

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, SERVITUDES AND EASEMENTS FOR
HOLES 11-17 OF THE ANDOVER COUNTRY CLUB AND
GOLF COURSE PROPERTY (DEED BOOK 3606, PAGE 120)**

THIS Declaration of Covenants, Conditions, Restrictions, Servitudes and Easements for Holes 11-17 of the Andover Country Club and Golf Course Property (Deed Book 3606, Page 120) (the "**Declaration**") is made as of the 20 day of December, 2018, by Andover Neighborhood Association, Inc., a Kentucky non-stock, non-profit corporation ("**Declarant**").

RECITALS

WHEREAS, Declarant was created to further the common good and general welfare of the residents of the development of the common interest community located in Fayette County, Kentucky and commonly known as Andover Hills (the "**Development**");

WHEREAS, the Development consists of certain residential lots (each a "**Lot**") that are identified in and subject to the Deeds of Restriction referenced in that certain Master Addendum to Deeds of Restrictions for Andover Neighborhood Association, Inc., dated June 21, 2018, and of record in the Fayette County Clerk's Office at Deed Book 3599, Page 303 (the "**Addendum**");

WHEREAS, portions of a golf course formerly known as the "**Andover Golf Course**", were located adjacent to and within the Development;

WHEREAS, the owner and operator of the Andover Golf Course, Andover Golf and Country Club, Inc. defaulted on its loan obligations to Whitaker Bank, the lender holding the mortgage on the Andover Golf Course ("**Whitaker**");

WHEREAS, in 2017, Whitaker foreclosed on the Andover Golf Course and was the highest bidder at the Master Commissioner's foreclosure sale;

WHEREAS, AGCC, LLC, a wholly owned subsidiary of Whitaker, was assigned Whitaker's winning bid interest, and was subsequently deeded the Andover Golf Course Property by Fayette Master Commissioner;

WHEREAS, the members of the Declarant, being the owners of the Lots within the Development (each owner a "**Member**" and collectively the "**Members**"), voted at a duly-noticed, called and held special meeting to purchase the Common Property, as defined herein, to be used in perpetuity as a golf course, or, if not financially feasible, as green space, open space, common areas, park, trails, and recreational amenities for the use of the Members; and

WHEREAS, Andover Forest Homeowners Association, Inc., Villas at Andover Homeowners Association, Inc., The Golf Townhomes of Andover, Estates Section, Homeowners Association, Inc., The Golf Townhomes at Andover Homeowners Association, Inc., and The Reserve at Andover Residential Homeowners Association, Inc. (the "**Neighboring Associations**") are adjacent to or located near the Development and contemporaneously

purchased portions of the Andover Golf Course, either individually or through Andover Common Property NFP, Inc. for similar purposes as the Declarant.

NOW, THEREFORE, Declarant desires to record this Declaration to restrict the uses to which the Common Property may be used.

1. **Definition.** As used herein, the term “*Common Property*” shall mean the portion of the former Andover Golf Course commonly known as Holes 11-17, more particularly being that property conveyed to the Declarant by Deed dated August 3, 2018, and filed of record in Deed Book 3606, Page 120 in the Fayette County Clerks’ Office, and more particularly described in **Exhibit A** attached hereto.

2. **Use Restriction.** The Common Property shall only be used and maintained as a golf course. However, if a golf course is not independently financially feasible, as determined by Declarant and the Neighboring Associations, without subsidies from Declarant and the Neighboring Associations or their Members, then the Common Property shall only be used and maintained as green space, open space, common area, park, trail, recreational amenities, or similar uses as determined by the Declarant (“*Permitted Uses*”). The Common Property shall not be developed, used or maintained as residential, commercial or other uses, except for the Permitted Uses.

3. **Easements, Licenses, and Exceptions**

a. **Member Easement.** Every Member of the Declarant shall have a non-exclusive right of access and enjoyment and an easement in, to and over the Common Property for the purposes for which this Declaration is established, which right and easement shall be appurtenant to and shall pass with the title to every Lot (the “*Member Easement*”). Any Member may license his or her Member Easement to the members of his or her family, lessees, social invitees, as applicable, subject to any Policies, defined herein, adopted by the Declarant. A Member who leases his or her Lot shall be deemed to have licensed its Member Easement rights to the Lot’s lessee, and said lessee shall comply with this Declaration and the Policies. This Member Easement is appurtenant to each Member’s Lot, and may not be conveyed separately from the ownership or lease of the Lot.

b. **Reciprocal Easements.** Declarant grants a non-exclusive right of access and enjoyment and an easement, subject to any Policies, defined here, adopted by the Declarant, for golf cart, pedestrian and bicycle passage on, upon and over the paved golf cart paths/walking trails (the “*Paths*”) in the Common Property to the members of each Neighboring Association.

c. **Licenses.** In addition to the easement granted to members of the Neighboring Associations, the Declarant may, at its discretion, grant licenses to access or use the Common Property to others, including members of other nearby common property regime association(s) on terms and conditions it may see fit, including, without limitation, indemnification and the payment of consideration by such common property regime association(s) or its/their members.

d. Golf Course Use. In the event the Declarant and Neighboring Associations agree with a third party to operate the Common Property and other parcels previously constituting the Andover Golf Course as a golf course and to maintain and operate the Common Property as a golf course at no expense to the Declarant (such third party being the “*Operator*”), then in consideration of the Operator’s maintenance obligations, the easements defined in Sections 3(a) and 3(b), and any license granted under Section 3(c), shall be restricted in both scope and time so as not to interfere with the operation of the Common Property as a golf course. In particular, the easements granted to the Members of the Declarant and the Neighboring Associations shall be limited to the use of the Paths and during certain times so as not to interfere with the operation of the Common Property as a Golf Course. The Declarant, in conjunction with an Operator shall adopt Policies, as defined herein, concerning the use of the Common Property, which Policies may include, but need not be limited to, defining seasons and times of golf course use, during which time Members of the Declarant and of Neighboring Associations right of access to the Common Property may be further limited. Any Policies shall consider and provide the Operator with reasonable restrictions to provide for the use of the Common Property as a golf course and shall provide the Members of the Declarant and members of Neighboring Associations with reasonable access to and use of the Common Property for uses other than as a golf course as set forth herein.

4. Sale of Common Property. Declarant may sell portions of the Common Property that adjoins a Member’s Lot to that Member (a “*Member Parcel*”). Any Member Parcel sold to a Member will remain subject to the Use Restriction described in Section 2 above and Easements described in Section 3 of this Declaration. Upon the transfer of a Member parcel to a Member, the Member Parcel shall be subject to the Deed of Restrictions, as that term is defined in the Addendum, applicable to the Lot it adjoins. For avoidance of doubt, a Member may not erect a fence, hedge, or other enclosure in or around a Member Parcel, as a fence, hedge, or other enclosure would violate the Use Restriction described in Section 2 and Easements described in Section 3.

5. Policies, Procedures, Rules, and Regulations; Enforcement. Declarant may adopt and exclusively enforce reasonable policies, procedures, rules and regulations concerning the Common Property (“*Policies*”). Such Policies shall be binding upon all Members, and their lessees, occupants or users of the Common Property, tenants, guests, licensees, invitees, agents and servants, and any person or persons that shall be permitted to use the Common Property. The Declarant may enforce this Declaration or any Policies against any Member, lessee, occupant or user of the Common Property, the tenant, guest, licensee, invitee, agent and servant of them, and any person or persons that shall be permitted to use the Common Property. The Declarant may enforce this Declaration and the violation or attempted violation of any covenant or restriction through judicial process, or by other methods, including but not limited to limiting or prohibiting access to the Common Property or imposing fines.

6. Miscellaneous.

a. Waiver. No waiver of any provision of this Declaration is or shall be interpreted to be a further waiver thereof or of any other provision of this Declaration.

b. Severability. If any provision of this Declaration is declared invalid or unenforceable by any legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by such determination and the affected provision shall be deemed valid and enforceable to the greatest extent allowed by law.

c. Runs with Land. Unless terminated, altered, or amended, this Declaration, and all the provisions hereof, shall run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall be extended automatically for successive periods of ten (10) years.

d. Amendment. This Declaration may be amended or modified only by the recording of an instrument signed by (i) the President and Secretary of the Declarant, verifying that the amendment or modification was approved by the majority of Members voting in person or by proxy at a duly-notice and called meeting of the Members at which a quorum was established, or (ii) a majority of the Members of the Declarant. For purposes of clarification, the majority of Members necessary to amend this Declaration under this Section 6(d)(ii) refers to a majority of all Members of the Declarant and not to a majority of those Members present in person or by proxy at a meeting.

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EXHIBIT A

Legal Description of the Common Property

TRACT 1

Being all of Tracts 1B-1, 1B-2, 1B-3, 2A, and 2B, of the Fourth Amended Non-Building & Consolidation Minor Subdivision Plat of the Lochmere Development Corporation Property and Stonecase Valley (a portion of), of record in Plat Cabinet I, Slide 134, in the Fayette County Clerk's Office.

There is INCLUDED in Tract 1 the following:

- a) All of Parcel 3, as shown on the Corrected Amended & Consolidation Minor Subdivision Plat of Lochmere, Unit 11-B, Section 2 and Lochmere Development Corporation Property, Tract 1B-3 & 2B, (Andover Golf Course), of record in Plat Cabinet K, Slide 892, in the Fayette County Clerk's office; and

There is EXCEPTED from Tract 1 the following:

- a) All of that property conveyed by Andover Golf & Country Club, Inc., a Kentucky non-profit corporation, to Lochmere Development Corporation, a Kentucky corporation, by Deed dated June 21, 1999, of record in Deed Book 2065, Page 595 in the Fayette County Clerk's office. Said property being more particularly described as:

Being all of Parcel 6, of Lochmere Unit 11-B, Section 2, as shown on Corrected Amended & Consolidated Minor Subdivision Plat of Lochmere, Unit 11-B, Section 2 and Lochmere Development Corporation Property, Tract 1B-3 & Tract 2B, (Andover Golf Course), of record in Plat Cabinet K, Slide 892, in the Fayette County Clerk's office, and

- b) All of that property conveyed by Andover Golf & Country Club, Inc., a Kentucky non-profit corporation, to Lochmere Development Corporation, a Kentucky corporation, by Deed dated June 9, 1992, of record in Deed Book 1632, Page 395, in the Fayette County Clerk's office. Said property being more particularly described as follows:

Being all of Parcel 1, of the Consolidation Minor Subdivision Plat of the Andover Golf and Country Club Property and Lochmere – Unit Two, Subsection Three, Lot 45, 708 Andover Village Drive, of record in Plat Cabinet I, Slide 568, in the Fayette County Clerk's office.

c) All that property conveyed by Andover Golf & Country Club Inc. to Commonwealth of Kentucky for the use and benefit of the Transportation Cabinet, Department of Highways, by Deed dated February 12, 2015, of record in Deed Book 3298, Page 377, both of record in the office of the Fayette County Clerk.

TRACT 2

Being all of Parcel 1, of Stonecase Valley, Unit 7, Section 2 as shown on Final Record Plat of Stonecase Valley, Unit 7, Section 2, of record in Plat Cabinet K, Slide 861, in the Fayette County Clerk's office.

TRACT 3

Being all of Parcel 4a, of Lochmere Unit 11-B, Section 2, as shown on Corrected Amended and Consolidated Minor Subdivision Plat Lochmere Unit 11-B, Section 2 and Lochmere Development Corporation Property Tract 1B-3 and Tract 2B [inadvertently referred to as "a1" in the Deed of the Master Commissioner dated May 24, 2017, and recorded on June 11, 2017, in Deed Book 3507, Page 182, in the Fayette County Clerk's Office] (Andover Golf Course), of record in Plat Cabinet K, Slide 892, in the Fayette County Clerk's office.

Being that same property conveyed to Andover Neighborhood Association, Inc., a Kentucky nonprofit corporation, by AGCC, LLC, a Kentucky limited liability company, by Deed dated August 3, 2018, and recorded on August 13, 2018, in Deed Book 3606, Page 120, in the Fayette County 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.



By: PATTY DAVIS ,dc

201812280064

December 28, 2018 10:28:36 AM

Fees	\$25.00	Tax	\$.00
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Total Paid	\$25.00
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8 Pages

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