COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
3RD DIVISION
CIVIL ACTION NO. 17-CI-986

WHITAKER BANK, INC. PLAINTIFF

v. **DEFENDANTS' MOTION TO DISMISS**

BALL HOMES, LLC AND
LOCHMERE DEVELOPMENT CORPORATION DEFENDANTS

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Come the Defendants, Ball Homes, LLC and Lochmere Development Corporation ("Defendants"), by counsel, and move the Court to dismiss all Counts of the Complaint pursuant to CR 12 for failure to state a claim and pursuant to CR 19.01 for failure to name indispensable parties, like Andover Golf & Country Club, Inc. and all property owners and members of the club. Plaintiff ignores the content of the Memorandum document filed of record in the Fayette County Clerk's office at Deed Book 1498, Page 225, and further ignores the entity obligated on the restrictions to operate the golf club and the thousands of residential property owners who purchased their property in the midst of, and in reliance upon, the designed development of the golf course abutting their property and its continued operation.

As the Court will see, what Plaintiff presents by this Declaratory Judgment Action under KRS Chapter 418, is not properly subject to that statute. There is no actual controversy, only a desired controversy by the Plaintiff to seek to eliminate restrictions on the land. "The courts generally hold that a declaratory judgment should not or cannot be made as to questions which may never arise or which are merely advisory, or are academic, hypothetical, incidental or remote, or which will not be decisive of any present controversy." *Dravo v. Liberty Nat. Bank & Trust Co.,* 267 S.W.2d 95, 97 (Ky. 1954). The failure to present an actual controversy and merely a

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concocted issue is fatal for Plaintiff. The Plaintiff hopes the Court will entertain it in this format – otherwise why did Plaintiff not bring this issue within its previously filed (and accelerated) foreclosure action filed in this same division?

In further support of their Motion, Defendants state as follows:

INTRODUCTION

This litigation involves a concocted question about the real property that is the Andover Golf & Country Club, a golf facility located on Todds Road in Fayette County, Kentucky ("AGCC"), and developed by Defendants in the late 1980's and early 1990's (the "Proeprty"). Plaintiff has entered into some undisclosed agreement with AGCC, the owner of the Property, for a voluntary hand-over of the Property – apparently, a deed in lieu of foreclosure-- but with the foreclosure being filed anyway in case # 17-CI-640 (the "Foreclosure"). While it may be that AGCC defaulted on its contractual and loan obligations to Plaintiff which note and debt are secured by a mortgage, the impact of the "deal" that Plaintiff has worked with AGCC to hand over the Property is to cause AGCC to be in breach of its obligations to Defendants and the thousands of property owners in Andover subdivisions and members of the club. Plaintiff's instant case cannot proceed as presented as a matter of law because of its failure to state a claim, and its failure to name indispensable parties.

ARGUMENT

A Golf Course Lease, Construction and Purchase Agreement was executed and in place by July 11, 1988 ("Agreement" or "Golf Course Agreement"), long before Plaintiff obtained an interest in the Property through a mortgage in 2007. As a result of the Agreement (dated July 11, 1988), and Amendment to the Agreement (dated July 24, 1990) and a Memorandum of the Agreement filed of record on December 12, 1988, there are certain restrictive covenants requiring the Property to be perpetually used and operated as a golf course with certain required amenities,

and the Property upon sale is subject to Defendants' right of first refusal. Plaintiff Whitaker Bank ("the Bank") now claims to hold a mortgage or mortgages[1] on the Property, and while it is clear that any mortgage was taken subject to and with notice of the actual use of the Property and the terms and conditions provided in the Agreement, the Amendment and the Memorandum, the Bank is now seeking a declaratory judgment holding that its interest arising from a mere subsequent mortgage is not subject to those certain restrictive covenants of record requiring the Property to be perpetually used as a golf course with certain amenities and that it may be sold free of any right of first refusal held by Defendants. For the following reasons, the Complaint must be dismissed.

Section 4 of the Golf Course Agreement from July 11, 1988, which is entitled "Use" provides in pertinent part the following restrictive covenant:

> The property and facilities shall be operated under the name "Andover Golf and Country Club," shall be continuously operated, and shall be used for no other purpose.

See Exhibit 1, Paragraph 4.

Paragraph 16 of that same Agreement or controlling document gives Ball & Lochmere[2], the developers, a right of first refusal for a period of thirty years from the date of closing "to purchase the leased property and improvements, at the price of and according to the same terms and conditions of any bona fide purchase offer." *Id.*

The Bank has asserted in its Complaint that the "lease" "expired" 5 years after the date on which the golf course was opened pursuant to Paragraph 2 of the Agreement. However, the Bank disingenuously ignores the rest of the "agreement" terms and the Amendment to Golf Course Lease, Construction and Purchase Agreement dated July 24, 1990 ("Amendment"). See Exhibit

[1] Apparently, there is some unrecorded, conditional additional mortgage that spun out of the AGCC bankruptcy proceeding from a few years ago. That is the subject of challenges within the Foreclosure as to the amount claimed by Whitaker.
[2] Upon its dissolution, Lochmere assigned all applicable rights to Troy Thompson.

2, hereto. That document clearly provides that the obligations and restrictive covenants bind all successors and assigns to the Property and further provides:

> 1. Survival of Covenants. Corman-McQueen, Ball & Lochmere and Hacker-Thompson acknowledge and agree that the items contained in paragraphs **4**, 7, 8, 13, 14, **16**, 19, 20 and all of the paragraphs 5 and 6 except for date deadlines **shall survive the closing**.

Andover Golf and Country Club Inc. joined in the Amendment for the specific purpose of acknowledging the survival of the covenants and the restrictions on the Property that are stated in the Amendment document dated and executed the same day as the Memorandum that was executed and recorded in the Fayette County Clerk's office, and the exact same corporation owns the Property and the club today. Therefore, the restrictive covenant requiring that the Property be used "continuously" as a golf course survived the closing, bound AGCC to the obligation and to the right of first refusal, and bound all successors and assigns to the restrictions and obligations that run with the land through the Agreement, the Amendment and the Memorandum of record (described below), and clearly apply to this Plaintiff to the extent it holds a valid mortgage interest in the Property.

The Bank's primary contention amounts to an assertion that the restrictive covenant was not properly recorded and therefore does not run with the land. The Bank attempts to seize upon the use of the word "lease" to argue that the "term" must have expired and it also ignores that a Memorandum of Lease and Purchase Agreement ("Memorandum") was filed on December 12, 1988, in the Fayette County Clerk's Office, at Book 1498, Page 225, relative to the Agreement, again well before[3] the Plaintiff's involvement in any way. That document provides:

> This Memorandum of Lease and Purchase Agreement is executed for the purpose of giving notice of the existence of the Lease and the terms thereof. Reference is

[3] Whitaker's foreclosure complaint in paragraph 8 recites the "Note 1" in issue was executed in 2007.

> made to the Lease for the full description of the rights and duties of Ball & Lochmere and Corman-McQueen, and this Memorandum of Lease shall in no way affect the terms and conditions of the lease or the interpretation of rights and duties of the parties thereunder.

See Exhibit 3, p. 1-2. Therefore, a recorded document exists which incorporates the Agreement terms by reference. Moreover, the Memorandum itself makes clear that the Agreement shall terminate only after "a date to be determined by reference to the Lease." There is and has been no termination of the Agreement, and the Bank took its interest in the Property with actual (visible) and constructive (Memorandum of record) notice of the restrictions on use and operation of the golf club and the right of first refusal.

The Bank no doubt took its limited mortgage interest in the property based upon the actual and obvious notice of the existence of, and operation of, a golf course with certain additional amenities (clubhouse, restaurant, pro shop, pool, poolhouse) intertwined into the neighborhoods and each residential lot. It is undeniable that the Bank would have been on inquiry notice (at the least) based on the existing use and operation of the property as a golf course intertwined into the residential community whenever it entered into the picture. It is disingenuous at the least for the Bank to now argue that there is no requirement to maintain the continuous operation of the golf course and amenities or that there is even some concocted "dispute" as to whether such obligation exists or was intended to exist and continue.

Moreover, the restrictive covenants (deed of restrictions) put to record in 1989 and 1990 applicable to the homes that are adjacent to the golf course are recorded in the County Clerk's Office. These covenants make clear that homeowners whose property abuts the golf course are prohibited from putting up fences, etc., to allow for the continued operation of the golf course. Clearly the mutuality of obligations was evident to homeowners purchasing lots and properties. See Ball property restrictions and Lochmere property restrictions, Exhibits 4 and 5, stating in part:

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"Golf Course Lots . . . No owner of a lot abutting the golf course shall construct any hedge, fence, wall or barrier of any nature within twenty (20) feet of any border which abuts the golf course . . . During the entire course of construction or any other use of a lot abutting the golf course, the owner shall provide a method (accepted in writing by the developers) to prevent siltage from running onto the golf course." See Ball and Lochmere property, respectively, restrictions of record, Deed Book 1523, Page 117-18, attached hereto as Exhibit 4. See also Deed Book 1554, Page 754, Exhibit 5 hereto.

1. *The Complaint must be dismissed under Rule 12 for failure to state a claim upon which relief may be granted.*

Under Rule 12, a party may move for dismissal of a Complaint where the pleading fails to state a claim upon which relief may be granted. This rule is clearly applicable here. The Court of Appeals has explained the standard for a Rule 12 motion to dismiss as follows:

> The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." In making this decision, the circuit court is not required to make any factual determination; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?

James v. Wilson, 95 S.W.3d 875, 883–84 (Ky. Ct. App. 2002). Here, the Complaint fails to state a claim upon which relief may be granted, and it must be dismissed.

It should be noted that the controlling documents may be referenced and considered by this Court in their entirety, even documents that were not specifically attached to the Complaint, without converting the instant motion into a motion for summary judgment. The Sixth Circuit has held:

> [A] document that is not formally incorporated by reference or attached to a complaint may still be considered part of the pleadings. This occurs when "a document is referred to in the complaint and is central to the plaintiff's claim...." In such event, "the defendant may submit an authentic copy to the court to be

> considered on a motion to dismiss, and the court's consideration of the document does not require conversion of the motion to one for summary judgment.

Greenberg v. Life Ins. Co. of Virginia, 177 F.3d 507, 514 (6th Cir. 1999)

Therefore, this Court should and must review all relevant documents "central to the plaintiff's claim," including the recorded Memorandum. An examination of these documents reveals that, unequivocally, the Complaint fails to state a claim, and this action has no basis in law or fact.

2. *Kentucky case law requires this action be dismissed*.

A restrictive covenant is valid and enforceable where the parties to the covenant intend and agree that the covenant is to run with the land. "[A] Court construes restrictive covenants according to their plain language. Parties are bound by the clear meaning of the language used, the same as any other contract." *Gadd v. Hensley*, 2015-CA-1948 (Ky. Ct. App. March 24, 2017) (not to be published). In particular:

> **It is not necessary that such an intention appear from the express language of the instrument creating it, but it may be implied where it appears that it was imposed as part of a general building plan or scheme for the improvement of several contiguous lots.**

Bagby v. Stewart's Ex'r, 265 S.W.2d 75, 76 (Ky. 1954) (emphasis added).

The Bank's position hinges on its specious assertion that no restrictive covenant "exists" of record. This argument is simply wrong. The Bank wants this court to hold that in a golf course community that was designed, developed and approved for contraction based upon an integral and interwoven golf course can cease to be a golf course at the whim of a lender who holds only an interest arising from a mortgage.

The Agreement and Amendment clearly contain both a restrictive covenant and a right of first refusal. The Memorandum adequately provided the "whole world" with notice of the

restrictive covenant, which was incorporated therein by reference. *See, e.g., Ashland, Inc. v. Realty Farm Development Co*., 485 S.W.2d 891, 894 (Ky. App. 1972) ("where a subsequent lessee has notice of a restrictive covenant in a prior lease he is bound thereby because a party with knowledge of the just rights of another should not be permitted to defeat them").

In *Triple Crown Subdivision Homeowners' Association, Inc. v. Oberst*, 279 S.W.3d 138 (Ky. 2009), a developer issued a deed for resale of real property acquired by the developer after the filing of the declaration of covenants, conditions and restrictions. The Court held that the deed "incorporated by reference the declaration," thus rendering the declarations enforceable. The Court held: "Although amending the declaration to include an additional legal description for after-acquired property would have made it easier for a title examiner, the absence thereof does not obscure or defeat the obvious intent of the developer." *Id*. at 141.

In *Oliver v. Schultz*, 885 S.W.2d 699 (Ky. 1994), the Court held that, while restrictive covenants are to be enforced under Kentucky law "only when the restriction is placed in a recorded instrument," such restrictions are enforceable where reflected in "a subdivision plat, a deed of restrictions or some ***other*** instrument of record . . . that would place an ordinary and reasonably prudent attorney performing a title search on notice of the restrictions in question." *Id*. at 701 (emphasis added). This is consistent with general "black letter" law. *See, e.g.,* 20 Am.Jur.2d §152 ("Covenants and restrictions as to the use of property may be effected by a separate instrument [other than the deed] if consideration and the other essentials of a contract are present"). *See also Mitchell v. First Nat'l Bank*, 263 S.W. 15, 16 (Ky. 1924) ("if a person has knowledge of such facts as would lead a fair and prudent man, using ordinary care and thoughtfulness, to make further inquiry, and he fails to do so, he is chargeable with the knowledge which by ordinary diligence he would have acquired"); *Sentry Safety Control Corp. v. Broadway & 4th Ave. Realty Co*., 124

S.W.2d 1051 (Ky. 1939) (accord). Here, the Memorandum alone was sufficient to place an ordinary and reasonably prudent attorney performing a title search on notice of the restrictions in question and is even more evident when combined with the obvious and outward use of the property and the restrictions of record applicable to the "Golf Course Lots".

In *J.C. Penny Company v. Giant Eagle, Inc*., 813 F.Supp. 360 (W.D. Penn. 1992), J.C. Penny was able to obtain a temporary injunction to enjoin a competitor from opening shop in the same shopping center. J.C. Penny's lease contained an "exclusive." The Court held that that restrictive covenant was enforceable against a third party, notwithstanding that J.C. Penny filed only a "memorandum of lease" in the County Clerk's office. *Id.* at 363. *See also Graco Town Lake Investment 2007 L.P. v. Conmach Corporation*, 2016 WL 7335862 (Tex. App. 2016) (unpublished) (recording of memorandum of lease sufficient to give inquiry notice of all lease terms).

Here, there is no ambiguity in the restrictive covenant; the Bank simply argues that the Memorandum was insufficient to "record" the restrictive covenant and that actual use and what was filed of record was insufficient to place the Bank on notice of continuing obligations or restrictions on the land. However, the Bank took its interest in the property with notice of and subject to the restrictive covenant and right of first refusal through the recorded documents at the Fayette County Clerk's Office. Paragraph 4 of the Agreement survived closing, per the Amendment thereto dated July 24, 1990. These legal rights are valid and enforceable as to any party or third parties.

3. *The Bank's Complaint must be dismissed for failure to join indispensable and/or necessary parties under Rule 19.*

Rule 19.01 provides that a party subject to service of process must be joined in an action where: 1.) In his absence complete relief cannot be accorded among those already parties, ***or*** where

2.) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest **or** (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Stated differently, "an indispensable party is one whose absence prevents the Court from granting complete relief among those already parties." *Milligan v. Schenley Distillers, Inc.,* 584 S.W.2d 751, 753 (Ky. App. 1979). Likewise, the Court in *West v. Goldstein,* 830 S.W.2d 379 (Ky. 1992), characterized a necessary party as one whose interest would be divested by an adverse judgment. *See also Presnell Const. Managers, Inc. v. EH Const., LLC,* 134 S.W.3d 575, 578 (Ky. 2004) (noting that "the owners of the real estate on which the building was located and another lienholder were joined as necessary parties to the lawsuit because of their interests in the real property").

AGCC is indisputably an indispensable party and Plaintiff must add it. They entered into the Amendment to make clear it was subject to the obligations and restrictions on the land and that the obligations and restrictions continued, survived closing and ran with the land. Their failure to comply with the obligations and restrictions and continue the operation of the club as mandated certainly require their presence in this case for a full adjudication of the issues presented if the Court determines that this action meets the requirements of CR 12, CR 19 and KRS Chapter 418 in order to continue.

Numerous other persons, including the adjacent land owners and/or members of the AGCC are indispensable parties to this action if it continues and Plaintiff must add them. In *Humana, Inc. v. Metts*, 571 S.W.2d 622 (Ky. App. 1978), the Kentucky Court of Appeals confirmed that a restrictive covenant was to run with the land. The restriction at issue limited a hospital's use of

space to hospital and "professional office use." The Court found the restriction enforceable. Relevant to the instant case, the Court held:

> Proper development of the subdivision inures to the benefit of each property owner. Metts was confronted with the possibility of Humana constructing commercial mercantile undertakings to the prejudice of their use and development of the balance of the land by other purchasers. If the restrictive covenant did not run with the land, then the only person who could enforce its provisions would be Metts. **On the other hand, if the restrictive covenant runs with the land, then Metts is not the only person with a right to challenge the present use being made of the property by Humana**. *Bagbey et al. v. Stewart's Executor et al*., Ky., 265 S.W.2d 75 (1954). It appears to the Court that the restrictive covenant ran with the land and was not wholly personal to Metts and Humana.

Id. at 625–26. Therefore, the Court confirmed that where the covenant runs with the land, the surrounding landowners have due process rights where the restrictive covenant is at issue in Court. Consistent with the foregoing Kentucky law, and when faced with similar facts, one court explained:

> Joinder of indispensable parties is mandated because due process principles make it essential that [such parties] be given notice and an opportunity to protect [their] interests by making [them] a party to the [action]. The unnoticed lot owners within Hop Brook [subdivision] are ***classic*** "indispensable parties" because the resolution of the questions regarding the restrictive covenants and the alleged common scheme of development are relevant to *all* deeds within the development.

Mannweiler v. LaFlamme, 653 A.2d 168, 172 (Conn. 1995) (some emphasis original). *See also Baker v. Weinberg*, 266 S.W.3d 827 (Ky. App. 2008) (in action to quiet title, record owners of property are indispensable parties); *Garnick v. Serewitch*, 121 A.2d 423 (N.Y. Super. Ct. 1956) (where restrictive covenant was part of neighborhood scheme, failure of landowner to join as defendants all the owners of parcels of land within the tract encompassed within the neighborhood scheme constituted failure to join all proper and necessary parties); *Karner v. Roy White Flowers, Inc*., 527 S.E.2d 40 (N.C. 2000) (nonparty subdivision owners were necessary parties to action brought by plaintiff lot owners against defendant lot owners to enjoin violation of residential restrictive covenants, even if nonparty property owners' interests were fully represented by

existing parties; "we conclude the nonparty property owners of Elizabeth Heights are necessary parties to this action because the voiding of the residential-use restrictive covenant would extinguish their property rights").

Here, there are several "categories" of unnoticed, interested third parties whose legal rights will be affected or extinguished by the instant action. First, there are homeowners in the subdivision through which the golf course runs, particularly those whose property is adjacent to the golf course. These parties have an interest in the property (1) such that it continues and remains what was intended, developed, approved by local government and an integral part of their purchase, (2) to preserve the property value of their land and(3) to preserve the intangible benefits of having adjacent green space as opposed to a shopping center, or a car wash, or whatever else the owners or subsequent owners have in mind. Second, the Andover Golf & Country Club sells golf memberships to people inside and outside of the Andover subdivisions. On information and belief, certain parties have already paid their 2017 membership fees[4], only to find that the golf course is now closed, and the Bank which has taken total possession, custody and control of the property (either voluntarily or involuntarily) is keeping it that way. These individuals obviously have an interest in whether Plaintiff herein is permitted to deny the obvious, and deny the restrictions of record and cause damage to each and every property owner in Andover and member of AGCC.

Finally, Andover Golf & Country Club itself is a necessary and indispensable party who was a party to the restrictive covenant agreement and is the entity which must operate the property

[4] Based on information and belief, some members continue to be automatically charged monthly fees and monthly fees continue to be taken by AGCC or others without refund.

"continuously" as a golf club under the controlling documents. Why that entity has not been named is not just perplexing but fatal to the presentation of a declaratory judgment action.

Clearly, there are interested and necessary and indispensable third parties that have not been joined in this action.

WHEREFORE, for the foregoing reasons, Plaintiff's Complaint must be DISMISSED WITH PREJUDICE for failure to state a claim upon which relief may be granted; or in the alternative, for failure to join necessary and indispensable parties, or both.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

NOTICE OF HEARING

All parties take notice that the foregoing shall come on for hearing on Friday, April 21, 2017, at 1:00 p.m., or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

This is to certify that the foregoing was served on April 5, 2017, by mailing same first class mail, postage prepaid, and email to:

John P. Brice
WYATT, TARRANT & COMBS, LLP
250 West Main Street, Suite 1600
Lexington, KY 40507-1746
ATTORNEY FOR PLAINTIFF

_/s/ Carroll M. Redford, III __
ATTORNEYS FOR DEFENDANTS

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GOLF COURSE LEASE, CONSTRUCTION AND PURCHASE AGREEMENT

THIS GOLF COURSE LEASE, CONSTRUCTION AND PURCHASE AGREEMENT, entered into as of the 11th day of July, 1988, by and between BALL HOMES, INC., a Kentucky corporation, whose address in 3399 Tates Creek Road Lexington, Kentucky 40502 and LOCHMERE DEVELOPMENT CORPORATION, a Kentucky corporation, whose address is 4679 Tates Creek Road, Lexington, Kentucky 40515 (hereinafter referred to as "Ball & Lochmere"), and CORMAN-McQUEEN GOLF, INC., a Kentucky corporation (hereinafter "Corman-McQueen"), whose address is 3200 Roxburg Road, Lexington, Kentucky, 40503.

WITNESSETH THAT:

1. Lease of Property. In consideration of the payment of the rental reserved herein, and of the performance by the parties of their respective obligations stated herein, Ball & Lochmere hereby lease to Corman-McQueen, and Corman-McQueen hereby leases from Ball & Lochmere, 165 acres, more or less, of land located on Todds Road, Lexington-Fayette County, Kentucky, as more fully shown on a plat attached hereto (to be supplemented by a survey and/or legal description to be prepared by Endicott and Associates, Engineers, to be attached to this Agreement) as Exhibit "A".

2. Term of Lease. This Lease shall commence upon the resolution, satisfactorily to Corman-McQueen, of the contingencies specified in paragraph 18 herein, and shall conclude 5 years after the date on which Corman-McQueen opens its golf course for use on

EXHIBIT 1

a greens-fees paying basis. At the appropriate times, the parties shall execute certificates confirming the commencement and expiration dates of this Lease, to constitute amendments to this Agreement.

3. Rent. Corman-McQueen shall pay rent to Ball & Lochmere at the address given above, payable quarterly in arrears, beginning September 1, 1989, for the previous quarter. Each rental payment shall be an amount which is equal to what would be the "cost of funds" during the preceding calendar quarter to Ball & Lochmere for a principal amount equal to the actual number of acres in the leased property, multiplied by $5,000. "Cost of funds" shall be determined by multiplying such principal amount by the rate of interest (or average thereof if different rates are charged) charged to Ball & Lochmere from time to time on the land-acquisition note, secured by a mortgage upon the leased property, as calculated on a daily basis. If no land-acquisition note is outstanding at any time, the rate shall be First Security National Bank Prime plus one percent (1%) as calculated on a daily basis.

4. Use. Corman-McQueen shall construct and operate on the leased property a golf course and country club, as more fully described herein. The property and facilities shall be operated under the name "Andover Golf and Country Club", shall be continuously operated, and shall be used for no other purpose.

5. Construction of Golf course: Corman-McQueen shall construct a regulation 18-hole golf course on the leased property,

in accordance with the plans of Clyde Johnson, Hilton Head, South Carolina, golf course architect, to be attached hereto as Exhibit "B". Construction shall commence upon the resolution, reasonably satisfactorily to Corman-McQueen, of the contingencies described in paragraph 18 herein, and shall proceed to completion with reasonable diligence. Corman-McQueen may make minor modifications to the golf course plans, but any substantial modification in layout, grading, drainage or roadway construction shall require the written approval of Ball & Lochmere, which approval shall not be unreasonably withheld. Construction of the golf course shall be deemed substantially completed upon seeding which shall be no later than April 30, 1989, subject to extension for reasons set forth in paragraph 21 herein. If seeding cannot be completed on all golf course holes during the same seeding season, Corman-McQueen shall seed the holes in an equitable manner between the separate properties of Ball & Lochmere. If all golf course holes are not ready for play at the same time, Corman-McQueen agrees to open the golf course for play only with the approval of both Ball & Lochmere.

6. Construction of Country Club. Corman-McQueen shall also construct on the leased property a clubhouse at the site as shown on Exhibit "A" (with grill, locker rooms, party room and pro shop) comparable to Greenbrier Golf and Country Club, two tennis courts, a junior olympic swimming pool, and related parking, sidewalk and patio areas as shown on Exhibit "A". Construction of the clubhouse shall commence upon seeding the golf course but not

later than April 30, 1989, and construction of the tennis courts and swimming pool shall begin no later than April 30, 1989. All such improvements shall be completed by August 30, 1989, subject to extension for reasons set forth in paragraph 20 herein. Ball & Lochmere shall have the right of reasonable architectural approval prior to commencement of the clubhouse or incidental outbuildings proposed by Corman-McQueen. Corman-McQueen may make modifications to the plans and specifications for such improvements during construction, except that any changes which materially alter the external appearance of such improvements, or materially alter the kind of facilities to be constructed, shall require the written approval of Ball & Lochmere, which approval shall not be unreasonably withheld on matters of appearance.

7. General Construction Provisions. All improvements on the leased property shall be constructed in accordance with certified plans and specifications, and in a good workmanlike manner. Workers' compensation insurance shall be maintained at all times by Corman-McQueen or its' contractors. Corman-McQueen shall discharge, by payment, bond or otherwise, within ten banking days, any mechanic's or materialman's lien placed against the leased property.

8. Operations. Corman-McQueen shall maintain the golf course and building improvements on the leased property in good condition at all times. Corman-McQueen shall comply with all laws and regulations applicable to the leased property and its operations thereon. Corman-McQueen shall maintain fire and

extended coverage insurance in effect at all times for the building improvements constructed on the leased property, for their full replacement value. Such insurance shall designate Ball & Lochmere as a loss payee, as their interests may appear, and shall provide for thirty days' advance written notice to Ball & Lochmere in the event of cancellation. Ball & Lochmere shall bring all utility connections to the clubhouse and maintenance area boundary sites. Corman-McQueen shall arrange and pay for all utility connections from the boundary sites to the leased property, and shall pay for all utilities used on the property. In the event of damage or destruction to the golf course or the building improvements on the leased property, regardless of cause, Corman-McQueen shall restore such improvements to their condition prior to such casualty (or as otherwise required by this Agreement), regardless of the adequacy of any insurance proceeds.

9. Taxes. Corman-McQueen shall arrange to have the leased property assessed as a separate parcel, and shall pay all real estate taxes and assessments levied on the leased property and improvements. Corman-McQueen shall also pay all taxes assessed against its personal property, and all taxes which might, if unpaid, result in a lien against the leased property.

10. Liability Insurance; Indemnity. Corman-McQueen shall at all times maintain public liability insurance with respect to the leased property, in which Ball & Lochmere are named as additional insureds, with cross-liability provisions in favor of Ball & Lochmere. Such insurance shall have limits of liability of not

less than $1,000,000 combined single limit with a $5,000,000.00 umbrella. Policies of such insurance shall provide for thirty days' advance written notice to Ball & Lochmere in the event of cancellation, and certificates of insurance shall be furnished to Ball & Lochmere. Corman-McQueen shall also maintain statutory workers' compensation insurance, and public liability insurance for its motor vehicles with limits of at least $100,000/$300,000. Corman-McQueen shall indemnify Ball & Lochmere, their respective officers, directors and shareholders, against, and hold them harmless from, all claims, damages, suits or causes of action, resulting from any injury to person or property, sustained on or about the leased property, or attributable to activities or operations thereon, including costs and reasonable attorney's fees.

Should Ball & Lochmere reenter the property during the lease period or thereafter as provided in paragraph 14, Ball & Lochmere shall indemnify Corman-McQueen, its respective officers, directors and shareholders, against, and hold it harmless from, all claims, damages, suits or causes of action, resulting from any injury to person or property, sustained on or about the leased property, or attributable to activities or operations thereon, including costs and attorney's fees.

11. Construction Financing. Corman-McQueen may obtain a $1,000,000 construction loan from Bank One, Lexington, N.A., pursuant to a loan commitment letter attached hereto as Exhibit "C", which loan may be secured by a first mortgage upon the leased

property. Ball & Lochmere shall subordinate their interest in the leased property to the lien of such mortgage, and shall subordinate their rights to receive rental payments from Corman-McQueen to the right of Bank One to receive principal and interest payments on such loan. Ball & Lochmere shall furthermore secure the subordination of any existing lien on the leased property to the lien of the Bank One mortgage. Corman-McQueen shall use the proceeds of such loan only for the construction of the golf course and building improvements on the leased property, and shall comply with all requirements of the lender regarding loan proceeds as set forth on Exhibit "C" hereof which are incorporated herein by reference as essential terms of this document. Prior to the Bank One closing, Corman-McQueen shall provide Ball & Lochmere with a copy of final loan documents for review for compliance with the terms of this paragraph.

To protect the subordinate position of Ball & Lochmere, Corman-McQueen agrees to provide in its loan agreement with Bank One a provision that Bank One will give any notice of default to Ball & Lochmere at the same time and manner as may be given to Corman-McQueen.

12. Condemnation. If any portion of the leased property is acquired in fee pursuant to the exercise of the power of eminent domain, Ball & Lochmere prior to improvement by Corman-McQueen shall receive all of the award or payment, and after improvements Ball & Lochmere shall receive that portion of the award or payment which is equal to what the purchase price would be for such

property, calculated according to paragraph 15 herein. After improvements by Corman-McQueen any balance of the award or payment shall belong to Corman-McQueen. Compensation for any easement shall belong to Corman-McQueen.

13. Signs. Corman-McQueen may not place any signs upon the leased property without the consent of Ball & Lochmere, except for signs which are consistent with regulations imposed by Ball & Lochmere on the balance of the Andover Development.

14. Developers' Covenants. Ball & Lochmere intend to develop land adjacent to the leased property for residential purposes. Ball & Lochmere retain the right to re-enter the leased property to install utilities and sanitary and storm sewers to serve their residential development, and in the event of re-entry for those purposes, or otherwise, shall restore any damage to the leased property and improvements caused by them during construction of general subdivision improvements, and shall make all reasonable efforts to avoid interference with operation of the golf course and country club during such construction. Upon Corman-McQueen's purchase of the leased property, Ball & Lochmere shall have an easement for such purposes which shall include such duties. Ball & Lochmere shall furthermore impose upon property adjoining the leased property, covenants and restrictions to promote the use of the leased property by Corman-McQueen as a golf course and country club including, but not limited to, no fencing shall be allowed along the golf course and residential common boundaries.

15. Purchase of Leased Property. Upon termination of the lease, or at an earlier date selected by Corman-McQueen, Corman-McQueen shall purchase the leased property, for the purchase price of $5,000 per acre. Ball & Lochmere shall in exchange for payment deliver a Deed of General Warranty for the leased property, subject to liens, and encumbrances created by Corman-McQueen; subject to easements and restrictions of record; and subject to a certain flowage easement with Kentucky American Water Company and other covenants and restrictions appropriate to continue in effect the provisions of this Agreement. Rent shall be apportioned to the date of closing. Transfer taxes shall be paid by Ball & Lochmere; recording fees shall be paid by Corman-McQueen.

16. First Refusal. For a period of thirty years from the date of closing, Ball & Lochmere shall have the right of first refusal to purchase the leased property and improvements, at the price of and according to the same terms and conditions of any bona fide purchase offer. Such right of first refusal shall be exercised by giving written notice thereof within thirty days after receipt from Corman-McQueen of written notice of any such offer; otherwise such right shall be deemed waived with respect to such offer, but only such offer. Should either Ball or Lochmere singularly decline to exercise said right to purchase the other party, may on its own account exercise said right. Corman-McQueen may nevertheless transfer ownership of the leased property and improvements at any time to the Andover Golf and Country Club membership, or an organization of such members, and such transfers

shall not be subject to the foregoing right of first refusal, but for the remainder of the thirty-year period, the transferee shall be subject to the right of first refusal.

17. Subleasing and Assignment. The parties do hereby specifically agree that the services of Corman-McQueen as described herein have been contracted for by Ball & Lochmere due to the specific expertise and capabilities of Corman-McQueen which are personal in nature and that due thereto, the rights of Corman-McQueen are not intended to be assignable. Corman-McQueen may not sublease the leased property nor assign its interests in the leased property or this agreement (including its right to purchase the leased property), in whole or in part directly or indirectly without the prior written consent of Ball & Lochmere. This prohibition shall extend and prohibit the issuance of common stock in Corman-McQueen to any one other than family members.

18. Contingencies. Corman-McQueen's obligations to lease and subsequently to purchase the leased property are subject to its obtaining approval from the Lexington-Fayette Urban County Board of Adjustment and all other regulatory agencies with jurisdiction, to construct a golf course and country club on the leased property, which approvals Corman-McQueen shall promptly and diligently pursue. The obligations of Corman-McQueen hereunder are also subject to the availability of adequate sewers for the leased property.

19. Country Club Membership and Governance. Utilization of the golf course by members of the public, residents of the Andover

development and members of the Andover Golf and Country Club, shall be on terms and conditions determined by Corman-McQueen, except that each resident of the Andover development may use the golf course once per month for payment of customary greens fees only.

Andover Golf and Country Club memberships shall consist of two types: full memberships, which may be issued by Corman-McQueen in its sole discretion; and social memberships, which shall be limited to 400 in number and shall be issued by Corman-McQueen only to lot owners in the Andover development, for the first ten years of the club's operation. Social memberships enjoy access to all club facilities equal to full memberships except for utilization of the golf course. Social memberships may be limited to use of the golf course once per month, for payment of customary greens fees only. Dues for social memberships shall have no initiation fee, and the annual family fee for first year of operation shall not exceed $250, and thereafter shall be set comparably to dues for similar facilities at Hartland and Palomar subdivisions. Increases in social membership dues of more than ten percent in any year (for the first ten years) are subject to the approval of Ball & Lochmere.

Corman-McQueen may issue regulations for the use of all golf and country club facilities.

Ball & Lochmere shall have no interest in or entitlement to proceeds from the sale of memberships. However, if Corman-McQueen becomes in default of the leasing and development provisions of

this Agreement, and pursuant thereto Ball & Lochmere recover possession and exclusive ownership of the leased property and improvements, as set forth in paragraph 21 herein, Ball & Lochmere may at their sole option elect to continue operation of the club facilities, in which event Ball & Lochmere shall be entitled to receive from Corman-McQueen the unearned portion of all paid memberships.

20. Drainage Pipe Expense and Water and Silt Detention. Corman-McQueen will be required to install drainage pipe on the leased property during construction to properly drain the golf course. If larger drainage pipe is required to be installed on the leased property in order to facilitate the development water runoff of Ball & Lochmere's surrounding property, Ball & Lochmere agree to pay for any increase in cost between the pipe needed to serve the leased and adjacent property for undeveloped runoff and that needed to facilitate the development runoff for Ball & Lochmere's developments, and Corman-McQueen agrees to install same at no installation cost to Ball & Lochmere. Any necessity of upgrading of pipe shall be determined by Ball & Lochmere engineers prior to installation.

Corman-McQueen agrees to cooperate with Ball and Lochmere in providing water and silt detention in the ponds that will be maintained on the leased property. Ball and Lochmere shall pay for any increase in costs incurred when they request assistance with water or silt detention from Corman-McQueen.

21. Delays in Performance. The deadlines stated herein for performance by Corman-McQueen shall be extended equitably in the event of destruction or other casualty by acts of God or other forces beyond its reasonable control.

22. Default and Remedies. The occurrence of any of the following before purchase of the leased property pursuant to paragraph 15, shall constitute a default by Corman-McQueen of its obligations hereunder: (a) Failure after written notice to make any rental payment within thirty days after its due date; (b) failure diligently to proceed with construction of the golf course, clubhouse, and amenities, for a period of sixty days after receipt of written notice of such failure; (c) failure diligently to operate the leased property as a full-time golf course and country club, for a period of sixty days after receipt of written notice of such failure; (d) the insolvency or bankruptcy or the filing of a voluntary or involuntary petition under any applicable Chapter of the Bankruptcy Code by or on behalf of Corman-McQueen, or any assignment for the benefit of its creditors, unless such condition or act is removed or reversed within sixty days after receipt of written notice thereof; (e) failure to discharge or remove liens or encumbrances upon the leased property, other than the mortgage liens permitted by this agreement; or (f) commencement of foreclosure proceedings by Bank One, Lexington, N.A. (or any lender substituted in its place), unless such proceedings are dismissed within sixty days.

Upon the occurrence of default, and after written notice of the expiration of any stated grace period, Ball & Lochmere may terminate the lease, recover possession of the leased property and all improvements thereon, and may terminate Corman-McQueen's right to purchase the leased property, without obligation to refund any payments previously made by Corman-McQueen. These remedies are not exclusive, and are supplementary to all legal and equitable remedies available to the parties upon default.

If any foreclosure proceeding is instituted Bank One, Lexington, N.A. (or any lender situated in its place) and the same is not dismissed within 60 days, Corman-McQueen grants Ball & Lochmere its power of attorney to satisfy the Bank One loan. The acceptance of this right by Ball & Lochmere shall be discretionary and not obligatory.

23. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally or deposited in the United States Post Office, First Class Mail, postage prepaid, addressed as follows:

Ball Homes, Inc.
P.O. Box 12950
Lexington, Kentucky 40583

Lochmere Development Corporation
4679 Tates Creek Road
Lexington, Kentucky 40515

Corman-McQueen Golf, Inc.
3200 Roxburg Road
Lexington, Kentucky 40503

24. Miscellaneous. This Agreement constitutes the entire agreement of the parties, and supersedes all prior negotiations or agreements between the parties. The Agreement may not be terminated or amended, except in writing. This Agreement shall be interpreted and enforced according to Kentucky law. This Agreement shall not be construed as creating any partnership or joint venture among the parties, their relationships being merely that of lessor/lessee and vendor/vendee. The provisions of this Agreement may not be waived, except in writing, and no waiver of any condition at any time shall be deemed to be a waiver of any other condition or a subsequent waiver of the same condition. This Agreement shall be binding upon and may be enforced by the parties hereto, and their permitted successors and assigns.

IN WITNESS WHEREOF, the parties hereto have affixed their signature as of the day and year first above written.

BALL HOMES, INC.

By: _____
Its: _____

LOCHMERE DEVELOPMENT CORPORATION

By: _____
Its: PRESIDENT

CORMAN-McQUEEN GOLF, INC.

By: Daniel B McQueen
Its: PRESIDENT

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the __ day of July, 1988, by D. Ray Ball, Jr. as President of Ball Homes, Inc., a Kentucky corporation, for and on behalf of the corporation.

My Commission expires April 14, 1992
Dorothy Jeanne Aylsworth
Notary Public, State at Large, Kentucky

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 11th day of July, 1988, by Troy N. Thompson as President of Lochmere Development Corporation, a Kentucky corporation, for and on behalf of the corporation.

My Commission expires 9-17-88
Betty Cox
Notary Public, State at Large, Kentucky

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 15th day of July, 1988, by Daniel H. McQueen as President of Corman-McQueen, Inc., a Kentucky corporation, for and on behalf of the corporation.

My Commission expires 9-17-88

Betty Cox
Notary Public, State at Large, Kentucky

EXHIBITS "A", "B" AND "C"
INTENTIONALLY LEFT
BLANK

ALL ARE ATTACHED TO ORIGINAL
LEASE ON FILE WITH
BANK ONE

Filed 17-CI-00986 04/05/2017 Vincent Riggs, Fayette Circuit Clerk

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ALL ARE ATTACHED TO ORIGINAL
LEASE

Filed 17-CI-00986 04/05/2017 Vincent Riggs, Fayette Circuit Clerk

FIRST AMENDMENT TO GOLF COURSE LEASE
CONSTRUCTION AND PURCHASE AGREEMENT

This First Amendment to Golf Course Lease, Construction and Purchase Agreement entered into as of the 9th day of December, 1988, by and between BALL HOMES, INC., a Kentucky corporation, whose address is 3399 Tates Creek Road, Lexington, Kentucky 40502 and LOCHMERE DEVELOPMENT CORPORATION, A Kentucky corporation, whose address is 4679 Tates Creek Road, Lexington, Kentucky 405015 (hereinafter referred to as "Ball" and "Lochmere", respectively), and CORMAN-MCQUEEN GOLF, INC., a Kentucky corporation (hereinafter "Corman-McQueen"), whose address is 3200 Roxburg Road, Lexington, Kentucky 40503.

WITNESSETH:

WHEREAS, parties hereinabove have entered into a Golf Course Lease, Construction and Purchase Agreement (hereinafter "Golf Course Lease") dated as of the 11th day of July, 1988 which Agreement provides that it may be amended in writing; and

WHEREAS, parties thereto desire to amend the Lease to add and modify certain provisions;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the Lease is amended as follows:

1. Description of Property. The land leased herein, consisting of 165 acres, more or less, and located on Todds Road, Lexington, Fayette County, Kentucky, as described in Paragraph 1 in the Golf Course Lease, shall be the tracts hereinafter

described as shown on the subdivision plans prepared by Endicott and Associates, Engineers and Cummins Engineers, which plats are attached hereto as Exhibits D and E respectively. More particularly, the land leased herein is shown as Tracts 1, 2, 4A and 4 on Exhibit D and Tracts 5, 9, 10, 11, 12, 13, 15 and 16 on Exhibit E. Additionally, the land leased herein includes the property which is more particularly described on Exhibits F, attached hereto and incorporated by reference herein. Furthermore, the parties hereto agree that minor amendments to the legal description of the leased property may be made as needed in order to accommodate the residential and golf developments.

2. Corman-McQueen and Ball and Lochmere, as appropriate, agree to sign any subdivision plats as may be required in order to dedicate public rights-of-way across golf cart paths, in order to establish golf cart path access ways, in order to designate golf cart paths as separate, transferable lots of record, in order to create and dedicate utility easements and easements for public improvements, including but not limited to easements for storm drainage, sanitary sewers, water, gas, electric and telephone facilities, or in order to accomplish any other purpose reasonably necessary to accommodate the residential and golf course development. Corman-McQueen specifically acknowledges and agrees that the portion of the land leased herein which is described on Exhibit G hereto shall be subject to dedication to the public and/or construction of a public road and Lochmere specifically retains the right to so dedicate such portion of

the property and to reenter same for purposes of constructing a public road.

3. All provisions of the Lease, except those which are specifically amended herein, shall remain in full force and effect as originally set forth.

BALL HOMES, INC.

By: _____

Its: _____

LOCHMERE DEVELOPMENT CORPORATION

By: _____

Its: PRESIDENT

CORMAN-McQUEEN GOLF, INC.

By: _____

Its: President

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 9th day of December, 1988, by D. Ray Ball Jr., as President of Ball Homes, Inc., a Kentucky corporation, for and on behalf of the corporation.

My Commission expires: 9-17-92

Betty Cox
Notary Public

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 9th day of December, 1988, by Troy Thompson, as President of Lochmere Development Corporation, a Kentucky corporation, for and on behalf of the corporation.

My Commission expires: 9-17-92

Betty Cox
Notary Public

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 9th day of December, 1988, by Daniel N. McQueen as President of Corman-McQueen Golf, Inc., a Kentucky corporation, for and on behalf of the corporation.

My Commission expires: 9-17-92

Betty Cox
Notary Public

314:30967:038

ENDICOTT AND ASSOCIATES
CIVIL ENGINEERS AND LAND SURVEYORS
176 STONE ROAD • SUITE 200
LEXINGTON, KENTUCKY 40503

PHONE (606) 277-8320

December 5, 1988

Being a portion of Tract 3 (3480 Todds Road) and being located between Tract 1 (3550 Todds Road) & Tract 4 (3450 Todds Road) of the property shown on the 'Non-Building & Consolidation Minor Subdivision Plat of The Lochmere Development Corportion Property and Stonecase Valley (a portion of)' of record in Plat Cabinet , Slide in the office of The Fayette County Court Clerk and more particularly decribed as follows:

Beginning at the point between calls number 156 and 137 on the above referenced plat; thence with call number 156, S 56°00'00" W, 241.12 feet to a point; thence with a curve to the right, whose chord bears N 79°25'16" W, 20.50 feet, along a radius of 1,501.36 feet for 20.50 feet to a point; thence N 09°22'11" E, 7.40 feet to a point; thence with call number 204, N 56°00'00" E, 253.66 feet to a point; thence S 25°18'29" E, 19.20 feet to THE POINT OF BEGINNING containing 4,966.33 square feet.

ENDICOTT & ASSOCIATES

Albert W. Gross, P.E., L.S.

STATE OF KENTUCKY
ALBERT WELTON GROSS
LS-2115
REGISTERED
LAND SURVEYOR

12.5.88

EXHIBIT "F"

ENDICOTT AND ASSOCIATES
CIVIL ENGINEERS AND LAND SURVEYORS
176 STONE ROAD • SUITE 200
LEXINGTON, KENTUCKY 40503

PHONE (606) 277-8320

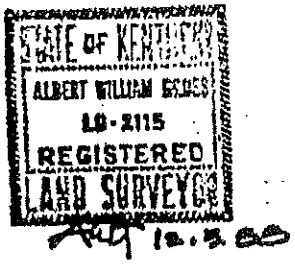
December 5, 1988

Being a portion of Tract 1 (3550 Todds Road) and being between Tract 6 (3500 Todds Road) and Tract 5 (3700 Todds Road) of the property as shown on the 'Non-Building & Consolidation Minor Subdivision Plat of The Lochmere Development Corportion Property and Stonecase Valley (a portion of)' of record in Plat Cabinet , Slide in the office of the Fayette County Court Clerk and more particularly described as follows:

Beginning at a point between calls number 9 and 15 on the above referenced plat; thence S 80°16'59" E, 20.00 feet to a point; thence along call number 138, S 09°23'23" W, 50.00 feet to a point; thence N 80°36'36" W, 20.00 feet to a point; thence along call number 15, N 09°23'24" W, 50.00 feet to THE POINT OF BEGINNING containing 998.85 square feet.

ENDICOTT & ASSOCIATES

Albert W. Gross, P.E., L.S.



ENDICOTT AND ASSOCIATES
CIVIL ENGINEERS AND LAND SURVEYORS
176 STONE ROAD • SUITE 200
LEXINGTON, KENTUCKY 40503

PHONE (606) 277-8920

December 5, 1988

Being a portion of Tract 1 (3550 Todds Road) and being between Tract 6 (3500 Todds Road) and Tract 5 (3700 Todds Road) of the property shown on the 'Non-Building & Consolidation Minor Subdivision Plat of The Lochmere Development Corportion Property and Stonecase Valley (a portion of)' of record in Plat Cabinet , Slide in the office of The Fayette County Court Clerk and more particularly decribed as follows:

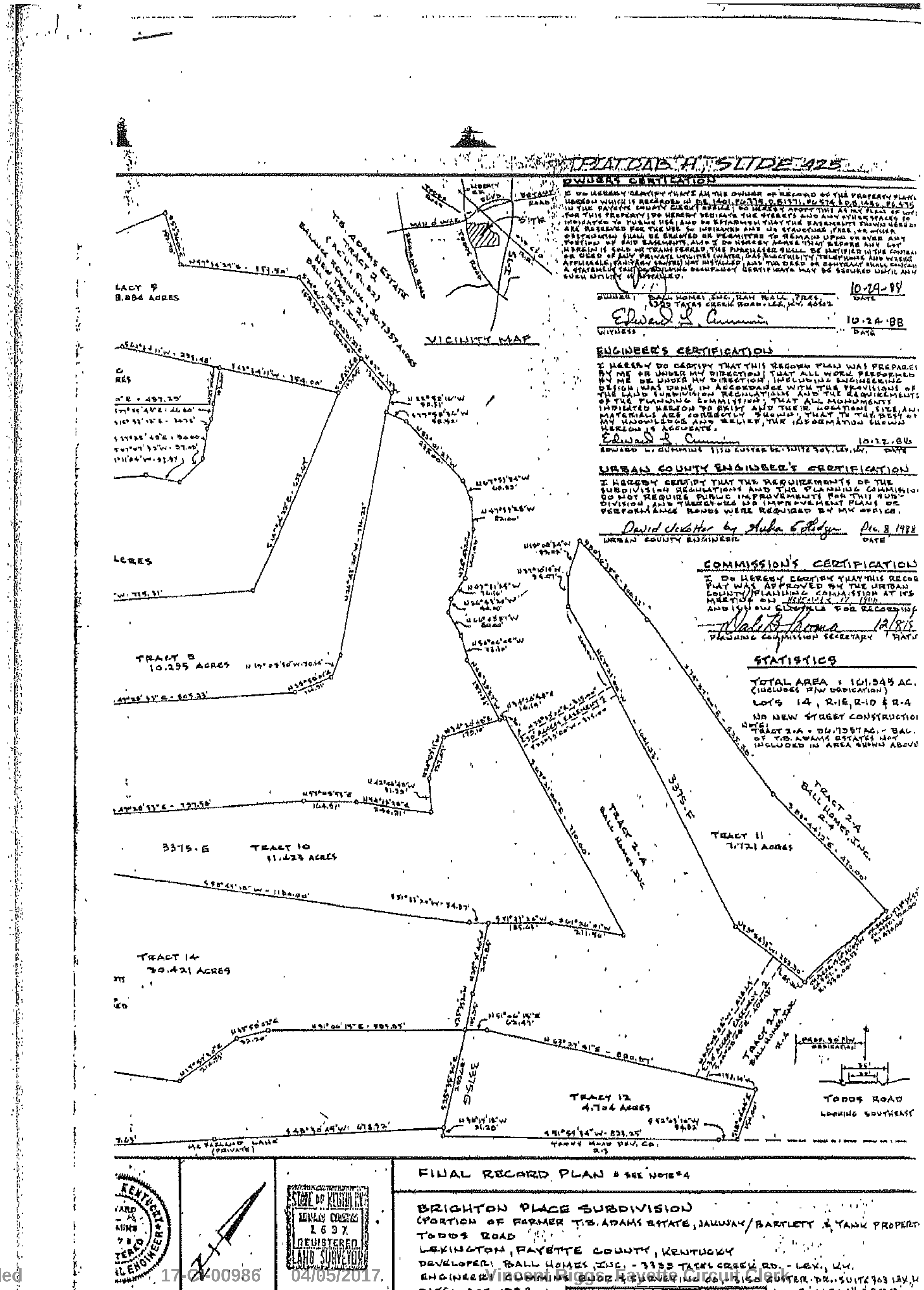
Beginning at a point between calls number 199 and 200 on the above referenced plat; thence along call number 200, S 03°31'10" W, 70.00 feet to a point; thence with a curve to the right, whose chord bears N 86°03'40" W, 23.01 feet, along a radius of 1,571.36 feet for 21.99 feet to a point; thence along call number 155, N 04°21'31" E, 70.00 feet to a point; thence with a curve to left, whose chord bears S 86°03'40" E, 21.99 feet, along a radius of 1,501.36 feet for 21.99 feet to THE POINT OF BEGINNING containing 1,575.74 square feet.

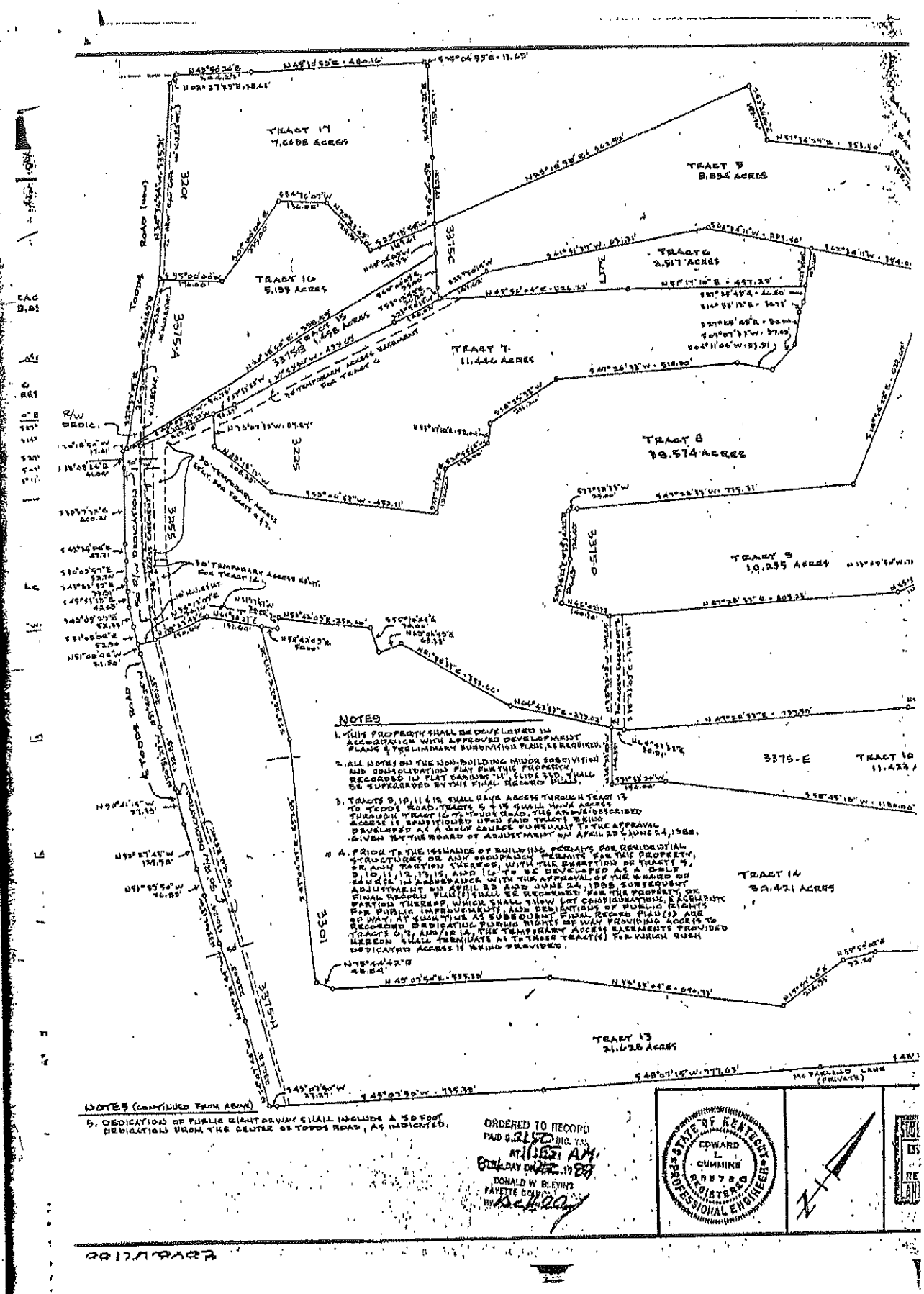
ENDICOTT & ASSOCIATES

Albert W. Gross, P.E., L.S.

STATE OF KENTUCKY
ALBERT WILLIAM GROSS
LS-2115
REGISTERED
LAND SURVEYOR

12.5.88





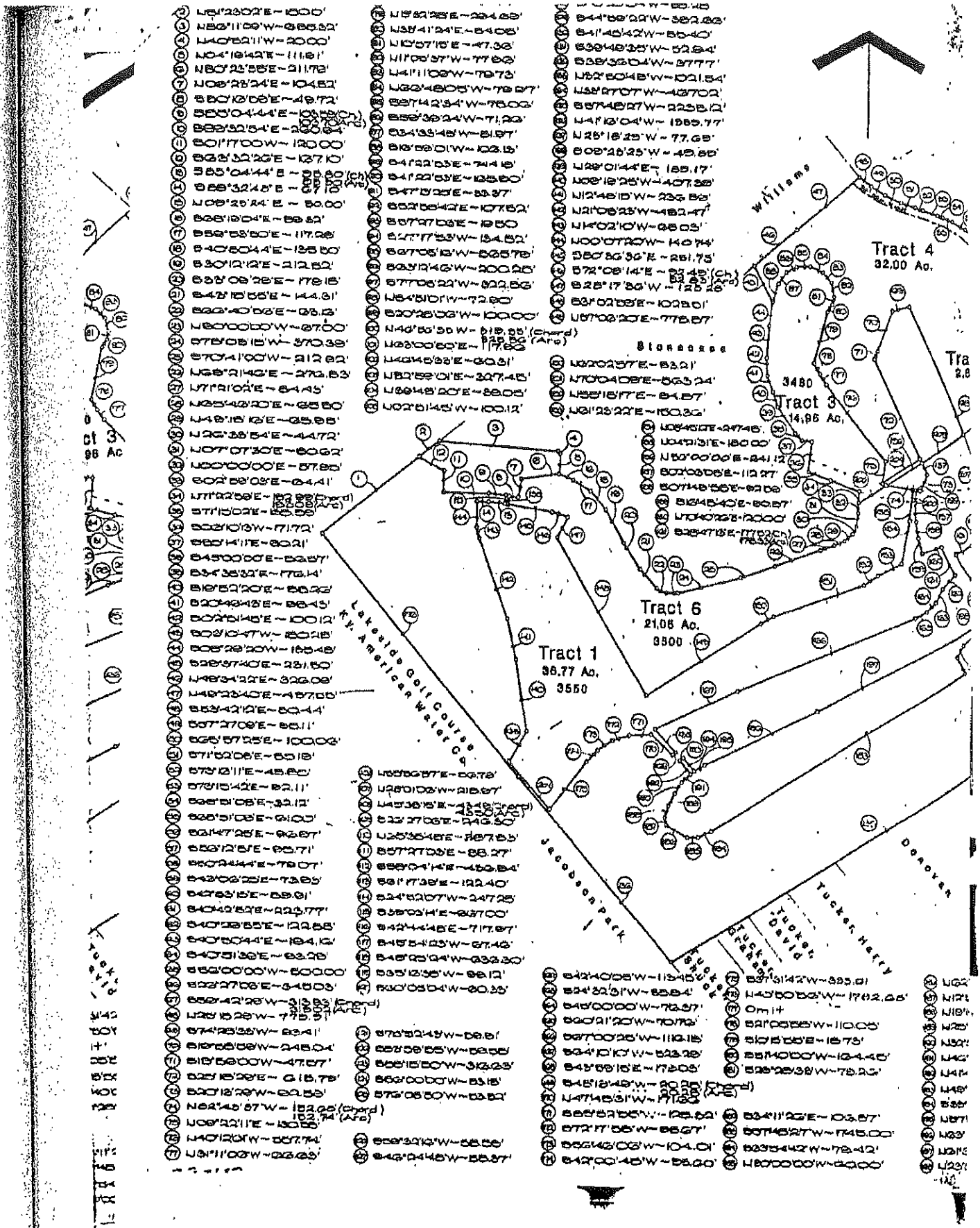
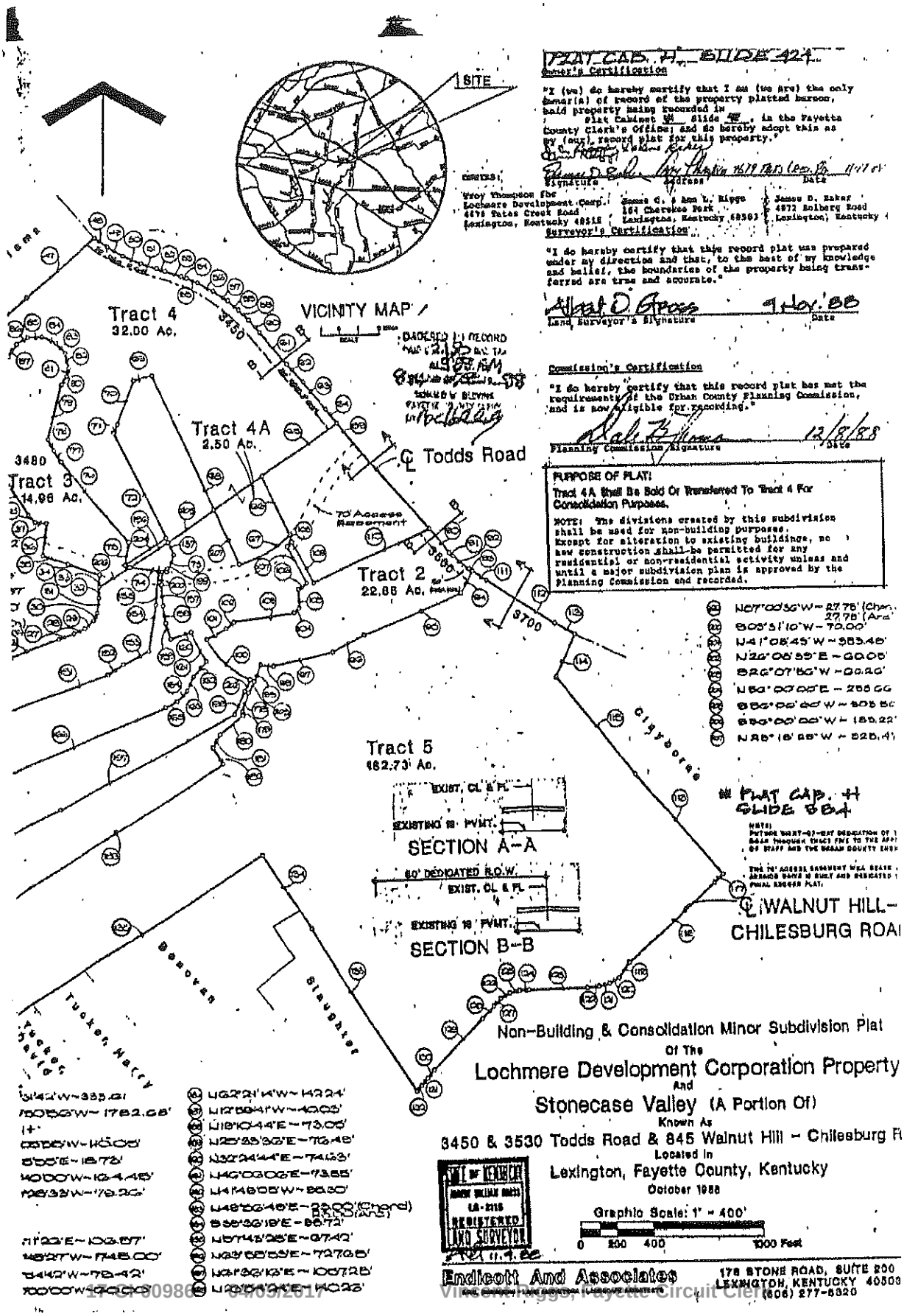


EXHIBIT D



AMENDMENT TO GOLF COURSE LEASE,
CONSTRUCTION AND PURCHASE AGREEMENT

THIS AMENDMENT TO GOLF COURSE LEASE, made and entered into this the 24 day of July, 1990, by and between Ball Homes, Inc., a Kentucky corporation, whose address is 3399 Tates Creek Road, Lexington, Kentucky 40502, and Lochmere Development Corporation, a Kentucky corporation, whose address is 4679 Tates Creek Road, Lexington, Kentucky 40515, (hereinafter "Ball & Lochmere"), Corman-McQueen Golf, Inc., a Kentucky corporation, whose address is 3200 Roxburg Road, W, Lexington, Kentucky 40514, (hereinafter "Corman-McQueen"), Andover Golf & County Club, Inc., a Kentucky corporation, whose address is 3450 Todds Road, Lexington, Kentucky 40509, (hereinafter "Andover"), Joe R. B. Hacker II and Troy N. Thompson whose address is 4679 Tates Creek Road, Lexington, Kentucky 40515, (hereinafter "Hacker-Thompson").

W I T N E S S E T H:

WHEREAS, Ball & Lochmere and Corman-McQueen entered into a Golf Course Lease, Construction and Purchase Agreement dated July 11, 1988, for one hundred sixty-five (165) acres, more or less, (hereinafter "Real Property"), located on Todds Road, Lexington, Fayette County, Kentucky; and

WHEREAS, Lochmere has conveyed a portion of its interest in the Real Property by deed dated December 30, 1988, to Hacker-Thompson; and

WHEREAS, Ball & Lochmere and Hacker-Thompson are tendering deed for the Real Property subject to said Agreement; and

WHEREAS, the parties wish to set forth those terms of the Agreement which are to survive the closing.

NOW, THEREFORE, in consideration of the above and the hereinafter below covenants, the parties agree as follows:

1. Survival of Covenants. Corman-McQueen, Ball & Lochmere and Hacker-Thompson acknowledge and agree that the items contained in paragraphs 4, 7, 8, 13, 14, 16, 19, 20 and all of paragraphs 5 and 6 except for date deadlines shall survive the closing.

2. Initiation Fees. So much of paragraph 19 that provides that Ball & Lochmere shall not be entitled to proceeds for the sale of memberships is modified to the extent that Ball & Lochmere and Hacker-Thompson shall be entitled to $400,000.00 of said proceeds as provided in a Note and Assignment dated July 24, 1990, between Corman-McQueen, Ball & Lochmere and Hacker-Thompson.

3. Acceptance by Andover Golf & Country Club. Andover joins in this Agreement to acknowledge the responsibilities of Corman-McQueen in the above referenced Agreement and does hereby accept and agrees to be subject to the survival of the clauses set forth in paragraph 1 above and the assignment of the initiation fees set forth in paragraph 2 recognizing said assignment is given as security for deferred purchase price in the amount of the assignment that would have otherwise been due upon passing of title of the Real Property to Andover.

4. Binding Effect. This Agreement shall be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their signatures as of the day and year first above written.

BALL HOMES, INC.
a Kentucky corporation

By Nina Ball

Its Sec.-Treas.

LOCHMERE DEVELOPMENT CORPORATION
a Kentucky corporation

By Troy Thompson

Its President

ANDOVER GOLF & COUNTY CLUB, INC.
a Kentucky non-profit corporation

By Daniel McQueen

Its PRES

Joe R. B. Hacker, II

Troy W. Thompson

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 24 day of July, 1990, by Nina Ball as Sec/Treas. of Ball Homes, Inc., a Kentucky corporation, for and on behalf of the corporation.

My Commission expires May 24, 1993

Constance Nicholas
Notary Public, State at Large, KY

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 24th day of July, 1990, by Ray N. Thompson as President of Lochmere Development Corporation, a Kentucky corporation, for and on behalf of the corporation.

My Commission expires 9-17-92

Betty Cox
Notary Public, State at Large, KY

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 24th day of July, 1990, by Daniel D. McQueen as President of Andover Golf & County Club, Inc., a Kentucky non-profit corporation, for and on behalf of the corporation.

My Commission expires 9-17-92

Betty Cox
Notary Public, State at Large, KY

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 24th day of July, 1990, by Joe R. B. Hacker II.

My Commission expires 9-17-92

Betty Cox
Notary Public, State at Large, KY

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 24th day of July, 1990, by Troy N. Thompson.

My Commission expires 9-17-92

Betty Cox
Notary Public, State at Large, KY

L:A:andover club/AF65:22687
071990:1:smr
golf lease/amendment

MEMORANDUM OF LEASE
AND PURCHASE AGREEMENT

BOOK 1498 PAGE 225

THIS MEMORANDUM OF LEASE AND PURCHASE AGREEMENT, entered into on the 9th day of December, 1988, by and between BALL HOMES, INC., a Kentucky corporation, whose address is 3399 Tates Creek Road, Lexington, Kentucky 40502, and LOCHMERE DEVELOPMENT CORPORATION, a Kentucky corporation, whose address is 4679 Tates Creek Road, Lexington, Kentucky 40515 (hereinafter referred to as "Ball & Lochmere"), and CORMAN-MCQUEEN GOLF, INC., a Kentucky corporation, whose address is 3200 Roxburg Road West, Lexington, Kentucky, 40503 (hereinafter referred to as "Corman-McQueen").

WITNESSETH THAT:

In consideration of the premises and the mutual covenants and agreements set forth in a certain Golf Course Lease, Construction and Purchase Agreement ("Lease") dated July 11, 1988, by and between Ball & Lochmere and Corman-McQueen, Ball & Lochmere have leased to Corman-McQueen, and Corman-McQueen has leased from Ball & Lochmere, the real estate located in Fayette County, Kentucky, as described on Exhibit "A" attached hereto and made a part hereof, for a term beginning as of July 11, 1988, and concluding five years after a date to be determined by reference to the Lease.

The Lease also provides that Corman-McQueen shall purchase the subject real estate on terms more specifically set out in the Lease on or before the termination of said Lease.

This Memorandum of Lease and Purchase Agreement is executed for the purpose of giving notice of the existence of the Lease and

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RETURN TO PREPARER

the terms thereof. Reference is made to the Lease for the full description of the rights and duties of Ball & Lochmere and Corman-McQueen, and this Memorandum of Lease shall in no way affect the terms and conditions of the lease or the interpretation of rights and duties of the parties thereunder.

IN WITNESS WHEREOF, Ball & Lochmere and Corman-McQueen have caused this Memorandum of Lease and Purchase Agreement to be executed on this 9th day of December, 1988.

BALL HOMES, INC.

By _____
Its _____

LOCHMERE DEVELOPMENT CORPORATION

By _____
Its PRESIDENT

CORMAN-MCQUEEN GOLF, INC.

By _____
Its PRESIDENT

STATE OF KENTUCKY)
) SS.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this 9th day of December, 1988, by D. Ray Ball Jr., President of Ball Homes, Inc., a Kentucky corporation, on behalf of the corporation.

My Commission Expires: 9-17-92

Betty Cox
NOTARY PUBLIC

STATE OF KENTUCKY)
) SS.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this 9th day of December, 1988, by Troy Thompson, President of Lochmere Development Corporation, a Kentucky corporation, on behalf of the corporation.

My Commission Expires: 9-17-92

Betty Cox
NOTARY PUBLIC

STATE OF KENTUCKY)
) SS.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this 9th day of December, 1988, by Daniel H. McQueen, President of Corman-Mcqueen, Inc., a Kentucky corporation, on behalf of the corporation.

My Commission Expires: 9-17-92

Betty Cox
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

STITES & HARBISON
2300 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507

By Stites & Harbison

Being all of Tract Nos. 5, 9, 10, 11, 12, 13, 15 and 16 of the Brighton Place Subdivision Final Record Plat to the City of Lexington, Fayette County, Kentucky, as shown by plat thereof of record in Plat Cabinet H, Slide 425, Fayette County Clerk's Office; and

Being all of Tract Nos. 1, 2, 4 and 4A of the Non-Building & Consolidation Minor Subdivision Plat of the Lochmere Development Corporation Property and Stonecase Valley (a portion of), Lexington, Fayette County, Kentucky, as shown by plat thereof of record in Plat Cabinet H, Slide 424, Fayette County Clerk's Office.

Being a portion of the property conveyed to Ball Homes, Inc., a Kentucky corporation, by deeds of record in the Fayette County Clerk's Office in Deed Book 1371, Page 574, Deed Book 1486, Page 475, and Deed Book 1461, Page 775.

And, being a portion of the same property conveyed to Lochmere Development Corporation, a Kentucky corporation, by deed dated November 28, 1986, and of record in the Fayette County Clerk's Office in Deed Book 1425, Page 52.

And, being a portion of the same property conveyed to Ball Homes, Incorporated and Lochmere Development Corporation, by Deed dated November 16, 1986 and of record in the Fayette County Clerk's office in Deed Book 1497, Page 603.

STATE OF KENTUCKY SCT.
COUNTY OF FAYETTE

I, DONALD W. BLEVINS, CLERK OF SAID COUNTY COURT HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT HAS BEEN DULY RECORDED IN DEED BOOK 1498 PAGE 225 IN MY SAID OFFICE.

DONALD W. BLEVINS, CLERK

BY ..... D.C.

ORDERED TO RECORD
PAID $ 10.00 INC. TAX
DEC 12 12 45 PM '88
DONALD W. BLEVINS
FAYETTE COUNTY CLERK
BY ..... D.C.

EXHIBIT A

AMENDMENT TO GOLF COURSE LEASE,
CONSTRUCTION AND PURCHASE AGREEMENT

THIS AMENDMENT TO GOLF COURSE LEASE, made and entered into this the 24 day of July, 1990, by and between Ball Homes, Inc., a Kentucky corporation, whose address is 3399 Tates Creek Road, Lexington, Kentucky 40502, and Lochmere Development Corporation, a Kentucky corporation, whose address is 4679 Tates Creek Road, Lexington, Kentucky 40515, (hereinafter "Ball & Lochmere"), Corman-McQueen Golf, Inc., a Kentucky corporation, whose address is 3200 Roxburg Road, W, Lexington, Kentucky 40514, (hereinafter "Corman-McQueen"), Andover Golf & County Club, Inc., a Kentucky corporation, whose address is 3450 Todds Road, Lexington, Kentucky 40509, (hereinafter "Andover"), Joe R. B. Hacker II and Troy N. Thompson whose address is 4679 Tates Creek Road, Lexington, Kentucky 40515, (hereinafter "Hacker-Thompson").

W I T N E S S E T H:

WHEREAS, Ball & Lochmere and Corman-McQueen entered into a Golf Course Lease, Construction and Purchase Agreement dated July 11, 1988, for one hundred sixty-five (165) acres, more or less, (hereinafter "Real Property"), located on Todds Road, Lexington, Fayette County, Kentucky; and

WHEREAS, Lochmere has conveyed a portion of its interest in the Real Property by deed dated December 30, 1988, to Hacker-Thompson; and

WHEREAS, Ball & Lochmere and Hacker-Thompson are tendering deed for the Real Property subject to said Agreement; and

WHEREAS, the parties wish to set forth those terms of the Agreement which are to survive the closing.

NOW, THEREFORE, in consideration of the above and the hereinafter below covenants, the parties agree as follows:

1. Survival of Covenants. Corman-McQueen, Ball & Lochmere and Hacker-Thompson acknowledge and agree that the items contained in paragraphs 4, 7, 8, 13, 14, 16, 19, 20 and all of paragraphs 5 and 6 except for date deadlines shall survive the closing.

2. Initiation Fees. So much of paragraph 19 that provides that Ball & Lochmere shall not be entitled to proceeds for the sale of memberships is modified to the extent that Ball & Lochmere and Hacker-Thompson shall be entitled to $400,000.00 of said proceeds as provided in a Note and Assignment dated July 24, 1990, between Corman-McQueen, Ball & Lochmere and Hacker-Thompson.

3. Acceptance by Andover Golf & Country Club. Andover joins in this Agreement to acknowledge the responsibilities of Corman-McQueen in the above referenced Agreement and does hereby accept and agrees to be subject to the survival of the clauses set forth in paragraph 1 above and the assignment of the initiation fees set forth in paragraph 2 recognizing said assignment is given as security for deferred purchase price in the amount of the assignment that would have otherwise been due upon passing of title of the Real Property to Andover.

4. Binding Effect. This Agreement shall be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their signatures as of the day and year first above written.

BALL HOMES, INC.
a Kentucky corporation

By Nina Ball

Its Sec.-Treas.

LOCHMERE DEVELOPMENT CORPORATION
a Kentucky corporation

By Troy Thompson

Its President

ANDOVER GOLF & COUNTY CLUB, INC.
a Kentucky non-profit corporation

By Daniel McQueen

Its PRES

Joe R. B. Hacker, II

Troy N. Thompson

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 24 day of July, 1990, by Nina Ball as Sec/Treas. of Ball Homes, Inc., a Kentucky corporation, for and on behalf of the corporation.

My Commission expires May 24, 1993

Constance Nichols
Notary Public, State at Large, KY

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 24th day of July, 1990, by Roy D. Thompson as President of Lochmere Development Corporation, a Kentucky corporation, for and on behalf of the corporation.

My Commission expires 9-17-92
Betty Cox
Notary Public, State at Large, KY

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 24th day of July, 1990, by Daniel D. McQueen as President of Andover Golf & County Club, Inc., a Kentucky non-profit corporation, for and on behalf of the corporation.

My Commission expires 9-17-92
Betty Cox
Notary Public, State at Large, KY

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 24th day of July, 1990, by Joe R. B. Hacker II.

My Commission expires 9-17-92
Betty Cox
Notary Public, State at Large, KY

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 24th day of July, 1990, by Troy N. Thompson.

My Commission expires 9-17-92

Betty Cox
Notary Public, State at Large, KY

L:A:andover club/AF65:22687
071990:1:smr
golf lease/amendment

MEMORANDUM OF LEASE AND PURCHASE AGREEMENT

BOOK 1498 PAGE 625

THIS MEMORANDUM OF LEASE AND PURCHASE AGREEMENT, entered into on the 9th day of December, 1988, by and between BALL HOMES, INC., a Kentucky corporation, whose address is 3399 Tates Creek Road, Lexington, Kentucky 40502, and LOCHMERE DEVELOPMENT CORPORATION, a Kentucky corporation, whose address is 4679 Tates Creek Road, Lexington, Kentucky 40515 (hereinafter referred to as "Ball & Lochmere"), and CORMAN-MCQUEEN GOLF, INC., a Kentucky corporation, whose address is 3200 Roxburg Road West, Lexington, Kentucky, 40503 (hereinafter referred to as "Corman-McQueen").

WITNESSETH THAT:

In consideration of the premises and the mutual covenants and agreements set forth in a certain Golf Course Lease, Construction and Purchase Agreement ("Lease") dated July 11, 1988, by and between Ball & Lochmere and Corman-McQueen, Ball & Lochmere have leased to Corman-McQueen, and Corman-McQueen has leased from Ball & Lochmere, the real estate located in Fayette County, Kentucky, as described on Exhibit "A" attached hereto and made a part hereof, for a term beginning as of July 11, 1988, and concluding five years after a date to be determined by reference to the Lease.

The Lease also provides that Corman-McQueen shall purchase the subject real estate on terms more specifically set out in the Lease on or before the termination of said Lease.

This Memorandum of Lease and Purchase Agreement is executed for the purpose of giving notice of the existence of the Lease and

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EXHIBIT 3

RETURN TO PREPARER

the terms thereof. Reference is made to the Lease for the full description of the rights and duties of Ball & Lochmere and Corman-McQueen, and this Memorandum of Lease shall in no way affect the terms and conditions of the lease or the interpretation of rights and duties of the parties thereunder.

IN WITNESS WHEREOF, Ball & Lochmere and Corman-McQueen have caused this Memorandum of Lease and Purchase Agreement to be executed on this 9th day of December, 1988.

BALL HOMES, INC.

By _____
Its _____

LOCHMERE DEVELOPMENT CORPORATION

By _____
Its PRESIDENT

CORMAN-MCQUEEN GOLF, INC.

By _____
Its PRESIDENT

STATE OF KENTUCKY)
) SS.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this 9th day of December, 1988, by D. Ray Ball Jr., President of Ball Homes, Inc., a Kentucky corporation, on behalf of the corporation.

My Commission Expires: 9-17-92

Betty Cox
NOTARY PUBLIC

STATE OF KENTUCKY)
) SS.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this 9th day of December, 1988, by Troy Thompson, President of Lochmere Development Corporation, a Kentucky corporation, on behalf of the corporation.

My Commission Expires: 9-17-92

Betty Cox
NOTARY PUBLIC

STATE OF KENTUCKY)
) SS.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this 9th day of December, 1988, by Daniel H. McQueen, President of Corman-Mcqueen, Inc., a Kentucky corporation, on behalf of the corporation.

My Commission Expires: 9-17-92

Betty Cox
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

STITES & HARBISON
2300 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507

By Stites & Harbison

Being all of Tract Nos. 5, 9, 10, 11, 12, 13, 15 and 16 of the Brighton Place Subdivision Final Record Plat to the City of Lexington, Fayette County, Kentucky, as shown by plat thereof of record in Plat Cabinet H, Slide 425, Fayette County Clerk's Office; and

Being all of Tract Nos. 1, 2, 4 and 4A of the Non-Building & Consolidation Minor Subdivision Plat of the Lochmere Development Corporation Property and Stonecase Valley (a portion of), Lexington, Fayette County, Kentucky, as shown by plat thereof of record in Plat Cabinet H, Slide 424, Fayette County Clerk's Office.

Being a portion of the property conveyed to Ball Homes, Inc., a Kentucky corporation, by deeds of record in the Fayette County Clerk's Office in Deed Book 1371, Page 574, Deed Book 1486, Page 475, and Deed Book 1461, Page 775.

And, being a portion of the same property conveyed to Lochmere Development Corporation, a Kentucky corporation, by deed dated November 28, 1986, and of record in the Fayette County Clerk's Office in Deed Book 1425, Page 52.

And, being a portion of the same property conveyed to Ball Homes, Incorporated and Lochmere Development Corporation, by Deed dated November 16, 1986 and of record in the Fayette County Clerk's office in Deed Book 1497, Page 603.

STATE OF KENTUCKY SCT.
COUNTY OF FAYETTE

I, DONALD W. BLEVINS, CLERK OF SAID COUNTY COURT HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT HAS BEEN DULY RECORDED IN DEED BOOK 1498 PAGE 225 IN MY SAID OFFICE.

DONALD W. BLEVINS, CLERK

BY ..... D.C.

ORDERED TO RECORD
PAID $ 10.00 INC. TAX
DEC 12 12 46 PM '88
DONALD W. BLEVINS
FAYETTE COUNTY CLERK
BY

EXHIBIT A

DEED OF RESTRICTIONS

FOR

STONECASE VALLEY SUBDIVISION (ANDOVER CLUB), UNIT 1

BOOK 1523 PAGE 113

WHEREAS, Ball Homes, Inc., a Kentucky corporation, and Lochmere Development Corporation, a Kentucky corporation, (hereinafter the "Developers"), are the owners of Unit 1 of Stonecase Valley Subdivision (Andover Club) as shown by plat of record in the Fayette County Court Clerk's Office in Plat Cabinet H, Slide 614, and desires to place covenants and restrictions of the lots within said unit to maintain uniformity as to the use and occupancy of said property, and

NOW, THEREFORE, the Developers do hereby establish the following covenants, conditions and restrictions as to the use and occupancy of all the lots in said Unit 1 of said Stonecase Valley (Andover Club) Subdivision and shown by Plat of Record in the Fayette County Court Clerk's Office.

1. All property in this unit shall be used for single family residential purposes only.

2. All driveways and approaches shall be constructed of Portland cement concrete or asphalt.

3. No commercial vehicle or truck over 3/4 ton shall be regularly parked on any lot or street in the subdivision other than for delivery or construction purposes unless housed within a garage; and no person shall engage in major car repairs either for himself or others at any time.

890901223

Return To:
STEPHEN M. RUSCHELL
STITES & HARBISON
2300 Lexington Financial Center
LEXINGTON, KENTUCKY 40507
(606) 254-2300

EXHIBIT 4

4. These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of one (1) year unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

5. The Developers or any lot owner at any time may enforce the restrictions and covenants herein contained by appropriate legal procedure. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

6. Should the owner of any lot fail to maintain the lawn, the Developers, or their assigns, may enter such lot to cut grass and/or weeds and remove any debris necessary, and collect their costs of labor and material plus 25% from the owner of said lot.

7. No residential vehicle, trailer or boat shall be parked in any front yard or on any street in the subdivision for a period in excess of twenty-four (24) consecutive hours or in any manner that may be construed as an intentional attempt to circumvent this restriction.

8. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

9. Anyone cutting into or tunnelling under or damaging in any manner the street, sidewalk or road serving said lots must repair and restore the street, sidewalk or road to its original condition, all at such person's own risk and expense. This shall not be construed as any permission or consent by the Developers and shall not create any liability on the Developers of Stonecase Valley Subdivision (Andover Club), express or implied.

10. No building or structure of a temporary character, including, but not limited to, trailers, basements, tents, shacks, garages, barns or other buildings other than residence buildings, shall be used upon any lot in said unit at any time as a residence, either temporarily or permanently, nor shall any trailer, tent, shack, barn or unmovable vehicle be used and/or maintained upon any lot in said subdivision at any time, whether temporarily or permanently.

11. No animals, livestock and/or poultry of any kind shall be raised, bred or kept upon any lot in said unit of said subdivision; provided, however, dogs, cats and/or other household pets may be kept and maintained upon said lots if they are not kept, bred or maintained for any commercial reason or purpose.

12. No fence, wall, hedge or any nature may be extended toward the front or side of the property line beyond the building set-back line as shown on the Record Plat in the Fayette County Clerk's Office and may not extend toward the front of the house past the rear corner. Any fence used must conform with the character of the subdivision and shall be in accordance with

appropriate governmental regulations, and shall be approved by the Developers prior to construction.

13. No signs shall be permitted on property, house number and name plates excepted, except those which the Developers deem fit.

14. No city or municipality shall be formed during the development and initial sale of this subdivision unless approved by the Developers.

15. No television, radio or other similar microwave receiving dish shall be permitted on any lot.

16. No additional subdivision of a lot shall be made to reduce the size of the lot without permission of the Developers and appropriate governmental bodies.

17. Minimum size of living area for primary construction exclusive of porches, basements, attics, carports and garages, shall be as follows, based on the house type:

a.	One-Floor Plan	1,800 Sq. Ft.
b.	One & One-Half Story	1,400 Sq. Ft.
	(Main Floor)	(2,100 Sq. Ft. Total)
c.	Two-Story	1,200 Sq. Ft.
		(2,400 Sq. Ft. Total)

The Developers may approve other types of design (so long as such designs contain a minimum of 1,800 Sq. Ft. of living area) provided the living area as defined in this paragraph is substantially similar to the requirements herein specified, at the sole discretion of the Developers.

18. All plans for buildings to be erected, placed, altered or permitted to remain upon any lot shall be subject to approval

by the Developers and one complete set of the plans and specifications shall be provided and retained by the Developers. The detailed plans and specifications shall, without limitation, include the color of the brick or paint to be used on the exterior. It is one of the purposes of these restrictions to cause the construction of residences of external design which will be harmonious one with the other. Bedford stone, Tennessee stone or similar stone shall not be permitted, only after photo or sample of particular stone has been approved by Developers.

19. Whether brick or other sidings are used in the erection of improvements, all foundations must be bricked to grade and all chimneys must be masonry.

20. As construction of each lot is completed, the lot shall be fully graded and sodded except only for the improved area, driveways, patios and sidewalks.

21. All houses must have a two car attached or basement garage.

22. As construction of the improvements are completed, each lot shall be landscaped with two (2) shade trees in the front yard.

23. The pitch of the roof must be a minimum of 4 1/2 on 12.

24. At no time during or after construction shall any trash, dirt, clipped weeds, grass or debris of any type be placed, wasted or deposited on any lot vacant or otherwise by owner, Contractor or Sub-Contractors.

GOLF COURSE LOTS

25. Certain lots within the unit abut a golf course; and the owners thereof acknowledge and agree that the non-negligent use thereof by the owner and the operator of the golf course from time to time shall create no liability on the owner or the operator. This acknowledgment and agreement shall, however, authorize no negligent, willful or other unlawful act and shall not permit any trespass on the lots abutting the golf course.

26. No owner of a lot abutting the golf course shall construct any hedge, fence, wall or barrier of any nature within twenty (20) feet of any border which abuts the golf course, nor plant any evergreen tree in such area, nor plant any other tree or place any other construction or matter in such area except as each shall be at least twenty (20) feet from each other plant, construction or matter.

27. During the entire course of construction or any other use of a lot abutting the golf course, the owner shall provide a method (accepted in writing by the Developers) to prevent siltage from running onto the golf course. Plans for siltage control shall be submitted along with the earliest plans of any kind submitted for such lots.

IN WITNESS WHEREOF, Ball Homes, Inc. and Lochmere Development Corporation have caused their names to hereunto be subscribed by their duly authorized officer this the 31st day of August, 1989.

BALL HOMES, INC.,
a Kentucky corporation

By _____

Its _____

LOCHMERE DEVELOPMENT CORPORATION,
a Kentucky corporation

By _____

Its _____

"DEVELOPERS"

BOOK 1523 PAGE 119

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 31st day of August, 1989, by D. Ray Ball, Jr. as President of Ball Homes, Inc., a Kentucky corporation, for and on behalf of the corporation.

My Commission expires 6/18/91

Notary Public, State at Large,
Kentucky

LASTENIA M. DOSS NOTARY PUBLIC STATE AT LARGE

BOOK 1523 PAGE 120

STATE OF KENTUCKY)
) SCT.
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me on this the 31st day of August, 1989, by Troy A. Thompson as President of Lochmere Development Corporation, a Kentucky corporation, for and on behalf of the corporation.

My Commission expires 9-17-92

Betty Cox
Notary Public, State at Large, Kentucky

THIS INSTRUMENT PREPARED BY:
Stites & Harbison
2300 Lexington Financial Center
Lexington, Kentucky 40507

By Sam Rueschel

L:A:andover group/AD08:22120
083089:1:smr
deed of restrictions

STATE OF KENTUCKY
COUNTY OF FAYETTE SCT.

I, DONALD W. BLEVINS, CLERK OF SAID COUNTY COURT HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT HAS BEEN DULY RECORDED IN DEED BOOK 1523 PAGE 113 IN MY SAID OFFICE.

DONALD W. BLEVINS, CLERK
BY ..... D.C.

SEP 1 3 07 PM '89

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BOOK 1554 PAGE 748

DEED OF RESTRICTIONS AND COVENANTS

FOR

ANDOVER HILL (LOCHMERE) SUBDIVISION UNIT 3,

SECTION 1 AND SECTION 2, SUBSECTION 1

WHEREAS, LOCHMERE DEVELOPMENT CORPORATION, a Kentucky corporation, hereinafter referred to as "Developer" is the owner of Unit 3, Section 1 and Section 2, Subsection 1 of The Andover Hill (Lochmere) Subdivision ("the Unit") as shown by plats of record in the Fayette County Court Clerk's office in Plat Cabinet I, Slides 127 and 128 (including the lots shaded thereon, later to be replatted) ("the Record Plats") and desires to establish covenants and restrictions of the lots within the Unit to maintain standards as to the use and occupancy of the Unit, and to accomplish related purposes, and

NOW, THEREFORE, Developer hereby establishes the following covenants and restrictions as to the use and occupancy of all the lots in the Unit.

GENERAL RESTRICTIONS AND COVENANTS

1. All lots in the Unit shall be used for single family residential purposes only. The "lots" mentioned herein are all the lots within the Unit, and only those within the Unit.

2. All driveways and approaches shall be constructed of Portland cement concrete.

3. No commercial vehicle or truck over three-fourths (3/4) ton shall be regularly parked on any lot or street in the Unit

900731113

mail to: ~~Tom Marks~~ Robert S. Miller
Miller, Griffin & Marks
271 W. Short St, Suite 700
Lexington, Ky 40507

EXHIBIT 5

other than for temporary delivery or construction purposes unless housed within a garage; and no person shall engage in major car repairs either for himself, herself or others at any time.

4. No residential vehicle, trailer or boat shall be parked in any front yard at any time, nor on any street in the Unit for a period in excess of twenty-four (24) consecutive hours, nor in any manner (by temporary removal or otherwise) whose result would (or which is an attempt to) circumvent this restriction.

5. The owner and occupant of each lot shall maintain its lawn in a first-class manner; and at no time during or after construction shall any trash, dirt, clipped weeds, grass or debris of any type be placed, wasted or deposited on any lot (vacant or otherwise) by the owner, occupant, his, her or its constructor or subcontractors or others. In default thereof, the Developer may enter such lot to cut grass and/or weeds and/or remove any debris and/or perform any other appropriate maintenance work, and collect its costs of labor and material, plus 25% from the owner and occupant of such lot.

6. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which is or may become an annoyance or a nuisance to others in the Unit or the surrounding neighborhood. No person shall apply for a conditional use permit, a variance, a zone change, an interpretation of the zoning ordinance, or any other matter involving any part of the Unit, to the Lexington-Fayette Urban County Planning Commission or the Lexington-Fayette Urban County

Board of Adjustment without the prior written consent of the Developer; and no person shall take any action (or omit to act) based upon a grant or determination by the Lexington-Fayette Urban County Commission or the Lexington-Fayette County Board of Adjustment without the prior written consent of the Developer. In applying for such consent, Developer shall be provided with such details as it requests of the proposed use; and no person shall, after the granting of such consent, if any, act (or omit to act) in any way inconsistent with the specific proposal thus delivered to the Developer.

7. Anyone cutting into or tunnelling under or damaging in any manner the streets, sidewalks, or road serving the Unit, and anyone damaging or in any way altering or affecting any storm or sanitary sewer, shall repair and restore the sewer, streets, sidewalks, or roads to their original condition, all at such person's own risk and expense. This paragraph shall not be construed as a grant of permission or consent by the Developer and shall not create any liability on the Developer.

8. No building or structure of a temporary character, including but not limited to, any trailer, basement, tent, shack, garage, barn or other building other than the residence building shall be used upon any lot in the Unit at any time as a residence, either temporarily or permanently; nor shall any trailer, tent, shack, barn or attached vehicle be used and/or maintained upon any lot in the Unit at any time, either temporarily or permanently.

Filed 17-CI-00986 04/05/2017 Vincent Riggs, Fayette Circuit Clerk

9. No animals, livestock or poultry of any kind shall be raised, bred or kept upon any lot in the Unit; provided, however, that dogs, cats or other small household pets may be kept and maintained thereon if they are not kept, bred or maintained for any commercial reason or purpose.

10. No fence, hedge, wall, or barrier of any nature may be constructed, planted or maintained beyond the building set-back lines (except the rear property lines and the side property lines behind the rear wall of the residence building) as shown on the Record Plat; nor shall any fence, hedge, wall or barrier of any nature be constructed, planted or maintained in front of the rear wall of the residence building. Fences, walls and constructed barriers shall be of substantial construction materials, and of first-class design, shall comply with all governmental regulations, and shall be approved the Developer in writing prior to commencement of the construction thereof.

11. No signs shall be constructed or maintained on any lot, except for house numbers and name plates of standard sizes (determined by the Developer), and standard, small, temporary "For Sale" signs when the lot is for sale. No mailbox or paperholder shall be placed on any lot unless its design and placement is approved in writing by the Developer; this provision, however, is subject to the United States Postal System's requirements. The Developer has or will construct uniform mail boxes in the Unit; and each owner of a lot will reimburse the Developer its cost (not in

Filed 17-CI-00986 04/05/2017 Vincent Riggs, Fayette Circuit Clerk

excess of $500) upon purchase of the lot or demand by the Developer thereafter.

12. No television, radio or other receiving tower or dish shall be constructed or maintained on any lot.

13. No additional subdivision of a lot shall be made to reduce the size of the lot without written permission of the Developer and the Lexington-Fayette Urban County Planning Commission.

CONSTRUCTION OF RESIDENCES

14. Minimum size of living areas (exclusive of porches, basements, attics, carports and garages) shall be based on house type, which shall be as follows:

A.	One-Floor Plan	2,000 sq. ft.
B.	One & One-half Story	1,500 sq. ft. on first floor 2,400 sq. ft. total
C.	Two-story	1,200 sq. ft on first floor 2,600 sq. ft total

The Developer may approve other types of design, but all designs shall contain a minimum of 2,000 square feet of living area.

15. No building shall be constructed or maintained (which term in these restrictions and covenants always includes, without limitation, erected, placed, altered or permitted to remain) on any lot without the written approval (prior to construction) by the Developer; and one complete set of the plans and specifications shall be provided to and may be retained by the Developer. The detailed plans and specifications shall include all details of

Filed 17-CI-00986 04/05/2017 Vincent Riggs, Fayette Circuit Clerk

construction and materials, including, without limitation, the color of the brick and/or paint to be used on the exterior, and the style of roof shingles. Bedford stone, Tennessee stone or similar stone shall not be permitted unless a photograph or sample of the particular stone has been approved by the Developer; and roof shingles shall be a minimum of three hundred (300) pounds per square. Other types of roof material or shingles may be approved by the Developer in its sole and uncontrolled discretion.

16. All exterior building materials shall be either brick or stone or a combination of the same, which materials shall extend to the ground level on all sides of the building; provided, however, that windows and doors shall be of standard material; and provided further, that the Developer may approve other materials than those listed herein, if such approval is given in writing. Harmony among the residences in the Unit is acknowledged as a goal of all parties.

17. As construction on the lot is completed, it shall be fully graded, and it shall be sodded except only for the building area, driveways, patios and sidewalks.

18. Each house shall have a two car, attached or basement garage. All garages shall be rear entry or side entry garages; except that other garage entries may be approved in writing by the Developer.

19. As construction of the improvements are completed, each lot shall be landscaped with the minimum number of shade trees in

the front yard required by the Lexington-Fayette Urban County Government and the Record Plat.

20. The pitch of the roof of each house shall be a minimum of 8 on 12.

GOLF COURSE LOTS

21. Certain lots within the Unit abut a golf course; and the owners thereof acknowledge and agree that the non-negligent use thereof by the owner and the operator of the golf course from time to time shall create no liability on the owner or the operator. This acknowledgement and agreement shall, however, authorize no negligent, willful or other unlawful act, and shall not permit any trespass on the lots abutting the golf course.

22. No owner of a lot abutting the golf course shall construct, plant or maintain any fence, hedge, wall, or barrier of any nature within twenty (20) feet of any border which abuts the golf course without the written consent of the Developer. Prior to constructing or planting any such matter, the owner shall submit a detailed proposal, including specific descriptions of the materials to be used, to the Developer, and the Developer's discretion in granting or refusing consent shall be absolute.

23. During the entire course of construction, or any other use of a lot abutting the golf course, the owner shall provide a method (accepted in writing by the Developer) to prevent siltage from running onto the golf course. Plans for siltage control shall be submitted along with the earliest plans of any kind submitted for such lots.

MAINTENANCE FEES

24. Every lot owner, with the exception of Developer, shall be required to pay on February 1st of each year an annual maintenance fee not to exceed $100 per lot (as such amount shall be increased in proportion to the U.S. Labor Department's "All Items" Urban Cost of Living Index) to the Andover Hills Development Maintenance Fund at the address provided by the Developer. This annual maintenance fee may be increased in Developer's discretion, not, however, in excess of the limits set out in the prior sentence. The Developer shall have absolute discretion in expenditures from the Fund, so long as it devotes the Fund in good faith to matters which it determines in good faith may benefit the Unit or the remainder of the subdivision.

25. The maintenance fees shall constitute a lien on the lot and any improvements thereon, but shall subordinate to a first mortgage or first vendor's lien placed on the lot. A record of receipts and disbursements made to and from the Maintenance Fund will be available for examination by lot owners upon request.

EFFECT

26. These covenants and restrictions run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants and restrictions are recorded, after which time these covenants and restrictions shall be automatically extended for successive periods of one (1) year unless an instrument signed by a majority of the

then owners of the lots in the Unit has been recorded, agreeing to change said covenants and restrictions in whole or in part.

27. The Developer or any lot owner at any time may enforce the restrictions and covenants contained under "GENERAL RESTRICTIONS AND COVENANTS" by appropriate legal procedure. The Developer at any time may enforce the covenants contained under "MAINTENANCE FEES" by appropriate legal procedure. The owner or operator of the golf course may at any time enforce the restrictions and covenants contained under "GOLF COURSE LOTS" by appropriate legal procedure. The Developer may at any time enforce the restrictions and covenants contained under the "CONSTRUCTION OF RESIDENCES" by appropriate legal procedure; and same may be enforced by any lot owner at such time as ninety (90%) percent of the lots in the Unit have been conveyed by deed to others. No other person shall obtain any rights hereunder, including, without limitation, any lot owners of other units in the subdivision. Invalidation of any restriction or covenant by judgment or court order shall in no way affect any other provision, each of which shall remain in full force and effect.

28. The Developer may amend any provision in this Deed of Restrictions and Covenants so long as its in good faith judgment and either the Unit or the remainder of the subdivision will be benefitted by such amendment, or if in its good faith judgment the continued development of the Unit or the remainder of the subdivision is hindered or made less economic in any way by any provision hereof; provided, however, that this right of amendment

shall cease upon the conveyance by deed by the Developer to others of either ninety (90%) percent of all the lots in the Unit or ninety (90%) percent of the lots in the entire subdivision. For purposes of this paragraph and paragraphs 24 and 27, "the subdivision" shall include all the land contained on plat of record in the Fayette County Clerk's office in Plat Cabinet H, Slide 384; and provided, further, that the Developer may not amend paragraphs 1, 3, 4, 5, 6, 8, 9, 17, or 19, hereof, nor increase the maximum amount of the annual maintenance fee under paragraph 24, nor shall it amend any provision of this Deed of Restrictions and Covenants to permit it to act otherwise than in good faith.

29. Any judgment, discretion, decision or other matter determined hereunder by the Developer shall be binding on all parties if made in good faith, and any interpretation hereof made by the Developer in good faith shall likewise be binding on all parties; and in each case, no party shall have any remedy against the Developer except to require specific performance of its duties hereunder and/or to obtain a declaratory judgment. In no case shall damages be claimed, shown or obtained against the Developer with respect to any matter related hereto.

IN WITNESS WHEREOF, LOCHMERE DEVELOPMENT CORPORATION, a Kentucky corporation, has caused its name to be hereunto subscribed by its duly authorized partners this 31st day of July, 1990.

BOOK 1554 PAGE 758

LOCHMERE DEVELOPMENT CORPORATION

BY: _____
TROY THOMPSON, PRESIDENT

ATTEST:

BY: _____
ROBERT S. MILLER, SECRETARY

STATE OF KENTUCKY SCT.
COUNTY OF FAYETTE

I, DONALD W. BLEVINS, CLERK OF SAID COUNTY COURT HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT HAS BEEN DULY RECORDED IN DEED BOOK 1554 PAGE 748 IN MY SAID OFFICE.

DONALD W. BLEVINS, CLERK

BY _____ D.C.

STATE OF KENTUCKY)
) SS
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged by me on this the 31st day of July, 1990, by Troy Thompson, President, and Robert S. Miller, Secretary, of Lochmere Development Corporation, a Kentucky corporation.

My Commission expires: 2-5-94.

Patricia Owens York
NOTARY PUBLIC, State at Large, Kentucky

PREPARED BY:

MILLER, GRIFFIN & MARKS
700 Security Trust Building
Lexington, KY 40507
(606) 255-6676

BY: Thomas C. Marks

rsm\deeds\andover.drc
7/23/90

ORDERED TO RECORD
PAID $ 22.50 INC. TAX
JUL 31 2 35 PM '90
DONALD W. BLEVINS
FAYETTE COUNTY CLERK
BY _____ D.C.