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**FIFTH AMENDMENT and RESTATEMENT of
COVENANTS, CONDITIONS and RESTRICTIONS
for
BOONE'S TRACE DEVELOPMENT**

The Covenants, Conditions and Restrictions made on September 14, 1998, are recorded in Miscellaneous Book 124, at page 402, in the records of the Madison County Court Clerk, Richmond, Kentucky. The Covenants, Conditions and Restrictions were amended on June 28, 1999, by Re-Recording an Amendment of Record in Miscellaneous Book 131, at page 626 in the office aforesaid. The Covenants, Conditions and Restrictions were amended on November 27, 2001, by Second Amendment and Restatement recorded in Miscellaneous Book 160, page 582, in the office aforesaid; and by Third Amendment and Restatement recorded in Miscellaneous Book 183, at page 695, in the office aforesaid. The Fourth Amendment and Restatement of Covenants, Conditions and Restrictions for Boone's Trace Development are recorded in Miscellaneous Book 193, Page 297, Office of the Madison County Clerk, Richmond, Kentucky. An additional amendment was made to the Covenants, Conditions and Restrictions at a duly called meeting of the Boone's Trace Property Owners' Association, Inc. held on May 29, 2014 and that Amendment adopted on May 29, 2014, reads as follows:

The initial paragraph of Article VII was amended to read as follows:

**ARTICLE VII
The Golf Course**

The golf course within Boone's Trace Development, formerly called "The Bull" Golf Course, and hereinafter called the golf course is a major attraction and integral part of the Boone's Trace Development. Although the following items are under the direct control of the golf course management, these provisions have an effect on all Owners and will be enforced by the Association in the same manner as all other restrictions.

Now therefore, the entire Covenants, Conditions and Restrictions for Boone's Trace Development as modified and amended is Restated and shall read as follows:

This DECLARATION of COVENANTS, CONDITIONS, AND RESTRICTIONS was made on September 14, 1998, and amended as indicated above, and is now made and restated by the Boone's Trace Property Owners Association, Inc., a Kentucky Corporation pursuant to Assignment by **BOONE'S TRACE, LLC**, a Tennessee Limited Liability Company authorized to do business in Kentucky, and with offices located at 175 Glen Eagle Drive, in Richmond, Kentucky, 40475 (hereinafter the "Developer") and the aforesaid Assignment is dated 7/29/14 and recorded in Miscellaneous Book 297, at page 473 recorded in the Madison County Clerk's office.

Boone's Trace Development is a gated residential community located off Kentucky

Please return to Preparer

Highway # 2328, formerly United States Highway 25N, in Madison County, Kentucky.

The Developer and the Boone's Trace Property Owners' Association, Inc. intend by this Declaration to impose upon the Boone's Trace Development described in Exhibit A (the Properties) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Properties. The Developer and the Boone's Trace Property Owners' Association desire to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for administration, maintenance, preservation, use and enjoyment of such properties as are subjected to this Declaration. This Declaration does not and is not intended to create a condominium within the meaning of the Kentucky Horizontal Property Law, Kentucky Revised Statutes, Section 381.805 et seq.

EFFECTIVE DATE. The Developer hereby declares that all Sections of the Properties (as described in Exhibit A) are subject to this Declaration. The effective date of these COVENANTS, CONDITIONS, and RESTRICTIONS shall be as follows:

(A) Sections 1-5 of Boone's Trace Development (as described in the attached Exhibit A) shall be subject to these COVENANTS, CONDITIONS, and RESTRICTIONS as of November 2, 1998, upon expiration of the COVENANTS and PROTECTIVE RESTRICTIONS which are recorded in Deed Book 316, at page 113, in the records of the Madison County Court Clerk, in Richmond, Kentucky, pursuant to paragraph 18 of such COVENANTS and PROTECTIVE RESTRICTIONS; and

(B) All other Sections of Boone's Trace Development (see Exhibit A attached) shall be subject to these COVENANTS, CONDITIONS, and RESTRICTIONS from and after the date on which these COVENANTS, CONDITIONS, and RESTRICTIONS were originally recorded in the records of the Madison County Court Clerk, in Richmond, Kentucky.

ARTICLE I

Definitions

1. **"Association"** shall mean and refer to **Boone's Trace Property Owners' Association, Inc.**, a Kentucky nonprofit corporation, whose Articles of Incorporation are recorded in Misc. Book 23, at page 557, in the records of the Madison County Court Clerk, its successors and assigns.

2. **"Common Expenses"** shall mean and include actual and estimated expenses incurred by the Association for the benefit of all owners, including such reasonable reserves as may be established by the Association.

3. **"Common Area"** shall mean all real and personal property that the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all

Owners.

4. **"Construction"** shall mean and include within its definition staking, clearing, excavating, grading, or other site work, and building or placement of new structures, swimming pools or other recreational facilities, and modifying or removal of existing structures or facilities, and plantings or removal of plants, trees, or shrubs.

5. **"Lot"** shall mean a portion of the Properties, whether developed or undeveloped, and depicted and described on a recorded Plat, and intended for a single-family residence, including any structure thereon, or if not yet platted, then it shall be assumed that there is one "Lot" for each acre in the part of the Properties not yet platted.

6. **"Member"** shall mean and refer to a Person entitled to membership in the Association as an Owner.

7. **"Owner"** shall mean and refer to one (1) or more Persons who hold the record title to any Lot that is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner.

8. **"Person"** means a natural person, a corporation, a partnership, a trustee, or other legal entity.

9. **"Properties"** shall mean and refer to the real property described in Exhibit "A" attached hereto. The Properties are sometimes referred to herein as Boone's Trace Development, or as all Sections thereof.

ARTICLE II

Approval of Construction Plans

1. **Approval of Plans Prior to Construction.** Until one hundred (100%) of the Lots within the Properties have been developed and conveyed to purchasers in the normal course of development and sale, or until assigned by Developer to the Association, the Developer (or the Developer's designated agent or committee) shall have the right to pre-approve all plans for construction on any Lot. During that time, NO CONSTRUCTION shall take place on any Lot prior to Approval of the Plans for the construction by the Developer (or the Developer's designated agent or committee). Thereafter, the Association, in its discretion, may establish such procedures for pre-approval of plans for construction, as its Board of Directors determines to be appropriate, from time to time, if any.

2. **Procedure for Approval of Construction Plans.** An Owner seeking approval for construction on a Lot shall submit to the Developer two sets of plans and

specifications. The Developer shall retain one set, and one set shall be returned to the Owner with the Developer's decision regarding approval or rejections of the plans. Plans shall include all details of the proposed construction, including, but not limited to the following: existing and proposed contours and grades; location of improvements, structures, recreational facilities, and access drives on a site plan; front, rear and side elevations for all improvements; floor plans for all improvements; colors for all exterior surfaces, including, but not limited to siding, brick, roof and trim; plants and landscaping materials, and their locations; any fences and/or walls; patios, decks, pools and porches; parking areas; mail boxes; and such other data, information or drawings as may be reasonably requested from time to time by the Developer.

All plans submitted to the Developer for original construction of a structure upon any Lot shall include a description or plan of erosion control during the period of construction which plan shall be designed to prevent the runoff of dirt, mud, or other construction related debris on to any adjoining Lot or right of way during the period of construction and until the Lot is seeded or sodded.

Plans shall be approved or rejected by the Developer within thirty (30) days after the Developer receives the plans and all such other data, information or drawings as the Developer reasonably requests. If the Developer fails to take action on the plans within the thirty-day period, the Owner may compel the Developer's action by written notice to the Developer to approve or disapprove the plans within fifteen (15) days after date of the written notice. Such notice shall be sent to the Developer by certified mail. If the Developer fails to take action on the proposed plans within the fifteen-day period, then the proposed plans shall be considered approved and the Owner may commence construction in accordance with the proposed plans.

3. Basis for Approval/Rejection of Proposed Plans. The Developer's approval/rejection of proposed plans for construction shall be based upon the following factors:

- a) conformity and harmony of the plans and specifications with natural features of the site, other structures within the Properties, including structures on adjoining Lot(s), and with the general intent of these restrictions; and
- b) view from the golf course to the Lot, if the lot adjoins or is in proximity to the golf course known as "The Bull", and
- c) sufficiency of the plan for erosion control during the period of construction; and
- d) compliance with the Minimum Architectural Standards, as herein provided.

Appropriate color of exterior surfaces shall be considered a vital factor in achieving the purposes of these restrictions.

4. **Developer Immunity from Liability.** The Developer, its agents, committees, successors and assigns, shall not be liable to any Person by reason of mistakes, negligence, or nonfeasance arising out of or in connection with the approval or disapproval of any plans for construction submitted to the Developer. Every Person who submits plans for construction to the Developer shall hold the Developer, its agents, committees, successors and assigns harmless from any and all liability arising out of or in any way connected with the approval and/or disapproval of all or any part of such plans.

ARTICLE III Minimum Architectural Standards

1. **Standards Common to All Properties.** All lots within the Properties shall be subject to and comply with the following architectural standards:

- a) Carports. There shall be no carports attached or unattached.
- b) Foundation. There shall be no exposed block or poured concrete on the exterior of any residence and/or other improvements or structures. Brick or stone must cover exterior foundation from grade to sill plate.
- c) Pools. No aboveground pools shall be erected, constructed or installed on any Lot. Lighting for in-ground pools shall be designed so as to buffer adjoining residences from the lighting.
- d) Mailboxes. All mailboxes shall satisfy applicable postal regulations and shall be of uniform architectural design, in accordance with specifications established by the Developer.
- e) Location of Improvements. The location of the residence, any structures or recreational facilities on the Lot shall be approved by the Developer.
- f) Modular/Mobile Homes. Except during initial construction within the Properties, no tent, utility shed, shack, trailer, mobile home, modular home, or other similar structure shall be placed upon a Lot or any part of the Properties. This restriction does not apply to permanent outbuildings constructed on Lots with the approval of the Developer.
- g) Construction Material. All construction material used shall meet or exceed applicable building codes and regulations of Madison County, Kentucky.
- h) Roof Pitch. No roof on any residence shall have less than a 7/12

pitch.

i) Landscaping Installation. All landscaping shall be installed prior to the occupancy of any residence, except that the Developer upon request by any Owner may grant legitimate weather/seasonal variances of this requirement.

j) Drainage. Drainage for each Lot shall be in conformity with the general drainage plan for the Properties. No storm water drains, roof downspouts or ground water shall be integrated into the sanitary sewer system, and all Lot connections shall be made with watertight joints in accordance with plumbing code requirements. Owner shall be responsible for installation of erosion and sediment controls prior to the beginning of construction or other improvements on a Lot.

k) Easements. No permanent structure shall be placed within the easements provided for on the plats for the Properties. Any plants or landscaping located within the easements may be removed by the Association, its agents or assigns, at the Owner's expense, as needed to make repairs or improvements to utilities or roads within the easements.

l) Fences. On Lots where fences are allowed, the fences shall be four-rail black, and the layout must be approved prior to installation.

2. Specific Standards for Various Sections. The Developer shall establish Specific Building Standards for each Section of Boone's Trace Development, which standards shall vary from Section to Section. In addition to the commons standards listed above, each Lot shall be subject to and comply with the Specific Building Standards for that Lot. The Specific Building Standards shall include mandatory guidelines for the following:

- a) the minimum required living area for any residence, exclusive of porches, open decks, basements, attics, and garages;
- b) the type of fencing, if any, allowed;
- c) composition and surface requirements for driveways;
- d) the exterior building materials permitted on residences and structures;
- e) the landscaping requirements for each Lot, including whether sodding is required;
- f) barns and outbuildings authorized, if any, and the requirements for such barns and outbuildings;

- g) the location of structures in relation to the golf course property, if applicable;
- h) whether service utilities are to be underground;
- i) whether sidewalks are required, and if so, the specifications for the sidewalks;
- j) building setback lines;
- k) parameters for vegetable gardens, if allowed;
- l) garage requirements, including size and location;
- m) such other requirements as the Developer shall determine from time to time.

Upon the sale of Lot(s) by the Developer to a purchaser, the Developer shall furnish to the purchaser the Specific Building Standards applicable to the Section in which the Lot(s) so purchased are located. From time to time, upon request by an Owner, or his or her agents, the Developer shall furnish a copy of the current Specific Building Standards applicable to the Owner's Lot, to the Owner, or his or her agents and assigns. The Specific Building Standards established by the Developer for each Section of Boone's Trace Development, as amended from time to time by the Developer, shall be a part of this Declaration, are included herein by reference, and shall be binding upon the Owners, their heirs, successors, and assigns, as if set forth at length herein.

3. **Variances.** Until one hundred (100%) of the Lots within the Properties have been developed and conveyed to purchasers in the normal course of development and sale, or until assigned by Developer to the Association, the Developer may authorize variances from compliance with any of the provisions of the Minimum Architectural Standards Common to All Properties, or of the Specific Building Standards for each Section, or in the procedures for obtaining approval for any construction, when desirable or necessary because of circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental, or other such other considerations as the Developer deems appropriate. Such variances shall be effective, only if in writing, and shall not stop the Developer from denying a variance in other similar circumstances. After one hundred (100%) of the Lots within the Properties have been developed and conveyed to purchasers in the normal course of development and sale, or after the variance approval function has been assigned by the Developer to the Association, whichever event shall first occur, the Association may grant variances on the same terms and conditions as authorized herein for the Developer.

ARTICLE IV

Use Restrictions

The Properties shall be used only for residential, and corresponding recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business/sales offices for the Developer or the Association), as may be more particularly be set forth in this Declaration. Standards and Restrictions governing the use of the Properties shall be as follows:

1. **Signs.** No sign of any kind, including signs advertising a Lot "for sale", shall be erected within the properties, without the written consent of the Association, except that the Developer and/or the Association shall have the right to erect signs as it deems appropriate, in its discretion, and one "For Sale" sign (which shall not be greater in size than nine (9) square feet), unless the Lot is on the golf course, in which case one additional such sign may be erected on the golf course side of the Lot.

2. **Parking and Garages.** Vehicles shall be parked only in the garages or in the driveways serving the Lots. No parking shall be permitted on any street, except temporarily for social gatherings held on a Lot. Commercial vehicles, tractors, motor homes, recreational vehicles, trailers (either with or without wheels), camper trailers, horse trailers, boats and other watercraft, and boat trailers shall be parked only in an enclosed garage or approved outbuilding on the Lot.

3. **Occupants Bound.** All provisions of this Declaration, By-Laws of the Association, and any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot.

4. **Animals and Pets.** Horses may be kept in the Lots that make up the Tanglewood Farm Section of Boone's Trace Development. No more than three horses shall be kept on any one Lot within the Tanglewood Farm Section. Horses shall not be allowed in any of the other Sections of the Boone's Trace Development. No other animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that each Lot Owner may keep dogs, cats and other usual or common household pets. Animals which are permitted to roam free, or in the sole discretion of the Association endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots shall be removed upon request of the Association; if the Owner fails to honor such request, the pet may be removed by the Association. No animals shall be kept, bred, or maintained for any commercial purpose. Dogs at all times when they are outside a Lot shall be confined on a leash, held by and under the physical control of a responsible person.

5. **Nuisance.** No portion of the Properties shall be used, in whole or part, for the storage of any property or thing that will cause it to appear to be in an unclean or

untidy condition or that will be unsightly to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties.

6. **Unsightly or Unkempt Conditions.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken on any part of a Lot, except within enclosed approved outbuildings. Each Lot owner shall keep his or her Lot mowed and clear of weeds and debris, or if the Lot Owner fails to do so, the Association shall have the right to mow and maintain the Lot and to charge the cost of such maintenance to the Lot Owner, which shall be levied and considered as a Special Assessment against the involved Owner(s).

7. **Antennas.** No antenna shall be constructed upon any portion of a Lot other than for the purpose of television signal reception. No television antenna shall be constructed or allowed to remain on any Lot which is not connected to the primary residence thereon nor shall said antenna extend more than six (6) feet above the roof line. No satellite dish larger than twenty-two (22) inches by forty-four (44) inches shall be permitted or located upon any Lot, and any satellite dish permitted shall not be located in the front yard or side yard abutting the side street (of a corner Lot) of any Lot or be visible when the residence is viewed from the street. Any variance therefrom shall be considered as provided in Article III, paragraph 3 above. The term "front yard" means the space extending the full width of the Lot between the main front wall of the residence and the front Lot Line from the ground upward. The term "side Yard" means the space between the side wall of the residence and the side Lot line from the ground upward excluding the front yard.

8. **Clotheslines, Garbage Cans, Tanks, and Similar Items.** No clotheslines, above-ground tanks, chain link enclosures, or other similar items shall be placed, allowed or maintained upon any portion of the Properties, including any Lot, without prior written approval of Association. All garbage cans shall be located or screened so as to be concealed from view of other Lots, streets, and property located adjacent to the Lot, except that garbage cans may be placed at curbside on days designated for trash pick-up for that particular Lot. All rubbish, trash, and garbage shall be regularly removed from the Properties and shall not be allowed to accumulate thereon.

9. **Subdivision of Unit.** No platted Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Association. Developer,

however, hereby expressly reserves the right to replat any Lot or Lots owned by Developer. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

10. **Firearms/Weapons.** The discharge or use of firearms or other weapons within the Properties is prohibited. The term "firearms" includes "B-B guns, pellet guns, and other firearms of all types, regardless of size. The term "weapons" includes bows, crossbows and other projectile weapons.

11. **Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. Developer hereby reserves a perpetual easement across the Properties for the purpose of altering drainage and water flow, in accordance with good engineering standards. No drainage ditches, cuts, swales, streams, impoundments, mounds, dams or other physical improvements or elements of the landscape or terrain which control or determine the location of flow of surface water and drainage patterns may be destroyed, altered or modified by any Owner, his or her agents, without prior written consent of the Developer.

12. **Air Conditioning Units.** No window air conditioning units may be installed on any Lots without prior written consent of the Association. All other exterior air conditioning units on a Lot shall be screened so as not to be visible from the street.

13. **Business/Home Occupations.** No trade or business of any kind shall be conducted on any Lot, except a home-based business with one employee (who is the Lot owner), if the business does not require use of the common areas for deliveries, parking, meetings, or for any other purpose.

14. **Off-Road Vehicles.** No motorized off-road vehicles except golf carts, including, but not limited to trail bikes, mini-bikes, go-carts, three-wheelers, gators, ATVs, and snowmobiles, shall be used on subdivision roads, easements, vacant lots or undeveloped property within Boone's Trace Development. Golf carts may be used during daylight hours if operated by a licensed driver in accordance with all regulations for operating a motor vehicle on the road.

15. **Garage or Yard Sales.** No garage or yard sales shall be constructed or place upon any Lot.

16. **Soliciting.** No soliciting shall be permitted on any Lot, unless approved in advance by the Association.

17. **Traffic Control.** Each Owner, and such Owner's occupants, guests, invitees, permittees, agents and employees as a condition of accessing the Properties, shall abide by the traffic control signs/signals/devices, speed limits and other restrictions and

regulations regarding use of the roadways, and pay such fine/charges as may be established from time to time by the Association for violations thereof, which shall be levied and considered as a Special Assessment against the involved Owner(s). In keeping therewith, any vehicles parked on any street in violation of Article IV, paragraph (2) above, shall be removed upon request of the Association; and if the involved Owner(s) fail(s) to honor such request, the vehicle may be removed by the Association from such street and the cost thereof shall be charged to such Owner(s), as provided in the immediately preceding sentence.

18. **Damage to Common Areas and Association Improvements.** Each Owner and such Owner's occupants, guests, invitees, permittees, agents and employees as a condition of accessing the Properties, shall promptly pay the Association for any damage done by such Person(s) to the Common Areas on the Properties and/or improvements thereon or other improvements located throughout the Properties, which are owned, installed or maintained by the Association, including, without limitation, any of the items mention in Article V, paragraph (2) below. Any such damage amount shall be levied and considered as a Special Assessment against the involved Owner(s).

ARTICLE V

Association

1. **Membership.** Every Owner shall be a Member of the Association, and by acceptance of a deed for any Lot within the Properties agrees to accept membership in the Association. All Owners/Members shall abide by the Association's By-laws, rules and regulations, and shall pay assessments established by the Association. No Owner, whether one or more persons, shall have more than one membership per Lot owned. The Developer shall have one vote for each Lot owned within the Properties. In the event the Owner of a Lot is more than one person, votes and rights of use and enjoyment shall be as provided in the Association's By-Laws. Membership rights of a Lot owned by a corporation, partnership, limited liability company, or entity, shall be exercised by the individual designated by the Owner to act on behalf of the entity in a written instrument provided to the Secretary of the Association.

2. **Duties.** The Association shall in all reasonable ways act to promote the health, safety and welfare of the Owners, which duties shall include, without limitation:

- a) Enforcement of the provisions of this Declaration;
- b) Procurement, maintenance, repair or replacement of the streets, rights of way, and any other common areas, access control (guard) buildings and equipment, security vehicles, and other security equipment and devices; maintenance and snow removal equipment, including (without limitations) tractors, mowers, mowing attachments, scraper blades, tools, etc.; and, any sanitary sewer lines

(at such time as any shall be owned by or become the responsibility of the Association), street signs, street lights, and storm sewer lines, if any, ditches, culverts, etc., which may be located along, under, within or upon the streets and rights of way, or which are used in common by the Owners;

- c) construction of a private sanitary sewer system and/or such improvements as may be required to provide utilities, or other benefits to all and/or some part of the Owners;
- d) Snow removal from the streets;
- e) Procurement of fire hydrants and payment of all rental fees therefore;
- f) Procurement of liability insurance policies covering use of the streets, rights of ways, or any other common areas.

3. **Creation of Assessments.** The Association, acting by and through its Board of Directors, shall establish Assessments for expenses incurred by the Association in carrying out its duties. The assessments may be modified from time to time by the Association as needed to meet the Association's expenses. Assessments shall be established for Common Expenses, for both day-to-day operational expenses of the Association and to fund capital improvements that benefit all Members of the Association, hereinafter "Common Assessments". The Association may establish "Special Assessments" to recoup expenses of an operational or capital nature incurred on behalf of less than all of the Members.

Common Assessments shall be levied equally on all Lots, except Lots owned by the Developer. A Special Assessment shall be levied equally on only the Lot(s) that benefit from the expenditure that is being recouped by the Special Assessment, except Lots owned by the Developer. Each Owner by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these assessments.

All assessments levied against a Lot, together with interest at a rate not to exceed eighteen (18%) percent or the highest rate allowed by Kentucky law as computed from the date the delinquency first occurs, reasonable late charges, costs, and reasonable attorney's fees, shall be a continuing lien upon the Lot. In addition, each such assessment, together with interest, late charges, costs, and attorney's fees, shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. The grantee of such Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of a conveyance.

Assessments shall be paid in such manner and on such dates as may be

fixed by the Association, including, without limitation, provisions for acceleration all Assessments due in a given year upon delinquency in payment of a monthly Assessment.

No Owner may waive or otherwise exempt himself from liability for Assessments, including, by way of illustration and not limitation, by non-use or Common Areas or abandonment of the Lot.

If the Assessments levied against Lots are insufficient to pay all of the Association's operating or capital expenses, the Developer may provide funds to make up the shortfall. The Association is hereby authorized to establish repayment terms for any such advancements made by the Developer, including repayment with interest at market rates, and payment of penalties for failure of the Association to comply with the repayment terms.

5. **Lien for Assessments.** Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid Assessments prior and superior to all other liens, except all taxes, bonds, assessments, and other levies which by law would be superior thereto, and the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for a Lot at a foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No right to vote shall be exercised on behalf of a Lot and no Assessment shall be levied against when the Lot is owned by the Association following foreclosure.

Suit to recover a money judgment for unpaid Assessments, interest, costs, and attorney's fees may be maintained without foreclosing or waiving the lien securing the same.

6. **Date of Commencement of Assessments.** The assessments provided for herein shall commence as to each Lot on the date on which a deed is delivered to an Owner.

ARTICLE VI

Obligation to Construct Sidewalk

Within thirty-six (36) months after the date of the initial deed from the Developer, the Lot Owner, or the Owner's successors in title, shall construct a sidewalk in accordance with the appropriate specifications for the Lot.

ARTICLE VII The Golf Course

The golf course within Boone's Trace Development, formerly called "The Bull" Golf Course, and hereinafter called the golf course is a major attraction and integral part of the Boone's Trace Development. Although the following items are under the direct control of the golf course management, these provisions have an effect on all Owners and will be enforced by the Association in the same manner as all other restrictions.

1. **Easements.** An easement is hereby reserved in favor of the entity owning and operating the golf course, its successors and assigns, as described in the recorded plat for the golf course and/or for Sections of Boone's Trace Development, for purposes of constructing, maintaining, operating and repairing a golf course, electric poles and lines, all utilities, retention and drainage facilities. The right is hereby reserved to enter upon any part of the Properties at any and all reasonable times for purposes exercising these Easement rights. This right includes the right for golf players to come onto Lots to recover lost balls, or balls hit out of the parameters of the course. This Easement shall be perpetual.

2. **Interference with Play on Golf Course.** Owners of Lots bordering on fairways of the golf course shall be obligated to refrain from any actions that would detract from the playing qualities of the course. During any golf tournament sanctioned by any professional golfers' association or international, national or state amateur golf organization, Owners of Lots bordering fairways shall suspend all construction activity, lawn maintenance and all other noisy activities which may cause disturbance to the play on the golf course. In the event of a major tournament, the Developer hereby assigns the right for the golf course management to redirect the flow of traffic throughout Boone's Trace Development by designating one-way streets, allowing parking in one lane, or by whatever other means deemed necessary to assure access for players, homeowners and spectators.

3. **Building setback; Limitation of Liability.** No building shall be constructed within thirty (30) feet of the golf course property. Neither the golf course property Owner and operator, nor their respective successors, officers, directors, shareholder, members, employees or agents shall be responsible for any damage or nuisance caused by golf course patrons or golf balls.

ARTICLE VIII Security

Each Owner shall be required to complete and submit to security personnel the registration form required for receiving a sticker/insignia, identifying the Owner as a Person who owns Lot(s) within the Properties. Further, the Owner shall be required put the sticker/insignia on the windshield of his or her motor vehicle. The Association shall

determine the design and format for the sticker/insignia. Failure to use the sticker/insignia shall subject the Owner to such fines as shall be established from time to time by the Association. Fines may be levied by the Association upon affidavit of an agent at the security gate, identifying the Owner as a Person who has passed through the security gate without the sticker/insignia.

ARTICLE XIX

Utilities

All Owners shall be required to hook up to public and/or private utilities as and when they become available, including water, sewer, electric and gas.

ARTICLE X

Miscellaneous

1. **Binding Period.** These Covenants, Conditions, and Restrictions are to run with the Properties and shall be binding on all parties claiming under them for a period of thirty (30) years from the date these Covenants, Conditions, and Restrictions were originally recorded in the records of the Madison County Court Clerk, in Richmond, Kentucky, after which time they shall be extended automatically for successive periods of ten (10) years, unless a document canceling or modifying these Covenants, Conditions and Restrictions is recorded in the records of the Madison County Court Clerk. Any such document must be approved and executed in accordance with the provisions of Paragraph (2) below.

2. **Modifications of the Covenants, Conditions, and Restrictions.** These Covenants, Conditions, and Restrictions may be cancelled, or modified in whole or in part, at any time by the affirmative action of Sixty percent (60%) of the Members of the Association. However, no covenant, condition or restriction shall be cancelled, modified or newly enacted, which would prevent the Developer from completing development of the Properties. A document executed by the designated agent of the Association shall be recorded in the records of the Madison County Court Clerk containing the cancellation and/or modification of these Covenants, Conditions, and Restrictions, as approved by the Members. As long as the Developer is actively developing and selling lots within Boone's Trace Development, the Developer shall be the designated agent of the Association for the purpose of executing and recording the cancellation and/or modification of these Covenants, Conditions and Restrictions.

3. **Agreement to Covenants Rights.** Every Person who now or hereafter owns or acquires any right, title, estate or interest to any portion of the Properties is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained in this Declaration and in the Specific Building Standards, whether or not reference to these Covenants, Conditions and Restrictions is contained in the instrument by which such Person acquired an interest in the property.

4. **Waiver.** The failure of the Developer, the Association or any Owner to enforce any of the covenants, conditions or restrictions herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other covenant, condition or restriction.

5. **Property to be Purchased "As Is".** Except for the warranties of title to be included in the Developer's deeds for Lot(s) in Boone's Trace Development, the Developer does not by the execution and recordation of this Declaration, and the Developer shall not, by the execution and delivery of any other document, agreement, or instrument executed and delivered in connection with the closing of sale of particular Lot(s), make any warranty, expressed or implied, of any kind or any nature whatsoever, with respect to any property within Boone's Trace Development, and ALL WARRANTIES ARE HEREBY DISCLAIMED. Without limiting the generality of the foregoing, THE DEVELOPER MAKES, AND SHALL MAKE, NO EXPRESSED OR IMPLIED WARRANTY OF SUITABILITY OR FITNESS OF ANY OF THE PROPERTIES FOR ANY PURPOSE, OR AS TO THE MERCHANTABILITY, VALUE, QUALITY, CONDITION OR SALABILITY OF ANY SUCH PROPERTY. The sale of property in Boone's Trace Development by the Developer to any builder or other Owner shall be "AS IS" and "WHERE IS".

6. **Mortgages.** The breach of any of the foregoing Covenants, Conditions or Reservations, or any reentry by reason of a breach, shall not defect or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any Lot(s) in the premises, but these Covenants, Conditions, and Restrictions shall be binding upon and effective against any mortgagee or trustee or Owner, whose title or whose grantor's title is or was acquired by foreclosure, trustee's sale, or otherwise.

7. **Severability.** In the event any one or more of the foregoing covenants, conditions, or restrictions is declared for any reason, by a court of competent jurisdiction, to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions, and restrictions not declared to be void or unenforceable, but all of the remaining covenants, conditions, and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

8. **Perpetuities rule.** In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event the terms shall be reduced to a maximum period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of Kentucky.

9. **Execution of these Covenants, Conditions and Restrictions.** This document is being executed by Boone's Trace, LLC, as the Developer, the designated agent for the Association.

10. **Assignment.** The several approval, enforcement and assessment rights retained by the Developer herein contained may be assigned to the Association. If Development ceases to exist as a legal entity or ceases to own any of the Lots within the Properties, those approval, enforcement and assignment rights shall be deemed assigned to the Association.

IN WITNESS WHEREOF, the Boone's Trace Property Owners Association, Inc., a Kentucky Corporation and pursuant to Assignment by **BOONE'S TRACE, LLC**, (hereinafter the "Developer") which Assignment is previously referenced herein, has caused this Fifth Amendment and Restatement of the Covenants, Conditions and Restrictions to be duly executed this 29th day of July, 2014.

BOONE'S TRACE PROPERTY OWNER'S
ASSOCIATION, INC., a Kentucky corporation

By:

George Huxel
George Huxel, President

By:

Leroy Metze, Secretary
Leroy Metze, Secretary

COMMONWEALTH OF KENTUCKY)
) SCT.
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me by GEORGE HUXEL, President of Boone's Trace Property Owner's Association, Inc., a Kentucky corporation, on this 29th day of July, 2014.

My commission expires:

03/17/2016

William Beebe
Notary Public, State at Large, Kentucky

COMMONWEALTH OF KENTUCKY)
) SCT.
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me by LEROY METZE, Secretary of Boone's Trace Property Owner's Association, Inc., a Kentucky corporation,

on this 29 day of July, 2014.

My commission expires: _____

2/9/16

Walter G. Eton
Notary Public, State at Large, Kentucky

PREPARED BY:

ECTON & SHANNON PLLC

Walter G. Eton

WALTER G. ETON
127 South Third Street
Richmond, Kentucky 40475
(859) 624-2252

Exhibit A

TO COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BOONE'S TRACE DEVELOPMENT

The Properties as listed in the Covenants, Conditions, and Restrictions for Boone's Trace Development include the following:

Plat Book	Plats
	<u>Section 1</u>
6-60* 15-33	Section 1, Boone's Trace (Lots 1-25) (re-plat)
	<u>Section 2</u>
6-61* 15-34 15-252	Section 2, Boone's Trace (Lots 26-46) (re-plat) Lots 32, 33 and 34
	<u>Section 3</u>
6-62* 18-158	Section 3, Boone's Trace (Lots 47-58, 67-72) Lot 55 & Lot 56
	<u>Section 4</u>
6-63* 6-294* 7-365 15-153 15-154 18-385 20-7 20-34 20-44 21-325	Section 4, Boone's Trace (Lots 73-82, 84-92, 94, 96, 97, 102, 104, 106, 107, 109-122, 124-129) (re-plat) Lot 114B Phase 1-A (Lots 81, 82, 84-92, 94, 96, 97, 102, 104, 106, 107, 109 & 110) Phase 1-B (Lots 112-122 & 124-129) Minor Plat for George and Heather Crawley, Property at 512 & 516 Avawam Drive (Lots 129, 130 & 131) Lot 112A, 428 Avawam Drive Lots 115 & 116, Minor Plat for George & Elizabeth Bollinger Huxel Lots 115A & 116A, Amended Minor Plat for Elizabeth Bollinger Huxel Lots 92 & 94, Minor Plat for Matthew & Angela Falcone
	<u>Section 5</u>
6-64* 18-185 18-299 18-385 20-62 20-96 22-90	Section 5, Boone's Trace (Lots 130-141, 143, 145-152, 154, 155, 157, 159, 161, 163, 165) Lots 149-150-151 Lots 148-151 Minor Plat for George and Heather Crawley, Property at 512 & 516 Avawam Drive (Lots 129, 130 & 131) Minor Plat for Barbara Mirabelli/Boone's Trace Dev. Lot 163 Minor Plat for Jeffrey A. & Tabatha D. Coffey (Lots 151R & 152R) Brighton Court (f/k/a Lot 165) for Avawam Enterprises
	<u>Avawam Estates</u>
18-159 20-83 21-173	Phase I: Lots 1-9 Phase II: Lots 10-13 Phase III: Lots 14-30
	<u>Forest Hills Estates</u>
16-180 21-177 22-3	Phase I: Lots 1-8 Phase II: Lots 9-21 Phase III: Lots 22-33

16-177 18-176 20-105 20-106 21-240	<u>Gleneagles-Phase IA</u>
	Lots 1-22 & 66-92
	Lot 71
	Charles Locker Builders, Inc.- 117 & 119 Gleneagles Boulevard (Lots 7 & 8)
	Amended Minor Plat for Lots 7 & 8 Gleneagles Phase I-A—117 Gleneagles Boulevard Consolidation Plat for Bobby Halloran (Lot 87 Gleneagles I-A & Lot 93 Gleneagles I-C)
16-178	<u>Gleneagles- Phase IB</u>
	Lots 23-65
21-174 21-240	<u>Gleneagles – Phase IC</u>
	Lots 93-126 Consolidation Plat for Bobby Halloran (Lot 87 Gleneagles I-A & Lot 93 Gleneagles I-C)
21-196 22-42	<u>Gleneagles – Phase ID</u>
	Lots 127-135 Amended
22-4	<u>Gleneagles – Phase IE</u>
	Lots 136-147
21-284	<u>Muirfield</u>
	Lots 1-17
16-179 22-125	<u>St. Andrews-Phase I</u>
	Lots 1-44 Minor Consolidation Subdivision Plat for Lots 22, 23, 24 St. Andrews (Property at 104, 108 & 112 St. Anns Court)
21-233	<u>Sawgrass</u>
	Lots 1-7
16-181 21-197 22-129	<u>Tanglewood Farms</u>
	Phase I: Lots 1-5
	Phase II: Lots 6-16 Minor Consolidation Plat for Robert Bonham (Lots 8-11)
<u>ADDITIONAL PLATS</u>	
6-111*	Plat of Access & Utility Easement for Boone's Trace Development & Bull's Hell Farm (Entrance, Lots 171, 193 & 194)
9-379	Land Exchange Plat/Madison County & Jack Whitaker Trust
16-151	Agricultural Exemption Plat/Boone's Trace, LLC (13.19 acres)
20-60	Single Family Residential Tract Division (21.19 acres)
20-146	Minor Plat for Boone's Trace LLC (Single Residential Tracts "A-1" and "A-2")
20-183	Recreational Tract "A" for Boones Trace Property Owner's Association (Avawam Drive)
20-193	Final Plat for Phase I, The Reserve at Boone's Trace for Phase IV Development, LLC (Lots 1-10 and 25-30)
21-377	The Pinnacle at Boone's Trace, LLC
22-90	Brighton Court (f/k/a Lot 165) for Avawam Enterprises
22-108	Minor Consolidation Plat for Property at Avawam Drive & KY Hwy 25
22-154	Final Plat for The Pinnacle at Boone's Trace Phase I-A

23-59	Lots 7 & 8 St. Andrews Subd Boones Trace
23-119	Lots 29-32 Gleneagles
23-120	Lots 1 & 2 Avawam Estates
23-266	Lots 27 & 28 St. Andrews Place Boones Trace
24-24	Avawam Drive
24-63	Iverness Trail/Boones Trace
24-64	Westchester Way/Boones Trace
24-127	Tract St. Ann Court
24-134	Tract Boones Trace Avawam Drive
25-50	St. Anns Court
26-385	Minor Plat Tanglewood Farms Lots 1-10
Plus	Any other plats pertaining to real property within the Boone's Trace Development
Plus	All currently unplatted land that is owned by Boone's Trace, LLC and is a part of Deed Book 466, Page 490 and Deed Book 476, Page 724, as recorded in the Madison County Court Clerk's Office.

* Indexed incorrectly at the courthouse as: Boone Trace

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