**INDEMNITY AGREEMENT**

This Indemnity Agreement (“Agreement”) entered into and effective the as of the date last signed below (the “Effective Date”), by and between **AF Investments, LLC**, a Kentucky limited liability company, and **Longbranch Development, Inc.**, a Kentucky corporation, whose address is 3940 Olympic Blvd., Suite 400, Erlanger, Kentucky 41018, (collectively “**INDEMNITOR**”) and **Boone County School District Finance Corporation**, whose address is 8330 U.S. 42, Florence, Kentucky 41042 (“**INDEMNITEE**”), collectively the “Parties”.

**RECITALS**:

1. **WHEREAS,** INDEMNITEE’s predecessor in interest acquired certain real property (the “Property”) from INDEMNITOR by Warranty Deed dated September 30, 2016 and recorded in Deed Book 1078, page 744 of the Boone County Clerk’s records;
2. **WHEREAS,** in connection with INDEMNITOR’s development of the Property and adjoining real property, INDEMNITOR performed work which required the issuance of certain permits and certifications (the “Permits”) under the federal Clean Water Act (33 U.S.C. § 1344) and Rivers and Harbors Act (33 U.S.C. §1341);
3. **WHEREAS,** as a condition for the issuance of such Permits, the Property and adjacent property shall be subject to a Mitigation Plan (as defined in the Declaration of Restrictive Covenants for Conservation mentioned below) for the purposes of stream re-establishment and stream rehabilitation, and in connection therewith, the Property shall be subject to certain restrictive covenants for conservation purposes;
4. **WHEREAS,** INDEMNITOR has requested that INDEMNITEE execute that certain Declaration of Restrictive Covenants for Conservation (“Declaration”) with respect to the Property;
5. **WHEREAS,** INDEMNITOR and INDEMNITEE have reviewed the mitigation easement plan and the mitigation plan within the Declaration and the requirements thereto;
6. **WHEREAS,** INDEMNITEE has agreed to execute and place for record the Declaration upon the condition that INDEMNITOR assumes responsibility for compliance with the mitigation plan, including any future work required under the Permits; and
7. **WHEREAS,** in consideration of INDEMNITEE’s execution of the Declaration, INDEMNITOR agrees to provide the indemnifications, representations, warranties and covenants set forth in this Agreement for the benefit of INDEMNITEE.

**NOW, THEREFORE,** the Parties intending to be bound by the mutual promises and covenants contained herein,

**IT IS AS HEREBY AGREED AS FOLLOWS:**

1. Incorporation; Definitions. The foregoing recitals are hereby incorporated herein as if fully restated. Capitalized terms used herein that are not otherwise defined will have the same meaning as set forth in the Declaration.
2. Representations and Warranties. INDEMNITOR upon knowledge and belief, hereby represents and warrants to INDEMNITEE that, as of the Effective Date:
	1. INDEMNITOR has performed all obligations to be performed by it with respect to the Declaration, Mitigation Plan, and Permits, and, to the best of INDEMNITOR’S knowledge, INDEMNITOR has not defaulted on any requirements and conditions of the Declaration, the Mitigation Plan, and any Permits;
	2. There is no pending, or, to the best of INDEMNITOR’s knowledge, any threatened claim, action or proceeding by any governmental authority or third party against or with respect to INDEMNITOR or the Property, asserting any violation of the Declaration, the Mitigation Plan, the Permits, or any other law or regulation relating to environmental or conservation conditions or matters;
	3. INDEMNITOR has not knowingly engaged in any activity or use of the Property (including the Mitigation Property as defined in the Declaration) which is prohibited by the Declaration or which would violate the terms of the Declaration or which would give rise to any claim or enforcement action against INDEMNITOR or INDEMNITEE by any governmental authority or third party; and
	4. With respect to representations and warranties contained in Paragraph 10 of the Declaration, INDEMNITOR makes the same representations and warranties to INDEMNITEE for the time period beginning on the date INDEMNITOR acquired the Property until the date of acquisition of the Property by INDEMNITEE’s predecessor in interest;
3. Covenants. INDEMNITOR hereby covenants that:
	1. INDEMNITOR has had, or within ninety (90) days of this Agreement shall have, the Mitigation Property surveyed and shall provide a copy of the plat of survey to INDEMNITEE;
	2. INDEMNITOR has, or within ninety (90) days of this Agreement shall have, installed appropriate signage on the Mitigation Property in compliance with the requirements set forth in Paragraph 5.5 of the Declaration. If at any time any governmental authority shall require additional or replacement signage, INDEMNITOR shall comply with such directives at its cost;
	3. INDEMNITOR has, or within ninety (90) days of this Agreement shall have, undertaken such landscaping and other maintenance of the Mitigation Property as reserved by Paragraph 5.2 of the Declaration;
	4. In the event any governmental authority with jurisdiction over INDEMNITEE or INDEMNITOR shall order any additional work or mitigation to be performed upon the Mitigation Property to comply with the requirements of the Declaration, the Mitigation Plan, or the Permits, and such order is not the result of any action or inaction by INDEMNITEE, whether or not such action or inaction constitutes a violation of the Declaration, then INDEMNITOR shall cause such work to be performed at its expense to the satisfaction of such governmental authority.
4. Indemnification. INDEMNITOR hereby agrees to indemnify and hold harmless IDENMNITEE, its successors and assigns, from and against any and all actions, claims, losses, damages, expenses, suits, liabilities, fines, and penalties (including but not limited to reasonable attorney’s fees and litigations expenses) (collectively, “Losses”) arising, or alleged to have arisen, in whole or in part, from or in connection with INDEMNITOR’s breach of any of the warranties, representations, or covenants contained in this Agreement, or any violations by INDEMNITOR of the Declaration, Mitigation Plan, or the Permits. However, INDEMNITOR shall not be liable for any action or inaction of INDEMNITEE, its successors and assigns, from and after the date of this Agreement which violates the Declaration.
5. Miscellaneous.
	1. Successors and Assigns. The terms of this Agreement will be binding upon and inure to the benefit of each of INDEMNITOR and INDEMNITEE and their respective successors and assigns. Notwithstanding the foregoing, INDEMNITOR shall not, without the prior written consent of INDEMNITEE, assign, transfer, or set over to any other person, in whole or in part, all or any part of INDEMNITOR’S benefits, rights, duties, or obligations hereunder.
	2. Conflicts. As between INDEMNITOR and INDEMNITEE, in the event of any conflict between the provisions of this Agreement and those contained in the Declaration, the provisions of this Agreement will control.
	3. Headings. The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not intended to define or limit, in any way, the scope or intent to the provisions hereof.
	4. Rights Cumulative. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies that INDEMNITEE would otherwise have at law or equity.
	5. Severability. If any term, condition, or covenant of this Agreement will be held to be invalid, illegal or unenforceable in any respect, this Agreement shall nevertheless remain enforceable and any such term, condition, or covenant shall be amended and interpreted as closely as practical to reflect the intent of the Parties.

* 1. Joint and Several Liability. The obligations and liabilities of each INDEMNITOR are joint and several.
	2. Governing Law. This Agreement will be governed, construed, applied, and enforced in accordance with the laws of the Commonwealth of Kentucky.

*[this space intentionally left blank; signature pages follow]*

**AF INVESTMENTS, LLC**

**a Kentucky limited liability company**

BY: Michael Kady

ITS: Vice President

DATE:

**LONGBRANCH DEVELOPMENT, LLC**

**a Kentucky limited liability company**

By:

Its:

Date:

**BOONE COUNTY SCHOOL DISTRICT FINANCE CORPORATION**

a Kentucky nonprofit corporation

By:

Name:

Title:

Date: