

2007006516 COV RES \$51.00
04/23/2007 03:05:57P 21 PGS
Monroe County Recorder IN
Recorded as Presented

Declaration of Covenants, Conditions and Restrictions
of
Summerfield Subdivision

This Declaration of Covenants, Conditions, and Restrictions of Summerfield Subdivision is made
April 20, 2007, by **Mohney Homes, Inc.**, an Indiana corporation ("Declarant").

BACKGROUND FACTS:

- A. Declarant is the sole owner of the fee simple title to the "Real Estate" in Monroe County, Indiana, described in **Exhibit "A"** of this Declaration.
- B. Declarant intends to develop the Real Estate into residential lots and common area and to restrict its use in accordance with a common plan designed to preserve the value and residential qualities of the Real Estate for the benefit of its future owners.

THE DECLARATION:

NOW, THEREFORE, Declarant declares that the Real Estate shall be held, transferred, encumbered, used, sold, conveyed, leased, and occupied subject to the covenants, conditions, and restrictions set forth in this Declaration expressly and exclusively for the use and benefit of the Real Estate and of each and every person or entity who now or in the future owns any portion or portions of the Real Estate. The provisions of this Declaration shall run with the land and shall be binding upon Declarant, and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or portion of the Real Estate subject to this Declaration, and shall inure to the benefit of Declarant's successor in title to all or any portion of the Real Estate.

Section 1 Definitions. The following terms used in this Declaration shall have the following meanings:

1.1 Articles. "Articles" means the Articles of Incorporation of Summerfield Association of Co-Owners, Inc., an Indiana nonprofit corporation.

1.2 Association. "Association" means the Summerfield Association of Co-Owners, Inc., its successors and assigns, an Indiana nonprofit corporation (or similarly named corporation), which is the incorporated association of Owners in the Subdivision.

1.3 Board of Directors. "Board of Directors" or "Board" means the governing body of the Association elected by the Owners in accordance with the Bylaws.

1.4 Builder. "Builder" means the person, firm, or entity (including the Developer) constructing the first Residence on each Lot.

1.5 Building. "Building" means all structures erected within Summerfield including Residences, garages, outbuildings or enclosed structures of any kind.

1.6 Bylaws. "Bylaws" means the Bylaws of the Association, providing for the administration and management of the Association.

1.7 Commercial Vehicle. "Commercial Vehicle" means a truck, car, van, trailer or other wheeled object or conveyance intended for roadway use which either has commercial advertising affixed to it, is used for commercial purposes, or which exceeds three (3.0) tons in gross weight.

1.8 Common Area. "Common Area" means all those areas shown on the Plat which are labeled as common area or a similar label which are outside the boundaries of each Lot and which are for the use of all Owners in the Subdivision.

1.9 Common Expenses. "Common Expenses" means the expenses of administration of the Association, expenses for upkeep and maintenance specified by this Declaration, and all other costs and expenses incurred by the Association for the common benefit of all Owners.

1.10 Declarant. "Declarant" means Mohney Homes, Inc., an Indiana corporation, developer of the Real Estate, and any successor or assignee of their interest in all or part of the Real Estate or in this Declaration under an instrument or instruments which expressly state that the successor or assignee shall become the Declarant for purposes of this Declaration.

1.11 Delinquency Date. "Delinquency Date" means the date which is ten (10) days after the due date of any Regular Assessment or Special Assessment.

1.12 Developer. "Developer" means Mohney Homes, Inc., an Indiana corporation, and any successor or assignee of their interest in all or part of the Subdivision or in this Declaration under an instrument or instruments which expressly state that the successor or assignee shall become the Developer for purposes of this Declaration.

1.13 Development Period. "Development Period" means the time from the recording of this Declaration until: (1) Declarant has turned over control of the Association to the Owners; or (2) Declarant has sold all Residences within Summerfield Subdivision; or (3) December 31, 2015, whichever is earlier.

1.14 Drainage Easements. "Drainage Easements" means any easement labeled "D.E." on the Plat created to provide paths and courses for area and local storm drainage, either over land or in underground conduits to serve the needs of the Subdivision, the lands adjoining the Subdivision, and the public drainage system.

1.15 Lot. "Lot" means one of the numbered lots as shown on the recorded Plat (defined below).

1.16 Mortgagee. "Mortgagee" means the holder, insurer or guarantor of any first mortgage on any Lot or Residence and other improvements constructed on a Lot.

1.17 Owner. "Owner" means a person, firm, corporation, partnership, association, trust, limited liability company, or other legal entity or any combination thereof, which owns the record fee simple title to a Lot; however, any such Owner owning a single Lot in combination as tenants in common, joint tenants, tenants by the entireties, or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration. Any person holding record fee simple title for purposes of security only shall be excluded.

1.18 Plat. "Plat" means the plat of Summerfield Subdivision, an addition in Monroe County, Indiana, as recorded March 13, 2006, as Instrument Number 2006005256 in Plat Cabinet D, Envelope 33 in the office of the Recorder of Monroe County, Indiana, and any amendments to the plat.

1.19 Regular Assessments. "Regular Assessments" means the total annual budget for the Association based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in the budget, divided by the total number of Lots in Summerfield Subdivision.

1.20 Residence. "Residence" means a single-family dwelling constructed upon a Lot in the Subdivision, regardless of such dwelling being connected to another by a common wall.

1.21 Sign or Signage. "Sign" or "Signage" means any permanent Summerfield Subdivision signage and attendant improvements and landscaping erected by Declarant at any location within the Real Estate and at other areas to be designated in the future.

1.22 Sign Easements. "Sign Easements" mean any areas which have been or may be created for the use of the Developer, Declarant, or Association for the erection and maintenance of any Sign or Signage and attendant improvements on Lots.

1.23 Special Assessments. "Special Assessments" mean those Assessments levied by the Association as may be necessary for the purpose of defraying, in whole or in part the expense of any contingency or event not provided for in the annual budget or the reserves of the Association; however, no Special Assessments shall be levied without the assent of a majority of the Owners at a meeting duly called for this purpose. Each Owner shall pay the Association a Special Assessment based on the total sum approved to meet the costs and expenses divided by the total number of Residences in Summerfield Subdivision.

1.24 Subdivision. "Subdivision" means the development known as Summerfield Subdivision which is the subject of this Declaration. "Subdivision" means the same as "Summerfield" or "Summerfield Subdivision."

1.25 Utility Easements. "Utility Easements" means any easement labeled "U.E." on the Plat which has been created for the installation of electric, telephone, cable television, sewer, water, gas, or other public utilities.

1.26 Vehicle. "Vehicle" means motor homes, boats, trailers, campers, motorcycles, scooters, trucks, vans, tractors, tractor trailers, buses, automobiles and any other motorized wheeled object or conveyance which is customarily used for transportation (and includes Commercial Vehicles).

1.27 Wall Easements. "Wall Easements" means any easement which exists along common walls shared by Residences because of the natural occurrence of settling and shifting.

Section 2 General.

2.1 Name. The development shall be known and designated as "Summerfield Subdivision," an addition to Monroe County, Indiana, and sometimes in this Declaration may be referred to as the "Subdivision" or "Summerfield."

2.2 Residential, Business Activity, and Leasing. Summerfield is a single-family residential development. Each Residence constructed shall be used by its owners and occupants exclusively for residential purposes. No commercial building shall be erected, altered, placed or permitted to remain on any portion of Summerfield. No business activity or business enterprise shall be carried on or conducted from any Residence. Leasing of a Residence for residential purposes shall not be considered a business or business activity.

2.3 Governmental Restrictions. All Lots and Residences shall be subject to the zoning ordinances and regulations of the applicable governmental authorities.

2.4 Effect on Owners. The Owners of any Lot subject to this Declaration, by acceptance of a deed conveying title, or in the execution of a contract for purchase, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement contained in this Declaration. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of Developer with respect to these restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners, covenant and agree and consent to and with Developer and to and with the Owners and subsequent Owners of each of the Lots affected by these restrictions to keep, observe, comply with and perform such restrictions and agreements.

Section 3 Physical Characteristics of the Development.

3.1 Number of Lots. Summerfield may contain up to 96 Lots on which Residences will be constructed. Each Lot shall consist of all space within its boundaries as depicted on the Plat.

3.2 Easements. Any perpetual and non-exclusive Drainage Easements, Utility Easements, and other easements are reserved as shown on the Plat. Some of these easements may be designated in combination with others. Within these easements, no structure, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or authorized signs or other usage or which may change the direction or flow of drainage or which may obstruct or retard the flow of drainage. Plants, trees, and other vegetation are allowed in these easements, but only to the extent permitted by this Declaration. Wall Easements have also been established to acknowledge that because of the natural occurrence of settling and shifting, a Residence may encroach upon the Lot with which it shares a common wall.

3.3 Streets. All streets as shown on the Plat within the boundaries of Summerfield are hereby dedicated to the public, which dedication will be effective when the County of Monroe or other governmental body accepts such streets into its public right-of-way system.

3.4 Underground Utilities. All utilities, including but not limited to water, gas, electric, telephone, sewer, and cable television shall be installed underground.

Section 4 Construction, Physical Restrictions, and Other Restrictions. In order to preserve the character of Summerfield and to protect its property values, and without intending to limit the generality

of the provisions described above, the following protective covenants and restrictions are imposed as a common scheme upon the Subdivision and shall be applicable to each Lot and to each Residence:

4.1 One Residence. Only one Residence shall be constructed on any Lot. Each attached Residence will share a common wall with another Residence.

4.2 Minimum Size. Each Residence constructed on a Lot shall have a finished ground floor area of not less than the square footage above finished grade shown on the original plans (which are not recorded). For purposes of this Section, ground floor area shall be determined from the area of the Residence measured from the outside of the building foundation exclusive of open porches, decks, breezeways, garages, chimneys, and eaves. The provisions of this Section may be waived by the Association upon application in writing by any Lot Owner. No waiver will be valid until it is properly signed by a representative of the Association. The waiver may be recorded in the office of the Recorder of Monroe County, Indiana.

4.3 Maximum Height. No Residence, exclusive of chimney, shall exceed the height of the original structures erected measured from the lowest finished grade level at the front of the foundation visible from any street to the highest point of the roof.

4.4 Construction of Sewer Lines. All sanitary and storm sewer lines within the Lots shall be designed and constructed in accordance with the provisions and requirements of the applicable governmental entity.

4.5 Parking. Each Residence located on any Lot will have an enclosed garage. Vehicles may park in the driveway appurtenant to such Residence.

4.6 Setback. No Residence, Building, or other permanent structure shall be located on any Lot nearer to the boundaries of the Lot than the minimum setback lines as shown on the Plat or the setback restrictions in effect at the time of construction as established by the County of Monroe, whichever is more restrictive. For the purposes of this covenant, eaves, steps, and open porches shall not be considered as part of a Residence; however, this provision shall not be construed to permit any portion of a Residence to encroach upon any other Lot, except because of incidental settling or movement at the juncture of the common wall between two attached Residences, which is the purpose of the Wall Easements. With respect to the Wall Easements, each Owner of a Residence which is attached to another Residence by a common wall is deemed to grant to the other Owner of such attached Residence a permanent easement for the right to maintain the Residence as it was constructed and as it has settled and shifted, or may continue to settle and shift, on the Lot to which it has, or may in the future have, settled or shifted. This Wall Easement

will run with the land and will be binding upon the Owners of the affected Lots and the Lots themselves.

4.7 Prohibited Building Styles. Modular construction, modular homes, or mobile homes will not be permitted upon any Lot. No used or temporary structure or structure without a foundation will be relocated or placed on any Lot.

4.8 Garbage Disposals and Sanitary Sewers. All Residences shall be equipped with a mechanical device for the grinding and disposal of garbage and food waste in the kitchen which shall discharge to the sewer drain. All sewage disposal shall be connected with the applicable sanitary sewer system. No septic tanks, holding tanks, or cesspools shall be constructed or permitted to remain upon any Lot.

4.09 Lot Access. Access to all Lots shall be from the streets shown on the Plat.

4.10 Light Fixtures, Mailboxes, Etc. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Subdivision, any exterior light fixture or structure must be approved by the Association as to size, location, height, and composition before it may be installed. Mailboxes shall be constructed in clusters as specified by the U.S. Postal Service and shall not be located on each Lot.

4.11 Exterior Construction. The following requirements shall be applicable unless the Association otherwise approves: (a) all utility facilities will be underground; (b) whenever possible, all utility meters and HVAC units will be located in places unseen or screened from the front of a Residence; (c) no outside fuel storage tanks will be permitted above ground and no gasoline storage will be permitted above or below ground; (d) all windows will be factory- or on-the-job painted; (e) no raw aluminum windows will be permitted; (f) all gutters and downspouts will be factory- or on-the-job painted; (g) all roof pitches of Residences will be as specified in the original plans; (h) no metal, fiberglass or similar type material awnings or patio covers will be permitted; and (i) no above-ground swimming pools, pet enclosures, or pet shelters will be permitted on any Lot. Subsequent to original construction, all Residences shall continue to exist or to be rebuilt, as the case may be, in substantially the same size, appearance, and design as originally constructed.

4.12 Use. This Subdivision shall be developed solely for residential purposes and each Residence shall be used by its Owners and occupants exclusively for residential purposes. No commercial building shall be erected, altered, placed or permitted to remain on any portion of any Lot. No business enterprise shall be carried on or conducted from any Residence. Leasing a Residence shall not be considered a business or business activity.

4.13 Parking Limitations. No Vehicle which exceeds 20 feet in length, nor any non-functioning Vehicle of any length, nor any Vehicle not currently registered and displaying a current license plate shall be parked overnight or longer in the Subdivision or in any way visible to occupants of the Subdivision or the users of any public street within the Subdivision. No Commercial Vehicle will be parked on any public street, except temporarily while performing services on a Lot or in a Residence. All Vehicles parked overnight will be parked in a garage or driveway.

4.14 Temporary Structures. No Residence shall be occupied prior to completion. No temporary living quarters shall be constructed within the Subdivision. No trailer, basement, tent, shack, garage, barn, or other outbuilding erected on any Lot shall be used as a dwelling, temporarily or permanently, nor shall any structure of a temporary character be used as a dwelling. Regardless, Declarant may have construction trailers and sales trailers upon the Real Estate until expiration of the Development Period.

4.15 Animals and Pets. No animal, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot or in any Residence with the exception of dogs, cats, or other usual and common pets in reasonable number which are housed inside the Residence on the Lot. No pet shall be kept, bred, or maintained for any commercial purpose. Dogs shall be confined on a leash at all times whenever outside a Residence. Pet waste must be promptly collected and properly disposed by the person responsible for such pet.

4.16 Nuisance. It shall be the responsibility of each Owner of a Residence to prevent any unclean, unhealthy, unsightly, or dangerous condition of the Residence or Lot. No Residence shall be used, in whole or in part, for the storage of any property or thing that will cause such Residence to appear to be in an unclean, unsightly, or untidy condition, based on reasonable standards prescribed by the Association; nor shall any substance, thing, or material be kept upon any Residence that will emit foul or offensive 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 Residences. No noxious or offensive activity shall be carried on upon any Lot, common area, or within any Residence, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person owning or occupying a Residence. No plant, animal, device, or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish the enjoyment of the Subdivision shall be maintained within a Residence or on a Lot. Yard incinerators for the disposal or burning of trash shall not be permitted anywhere within the Subdivision. All these standards shall be based upon the reasonable judgment of the Association.

4.17 Antennae and Reception Devices. No exterior antennae, satellite dishes in excess of 24 inches in diameter, or television or other communication reception devices of any kind shall be

placed, allowed, or maintained upon any portion of any Lot without obtaining the prior written consent of the Association. Any consent will take into account the appearance of such device and whether its installation will interfere with the general appearance of the Residences, including the Residence where the device is sought to be installed.

4.18 Clotheslines, Refuse Containers, Woodpiles, etc. All rubbish, trash, and garbage shall be regularly removed from the Residence and shall not be allowed to accumulate. No clothesline shall be permitted on a Lot outside a Residence or in any portion of the Common Area. No liquid fuel container (other than for use in connection with a normally sized outdoor cooking device) shall be located within or outside of a Residence.

4.19 Submission of Documents. No Residence, Building, or other permanent structure shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Association as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. Approval or disapproval as required in these covenants by the Association shall be in writing.

4.20 Requirement to Rebuild. To the extent of any casualty loss to all or any part of a Residence, the Owner must rebuild the Residence to the specifications to which it was constructed originally, subject to any changes permitted by the Association and in accordance with applicable government building codes.

4.21 Temporary Signs. Existence and placement of temporary signs will be permitted only as approved in writing by the Association. However, Declarant reserves the right to place signs and displays pertaining to sales of Lots and Residences and otherwise to promote general sales activities. Also, Owners may place one sign pertaining to the sale or lease of the Lot on which the sign is placed, such sign being no larger than two feet by three feet, excluding the size or height of the sign post, if any. Other than the exception pertaining to Declarant, no sign may be placed on any Lot or in the Common Area for any commercial activity or enterprise.

Section 5 Additional Restrictions on the Use of the Real Estate. In order to preserve the character of Summerfield and to protect its property values, and without intending to limit the generality of the provisions described above, the following additional protective covenants and restrictions are imposed as a common scheme upon the Subdivision and shall be applicable to each Lot and to each Residence:

5.1 Maintenance of Lots and Improvements. Except for mowing and general lawn maintenance, the Owner of each Lot shall maintain that Lot and all improvements situated on it. Other than mowing and general lawn maintenance, the Association will have no obligation to

maintain any portion of a Lot. In no event shall the Association have any obligation to maintain any Residence or other improvement situated on a Lot. All maintenance shall be performed in such a manner as to prevent the Lot or Residence from becoming unsightly. From time to time, the Association may publish specific standards concerning such maintenance. Specifically, with respect to Owner's maintenance responsibilities for the Lot and the Residence situated on the Lot, including the sidewalks on the Lot, such Owner shall:

5.1.1 Landscaping. Tend the vegetation, plantings, and landscaping, as applicable, at such times and in such manner as may reasonably be required in order to prevent the unsightly growth of vegetation and weeds, and to exercise good husbandry.

5.1.2 Rubbish. Remove all debris, rubbish, and litter.

5.1.3 Appearance. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Subdivision.

5.1.4 Exterior. Keep the exterior (including the roof) of the Residence and the sidewalks on the Lot in a reasonable state of repair or maintenance with respect to appearance, function, and safety. To the extent that an Owner or agent of an Owner must enter upon an adjacent Lot or Residence for the purpose of maintaining or repairing any portion of any improvements of such Owner's Lot, a temporary easement shall exist which entitles the Owner or agent of the Owner to enter on the adjacent Lot to facilitate such maintenance or repair. Any Owner who utilizes such easement right is deemed to indemnify such adjacent Owner against loss or damage caused by such entry or use.

5.1.5 Snow Removal. Remove all snow and ice from the sidewalks situated on the Lot. Neither Declarant nor the Association will have any snow and ice removal obligation in such areas or in any other area of the Subdivision.

5.1.6 Other. All other maintenance items not performed by the Association.

To the extent that any Owner fails to meet such Owner's maintenance obligations, the Association may undertake such obligations on such Owner's behalf, but is under no obligation to do so and will bear no liability or responsibility if it does not do so. However, if the Association does undertake such maintenance, the Association shall charge the Owner for the expenses for such maintenance and will be entitled to file a lien against the applicable Lot and Residence in the same manner in which the Association is otherwise entitled to file liens under this Declaration for unpaid Assessments.

The Association will also maintain Signage within the Subdivision. Each Owner of any Lot upon which any such Sign or landscaping is located grants a perpetual easement to the Association to repair, replace, and maintain any such Sign located on such Lot.

5.2 Subdivision of a Lot. There shall be no subdivision of any Lot or any sale in parcels.

5.3 Common Area. "Common Area" is defined in Section 1. It specifically excludes any street, right-of-way, or facility which may now or subsequently be dedicated to the general public. At the time determined by Declarant, the Common Area will be conveyed to the Association.

Section 6 Enforcement. The provisions of Sections 4 and 5 of this Declaration shall be liberally construed to implement the purpose of creating a uniform plan for the development and operation of the Subdivision. In the event any Owner fails to observe and perform fully the obligations set forth in this Declaration, and in the further event that such failure is not cured within 30 days after written notice is given by the Association, any Owner of any Lot within the Subdivision shall have the right to commence judicial proceedings to abate or enjoin such failure, and to take such further action as may be allowed at law or in equity to correct such failure after commencement of such proceedings. In the event that such failure causes or threatens to cause immediate and substantial harm to any property beyond such defaulting Owner's Lot or to any person, the Association shall have the right to enter upon such Lot for the purpose of correcting such failure and any harm or damage caused or reasonably believed about to be caused by such failure, without any liability whatsoever on the part of the Association or other Owners. The failure or forbearance by the Association to enforce any such covenant, condition, or restriction shall not be deemed a waiver of the subsequent right to do so. There shall be a conclusive presumption that any violation or breach or any attempted violation or breach of any covenant, condition, or restriction contained in this Declaration cannot be adequately redressed by an action at law and that injunctive relief is appropriate. All costs incurred by the Association in connection with any act or proceeding undertaken to abate, enjoin, or correct such failure, including reasonable attorney's fees, shall be payable by the defaulting Owner upon demand by the Association, and shall immediately become a lien against the Lot of such Owner. The rights in the Owners and the Association under this Section shall be in addition to all other enforcement rights in this Declaration or at law or in equity.

Section 7 Association.

7.1 General. The Association shall provide certain maintenance functions specified elsewhere in this Declaration. Also, it will establish a budget and administer billing for and collection of dues. In addition, it will perform such other functions as may be assigned to it.

7.2 Membership. Each Owner of a Lot shall automatically be a member of the Association, but membership shall terminate when such person ceases to own a Lot, in which case the

membership will be transferred to the new Owner. However, any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless the security is converted to ownership of a Lot, at which time such person shall automatically be and become an Owner and a member of the Association.

7.3 Classes of Members. The Association shall have three classes of members:

7.3.1. Class A. Class A members shall be all Owners except Declarant and shall be entitled to one vote for each Lot owned. All persons holding an interest in any Lot shall be members; however, each Lot represented shall have only one vote as the Owners of such Lot may determine.

7.3.2. Class B. The Class B member shall be Declarant and Declarant shall be entitled to 10 votes for each Lot owned. The Class B membership shall cease and terminate upon the first to occur of: (a) the date upon which the written resignation of the Class B member as such is delivered to the resident agent of the Association; however, if Declarant, at such time still owns Lots, such membership shall be converted to a Class A membership; or, (b) the expiration of the Development Period.

7.3.3. Class C. Any and all natural persons who are officers, directors, partners, employees, or appointees of a Class A member or a Class B member may become a Class C member of the Association upon designation by a Class A member or a Class B member. A Class C member shall have no vote in matters of the Association, but may serve on the Board of Directors.

7.4. Initial Board of Directors. The initial Board of Directors shall be designated by the Declarant in the Articles, shall be Class C members, and (regardless of any provision in this Declaration, the Articles, or the Bylaws to the contrary) shall continue as Directors until the expiration of the Development Period. If there is a vacancy or vacancies on the Board for any reason prior to the expiration of the Development Period every such vacancy shall be filled by a person appointed by Declarant and shall be deemed a member of the Board. Upon expiration of the Development Period, the Association shall elect a Board annually in accordance with and as prescribed by the Bylaws.

7.5. Duties of the Board of Directors. The members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the Bylaws. The Board shall be the governing body of the Association, represent all of the members, and be responsible for the functions and duties of the Association including but not limited to the maintenance of certain items as prescribed in this Declaration.

7.6. Right of Board of Directors to Adopt Rules and Regulations. The Board of Directors may promulgate reasonable rules and regulations regarding the operation of the Association and its duties, as it may deem necessary from time to time. Such rules as are adopted may be amended by vote of a majority of the Board, which shall cause copies of such rules to be delivered and mailed promptly to all Owners.

7.7 Association Governance. The Association shall be governed by the Board of Directors elected according to the procedures set forth in this Declaration.

7.8 Maintenance Areas. The Association shall maintain the Signage; the Common Area (including any storm water detention area located within it); street lamps (if any, including paying the utility fees and expenses); and other areas as shown on subsequent plats (if any), or as determined from time to time by the Association, or as more specifically described in the Declaration.

7.9 Casualty Insurance. Property and casualty insurance covering one hundred percent (100%) of the actual replacement cost value of the following shall be obtained and maintained by Declarant (and subsequently, the Association): fire and extended coverage over the structure, fixtures, improvements, and alterations that are a part of any Residence or structure (including the Residence or structure itself) in Summerfield, and shall provide coverage for appliances such as those used for refrigerating, ventilating, cooking, heating, air conditioning, dishwashing, laundry, security, and housekeeping, regardless of ownership; and all personal property owned by the Association, if any. Each Owner shall pay a proportionate share of the premium for such casualty insurance policy pertaining to the Residence on such Owner's Lot. The casualty insurance carrier shall be the same carrier for all Owners and Lots, which carrier shall be determined by the Association. The insurance shall be a master policy of insurance for the entire Subdivision if such policy is available and the Association so elects. The Association may change the insurance carrier from time to time, in the sole discretion of the Association. The premium for the insurance shall be paid by the individual Lot Owners based upon the numbers of Lots platted at any given time. The Association will have no responsibility for payment of any Lot Owner's premium. In addition, all Lot Owners will be responsible for obtaining any separate casualty insurance required to cover personal property or interior furnishings and fixtures not covered by the master casualty policy. Such insurance shall be from any carrier in the sole discretion of the Lot Owner. Lot Owners will be responsible for obtaining any other type of insurance, including liability insurance.

Section 8 Assessments.

8.1. Annual Accounting. Annually after the close of each calendar year and prior to the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished each Owner an unaudited financial statement which shows all receipts and expenses during the preceding calendar year. The annual accounting shall be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered.

8.2. Proposed Annual Budget. Annually on or before the date for notice of the annual meeting of the Association, the Board of Directors shall: prepare a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year and furnish a copy of such proposed budget to each Owner at the same time as the notice of annual meeting is mailed or delivered. The proposed annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption, and if so adopted shall be the basis for the Regular Assessments for the ensuing calendar year. At the annual meeting of the Owners, the proposed budget may be approved in whole or in part, or may be amended in whole or in part by a majority vote of the Owners present or represented at the meeting (provided a quorum is present). However, the annual meeting of the Owners shall not be adjourned until an annual budget is approved. The failure or delay of the Board to prepare a proposed annual budget and to furnish a copy to the Owners shall not constitute a waiver or release of any Owner to pay the Expenses.

8.3. Regular Assessments. Unless otherwise determined by the Association, the Regular Assessment against each Residence shall be paid in one annual installment on or before December 31 of the same year following adoption of the budget. The budget will be adopted on or before November 15 of each year. Payment of the Regular Assessment shall be made to the Association as directed by the Board of Directors. However, any Owner may elect to pay Regular Assessments in advance. The Regular Assessment for each year shall become a lien on each separate Residence (Lot) in as of the date of the adoption of the annual budget. The initial Regular Assessment will be specified in the Bylaws, as will the limitation on the increase of the Regular Assessment for each year during the Development Period. Regardless of any provision in this Declaration to the contrary, no Regular Assessment will be applicable to any Lot or Residence owned by the Developer during the Development Period. However, Regular Assessments will be applicable to any Lot or Residence upon the transfer of fee simple title to such Lot or Residence to a third party (or upon a sale of such Lot or Residence to a third party by conditional sales contract).

8.4. Special Assessments. No Special Assessment shall be levied without the assent of two-thirds (2/3) of the Owners at a meeting duly called for such purpose. Each Owner, subject to the Regular Assessment described above, shall pay to the Association a Special Assessment on or before the due date(s) established by the Board of Directors. Regardless of any provision in this Declaration to the contrary, no Special Assessment will be applicable to any Lot or Residence owned by the Developer during the Development Period. However, Special Assessments will be applicable to any

Lot or Residence upon the transfer of fee simple title to such Lot or Residence to a third party (or upon a sale of such Lot or Residence to a third party by conditional sales contract).

8.5. Adjustments. If the approved budget and Regular Assessments plus the reserves of the Association are insufficient to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more Special Assessments. If the approved Regular Assessments exceed actual expenses in any year, such surplus shall be retained and used to offset expenses in the next year(s).

8.6. Temporary Budget and Assessments. If for any reason an annual budget and the Regular Assessments for any year have not been determined as of January 1 of any year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and Regular Assessments are determined in accordance with this Declaration and the Bylaws. However, the preceding budget and Regular Assessments may be increased by up to 15% as the Board of Directors, by majority vote, may deem necessary.

8.7. Operating Funds. The Association shall be obligated to establish an operating fund for the various expenses to be paid by the Association pursuant to this Declaration, based upon good faith estimates of such expenses. Extraordinary expenditures not originally included in the annual estimate that become necessary during the year shall be charged by a Special Assessment. All amounts held by the Association pursuant to this Section shall be maintained in a federally-insured, non-interest-bearing account in a commercial bank or savings bank doing business in Monroe County, Indiana.

8.8. Status of Funds Collected by Association. All funds collected pursuant to this Section shall be held and expended by the Association solely for the purposes designated in this Declaration, and, except for such adjustments as may be required to reflect delinquent or prepaid Regular or Special Assessments, shall be deemed to be held for the use, benefit, and account of the Owners for the payment of Common Expenses.

8.9. Accounting Practices of the Association. The annual budget, the Regular Assessment, and all sums assessed by the Association shall be established by using generally accepted accounting principles.

8.10 Collection of Assessments. Each Owner of a Lot will pay when due the Regular Assessments and Special Assessments levied by the Association. No Owner will be exempt from liability by waiving the right to use any facilities or by refusing to participate in the meetings of the Association. Each Assessment shall be due and payable on the due date as specified in this Declaration or in the Bylaws, or if not so specified, then on any due date(s) determined by the Board

of Directors. Any Regular or Special Assessment which is not paid in full by the Delinquency Date shall be deemed delinquent without further notice or demand to the defaulting Owner, and shall bear interest on the unpaid balance from the Delinquency Date until fully paid, at an interest rate of 18% per annum. If any costs or expenses, including reasonable attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the date incurred until paid in full, at an interest rate of 18% per annum. All interest and all costs and expenses payable with respect to a delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Residence or Lot as of the date on which such delinquent Assessment first became a lien, to enforce payment of the same by foreclosure of such lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. The Owner and any occupant of the Residence shall be jointly and severally liable for the payment to the Association of reasonable rental for such Residence and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Residence and to collect the rentals and other profits for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

8.11. Subordination of Assessment Lien to Mortgage. Regardless of anything contained in this Declaration, the Articles, or the Bylaws to the contrary, any sale or transfer of a Residence to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer, or conveyance. However, the extinguishment of such lien cannot relieve the prior Owner from personal liability for any sum owed.

8.12. Notice of Assessments. Upon written request to the Association, the Association shall deliver to any Owner, Mortgagee, prospective Mortgagee, title insurance company or agent, purchaser, or other prospective transferee of a Lot, a written statement setting forth the amount of all unpaid Assessments, if any, with respect to the subject Lot, together with the amount of the current assessments for Common Expenses and the date(s) such Assessments become due and payable. Any such written statement shall be binding upon the Association in favor of any person relying on it in good faith.

Section 9 Rights of Mortgagees. Except to the extent otherwise provided, no breach of these Restrictions shall defeat or render invalid the lien of any mortgage now existing or subsequently executed upon any portion of the Subdivision. However, if all or any portion of the Subdivision is sold under a

foreclosure of any mortgage, any purchaser at such sale and its successors and assigns shall hold any and all land so purchased subject to this Declaration. Regardless of any other provision of this Declaration, neither Developer nor Owners shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Subdivision at the time of such amendment.

Section 10 Liability Insurance for Association, etc. The Association shall purchase a liability insurance policy in an amount required by the Bylaws, this Declaration, or any decision of the Board of Directors, which may be revised from time to time by the Board. The policy shall cover the Association, all persons acting or who may act as agents or employees of the Association, and all Owners and all other persons entitled to occupy any Residence. Such other policies as may be required by this Declaration may be obtained by the Owners through the Association including, without limitation, specialized policies covering officers' and directors' liability. The premium for the insurance obtained by the Association shall be paid by the Association as part of the Common Expenses.

Section 11 General Provisions.

11.1 Duration. This Declaration shall be perpetual, run with, and bind the Real Estate subjected to this Declaration and shall inure to the benefit of and be enforceable by the Developer, its respective successors, assigns, heirs, executors, administrators, and personal representative, with the following exception:

The covenants and restrictions set forth in Sections 4 and 5 shall have an initial term of 20 years from the date this Declaration is recorded in the office of the Recorder of Monroe County, Indiana. At the end of this period, such covenants and restrictions shall automatically be extended for successive periods of 10 years each unless at least two-thirds of all Owners, at the time of the expiration of the initial period or any extension period, shall sign an instrument, or instruments (which may be in counterparts) in which they agree to terminate any or all of the covenants, conditions, and restrictions in any manner as may be provided by law. However, no such agreement shall become binding unless written notice containing the terms of the proposed agreement is sent to every Owner at least 90 days prior to taking the action which authorizes such agreement. In any event, any such agreement shall not become effective and binding until three years after the recording of the fully executed instrument or instruments containing such agreement. During such interim, the existing covenants, conditions, and restrictions will continue to be applicable.

11.2 Amendment of Declaration. Except as otherwise provided, amendments to this Declaration shall be proposed and adopted in the following manner:

11.2.1 By Owners. Notice of the subject matter of the proposed amendment shall be given to each Owner of a Residence. Any proposed amendment to this Declaration must be approved by not less than 75% of the Owners. Each amendment to the Declaration shall be executed by the Owners casting votes in favor of the amendment and shall be recorded in the office of the Recorder of Monroe County, Indiana, and such amendment shall not become effective until recorded.

11.2.2 By Declarant. Regardless of any provision to the contrary, Developer shall have the right acting alone and without the consent or approval of the Owners, Builders or any other person, to amend or supplement this Declaration from time to time if such amendment or supplement is required to: (a) provide utility service to any Lot; (b) to bring this Declaration into compliance with any statutory requirements; (c) to correct clerical or typographical errors in this Declaration or any exhibit or any supplement or amendment; or (d) to implement any change which Developer reasonably believes furthers the purposes of this Declaration and the Subdivision. However, regardless of any other provision of this Declaration to the contrary, neither the Declarant nor the Owners shall have any right to make any amendment to this Declaration, the Articles or the Bylaws which materially impairs the right of any Mortgagee or any party holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment, unless the mortgagee consents in writing.

11.3 Notice. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice given, when mailed, by regular U.S. Mail, with postage prepaid, addressed to the Owner at the last known post office address of the person who appears as Owner in the records of Monroe County Auditor's office. Valid notice may also be given to an Owner by (i) personal delivery to any occupant of the applicable Residence who is at least 14 years of age; or, (ii) by affixing the notice to or inserting it via any entry/exit door of such Residence.

11.4 Severability. Should any covenant or restriction contained in this Declaration, or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties and the subject matter, such judgment shall not in any manner affect the other provisions of this Declaration, which are hereby declared to be severable and which shall remain in full force and effect.

11.5 Rule Against Perpetuities. If any provision of this Declaration shall be interpreted to constitute a violation of the rule against perpetuities, then such provision shall be deemed to

remain in effect until the death of the last survivor of the now living descendants of the persons signing the Declaration on behalf of Developer plus 21 years.

11.6 Gender and Number. Whenever the context of this Declaration requires, the use of the masculine gender shall be deemed to refer to the feminine or neuter gender and the use of the singular shall be deemed to refer to the plural and vice versa. No pronoun usage shall be deemed to exclude a reference to an institutional, corporate, partnership, limited liability company, or any other type of business entity. The various titles are for convenience of reference only and shall not be used as an aid in construing the provisions of this instrument.

*** THE BALANCE OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY ***

20

EXHIBIT "A"
(Legal description – Summerfield at Fieldstone)

A part of the West Half of Section 2, Township 8 North, Range 2 West, Monroe County, Indiana and being more particularly described as follows:

COMMENCING at a 5/8" rebar stamped Bledsoe Tapp marking the northeast corner of the Southwest Quarter of said Section 2; thence NORTH 87 degrees 33 minutes 58 seconds West 53.79 feet to a stone; thence NORTH 88 degrees 29 minutes 50 seconds West along the north line of (D. R. 281, Pg. 310) 813.49 feet to the northeast corner of Lot 183 at Stonecrest at Fieldstone Subdivision, Phase 4 Section 1 Final Plat (P.C. "C", Env. 285); thence NORTH 65 degrees 44 minutes 02 seconds West 100.00 feet to the easterly right-of-way of Fieldstone Boulevard; thence along said right-of-way 74.67 feet along a 710.00 foot radius non-tangent curve to the left whose chord bears NORTH 21 degrees 15 minutes 11 seconds East 74.64 feet; thence leaving said right-of-way line NORTH 71 degrees 45 minutes 36 seconds West 70.00 feet to the westerly right-of-way of Fieldstone Boulevard, said point being the POINT OF BEGINNING; thence the following three (3) courses along said right-of-way 1) 460.61 feet along a 640.00 foot radius non-tangent curve to the right whose chord bears SOUTH 38 degrees 51 minutes 29 seconds West 450.73 feet; thence 2) SOUTH 30 degrees 31 minutes 25 seconds East 5.00 feet; thence 3) 379.58 feet along a 645.00 foot radius non-tangent curve to the right whose chord bears SOUTH 76 degrees 19 minutes 42 seconds West 374.10 feet; thence leaving said right-of-way NORTH 03 degrees 11 minutes 12 seconds East 34.62 feet; thence NORTH 40 degrees 20 minutes 49 seconds East 259.85 feet; thence NORTH 20 degrees 49 minutes 51 seconds West 396.77 feet; thence NORTH 09 degrees 51 minutes 03 seconds East 117.82 feet; thence NORTH 41 degrees 55 minutes 09 seconds East 109.53 feet; thence NORTH 88 degrees 48 minutes 23 seconds East 42.08 feet; thence NORTH 68 degrees 53 minutes 43 seconds East 53.54 feet; thence NORTH 36 degrees 41 minutes 10 seconds East 109.28 feet; thence NORTH 80 degrees 23 minutes 41 seconds East 28.89 feet; thence SOUTH 55 degrees 13 minutes 44 seconds East 77.34 feet; thence SOUTH 83 degrees 31 minutes 34 seconds East 63.36 feet; thence NORTH 52 degrees 54 minutes 10 seconds East 106.76 feet; NORTH 08 degrees 10 minutes 11 seconds West 89.42 feet; thence NORTH 44 degrees 29 minutes 14 seconds East 72.39 feet; thence NORTH 71 degrees 02 minutes 01 seconds East 8.89 feet to the westerly right-of-way of Fieldstone Boulevard; thence the following two (2) courses along said right-of-way; 1) SOUTH 18 degrees 57 minutes 59 seconds East 230.33 feet; 2) thence 415.60 feet along a 640.00 foot radius tangent curve to the right whose chord bears SOUTH 00 degrees 21 minutes 47 seconds East 408.34 feet to the POINT OF BEGINNING, containing 10.02 acres, more or less.