**Declaration of Covenants, Conditions, & Restrictions**

**for**

**Summit Pointe**

The undersigned Summit Pointe Investors, LLC, an Ohio limited liability company (hereinafter referred to as “Developer”), as owner and developer of real property located in Clearcreek Township, Warren County, Ohio described in Exhibit A attached hereto and known as Summit Pointe Section 1 (including lots 1 to 38 inclusive and referred to herein as the “Subdivision”), impose the following plat restrictions and covenants of the Subdivision for the benefit of all present and future owners of any lot in the Subdivision.

**DECLARATIONS**

All lots within the Subdivision shall be subject to the following development standards, restrictions, covenants, conditions and assessments, which are for the benefit of all lot owners and occupants within the Subdivision and which shall run with the property and shall be binding on all owners and all persons claiming under them until December 31, 2010, at which time said covenants, conditions, restrictions and assessments shall be automatically extended for successive periods of ten (10) years, unless by a majority vote of the then owners of the lots in the Subdivision it is agreed to change said covenants, conditions, restrictions and assessments in whole or in part.

**Article 1. Use Restrictions**

* 1. Each lot within the Subdivision (said lots hereinafter being referred to collectively as “Building Lots” or separately as a “Building Lot”) shall be used for single-family residential purposes only. However, the Developer, its agents or assigns, and any approved homebuilder building in the Subdivision (“Builder”) may use the Building Lots for construction and sales purposes during any building and sales period. The Parcel areas shown as open space on the record plat for the Subdivision shall not be considered Building Lots.
  2. No residence, building, porch, deck, fence, flagpole, mailbox, light pole or fixture, swimming pool, pavement, driveway, awning, wall or structure of any kind shall be erected, placed or altered on any Building Lot without first obtaining the written consent of the Architectural Control Committee subsequently described herein. All requests for written approvals from the Architectural Control Committee shall be accompanied by detailed plans and specifications for the proposed improvements showing, where applicable, the size, location, type, architectural design, spacing, quality, use, construction materials, color scheme, grading plan and finish grade elevation for said improvements.
  3. No residence shall be erected, altered, placed or permitted to remain on any Building Lot other than one (1) single-family dwelling unit (“Dwelling Unit”). Each two (2) story Dwelling Unit constructed on any Building Lot shall have a minimum of 1,700 square feet of living area and each single story Dwelling Unit shall have a minimum living area of 1,500 square feet, exclusive of basements, open porches, garages, and other unheated areas. Each Dwelling Unit shall have an attached garage with space for not less than two (2) automobiles.
  4. All structures or improvements commenced by an owner of any Building Lot within the Subdivision must be completed within six (6) months from the date of commencement unless otherwise approved by the Architectural Control Committee.
  5. A front walk pole light operated by a photo optic cell (or other darkness sensing technology) that illuminates automatically at darkness shall be installed in the front yard of each Building Lot at the time of construction of a Dwelling Unit thereon. All pole lights must be of uniform design, style and color as determined by a Developer. The Building Lot owner shall maintain the light in operating condition at all times.
  6. A mailbox shall be installed at the time of the construction of the Dwelling Unit on each Building Lot. All mailboxes shall be of uniform design, style, and color as determined by the Developer.
  7. All yards shall be sodded or seeded in accordance with guidelines established by the Architectural Control Committee prior to Builder closing on any Building Lot with a homebuyer unless the weather is prohibitive in which case all yard areas shall be sodded or seeded as soon as weather permits.
  8. No antenna, radio, television or microwave tower or satellite dish shall be erected or maintained on any Building Lot or attached to any structure in the Subdivision without the approval of the Architectural Control Committee. The Architectural Control Committee may deny any such request in its sole and absolute discretion or may attach such conditions as it deems necessary or appropriate.
  9. No air-conditioning or heating equipment shall be located in the front yard of any Building Lot. Air-conditioning and heating equipment located in side or rear yards shall be screened in such a manner so as to provide minimal visual impact from public spaces and other Building Lots as determined by the Agricultural Control Committee.
  10. No Dwelling Unit shall have a sump pump which discharges directly into the street through a curb.
  11. No Dwelling Unit or other structure on a Building Lot shall be located nearer to any street than the building setback line shown on the recorded plat of the Subdivision. The setback areas designated on the recorded plat shall be for lawn purposes only. This covenant shall not be constructed to prevent the use of the setback areas for walks, drives, trees, shrubbery, flowers, or ornamental plants used for the purpose of beautification.
  12. No structure or materials shall be placed or permitted within the utility or drainage easement areas as designated on the recorded plat of the Subdivision unless otherwise approved by the Architectural Control Committee. Plantings within said utility or drainage easement areas are at the Building Lot owner’s sole risk of loss if such plantings, as determined by the applicable utility company or the Architectural Control Committee, would damage or interfere with the installation or maintenance of utilities or would change or retard the flow of surface water from its proper course. Each Building Lot owner shall maintain such portion of any utility or drainage easement area as is located upon such Building Lot owner’s lot and shall be responsible for maintaining the grade of the utility or drainage easement areas in accordance with the improvement plans prepared by Developer and approved by Warren County.
  13. No trade or business activities of any kind shall be conducted on any Building Lot or open space in the Subdivision except that an owner (or member of owner’s family) of a Dwelling Unit may conduct a business activity within the Dwelling Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Dwelling Unit, (b)) the business activity conforms to all zoning requirements for the Subdivision and is not prohibited by laws of any entity having jurisdiction over the Subdivision, (c) the business activity does not involve persons coming on to the Building Lot who do not reside in the Building Unit and (d) the business activity is consistent with the residential character of the Subdivision. The foregoing restriction shall not apply to the business activities of Developer or the construction, sale to maintenance of Building Lots and residences by the Builder or by the Developer, its agents or assigns, during the construction and sales period.
  14. No outside drying or airing of clothes shall be permitted (a) within any open space in the Subdivision or (b) on any Building Lot except in an enclosed area not visible to the public.
  15. Except in connection with Developer’s or a Builder’s construction activities, no buses, motorcycles, trucks, trailers, boats, jet skis, snowmobiles, campers, motor homes or other recreational vehicles shall be parked on any Building Lot or elsewhere in the Subdivision unless housed within a garage. No junk, inoperable or derelict vehicle or other vehicle on which current registration plates are not displayed shall be parked within the Subdivision. Vehicle repairs and storage of vehicles are permitted with the Subdivision only if in garages. Recreational vehicles and boats may be parked in the driveway for a period not to exceed forty-eight hours for the purpose of cleaning, loading or unloading.
  16. No exterior portion of any Building Lot shall be used as a dumping ground or storage area for rubbish, equipment, machinery, bulk materials, scrap, paper, glass, or other such materials. Garbage or other waste shall be kept in trash containers. All containers used for storage or disposal of trash or recyclable materials shall be kept in a clean and sanitary condition and screened from public view. Building materials to be used in the construction of approved structures may be stored on a Building Lot, provided such building materials are incorporated into the approved improvement within ninety (90) days after their delivery to such Building Lot.
  17. No sod, dirt, or gravel, other than incidental to the construction of an approves structure or the normal maintenance of lawn areas, shall be removed from any Building Lot without the written approval of the Architectural Control Committee.
  18. No underbrush or unsightly growth of weeds or other objects of any kind shall be permitted to remain on any Building Lot with the Subdivision. All lawn areas shall be maintained in a neat and orderly manner free of debris and clutter and shall be moved on a regular basis. The Homeowner’s Association may regulate and control the maintenance of lawn areas by publishing rules and regulations as it deems necessary from time to time.
  19. No geothermal or solar heating system shall be installed on any Building Lot or Dwelling Unit without the prior approval of all applicable agencies and the Architectural Control Committee.
  20. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Building Lot, except that guide animals, dogs, cats, or other usual household pets may be kept on a Building Lot, so long as such pets are not kept, bred, or maintained for any commercial purpose. No external cages or kennels shall be permitted. No animal shall be permitted to run loose, become a nuisance to any owner of any Building Lot in the Subdivision or cause unreasonable disturbance or noise. Pets shall not be permitted in any of the open spaces of the Subdivision unless leashed and accompanied by someone who can control the pet. Any Building Lot owner who keeps or maintains any pet within the Subdivision shall be deemed to have indemnified and agreed to hold Developer and the Association harmless from any loss, claim or liability of any kind or character whatsoever arising by reason of keeping or maintaining such pet within the Subdivision. The Homeowners’ Association may regulate and control the maintenance of such household pets by publishing such rules and regulations as it deems necessary from time to time.
  21. No sign or billboard shall be erected or displayed on any Building Lot except (a)one (1) temporary sign of no more than six (6) square feet advertising the property for sale; (b) signs used by Developer, its successors and/or assigns, or a Builder to advertise Building Lots or Dwelling Units for sale during the construction and sales period and (c) street and identification signs installed by Developer or the Association.

* 1. All tanks for the storage of propane gas, fuel, or oil shall be located beneath ground level, except that propane tanks for service to the entire Subdivision, for portable gas grills or, on a temporary basis, for construction of an approved structure may be located above ground.
  2. No well for the production of gas, water or oil, whether intended for temporary or permanent purposes, shall be drilled or maintained on any Building Lot without the written consent of the Architectural Control Committee.
  3. There shall be no production, storage or discharge of hazardous wastes in the Subdivision, or discharges or emissions of liquids, solid wastes, gases or other harmful matter into the ground, atmosphere or anybody or course of water, if such discharge or emission may adversely affect the use or intended use of any portion of the Subdivision or may adversely affect the health, safety or comfort of any person.
  4. No barns or other outbuildings shall be permitted on any Building Lot. Storage sheds that are 200 square feet or less in floor area are permitted as long as the proposed shed is approved by the Architectural Control Committee AND meets the standards as specified by the governing Summit Pointe Board.
  5. No chain link fence shall be permitted on any Building Lot in the Subdivision.
  6. No above ground swimming pool shall be permitted, except that small portable “kiddie” pools are permitted in accordance with guidelines established by the Architectural Control Committee.
  7. No tennis or basketball court shall be permitted on any Building Lot, except that a basketball hoop or goal may be placed on a Building Lot with the prior written consent of the Architectural Control Committee.
  8. No private water supply systems or private sewage disposal systems shall be permitted on any Building Lot in the Subdivision.
  9. No unlawful use shall be made of any portion of the Subdivision. All laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction over any portion of the Subdivision shall be observed and complied with by, and at the expense of, the Building Lot owner.
  10. Invalidation of any of these covenants and restrictions by judgement or court order shall in no way affect any other provision hereof, all of which shall remain in full force and effect.
  11. Upon the violation of any covenant or restriction contained herein or violation of any rule or regulation duly adopted by the Homeowners’ Association, the Homeowners’ Association shall have the power to levy a fine against the owner of the Building Lot in violation, which fine shall also be an Individual Assessment under Article 3.08 hereof. The Homeowners’ Association may also, upon reasonable notice to the Owner, enter upon a Building Lot as to which a violation exists and summarily abate at the expense of the owner the condition that may exist thereon in violation of the covenants and restrictions contained herein and the Homeowners’ Association, its Board or agents, shall not be thereby deemed guilty in any manner of trespass or wrongful act. Developer, the Homeowners’’ Association or any person or persons owning a Building Lot may prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate any covenant or restriction contained herein. The proceeding may seek to prevent such person or persons from violating or continuing to violate the restrictions or to recover damages for such violation together with the costs incurred in enforcement of the restrictions.

**Article 2. Drainage Easement Restrictions**

Detention basin easements in Parcel areas and drainage easements shown on the recorded plat of the Subdivision may include storm water detention or retention areas or other areas designed to direct, detain or retain water. The following covenants and restrictions are for the benefit of all Building Lot owners in the Subdivision and are to run with the land and shall be binding on all parties, on all Building Lot owners, and all persons claiming under them forever, as follows:

2.01 No owner of any Building Lot in the Subdivision shall do or permit to be done any action or activity which would result in (a) the pollution of any retained water, (b) the diversion of water, (c) a change in the elevation of the water level, (d) silting or (e) an adverse effect on water quality, drainage or proper water management, or which would otherwise impair or interfere with the use of such areas for drainage and related purposes for the benefit of all Building Lot owners.

2.02 No boating, fishing, swimming, ice skating or other recreational activity shall be conducted in, on or above said detention basin easement or drainage easement areas.

2.03 The Homeowners’ Association shall have the right to establish rules regarding the use of the detention basin easement and drainage easement areas, provided such rules are not in conflict with any other provision contained herein, and are reasonably established to protect the safety and welfare of the residents of the Subdivision and their guests, or are established to assure the continued service of the areas for the purpose for which they were designed.

2.04 Developer, the Homeowners’ Association or any person or persons owning a Building Lot may prosecute proceedings at law or in equity against any person or persons violating or attempting to violate any of the above covenants and restrictions or seek restraining orders or other mandatory relief for the correction of any interference with or damage to the drainage and detention or retention system, and to recover compensation for any damages incurred by the complaining party together with the costs incurred in enforcement of the restrictions.

**Article 3. Homeowners’’ Association**

3.01 After the recording of this Declaration, Developer shall form and incorporate a homeowners’ association to be known as Summit Pointe Homeowners’’ Association, Inc. (the “Association”) to promote the common interest of all Building Lot owners, to handle maintenance of certain areas within the Subdivision as set forth in this Declaration. The Association shall be comprised of the owners of all the Building Lots in the Subdivision. Developer reserves the right to expand the membership and the duties of the Association to include other lot owners in sections of Summit Pointe to be developed in the future. Attached hereto as Exhibit B is a description of real property which may be developed by the Developer (the “Expansion property”), the lot owners of which may, at the option of Developer, be required to become members of the Association. If the Developer elects to develop all or a portion of the Expansion Property and elects to include the owners of lots in such portion of the Expansion Property as members in the Association and to expand the Association’s responsibilities to include similar duties for such portion of the Expansion property, Developer may do so by filing an amendment to this Declaration to include such portion of the Expansion Property within ten (10) years from the date hereof, explicitly setting forth that the lot owners within such portion of the Expansion Property shall become members of the Association and detailing the additional rights and obligations of the Association.

3.02 The membership of the Association shall at all times consist exclusively of owners of the Building Lots. All owners of Building Lots within the Subdivision, upon acquisition of title to a Building Lot, shall automatically become a member of the Association. Membership shall be appurtenant to and may not be separated from such ownership. Such membership shall terminate upon the sale or other disposition by a member of his ownership of a Building Lot.

3.03 The management and control of the affairs of the Association shall be vested in it is

board of directors (“Board”). The Board shall be composed of three (3) initial members. The three (3) initials members of the board shall be selected by the Developer. The three (3) initial members of the board shall serve until (a) that date which is ninety (90) days after 100% of all Building Lots within the Subdivision and 100% of all lots within the Expansion Property which have been developed and whose owners have been made a part of the Association as set forth above in Article 3.01 have been sold, or (b) Developer elects to turn control of the Association to the Building Lot owners, whichever shall first occur. Upon the incapacity, resignation or death of any initial Board member, a successor, who shall serve the remaining term of the departed Board member, shall be appointed by the remaining members of the Board within three (3) months after the incapacity, resignation or death of the departed Board member. Subsequent Board members shall be elected by a majority of the Building Lot owners as more fully set forth in the Articles of Incorporation and By-Laws of the Association.

3.04 Parcels shown on the recorded play of the Subdivision as open space shall be conveyed to and maintained by the Association. The Association shall have the authority to adopt rules and regulations for the use and occupation of those Parcels and to enforce said regulations.

3.05 The Association, its agents or assigns, shall have the right to enter onto any open space Parcel, public right-of-way or landscape easement area shown on the recorded plat of the Subdivision or other easement area as it from time to time deems necessary for the purpose of maintaining the same. Such maintenance may include, but shall not be limited to:

(a) regular mowing, trimming and fertilizing of grassy areas;

(b) periodic mulching of flower beds within the Subdivision;

(c) regular weeding of flower beds;

(d) flower planting within the Subdivision

(e) maintenance repair or replacement of landscape lighting or street lighting, if , any, and associated electrical service;

(f) construction or repair of any permanent signs;

(g) construction or repair of any stone or brick wall, wing wall or fencing;

(h) treatment of water in any detention or retention areas to limit algae and grassy growth;

(I) maintenance and repair of any fountain;

(j) planting, trimming, pruning, removal and replacement of trees and bushes, as necessary; and

(k) maintenance, repair or replacement of any irrigation equipment.

3.06 There is hereby established for the benefit of the Association and as a charge on each Building Lot an annual “General Assessment” whereby the Association shall be empowered to levy, assess and collect from the owner of each and every Building Lot in the Subdivision, excepting those Building Lots owned by Develop, an amount to be determined as set forth for the purpose of providing funds to carry out the responsibilities and duties of the Association including, but not limited to, (a) the cost of management and operation of the Association; (b) the cost of ownership, operation, maintenance and repair of the open space Parcels, landscape easement areas and any other property owned by the Association; (c) the cost of any insurance required by this Declaration or determined to be in the best interest of the Association; (d) reasonable reserves for contingencies and replacement; (e) administrative, accounting, and legal fees incurred on behalf of the Association; and (f) all other costs and liabilities incurred by Association in the exercise of its power and duties pursuant hereto.

3.07 The annual General Assessment shall be established by a budget adopted by the Board each year in accordance with the By-Laws of the Association. The annual General Assessment shall be allocated equally to each Building Lot. The annual General Assessment as to each Building Lot shall be effective on the first day of the Association’s fiscal year. The initial General Assessment as to each Building Lot shall commence on the first day of the month following the earlier of (a) its conveyance to an owner other than a Builder or (b) occupation of the Dwelling Unit thereon. The initial General Assessment as to each Building Lot shall be prorated on a monthly basis to the end of the Association’s fiscal year, and shall be collected at closing of the conveyance of the Building Lot from Builder. The General Assessment shall be payable on the fifteenth (15th) day of the first (1st) month of each fiscal year. The Association may adopt such billing, collection and payment procedures from time to time as it deems appropriate. Beginning with the recording of this Declaration and until December 31, 2002, the maximum annual General Assessment as to each Building Lot shall be Two Hundred Fifty Dollars ($250.00) Beginning with the annual General Assessment levied and effective as of January 1, 2003, and annually thereafter, the Board may increase or decrease the General Assessment as to each Building Lot in accordance with the budget adopted without a vote of the owners of the Building Lots, provided that, if the annual General Assessment is increased by more than the percentage increase in the Consumer Price Index of the U.S. Bureau of Labor Statistics, United States City Average – All items over the twelve (12) month period ending on the last day of the month preceding the effective date of the annual General Assessment increase (the “CPI Increase”), then, within thirty (30) days of notice of such increase, members of the Association holding ten percent (10%) or more of the voting power of the Association may petition the Board for a special meeting of the Association to reconsider such increase. At such meeting, members, in person or by proxy, exercising more than fifty percent (50%) of the voting power of the Association may vote to reduce the increased General Assessment to any amount therein proposed, but not lower than the previous year’s amount increased by the CPI Increase.

3.08 The Association, upon the affirmative vote of two-thirds (2/3) of all members of the Board, may also assess an individual Building Lot owner (“Individual Assessment”) for (a) any charges or fines imposed or levied in accordance with Article 1.32, (b) any cost incurred for maintenance or repair caused through willful or negligent act of the owner of a Building Lot or other occupant of, or guest or invitee in, the Dwelling Unit on said Building Lot, including attorney fees, court costs and other expenses incurred or (c) any costs associated with the enforcement of this Declaration or rules and regulations of the Association with respect to any owner of a Building Lot or other occupant of, or guest or invitee in, Dwelling Unit on said Building Lot. Any Individual Assessment shall be in addition to the General Assessment as to such Building Lot.

3.09 Any amount assessed or levied hereunder by the Association against a Building Lot owner shall become a lien on each Building Lot until paid and shall bear interest at the rate of ten percent (10%) per annum until paid, beginning thirty (30) days after the date of assessment. In the event any amount so assessed or levied is not paid when due and remains in arrears for more than sixty (60) days, the Association may file with the Warren County Recorder a Notice of Lien. The Notice of Lien shall contain a description of the Building Lot against which the lien exists, the name or names of the record owner or owners thereof, and amount of the unpaid portion of the assessment or assessments. The lien provided for herein shall remain valid for a period of five (5) years from the date a Notice of Lien is dully filed, unless sooner released or satisfied in the same manner provided for by the law in the State of Ohio for the release and satisfaction of mortgages on real property or until discharged by the final judgement or order of the Court in an action brought to discharge a lien. The lien shall secure not only the amount of the unpaid assessments but also the costs incurred in collection, including, but not limited to, interest, attorney’s fees and court costs. The lien of the assessment provided for herein shall be subject and subordinate to the lien of any duly executed mortgage on any Building Lot recorded prior to the recording of the Notice of Lien. The holder of any such mortgage which comes into possession of a Building Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure shall take the Building Lot free of claims for unpaid installments of assessments or charges against the Building Lot which become due and payable prior to the time such holder or purchaser takes title to the Building Lot.

3.10 The Association, through the Board, shall have the authority to and shall obtain such insurance as it may deem necessary to protect the property owned by the Association, the members of the Association, the Association and the Board and officers of the Association.

3.11 At such time as control of the Association is transferred to the Building Lot owners, Developer may reserve the exclusive right to approve the plot plan, construction plans, color scheme and landscape plan associated with any structure on any Building Lot on which a Dwelling Unit has not yet been completed and occupied, so long as Developer clearly identifies the Building Lots for which it is retaining such right at the time of the turnover. Developer shall maintain said right of approval for each Building Lot until such time as a Dwelling Unit has been completed on that Building Lot and occupied by the homebuyer.

**Article 4. Architectural Control Committee**

An Architectural Control Committee (the “Committee”) is hereby established as a standing committee of the Association to carry out the functions set forth for it in this Declaration. The Committee’s procedures and duties shall be as follows:

4.01 The Committee shall be composed of three (3) members. The Developer shall appoint each of the three (3) initial members of the Committee.

4.02 The three (3) initial members of the Committee shall serve until such time as the Developer turns over control of the Association to the Building Lot owners as set forth in Article 3.03 hereof. Any subsequent members shall be appointed by the Association and shall serve for terms of three (3) years, except that the first appointed members of the Committee shall serve for staggered terms of one (1), two (2) and three (3) years as directed by the Board. All members of said Committee shall serve until the expiration of their terms or until their incapacity, resignation or death. Upon the incapacity, resignation or death of a member of the Committee, a successor, who shall serve the remaining term of the departed Committee member, shall be appointed by the Board within three (3) months after the incapacity, death or resignation of the departed member.

4.03 The use restrictions require the submission of detailed plans and specifications to the Committee prior to the erection of, placement on, or alteration of any structure or improvement on any Building Lot. The intent is to achieve an architecturally harmonious, artistic and desirable residential subdivision. Therefore, while considering the approval or disapproval of any plans and specifications submitted, the Committee is directed to consider the appropriateness of the improvement contemplated in relation to the improvements on contiguous or adjacent lots, the artistic and architectural merits of the proposed improvement, the adaptability of the proposed improvement to the Building Lot on which it is proposed to be made, and such other matters as may be deemed by the Committee members to be in the interest and benefit of the owners of the Building Lots in the Subdivision as a whole.

4.04 To assist it in making its determinations, the Committee may require that any plans and specifications submitted to the Committee be prepared by a registered architect or civil engineer. The Committee shall also have the right to require any other reasonable data including, but not limited to, grading or elevation plans, material lists, landscape plans and color scheme designations.

4.05 The Committee’s decisions shall be in writing and shall be binding upon all parties in interest. The Committee shall approve, disapprove or request additional information with respect to any request for approval within thirty (30) days after the request shall have been submitted to the Committee for approval. The failure of the Committee to approve, disapprove or request additional information within said time period shall be deemed an approval of any request.

4.06 If, in the opinion of the Committee, the enforcement of these restrictions would constitute a hardship due to the shape, dimension or topography of a particular Building Lot in the Subdivision, the Committee may permit a variation which will, in its judgment, be in keeping with the maintenance of the standards of the Subdivision.

**Article 5. Other Conditions**

5.01 All transfers and conveyances of each and every Building Lot in the Subdivision shall be made subject to these covenants and restrictions.

5.02 Any failure to enforce these restrictions shall not be deemed a waiver thereof or an acquiescence in, or consent to, any continuing, further or succeeding violation hereof.

5.03 If any covenant, condition or restriction hereinabove contained, or any portion thereof, is invalid, such invalidity shall in no way affect any other covenant, condition, or restriction.

5.04 All costs of litigation and attorney’s fees resulting from violation of this Declaration shall be the financial responsibility of the Building Lot owner or owners found to be in violation.

5.05 So long as Developer maintains control of the Association as set forth in Article 3 hereof, Developer reserves the right to amend this Declaration to the extent necessary (a) to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution (including, but not limited to, the U.S. Department of Housing and Urban Development, the U.S. Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar entity): (b) for the purpose of eliminating or correcting any typographical or other inadvertent error herein; (c) eliminating or resolving any ambiguity herein; or (d) clarifying Developer’s original intent, all without the approval of the Building Lot owners. Each Building Lot owner, by the acceptance of a deed to a Building Lot within the Subdivision, consents to this reserved right.

5.06 Except as provided in Article 5.05 hereof, this Declaration may be amended only by a recorded instrument executed by the proper officers of the Association and approved by the owners of seventy-five (75%) of the Building Lots in the Subdivision.

5.07 Only the Building Lots contained in the Subdivision shall be subject to and bound by the restrictions, covenants and conditions set out in this Declaration and none of said provisions shall in any manner affect or be operative in respect to any other land of the owner or its successors or assigns.

**IN WITNESS WHEREOF**, Summit Pointe Homeowners Association has caused this instrument to be executed by its duly authorized representative this \_\_\_\_\_\_\_ day of October, 2016.

Signed and acknowledged Summit Pointe Homeowners Association, Inc., an Ohio

In the presence of: not-for-profit company

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Gloria Jane Cook

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ President/ Summit Pointe Homeowners Association

STATE OF OHIO )

) SS:

COUNTY OF WARREN )

The foregoing instrument was acknowledged before me this \_\_\_\_\_\_\_ day of October, 2016, by Gloria Jane Cook, President/Summit Pointe Homeowners Association, on behalf of the company.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

**AMENDMENT TO**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR SUMMIT POINTE**

**TO PROVIDE FOR THE ADDITION OF**

**SUMMIT POINTE, SECTION 2**

The undersigned SUMMIT POINTE INVESTORS, LLC an Ohio limited liability company

(“Developer”), was the developer of a certain residential development in Clearcreek township, Warren County, Ohio, known as Summit Pointe, Section 1 as delineated on a plat thereof recorded in Platt Book 55, Pages 59 and 60 of the plat records of Warren County, Ohio (“development”).

WHEREAS, Developer imposed certain restrictions, covenants and conditions upon the Development pursuant to the terms and conditions of a certain Declaration of Covenants, Conditions and Restrictions for Summit Pointe dated November 16, 2001 (the “Declaration”), which Declaration was recorded I Official Record Volume 2353, Page 887 of the Warren County, Ohio records.

WHEREAS, Developer, pursuant to Article 3.01 of the Declaration, retained the right to add additional real estate to the Development out of the Expansion Property as described in Exhibit B of the Declaration.

WHEREAS, Developer is developing Summit Pointe, Section 2, a subdivision in Clearcreek Township, Warren County, Ohio consisting of lots 39 through 75, inclusive (the “Subdivision”) which is contiguous to the Development and which is a part of the Expansion Property described in the Declaration.

WHEREAS, the real estate upon which the Subdivision is being developed is described in Exhibit A attached hereto.

WHEREAS, Developer desires to amend the Declaration to add the Subdivision to the Development and to subject the Subdivision to the terms, conditions and restrictions contained in the original Declaration.

NOW, THEREFORE, the undersigned states as follows:

Developer hereby subjects the Subdivision to, and imposes upon the Subdivision, all of the restrictions, covenants and conditions and benefits contained in the Declaration as if the Subdivision had been included in the Declaration and described in Exhibit A of the Declaration. All owners of Building Lots within the Subdivision shall become members of the Homeowners Association created pursuant to Article 3 of the Declaration.

**EXHIBIT A**

**Legal Description**

**Page 1 of 3**

LEGAL DESCRIPTION OF SUMMIT POINTE SECTION 2

Situate in Section 33, Town 3, Range 5, B.T.M., Clearcreek Township, Warren County, Ohio, lying within the remaining 28.4170 acres of the original 49.6788 acre tract as conveyed to Summit Pointe Investors, LLC by deed filed in the office of the Warren County, Ohio Recorder in O.R. Volume 2142 at Page 388, etc. which is shown on a plat of survey filed in the Warren County Engineer’s Record of Land Division in S.R. Volume 113 at Plat No. 13 and being more particularly described as follows:

Beginning in the centerline of Bunnell Hill Road, on the westerly line of said Section 33, at the northwest corner of Summit Pointe Subdivision Section 1, the record plat of which is filed in the office of said Recorder in Plat Book 55 at Pages 59 through 61, said beginning being N 04’ 56’ 51’ E, distant 1028.96’, as measured along said centerline and said section line, from a found railroad spike at the intersection of the centerlines of said Bunnell Hill Road and Lytle-Five Points Road, marking the southwest corner of said Section 33; thence from said beginning, continuing with the meridian of said S.R. Volume 113, Plat No. 13:

1. Leaving the lines of said Summit Pointe Subdivision Section 1, with the exterior

boundaries of said 28.4170 acre tract, the centerline of said Bunnell Hill Road and

the westerly line of said Section 33, N 04’ 56’ 51’ E, 79.96’ to a set mag nail; thence,

1. Leaving said section line, continuing with the centerline of said Bunnell Hill Road

and along the exterior boundaries of said 28.4170 acre tract, along the arc of a

tangent curve to the right, having a radius of 200.00’, an arc length of 300.91’, the

chord of which bears N 48’ 03’ 00” E, distant 273.32’ to a set mag nail: thence,

1. Continuing along said centerline and the exterior boundaries of said 28.4170 acre

Tract, tangent to said curve, S 88’ 50’ 52” E, 241.72’ to a found ¾” iron pin; thence,

1. Leaving said centerline, continuing with the northerly line of said 28.4170 acre tract,

S 84’ 29’ 02” E, 375.33’; thence, leaving said northerly line, through said 28.4170

Acre tract, by new division lines for the following 13 courses:

1. S 05’ 30’ 58” W, 130.00”; thence,
2. S 84’ 29’ 02” E, 40.72’: thence,
3. S 05’ 30’ 58” W, 160.00’: thence,
4. S 84’ 29’ 02” E, 480.00’; thence,
5. S 05’ 30’ 58” W, 160.00’; thence,
6. N 84’ 29’ 02 W, 15.30’; thence,
7. S 05 30’ 58 W, 210.00’; thence,
8. S 52 00’ 46” E, 65.19’; thence,
9. S 05’ 30’ 58’ W, 45.00’; thence,
10. N 84’ 29 02” W, 80.00’; thence,
11. S 05’ 30’ 58” W, 168.30’; thence,
12. Along the arc of a non-tangent curve to the left, having a radius of 34.50’, an arc

length of 15.22’, the chord of which bears N 71’ 50 50” W, distant 15.09’; thence,

1. Tangent to said curve, N 84’ 29 02 W, 55.77’ to the southeast corner of the right-

of-way of Hillcrest Drive of said Summit Pointe Subdivision Section I, as shown on

said Plat Book 55, Pages 59 through 61; thence with the exterior lines of said

Summit Pointe Subdivision Section 1 for the following 19 courses:

1. N 05’ 30’ 58” E, 30.00’; thence,
2. Along the arc of a non-tangent curve to the right, having a radius of 34.50’, an arc

Length of 54.19’, the chord of which bears N 39’ 29’ 02” W, distant 48.79’; thence,

1. Radial to said curve, N 84’ 29 02 W, 30.00’; thence,
2. Along the arc of a non-tangent curve to the right, having a radius of 34.50’, an arc

length of 54.19’, the chord of which bears S 50’ 30’ 58 W, distant 48.79’; thence,

1. Tangent to said curve, N 84 29 02” W, 65.50’; thence,
2. N 05’ 30’ 58” E, 135.00’; thence,
3. N 84’ 29’ 02” W, 30.00’; thence,
4. N 05’ 30’ 58” E, 160.00’; thence,
5. N 84’ 29’ 02” W, 180.00’; thence,

1. S 05’ 30’ 58” W, 5.00’; thence,
2. N 84’ 29’ 02 W, 273.12’; thence,
3. Along the arc of a non-tangent curve to the right, having a radius of 185.00’, an arc

length of 50.28’, the chord of which bears N 28 58’ 59” E, distant 50.13’; thence,

1. Radial to said curve, N 53’ 13 49” W, 197.28’; thence,
2. S 47 48’ 03” W, 27.04’; thence,
3. N 72’06” 26” W, 130.02’; thence,
4. Along the arc of a non-tangent curve to the right, having a radius of 160.00’, an arc

length of 34.01’, the chord of which bears N 22’ 42’ 51” E, distant 33.95’; thence,

1. radial to said curve, N 61’ 11’ 44” W, 30.00’; thence,

35) N 60’ 28’ 05” W, 209.70’; thence,

36) N 85’ 03’ 09” W, 59.69’ to the place of beginning, containing 13.5098 acres of land,

more or less.

Subject to all legal highways, easements and restrictions of record.

Prior Deed: O.R. Volume 2142, Page 388, etc.

The above legal description was prepared by Steven R Pennington of Henderson and Bodwell, L.L.P. Consulting Engineers, Ohio Registered Surveyor No. S-7215.

**AMENDMENT TO**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR SUMMIT POINTE**

**TO PROVIDE FOR THE ADDITION OF**

**SUMMIT POINTE, SECTION 3**

The undersigned SUMMIT POINTE INVESTORS, LLC an Ohio limited liability company

(“Developer”), was the developer of a certain residential development in Clearcreek township, Warren County, Ohio, known as Summit Pointe, Section 1 as delineated on a plat thereof recorded in Platt Book 55, Pages 59 and 60 of the plat records of Warren County, Ohio and Summit Pointe, Section 2 as delineated on a plat thereof recorded in Plat Book 59, Pages 95, 96 and 97 of the plat records of Warren County, Ohio (collectively the “Development”).

WHEREAS, Developer imposed certain restrictions, covenants and conditions upon the Development pursuant to the terms and conditions of a certain Declaration of Covenants, Conditions and Restrictions for Summit Pointe dated November 16, 2001 recorded in Official Record Volume 2353, Page 887 of the Warren County, Ohio records and amended by the Amendment to Declaration of Covenants, Conditions and Restrictions for Summit Pointe to Provide for the Addition of Summit Pointe, Section 2 dated December 6, 2002 recorded in the Official record Volume 2819, Page 923 of the Warren County, Ohio records (said Declaration as amended being hereinafter referred to as the “Declaration”).

WHEREAS, Developer, pursuant to Article 3.01 of the Declaration, retained the right to add additional real estate to the Development out of the Expansion Property as described in Exhibit B of the Declaration.

WHEREAS, Developer is developing Summit Pointe, Section 3, a subdivision in Clearcreek Township, Warren County, Ohio consisting of lots 76 through 112, inclusive (the “Subdivision”) which is contiguous to the Development and which is a part of the Expansion Property described in the Declaration.

WHEREAS, the real estate upon which the Subdivision is being developed is described in Exhibit A attached hereto.

WHEREAS, Developer desires to amend the Declaration to add the Subdivision to the Development and to subject the Subdivision to the terms, conditions and restrictions contained in the original Declaration.

NOW, THEREFORE, the undersigned states as follows:

Developer hereby subjects the Subdivision to, and imposes upon the Subdivision, all of the restrictions, covenants and conditions and benefits contained in the Declaration as if the Subdivision had been included in the Declaration and described in Exhibit A of the Declaration. All owners of Building Lots within the Subdivision shall become members of the Homeowners Association created pursuant to Article 3 of the Declaration.

**EXHIBIT A**

**Legal Description**

**HENDERSON AND BODWELL, L.L.P.**

**January 7, 2003 CRD-3 SP**

LEGAL DESCRIPTION OF SUMMIT POINTE SECTION 3

Situate in Section 33, Town 3, Range 5, B.T.M., Clearcreek Township, Warren County, Ohio, being the remaining 14.9072 acres of the original 49.6788 acre tract as conveyed to Summit Pointe Investors, LLC by deed filed in the office of the Warren County, Ohio Recorder in O.R. Volume 2142 at Page 388, etc. which is shown on a plat of survey filed in the Warren County Engineer’s Record of Land Division in S.R. Volume 113 at Plat No. 13 and being more particularly described as follows:

Beginning on the southerly line of said Section 33, in the centerline of Lytle-Five Points road at the southeast corner of Summit Pointe Subdivision Section 1, the record plat of which is filed in the office of said recorder in Plat Book 55 at ages 59 through 61, said beginning being S 84’ 24’ 47” E, distant 1145.21’. as measured along said section line and said centerline, from a found railroad spike at the intersection of the centerlines of said Lytle-Five Points road and Bunnell Hill Road, marking the southwest corner of said Section 33; thence from said beginning, running with the meridian of said S.R. Volume 113, Plat No. 13 and along the exterior boundary lines of said Summit Pointe Subdivision Section 1, for the following three courses;

1) Leaving said section line and said centerline, N 05’ 35’ 13” E, 85.08’; thence,

2) N 05’ 30’ 58” E, 340.00’; thence,

3) S 84’ 29’ 02” E, (passing the southernmost common corner of said Summit Pointe

Subdivision Section 1 and Summit Pointe Section 2, the record plat of which is filed in

the office of said Recorder in Plat Book 59 at Pages 95 through 97 at 54.73’) a total

distance of 110.50’; thence continuing with the exterior boundary lines of said Summit

Pointe Subdivision Section 2 for the following twelve courses:

4) Along the arc of a tangent curve to the right, having a radius of 34.50’, an arc length

of 15.22’, the chord of which bears S 71’ 50’ 50” E, distant 15.09’; thence,

5) N 05’ 30’ 58” E, 168.30’; thence,

6) S 84’ 29’ 02” E, 80.00’; thence,

7) N 05’ 30’ 58” E, 45.00’; thence,

8) N 52’ 00’ 46” W, 65.19’; thence,

9) N 05’ 30’ 58” E, 210.00’; thence,

10) S 84’ 29’ 02” E, 15.30’; thence,

11) N 05’ 30’ 58” E, 160.00’; thence,

12) Leaving the lines of said 1.4855 acre tract, with the northerly line of said 0.9642 acre

tract, N 84’ 24’ 47” W, 200.00’ to a set ½” iron in with cap marking the northwest

corner of said 0.9642 acre tract; thence,

13) With the westerly line of said 0.9642 acre tract, S 05 35’ 13” W, (passing a set ½” iron pin

with cap at 180.00) a total distance of 210.00’ to a set P.K. nail in the centerline of said

Lytle-Five Points road, on the southerly line of said Section 33, marking the southwest

corner of said 0.9642 acre tract: thence,

14) Leaving the lines of said 0.9642 acre tract, with said centerline and said section line, N 84’

24’ 47” W, 359.78 to the place of beginning, containing 14.9072 acres of land, more or

less.

Subject to all legal highways, easements and restrictions of record.

Prior Deed: O.R. Volume 2142, Page 388, etc.

The above legal description was prepared by Steven R Pennington of Henderson and Bodwell, L.L.P. Consulting Engineers, Ohio Registered Surveyor No. S-7215.

**THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS**

**AND RESTRICTIONS FOR SUMMIT POINTE TO PROVIDE FOR STORAGE SHEDS**

WHEREAS, Summit Pointe Homeowners Association, Inc., an Ohio not for profit corporation (the “association”) acting pursuant to Ohio revised code Section 1702.01 et seq., Ohio Revised Code Section 5312.01 et seq., and pursuant to the Declaration of Covenants, Conditions and Restrictions for Summit Pointe dated November 16, 2001 and recorded in Book 2353 Page 887 of the Warren County recorder’s Office engages in activities to benefit the Association and its members;

WHEREAS, the Association, pursuant to the Amendment To Declaration of Covenants, Conditions and Restrictions For Summit Pointe To Provide For The Addition Of Summit Pointe, Section 2 dated December 6, 2002 and recorded in Book 2819 Page 923 of the Warren County Recorder’s Office engages in activities to benefit the Association and its members;

WHEREAS, the Association, pursuant to the Second Amendment To Declaration of Covenants, Conditions and Restrictions For Summit Pointe To Provide For The Addition Of Summit Pointe, Section 3 dated September 1, 2004 and recorded in Book 3646 Page 88 of the Warren County Recorder’s Office engages in activities to benefit the Association and its members;

WHEREAS, the Association, pursuant to Ohio Revised Code Section 5312.05(A) and Article 5 Section 5.06 of said Declaration of Covenants, Conditions and restrictions for Summit Pointe may amend said Declaration of Covenants, Conditions and restrictions for Summit Pointe with the consent and approval by the owners of seventy-five percent (75%) or more of the Building Lots of the Subdivision;

WHEREAS, the Association through its duly elected officers and having obtained the consent and approval in writing or in a meeting duly called for said purpose by the owners of seventy-five percent (75%) or more of the Building Lots of the Subdivision hereby amends Article 1, Section 1.25 of said Declaration of Covenants, Conditions and Restrictions for Summit Pointe dated November 16, 2001 and recorded in Book 2353 Page 887 of the Warren County Recorder’s Office to read as follows in its entirety:

“1.25 No barns or other outbuildings shall be permitted on any Building Lot. Storage sheds that are 200 square feet or less in floor area are permitted as long as the proposed shed is approved by the Architectural Control Committee AND meets the standards as specified by the governing Summit Pointe Board.”

WHEREAS, all of the other terms and provisions of the Declaration of Covenants, Conditions and Restrictions for Summit Pointe dated November 16, 2001 ad recorded in Book 2353 Page 887 of the Warren County Recorder’s Office, the Amendment to Declaration of Covenants, Conditions and Restrictions For Summit Pointe To Provide For The Addition of Summit Pointe, Section 2, dated December 6, 2002 ad recorded in Book 2819 Page 923 of the Warren County Recorder’s Office, and, the Second Amendment to the Declaration of Covenants, Conditions and Restrictions For Summit Pointe To Provide For The Addition Of Summit Pointe Section3 dated September 1, 2004 and recorded in Book 3646 Page 88 of the Warren County Recorder’s Office shall remain in full force and effect.

WHEREAS, the Association, pursuant to Ohio Revised Code Section 5312.05(A) and Article 5, Section 5.06 hereby records this “Third Amendment To Declaration of Covenants, Conditions And Restrictions For Summit Pointe To Provide For Storage Sheds on all lots, Parcels, and Common Areas as contained in the following legal description:

1. “Summit Pointe Section 1” as more fully described at Book 2353 Page 899 of the records

of the Warren County Recorder’s Office with a Legal Description of Summit Pointe

Section 1 attached hereto as Exhibit 1.

2. “Summit Pointe Section 2” as more fully described at Book 2819 Page 925 of the records

of the Warren County Recorder’s Office with a Legal Description of Summit Pointe

Section 1 attached hereto as Exhibit 2.

3. “Summit Pointe Section 3” as more fully described at Book 3646 Page 90 of the records

of the Warren County Recorder’s Office with a Legal Description of Summit Pointe

Section 1 attached hereto as Exhibit 3.

**EXHIBIT J**

**GUIDELINES FOR ARCHITECTURAL APPROVAL**

**SUMMIT POINTE SUBDIVISION**

1. Any fence, porch, deck, structure, driveway, swimming pool, mailbox, light pole or fixture, basketball goal, satellite dish, landscaping or exterior modification to the original dwelling constructed on any lot in Summit Pointe must receive written approval from the Architectural Control Committee (“ACC”) prior to construction or installation. This includes changes in color.
2. All requests for approval shall be made in writing and shall include:

* Plot plan of lot showing location of improvement
* Elevation – side view or picture of proposed improvement with dimensions shown thereon
* Materials list
* Finished color plan of improvement

1. All front, side and rear yards to five (5) feet from the rear of the houses shall be sodded, and any unsodded rear areas shall be seeded, prior to a Builder’s closing with a homebuyer, unless the weather is prohibitive, in which case the lawn areas shall be sodded and seeded in accordance herewith as soon as the weather permits.
2. Fences are to be erected in the rear yard only and are to extend from the back corners of the home, unless specifically excepted by the ACC:

* Examples of acceptable fence styles are split rail and picket.
* Split rail and picket fences are not to exceed 48” in height. Spacing between pickets to be no less than one-half the width of the face of the pickets.
* An approved wire mesh may be attached to a split rail fence for additional enclosure.
* 6’ shadow box fences may be approved if installed immediately around an in-ground pool or deck near the house. Privacy fences are not to be used for perimeter fencing.
* Fences must be built of decay resistant wood materials or other materials approved by the ACC. No chain link fences are allowed.
* Invisible pet fences shall be allowed.
* Fences must be maintained at all times.

1. No outside antennas or radio, television or microwave towers are permitted. No satellite dish larger than twenty inches (20”) in diameter shall be erected or maintained on any Building Lot or Dwelling Unit:

* An approved satellite dish must be located in the rear yard or on the rear of the Dwelling Unit in such a manner so as not to be visible by a person standing at the edge of the street directly in front of the Dwelling Unit. Other placements approved by the ACC are permitted if placement under these guidelines precludes reception of a signal that is (i) of the quality intended for reception in the viewing area and (ii) consistent with the quality of signals received by others in the immediate vicinity.
* The ACC may prohibit a location that imposes a legitimate safety concern.
* The ACC may require that the satellite dish be painted in a fashion that will not interfere with reception so that it blends into the background against which it is mounted or that the satellite dish be screened so as to reduce the visual impact.
* Each owner shall maintain the satellite dish in a reasonable manner so as not to become unsightly.
* Each owner shall remove any satellite dish on cessation of its use.

1. No basketball hoop or goal may be placed on any Lot, regardless of location, until its specifications and location have been approved by the ACC:

* No home-made backboards or posts are permitted.
* Backboards and posts shall be painted in subdued colors so as to blend in with the surroundings as much as possible.
* No basketball goal shall be permitted in the front yard of any Building Lot.
* No basketball goal may be attached to any Dwelling Unit or garage.
* All goals must be located at least 10 feet (10’) back from any property line.
* Portable basketball goals may be located on a driveway for the period of its current use.
* No portable goal shall be located in any street within the Subdivision.
* Portable goals must be put away after use. Any portable goal left out overnight shall be considered in violation of these guidelines.
* Any lighting for a basketball goal must be directed away from neighboring Dwelling Unit or patio or deck areas.
* Basketball hoops and goals must be maintained at all times.
* Use shall be limited to reasonable play hours, but not before 9:00 a.m. or after 9:00 p.m., provided that the ACC has the right to amend these hours in the event that use creates an unreasonable disturbance.

1. Small portable “kiddie” pools shall be permitted only in rear yards behind the Dwelling Unit so as not to be visible by a person standing at the edge of the street directly in front of the Dwelling Unit so long as said pool is not in place for more than seventy-two (72) consecutive hours.
2. No metal or fiberglass awnings or patio covers are permitted. Canvas awnings may be used subject to prior ACC approval of size, color, location and manner of installation.