developer hereunder in a properly-recorded instrument executed by the immediately preceding Developer.

1.8 "Lot" shall mean and refer to any subdivided tract of land shown upon the Amended Final Record Plats of Lochmere Estates (Maple Ridge) for Unit 1-A, Section 1(a) of record at Plat Cabinet R, Slide 60 and for Unit 1-B, Section 1(a) of record at Plat Cabinet R, Slide 61, all in the Fayette County Clerk's office, or shown upon subsequent record plats of the Property, and which tracts are intended for independent ownership and construction of a single-family detached dwelling provided that the term "Lot" shall not include Lot 51, also known as 736 Lochmere Place. Provided further, however, that the term "Lot" shall not include Lot 24, also known as 832 Lochmere Place, as shown on the Final Record Plat of Lochmere Estates (Maple Ridge), Unit 1-A, Section 1, of record at Plat Cabinet N, Slide 188.

1.9 "Member" shall mean and refer to a "Person", as hereinafter defined, entitled to membership in the Association, as provided for herein.

1.10 "Mortgage" shall mean and refer to any mortgage, deed, debt, security deed, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment of satisfaction of an obligation.

1.11 "Mortgagee" shall mean and refer to the beneficiary or holder of record of a Mortgage.

1.12 "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

1.13 "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot located on the Property, with the exception of Lot 24 on the Final Record Plat of Lochmere Estates (Maple Ridge), Unit 1-A, Section 1 of record at Plat Cabinet N, Slide 188 and Lot 51, also known as 736 Lochmere Place, on the Amended Final Record Plan of Lochmere Estates (Maple Ridge) Unit 1-B, Section 1(a) of record at Plat Cabinet R, Slide 61 all in the Office of the Fayette County Clerk but excluding any Person who is a Mortgagee or holds an interest merely as security for the performance of an obligation.

1.14 "Plat" or "Plats" shall mean the Amended Final Record Plat of Lochmere Estates (Maple Ridge), Unit 1-A, Section 1(a) of record at Plat Book R, Slide 60 and the Amended Final Record Subdivision Plat of Lochmere Estates (Maple Ridge), Unit 1-B, Section 1(a) of record at Plat Cabinet R, Slide 61 all in the Office of the Fayette County Clerk, or any Plat of the Property which is recorded in said Clerk's office subsequent to the recordation of this Declaration.

1.15 "Person" shall mean and refer to a natural person, a corporation, a partnership, a limited liability company, limited liability partnership, a trustee or other legal entity.

1.16 "Property" shall mean and refer to the real property described at Exhibit A, including such additional property as is hereafter subjected to this Declaration by a Subsequent Amendment. Provided, however, that the Property does not include Lot 24, also known as 832 Lochmere Place on the Final Record Plat of Lochmere Estates (Maple Ridge), Unit 1-A, Section 1(a), of record at Plat Cabinet N, Slide 188, nor does it include Lot 51, also known as 736

Lochmere Place on the Amended Final Record Subdivision Plat of Unit 1-B, Section 1(a), of record at Plat Cabinet R, Slide 61. Lots 24 and 51 are excluded from and not subject to the provisions of this Declaration.

1.17 "Subsequent Amendment" shall mean and refer to an amendment to this Declaration which subjects additional property to this Declaration, withdraws property from this Declaration, imposes, expressly or by reference, additional covenants, conditions, restrictions, assessments and obligations on the land described therein, or which substitutes a successor Developer.

ARTICLE II  
EASEMENTS, PROPERTY RIGHTS AND COMMON AREAS

2.1 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Developer to install utilities, sanitary and storm sewer facilities and similar improvements in the Common Areas; and
- (b) The right of the Association to suspend the voting rights and right to use of the facilities by an Owner for any period during which any assessment against any Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction by an Owner of the Association's published Rules and Regulations; and
- (c) The right of the Association to dedicate and transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by at least fifty-one (51%) per cent of each class of members has been recorded.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his or her right of enjoyment to the Common Areas and facilities to the members of his or her family, guests and social invitees.

2.3 Maintenance of Common Areas. As provided for hereinafter in Article IV, the Association shall maintain the Common Area and improvements thereon, including, but not limited to, the entry wall and landscaping, medians within the streets, pedestrian access trails, and any Property perimeter fence.

2.4 Structures in the Common Area. No structure, object or plant material may be placed in the Common Area without the approval of the Developer during the Class B Membership Period, as hereinafter defined in Article III, or, thereafter, by the Association.

2.5 Sale of Common Area. The Common Area shall not be sold or otherwise disposed of without first offering to dedicate such area to the appropriate governmental entity. This limitation neither applies to a transfer of the Common Area to an organization conceived and

established to own and maintain the Common Area as a successor to the Association, nor to the easements, rights and privileges created by this Declaration.

2.6 Title to Common Area. The title to the Common Area, or portions thereof, shall be conveyed to the Association by the Developer upon the expiration of the Class B Membership, free and clear of all liens and encumbrances.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner of a Lot shall be a Member of the Association. No Owner, whether one or more persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership.

3.2 Voting Rights. The Association shall have two (2) classes of voting membership;

(a) Class A. Class A Members shall be all Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to one vote per Lot owned for the year in which the voting power is exercised, and, in addition, shall be entitled to appoint all members of the Board of Directors. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earliest:

- (i) Upon the sale of seventy-five (75%) percent of the Lots which are planned for development in the Property; or
- (ii) Five (5) years from the recording date of the deed conveying the first Lot in the Property to a Person or entity other than the Developer.

Owners may not vote by written proxy but an Owner's vote may be cast with the Owner's spouse in the Owner's absence.

### ARTICLE IV MAINTENANCE

4.1 Responsibility of the Association. Insofar as the Property has been designed to provide a large area of common open space to be used and enjoyed by the Owners, and insofar as such common open space, which is included in the Common Area, is dispersed throughout the Property, it is desirable to maintain a consistent and uniform appearance and level of

maintenance of the Lots and Common Area. In order to achieve such uniformity, the Association shall be responsible for the maintenance of the Common Area and for mowing of all lawn areas within Lots which are not enclosed by an approved wall or fence. The Owner shall be entitled to install plantings, including trees, decorative shrubs, flowers and other landscaping on unenclosed lawn areas in addition to any plantings that were installed on the Lot by the Developer at time of construction of the house. However, prior to the installation of such additional plantings, the Owner shall obtain the prior written approval of the Association or a person or committee designated by the Association to review and approve such plans in order that the Association may determine if such additional plantings will unreasonably interfere with the ability of the Association to efficiently mow the unenclosed lawn areas on the Lot. The Owner shall be responsible for the maintenance of all landscaping, with the exception of mowing of unenclosed lawn areas, on his or her Lot.

4.2 The Common Area. The Association's maintenance of the Common Area shall include, but not be limited to, mowing and trimming of lawn areas; care and trimming of any trees, including street trees, decorative shrubbery or other plantings; maintenance of entry features to the Property including walls, signage, lighting and any irrigation system that may be installed; maintenance and repair of any detention areas; maintenance and repair of pedestrian access ways; mowing of street medians; and, maintenance and repair of any perimeter fencing installed around the Property. Provided, however, that the Owner shall be responsible for the maintenance and repair of any driveway accessing his or her Lot, including such portion of the driveway that is located in the Common Area.

4.3 Right of Access. All Lots shall be subject to an access easement in favor of the Association for the purpose of maintaining the unenclosed lawn areas within a Lot and for maintaining the Common Area, which access shall be reasonable and include use of the driveway where feasible.

#### ARTICLE V INSURANCE

5.1 Insurance. The Association's Board of Directors, or its authorized agent, shall have the authority to obtain, on behalf of and for the benefit of the Association, its Members, officers, and directors, such insurance coverages and/or bonds as the Board, in its discretion determines, including, but not limited to, blanket all-risk coverage, fire and extended coverage, public liability, workers' compensations, director's and officer's liability and a fidelity bond. Premiums for all insurance and/or bonds obtained shall be Common Expenses and shall be included in the General Assessment, as more particularly described in Article IX of this Declaration. If "all-risk" property insurance is not generally available at reasonable cost, then fire and extended coverage may be substituted in such form as the Board deems appropriate. The face amount of the policy shall be sufficient to cover the full replacement cost of all insurable structures in the Common Area.

The Board shall also obtain a public liability policy covering all Common Areas, insuring the Association and its Members for all damage or injury caused by the negligence of the

Association, any of its Members, its employees, agents, or contractors acting on its behalf which policy shall be in amounts authorized from time to time by the Association. Premiums for all insurance on Common Areas shall be included in the General Assessment.

5.2 Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area, or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

5.3 Damage and Destruction. Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Members representing at least seventy-five percent (75%) of the total vote of the total Class A votes of the Association and the Class B Member, if any, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

5.4 Repair and Reconstruction. If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired and reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment, as hereinafter defined, against all Owners responsible for the premiums for the applicable insurance coverage under Section 5.1 of this Article on the same basis as provided for the General Assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

5.5 Fidelity Coverage. The Association may obtain fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The fidelity insurance policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days' prior written notice to the institutions servicing mortgages on behalf of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

#### ARTICLE VI NO PARTITION

Except as is permitted in this Declaration or Amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition unless the Property has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

#### ARTICLE VII CONDEMNATION

Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain (or conveyed in lieu of and under any threat of condemnation, by the Board acting on the written direction of Members representing at least two-thirds (2/3) of the total Association vote and the Developer, as long as the Developer owns any property described on Exhibit A), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such a taking, the Developer, so long as the Developer owns any property described in Exhibit A of this Declaration, and Members representing at least seventy-five (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors. If such improvements are to be repaired or restored, the above provisions of Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

#### ARTICLE VIII ANNEXATION OF ADDITIONAL PROPERTY

8.1 Annexation of Additional Property. The Developer, with the consent of the owner, shall have the sole right and privilege, so long as it is the Class B Member, to annex all or any portion of the real property shown at Exhibit A, and to subject such property to the provisions of this Declaration by filing an "Subsequent Amendment" with the Clerk of the Fayette County Court. Such Subsequent Amendment shall not require the consent of Members and shall be effective upon the filing of record of such Subsequent Amendment, unless otherwise provided herein. The Developer shall have the sole right to transfer the right and privilege to annex additional property to any other Person provided that such transferee or assignee shall be the developer of at least a



portion of the real property described in Exhibit A. The real property described at Exhibit A, with the exception of the real property described at Exhibit B, shall not be affected by this Declaration, either expressly or by implication, unless and until annexed as provided for herein.

8.2 Acquisition of Additional Common Area. The Developer, during the Class B Membership Period, may convey or cause to be conveyed to the Association additional real estate, improved or unimproved, located within the properties depicted on Exhibit A, which, upon conveyance or dedication to the Association, shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

8.3 Additional Covenants and Easements Developer or its successors may subject any portion of the property subjected to this Declaration initially or by Subsequent Amendment to additional covenants, conditions, restrictions, and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a Subsequent Amendment duly recorded in the Fayette County Clerk's Office filed either concurrent with or after the submission of the subject property and shall require the written consent of the owner of the property if not the Developer, except as otherwise provided in Article XII hereinafter.

#### ARTICLE IX ASSESSMENTS

##### 9.1 Creation of Lien and Personal Obligation for Assessments.

(a) Each Owner of any Lot other than Developer, by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association:

- (i) General Assessments to fund expenses for the benefit of all Members of the Association; and
- (ii) Special Assessments as described in Section 9.4 below.

(b) All such assessments, together with interest, charges, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Each Owner shall be liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot. General Assessments shall be levied equally on all Lots.

(c) The grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of such conveyance, without prejudice to such grantee's right to recover from such grantor

the amounts paid by the grantee therefor; provided, however, that if such grantor or grantee shall request a statement from the Association as provided in Section 9.14 hereof, such grantee, his successors, successors-in-title and assigns, shall not be liable for, nor shall the Lot conveyed by subject to a lien for, any unpaid assessments against such grantor in excess of the amount set forth in such statement if any.

- (d) During the Class B Membership Period, the Developer shall not be required to pay assessments for Lots owned by Developer. However, until the expiration of the Class B Membership Period, the Developer shall be obligated for the difference between the amount of assessments levied on all Lots subject to assessment and the amount of actual expenditures required to operate the Association during the calendar year. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Developer or other entities for the payment of some portion of the Common Expenses. Upon expiration of the Class B Membership Period, the Developer shall be obligated to pay assessments for Lots which it owns on the same basis as other owners.
- (e) Until expiration of the Class B Membership Period, the Developer or its nominee shall administer the assessments and receipts therefrom and which may be only used for purposes generally benefiting the Property or portions thereof subject to this Declaration.

9.3 Preparation of Budget. Upon expiration of the Class B Membership Period, it shall be the duty of the Board at least sixty (60) days prior to the Association's annual meeting to prepare a budget covering the estimated cost of operating the Association during the coming year including an adequate reserve fund. The Board shall cause the budget and assessments to be levied against each Lot for the following year to be delivered to each Member at least twenty-one (21) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at the annual meeting by a vote of a majority of the total Association membership. Notwithstanding the foregoing, however, in the event the Board fails for any reason to determine the budget for the succeeding year then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year. Such budget shall include a breakdown of such costs allocated to Common Area Expenses.

9.4 Special Assessments. In addition to the annual assessments authorized above, the Association may levy upon all Owners, in any assessment year, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of a capital improvement on the Common Area, provided that any such assessment shall have the assent of at least fifty-one (51%) percent of the votes of the Owners who are voting in person for a meeting duly called for such purpose. The Board may make Special Assessments payable in installments over a period of not more than three (3) years. Each such assessment together with

interest, costs, and reasonable attorney's fees shall become the personal obligation of each Owner, his or her heirs, successors and assigns.

9.5 Notice of Meeting. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members entitled to cast fifty-one (51%) percent of all votes shall constitute a quorum. If the required quorum is not present, another meeting may be called upon written notice of not less than three (3) nor more than five (5) days. Said meeting shall not be required to satisfy the quorum in order to do business. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.6 Capital Budget and Contribution. After the end of the Class B Membership Period, as provided for in Section 9.3 hereinabove, the Board of Directors shall annually prepare a capital budget to take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected capital needs of the Association as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The funds in the capital budget shall only be used for maintenance and repair of the Common Area. The capital contribution shall be fixed by the Board and included within and distributed with the budget and assessment as provided in Section 9.3 hereinabove.

9.7 Date of Commencement and Amounts of Annual Assessments. The initial annual assessment shall be due in full as to each Lot at the time of acquisition of record title to such Lot. The initial assessment shall be One-Thousand Nine Hundred and Fifty Dollars (\$1,950.00) per year. Thereafter, the annual assessment will be dated January 1 of each year and will be due and payable in quarterly installments on the first day of January, April, July and October of each year. The Board of Directors from time to time may increase or decrease the assessment and/or modify the payment due dates.

9.8 Lien for Assessments. The General and Special Assessments and all other sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred as provided herein, shall be secured by a continuing lien on such Lot in favor of the Association. Such lien shall be prior and superior to all other liens and encumbrances on such Lot except:

- (a) all taxes, assessments and other levies which by law would be superior thereto; and
- (b) the lien for all sums unpaid which are secured by a first in priority Mortgage, or any Mortgage in favor of Developer, duly recorded in the public records of Fayette County, Kentucky, and all amounts advanced pursuant to such Mortgage(s) and secured thereby in accordance with the terms of such instrument(s).

All other persons acquiring liens or other encumbrances on any Lot which become liens after this Declaration is filed for record shall be deemed to consent that such liens or encumbrances shall be inferior to future liens or encumbrances, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens or encumbrances.

9.9 Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. Any assessment due for a period of fifteen (15) days shall incur a late charge of ten (10%) percent. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within fifteen (15) days following the due date. If the assessment is not paid within thirty (30) days, the lien provided for herein shall attach and in addition the lien shall include a late charge of ten (10%) percent, together with interest on the principal amount due and the late charge at the rate of eighteen (18%) percent per annum, or at whatever rate the Association shall establish at its annual meeting, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided for herein. In the event that the assessment remains unpaid after thirty (30) days, the Association, through the Board, may institute suit to collect such amounts or to foreclose its lien. Each Owner, by his acceptance of a Deed to a Lot, vests in the Association or its agents the right and power to bring actions against him personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid in the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas.

9.10 Exempt Property. Notwithstanding anything to the contrary herein, Common Areas shall be exempt from the payment of General and Special Assessments.

9.11 Failure to Assess. The omission or failure of the Board to fix assessment amounts or rates or to deliver and mail to each Owner an assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment was made, at which time any shortfalls in collections may be assessed retroactively by the Association.

9.12 Recordkeeping. The Association shall maintain or cause to be maintained full and accurate books of account with respect to the performance of its responsibilities hereunder. The books and records and related financial statements shall be made available for inspection and copying upon request by the Members during normal business hours. Copying charges shall be paid by Members when requesting copies.

9.13 Effect of Foreclosure. When a Mortgagee or the purchaser or purchasers of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage, or by voluntary conveyance in lieu of such foreclosure, said Mortgagee or purchaser shall not be liable for the share of assessments by the Board pertaining to such Lot which became due prior to acquisition of title by said Mortgagee or purchaser as a result of the foreclosure or voluntary conveyance in lieu of

foreclosure; provided, the Mortgagee or purchaser shall be liable for its share of assessments accruing after the acquisition of title by said Mortgagee or purchaser. Such unpaid share of assessments shall be deemed to be Common Expenses collectible from all of the other Lot Owners, including a successor or assign of the Mortgagee. The waiver of liability granted herein for the payment of past due assessments shall not apply to an Owner who takes back a purchase money mortgage, or to any other Mortgagee which is not an "institutional mortgagee." The term "institutional mortgagee" herein shall mean a first mortgage holder which is a bank, savings and loan association, life insurance company, pension fund, trust company, credit union or other similar institutional lender.

9.14 Certificate as to Assessments. Any Owner, Mortgagee of a Lot, person having executed a contract for the purchase of a Lot, or lender considering the loan of funds to be secured by a Lot, shall be entitled, upon request, to a statement from the Association or its management agent setting forth the amount of the Assessments past due and unpaid (with late charges and interest applicable thereto), against that Lot.

#### ARTICLE X RESTRICTIONS

10.1. Land Use and Building Type. No Lot within the Property shall be used except for private single-family residential purposes. However, notwithstanding the foregoing, Developer may construct model and/or speculative homes on Lots and use same for the marketing and sale of private single family residences. No building shall be erected, altered, placed or permitted to remain on any Lot within the Property other than one detached single family dwelling not to exceed two stories in height, unless provided for herein.

10.2. Construction Materials. Any dwelling erected, placed, altered or permitted to remain on any Lot within the Property shall be substantially of brick veneer or wood or non-masonry construction and all house plans and designs shall be approved in writing by Developer prior to beginning construction. The type of materials used for construction must be approved in writing by Developer prior to construction.

10.3. Approval of Building Plans. Developer is hereby granted the right, but is not obligated, to approve all plans and specifications for the erection of improvements on all Lots within the Property.

10.4. Detached Garages and Other Outbuildings. No detached garages and/or other outbuildings shall be erected, altered, placed or permitted to remain on any Lot within the Property. Notwithstanding the foregoing, nothing herein shall preclude Developer from erecting and maintaining temporary tool or storage sheds or field offices on the Property which are used by the Developer.

10.5. Temporary Structures. No structure of a temporary character, trailer, basement of any uncompleted structure, tent, shack, garage, barn or other outbuildings shall be used on any Lot within the Property at any time as a residence, either temporarily or permanently.

10.6. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot within the Property nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No immobile or "junk" cars, trailers or recreational vehicles or boats shall be allowed to be parked upon streets or public rights-of-way in the Property or on any portion of the Property other than within a garage or an approved storage facility. No microwave, dish, or other receiver or transmitter exceeding twenty four (24) inches in diameter shall be erected or placed on any Lot unless its design, size, color and placement are approved in writing by Developer. No outside clothes lines, antenna, shortwave or "ham" radios and shortwave towers shall be allowed on or within the Property.

10.7. Easements. Any Lot within this Property shall be conveyed subject to the building lines, easements and other conditions shown or noted on the applicable recorded subdivision plat for such Lot.

10.8. Lot Condition. In the event the owner of any Lot within the Property fails to keep or maintain the lot in a good condition, free of trash or weeds, the Developer shall have the right, but not the obligation, to clean and maintain said Lot in whatever manner the Developer deems appropriate and charge the owner for all costs incurred in performing such work. Upon the demand of Developer, the owner of such Lot shall reimburse Developer for all costs over and above the cost of mowing unenclosed lawn areas incurred in performing such work and Developer shall retain a lien on such Lot and the improvements thereon to secure the repayment of such amounts. Interest shall accrue on the unpaid costs at the rate of twelve percent (12%) per annum commencing on the date on which Developer demands payment and ending on the date that Developer is indefeasibly paid in full for such costs. Such lien may be enforced by foreclosure against the Lot and Improvements thereon, but such lien shall be subordinate to any first mortgage thereon.

10.9. Animals. No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any Lot within the Property, except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area) may be kept provided that they are not kept, bred or maintained for any commercial or breeding purposes. All household pets, including dogs and cats, shall at all times be confined to the Lot occupied by the owner of such pet. However, no "dog runs" of any type or material or any type of permanent dog or pet shelter shall be permitted on any Lot within the Property provided that the prohibition against "dog runs" shall not preclude the installation of an approved wall or fence as provided for herein.

10.10. Signs. No sign for advertising or for any other purpose shall be displayed on any Lot within the Property or on a building, structure or anywhere else on any Lot within the Property except one sign for advertising the sale or rent thereof, which shall not be greater in area than nine square feet. Notwithstanding the forgoing, Developer shall have the right to erect larger signs when advertising the subdivision. This restriction shall not prohibit placement of occupant name signs and lot numbers as allowed by applicable zoning regulations.

10.11. Fences. Fences or walls shall be permitted provided that they are located within a

Lot and further provided that, prior to construction, the wall or fence, including type of materials, dimensions and location, is approved in writing by the Association or by a person or committee designated by the Association to approve such plans. A perimeter fence along the boundary of the Property as may be constructed or approved by the Developer may also be permitted. Underground "invisible" fencing will be permitted.

10.12. Conformation. All land development and building construction within the Property shall conform to the applicable local governmental land planning and zoning laws, regulations and ordinances as adopted from time to time.

10.13. Detention, Retention, Drainage and Storm Sewer Easements. Unless and until an appropriate governmental authority assumes all responsibility for maintaining all areas within any detention, retention and/or drainage easement and/or any storm sewer easement, the respective owners of those Lots on which such areas are located shall be responsible for maintaining such areas.

10.14. Mailboxes. A mailbox selected by Developer will be placed on or adjacent to each Lot within the Property at the expense of the Lot Owner. Such mailboxes shall satisfy applicable postal regulations and shall conform to specifications established by the Developer. There shall be no modification of a mailbox without the prior written approval of the Association or person or committee designated by the Association to review such plans.

10.15. Swimming Pools. No swimming pools, other than permanent, in-ground pools will be permitted provided that all pools shall be located within the Lot, shall be enclosed by an approved fence or wall, and shall be approved by the Association prior to installation.

10.16. Tennis Courts. No tennis courts shall be permitted on the Property.

10.17. Basketball Goals. No basketball goal shall be erected without the written prior approval of the Developer. No basketball goal shall be attached to the front of the house. No basketball goal shall be erected in the Common Area, and no portable basketball goals shall be located or used in or adjacent to any street.

10.18. Lighting. No exterior lighting, including recreational and/or security lighting, shall be installed or maintained on any Lot which is found to be objectionable by the Developer in its sole discretion. Should the Developer make such a determination, the Owner of the Lot on which such lighting is located will immediately remove said lighting upon notice being provided by the Developer, or, have such lighting shielded to the satisfaction of the Developer. Temporary exterior building lights and holiday decorations are permitted, subject, however, to rules and regulations adopted by the Developer or Association.

10.19. Play Equipment. Swing sets and similar play equipment are permitted provided that they are located within a Lot, are enclosed by an approved fence or wall and have been approved prior to installation by the Association or a person or committee designated by the Association to approve such plans.

10.20. Tanks. Above-ground propane and similar tanks shall not be permitted on the Property.

ARTICLE XI  
ASSOCIATION; RIGHTS AND OBLIGATIONS

11.1 Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration or by the By-Laws, or which may be reasonably implied from or reasonably necessary to effectuate, any such right or privilege.

11.2 Rules. The Association, through its Board, may make, modify, and enforce reasonable rules governing the use of the Property and the Common Area (the "Rules"), consistent with the rights and duties established by this Declaration and provided that such Rules are substantially related to the rights and duties established by this Declaration. Such Rules shall be binding upon all Owners, occupants, invitees, and licensees until and unless repealed or modified in a regular or special meeting of the Board of Directors by the vote of a majority of the Board and, so long as such membership exists, by the Class B Member.

11.3 Enforcement. The Association may impose sanctions for violations of this Declaration, the By-Laws, or Rules, including reasonable monetary fines, suspension of voting rights and the right to use any facilities within the Common Area. In addition, the Association may exercise self-help remedies to cure violations of the By-Laws, this Declaration, or the Rules, and may suspend any services it provides to the Lot of any Owner thirty (30) days or more delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court. Board actions to impose or seek sanctions shall be governed by the By-Laws.

11.4 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, under the terms and conditions of this Declaration.

ARTICLE XII  
AMENDMENT

12.1 General. Prior to the conveyance of the first Lot, Developer or its successor may unilaterally amend any portion of this Declaration. After such conveyance, the Developer or its successor may unilaterally amend any provision of this Declaration, so long as it still owns any portion of the Property shown on Exhibit A and so long as the amendment has no material adverse effect upon the substantive right of any Owner; thereafter and otherwise, and except as otherwise provided in this Declaration, this Declaration may be amended only by the affirmative vote of a majority of the Board of Directors present at a meeting duly called for such purpose and, of the Developer so long as Developer owns property subject to this Declaration or which may become subject to this Declaration pursuant to Article VIII (Annexation of Additional Property). However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Notwithstanding the foregoing, the Developer or its successors may amend this Declaration to provide for annexation of additional property.



imposition of additional covenants, restrictions, and easements, as provided for in and pursuant to Article VIII herein.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to so consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege.

12.2 Subsequent Amendment to Annex Property. Article VIII of this Declaration shall not be amended without the prior consent of Developer so long as it still owns any property depicted on and described in Exhibit A. The Developer, pursuant to and as set forth in Article VIII of this Declaration, has the privilege to amend this Declaration for the purpose of annexing the real property shown on Exhibit A to this Declaration pursuant to recorded Subsequent Amendments.

12.3 Removal of Property. Notwithstanding any of the foregoing, the Developer reserves the right to amend the Declaration unilaterally at any time during the Class B Membership Period for the purpose of removing certain portions of the Property then owned by the Developer or its affiliates, or, the Association from the provisions of this Declaration, without prior notice and without the consent of any Person other than the Owner thereof, either (a) to the extent such property was included originally in error; or (b) as a result of any changes whatsoever in the plans for The Enclave at Lochmere Estates desired to be effected by the Developer, provided that such withdrawal is not inconsistent with the overall uniform scheme of development for the Property.

#### ARTICLE XIII GENERAL PROVISIONS

13.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Developer, the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years agreeing to terminate said covenants and restrictions, in which case this Declaration shall be terminated as specified therein.

Notwithstanding the foregoing, this Declaration may be terminated with the consent of Owners of three-fourths of the Property and Developer so long as it owns any of the property depicted on and described at Exhibits "A" and "B".

Section 13.2 Indemnifications, Liability of Directors.

(a) It is the policy of this Association that, subject to any restriction or limitation of applicable law, each person who is or was a member, director, trustee, committee member, or officer of the Association, whether elected or appointed, including the heirs, executors, administrators, or estate of any such person, and who has acted in good faith and reasonably believed that their conduct was in the best interest of the Association, shall be indemnified by the Association to the full amount against any liability, and the reasonable cost or expense (including reasonable attorney fees, monetary or other judgments, fines, excise taxes, or penalties and amounts paid or to be paid in settlement) incurred by such person in such person's capacity as a member, director, trustee, officer, committee member, or employee, or arising out of such person's status as a member, director, trustee, officer, committee member, or employee; provided, however, no such person shall be indemnified against any such liability, cost, or expense incurred in connection with any action, suit, or proceeding in which such person shall have been adjudged liable on the basis that personal benefit was improperly received by such person, or if such indemnification would be prohibited by law. This right of indemnification shall also provide that the officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The Association shall, to the extent permitted by applicable law, maintain insurance, as a Common Expense, to protect itself and any such person against any such liability, cost, or expense, whether or not the Association would have the power to indemnify such person against such liability, cost, or expense under the Kentucky Nonprofit Corporation Acts or under this Article XIII, if such insurance is reasonably available. The indemnification provided by this Article XIII shall not be deemed exclusive of any other rights which those seeking indemnification may have or hereafter acquire under any bylaw, agreement, statute, vote of members or board of directors, or otherwise. If this Article XIII or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Association shall nevertheless indemnify each such person to the full extent permitted by any applicable portion of this Article XIII that shall not have been invalidated or by any other applicable law.

(b) The liability of each and all of the directors of this Association shall be and is hereby limited to the greatest extent permitted by law and no director of the Association shall be liable to the Association for monetary damages for breach of such director's duties as a director, except for the following (which exceptions shall be construed as narrowly as legally permissible):

(i) For any transaction in which the director's personal financial interest is in conflict with the financial interests of the Association;

(ii) For acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be a violation of law; or

(iii) For any transaction from which the director derives an improper personal benefit.

(c) In addition to the limitation on a director's liability stated hereinabove, no action taken as a director and no failure to take action as a director shall be the basis for monetary damages or injunctive relief unless:

(i) The director has breached or failed to perform the duties of the director's office in compliance with the general standards for directors as set forth in KRS 273.215; and

(ii) In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property.

(d) If the Kentucky Nonprofit Corporation Acts are amended after approval of this Article XII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Association shall be deemed to be eliminated or limited by this provision to the fullest extent then permitted by the Kentucky Nonprofit Corporation Acts, as so amended. Any repeal or modification of this Article XIII shall not adversely affect any right or protection of a director of the Association existing at the time of such repeal or modification.

### 13.3 Board of Directors Meetings.

Except as otherwise provided herein, meetings of the Board of Directors shall comply with the requirements of the By-Laws including, but not limited to, notice, quorum, and voting requirements.

### 13.4 Easement for Maintenance of Common Area and Landscape Area.

Subject to the provisions of this Declaration, Developer hereby and by recording this Declaration and the recording of any document adding property this Declaration, grants and conveys to the Association, and its successors, successors-in-title, and assigns, a perpetual easement and right of access across the Property for the purpose of maintaining, repairing, and replacing the Common Areas, including any improvements or landscaping within the Common Areas in accordance with this Declaration. Where feasible, such access shall be limited to public rights-of-way and to paved access ways, driveways, and/or streets whether public or private.

The continued existence of the easements created hereunder is expressly made subject to the conditions and restrictions contained herein which shall constitute covenants running with the title to, and both benefiting and burdening, the Property.

13.5 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

13.6 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then

such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

13.7 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of a majority of the Board of Directors. Any meeting called for such purpose shall be subject to the same notice and quorum requirements and other procedures as provided in the By-Laws for meetings of the membership. This Section shall not apply, however, to:

- (a). actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens),
- (b). the imposition and collection of assessments as provided in Article X hereof,
- (c). proceedings involving challenges to ad valorem taxation, or
- (d). counterclaims brought by the Association in proceedings instituted against it.

This Section shall not be amended unless such amendment is made by the Developer or is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above.

13.8 Use of the Words "Enclave at Lochmere Estates". No Person shall use the words "Enclave at Lochmere Estates" or any derivative thereof in any printed or promotional material without the prior written consent of the Developer. However, Owners may use the term "Enclave at Lochmere Estates" in printed or promotional matter where such term is used solely to specify that particular property is located within the Enclave.

13.9 Security The Developer and/or the Association is not formed for the purpose of and shall not be obligated to, undertake any measures designed to increase safety or security in the Property. NEITHER THE ASSOCIATION NOR THE DEVELOPER SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY AND NEITHER THE ASSOCIATION NOR THE DEVELOPER SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE SECURITY. ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE DEVELOPER, THE ASSOCIATION AND ITS BOARD OF DIRECTORS DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM WILL BE INSTALLED ON THE PROPERTY BY THE DEVELOPER AND/OR THE ASSOCIATION. EACH OWNER, TENANT, GUEST OR INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DEVELOPER, THE ASSOCIATION, THE BOARD OF DIRECTORS AND COMMITTEES ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT DEVELOPER, THE ASSOCIATION, THE BOARD OF DIRECTORS AND COMMITTEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIED UPON

ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THAT ANY SECURITY MEASURES WILL BE UNDERTAKEN BY DEVELOPER AND/OR THE ASSOCIATION.

13.10 Headings and Gender. Headings of Articles and Sections are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Articles and Sections to which they refer. Where required for proper interpretation, words in the singular shall include the plural, and vice versa, and the masculine gender shall include the neuter and feminine, and vice versa.

#### ARTICLE XIV DEVELOPER'S RIGHTS

Any or all of the special rights and obligations of the Developer may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded in the Fayette County Clerk's office, Lexington, Fayette County, Kentucky.

Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, and amendments thereto, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Developer, its successors and assigns, and any builder or developer approved by Developer, to maintain and carry on sales and promotional activities on Lots owned or leased by Developer, its successors and assigns, or such builder or developer; and to construct and operate business offices, signs, construction trailers, and sales offices on such Lots.

No rights, privileges and easements granted or reserved herein shall be merged into the title of the Property but shall be held independent of such title and no such right, privilege or easement shall be surrendered, conveyed or released except by delivery of a quitclaim deed from Developer releasing such right, privilege or easement by express reference thereto.

So long as Developer continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument affecting any portion of the Property without Developer's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Developer.

This Article may not be amended without the express written consent of the Developer; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) ten (10) years or (b) when Class "B" Membership Period ends.

#### ARTICLE XV

CONSENTS AND APPROVALS

Whenever the consent or approval of any party is required pursuant to this Declaration, such consent or approval shall not be unreasonably withheld.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned Developer has executed this Declaration of Covenants, Conditions and Restrictions for the Enclave at Lochmere Estates this 8<sup>th</sup> day of July, 2013.

BALL HOMES, LLC,  
a Kentucky limited liability company  
BY: Ray Ball  
ITS President

STATE OF KENTUCKY  
COUNTY OF FAYETTE

The foregoing Declaration of Covenants, Conditions and Restrictions for the Enclave at Lochmere Estates was subscribed, sworn to and acknowledged before me this 8<sup>th</sup> day of July, 2013, by Ray Ball, as President of Ball Homes, LLC, a Kentucky limited liability company, for and on behalf of the corporation.

My Commission Expires: 4-24-17

Rena G. Wiseman  
Notary Public ID# 488023

This instrument was prepared by:

Rena G. Wiseman  
RENA G. WISEMAN, ESQ.  
3609 Walden Drive  
Lexington, Kentucky 40517  
(859) 268-1191

EXHIBIT "A"

**THE ENCLAVE**  
**PARCEL I**

BEING all of Lot No. 2, of the Lochmere Estates (Maple Ridge) Subdivision to the City of Lexington, Fayette County, Kentucky, as shown by maps or plats thereof of record in Plat Cabinet H, Slide 707, Plat Cabinet I, Slide 394 and Plat Cabinet K, Slide 28, in the Fayette County Clerk's Office; and the improvements thereon being known and designated as 1011 Maple Ridge Place (a/k/a 651 Chilesburg Road), Lexington, Kentucky.

**PARCEL II**

BEING all of Lot No. 1 and Lot No. 3, of the Lochmere Estates (Maple Ridge) Subdivision to the City of Lexington, Fayette County, Kentucky, as shown by maps or plats thereof of record in Plat Cabinet K, Slide 28, in the Fayette County Clerk's Office; and the improvements thereon being known and designated as 1001 Maple Ridge Place and 1111 Maple Ridge Place, Lexington, Kentucky.

HOWEVER, THERE IS EXCEPTED from the above described PARCEL I that certain property described as follows:

BEING all of Lot No. 40, of the Lochmere Estates (Maple Ridge) Subdivision, Unit 1-B, Section 1 to the City of Lexington, Fayette County, Kentucky, as shown by Final Plat of Lochmere Estates (Maple Ridge), Unit 1-B, Section 1 thereof of record in Plat Cabinet N, Slide 354, in the Fayette County Clerk's Office; and the improvements thereon being known and designated as 736 Lochmere Place, Lexington, Kentucky.

HOWEVER, THERE IS EXCEPTED from the above described PARCEL II that certain property described as follows:

BEING all of Lot No. 24, of the Lochmere Estates (Maple Ridge) Subdivision, Unit 1-A, Section 1 to the City of Lexington, Fayette County, Kentucky, as shown by Final Plat of Lochmere Estates (Maple Ridge), Unit 1-A (Section 1) thereof of record in Plat Cabinet N, Slide 188, in the Fayette County Clerk's Office; and the improvements thereon being known and designated as 832 Lochmere Place, Lexington, Kentucky; and

Therefore, PARCEL I and PARCEL TWO are now platted, and the following lots are a part of and included in PARCEL I and PARCEL II described above (less the exceptions):

BEING all of Lot Nos. 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 43, 44, 45 and 46, of the Lochmere Estates (Maple Ridge) Subdivision, Unit 1-A, Section 1 to the City of Lexington, Fayette County, Kentucky, as shown by Final Plat of Lochmere Estates (Maple Ridge), Unit 1-A (Section 1) thereof of record in Plat Cabinet N, Slide 188, in the Fayette County Clerk's Office; and the improvements thereon being known and designated as 817 Lochmere Place, 821



Lochmere Place, 825 Lochmere Place, 829 Lochmere Place, 4108 Lochmere Loop, 4104 Lochmere Loop, 4100 Lochmere Loop, 3996 Lochmere Loop, 721 Lochmere Place, 729 Lochmere Place, 733 Lochmere Place, 816 Lochmere Place, 720 Lochmere Place, 728 Lochmere Place and 732 Lochmere Place, Lexington, Kentucky; and

BEING all of Lot Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 33, 34, 35, 36, 37, 38, 39 and 41, of the Lochmere Estates (Maple Ridge) Subdivision, Unit 1-B, Section 2 to the City of Lexington, Fayette County, Kentucky, as shown by Final Plat of Lochmere Estates (Maple Ridge), Unit 1-B (Section 2) thereof of record in Plat Cabinet N, Slide 474 and Corrected Amended and Easement Minor Plat of record in Plat Cabinet N, Slide 529, in the Fayette County Clerk's Office; and the improvements thereon being known and designated as 741 Lochmere Place, 745 Lochmere Place, 749 Lochmere Place, 753 Lochmere Place, 757 Lochmere Place, 761 Lochmere Place, 765 Lochmere Place, 769 Lochmere Place, 773 Lochmere Place, 777 Lochmere Place, 781 Lochmere Place, 785 Lochmere Place, 789 Lochmere Place, 4004 Lochmere Court, 4000 Lochmere Court, 4001 Lochmere Court, 801 Lochmere Place, 809 Lochmere Place, 744 Lochmere Place, 748 Lochmere Place, 752 Lochmere Place, 768 Lochmere Place, 780 Lochmere Place, 792 Lochmere Place, 800 Lochmere Place and 808 Lochmere Place, Lexington, Kentucky; and

BEING all of Lot Nos. 19 and 42, of the Lochmere Estates (Maple Ridge) Subdivision, Unit 1-A, Section 2 to the City of Lexington, Fayette County, Kentucky, as shown by Final Plat of Lochmere Estates (Maple Ridge, Unit 1-A (Section 2) thereof of record in Plat Cabinet N, Slide 504, in the Fayette County Clerk's Office; and the improvements thereon being known and designated as 813 Lochmere Place and 812 Lochmere Place, Lexington, Kentucky.

Being the same property conveyed to Ball Homes, LLC, a Kentucky limited liability company, by deed dated October 9, 2012, of record in Deed Book 3105, Page 13, in the Fayette County Clerk's office.

EXHIBIT "B"

Being all of the property shown on the Amended Final Record Plat of Lochmere Estates (Maple Ridge), Unit 1-A, Section 1 (a), of record at Plat Cabinet R, Slide 60, in the office of the Fayette County Clerk, and all of the property shown on the Amended Final Record Plat of Lochmere Estates (Maple Ridge), Unit 1-B, Section 1 (a), with the exception of Lot 51, also known as 736 Lochmere Place, of record at Plat Cabinet R, Slide 61 in the aforesaid Clerk's office.

Being a part of the property conveyed to Ball Homes, LLC by deed dated October 9, 2012 and of record at Deed Book 3105, page 13 in the aforesaid Clerk's office.

I, Donald W Blevins Jr, County Court Clerk  
of Fayette County, Kentucky, hereby  
certify that the foregoing instrument  
has been duly recorded in my office.

  
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By: DOUG BRADLEY ,dc

201307090446

July 9, 2013                      15:10:28    PM

Fees	\$82.00	Tax	\$ .00
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Total Paid	\$82.00
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**THIS IS THE LAST PAGE OF THE DOCUMENT**

27 Pages

1 - 27