

# BOARD OF ZONING APPEALS AGENDA



**Board of Zoning Appeals Meeting  
6:00 PM Monday, August 17, 2015**

**Village Administration Building  
99 High Street  
South Lebanon, Ohio 45065**

	Agenda Item
1.	<b>Call to Order</b>
2.	<b>Roll Call</b>
3.	<b>Pledge of Allegiance</b>
4.	<b>Open Forum</b>
5.	<b>Review and Approval of Minutes</b> A. Minutes of June 30, 2015 B. Minutes of July 8, 2015
6.	<b>Public Hearing</b> A. Open Public Hearing B. Case 2015-04BZA – Request for a Variance to the Rear Yard Setback for a Property at 676 Fredericks Pass, Lot 21, Fredericks Stand Subdivision C. Close Public Hearing
7.	<b>Old Business - None</b>
8.	<b>New Business</b> A. Case 2015-04BZA – Request for a Variance to the Rear Yard Setback for a Property at 676 Fredericks Pass, Lot 21, Fredericks Stand Subdivision
9.	<b>Communications</b>
10.	<b>Adjournment</b>

Members of the public may address the Planning Commission during the Open Forum segment of the agenda and shall be limited to five minutes each. After the speaker concludes remarks, the Planning Commission may comment or ask questions at that time. The Chairperson may at his or her discretion restrict duplicate testimony on a particular subject.



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Village of South Lebanon  
99 N. High Street, South Lebanon, Ohio 45065  
513-494-2296 fax: 513-494-1656  
[www.southlebanonohio.org](http://www.southlebanonohio.org)

**BOARD OF ZONING APPEALS  
MEETING MINUTES  
June 30, 2015  
6:00 p.m.**

Members:

Randall Atkins, Chairman  
Dennis Rahe  
Larry Sargeant  
Bill Pollack

Staff:

Jerry Haddix, Zoning Administrator

1. Call to order at 6:00 p.m.
2. Roll Call. Bill Pollack was absent; all others were present
3. Pledge of Allegiance
4. Open Forum – Nobody present to speak
5. Chairman Atkins requested a motion to continue Case 2015-03BZA – Request for a Conditional Use Permit for property at 350 King Avenue. Larry Sargeant made the motion, Dennis Rahe seconded. All yeas.

Larry Sargeant made the motion to continue the hearing until Wednesday, July 8, 2015, at 6:00 p.m.; Dennis Rahe seconded. All yeas.

6. **Old Business : none**
7. **Communications:** none
8. **Adjournment:**

Mr. Atkins asked for a motion to adjourn. Larry Sargeant made the motion, Dennis Rahe seconded. All yeas.

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Randall Atkins – Chairman

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– Secretary



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**BOARD OF ZONING APPEALS  
MEETING MINUTES**

July 8, 2015  
6:00 p.m.

Members:

Randall Atkins, Chairman  
Dennis Rahe  
Bill Pollack  
Larry Sargeant  
Bob Organ

Staff:

Jerry Haddix, Zoning Administrator  
Mickey Dillon, Clerk

1. Call to order at 6:00 p.m.
2. Roll Call. Larry Sargeant was absent; all others were present
3. Pledge of Allegiance
4. Open Forum – Nobody present to speak
5. Chairman Atkins requested a motion to approve the minutes from the BZA meeting held on May 6, 2015. Motion to approve was made by Bill Pollack, seconded by Dennis Rahe, 2 yeas. (Mr. Organ was not present for meeting of May 6, so he did not vote)
6. **Public Hearing:** Chairman Atkins opened the floor for the public hearing at 6:10 p.m.

**Case 2015-03BZA- Request for a Conditional Use permit for property at 350 King Ave**  
Mr. Atkins asked the Secretary to supply responses to the following questions on the record:

- i) Which newspaper(s) were used to publish notice of this hearing: Cincinnati Enquirer
- ii) Whether the newspaper(s) provided the BZA with an affidavit of proof of publication: YES
- iii) The date the affidavit indicates notice was published: June 20, 2015

- iv) The content of the publication by reading the publication: read Legal Notice  
Date written notice of this hearing was mailed by First Class Mail: June 23, 2015
- v) Content of written notice to the applicant by reading notice: Same as Legal Notice

Chairman Atkins stated that BZA will hear from the Zoning Administrator. He asked the Zoning Administrator to come forward to the microphone, raise his right hand and be administered the oath:

DO YOU SOLEMNLY SWEAR OR AFFIRM UNDER OATH, TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH SO HELP YOU GOD, AND THIS YOU SHALL ALSO DO SUBJECT TO THE PENALTIES OF PERJURY OF THE STATE OF OHIO. IF SO, ANSWER "I DO"

Chairman Atkins then asked Zoning Administrator to provide BZA with testimony as to the following:

- i) The date the application was filed: June 2, 2015
- ii) The identity of applicant: Grant Toney
- iii) The identity of the owner, if different than the applicant, and the authority of the applicant to act on the owner's behalf: Amberley Browning and Angela Pope, the applicant and Kimberly Larios assumed the land contract on the property on February 3, 2015;
- iv) The property location, Parcel # and any other identification of the site for which a conditional use has been applied for: the address is 350 King Ave., 2 parcels, 13311560192 (4.286 ac.) and 13311560191 (4.518 ac.):
- v) The size of the site: total size is 5.8 acres
- vi) The site's current zoning designated on the official Zoning Map: Residential Flood Plain
- vii) The existing land use of the site and any relevant background: currently vacant, prior use as a salvage yard and towing business
- viii) Each document that has been filed by the applicant: application, fee, site plan, aerial map, land contract assumption agreement, description of proposed activities on site and list of surrounding mailing labels
- ix) What explanation do the documents provide for why applicant is seeking conditional use: site plan shows layout of the proposed site, mulch, soil, gravel.
- x) Whether the applicant has complied with the application requirements in Section 15.6.8 of the Zoning Regulations: YES
- xi) Any recommended conditions and safeguards, if any, to insure that the objectives of the Zoning Regulations will be met if the BZA decides to grant the conditional use application: evidence of egress and ingress, no additional construction, only permitted uses allowed, and limiting noise and any other environmental conditions;
- xii) Does the applicant or applicant's attorney have any questions for the Zoning Administrator: No

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7. This hearing must be conducted as a quasi-judicial administrative hearing. The order and rules for the hearing were read by Chairman Atkins.

Pursuant to Section 15.6.9, in addition to the specific requirements for conditionally permitted uses as specified in Articles 9, the Board shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

1. Is in fact a conditional use as established under the provisions of Article 9 and appears on the Schedule of District Regulations adopted for the zoning district involved;
2. Will be in accordance with the general objectives, or with any specific objective, of the Village comprehensive plan and the zoning regulation;
3. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearances with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
4. Will not be hazardous or disturbing to existing or future neighboring uses;
5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
6. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
7. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke fumes, glare, or odors;
8. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;
9. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

Mr. Atkins then asked if there were any persons to testify and if so, to raise their right hand and be sworn in. He then administered the oath to all.

Mr. Atkins asked that the applicant or applicants attorney to come forward and present their case. Witnesses for the applicant were instructed to give their name, address and affirm that they have been sworn in.

The Applicant's representative, Grant Toney, testified as to the request for conditional use. Mr. Atkins then asked for any proponents for the applicant to come forward. Mr. Andrew Bardos came forward. He states he owns Bardos Landscaping & Lawn Care. He would like the use of the facility to the nursery business and landscaping business so that they can run that operation. He states he wants to be a good neighbor, doesn't want to create any problems and wants to keep normal daytime operating hours. He states they would be

growing nursery stock, do landscaping in residential areas, and would like to use this property for that purpose. He states he does not want to be creating noise or disturbance to anyone. Mr. Atkins asked if there were any cross examination questions for this witness. The answer was No.

Mr. Atkins then asked if there were any opponents to testify to the application for conditional use. Mr. John Spicer stepped up to the microphone. He states the applicant will be using fertilizer, and all the run-off will run into their lake in the back. Mr. Spicer said there had already been an incident of spillage from another person who tried to use the property. The spillage was diesel fuel and it ended up in the lake, created an unpleasant odor and killed the grass. He states the applicant had men who came on the property and mutilated some of the trees. He also says the property is an eye sore and nobody has ever tried to clean it up. For these reasons, he does not feel this conditional use application should be denied. Mr. Toney agreed the property is an eye-sore and does need to be cleaned but states that Mr. Bardos would indeed be cleaning the property if the application is allowed. Mr. Toney then presented copies of an easement to the village dated 1986.

Mr. Atkins then asked if the applicant had any other documents to present for the BZA to use to make the decision. Mr. Toney presented a copy of an easement to the Village dated 1986.

Chairman Atkins then asked the applicant the following questions:

- (i) Has the BZA denied you the opportunity to present your position, arguments and contentions? Answer: NO
- (ii) Has the BZA denied you the right to offer and examine witnesses and present evidence in support into record? Answer: NO
- (iii) Has the BZA denied you the right to cross-examine witnesses in opposition? Answer: NO
- (iv) Has the BZA denied you the opportunity to offer evidence to refute evidence or testimony offered in opposition? Answer: NO
- (v) Has the BZA refused or failed to compel any witnesses' appearance or evidence at your request? Answer: NO

Chairman Atkins asked for a motion from the BZA to close the hearing. Bill Pollack made the motion, Dennis Rahe seconded. All yeas.

Mr. Atkins next asked for a motion to deliberate in public or in private. Bob Orton made a motion to deliberate in private, Bill Pollack seconded. All yeas.

After deliberations in private, Mr. Atkins asked for a motion to either approve the issuance of a Conditional use permit by making affirmative finding in writing of the proposed conditional use of the property at 350 King Ave. as a plant nursery or garden center, is located in a district wherein such use may be conditionally permitted and all conditions for the approval of such use have been met and that such use will neither result in a significant negative impact upon or conflict with surrounding uses, and in accordance with Section 15.6.14, the BZA may prescribe supplementary conditions & safeguards as specified in Section 15.6.9 as well as specifically providing the conditional use permit is subject to revocation for violating the supplementary conditions & safeguards or, Make a written finding that the application is deficient in information or is in need of modification and is being returned to the applicant, or Make a written finding that the application is denied (specifying the reasons for denial.

Dennis Rahe stated that in reviewing the paperwork, he feels that the application submitted does not meet the definition of Section 15.9.5.3, which is conditional use. He does not feel

the landscaping portion is the same as a garden center so for that reason, he is making a motion to deny the application for conditional use. Bob Organ seconded. All yeas.

Mr. Atkins stated that the BZA vote is not a final appealable order, only a written decision provided to the applicant shall constitute a final appealable order. In accordance with Section 15.6.13, the BZA will reduce its decision to writing and provide the written decision to the applicant with 30 days from the date this hearing was closed.

**8. Old Business : none**

**9. Communications: none**

**10. Adjournment:**

Mr. Atkins asked for a motion to adjourn. Dennis Rahe made the motion, Bob Organ seconded. All yeas.

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Randall Atkins – Chairman

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Mickey Dillion – Secretary

## VILLAGE OF SOUTH LEBANON MEMORANDUM

**TO:** Board of Zoning Appeals members

**FROM:** Jerry Haddix, Village Administrator

**RE:** Case 2015-04BZA: Request for a Rear Yard Setback Variance for Lot 21 in Frederick's Stand Subdivision

**DATE:** August 13, 2015

On the agenda for August 17, 2015, is a public hearing and a Board of Zoning Appeals application for a rear yard setback variance on Lot 21, 676 Frederick's Pass in Frederick's Stand Subdivision submitted by Monarch Homes, the "Applicant". The owner of the property is THP Homes, LLC.

### **Background**

The plat for Frederick's Stand was approved by the Village Planning Commission on February 11, 2005 and was subsequently recorded by Grant and Frederick Communities, Ltd., the owner and developer of the property at the time.

This subdivision is composed entirely of private streets. The subject property is located at the corner of Frederick's Stand and Frederick's Pass as shown on the attached map and site plan which accompanies this memorandum. This lot is triangular in shape with a narrow front yard and a wide rear yard. Given the very narrow front yard, it is difficult place a house on the property and still meet the setback requirements for this lot (see site plan). The Applicant is requesting farther to the year yard at a slight angle and adding a screened in porch.

### **Zoning Code**

Pursuant to Section 15.5.4 of the Village Zoning Regulations, the Board of Zoning Appeals may authorize upon appeal in specific cases such variance from the terms of the Zoning Regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Zoning Regulations would result in unnecessary hardship.

No variance shall be granted by the BZA unless the Board shall find that the written application for the requested variance contains all of the items listed in Section 15.5.5 of the Zoning Regulations.

Pursuant to Section 15.5.12(1), variances may be granted to permit any yard or setback less than the yard of setback required by the applicable regulations.

Pursuant to Section 15.5.7, the BZA shall hold a public hearing within thirty (30) days after the receipt of an application for a variance. Pursuant to Section 15.5.8, before conducting the hearing, notice of such hearing shall be given in one or more newspapers of general circulation in the Village at least ten (10) days before the date of said hearing. Pursuant to Section 15.5.9, written notice of the public hearing shall be mailed at least ten (10) days before the day of the hearing to all parties in interest.

## Analysis

A notice of the public hearing has been published in the Today's Pulse at least ten (10) days before this date of the hearing. A notice of the hearing was mailed to all surrounding property owners contiguous to, or across the street from the subject property at least ten (10) date before this date of the hearing.

Frederick's Stand Subdivision is located in the R-3 PUD Single and Multiple Family Zoning District. Per the approved PUD, the setbacks for this lot are as follows:

Front Yard	20 feet
Side Yard	5 feet minimum on west side; 15 feet on east side
Rear Yard	30 feet

Monarch Homes is requesting a reduction to the minimum rear yard setback requirement for Lot 21 from thirty (30) feet to 19.17 feet to allow for a screened porch as well as moving the houseback to meet the front yard setbacks. The property is bordered on the North by HOA-owned walking trail property and streets to the East and South. Only one vacant lot borders the lot to the West.

The requested rear yard setback variance conforms to the following standards listed in Section 15.5.5 of the Zoning Regulations:

- a. The granting of the variance shall be in accord with the general purpose and intent of the regulations imposed by these Regulations on the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare.
- b. The granting of the variance will not permit the establishment of any use which is not otherwise permitted in the district.
- c. There must exist special circumstances or conditions, fully described in the findings, applicable to the land or buildings for which the variance is sought, which are peculiar to such land or buildings and do not apply generally to land or building in the area, and which are such that the strict application of the provisions of these Regulations would deprive the applicant of the reasonable use of such land or building. Mere loss in value shall not justify a variance; there must be deprivation of beneficial use of land.
- d. There must be proof of hardship created by the strict application of these Regulations. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of these Regulations; it must be suffered directly by the property in question; and evidence of variances granted under similar circumstances need not be considered.
- e. The granting of the variance is necessary for the reasonable use of the land or building, and the variances as granted is the minimum variance that will accomplish this purpose.
- f. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion upon public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area.
- g. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or same district.

**Zoning Process**

Within 30 days after the public hearing, the BZA shall either approve, approve with supplementary conditions or disapprove the request for variance. The BZA shall further make a finding in writing that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building or structure.

**Recommendation**

Staff recommends that the Board of Zoning Appeals grant the request for a rear yard setback variance which would reduce the rear yard setback for Lot 21 from 30 feet to 19.17 feet.

**Attachment**

BZA Application Packet

Site Plan

Map

**BOARD OF ZONING APPEALS**  
**Village of South Lebanon**  
**99 High Street**  
**South Lebanon, OH 45065**  
**(513) 494-2296**

**APPLICATION FOR APPEALS, VARIANCES, CONDITIONAL USES, & SIMILAR USES**  
**A separate application is required for each appeal or variance requested.**

**1. Application Type: (check the appropriate box)**

<input checked="" type="checkbox"/>	Dimensional Variance (Article 5)		Appeal (Article 5)
<input type="checkbox"/>	Conditional Use (Article 6)		Similar Use (Article 6)
<input type="checkbox"/>	Other Action (specify:)		
Identify the nature and extent of the requested action, and the grounds upon which the action is being requested. Include proposed use(s) and/or buildings to be constructed and any required dimensional calculations. A separate application will be required for each action requested:			
We are requesting a rear yard setback variance on Lot 21 Fredericks Stand subdivision. The lot is a pie shaped corner lot			
that requires the home to have a deeper front yard setback than the required 20 feet, which causes the home to be pushed			
back further on the lot. The rear setback would need to be adjusted to 19 ft from the 30 ft requirement to allow for the screened			
in porch. The main structure will be 26'10" from the rear property line which is a 3'-2" reduction in the rear setback.			

**2. Property Information**

<b>Project Location and Size:</b>			
SIDWELL No(s): <i>17362020100</i>		Lot Width: IRREG	
Lot & Subdivision: Lot 21 Fredericks Pass			
Address: 676 Fredericks Pass, S. Lebanon, OH 45065		Lot Depth: IRREG	
Current Zoning: R3		Total Acreage: 0.2398 AC	
Existing Use: Vacant Lot		Pertinent Code Section:	
<b>Current Owner of the Property</b>		<b>Project Contact (Architect, Engineer, Planner)</b>	
Name: THP Homes, LLC		Name: Monarch Homes, LLC - Chris Pernice	
Address: 4400 Willow Creek Drive		Address: 726 E Main St, Suite F-107	
City: Bellbrook	State: OH	Zip: 45305	City: Lebanon
			State: OH
			Zip: 45036
Telephone: 937-313-3080	Fax:		Telephone: 513-331-9006
			Fax:
<b>Permit Applicant(s):</b>			
Name: Monarch Homes, LLC			
Address: 726 E Main St, Suite F-107			
City: Lebanon	State: Ohio	Zip: 45036	
Telephone: 513-331-9006	Fax: 513-932-6644		
* Applicant's Signature: <i>Chris Pernice</i>			
* Applicant is responsible for payment of all fees			

### 3. Other Permits of Approval Required:

A.	
B.	
C.	

### 4. Accompanying Materials Required: Application will not be accepted if any item A-E below is missing.

A.	Application fee.
B.	Proof of owner's interest in property (copy of deed, purchase agreement, or title insurance).
C.	Owner's concurrence in this application if owner does not sign below.
D.	Submit one set of mailing labels including the name and address of property owners of parcels adjacent to or across the street from the property in question.
E.	8 Plot Plans. (Standards below are the minimum that must be met for submission. If variance is sought in conjunction with Site Plan Review, a site plan pursuant to Article 18 is required.)
	<ul style="list-style-type: none"> <li>Folded plans drawn to scale.</li> <li>Applicant's name, address, and telephone number.</li> <li>Scale, northpoint, and dates of submission and revision.</li> <li>Property identification (address and sidwell) number.</li> <li>Zoning classification of subject property and all abutting parcels.</li> <li>Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on site and within 50 feet of the site.</li> <li>Dimensions of all lot and property lines showing the relationship of site to abutting properties.</li> <li><b>For Dimensional Variances</b> - verified measurements of existing conditions and proposed dimensions or calculations regarding the specific standard from which a variance is sought.</li> <li>Floor plans and elevations. (if applicable)</li> <li>Name, address, and phone number of person or firm who prepared the plot plan.</li> </ul>
F.	Three (3) copies of this application must be accompanied by narrative statements establishing and substantiating that variance conforms to the standards established in Article 5, Section 15.5.5 "Application and Standards for Variances" as shown below:
	<ul style="list-style-type: none"> <li>The granting of the variance shall be in accord with the general purpose and intent of the regulations imposed by these Regulations on the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare.</li> <li>The granting of the variance will not permit the establishment of any use which is not otherwise permitted in the district.</li> <li>There must exist special circumstances or conditions, fully described in the findings, applicable to the land or buildings for which the variance is sought, which are peculiar to such land or buildings and do not apply generally to land or building in the area, and which are such that the strict application of the provisions of these Regulations would deprive the applicant of the reasonable use of such land or building. Mere loss in value shall not justify a variance; there must be deprivation of beneficial use of land.</li> <li>There must be proof of hardship created by the strict application of these Regulations. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of these Regulations; it must be suffered directly by the property in question; and evidence of variances granted under similar circumstances need not be considered.</li> <li>The granting of the variance is necessary for the reasonable use of the land or building, and the variances as granted is the minimum variance that will accomplish this purpose.</li> <li>The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion upon public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area.</li> <li>The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or same district.</li> </ul>



### 5. Similar Use Application Requirements.

The following standards shall be considered by the Board when making a determination that a use is substantially similar to a permitted or a conditional use within a specific district.

1. The compatibility of the proposed use with the general classification system as specified in these Regulations.
2. The nature, predominant characteristics, and intensity of the proposed use in relation to those uses specified by these Regulations as being permitted, or in the case of a conditional use, conditionally permitted, in that district.
3. The size, dimensional requirements, parking requirements, traffic generation potential, and other regulatory considerations normally associated with uses as specified in these Regulations.
4. In no case shall a finding of substantially similar use be made if the proposed use is explicitly stated as a permitted use or conditional use in a zoning district other than the zoning district for which the proposed use is intended.

### 6. Conditional Use Application Requirements.

Applications for Conditional Use Permits at a minimum shall contain the following information:

1. A plan of the proposed site for the conditional use showing the location of all buildings, parking and loading areas, streets and traffic accesses, open spaces, refuse and service areas, utilities, signs, yards, landscaping features, and such other information as the Board may require;
2. A narrative statement discussing the compatibility of the proposed use with the existing uses of adjacent properties and with the comprehensive plan, to include an evaluation of the effects on adjoining properties of such elements as traffic circulation, noise, glare, odor, fumes, and vibration;
3. A list containing the names and mailing addresses of all owners of property within five hundred (500) feet of the property in question;

### 7. Schedule.

Hearings for Variances and Conditional Uses will be scheduled within 30 days after a completed application is submitted and accepted by the Village.

**SEE PAGE 4 OF 5 FOR FEE SCHEDULE**

**8. Fee Schedule (See Page 5 of 5 for Footnotes to Fee Schedule).**

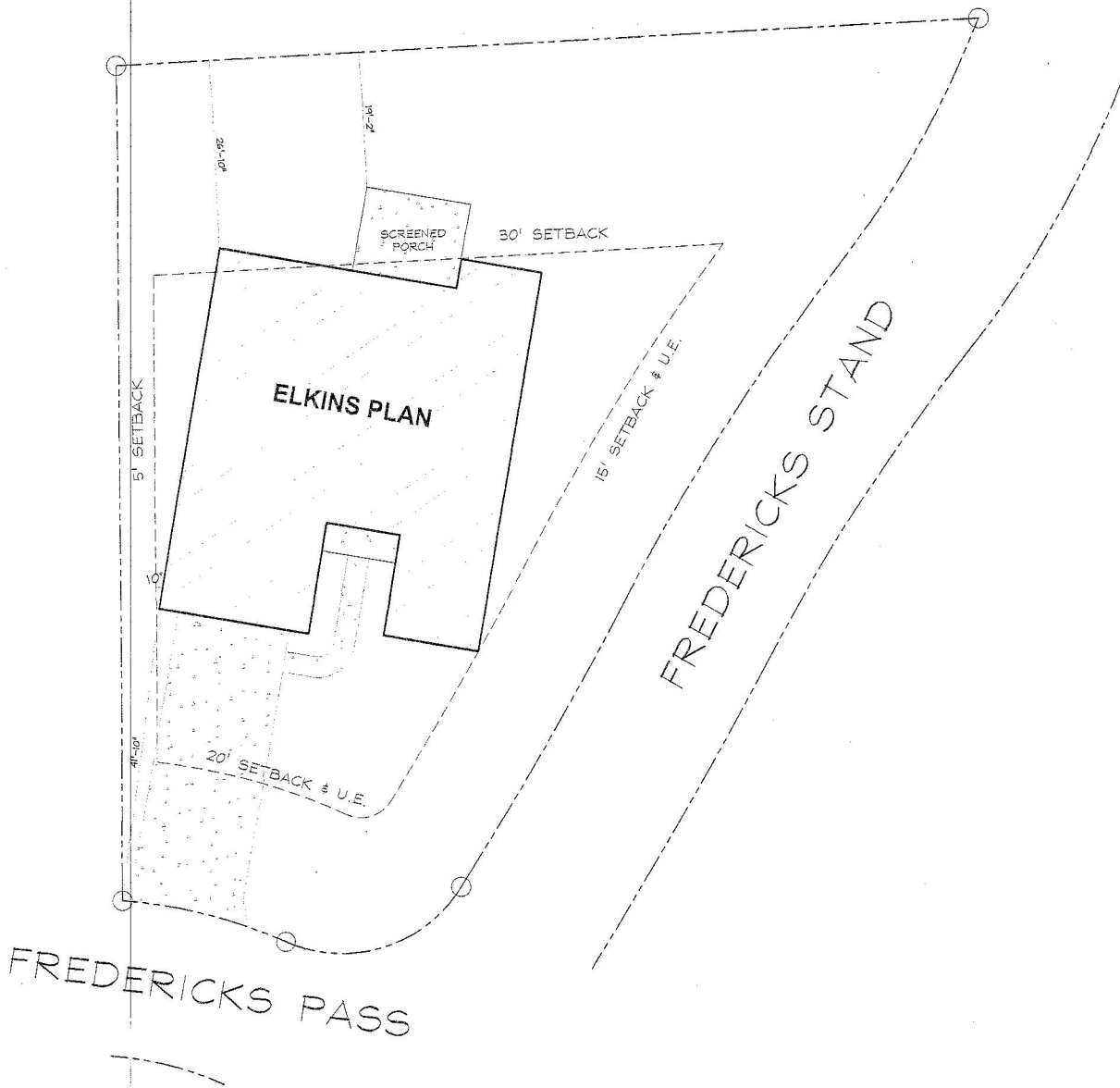
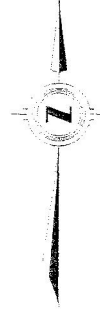
Article/Ord. Reference	Item	Fees <sup>(3)</sup> (4)	Submittal Requirements
Article 20 Article 14	Preliminary Plats Final PUDs	\$150 + 0.25% of estimated infrastructure construction costs <sup>(1)</sup>	12 Copies <sup>(5)</sup> + 1 Copy (Ledger Paper)
Article 20	Construction Drawings	\$150 + 2.75% of estimated infrastructure construction costs <sup>(1)</sup> (Include estimate with application) (1.25% due at time of submittal and 1.5% due before construction begins) <sup>(2)</sup>	4 Copies <sup>(5)</sup> 2 Drainage Calculations 2 Detailed Spreadsheet of the Estimated Infrastructure Costs
Article 20	Final / Dedication Plats	\$350	10 Copies <sup>(5)</sup> + 1 Copy (Ledger Paper)
Article 20	Lot Split / Minor Subdivision / Replats	\$75 per lot	3 Survey Plats <sup>(5)</sup> & Legal Descriptions 1 New Deed + 1 Original Deed
Article 18	Site Plans	\$400 + \$5 per unit Multi-family \$400 + \$20 per acre Commercial/ Office/Industrial/Institutional	12 Copies <sup>(5)</sup> + 1 Copy (Ledger Paper)
Article 17	Landscape Plans	\$150 + \$10 per acre	12 Copies <sup>(5)</sup> + 1 Copy (Ledger Paper)
Article 7	Zoning District Map Change Zoning Text Change	\$400 + \$10 per acre	20 Copies <sup>(5)</sup> + 1 Copy (Ledger Paper) 1 List of Surrounding Property Owners + 2 Sets of Mailing Labels
Article 5	Variances / Appeals	\$400	8 Copies + 1 Copy (Ledger Paper) 1 List of Surrounding Property Owners + 1 Set of Mailing Labels
Article 14	Preliminary PUD Plans	\$2,500 + \$20 per acre	12 Copies <sup>(5)</sup> + 1 Copy (Ledger Paper) 1 List of Surrounding Property Owners + 2 Sets of Mailing Labels
Article 14	Final PUD Plans	Site Plan Review Fees Apply	Site Plan Review Submittal Requirements Apply
Article 6	Conditional Use / Similar Use	\$250 + applicable site plan fee	15 Copies + 1 Copy Ledger Paper <sup>(5)</sup>
Article 3	Zoning Permit	\$250 + \$0.03 per square foot of building area (Village water tap and inspection fee required if utilizing Village Water [proof of payment of County tap fee if utilizing County Water]; Village sewer tap and inspection fee also required)	5 Copies
Article 3	Temporary Use Permit	\$50	5 Copies
Article 3	Certificate of Occupancy	\$50	3 Copies
Ord. No: 2008-14; Permit App.	Flood Hazard Area Development Permit	\$50	3 Copies of Permit Application w/ applicable submittal requirements (stated on Page 2 of 2 of Permit Application + Engineering "No Rise" Certification (if applicable))
	Special Meeting	\$500 + Application Fee, if any <sup>(6)</sup>	Depends Upon Type of Application or Meeting Requested

#### FOOTNOTES TO FEE SCHEDULE

- (1) Infrastructure construction costs include all infrastructure costs associated with a development including, but not limited to, drainage facilities, sanitary sewers, waterlines, grading, excavation, and street improvements.
- (2) Any inspection conducted outside the normal eight-hour workday of Monday through Friday, excluding holidays, 8:00 a.m. until 4:30 p.m., shall be charged at one and a half (1.5) times the standard rate. The Village reserves the right to charge fees in addition to the fees specified in the table above if, due to the applicant's responsibility, excessive review and/or field inspections are necessary, and as determined by the Village Engineer. Such fees for review and field inspection by Village staff shall be charged at the standard rate of forty dollars (\$40) per hour, plus a three-fourths (.75) hour charge for travel time. Any review and inspection completed by consultants on behalf of the Village shall be charged to the applicant at the same rate charged by the consultants. Performance and maintenance bonds will not be released until payment of all fees is received.
- (3) Any review and inspection completed by consultants on behalf of the Village shall be charged to the applicant at the same rate charged by the consultants. The applicant shall pay the difference when consultant fees charged to the Village are in excess of the established Fee Schedule base amounts. Final approvals will be held until all fees charged by consultants are paid-in-full by the applicant.
- (4) The fee for review of a revised application shall be sixty (60) percent of the fee specified for the initial or first review of such application.
- (5) All plans must be folded to fit a legal sized file folder with the title showing in the lower right-hand corner.
- (6) Special meetings that require one or more of the Village's consultants to attend shall require payment of the special meeting fee before the meeting is scheduled. Examples of special meetings include staff meetings and non-scheduled Planning Commission meetings requested by an applicant and/or developer.

# BEGUE RESIDENCE

## HOMESITE 21 FREDERICKS STAND



SCALE 1/16"=1'-0"

**MONARCH**  
HOMES

MONARCH HOMES LLC  
726 E MAIN ST #F107  
LEBANON, OHIO 45036

**SQUARE FOOTAGE**

FRONT FLOOR	1784
TOTAL HEATED	1784
GARAGE	469
FRONT PORCH	42
SCREENED PORCH	180
TOTAL UNDER ROOF	2475

**BEGUE**  
676 FREDERICKS PASS  
S LEBANON, OH 45065

PILOT DATE: JULY 17, 2015

REVISION DATE:

**DRAWN BY:** CHRIS PERONE

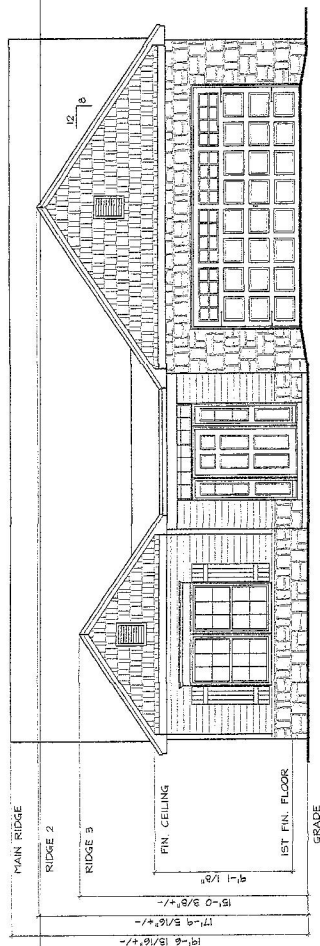
CHECKED BY:

TO NOT SCALE FROM DRAWINGS

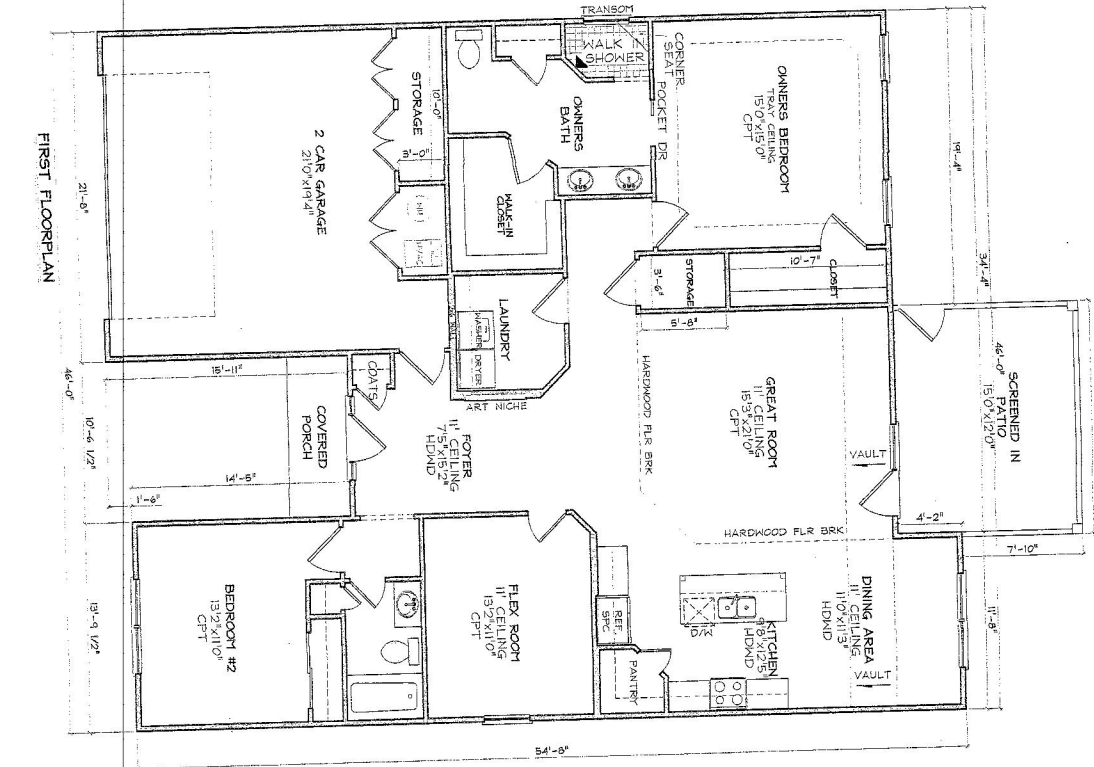
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SQUARE FOOTAGE LISTED ON THESE FLOOR PLANS IS A GOOD FAITH ESTIMATE AND ARE SUBJECT TO CHANGE WITHOUT NOTICE, AND IS NOT INTENDED FOR CONTRACTUAL PURPOSES.

11x17 SHEET SCALE 1/8" = 1'-0"  
4x36 SHEET SCALE 1/4" = 1'-0"  
**FRONT ELEVATION**



11x17 SHEET SCALE 1/16" = 1'-0"  
24x36 SHEET SCALE 1/8" = 1'-0"



FIRST FLOOR PLAN

1/4" = 1'-0"  
2/8" = 1'-0"  
FLOOR PLAN

# GENERAL NOTES:

1. CONSULT THE DRAWING FOR ALL DIMENSIONS AND SPECIFICATIONS. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
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# DRAWING NOTES:

1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
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# ELECTRICAL SYMBOLS

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1/4" = 1'-0"  
2/8" = 1'-0"  
FLOOR PLAN

1/4" = 1'-0"  
2/8" = 1'-0"  
FLOOR PLAN

1. LIGHT SWITCH	2. LIGHT SWITCH	3. LIGHT SWITCH	4. LIGHT SWITCH
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1/4" = 1'-0"  
2/8" = 1'-0"  
FLOOR PLAN

**ELKINS PLAN**  
**SIGNATURE SERIES**

MONARCH HOMES LLC  
726 E MAIN ST #F107  
LEBANON, OHIO 45036

**MONARCH**  
HOMES

SQUARE FOOTAGE	1984
FIRST FLOOR	1984
SECOND FLOOR	1984
THIRD FLOOR	1984
FOURTH FLOOR	1984
FIFTH FLOOR	1984
SIXTH FLOOR	1984
SEVENTH FLOOR	1984
EIGHTH FLOOR	1984
NINTH FLOOR	1984
TENTH FLOOR	1984
ELEVENTH FLOOR	1984
TWELFTH FLOOR	1984
THIRTEENTH FLOOR	1984
FOURTEENTH FLOOR	1984
FIFTEENTH FLOOR	1984
SIXTEENTH FLOOR	1984
SEVENTEENTH FLOOR	1984
EIGHTEENTH FLOOR	1984
NINETEENTH FLOOR	1984
TWENTIETH FLOOR	1984
21ST FLOOR	1984
22ND FLOOR	1984
23RD FLOOR	1984
24TH FLOOR	1984
25TH FLOOR	1984
26TH FLOOR	1984
27TH FLOOR	1984
28TH FLOOR	1984
29TH FLOOR	1984
30TH FLOOR	1984

1/4" = 1'-0"  
2/8" = 1'-0"  
FLOOR PLAN

1/4" = 1'-0"  
2/8" = 1'-0"  
FLOOR PLAN

## Narrative Statements

- The granting of the variance shall be in accord with the general purpose and intent of the regulations imposed by these Regulations on the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare. **By requesting the rear yard setback to be lessened, no other property owner is impacted by the variance.**
- The granting of the variance will not permit the establishment of any use which is not otherwise permitted in the district. **This request would not be permitting the establishment of a different use.**
- There must exist special circumstances or conditions, fully described in the findings, applicable to the land or buildings for which the variance is sought, which are peculiar to such land or buildings and do not apply generally to land or building in the area, and which are such that the strict application of the provisions of these Regulations would deprive the applicant of the reasonable use of such land or building. Mere loss in value shall not justify a variance; there must be deprivation of beneficial use of land. **The variance is requested due to the unusual shape of the lot. The home is typical (if not smaller) than other homes in the neighborhood at 1784 livable Square Feet.**
- There must be proof of hardship created by the strict application of these Regulations. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of these Regulations; it must be suffered directly by the property in question; and evidence of variances granted under similar circumstances need not be considered. **The hardship is that a typical home for the community will not fit on the homesite due to the unusual shape of the lot.**
- The granting of the variance is necessary for the reasonable use of the land or building, and the variances as granted is the minimum variance that will accomplish this purpose. **The variance is necessary to build a typical sized home on the lot.**
- The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion upon public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area. **This variance would not negatively impact any of the above.**
- The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or same district. **This variance would not confer any special privilege.**

## LOT PURCHASE AGREEMENT

This Agreement is made and entered into this 10th day of February, 2014, by and between THP Homes, LLC, 4400 Willow Creek Drive, Bellbrook, OH 45305 (Seller") and Monarch Homes, LLC, an Ohio Limited Liability Company, 1029 Arabian Run Drive, Clarksville, Ohio 45113 ("Purchaser").

WHEREAS, Seller is the owner of, **Grants Settlement and Fredericks Stand Subdivisions**, located in the City of South Lebanon, Ohio which is hereinafter referred to as the "Real Estate"; and

WHEREAS, Purchaser desires to purchase 23 lots, all subject to the terms of this Agreement.

WHEREAS, Purchaser is a builder of single family and two family residences; and

WHEREAS, Seller desires to sell and Purchaser desires to purchase the developed Lots on the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

1. **Sale and Purchase.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, 8 lots in Grants Settlement and 15 lots in Fredericks Stand, as further described in Exhibit "A".

2. **Sale of Real Estate.** Subject to the terms hereof, Seller shall sell the Real Estate as follows:

- a. Grants Settlement – 8 existing lots
- b. Fredericks Stand – 15 existing lots

i. All remaining top coat street paving shall be completed by May 31, 2014.

ii. Installation of minimum 6' tall Arborvitae shrubs every 4 feet on the rear lot lines of lots that back up to Zoar Road to act as a buffer to the road, or per the recommendation of Seller's landscaping contractor.

iii. Pin the corners of all Lots that are included in this Purchase Agreement.

c. Purchaser shall be responsible for all sewer and water tap in fees for the Lots to be purchased by it provided such fees are assessed on a per Lot basis and Seller shall be responsible for all other development related fees. Seller shall submit to Purchaser for its review the



subdivision development plat, including grading plan and drainage plan, record plat and any proposed subdivision restrictions for the Real Estate.

d. Within 45 days after the date of this agreement, Seller shall provide a colored rendering of the subdivision lots for Purchaser's use.

3. **Purchase Price and Closing.** The purchase price for the Lots shall be per Exhibit "A" attached hereto.

**Grants Settlement**

<u>Lot</u>	<u>Price</u>
12	\$40,000
19	\$45,000
25-30*	\$35,000 each

**Fredericks Stand**

<u>Lot</u>	<u>Price</u>
2 & 4	\$45,000 each
11	\$55,000 (walk-out basement lot)
13-16	\$40,000 each
19-21*	\$35,000 each
22-26	\$40,000 each

When an interior lot is purchased, a lot marked with the (\*) must be purchased next.

Purchase price shall be escalated annually as follows:

On the first anniversary of this Agreement, any Lot purchased thereafter shall increase in price by 2% from original price.

On the second anniversary of this Agreement, any Lot purchased thereafter shall increase in price by 3% from the first anniversary price.

On the third and each subsequent anniversary of this Agreement, any Lot purchased thereafter shall increase by 4% from the previous anniversary price.

The purchase price shall be payable by electronic transfer, corporate or title company check at the time of the closing and conveyance of title on each of such Lots. Seller shall convey to Purchaser good and marketable title to said Lots by General Warranty Deed, free from all encumbrances except for utility easements and such other restrictions of record which shall not unreasonably interfere with the construction of single family residences. In the event that the subsequent homebuyer obtains a Construction to Permanent Loan, Purchaser may assign the right to purchase a Lot directly from the Seller, provided there is an executed New Home Sales Agreement between Purchaser and subsequent homebuyer.

Closing shall take place at Title Partners, Inc., Address: 29 Triangle Park Dr #2902, Cincinnati, OH 45246, Phone: 513-771-1758, Contact: Linda Donohue.

Within 10 days of Purchaser's receipt of a fully executed copy of this contract, Purchaser shall deposit with Seller \$5,750.00 ("Deposit") (\$250 per Lot) in the form of a company check. \$1,000 of this total earnest money deposit amount shall be credited back to Purchaser for every 4 lots conveyed to Purchaser.

If at the time of a closing there may be any liens or encumbrances which Seller is obligated to pay and discharge, Seller may use any portion of the purchase price to satisfy same, however, any such liens or encumbrances must be satisfied at the closing. Seller shall pay all recording costs associated with the satisfaction or release of such liens or encumbrances.

4. **Purchase Schedule.** Within 45 days after the date of this agreement, Purchaser agrees to purchase the first Lot. Thereafter, Purchaser shall purchase at least 4 Lots every 12 months according to the following takedown schedule:

- 4 lots purchased between June 1, 2014 and May 31, 2015
- 4 lots purchased between June 1, 2015 and May 31, 2016
- 4 lots purchased between June 1, 2016 and May 31, 2017
- 4 lots purchased between June 1, 2017 and May 31, 2018
- 5 lots purchased between June 1, 2018 and May 31, 2019

Any Lots purchased by Purchaser ahead of this purchase schedule shall be credited to the next scheduled pickup obligation of Purchaser.

If Purchaser accumulates a minimum of 3 Lots in unsold inventory, Seller agrees to temporarily suspend the takedown schedule listed. This suspension shall be in effect for a 120 day period, upon which time the takedown schedule will resume with the 120 day delay from the dates outlined above.

Purchaser is required to purchase all Lots that are included in this Purchase Agreement by May 31, 2019.

5. **Obligations of Purchaser.** Until such time as Purchaser shall have constructed all of the residences and sold all of its Lots, Purchaser shall:

- a. Maintain a neat and orderly construction site, as well as erosion controls on each Lot during construction.
- b. Prevent the vegetation of weeds on its Lots and restore disturbed areas as soon as possible after construction to minimize erosion. Lots owned by Seller shall be mowed and maintained at Seller's expense.
- c. Replace or rebuild to existing conditions the improvements disturbed or damaged through construction.

d. Keep all of the streets of the subdivision free and clear of mud and debris resulting from the construction of the residences.

e. Not dump or permit the dumping of trees or construction material on any other Lot in the subdivision.

f. Comply with all applicable laws, ordinances, rules and regulations of all governmental authorities exercising jurisdiction over the Real Estate.

g. Seller and Purchaser shall walk the community ("community walk") and identify any items that shall be corrected at the Seller's expense, including but not limited to curbs, sidewalks, aprons, sanitary and storm sewers. After this site walk-through, any additional damages to the same shall be repaired by Purchaser. After this initial community walk, there shall be community walks every 6 months. Any items in need of repair shall be done by Purchaser within 30 days of the community walk.

6. **Real Estate Taxes and Assessments.** Real Estate taxes and Assessments (based upon the most recent available tax bill as of the closing) shall be prorated using the short method at closing. Purchaser shall also be responsible for all assessments against the subject Real Estate (whether certified or in the process of being certified) as of the date of the closings. When a lot owner becomes subject to the Monthly Fee, as provided above, they shall pay a one time \$500 initial fee required by the Homeowners Association.

7. **Lot Conditions and Defective Lots.** In the event a local building department or a licensed professional geotechnical engineering firm acceptable to Purchaser determines that soil conditions on a particular Lot are not suitable for 8 or 9 foot poured wall basement construction, such Lot shall be deemed a "Defective Lot" and subject to the provisions hereinafter set forth in this paragraph 7.

Following any closing, in the event Purchaser, (a) cannot secure all required permits for construction of residences upon any Lot which is the subject of such closing; (b) discovers fill materials unsuitable to support minimum house footings as required by the applicable building code; or (c) cannot use a Lot for its intended purpose (meaning the discovery of a natural spring or sand vein), then such Lot shall be deemed a "Defective Lot". Purchaser shall promptly notify Seller of the defect impediment to any Lot found to be a defective Lot and Seller shall have fifteen (15) days in which to (i) correct at Seller's sole expense, such defect or impediment, or (ii) split the cost of correction of any defective lot 50/50 with the builder for any expenses exceeding \$2,000. If either of the foregoing is not accomplished by Seller within such fifteen (15) day period, Purchaser shall have the right to Purchase a "Trade Lot" and Seller shall repurchase said Lot from Purchaser. Purchaser is required to purchase a Trade Lot equal to or greater than the price of the Defective Lot. If the defective lot is the same price as the Trade Lot, then the lots will be traded with no money or consideration exchanged. If there is a difference in price between the two lots, the Purchaser shall pay the difference at closing.

8. **Marketing Signs.** Seller and Purchaser shall jointly request approval from the Homeowners Associations to allow Purchaser to have the right to place signs within the subdivisions and in common areas owned by the Homeowners Associations.

9. **Representations and Warranties of Seller.** Seller, to the best of its knowledge, represent, warrants, and covenants to Purchaser as to the following matters, and shall be deemed to remake all of the following representation, warranties, and covenants as of the date of each closing:

a. **No Consents Necessary.** Seller has the legal right, power, capacity and authority to enter into and perform its obligations under this Agreement, and no approval or consent of any other person or entity is necessary to authorize the execution of this Agreement by Seller or the consummation by Seller of the transactions contemplated hereby. The execution and delivery of this Agreement and every other document delivered pursuant to this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement have been duly authorized and validly executed and delivered by Seller.

b. **No Violations.** Seller has not received any written notice (i) of any violations by Seller or the Real Estate or any part thereof, of any law, rule, regulation, order or ordinance, or (ii) from any governmental authority of the existence of any material and adverse condition which requires work to be done to cure such condition with respect to the Real Estate, and Seller has no knowledge that any such notices are forthcoming or that any such conditions or violations exist.

c. **No Pending Proceedings.** There is no pending or, to Seller's knowledge, threatened, condemnation action, litigation, arbitration, administrative action or examination, claim, demand, attachment, execution or similar proceeding whatsoever, relating to the Real Estate or Seller which would adversely affect the Real Estate. Seller shall immediately notify Purchaser of any such claim or proceeding which is made, filed, threatened or instituted by or against Seller or the Real Estate after the date of this Agreement.

d. **No third Party Rights.** No tenant or other third party has any agreement, option, or other right of first refusal, to purchase the Lots to be purchased by Purchaser or any part thereof nor does any party have any occupancy rights with respect to the Lots to be purchased by Purchaser.

e. **No Mechanics' Liens.** All bills and claims for labor performed or services and materials furnished to or for the benefit of the Real Estate or any part thereof have been paid in full or will be paid in full as of the date of each closing, and there are no mechanic's liens or material man's liens on or affecting the Real Estate or any part thereof.

f. **Assessments.** There are no public improvements which have been ordered to be made and/or which have not heretofore been assessed.

g. **Hazardous Substances.** Seller has not received notice from any public authority or from any other source and has no knowledge that the Real Estate or any part thereof

contains any hazardous substance, hazardous waste, lead, lead-based paint, asbestos, methane gas, urea formaldehyde insulation, oil, toxic substance, underground storage tanks, polychlorinated biphenyls (PCBs), or radon, and no part of the Real Estate is affected by the presence of oil, toxic substances or other pollutants in violation of any local, state or federal law or regulations. Seller has no knowledge that any violation of the Clean Air Act, Clean Water Act, Response Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environment Resource Compensation and Liability Act, or Occupational Safety and Health Act has occurred or is occurring. Seller has not, during his ownership of the Real Estate, stored thereon any of the aforementioned substances, materials or wastes in violation of any state, local or federal law. Additionally, to the best of Seller's knowledge, there is no existing condition or condition perceived by the general public to exist (although not necessarily existing in fact) on any portion of the Real Estate which existing condition or perceived condition raises any health or environmental issue with respect to the Real Estate or the Lots.

h. **Other Agreements.** Seller is not in violation of any instrument, agreement, law, order, rule or regulation relating to the real Estate, which would preclude Seller from consummating the transactions contemplated hereby; and no event or failure of performance by Seller has occurred which, with the passage of time or the giving of notice, or both, would result in any such violation. The execution and delivery by Seller of this Agreement and the performance by Seller of his obligations hereunder will not result in any such violation.

i. **No Encroachments.** There are no encroachments onto the real Estate of any improvements on any adjoining Real Estate, and there are no encroachments onto any adjoining Real Estate of any improvement on the Real Estate.

j. **No Prohibitions.** Seller is not aware of any facts or circumstances that would prohibit or inhibit Purchaser from developing the Lots for its intended use.

k. **No Commitments.** Seller has not made and has no knowledge of any commitments to any public authority, school board, church or other religious body, or to any other organization, group or individual relating to the Real Estate which would impose any obligations upon Purchaser to make any contributions of money or land or to install or maintain any improvement of which would interfere with Purchaser's ability to use, develop and improve the Real Estate as herein contemplated.

l. **Flood Plain.** No portion of the building areas of a Lot is located in any flood zone, flood hazard area, flood plain or similarly designated zone on the application FEMA maps or in a "wetlands" area as defined by any governmental authority. The lowest elevation of any building area will be at least thirty-six inches (36") higher in elevation than any flood zone. All lots presently shown on the FEMA map as being in the flood plain have been filled and compacted to an acceptable elevation.

m. **Designation/Historic Use.** There is no actual or pending designation of all or any portion of the Real Estate, or of the area or district in which the Real Estate is located, as a historic district, site, building, battlefield, structure, object or other resource on the National

Register of Historic Places or any other similar list or survey maintained by any federal, state, county, municipal or public authority such that the Real Estate or any portion thereof is or may become subject to development restrictions or prohibitions, nor does Seller have any knowledge that any such designation is contemplated. The Real Estate does not contain any cemeteries or grave yards.

n. **Permits and Approvals.** Seller has obtained, or will obtain, all necessary permits and approvals from the appropriate governmental authorities in connection with the development of the subject Lots, including approvals for all utility extensions, storm water maintenance and pollution control and environmental compliance.

o. **Survival of Warranties.** Each of the foregoing representations and warranties shall survive the Closing and any independent investigation by Purchaser.

10. **Homeowners Association.** Purchaser acknowledges that each Lot in the Subdivision shall be subject to the Declaration of Covenants, Conditions and Restrictions and Reservation of easements for the Subdivision (the "Declaration") recorded in the real estate records of the County in which the Real Estate is located. The parties acknowledge that every owner of a Lot in the Subdivision shall be subject to the Declaration; and that such parties shall automatically become a member of the Association. Purchaser agrees to disclose the Declaration in the deed of any Lot to a subsequent buyer and to furnish a copy of the Declaration and by-Laws to a subsequent buyer. Purchaser shall obtain a receipt from each subsequent buyer of receiving the Declaration and by-Laws and provide a copy of such receipt to Seller.

11. **Indemnification.** Seller agrees to defend and hold Purchaser harmless from any and all claims, losses, damages, causes of action arising out of, or directly or indirectly related to, Seller's construction activities in the Subdivision, and the activities of Seller's employees, agents and subcontractors, including, without limitation, claims or liens by mechanics or material men, and any claims by any third party arising out of the misrepresentation or the failure to disclose information by Seller or Seller's agents. This indemnity shall include reasonable attorney's fees, court costs, and all other costs, expenses and liabilities incurred by Purchaser from the date Purchaser first received notice of any actual or anticipated claim or demand.

Purchaser agrees to defend and hold Seller harmless from any and all claims, losses, damages, causes of action, damages or proceedings arising out of, or directly or indirectly related to, Purchaser's construction activities on the Lots, claims by any third party arising out of any contract with Purchaser relating to the lots, and any claims by any third party arising out of misrepresentations or failure to disclosure information by Purchaser or Purchaser's agent. This indemnity shall include reasonable attorney fees, court costs, and all other costs, expenses and liabilities incurred by Seller from the date Seller first received notice of any actual or anticipated claim or demand.

12. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the above, either party shall have the right, without the consent of the other party, to assign this Agreement to a partnership or a limited liability company in which the



assigning party is one of the partners or members, as the case may be. In the event of such an assignment of this agreement, the assigning party shall not be released from any of its obligations under this Agreement.

13. **Arbitration of Disputes.** Any controversy, claim or other matter arising out of or relating to this Agreement, or breach thereof, shall be resolved in accordance with the Homebuilders Association of Greater Cincinnati, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the above, arbitration shall not be required in connection with any controversy or claim in which the dollar amount in dispute does not exceed the jurisdictional limit of any small claims court having jurisdiction over the parties. In such event, either party shall have the right to resolve such controversy or claim by filing an action in such small claims court. Claims in excess of such jurisdiction limited shall be subject to arbitration as provided in this paragraph.

14. **Notices.** All notices required to be given under the terms of this Agreement shall be in writing and shall be deemed given on the date of the postmark if mailed by certified U.S. mail, return receipt requested, to the appropriate parties, at the address set forth above, or to such other address as any party may specify by notice delivered in accordance herewith.

15. **Invalid Provisions.** In the event that any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

16. **Broker.** Seller has agreed to pay a 6% real estate commission at each lot closing to the following Real Estate Brokers:

- a. 3% to Bruce Anderson, 11250 Cornell Woods Drive, Cincinnati, OH 4524
- b. 3% to Bob Neal, Comey and Shepherd Realtors, 7870 E Kemper Rd #100, Cincinnati, OH 45249.

17. **Force Majeure.** Neither party shall be liable for nonperformance or delay in performance due to any act of God; riot, civil commotion; destruction of the Real Estate by fire, earthquake or storm; strike or labor disturbances.

18. **Default.** In the event Purchaser defaults on any obligation under this Agreement, Seller's sole remedy shall be to retain the remaining earnest money deposit paid to Seller as full and complete liquidated damages and neither party shall be under any further obligation hereunder. Seller and Purchaser have negotiated and hereby acknowledge and agree that the actual damages which Seller would suffer on account of the default of Purchaser under this Agreement as difficult, if not impossible to ascertain, and both parties agree that the receipt by Seller of the remaining deposit paid by Purchaser constitutes a reasonable estimate of the actual damages Seller may suffer in the event of a default under this Agreement by Purchaser. Additionally, in such event Seller shall have the option of selling any of the unsold Lots to another builder.

In the event of a default by Seller of any obligation under this Agreement, Purchaser's sole remedy is to terminate this Agreement whereupon the earnest money deposit shall be returned to Purchaser. Seller shall not be liable to Purchaser for any other damages or losses, including but not limited to, lost profit, by reason of Seller's default. Both Seller and Purchaser must give the other party written notice ten (10) days in advance of exercising any remedy for default in which ten (10) day period the defaulting party shall be entitled to cure such defaults.

19. **Miscellaneous.** The foregoing Agreement contains the entire understanding between Seller and Purchaser and no verbal representations heretofore made by either party to the other shall be binding upon either of them. The representations made herein shall survive the closings and shall not be merged in the closings. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns. The parties do not intend to confer any benefits hereunder on any person, firm, corporation or association other than the parties hereto. Time is of the essence in this Agreement. This Agreement shall be governed by and construed in accordance with the laws and regulations of the State in which the Real Estate is located.




IN WITNESS WHEREOF, the parties have hereunto set their hands this day and year first above written.

SELLER:

THP Homes, LLC

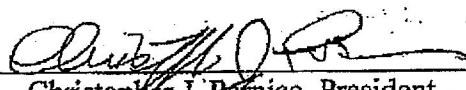
BY: Tom Peebles, Member

By:   
Tom Peebles, Member

PURCHASER:

Monarch Homes, LLC

BY: Christopher J. Pernice, President

By:   
Christopher J. Pernice, President