

**DECLARATION OF RESTRICTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
LOOKOUT POINTE**

**AT**

**MONTVILLE LAKES SUBDIVISION PHASE III  
KNOWN AS "BLUE HERON ESTATES"**

**IN MONTVILLE TOWNSHIP, MEDINA COUNTY, OHIO**

AMERICAN HOME &  
COMMERCIAL TITLE AGENCY, INC.  
236 WEST LIBERTY STREET  
MEDINA, OHIO 44255-2218

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**DECLARATION OF RESTRICTIVE COVENANTS  
CONDITIONS AND RESTRICTIONS OF  
MONTVILLE LAKES SUBDIVISION PHASE III, CLUSTER BLOCK "H"  
KNOWN AS "LOOKOUT POINTE"  
IN MONTVILLE TOWNSHIP, MEDINA COUNTY, OHIO**

KNOW ALL MEN BY THESE PRESENTS, that:

**RECITALS**

**WHEREAS**, the undersigned, Golden Falcon Construction Company, (hereinafter called the "Declarant"), an Ohio Corporation, is the fee owner of the real property herein described and desires to impose upon its real property all of the restrictions, limitations, covenants, and requirements set forth herein.

**WHEREAS**, Cluster Block "H" in Montville Lakes Subdivision Phase III is a phase of an approved Planned Unit Development situated in the Township of Montville, County of Medina, and State of Ohio. Declarant is the developer of this phase of the Planned Unit Development named "Lookout Pointe," a community of detached "Cluster Residences."

**WHEREAS**, Declarant desires to protect the value of said property and to provide a flexible and reasonable procedure for the overall development of the property and to establish a method for the administration, maintenance, preservation, use, and enjoyment thereof.

**WHEREAS**, Declarant is acting under the authority and these declarations are made pursuant to Article Eleven, Sections 11.13 *et seq.* of the *Declaration of Restrictive Covenants, Conditions and Restrictions of Montville Lakes, Phase 3*, recorded in 2003OR023233 Official Records of the Medina County Recorder, State of Ohio.

**NOW, THEREFORE**, Declarant, for itself and its successors and assigns, does hereby declare, publish, and impose the restrictions, covenants, easements, and conditions hereinafter set forth upon all the property described in Article II in the Township of Montville, County of Medina, and State of Ohio, which are for the purpose of protecting the value and desirability of the real property; which shall run with, burden, and bind the real property, for the time hereinafter specified; which shall be binding upon all parties having any right, title, or interest in the property or any part thereof, their heirs, personal representatives, successors, and assigns; and which shall inure to the benefit of each owner of the property or any part thereof. All of the following, irrespective of any heading provided, are restrictions, limitations, covenants, and requirements imposed upon the real property herein described by Declarant and shall be covenants running with the land, binding upon and inuring to the benefit of the Declarant and the respective grantees in deeds for such real property (or portions thereof), their respective successors, purchasers,

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heirs, executors, administrators, and assigns.

## ARTICLE I: DEFINITIONS

1.1 **Specific Words**. The following words, when used in this Declaration, shall have the following meanings:

1.1.1 **Assessments** shall mean and refer to the proportionate share of each Lookout Pointe Cluster Lot Owner for those costs of joint ownership and use of certain amenities owned and/or provided for by the Lookout Pointe Cluster Sub-Association and all "other Common Charges" which from time to time shall be payable by a Lookout Pointe Cluster Lot Owner pursuant to this Declaration.

1.1.2 **Board of Trustees** shall mean and refer to the Board of Trustees of the Lookout Pointe Homeowners Association, Inc.

1.1.3 **Cluster Residence** shall mean and refer to any permitted structure or building constructed on a Lookout Pointe Cluster Lot or Lookout Pointe Cluster Lots within Lookout Pointe intended for a single family residence and shall include any garage or other permissible structure built on a Lookout Pointe Cluster Lot for the use or enjoyment of the Occupants of said Cluster Residence. A Model Cluster Residence shall become a "Cluster Residence" when it is used as a single family residence.

1.1.4 **Lookout Pointe** shall mean and refer to the area of real property designated for the exclusive construction of Cluster Residences and which Lookout Pointe Cluster Lots are created with the residual of same being the Lookout Pointe Common Area. It shall mean and refer to the Lookout Pointe Cluster Lots, and Lookout Pointe Common Area described in Article II of this Declaration and such additional real property as may be added pursuant to a Subsequent Amendment to this Declaration. It refers to "Block "H" of the Montville Lakes Subdivision, Phase 3A as per Plat 2003PL00047 of Medina County Plat Records, in Original Township Lots 83,84, 89, 90 and 103. PPN. # 030-11B-33-050.

1.1.5 **Lookout Pointe Common Area** shall mean and refer to any area within Lookout Pointe not platted as an envelope of a Lookout Pointe Cluster Lot. It is the residual of "Block H" of the platted Subdivision of Montville Lakes Phase 3A as per Plat 2003PL00047 of Medina County Plat Records, that remains after construction and re-platting of such Block "H" for FIFTY-THREE (53) Lookout Pointe Cluster Lots allowable in Lookout Pointe. It shall include, without limitation, the non-dedicated streets, rights of way, and

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common sidewalks within the lawn of a Lookout Pointe Cluster Lot or other amenity, landscaping maintained thereon outside of the platted envelope for each Lookout Pointe Cluster Lot.

**1.1.6 Lookout Pointe Cluster Lot** shall mean and refer to any individual Cluster Residence that is hereafter platted as a single Residential envelope within Lookout Pointe and is deeded separately to an individual owner or owners for use as a single family residence. It shall also mean and refer to any plot of land shown upon a recorded Plat of "Block H" of the platted Subdivision of Montville Lakes Phase Phase 3A as per Plat 2003PL00047 of Medina County Plat Records and any re-plat of Block "H" filed, with the exception of the Lookout Pointe Common Area and intended for independent ownership and use for the construction of a Cluster Residence thereon and made subject to these Declarations or any Subsequent Amendment hereafter made. The plural of said term shall mean one or more Lookout Pointe Cluster Lots, as defined herein.

**1.1.7 Lookout Pointe Cluster Lot Owner** shall mean and refer to any individual, person, or entity, estate, trustee, or other Person who is the record owner of the fee simple of any Cluster Lot within Lookout Pointe. If a Lookout Pointe Cluster Lot is sold under a land installment contract, the purchaser (Vendee) (rather than the fee Owner) will be considered to be the Lookout Pointe Cluster Lot Owner. For the purpose of this Declaration, the Owner of a Lookout Pointe Cluster Lot that is leased and/or rented to others shall be as follows: (i) for the purpose of votes and Assessments, the record Lookout Pointe Cluster Lot Owner of the Lookout Pointe Cluster Lot; and (ii) for the purpose of use and enjoyment of common facilities and amenities set forth herein, the Tenant residing in the Cluster Residence situated on the Lookout Pointe Cluster Lot. The word "Lookout Pointe Cluster Lot Owner" shall not include: (i) any Person holding, whether or not of record, a non-possessory future interest or a leasehold estate having a term of less than fifty (50) years, and/or (ii) any Person holding an interest merely as security for the performance of an obligation unless and until said Person shall have acquired title pursuant to foreclosure or any act or proceeding in lieu of foreclosure.

**1.1.8 County** shall mean and refer to the County of Medina organized and existing under the laws of the State of Ohio.

**1.1.9 Declarant** shall mean and refer to Golden Falcon Construction Company, an Ohio Corporation, its successors and assigns. However, in no event for the rights reserved to Declarant, herein stated, shall an individual Lookout Pointe Cluster Lot Owner, receiving title from Declarant, be considered an assignee of Declarant for the purposes and rights reserved to Declarant pursuant to

this Declaration.

- 1.1.10 **Declaration** shall mean and refer to this instrument and all Subsequent Amendments hereto filed with the Medina County Recorder's Office, Medina County, Ohio.
- 1.1.11 **Golf Course** shall mean and refer to the 27 hole golf course constructed by Hoffman Properties Limited Partnership, known as Blue Heron Golf Course, on property adjacent to and abutting Lookout Pointe.
- 1.1.12 **Member** shall mean and refer to all Voting Members of the Cluster Sub-Association hereinafter provided.
- 1.1.13 **Montville Lakes Subdivision Phase III or 3A** shall mean and refer to Blue Heron Estates, the Subdivision, and/or the real property described in Article II of this *Declaration of Restrictive Covenants, Conditions and Restrictions of Montville Lakes, Phase 3A*, recorded in 2003OR023233 Official Records of the Medina County Recorder, State of Ohio and such additional real property as may be added pursuant to a Subsequent Amendment to the *Declaration of Restrictive Covenants, Conditions and Restrictions of Montville Lakes, Phase 3*, recorded in 2003OR023233 Official Records of the Medina County Recorder, State of Ohio.
- 1.1.14 **Occupant** shall mean and refer to a natural person who is in possession of a Cluster Residence within the Subdivision including, without limitation, an Lookout Pointe Cluster Lot Owner or any guest, invitee, lessee, tenant, or family member of a Lookout Pointe Cluster Lot Owner occupying or otherwise using a Cluster Residence.
- 1.1.15 **Ownership Interest** shall mean and refer to the entire right, title and interest of a Lookout Pointe Cluster Lot Owner in all of the fee simple and leasehold estates of a Lookout Pointe Cluster Lot Owner in the Subdivision, whether such interest is held by a life tenant, periodic tenant, trust, corporation, trustee in bankruptcy, receiver, administrator, executor, agent or co-owner of such interest.
- 1.1.16 **Person** shall mean and refer to a natural person, corporation, partnership, limited partnership, limited liability company, trust and any other legal entity to which the law attributes the capacity having rights and duties.
- 1.1.17 **Plat/Re-Plat** shall mean and refer to the recorded plat of Montville Lakes Phase III, Cluster Subdivision Block "H" and all subsequent re-plat(s) of Montville Lakes Cluster Subdivision Block "H" and filed of recorded with the Medina County Recorder's Office, Medina County, Ohio.

- 1.1.18 **Property or Properties** shall mean and refer to the real property described in Article II of this Declaration and such additional real property as may be added pursuant to a Subsequent Amendment to this Declaration.
- 1.1.19 **Sub-Association** shall mean and refer to Lookout Pointe Cluster Homeowners Association, Inc., an Ohio not-for-profit corporation, set forth in Article III, Section 3.1, hereof, which shall have the purpose of maintaining and administering the Utility Facilities, (as hereinafter defined), and Lookout Pointe Common Area, (as hereinafter defined), providing services of general benefit to the Cluster Residence Lookout Pointe Cluster Lot Owners, administering and enforcing this Declaration, collecting and disbursing permissible assessments, and exercising the functions hereinafter provided for, pursuant to Article XI, Section 11.13 et. seq. of the *Declaration of Restrictive Covenants, Conditions and Restrictions of Montville Lakes, Phase 3*, recorded in 2003OR023233 Official Records of the Medina County Recorder, State of Ohio.
- 1.1.20 **Subsequent Amendment** shall mean and refer to an amendment to this Declaration filed with the Medina County Recorder's Office, Medina County, Ohio. A Subsequent Amendment may add property to that covered by this Declaration in Article II hereof and may: (i) impose, expressly or by reference, additional restrictions and obligations on the real property submitted by such Subsequent Amendment to the provisions of this Declaration; and/or (ii) otherwise amend the Declaration.
- 1.1.21 **Tenant** shall mean and refer to any person(s) having a possessory leasehold estate in a Cluster Residence and/or Lookout Pointe Cluster Lot, other than the owner and Occupant of a Cluster Residence.
- 1.1.22 **Township** shall mean and refer to the Township of Montville, organized and existing under the laws of the State of Ohio.
- 1.1.23 **Utility Facility or Utility Facilities** shall mean and refer to any and all non-dedicated streets/roads/rights of way, common water, sanitary sewer, storm sewer, drainage, swales, streams, electric, gas, telephone, cable TV, or other communications lines, now known or hereafter developed, and any other utility line, pipe, conduit, wire, facility, installation and service connection, and any appurtenances thereto. Utility Facility or Utility Facilities are common if they serve one (1) or more Lookout Pointe Cluster Lots and/or Lookout Pointe Common Area. Utility service lines exclusively serving a specific Lookout Pointe Cluster Lot and Cluster Residence are not considered common Utility Facility or Utility Facilities.

## **ARTICLE II: PROPERTIES SUBJECT TO THE DECLARATION**

**2.1 Subjected Properties.** The Property, and all real property hereafter made subject to this Declaration by Subsequent Amendment, comprising Lookout Pointe, all of which are and shall be held subject to this Declaration, are located in the Township of Montville, State of Ohio, as is more particularly described as follows.

**2.1.1 Cluster Residence Block H:** Situated in the Township of Montville, County of Medina, and State of Ohio: And known as being the whole of the "Block H" in the Montville Lakes Subdivision Phase 3A as per Plat 2003PL00047 of Medina County Plat Records, in Original Township Lookout Pointe Cluster Lots 83,84, 89, 90 and 103. **PPN. # 030-11B-33-050.**

**2.1.2 Lookout Pointe Common Area** shall be those areas identified as such by Declarant on a Plat or Re-Plats filed with the Medina County Recorder's Office for **Lookout Pointe** and included herein by Subsequent Amendment and created as dedicated Lookout Pointe Common Area within Lookout Pointe and subjected to this Declaration by Subsequent Amendment. Lookout Pointe Common Area shall be all of the residual real property of Cluster Residence Block "H," and any residual real property that remains after platting of all the FIFTY-THREE (53) Lookout Pointe Cluster Lots.

**2.2 Expansion and Inclusion of Additional Property.** The Declarant reserves the right from time to time to add additional real property to Lookout Pointe and the Property described above and to subject the same to the provisions of this Declaration. To exercise such right, Declarant shall record a re-plat of the Lookout Pointe with the Medina County Recorder with all necessary governmental approvals and record a Subsequent Amendment to this Declaration which expressly provides that the additional real property shall become a part of Lookout Pointe and the Property described in Article II and shall be subject to the covenants and restrictions set forth in this Declaration, except the same may be modified by the Subsequent Amendment.

**2.3 Modification of Property.** Declarant reserves the right to revise the size and/or configuration of any Lookout Pointe Cluster Lot, Cluster Residence and/or Lookout Pointe Common Area or to increase or decrease the number of Lookout Pointe Cluster Lots. To exercise such right, Declarant shall record a re-plat of Lookout Pointe with the Medina County Recorder with all necessary governmental approvals and if necessary, record a Subsequent Amendment to this Declaration. A Lookout Pointe Cluster Lot Owner, by acceptance of a deed to a Lookout Pointe Cluster Lot, appoints Declarant his attorney in fact, with full power of attorney to sign on behalf of the Lookout Pointe Lot Owner any re-plat that would require the signature of all Lookout Pointe Lot Owners, so long as such re-plat in no manner affects the Lookout Pointe Lot Owner's Lookout Pointe Cluster Lot's dimensions as originally

platted and deeded to the Lookout Pointe Cluster Lot Owner.

### **ARTICLE III: HOMEOWNERS ASSOCIATION**

- 3.1 Lookout Pointe Sub-Association.** Lookout Pointe Homeowners Association, Inc., (hereinafter the "Sub-Association"), is a duly constituted not-for-profit corporation existing under the laws of the State of Ohio. The Sub-Association, as a non-profit corporation, is established to enforce and maintain Lookout Pointe, pursuant to this Declaration. Said Sub-Association shall undertake the duties, obligations, charges and restrictions herein provided.
- 3.2 Membership in the Sub-Association.** The Declarant and each Lookout Pointe Cluster Lot Owner shall automatically become and be a Member of the Sub-Association. Other than for Declarant, such membership shall terminate upon the conveyance of record by such Lookout Pointe Cluster Lot Owner of his Lookout Pointe Cluster Lot, at which time the new Lookout Pointe Cluster Lot Owner shall automatically become a Member of the Sub-Association.
- 3.3 Voting Rights of Members.** Each Lookout Pointe Cluster Lot Owner is made a full voting member of the Sub-Association, subject to Article III, Section 3.3.1 written immediately below. Every Lookout Pointe Cluster Lot Owner shall be, as a condition of ownership, a member of the Sub-Association and shall be entitled to one vote for each single Lookout Pointe Cluster Lot owned. When more than one person holds an interest in a given single Lookout Pointe Cluster Lot, all such persons shall be members, and the vote for such Lookout Pointe Cluster Lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any Lookout Pointe Cluster Lot owned by a member.
- 3.3.1 Grant of Voting Proxy** Each Lookout Pointe Cluster Lot Owner, accepting or being granted a deed to a Lookout Pointe Cluster Lot from Declarant or any subsequent owner of a Lookout Pointe Cluster Lot acquiring title to said Lookout Pointe Cluster Lot from a Lookout Pointe Cluster Lot Owner or his heirs or assigns, hereby covenants that such Lookout Pointe Cluster Lot Owner's voting rights in the Sub-Association, pursuant to Article III, 3.3, shall be irrevocably granted by proxy to Declarant pursuant to this Section. This irrevocable grant of proxy to the Lookout Pointe Cluster Lot Owner's voting rights in the Sub-Association to Declarant shall be irrevocable until Declarant terminates any such voting right proxy granted herein, as provided immediately below. Declarant shall have the proxy and right, by this Section, to each Lookout Pointe Cluster Lot Owner's full (100%) voting rights in the Sub-Association until such time as all of the Lookout Pointe Cluster Lots in the Subdivision have been sold to individuals or entities other than Declarant,

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or any entity controlled by Declarant, or at such time as Declarant may elect, in its sole discretion, to terminate one or more of these reserved voting right proxies. Termination shall be performed by Declarant filing an *Affidavit of Termination* with the Medina County Recorder, executed in substance and form of deeds in Ohio and in such manner as is acceptable to the Medina County Recorder for recording or any such termination may be affirmatively made a part of any deed granted by Declarant. No implication of termination of such proxy shall be made by any deed unless a revocation of the proxy by Declarant is expressly set forth in any such deed by reference to this Section of this Declaration.

**3.4 Additional Conditions of Membership.** As a condition of Membership in the Sub-Association, each Lookout Pointe Cluster Lot Owner agrees to abide by these Declarations, the *Articles of Incorporation*, *Code of Regulations*, and *Resolutions* of said Sub-Association and any rules, policies and regulations promulgated pursuant to this Declaration. Payment of Assessments, when due, is a condition of Membership and upon non-payment of any Assessment, a Member shall automatically be denied all privileges until all Assessments of the Lookout Pointe Cluster Lot Owner are paid in full.

**3.5 Powers of Sub-Association.** Declarant hereby covenants, for each Lookout Pointe Cluster Lot within Lookout Pointe and each Lookout Pointe Cluster Lot Owner is hereby deemed to covenant by acceptance of the deed for a Lookout Pointe Cluster Lot, whether or not it shall be so expressed in the deed, to the Sub-Association having the following expressed rights, powers and authority. Notwithstanding the rights and easements of enjoyment and use created in this Declaration, in any Zoning Resolution adopted by Montville Township Board of Trustees or Conditional Zoning Certificate issued by the Board of Zoning Appeals of Montville Township, and in addition to any right otherwise set forth in this Declaration, or available in law or equity, the Sub-Association shall have the following rights, powers and authority:

**3.5.1 Enforcement of this Declaration.** To enforce the provisions of this Declaration and any Subsequent Amendment with respect to the Subdivision.

**3.5.2 Right of Entry.** To enter or authorize its agents to enter in or upon any property in Lookout Pointe, or any part thereof, when necessary in connection with any maintenance, repair or construction for which the Sub-Association is responsible. Such entry shall be made with as little inconvenience to the Lookout Pointe Cluster Lot Owner and Occupants thereof as practicable and any damage caused thereby shall be repaired by the Sub-Association.



- 3.5.3 Grant of Easements.** To dedicate, transfer or grant easements in all or any part of property, land or facilities owned by the Sub-Association or, with Declarant's prior written consent, property, land or facilities owned by the Declarant, (i) to any municipality, public agency, authority or utility or (ii) to any Lookout Pointe Cluster Lot Owner to install, operate, use, maintain, repair and replace in, on, over or under such property, land or any part thereof roads, right-of-way, pipes, conduits, ducts, wires television cables and equipment, and utility lines to provide or furnish electricity, telephone, television, and other communications, sanitary sewers and storm sewers, drainage, gas, water, energy of all types, utility services of all types and access to or for the benefit of the Lookout Pointe Cluster Lot Owners and/or the Sub-Association and further, to construct improvements and establish grade, and for such other purposes as may be determined by the Sub-Association.
- 3.5.4 Right to Obtain Easements.** To obtain easements for the construction, extension, installation, inspection, maintenance or replacement of Utility Facilities and services to or from a public utility or governmental authority, and to or from any body or agency which has the power of eminent domain or condemnation.
- 3.5.5 Right to Repair.** To repair, restore or otherwise correct a condition of disrepair or neglect to the exterior areas of any Lookout Pointe Cluster Lot and/or Lookout Pointe Common Area and to perform any work or duties required of a Lookout Pointe Cluster Lot Owner or Tenant of same, pursuant to this Declaration, provided the Lookout Pointe Cluster Lot Owner or Tenant of same shall not have made such repair or restoration or shall not have cured said condition within a reasonable time after notice thereof from the Declarant or Sub-Association; provided, however, that the Sub-Association need not give notice, if in the opinion of its Board of Trustees, it is acting to prevent personal injury or damage to property or other emergency. The expenses incurred by the Sub-Association shall be considered a Special Assessment against the Lookout Pointe Cluster Lot Owner and his Lookout Pointe Cluster Lot, pursuant to Article IV, Section 4.1.2.
- 3.5.6 Right To Suspend Rights.** There is an automatic suspension of voting rights and beneficial rights to any joint amenity a Lookout Pointe Cluster Lot Owner and his Occupants, Tenants and occasional guests during any period that an Assessment against a Lookout Pointe Cluster Lot Owner and his Lookout Pointe Cluster Lot remains unpaid for a period of thirty (30) days or more or for any infraction of the Sub-Association published rules, policies and regulations.

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- 3.5.7 Rules & Regulations.** To promulgate, from time to time, reasonable and non-discriminatory Rules, Policies and Regulations with respect to the use of any Lookout Pointe Cluster Lot and Lookout Pointe Common Area and common amenities therein.
- 3.5.8 Assessments.** The Sub-Association shall have the right, authority and power to make Assessments and to create liens for same against each Lookout Pointe Cluster Lot and Lookout Pointe Cluster Lot Owner pursuant to and in the manner set forth in Article IV.
- 3.5.9 Assignment of Right to Collect Assessments.** The Sub-Association shall have the right to contract for the collection of any Assessment allowed to be collected by the Sub-Association pursuant to this Declaration.
- 3.5.10 Management.** The Sub-Association shall have the right, authority and power to provide the management and supervision for the operation of the Open Space and the Subdivision in general.
- 3.5.11 Employees and Managers.** The Sub-Association shall have the right, authority and power to engage employees and agents, including, without limitation, attorneys, accountants and consultants, and maintenance firms and contractors. Such delegation may be evidenced by a management agreement, lease or other written instrument and may include reasonable compensation for such terms as deemed reasonable and necessary under all circumstances.
- 3.5.12 Insurance.** The Sub-Association shall have the right, power and authority to acquire insurance, including but not limited to, casualty, comprehensive liability, worker's compensation and directors and officers liability insurance and fidelity bonds.
- 3.5.13 Right to Amend Declaration.** Other than specifically set forth herein, the Sub-Association shall have the right and authority to waive, amend, or modify, after the thirtieth (30th) day following the Declarant ceasing to hold title or interest in any Lookout Pointe Cluster Lot, Cluster Residence or the Lookout Pointe Common Area within the Subdivision (as same may be modified or expanded by Subsequent Amendment) or sooner termination of the reservation by Declarant, set forth in Article XI, Section 11.14, by either of the following acts by the Lookout Pointe Cluster Lot Owners or Members of the Sub-Association:
- 3.5.13.1 Written Consent of Lookout Pointe Cluster Lot Owners.** If, for any reason, no Sub-Association exists, then, upon the written consent of seventy-five percent (75%) of the then Lookout

Pointe Cluster Lot Owners, this Declaration may be amended. Any written consent to the waiver, amendment or modification by the Lookout Pointe Cluster Lot Owners, pursuant hereto, shall be an instrument which sets forth in full the text of the waiver, amendment or modification and be signed by said required number of Lookout Pointe Cluster Lot Owners in the same manner and with all the requirements of a recordable deed in the State of Ohio.

**3.5.13.2 Vote of Sub-Association Members.** If the Sub-Association is lawfully formed and lawfully recognized by the State of Ohio, then this Declaration may be amended, exclusively by a vote of the Members of the Sub-Association at a special meeting held for such purposes, on the affirmative vote of seventy-five percent (75%) of the Members entitled to vote at such meeting. Written notice shall be given to each member at least thirty (30) days in advance of such meeting stating that such waiver, amendment or modification shall be considered at the meeting and shall set forth the text of the proposed waiver, amendment, modification or cancellation. Voting may be by written proxy. In the event of passage by the required number of voting Members of the Sub-Association, the Board of Trustees of the Sub-Association shall execute an instrument reciting such waiver, amendment or modification and such instrument shall be filed with the Medina County Recorder's Office within ninety (90) days of any such vote.

**3.5.13.3 Approval of Township.** Any action taken under the authority of this Article III, Section 3.5.16 et seq., shall be submitted and approved by the Township and/or County prior to filing of such instrument approved and executed pursuant to Article III, Section 3.5.16 et seq. and shall not be effective until any such instrument is approved by the Township and/or County, if required, and filed of record with the Medina County Recorder's Office.

**3.6 Obligations of the Sub-Association.** Pursuant to the mandatory obligations set forth in Article Three, Sections 3.6.3 of the *Declaration of Restrictive Covenants, Conditions and Restrictions of Montville Lakes, Phase 3*, recorded in 2003OR023233 Official Records of the Medina County Recorder, State of Ohio, the Sub-Association shall have the following mandatory maintenance obligations which shall not be increased or enlarged upon without the adoption of an amendment to this Declaration:

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- 3.6.1 Sub-Association's Duty to Take Title to Lookout Pointe Common Area.** All of the Lookout Pointe Common Area described herein shall be owned by the Sub-Association upon the Declarant transferring the Lookout Pointe Common Area to the Sub-Association. The transfer of title to the Lookout Pointe Common Area by Declarant to the Sub-Association shall be not later than ninety (90) days following termination of all the Declarant's voting proxies granted pursuant to Article III, Section 3.3.1 or no later than the time period set forth in Article Nine, Section 9.3.1, and shall be held for the use and benefit of Members of the Sub-Association.
- 3.6.2 Obligation to Enforce Restrictions.** The Sub-Association shall have the obligation to enforce all restrictions and reservations on the Lookout Pointe Common Area set forth in this Declaration.
- 3.6.3 Sub-Association's Duty to Pay Taxes and Assessments on Lookout Pointe Common Area.** The Sub-Association shall pay, prior to delinquency, all taxes and assessments levied against the Lookout Pointe Common Area including without limitations, personal property taxes, general real estate taxes and special assessments by the County.
- 3.6.4 Sub-Association's Duty to Pay Utilities for Lookout Pointe Common Area.** The Sub-Association shall pay all charges for water, gas, sewer, electricity, light, heat, power, telephone and other services used, rendered or supplied to or in connection with the Lookout Pointe Common Area .
- 3.6.5 Obligation to Enforce Rules & Regulations** The Sub-Association is obligated to enforce the reasonable and non-discriminatory Rules and Regulations with respect to the use of any Lookout Pointe Cluster Lot, and the Lookout Pointe Common Area and to insure any Lookout Pointe Cluster Lot Owner's due process rights.
- 3.6.6 Obligation to Enforce Assessments.** The Sub-Association shall have the obligation to make Assessments, to collect same and to enforce liens for non-payment of any assessment against each Lookout Pointe Cluster Lot and Lookout Pointe Cluster Lot Owner pursuant to and in the manner set forth in Article IV.
- 3.6.7 Obligation to Obtain Insurance.** The Sub-Association shall, if applicable obtain, and keep in full force and effect the following insurance:
- 3.6.7.1 Casualty Insurance.** Fire, extended coverage, vandalism and malicious mischief insurance, or risk insurance, insuring all of the improvements in Lookout Pointe owned by the Sub-Association which are normally insured (if any), in an amount equal to at least

eighty percent (80%) of the full replacement cost thereof. Such insurance may have a deductible clause in an amount not exceeding Five Thousand Dollars (\$5,000.00) or, if the property has a value of less than Five Thousand Dollars (\$5,000.00), the Sub-Association shall not be required to maintain insurance on it.

**3.6.7.2 Liability Insurance.** Comprehensive general liability insurance (with automobile liability coverage if the Sub-Association owns any vehicles) covering claims for bodily injury or death occurring upon, in, or about Lookout Pointe owned by the Sub-Association, with contractual liability and "personal injury" coverage, shall afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) with respect to both bodily injury and death and of not less than One Hundred Thousand Dollars (\$100,000.00) with respect to property damage. The insurance procured under this Section shall designate, as additional insures, the Declarant, all parties to this Declaration and the Lookout Pointe Cluster Lot Owners.

**3.6.7.3 Worker's Compensation Insurance.** The Sub-Association shall maintain Worker's Compensation Insurance if required under the applicable laws of the State of Ohio.

**3.6.7.4 Additional Insurance.** The Sub-Association may, but shall not be obligated to, obtain and maintain such additional and other insurance as it deems desirable, including without limitation, directors and officers liability insurance and fidelity bonds.

**3.6.8 Obligation to Manage.** The Sub-Association shall provide the management and supervision for the operation of the Lookout Pointe Common Area in general. The Sub-Association shall establish and maintain such policies, programs and procedures to fully implement this Declaration for the purposes intended and for the benefit of the Members and may, but shall not be required to:

**3.6.8.1 Adopt Rules.** The Sub-Association may adopt its own rules, polices and regulations regarding the use of the Lookout Pointe Common Area and any amenity therein or thereon.

**3.6.8.2 Engage Employees and Agents.** The Sub-Association shall engage, by contract or by direct employment, sufficient employees or other Persons to carry out, implement or enforce any obligation imposed upon the Sub-Association by this Declaration.

- 3.6.9 **Obligation to Delegate.** If the Sub-Association does not employ sufficient staff to carry out the obligations imposed upon the Sub-Association by this Declaration or the Board of Trustees determines that it is more economical to delegate all or any portion of its authority and responsibilities to a manager, managing agent, or management company, it shall be obligated to do so.
- 3.6.10 **Obligation for Dispute Resolution.** The Board of Trustees, to the best of its ability, shall act as an arbitrator of disputes between Lookout Pointe Cluster Lot Owners. All parties to the dispute, however, must agree in writing to submit such dispute to the Board of Trustees.
- 3.6.11 **Obligation to Issue Certificate of Compliance.** The Sub-Association shall have the obligation to issue "Certificate of Compliance" pursuant to Article IX, Section 9.16.
- 3.6.12 **Obligation to Maintain Lookout Pointe Common Area.** The Sub-Association shall have the obligation to perform the following enumerated maintenance within the Lookout Pointe Common Area:
- 3.6.12.1 **Grass and Leaves.** The Sub-Association shall fertilize, cut and maintain the grass on all areas of the Lookout Pointe Common Area.
- 3.6.12.2 **Shrubbery and Plants.** The Sub-Association shall maintain all shrubbery and plants and beds thereof in the Lookout Pointe Common Area.
- 3.6.12.3 **Non-dedicated Streets/Roads/Rights of Ways and Other Lookout Pointe Common Area Repairs.** The Sub-Association shall maintain and repair all non-dedicated streets/roads/rights of way, sidewalks along same, structures and Common Utility Facilities and the remainder of the Lookout Pointe Common Area, as well as any areas dedicated for the common use by all Cluster Resident Lot Owners and/or Occupants, in a clean, safe, neat, healthy and workable condition.
- 3.6.12.4 **Snow Removal.** The Sub-Association shall use reasonable efforts to keep the private roads and the individual Lookout Pointe Cluster Lot driveways, (within one foot of a Cluster Residence garage door), sidewalks, stoops and steps and any commonly used sidewalks running along the non-dedicated streets/roads/rights of ways and any common parking spaces free from accumulations of snow. Notwithstanding the above,

the removal of snow accumulating less than two inches (2") (excluding drifting) shall be the obligation of each Lookout Pointe Cluster Lot Owner. The Sub-Association shall not be required to remove ice in any area set forth herein for which it is required to perform snow removal.

#### **ARTICLE IV: ASSESSMENTS AND LIEN RIGHTS**

**4.1 Covenant for Assessments.** Declarant hereby covenants, for each Lookout Pointe Cluster Lot within the Subdivision, and each Lookout Pointe Cluster Lot Owner and/or Ownership Interest to a Lookout Pointe Cluster Lot is hereby deemed to covenant by acceptance of the deed for a Lookout Pointe Cluster Lot and/or Ownership Interest to a Lookout Pointe Cluster Lot, whether or not it shall be so expressed in the deed, to pay to the Sub-Association the following Assessments:

**4.1.1 General Maintenance Assessment.** A "General Maintenance Assessment" shall be levied yearly against each Lookout Pointe Cluster Lot Owner and his Lookout Pointe Cluster Lot. The General Maintenance Assessment shall be used to maintain any lands, rights or property titled in the Sub-Association or required to be maintained by the Sub-Association to include but not be limited to: Lookout Pointe Common Area, any building, non-dedicated street/road/right of ways, landscaping, lawn services, lawn maintenance, front entrance, street lighting, snow plowing, insurance and any other maintenance items within the Subdivision and not the direct responsibility of any governmental agency or any private Lookout Pointe Cluster Lot Owner. The amount of such General Maintenance Assessments shall be determined annually on or before December 31<sup>st</sup> for the forthcoming year by a majority vote of the Board of Trustees and shall be an amount necessary to promote the health, safety, and welfare of the residents of the development and to carry out any of the enumerated obligations of the Sub-Association set forth in this Declaration.

**4.1.1.1 Manner of Computation of General Maintenance Assessment.** All Lookout Pointe Cluster Lot Owners shall pay the yearly General Maintenance Assessment in accordance with the fraction, the numerator of which being the total number of Lookout Pointe Cluster Lots owned by a Lookout Pointe Cluster Lot Owner and the denominator of which being the total number of Lookout Pointe Cluster Lots owned by all Lookout Pointe Cluster Lot Owners in the Lookout Pointe. By way of example, when there are ten (10) Lookout Pointe Cluster Lots owned by Lookout Pointe Cluster Lot Owners in the Lookout Pointe, each Lookout Pointe Cluster Lot Owner that owns one of those Lookout Pointe Cluster

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Lots shall pay the General Maintenance Assessment equal to one-tenth (1/10) of the General Maintenance Assessment. The General Maintenance Assessment shall be collected on a monthly basis from each Lookout Pointe Cluster Lot Owner.

- 4.1.2 **Special Assessments Against a Single Lookout Pointe Cluster Lot and/or Lookout Pointe Cluster Lot Owner.** A "Special Assessment" shall be levied by the Board of Trustees against any Lookout Pointe Cluster Lot Owner and his Lookout Pointe Cluster Lot for the costs of enforcement of any restriction set forth in this Declaration. A Special Assessment shall include the cost borne/incurred by the Sub-Association in enforcing a violation of any restriction set forth in this Declaration by a Lookout Pointe Cluster Lot Owner or any Lookout Pointe Cluster Lot Owner's Occupant Tenant and/or guest. The cost borne/incurred by the Sub-Association shall include, but not limited to, the actual cost expended by the Sub-Association to bring any Lookout Pointe Cluster Lot into compliance upon refusal of a Lookout Pointe Cluster Lot Owner to do so, the amount of any damage caused to any Property by any of those individuals enumerated in the preceding sentence, attorney fees and court costs, if any.
- 4.1.3 **Major Improvement Assessments.** A "Major Improvement Assessment" may be levied by the Board of Trustees for any major improvement for the benefit of the Subdivision **after** the Declarant no longer holds the proxy to all votes pursuant to Article III, Section 3.3.1 and after an affirmative vote of at least FIFTY-ONE (51%) of the Voting Members of the Sub-Association. A Major Improvement Assessment shall be defined as the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Lookout Pointe Common area, including, but not limited to: non-dedicated roadways, common sidewalks, common structures, fixtures and personal property related thereto.
- 4.1.4 **Special Emergency Assessments.** A "Special Emergency Assessment shall be levied by the Board of Trustees against each Lookout Pointe Cluster Lot Owner and his Lookout Pointe Cluster Lot in the event of an emergency, national or natural disaster. No Special Emergency Assessment shall be levied until the Board of Trustees determines, by majority vote, that such Special Emergency Assessment is necessary for the safety, welfare and protection of the Lookout Pointe Cluster Lot Owners and that immediate funds must be expended to save loss of life or property.
- 4.1.5 **Manner of Computation of Major Improvement and/or Special Emergency Assessment.** All Lookout Pointe Cluster Lot Owners shall pay all Major Improvement Assessments, and/or Special Emergency

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Assessments in accordance with the fraction, the numerator of which being the total number of Lookout Pointe Cluster Lots owned by a Lookout Pointe Cluster Lot Owner and the denominator of which being the total number of Lookout Pointe Cluster Lots owned by all Lookout Pointe Cluster Lot Owners in Lookout Pointe. By way of example, when there are ten (10) Lookout Pointe Cluster Lots owned by Lookout Pointe Cluster Lot Owners each Lookout Pointe Cluster Lot Owner that owns one of those Lookout Pointe Cluster Lots shall pay an Assessment equal to one-tenth (1/10) of the Major Improvement Assessments, and/or Special Emergency Assessments. All Major Improvement Assessments, and/or Special Emergency Assessments may be levied over a period of years by the Board of Trustees, however, collection shall be on a monthly basis.

**4.2 Use of Assessments.** All Assessments levied by the Sub-Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of Lookout Pointe for the improvement and maintenance of the Lookout Pointe Common Area, for the intended use of any Assessment and/or as is otherwise consistent with the rights, obligations and responsibilities of the Sub-Association and for the benefit of its Voting Members.

**4.3 Non-Liability of Foreclosure Sale Purchaser For Past Due Assessments.** When an institutional first mortgagee or purchaser at a foreclosure sale of an institutional first mortgage acquires an Ownership Interest as a result of foreclosure or the acceptance of a deed in lieu of foreclosure, such mortgagee or purchaser, their respective successors and assigns and all future grantees of said Lookout Pointe Cluster Lot, shall not be liable for the Assessments levied against the owner of such Ownership Interest in a Lookout Pointe Cluster Lot prior to acquisition of title to the Ownership Interest whether or not a lien has been filed in accordance with Article IV, Section 4.8 et seq. Any funds received on the judicial sale of the Ownership Interest in excess of the mortgage lien, the court costs and the real estate taxes and governmental assessments shall, however, to the extent otherwise permitted under the laws of the State of Ohio, next be applied to satisfy the Sub-Association's lien for Assessments. The Lookout Pointe Cluster Lot Owner and/or owners of an Ownership Interest shall be and remain personally and primarily liable, jointly and severally, for the Assessments accruing against the Ownership Interest prior to the date of the judicial sale, as provided in this Section.

**4.4 Liability for Assessments Upon Voluntary Conveyance.** Except as set forth in Article IV, Section 4.3, the grantee(s) of an Ownership Interest shall be jointly and severally liable with the grantor for the amount of all unpaid Assessments, whether or not a lien has been perfected, without prejudice to the grantee(s)'s right to recover from the grantor the amounts paid by the grantee(s) therefor. A mortgagee other than a first institutional mortgagee, a purchaser at a foreclosure sale of a mortgage other than a first mortgage held by an institutional mortgagee, their

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respective successors and assigns, a devisee of an Ownership Interest, or the transferee of an Ownership Interest pursuant to the statute of Descent and Distribution, shall be deemed to have obtained said Lookout Pointe Cluster Lot pursuant to a voluntary conveyance for purposes of this Section.

**4.5 No Right to Waive Assessments.** No Lookout Pointe Cluster Lot Owner or Board of Trustees of the Sub-Association shall have the right to waive any individual Lookout Pointe Cluster Lot Owner's obligation to pay past due, current or future Assessments. Any such representation by any Lookout Pointe Cluster Lot Owner, builder, or real estate agent or broker for same shall be an actual fraud upon any person acquiring an Ownership Interest in and to a Lookout Pointe Cluster Lot with such representation whether written or oral.

**4.6 No Exemption for Non-Use of Lookout Pointe Common Area.** A Lookout Pointe Cluster Lot Owner or any Ownership Interest in a Lookout Pointe Cluster Lot not otherwise exempt from the Assessments may not exempt himself from liability for Assessments levied against him by waiver of the use of the Cluster Residence Common Area or any other amenity owned, leased, licensed and/or operated by the Sub-Association, or by abandonment of his Lookout Pointe Cluster Lot. Furthermore, no Lookout Pointe Cluster Lot Owner or any owner of an Ownership Interest in a Lookout Pointe Cluster Lot shall be entitled to any portion of the funds held for reserves; nor shall any Person have a claim against the Sub-Association with respect thereto.

**4.7 Creation of Lien for Unpaid Assessments.** Each Lookout Pointe Cluster Lot Owner hereby covenants and agrees by acceptance of the deed to an Ownership Interest in and to a Lookout Pointe Cluster Lot, whether or not expressed in any such deed, to pay to the Sub-Association, all Assessments levied against such Lookout Pointe Cluster Lot Owner in accordance with this Declaration on or before the due date. If a Person liable for the payment of an Assessment shall **fail** to pay the same when due, the Sub-Association shall notify said Person, in writing, of the failure to make said payment. In the event that the Assessment is not paid within ten (10) calendar days following said notification, then such Assessment shall be "delinquent" and, together with such interest thereon at the rate permitted to be charged to individuals in Ohio or twelve percent (12%) per annum, whichever is lower, from the date said payment was due and costs of collection, including but not limited to attorney fees and court costs, and shall, upon "perfection" as provided in Article IV, Section 4.7.1, become a continuing lien, (hereinafter the "Lien"), upon the Lookout Pointe Cluster Lot and any Ownership Interest of such Person with respect to such Lookout Pointe Cluster Lot and any Cluster Residence thereon and shall bind such Ownership Interest in the hands of the then Lookout Pointe Cluster Lot Owner, his heirs, executors, administrators, devisees, personal representatives, successors and assigns. Each co-Lookout Pointe Cluster Lot Owner of a Lookout Pointe Cluster Lot shall be personally liable, jointly and severally, with all other co-

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Lookout Pointe Cluster Lot Owners for all Assessments made by the Sub-Association with respect to said Lookout Pointe Cluster Lot. The assessment lien provided for herein shall be subordinate to the Lien of any first institutional mortgage on a Lookout Pointe Cluster Lot, but shall not be subordinate to any other mortgage lien unless the written consent of the Sub-Association to such further subordination is recorded in the Medina County Records.

**4.7.1 Perfection of Lien.** If any Lookout Pointe Cluster Lot Owner shall fail to pay when due an Assessment levied in accordance with this Declaration (such Lookout Pointe Cluster Lot Owner hereinafter referred to as the "Delinquent Lookout Pointe Cluster Lot Owner"), the Board of Trustees of the Sub-Association shall authorize the perfection of a lien on the Ownership Interest of the Delinquent Lookout Pointe Cluster Lot Owner on the Cluster Residence for which Assessments have not been paid by filing for record with the recorder of Medina County, Ohio a Certificate of Lien. The Certificate of Lien shall be in recordable form and shall include the following:

**4.7.1.1 Name of Lien Claimant.** The Lien shall be in the name of the Board of Trustees of the Sub-Association against the named Delinquent Owner.

**4.7.1.2 Description of Lookout Pointe Cluster Lot.** A description of such Delinquent Owner's Lookout Pointe Cluster Lot for which Assessments were not paid.

**4.7.1.3 Amount Due.** The entire amount claimed, including the amount of any delinquency, the rate of interest accruing thereon and actual and estimated cost of collection.

**4.7.1.4 Declaration Authority.** A statement referring to the provisions of this Declaration and lien authorization.

**4.7.1.5 Signing of Certificate.** The Certificate of Lien shall be signed before a notary public by one of the Board of Trustees of the Sub-Association.

**4.7.2 Duration of Lien.** Any lien created pursuant to Article IV, Section 4.7.1 shall remain valid for a period of five (5) years from the time of filing of said Certificate of Lien, unless an action to enforce same has then been commenced or said Lien is sooner released or satisfied, in the same manner provided by law for the release or satisfaction of mortgages on real property, or discharged by the final judgment or order of a Court of competent jurisdiction in an action brought to discharge such Lien.

- 4.7.3 **Priority of Lien.** Except as may be provided under applicable law, a Lien perfected pursuant to Article IV, Section 4.7.1 et seq. shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and governmental assessments and liens of a bona fide first mortgage to an institutional lender.
- 4.7.4 **Enforcement of Lien.** A Lien may be foreclosed in the same manner as a mortgage on real property in an action brought in the name of the Sub-Association after authorization from the Board of Trustees of the Sub-Association.
- 4.7.5 **Dispute as to Assessment.** A Lookout Pointe Cluster Lot Owner who believes that any Assessment levied by the Sub-Association against his Ownership Interest in a Lookout Pointe Cluster Lot for which a Certificate of Lien has been filed by the Sub-Association has been improperly determined, may bring an action in the Court of Common Pleas of Medina County, Ohio, for discharge of all or any portion of such Lien, but the Lien shall continue until the actual amount of the Lien so determined is paid in full. The Sub-Association may counterclaim in such action for foreclosure of the amount of Lien found to be due.
- 4.7.6 **No Waiver Implied.** The creation of a Lien upon any Ownership Interest owned by a Delinquent Lookout Pointe Cluster Lot Owner shall not waive, preclude or prejudice the Sub-Association from pursuing any and all other remedies granted to it elsewhere in this Declaration, at law, or in equity.
- 4.7.7 **Personal Obligations.** The Assessment obligations created pursuant to this Declaration shall be and remain the personal obligations of the Delinquent Lookout Pointe Cluster Lot Owner(s) until fully paid, discharged or abated.
- 4.7.8 **Exemption from Assessments and Liens.** The following property shall be exempted from the Assessments and Liens established pursuant to Article IV, Section 4.1 et seq. and Article IV, Section 4.7 et seq., respectively:
- 4.7.8.1 **Government Property.** All properties to the extent of any easement or other interest therein dedicated and accepted by the State of Ohio, the County and/or the Township and devoted to public use.
- 4.7.8.2 **Tax Exempt Property.** All properties of the Township or the County which are exempted from taxation by the laws of the State of Ohio.

- 4.7.8.3 **Lookout Pointe Common Area.** All property and any amenity within the Lookout Pointe Common Area.
- 4.7.8.4 **Property of the Declarant.** All properties of the Declarant so long as it is fee title owner to any Lookout Pointe Cluster Lot within the Subdivision.
- 4.7.8.5 **Model Cluster Residence.** A Model Cluster Residence Home constructed by a Declarant or an authorized builder on a Lookout Pointe Cluster Lot utilized by the original builder as a Model for sale of like homes to potential purchaser(s).
- 4.7.8.6 **Speculative Built Cluster Residence.** A Lookout Pointe Cluster Lot deeded to a qualified builder, other than Declarant, upon which he builds a Cluster Residence for immediate sale to others for a period not to exceed 12 months from date of issuance of a building permit for such Cluster Residence by the County.
- 4.7.8.7 **Design Built Cluster Residence Under Construction.** A Lookout Pointe Cluster Lot deeded to a Lookout Pointe Cluster Lot Owner who contracts for the construction of a Cluster Residence upon the Lookout Pointe Cluster Lot for a period not to exceed the sooner of an "occupancy permit" being issued by the County or one year from the date of purchase of the Lookout Pointe Cluster Lot.

**ARTICLE V: GENERAL RESTRICTIONS  
ON AND OBLIGATIONS OF LOOKOUT POINTE CLUSTER LOT OWNERS**

- 5.1 **General Restrictions And Obligations.** All Lookout Pointe Cluster Lot Owners and any owner of an Ownership Interest, his respective heirs, trustees, administrators, executors, successors and assigns shall be bound by all the conditions, restrictions, covenants of this Declaration and Subsequent Amendment filed with the Medina County Recorder's Office and the *Declaration of Restrictive Covenants, Conditions and Restrictions of Montville Lakes, Phase 3*, recorded in 2003OR023233 Official Records of the Medina County Recorder, State of Ohio . These obligations and restrictions shall be covenants that run with the land and shall be perpetual in nature. In addition, each Lookout Pointe Cluster Lot Owner shall have the following general responsibilities and such responsibilities shall not in any manner be imputed to the Declarant, the Sub-Association:
  - 5.1.1 **Taxes and Assessments.** Each Lookout Pointe Cluster Lot Owner shall pay, prior to delinquency, all taxes and governmental assessments and

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Assessments levied against the Lookout Pointe Cluster Lot owned by each Owner.

- 5.1.2 Utilities.** Each Lookout Pointe Cluster Lot Owner shall pay all charges for water, gas, sewer, electricity, light, heat, power, telephone and other services used, rendered or supplied to or in connection with such Lookout Pointe Cluster Lot Owner's Cluster Residence, including, without limitation, the charges for electricity used in the light post in front of each Cluster Residence required by Article V, Section 5.6.5.
- 5.1.3 Insurance.** Each Lookout Pointe Cluster Lot Owner, at his sole expense and cost, shall maintain and keep in full force and effect the following insurance:
- 5.1.3.1 Liability Insurance.** Each Lookout Pointe Cluster Lot Owner shall maintain adequate insurance covering such Owner's Lookout Pointe Cluster Lot and Cluster Residence.
- 5.1.3.2 Hazard Insurance.** Each Lookout Pointe Cluster Lot Owner shall maintain fire and "all risk" hazard insurance coverage on each Owner's Cluster Residence in the amount of the full replacement cost of such Cluster Residence.
- 5.1.3.3 Hazard Contents Insurance.** Each Lookout Pointe Cluster Lot Owner shall maintain hazard insurance on his contents and personal property, as such Lookout Pointe Cluster Lot Owner shall desire.
- 5.1.3.4 Workman's Compensation.** Each Lookout Pointe Cluster Lot Owner shall maintain workman's compensation insurance if required under the applicable laws of the State of Ohio.
- 5.2 Township Zoning.** All Lookout Pointe Cluster Lot Owners and any owner of an Ownership Interest his respective heirs, trustee, administrator, executor, successor and assigns shall be bound by all the Zoning Resolutions of Montville Township and all Conditional Zoning Certificates adopted by the Montville Township Board of Zoning Appeals for Montville Lakes Subdivision Phase III and the Planned Unit Development of Montville Lake Subdivision.
- 5.3 General Restriction On Lookout Pointe Common Area.** No Lookout Pointe Cluster Lot Owner or any other Person shall construct or place upon anything on the surface of the Lookout Pointe Common Area or on the surface of any easement which is for the benefit of the Sub-Association or anyone to whom an easement may be granted, including, but not limited to, Utility Facility easements, without the

prior written approval of the Declarant or the Sub-Association, upon the Declarant ceasing to hold voting proxy rights pursuant to Article III, Section 3.3.1.

**5.4 General Use Restrictions On Lookout Pointe Cluster Lot and Lookout Pointe Common Area.**

All Lookout Pointe Cluster Lot Owners and Occupants, Tenants and guests of a Lookout Pointe Cluster Lot Owner shall make use of a Lookout Pointe Cluster Lot and/or Lookout Pointe Common Area in such manner as not to create or maintain a nuisance and shall conduct all activities and enjoyment of a Lookout Pointe Cluster Lot and/or Lookout Pointe Common Area to prevent offensive, immoral, improper, or unlawful activities of any kind and being mindful of Declarant's and each Lookout Pointe Cluster Lot Owner's and/or Sub-Association's right to peaceful enjoyment of his respective Lookout Pointe Cluster Lot and/or Lookout Pointe Common Area.

**5.5 Abide by Rules and Regulations:** All Lookout Pointe Cluster Lot Owners agree as additional restrictions, covenants, and obligations for their respective Lookout Pointe Cluster Lot, and for themselves and their heirs, successors and/or assigns and anyone claiming title through a Lookout Pointe Cluster Lot Owner or claiming privileges of membership in the Sub-Association or use of any Lookout Pointe Common Area rights or other amenities, to abide by, to adhere to and to assume any and all obligations, duties and restrictions contained in this Declaration, any Subsequent Amendment, and all rules and regulations of the Sub-Association.

**5.6 General Conditions of Lookout Pointe Cluster Lot and Cluster Residence.** All Lookout Pointe Cluster Lot Owners shall provide good, neat, and orderly exterior maintenance repair upon each Lookout Pointe Cluster Lot and any Cluster Residence thereon, as follows:

**5.6.1 Exterior Maintenance of Cluster Residence.** Each Lookout Pointe Cluster Lot Owner shall keep such Lookout Pointe Cluster Lot Owner's Cluster Residence in good condition and repair and shall make all repairs and replacements, structural and non-structural, ordinary as well as extraordinary, interior and exterior, including, decks, porches, doors (including garage doors) and windows, including frames, hardware and other appurtenances thereof. In addition, each Lookout Pointe Cluster Lot Owner shall make all repairs and replacements necessitated by fire or other casualty within a reasonable time not to exceed one hundred and eighty (180) days. Such obligation to repair and/or replace includes but is not limited to regular repairs, replacements and maintenance of the exterior building surfaces, the roof, gutters, down-spouts, drives, walks, and exterior lighting of the Cluster Residence constructed or installed on a Lookout Pointe Cluster Lot and any allowable underground irrigation system.

**5.6.2 Grounds and Landscaping.** A Lookout Pointe Cluster Lot Owner shall

properly landscape his Lookout Pointe Cluster Lot and maintain all landscaping (including watering of grass) on a regular basis of the Lookout Pointe Common Area immediately adjacent to his Lookout Pointe Cluster Lot, even though such grassed area is within the Lookout Pointe Common Area. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain anywhere on a Lookout Pointe Cluster Lot by any Lookout Pointe Cluster Lot Owner; irrespective of whether a Cluster Residence has been constructed on such Lookout Pointe Cluster Lot. All trees, shrubs, grass and other annual or perennial flora shall be kept in a living state and all dead flora shall be timely removed by the Lookout Pointe Cluster Lot Owner. No Lookout Pointe Cluster Lot shall remain without appropriate grass and landscaping for a period in excess of one (1) year from the issuance of building permit by the County for the construction of a Cluster Residence on the Lookout Pointe Cluster Lot.

- 5.6.3 Debris and Garbage.** No Lookout Pointe Cluster Lot Owner shall allow refuse, debris, pipes, unused construction material, or other unsightly objects to be placed, kept, allowed or suffered to remain anywhere on a Lookout Pointe Cluster Lot. In the event that any Lookout Pointe Cluster Lot Owner shall fail or refuse to keep a Lookout Pointe Cluster Lot in conformity herewith, then the Sub-Association or its representatives may enter upon the Lookout Pointe Cluster Lot and maintain said Lookout Pointe Cluster Lot in conformity herewith at the expense of the Lookout Pointe Cluster Lot Owner thereof and such entry shall not be deemed a trespass. The expenses incurred by the Sub-Association shall be considered a Special Assessment against said Lookout Pointe Cluster Lot Owner and Lookout Pointe Cluster Lot pursuant to Article IV, Section 4.1.4.
- 5.6.4 Cleaning - Snow Removal.** Each Lookout Pointe Cluster Lot Owner shall remove snow and ice, as may be reasonable in the circumstances, from, without limitations, all sidewalks, stoops, landings and steps to and from his Cluster Residence, steps, except as such snow removal is provided by the Sub-Association pursuant to Article III, Section 3.6.12.4
- 5.6.5 Electric Posts.** Each Lookout Pointe Cluster Lot Owner shall keep in good condition and repair any electric posts in/on a Lookout Pointe Cluster Lot with a Cluster Residence and shall replace light bulbs promptly as required. Each Lookout Pointe Cluster Lot Owner of a Lookout Pointe Cluster Lot with a Cluster Residence shall cause the light to be lit during all hours of darkness and shall pay the electric utility charge for such light.
- 5.6.6 Driveways and Sidewalks.** Each Lookout Pointe Cluster Lot Owner shall maintain all driveways, sidewalks, steps, stoops, landings, patios and other paved areas on his Lookout Pointe Cluster Lot or located between his



Lookout Pointe Cluster Lot and the non-dedicated street/road/rights of ways adjacent to his Lookout Pointe Cluster Lot, in good condition and repair.

**5.6.7 Repairs Caused by the Wrongdoing of a Lookout Pointe Cluster Lot Owner, Occupant or Tenant.** Notwithstanding anything in this Declaration to the contrary, each Lookout Pointe Cluster Lot Owner shall be responsible to pay for or make all repairs and replacements which would otherwise be the responsibility of the Declarant, the County, the Township, the Sub-Association or other Lookout Pointe Cluster Lot Owners, if the repairs or replacements are required because of the acts or negligence of the Lookout Pointe Cluster Lot-Owner or his Occupants, Tenants and/or guests.

**5.6.8 Right of Sub-Association to Perform Maintenance Obligations of Lookout Pointe Cluster Lot Owner.** If a Lookout Pointe Cluster Lot Owner fails to perform any maintenance obligations or to make any repairs or replacements required to be performed or made by a Lookout Pointe Cluster Lot Owner pursuant to the provisions of this Declaration and specifically Article V, Sections 5.6.1 through Section 5.6.7, and if such failure continues for thirty (30) days after the Sub-Association gives written notice of such failure to the Lookout Pointe Cluster Lot Owner, (unless the Lookout Pointe Cluster Lot Owner shall have begun, or shall have taken measures to have begun, to do such maintenance or to make such repairs or replacements within said thirty-day period and shall be continuing with due diligence), then the Sub-Association shall have the right to perform such maintenance or to make such repairs or replacements, and the Lookout Pointe Cluster Lot Owner shall reimburse the Sub-Association for all costs and expenses incurred by the Sub-Association in connection therewith within thirty (30) days following receipt of an invoice. Failure of a Lookout Pointe Cluster Lot Owner to pay any such invoice shall authorize the Board of Trustees to assess the Lookout Pointe Cluster Lot Owner and his Lookout Pointe Cluster Lot, as a Special Assessment pursuant to Article IV, Section 4.1.4. Notwithstanding the above, if the Sub-Association believes that an emergency situation exists, no notice to the Lookout Pointe Cluster Lot Owner shall be required. Notwithstanding the rights set forth above shall not limit the right of the Sub-Association, Declarant or other Lookout Pointe Cluster Lot Owner from any rights afforded under law or equity to enforce this Declaration.

**5.6.9 Standards for Maintenance and Repair.** All maintenance, repair and replacement required to be performed or made by a Lookout Pointe Cluster Lot Owner pursuant to the provisions of this Declaration, specifically Article V, Sections 5.6.1 through Section 5.6.7, shall be done in a good and

workmanlike manner and in accordance with all federal, state and local laws, statutes, resolutions, codes and regulations. Any replacements required shall be of the same (or better) specifications, quality, kind and type as the item being replaced. All repairs and maintenance shall be done promptly to maintain the values of the Property within the Subdivision.

**5.7 Land Use - Residential Use.** All of the Lookout Pointe Cluster Lots, except as hereinafter expressly provided to the contrary, including all Lookout Pointe Cluster Lots enlarged or recreated by shifting or location of side boundary lines, are restricted to the use of a single family, their household servants and guests, herein referred to as a single family residence or Cluster Residence. Only one Cluster Residence shall be erected per Lookout Pointe Cluster Lot. A construction shed may be placed on a Lookout Pointe Cluster Lot and remain there temporarily only during the course of active construction of a Cluster Residence. Otherwise, no portable building or trailers, mobile homes, or campers may be moved onto a Lookout Pointe Cluster Lot or any Lookout Pointe Common Area.

**5.8 Land Use - Use of the Lookout Pointe Cluster Lot or Cluster Residence.** No industry, business, trade, occupation, or profession of any kind, whether permitted under any County and/or Township Zoning Resolution, whether for commercial, religious, educational, charitable, or other purposes, shall be conducted, maintained, or permitted on any Lookout Pointe Cluster Lot, in any Cluster Residence, or in or on any portion of the Lookout Pointe Common Area, except such as may be permitted by these and other applicable covenants herein written, specifically to wit:

**5.8.1 Declarant's Business Rights.** The Declarant may perform or cause to be performed such work as is incident to the completion of its development of the Subdivision and improvement of Lookout Pointe.

**5.8.1.1 Model Cluster Residence.** The Declarant shall have the right to, and shall have the right to authorize builders to construct and maintain a Cluster Residence on a Lookout Pointe Cluster Lot as a Model Cluster Residence and utilize such Cluster Residence for the purpose of selling additional Lookout Pointe Cluster Lots and/or contracting for construction of like Model Cluster Residence(s) on Lookout Pointe Cluster Lots within the Subdivision.

**5.8.1.2 Specific Exemption.** Nothing in Article V, Section 5.8 shall in any manner limit the Declarant, its successors and/or assigns, from operating its respective business enterprises on any portion of the Property within Lookout Pointe.

- 5.8.2 Right of Lookout Pointe Cluster Lot Owner to Construct Cluster Residence And Maintain.** A Lookout Pointe Cluster Lot Owner or contractor of, agent or representative may perform or cause to be performed any construction, maintenance, repair, or remodeling work with respect to any Lookout Pointe Cluster Lot or Cluster Residence.
- 5.8.3. Right of Lookout Pointe Cluster Lot Owner To Lease Cluster Residence.** A Lookout Pointe Cluster Lot Owner shall have the right to lease his Cluster Residence for single family residential use, except, that no Cluster Residence shall be leased for a period less than one (1) year. No Lookout Pointe Cluster Lot Owner shall rent, let or lease a Cluster Residence on a month-to-month, weekly or nightly rental, in whole or part.
- 5.8.4 Right of Lookout Pointe Cluster Lot Owner To Home Office.** A Lookout Pointe Cluster Lot Owner, his Tenant or Occupant shall have the right to use a portion of a Cluster Residence for a personal private office and/or studio, provided:
- 5.8.4.1 Home Office Not to Interfere.** That the activities therein shall not interfere with the quiet enjoyment or comfort of any other Lookout Pointe Cluster Lot Owner;
- 5.8.4.2 No Walk-in Traffic.** That such use does not result in walk-in traffic to the Lookout Pointe Cluster Lot from the general public or from regular business invitees;
- 5.8.4.3 No Commercial Traffic.** That such use does not result in any commercial traffic, frequent deliveries, parcel and package drop-offs and pick-up, regular daily United States Postal Service excepted; and
- 5.8.4.4 Does Not Violate Zoning.** That such use does not violate any Township Zoning Resolutions.
- 5.9 No Nuisances Permitted.** No Lookout Pointe Cluster Lot Owner shall permit nuisances or any safety hazard to remain in or on a Lookout Pointe Cluster Lot, Cluster Residence, or the Lookout Pointe Common Area nor use or practice which is the source of nuisances or safety hazards to other Lookout Pointe Cluster Lot Owners, or Lookout Pointe Common Area or using any other amenity within Lookout Pointe or which interferes with the peaceful possession and proper use of any other property within or adjacent to Lookout Pointe.
- 5.9.1 Holiday Decorations.** No excessive use of outdoor electrical lighting and

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outdoor decorations in celebration of any holiday shall be permitted. The Board of Trustees' determination of "excessive" shall be binding on any Lookout Pointe Cluster Lot Owner, Occupant and/or Tenant. No holiday decorations shall be placed on any Lookout Pointe Cluster Lot or Cluster Residence sooner than thirty (30) days prior to any holiday and shall be removed no later than thirty days (30) following a holiday.

- 5.10 No Illegal Activities.** No Lookout Pointe Cluster Lot Owner or other Person shall permit any unlawful or illegal activities on a Lookout Pointe Cluster Lot, within a Cluster Residence or any other property within or adjacent to Lookout Pointe.

## ARTICLE VI: EASEMENTS

- 6.1 Easements for Utilities.** There is hereby reserved unto Declarant, the Sub-Association, and those designated by each, which include, without limitation, any Lookout Pointe Cluster Lot Owner, governmental body, political subdivision, any public or private utility company, a blanket easement upon, in, across, over, and under all portions of Lookout Pointe, including, without limitation, Lookout Pointe Cluster Lots, excluding Cluster Residences, and Lookout Pointe Common Area, for installing, tying into, using, replacing, repairing and maintaining drainage systems, exterior lights and/or Utility Facilities, for the benefit of one or more than one Lookout Pointe Cluster Lot, Cluster Residence and/or Lookout Pointe Common Area and/or any adjacent property owned in whole or part by the Declarant, together with ingress and egress thereto.
- 6.2 Access and Right-of-Way to Lookout Point Common Area.** The Declarant, its agents, contractors, and employees, the Sub-Association, its agents, contractors and employees, and all Lookout Pointe Cluster Lot Owners and their respective, Tenants and their respective occasional guests shall have the perpetual and non-exclusive right of ingress, egress, access and passage to, from and over the Lookout Pointe Common Area, however, subject to the restrictions and covenants of this Declaration and any and all rules and regulations for the use thereof authorized by this Declaration.
- 6.3 Innocent Encroachments.** Easements for encroachments caused by inaccuracy of survey or in construction or reconstruction of any street, rights-of-way, easement for Utility Facilities, any building or Lookout Pointe Common Area caused by the settlement or movement, and including easements for the maintenance and use of encroaching improvements in favor of the Declarant, a Lookout Pointe Cluster Lot Owner and the Sub-Association, are hereby created, provided such encroachments are not intentionally created.

- 6.4 **Right To Granting Easements for Lookout Pointe Common Area and Lookout Pointe Cluster Lots.** The Declarant and the Sub-Association shall each have the right to grant and reserve non-exclusive easements to third parties to install, use, tie into, repair, maintain, replace and inspect all or any part of the Utility Facilities located from time to time in the Lookout Pointe Common Area or within a Lookout Pointe Cluster Lot (excluding the Cluster Residence), and the drives and walks within the Lookout Pointe Common Area.
- 6.5 **Right to Grant Utility Easements to Adjacent Property.** The Declarant and the Sub-Association shall each have the right to grant and reserve non-exclusive easements to utility companies for the installation, repair, and replacement of Utility Facilities within the Lookout Pointe Common Area or on a Lookout Pointe Cluster Lot, (excluding the Cluster Residence), as may be desired by the Declarant and/or the Sub-Association, (acting through the Board of Trustees). For example, the Declarant or the Sub-Association could grant to the owner of adjacent property to Lookout Pointe or could reserve for use of the Declarant for the benefit of land owned by Declarant not within Lookout Pointe the right to install and/or to tie into and use a Utility Facility in Lookout Pointe or to use a private drive located within the Lookout Pointe Common Area of the Lookout Pointe, without violation of this Declaration and without the authorization of the Members of the Sub-Association.
- 6.6 **Declarant's Specific Reservation To Grant Easement.** Without limiting the foregoing Article VI, Sections 6.1 through Section 6.5, Declarant and the Sub-Association reserve the right and easement to install, tie into, use, repair, replace, inspect, and maintain all or any part of the Utility Facilities located from time to time in Lookout Pointe Common Area or within a Lookout Pointe Cluster Lot (excluding the Cluster Residence) and non-dedicated streets/roads/right of ways, drives and walks within the Lookout Pointe Common Area, for the benefit of Declarant and any other owners and occupants of any real property Declarant may have an interest in adjacent to Lookout Pointe, or within any real property which is now or subsequently becomes a part of Lookout Pointe or any real property deleted from Lookout Pointe by Declarant. In addition to any other ways in which such easements may be further acknowledged, Declarant and/or Sub-Association shall have the right to record a deed, an affidavit or other documentation referring to the rights granted to and reserved by Declarant herein and specifying the real property which will have the benefit of the rights and easements reserved herein.
- 6.7 **Parking Easement.** The Declarant, the Sub-Association or any builder/contractor of a Lookout Pointe Cluster Lot Owner and their respective agents, contractors, sub-contractors employees, and customers shall have the right and easement to park in other areas necessary or desirable during construction of Cluster Residences or improvements or the repairs and maintenance thereof, or in connection with the sales of Lookout Pointe Cluster Lots or Cluster Residences, whether or not such construction is taking place on or within Lookout Pointe.

- 6.8 **Easement to Maintain Sales Office, Models, Etc.** Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and sale of Lookout Pointe Cluster Lots and Cluster Residences by Declarant and/or builders purchasing Lookout Pointe Cluster Lots from Declarant shall continue on/within Lookout Pointe or on any adjacent property owned by Declarant, it shall be expressly permissible for Declarant and those authorized by Declarant to maintain and carry on upon portions of the Lookout Pointe Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the sale of Lookout Pointe Cluster Lots or the construction and sale of Cluster Residences on such Lookout Pointe Cluster Lots within Lookout Pointe, including, but not limited, administrative/customer services, construction offices/trailers, parking signs, signs, model Cluster Residences, and sales and resale offices, and those authorized by Declarant and their guests, licensees and invitees shall have an easement for access to such facilities and for use of other facilities reasonably required.
- 6.9 **Easements Created and Granted by Declarant to the County, Township or the Sub-Association.** The Declarant shall have the right to create and grant easements for the installation and maintenance of Utility Facilities and Common Utility Facilities to the County, Township, or the Sub-Association. No structures, including but not limited to sidewalks, driveways, plantings or other materials, shall be placed or permitted to remain within such easement areas which may damage or interfere with the installation and/or maintenance of such improvements in such easement areas or which may change, retard, or increase the flow of water through the respective easement areas, without the consent of Declarant or the Sub-Association, the County or Township. The easement areas and all improvements therein shall be maintained continuously by the Sub-Association unless those easement areas are accepted by the County and/or Township and either or both have formally undertaken to maintain same. The Declarant, the County, the Township, or the Sub-Association shall have the right to enter upon and across each Lookout Pointe Cluster Lot at any place that is deemed by one or more of the above to be necessary in order to install or maintain, or to perform any other function or operation in accordance with such easement.
- 6.10 **Emergency and Service Easements.** Easements are created in favor of fire, police, sanitation, medical, ambulance, school buses, utility companies, mail services and other public or quasi-public emergency and service personnel and their vehicles shall have an easement for ingress and egress over and across the non-dedicated streets/roads/right of ways, private drives, sidewalks and/or common drives within Lookout Pointe for the performance of their respective duties.
- 6.11 **Environmental Easement.** There is hereby reserved for the benefit of any governmental authority, the Declarant and/or the Sub-Association and their respective agents, employees, successors, and assigns an alienable, transferrable,

and perpetual right and easement on, over, and across Lookout Pointe and any part thereof for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and promulgated by Declarant, the Sub-Association or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, the right to dispense pesticides and herbicides, and the right to maintain any designated "wetland" areas or to enforce any environmental restrictions.

**6.12 Benefitted Property.** The real property benefitting from the easements reserved or granted pursuant to any Section of this Article VI is referred to as the "Benefitted Property" and the owners of the Benefitted Property are referred to as the "Benefitted Owners." The Sub-Association shall keep the common Utility Facilities, those facilities that serve the Lookout Pointe Common Area or more than one (1) Lookout Pointe Cluster Lot or Cluster Residence of Lookout Pointe, in good condition and repair. Each Benefitted Owner shall pay to the Sub-Association Lookout Pointe Cluster Lot Owner's "Share" of the cost of repairing, maintaining and replacing the Utility Facilities which such Beneficial Owner shall have the right to use pursuant to this Article VI. Such "Share" shall be determined by multiplying such costs times a fraction, the numerator of which being one (1), and the denominator of which being the total number of Cluster Residences located within Lookout Pointe and the Benefitted Property which have the right to use the Utility Facility.

**6.13 Formalities of Easement Grant.** In granting any additional or supplemental easement set forth in this Article VI, including but not limited with respect to a Utility Facility on a Lookout Pointe Cluster Lot, the Lookout Pointe Cluster Lot Owner of the Lookout Pointe Cluster Lot who is requested by Declarant or the Sub-Association to grant such easement shall execute any instruments or documents requested to grant such easement except no such easement shall be granted on real property on or under which a Cluster Residence has or will be constructed. Each Lookout Pointe Cluster Lot Owner and his or her respective Mortgagees, by acceptance of a deed conveying such ownership interest or a Mortgage encumbering such ownership interest, as the case may be, hereby agrees to grant such easements in recordable form; and such Lookout Pointe Cluster Lot Owner and/or Mortgagees irrevocably appoint any member of the Board of Trustees as their respective attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of the attorney, to execute, acknowledge and record for and in the name of such Lookout Pointe Cluster Lot Owner and his Mortgagees such easements, subordinations of mortgages, or other instruments as may be necessary or desirable to effect and/or enjoy the foregoing.

## **ARTICLE VII: SPECIFIC USE RESTRICTIONS**

**7.1 Specific Use Restrictions on Lookout Pointe Cluster Lots.** In order to insure that

all Lookout Pointe Cluster Lot Owner(s) preserve a uniform use of a Lookout Pointe Cluster Lot and conformity of the use of a Lookout Pointe Cluster Lot for the efficient preservation of the values, aesthetic harmony, and amenities of Lookout Pointe, the following specific restrictions, (which are in addition to any use and activities restrictions herein stated), shall be conformed to in their entirety by each Lookout Pointe Cluster Lot Owner, his Occupants and Tenants, owner(s) of a Lookout Pointe Cluster Lot Ownership Interest, other estate holders of the Lookout Pointe Cluster Lot or any guest, invitee, licensee or other Person acting through or with permission of any of the above.

**7.1.1 No Industry or Manufacturing.** No industrial or manufacturing uses of any kind shall be permitted on a Lookout Pointe Cluster Lot.

**7.1.2 No Commercial Agriculture.** No commercial agricultural uses shall be permitted on a Lookout Pointe Cluster Lot.

**7.1.3 No Oil & Gas Wells.** No drilling or operating of any oil or gas well shall be permitted on a Lookout Pointe Cluster Lot.

**7.1.4 No Mining Operations.** No mining or extraction of any minerals, including the removal of sand or gravel shall be permitted on a Lookout Pointe Cluster Lot. (Nothing in this restriction shall prohibit the removal of any material in connection with the development of the Property by Declarant or construction of a Cluster Residence.)

**7.1.5 No Raising of Animals.** No keeping, raising, and harboring of wild beasts, cattle, swine, fowl, poultry, birds, reptiles, livestock, other farm animals or any other animal or insects not normally kept as household pets shall be permitted on a Lookout Pointe Cluster Lot. (Nothing in this restriction shall prohibit the keeping of household pets pursuant to Article VII, Section 7.1.6).

**7.1.6 Domesticated Pets.** No domesticated pets shall be kept, bred, boarded, or maintained for commercial purposes, or kept in any manner as to constitute a nuisance on a Lookout Pointe Cluster Lot.

**7.1.6.1 Permitted Domesticated Pets.** A Lookout Pointe Cluster Lot Owner, his Occupants or Tenants shall have the right to keep domesticated pets in the Cluster Residence, however, such right shall be limited to two (2) dogs or cats or a combination thereof.

**7.1.6.2 No Pets Maintained Outside.** No Lookout Pointe Cluster Lot Owner shall permit the housing, chaining, tying or keeping of any animal including any domesticated permitted dog or cat outside of



the Cluster Residence. All dogs and cats taken outside will be maintained and controlled on a hand-held leash. No pet shall be allowed to run, roam or otherwise freely move uncontrolled through Lookout Pointe, or adjoining real property to Lookout Pointe, including but not limited to the Golf Course.

**7.1.6.3 No Fencing of Pets.** No Lookout Pointe Cluster Lot Owner shall permit any dog or cat to be kept outside of the Cluster Residence by fencing of any type or construction, including but not limited to electronic fencing, "invisible fencing," on the portion of the Lookout Pointe Cluster Lot Owner's Lookout Pointe Cluster Lot or within or on any portion of the Lookout Pointe Common Area.

**7.1.6.4 Obligation To Remove Waste.** If any permissible pet is taken outside on a hand held leash and such pet deposits waste upon any area of the Lookout Pointe Common Area, or other Lookout Pointe Cluster Lot Owner's Lookout Pointe Cluster Lot, it is the pet's owner's obligation and responsibility to remove such waste immediately after being deposited by such owner's pet.

**7.1.7 No Temporary or Outdoor Structures.** The keeping or construction of temporary or outdoor structures on a Lookout Pointe Cluster Lot, including but not limited to trailers, campers, basement or incomplete houses, tents, shacks, tool sheds, dog houses, barns, garages, (except attached garages permitted herein), or other out buildings of any kind shall **not** be permitted on a Lookout Pointe Cluster Lot. [Nothing in this restriction shall prohibit temporary construction trailers and temporary structures used in connection with the development of Lookout Pointe, maintaining or construction or alteration of any Cluster Residence, construction or maintaining of the Golf Course or construction or maintaining any amenity on the Open Space or Cluster Residence Block Common Area(s)]. No such temporary structure shall be used on any Lookout Pointe Cluster Lot at any time as a Cluster Residence, either temporarily or permanently.

**7.1.8 Sign Limitations.** The erection or maintenance of any sign, billboard or advertising devices of any kind shall **not** be permitted on a Lookout Pointe Cluster Lot, except: (i) one (1) sign not larger than the standard real estate agency sign but in no event larger than 24 inches x 24 inches for the offering a Lookout Pointe Cluster Lot and any Cluster Residence for sale; (ii) political signs, not exceeding the above measurements during the thirty (30) days immediately preceding a Medina County Board of Elections' run national, state or local election; (iii) one (1) promotional signs of a home builder and/or contractor not larger than 24 inches x 24 inches during the period of construction of any Cluster Residence on a Lookout Pointe Cluster

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Lot. (Nothing contained in this restriction shall be construed to prohibit or interfere with the Declarant's right to display signs, of any size or design, for sale of Lookout Pointe Cluster Lots in Lookout Pointe.)

- 7.1.9 No Outdoor Privies.** No storage, construction, placement or maintenance of privies, out-houses or other portable or detached lavatory units shall be permitted on a Lookout Pointe Cluster Lot. (Nothing in this restriction shall prohibit the placement and use of temporary portable toilets for the use of construction workers during the construction of any Cluster Residence or improvement and/or repair to same, installation of any utility or other worked performed in furtherance of Declarant's development of Lookout Pointe or any amenity being constructed or maintained by the Declarant and/or Sub-Association on any portion of Lookout Point Cluster Common Area.
- 7.1.10 No Outdoor Communication Devices.** No storage, construction, placement or maintenance of radio towers, radio antennas, satellite dishes, or other apparatus for the transmission of or receiving of television, radio, or other signals of any kind, commercial or residential television communication disks or microwave towers or receivers or transmitters shall be permitted on any Lookout Pointe Cluster Lot or Cluster Residence thereon, unless such device is architecturally concealed from view.
- 7.1.11 No Swimming Pools.** No storage, construction, placement or maintenance of a swimming pool, either below or above ground, shall be permitted on a Lookout Pointe Cluster Lot.
- 7.1.12 No Parking of Vehicles.** No storage, parking, placement, or maintenance of golf carts, campers, motorized trailers, mobile homes, all-terrain vehicles, recreational conversion vans, motor bikes, bicycles, trailers, campers, canoes, boats, boat trailers, snowmobiles, snowmobile trailers of any type, trail bikes, mini-bikes, motorcycles, scooters, boats, boat trailers of any type, and other recreation vehicles, now manufactured or hereafter manufactured, or the storage, parking, placement, or maintenance of non-working vehicles, detachable truck or camper cabs, shall be permitted on the exterior of any Cluster Residence, Lookout Pointe Cluster Lot or non-dedicated street/road/right of ways, and/or private driveway except on an infrequent and temporary basis, not to exceed twenty-four (24) hours.
- 7.1.13 No Parking of Commercial Vehicles.** No parking of commercial trucks for more than four (4) hours shall be permitted on a Lookout Pointe Cluster Lot or non-dedicated street/road/right of way and **no** storage, parking, placement of building equipment, work trucks, commercial trucks, tractors, trailers, mowers, lawn-care equipment, water tanks, fuel tanks, sprayers, sprayer-tanks, and other large implements shall be permitted on a Lookout

Pointe Cluster Lot without said equipment, vehicle or other apparatus being housed in the Cluster Residence or its attached garage. (Nothing in this restriction shall prohibit the normal activities, (so long as the duration is reasonable and necessary to the permitted activity), of the Declarant, the Sub-Association or any Lookout Pointe Cluster Lot Owner, home builder, contractor, Township, and/or County from storing, parking, placing, or maintaining any of the necessary equipment and vehicles associated with: (i) the development of Lookout Pointe by Declarant; (ii) the construction and/or maintenance of any Cluster Residence; (iii) the maintenance of any lawn or other landscaping service on a contract service basis to the Declarant, Sub-Association or any Lookout Pointe Cluster Lot Owner, home builder or contractor; (iv) for the construction, installation, repairing and/or servicing of any Utility Facilities, easement or public service, (v) or in conjunction with any permissible and necessary maintenance and/or necessary operational activities of the Declarant and/or the Sub-Association.

- 7.1.14 No Outside Clothes Lines.** No hanging of laundry, carpets or other items on outside lines shall be permitted on a Lookout Pointe Cluster Lot.
- 7.1.15 No Subdividing of Lookout Pointe Cluster Lot By Lookout Pointe Cluster Lot Owner.** No Lookout Pointe Cluster Lot Owner shall be permitted to subdivide or alter his Lookout Pointe Cluster Lot size or dimensions.
- 7.1.16 No Lookout Pointe Cluster Lot to Be Used As Access to Property Not In Lookout Pointe.** No Lookout Pointe Cluster Lot Owner shall permit any portion of his Lookout Pointe Cluster Lot to be utilized for driveway or roadway purposes except for access to and from the Cluster Residence located upon that Lookout Pointe Cluster Lot. No Lookout Pointe Cluster Lot shall be utilized as access for ingress and egress to any real property not within Lookout Pointe, except as may be permitted by Article VI, Section 6.7.
- 7.1.17 No Storage of Waste.** No storage, depositing or leaving of waste material, including but not limited to: garbage, refuse, waste, putrid substances, hazardous waste, junk, construction and demolition debris, excess dirt or soil, or cut vegetation, shall be permitted a Lookout Pointe Cluster Lot. A Lookout Pointe Cluster Lot Owner, his Occupants, Tenants and occasional guests may keep normal garbage and refuse as shall necessarily accumulate from the last garbage and rubbish collection available for such Lookout Pointe Cluster Lot and/or Cluster Residence, provided any such garbage and/or refuse is kept in sanitary containers, which containers and refuse, except on the day scheduled for garbage and rubbish collection for

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such Lookout Pointe Cluster Lot and/or Cluster Residence, shall be kept from public view. (Nothing in this restriction, shall prohibit or interfere with the reasonable, normal and ordinary construction and demolition debris associated with permissible construction, alteration and/or repair of any Cluster Residence or other structure within Lookout Pointe, during such construction, alteration and/or repair; all and any of which shall be maintained and removed in a reasonable, safe and timely manner.) (Nothing in this restriction shall prohibit or interfere with the Declarant's development of Lookout Pointe.)

- 7.1.18 No Extension Of Utilities.** No Lookout Pointe Cluster Lot Owner shall permit his Lookout Pointe Cluster Lot to be utilized for access to, service from and/or any connection to any Utility Facilities including but not limited to sewer and water, for service to any real property other than the Lookout Pointe Cluster Lot. No extension of Utility Facilities from any Lookout Pointe Cluster Lot to any adjoining or adjacent real property not in Lookout Pointe, whether or not owned by the same Lookout Pointe Cluster Lot Owner, shall be permitted, except as may be permitted by Article VI.
- 7.1.19 No Access to Golf Course.** No access to the Golf Course for any purposes except access for emergency purposes for medical or other life threatening purposes shall be permitted from any Lookout Pointe Cluster Lot.
- 7.1.20 No Fences.** No construction of or maintenance of fences of any kind, electrical or otherwise, shall be permitted on a Lookout Pointe Cluster Lot.
- 7.1.21 No Acts In Contravention of The Water Quality Protective Deed Restrictions.** No action or activity, which violates in any manner the *The Water Quality Protective Deed Restrictions* filed of record with the Medina County Recorder's Office at 2002OR024031 shall be permitted on any Lookout Pointe Cluster Lot.
- 7.1.22 No Dangerous Ordnances.** No hunting or shooting of firearms, rifles, or other dangerous ordnances, including, but not limited to, "B-B" guns, dart guns, air rifles or pistols, bows and arrows, explosives, fireworks shall be permitted on a Lookout Pointe Cluster Lot.
- 7.1.23 No Long Term Repairing of Vehicles.** No pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkept conditions shall be permitted on a Lookout Pointe Cluster Lot. Out-of-door repairs to any motorized vehicle or bike shall be limited to temporary

repairs not exceeding twenty-four (24) hours.

**7.1.24 No Window Air Conditioning Units.** No use of window air conditioning units or the installation of same in or upon any Cluster Residence or attached garage shall be permitted on a Lookout Pointe Cluster Lot.

**7.1.25 Restrictions on Front Yards And Porches.** No use of or placement of any furniture designed or intended for indoor use or back yard use (including, without limitation, so-called lawn furniture or baby furniture, cooking grills or other cooking apparatuses, any paved or unpaved parking strips, sculptures, art objects, figurines, bird baths, metal works, fountains or children's toys, furnishings or furniture (including, without limitation, pools, swing-sets, etc) or other furnishings shall be permitted in or upon the front yard or front porches of any Cluster Residence or Lookout Pointe Cluster Lot. The Declarant or Board of Trustee shall have the right to determine if any furniture or furnishing located within the front yard or front porches of a Cluster Residence or Lookout Pointe Cluster Lot violates this restriction. No portion of a Lookout Pointe Cluster Lot nearer to any non-dedicated roadway than the minimum set-back line shall be permitted to be used for any purpose other than that of a lawn. All lawns in the front of each Cluster Residence shall extend to the pavement line. (Nothing herein contained shall be construed as preventing the use of the front portion of a Lookout Pointe Cluster Lot for walks and drives, and the planting of trees or shrubbery, the growing of flowers or ornamental plants, or for other similar ornamentations within six (6) feet of the sides and rear of a Cluster Lot Residence, for the purpose of beautifying said Lookout Pointe Cluster Lot.)

**7.2 Specific Restrictions On Lookout Pointe Common Area.** In order to insure that all Lookout Pointe Cluster Lot Owners preserve a uniform use and conformity of the use of the Lookout Pointe Common Area and to provide for its natural and landscaped beauty and state and for the efficient preservation of the values, aesthetic harmony, and amenities of Lookout Pointe, the following specific restrictions, (which are in addition to any use and activities restrictions herein stated), shall be conformed to in their entirety by each Lookout Pointe Cluster Lot Owner, his Occupants, Tenants, owner(s) of a Lookout Pointe Cluster Lot Ownership Interest, other estate holders of the Lookout Pointe Cluster Lot or any guest, invitee, licensee or other Person acting through or with permission of any of the above.

**7.2.1 No Automobile Repairs.** No temporary repair, changing of oil, body repair, or other usages associated with the repair and cleaning of vehicles, boats, trailers, recreational vehicles, lawn and garden equipment, or any other equipment shall be permitted in or upon Lookout Pointe Common Area.

- 7.2.2 **No Waste.** No waste of any kind shall be committed in or upon the Lookout Pointe Common Area.
- 7.2.3 **No Dumping.** No storage or depositing of anything shall be permitted in or upon the Lookout Pointe Common Area without the written approval of the Declarant and/or Sub-Association, when title of the Lookout Pointe Common Area has transferred.
- 7.2.4 **No Harvesting Or Gardening Within Lookout Pointe Common Area.** Except as otherwise herein reserved or provided, no planting or gardening, harvesting of trees or cutting of trees or the removal, cutting or transplanting of any flora shall be permitted in or upon the Lookout Pointe Common Area.
- 7.2.5 **No Hunting Permitted.** No hunting or shooting of firearms, rifles, or other dangerous ordinances, including, but not limited to, dart guns, air rifles or pistols, bows and arrows, explosives, fireworks shall be permitted in or upon the Lookout Pointe Common Area.
- 7.2.6 **No Nuisances Permitted.** No nuisances or safety hazards shall be permitted to remain in or upon the Lookout Pointe Common Area. **Nor** shall any use or practice be permitted in or upon the Lookout Pointe Common Area which is the source of nuisances or safety hazards to a Lookout Pointe Cluster Lot Owner, his Occupants, Tenants, occasional guests, any person using any other amenity within the Lookout Pointe Common Area or any person playing golf on the Golf Course. **No** nuisances or safety hazards shall be permitted to remain in or upon Lookout Pointe Common Area which interferes with the peaceful possession and proper use of the Lookout Pointe Common Area and the streams, lakes, natural or landscaped flora and fauna that abounds therein.
- 7.2.7 **No Vehicles Permitted.** No automobiles, trucks, all-terrain vehicles, dirt bikes, golf carts or other motorized off-road vehicles, now known or later developed, shall be permitted to be used or operated in or upon the Lookout Pointe Common Area, except in designated parking spaces. (Non-motorized bike-riding and other electrical driven transportation for the handicapped shall be permitted). Nothing contained in this restriction shall prohibit the Declarant and/or Sub-Association from accessing the Lookout Pointe Common Area for maintenance and repairs.
- 7.2.8 **No Outside Clothes Lines.** No hanging of laundry, carpets or other items on outside lines shall be permitted in or upon the Lookout Pointe Common Area.
- 7.3 **Golf Cart Restrictions.** No golf carts shall be permitted on or permitted to be used

on any non-dedicated rights of way within Lookout Pointe, except as may be utilized by Declarant for sales purposes..

- 7.4 **Sign Limitations.** No sign, billboard or advertising devices of any kind shall be permitted on any portion of the Lookout Pointe Common Area, except, the entrance sign or signs installed and maintained by Declarant and/or the Sub-Association.:

## ARTICLE VIII: BUILDING RESTRICTIONS

- 8.1 **No Construction/Remodeling Without Permits and Approvals.** No Lookout Pointe Cluster Lot Owner shall construct, repair, restore and/or remodel a Cluster Residence on any Lookout Pointe Cluster Lot within Lookout Pointe until the construction plans and specifications showing the location of the structure(s) have been approved by the Township and/or the County. The issuance by the Township and/or the County of a building permit, zoning permit, license or approval of any type shall not be deemed to satisfy the requirements of this Article VIII nor shall any such permit prevent the Declarant, the Sub-Association, the Architectural Review Committee named hereunder or any of the Lookout Pointe Cluster Lot Owners from enforcing these restrictions.

- 8.2 **Construction/Remodeling Restrictions.** In order to insure that a Cluster Residence constructed upon any Lookout Pointe Cluster Lot in Lookout Pointe will preserve a uniformly high standard of construction, the following specific building restrictions shall be conformed to in their entirety by each Lookout Pointe Cluster Lot Owner.

- 8.2.1 **Minimum Square Footage of a Cluster Residence.** No Lookout Pointe Cluster Lot Owner shall construct a Cluster Residence of one story, (including but not limited to ranch style construction), having less than one-thousand five hundred fifty (1,550) square feet of floor area.

- 8.2.2.1 **Manner of Determining Square Footage.** The method of determining the square foot floor area of proposed Cluster Residence shall be to multiply the outside horizontal dimensions of the building or structure at each floor level. Garages, terraces, patios, carports, screened porches, open porches, breeze-ways and basements shall not be taken into account in calculating the minimum square foot area as required by Article VIII, Section 8.2.1. In the case of a Cape Cod construction, the second floor area shall be computed from the outside dimension of the knee wall.

- 8.2.2 **Minimum Setback Requirements.** No Lookout Pointe Cluster Lot Owner shall construct and/or remodel a Cluster Residence without meeting the minimum setback requirements for construction from Lookout Pointe Cluster

Lot lines as established by the applicable Building Codes and Zoning Resolutions of the Township and/or County now established or hereafter established. Where two (2) or more Lookout Pointe Cluster Lots are acquired and used as a single building site, the side Lookout Pointe Cluster Lot lines shall refer only to the lines bordering on the adjoining Lookout Pointe Cluster Lot.

- 8.2.3 Minimum Roof Pitch Requirements.** No Lookout Pointe Cluster Lot Owner shall construct and/or remodel a Cluster Residence of one story, (including but not limited to, ranch style construction), having less than a 8/12 pitch to its roof, nor shall a Lookout Pointe Cluster Lot Owner construct any Cluster Residence having two stories, (including but not limited to Colonial or Cape Code style construction), having less than a 8/12 pitch to its roof. No Lookout Pointe Cluster Lot Owner shall construct a Cluster Residence with a flat roof of any kind. Any Cluster Residence fronting the Golf Course shall not have any roof elevations, including but not limited to any treatments and/or gable ends of less than a 8/12 pitch.
- 8.2.4 Driveway Material Requirements.** No Lookout Pointe Cluster Lot Owner shall construct and/or replace the driveway to his Cluster Residence with materials except concrete or other hard surface masonry-like materials and located as required by the Township and/or the County.
- 8.2.5 No Exposed Concrete Requirements.** No Lookout Pointe Cluster Lot Owner shall construct and/or remodel a Cluster Residence that allows exposed concrete block or poured concrete walls to be exposed, it being required that all exposed areas of concrete basement walls or footers be faced with brick, stone or stucco in the front of the Cluster Residence and/or like materials on the sides and rear of the Cluster Residence or the siding of such structure on the sides and rear of the Cluster Residence is brought down to grade.
- 8.2.6 Exterior Front of Cluster Residence Requirements.** No Lookout Pointe Cluster Lot Owner shall construct and/or remodel a Cluster Residence that does not consist of a minimum of forty percent (40%) of the front exterior of the Cluster Residence to be faced with brick, stone or stucco.
- 8.2.7 Garage Requirements.** No Lookout Pointe Cluster Lot Owner shall construct a Cluster Residence with a garage which is separated from the Cluster Residence. All garages must be sufficient to store at least two (2) or more full size passenger automobiles. Nor shall any Lookout Pointe Cluster Lot Owner convert a garage to part of the living area by alteration or use, so as to diminish its area below that required for garage purposes, unless in conjunction with such conversion, a garage with equivalent space



is provided and constructed.

- 8.2.8 Sight Lighting Requirements.** No Lookout Pointe Cluster Lot Owner shall permit the installation or maintenance of sight lighting which interferes with the comfort, privacy, or general welfare of adjacent Lookout Pointe Cluster Lots or any other Lookout Pointe Cluster Lot Owner. All Cluster Residences shall be required to have installed a post light of identical uniform design, at the right-of-way line which is serviced by underground wiring, which design shall be designated by Declarant or the Architectural Review Committee named hereunder.
- 8.2.9 Heating and Air Conditioners.** No Owner shall construct and/or remodel a Cluster Residence that is not heated or air conditioned by efficient heating and air conditioning units using natural gas or electricity or a combination of both supplied by a utility provider servicing Lookout Pointe. No Lookout Pointe Cluster Lot Owner shall construct and/or remodel a Cluster Residence that uses liquid heating oil, geothermal heating system or bottled gas, (propane), for its heating and/or air conditioning system. No Lookout Pointe Cluster Lot Owner will allow any exhaust pipes to be vented through the front roof of a Cluster Residence and the same prohibition applies to plumbing exhaust pipes. No air conditioning units shall be placed in or upon the front side of a Cluster Residence.
- 8.2.10 External Fireplace Chimneys.** No Lookout Pointe Cluster Lot Owner shall construct and/or remodel or install an external fireplace chimney and/or chase unless such fireplace chimney and/or chase is constructed of or faced entirely of masonry material. No siding chimneys or chases are permitted. Fireplaces may be direct vent without a chimney or chase.
- 8.2.11 Standard Mail Boxes and Numbering.** No Lookout Pointe Cluster Lot Owner shall construct, replace or install a mailbox that does not conform to the identical uniform design designated by the Declarant or the Architectural Review Committee named hereunder or does not have printed or posted in identical uniform design designated by the Declarant or the Architectural Review Committee the assigned address Lookout Pointe Cluster Lot numbers of such Lookout Pointe Cluster Lot.
- 8.2.12 Standard Numbering On Cluster Residence.** No Lookout Pointe Cluster Lot Owner shall construct and/or remodel a Cluster Residence that does not have in identical uniform design designated by the Declarant or the Architectural Review Committee named hereunder, the address numbers of the Lookout Pointe Cluster Lot permanently attached to the front exterior of the Cluster Residence.

**8.2.13 Right To Establish Grades.** The Declarant or the Architectural Review Committee named hereunder shall have the right to establish grades and slopes and to fix grades for, without limitations, any Cluster Residence, driveway or patio, so that the same may conform to a general plan wherein the established grade and slope of each Lookout Pointe Cluster Lot, as the construction thereon is completed, will correspond to the grade of the Lookout Pointe Cluster Lots on either side; having due regard for natural contours and drainage of the property. Approval of the grades and slopes for any such construction shall be in writing prior to any construction.

**8.2.14 Right To Approve Contractor.** The Declarant or the Architectural Review Committee named hereunder shall have the right to approve any general contractor to be employed in conjunction with construction and/or remodeling of any Cluster Residence, any other permissible building, improvement or other structure on any Lookout Pointe Cluster Lot or within Lookout Pointe, and such construction and/or remodeling shall not commence until the contractor has been approved in writing.

**8.2.15 Right to Grant Variances.** The Declarant or the Architectural Review Committee named hereunder, upon the Declarant no longer owning a Lookout Pointe Cluster Lot or other property in Lookout Pointe, reserves the right to grant variations to any Article VIII, Section 8.2 et seq. building restrictions, taking into consideration specifically, corner Lookout Pointe Cluster Lots; odd-shaped Lookout Pointe Cluster Lots; or specific uniqueness of any particular Lookout Pointe Cluster Lot.

**8.3 Architectural Review Committee.** The Board of Trustees shall have the authority and standing, on behalf of the Sub-Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Review Committee, (hereinafter referred to as the "ARC"), named in Article VIII, Section 8.3.2. This Section may not be amended without the Declarant's written consent so long as the Declarant owns any real property subject to this Declaration.

**8.3.1 No Construction/Remodeling Without Approval of ARC.** Without the approval of the ARC, and in strict compliance with this Article VIII, Section 8.3 et seq., there shall be no "construction" and/or "remodeling" within Lookout Pointe by any Lookout Pointe Cluster Lot Owner or other person. The term "construction and/or remodeling" shall include within its definition, without limitation, the following:

**8.3.1.1 Site Work.** Staking, clearing, grading, and other site work in connection with any building, drive, walk or other structure.

**8.3.1.2 Construction/Remodeling of Any Structure.** The Construction or

remodeling, replacing or installation of any Cluster Residence, new building, fence, or improvement or exterior alteration or modification of existing buildings or improvements;

**8.3.1.3 Landscaping.** Planting or removal of plants, trees, grass or shrubs (collectively referred to as "landscaping"), except for landscaped areas or beds within six feet (6') of the sides and rear of a Cluster Residence;

**8.3.1.4 Exterior Colors.** Change of the color or exterior material(s) of the exterior finish of any structure or architectural elements (including, without limitation, the roof, doors, windows and exterior walls of a Cluster Residence), and

**8.3.1.5 Installations.** Installations on or to the roof or exterior walls of a Cluster Residence or on or upon a Lookout Pointe Cluster Lot.

**8.3.2 The ARC.** The ARC shall be the Architectural Review Committee formed by the Blue Heron Estates Homeowners Association, Inc. All applicable procedures, conditions and affirmative covenants shall be applicable pursuant to Article VIII of the *Declaration of Restrictive Covenants, Conditions and Restrictions of Montville Lakes, Phase 3*, recorded in 2003OR023233 Official Records of the Medina County Recorder, State of Ohio.

## **ARTICLE IX: GENERAL PROVISIONS**

**9.1 Declaration Runs With Land; Binding Effect.** All of the easements, covenants and restrictions which are imposed upon, granted and/or reserved in this Declaration or any Subsequent Amendment hereto, (including without limitation, payment of Assessments) constitute easements, covenants and restrictions running with Lookout Pointe Cluster Subdivision, Lookout Pointe Cluster Lot(s), Cluster Residence(s), and Lookout Pointe Common Area and shall inure to the benefit of and shall be binding upon the parties hereto and every subsequent transferee of all or any part thereof, including, without limitations, the Declarant, the Cluster Sub-Association, grantees, Tenants, Occupants, Lookout Pointe Cluster Lot Owners, and any owner of an Ownerhip Interest in a Lookout Pointe Cluster Lot, and their respective heirs, trustees, executors, administrators, personal representatives, successors and assigns.

**9.2 A Grantee's Deed or Tenant's Lease.** Each grantee accepting a deed or Tenant accepting a lease (whether oral or written) which conveys any interest in any portion of Lookout Pointe, Lookout Pointe Cluster Lot(s), Cluster Residence(s), and Lookout Pointe Common Area, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, trustees,

executors, administrators, successors and assigns to observe, perform and be bound by the provisions of this Declaration and any Subsequent Amendment hereto.

**9.3 Duration of Easements, Covenants and Restrictions.** The term of this Declaration shall commence upon the recording hereof with the Medina County Recorder' Office and shall continue in perpetuity, or the longest time permitted in law.

**9.3.1 Rule Against Perpetuities.** If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of George W. Bush, President of the United State of America, and Richard Cheney, Vice-President of the United States of America.

**9.4 Plural Owner.** In the event that any Lookout Pointe Cluster Lot Owner shall hold title to a Lookout Pointe Cluster Lot as a joint tenant, tenant in common, tenant by the entirety or in any other manner with one or more other Persons (hereinafter referred to as a "co-Lookout Pointe Cluster Lot Owner"), the signature of any one of the co-Lookout Pointe Cluster Lot Owners shall be binding upon and shall be effective as an authorization from all of the other Lookout Pointe Cluster Lot Owners of such Lookout Pointe Cluster Lot. In addition, the vote cast at any meeting of the Cluster Sub-Association by one such co-Lookout Pointe Cluster Lot Owner of such Lookout Pointe Cluster Lot shall be effective as an authorized vote from all of the co-Lookout Pointe Cluster Lot Owners of such Lookout Pointe Cluster Lot, unless another co-Lookout Pointe Cluster Lot Owner objects at such meeting in which event the majority of Ownership Interest of said Lookout Pointe Cluster Lot shall prevail. If co-Lookout Pointe Cluster Lot Owners own fifty percent (50%) of the Ownership Interest, and there is an objection by one of the co-Lookout Pointe Cluster Lot Owners then no vote will be counted for such Ownership Interest

**9.5 Construction of the Provisions of this Declaration:** The following rules of construction shall be applied to this Declaration:

**9.5.1 Construction by Declarant or Sub-Association Binding.** The Declarant, or the Sub-Association, where specifically authorized herein to act, shall have the right to construe and interpret the provisions of this Declaration and, in the absence of any adjudication by arbitrator(s) or a court of competent jurisdiction to the contrary, its construction and interpretation shall be final and binding as to all Persons and to all Property within Lookout Pointe, which interpretation of the Declarant or the Sub-Association and that of any person or entity entitled to enforce the provisions hereof, shall be resolved in favor of the construction or interpretation by the Declarant or the Sub-Association,

as the case may be.

- 9.5.2 Waiver of Rule of Construction Against Drafting Party.** The legal rule and doctrine of "construction against the drafting party" shall not be applied by any court against Declarant or the Sub-Association. Said rule being specifically waived by any person claiming or seeking rights under the provisions of this Declaration.
- 9.5.3 More Restrictive Construction Controls.** Any covenant, restriction, right, obligation, responsibility or condition, (except reservations by Declarant), set forth in this Declaration in more than one Section shall be read in tandem with all other Section(s) containing the same or similar covenant, restriction, right, obligation, responsibility or condition, (except reservations by Declarant), with the more restrictive Section controlling. The legal rule and doctrine of "construction of deed restrictions so that all ambiguities contained in the deed restrictions shall be interpreted and constructed in a manner to allow the free use of lands" is hereby specifically waived by each Lookout Pointe Cluster Lot Owner.
- 9.5.4 Use of Singular or Plural, Gender.** References to the masculine herein shall be deemed to include the feminine or the neuter, references to the feminine shall be deemed to include the masculine or neuter and references in the neuter shall be deemed to include the masculine or feminine. Plural references shall be deemed to include singular where the context so requires and vice versa.
- 9.6 Severability** Invalidation or modification of any one of the provisions of this Declaration by judgment or a court order of a court of competent jurisdiction shall in no event or way affect any of the other provisions, which shall remain in full force and effect and be continuing covenants that run with the land.
- 9.7 Ohio Law Controlling.** Ohio Law shall be the applicable law to any interpretation, validity or enforcement of this Declaration.
- 9.8 Validity of Mortgages.** No violation of any easement, covenant, or restriction of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any Lookout Pointe Cluster Lot or portion of the Property; provided, however, that any mortgagee in actual possession, or any purchase at any mortgagee's foreclosure sale shall be bound by and subject to this Declaration as fully as any other Lookout Pointe Cluster Lot Owner or owner of any portion of Lookout Pointe.
- 9.9 Notice to Lookout Pointe Cluster Lot Owners/Members.** Any notices required to be given to any Person, except as provided in Article IX, Section 9.10, under the

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provisions of this Declaration shall be deemed to have been given: (i) when personally delivered to such Person's Cluster Residence; or (ii) mailed, postage prepaid, to the last known address of such Person or principal place of business, if a corporation, limited liability company, limited partnership, or partnership. A notice of "delinquency" of any payment due hereunder shall be made by: (i) personal delivery to such Cluster Residence or principal place of business, if a corporation, limited liability company, limited partnership, or partnership; (ii) by certified mail U. S. Mail; or (iii) by other national delivery service that retains date of delivery and requires signature for such delivery. The effective date of the notice shall be the date said notice is personally delivered, or date of delivery to the U. S. Mail or the national delivery service, as the case may be. The last known address of a Lookout Pointe Cluster Lot Owner/Member shall be determined as appears on the records of the Medina County Auditor or the last address provided the Sub-Association. If no such address is found or provided or the Lookout Pointe Cluster Lot Owner/Member refuses delivery of said notice, then said notice may be posted for a period of thirty (30) days upon the Lookout Pointe Cluster Lot Owner/Member's Cluster Residence or Lookout Pointe Cluster Lot.

- 9.10 Notice to Declarant or Sub-Association.** Notices to the Declarant, or the Sub-Association shall be deemed given only when received and must be delivered to Declarant or the Sub-Association, addressed to its respective Ohio statutory agent, upon whom all notices may be served, and shall be sent by U. S. Mail, postage prepaid, by certified mail receipt return requested, showing thereon date of delivery and person signing for the delivery.
- 9.11 Enforcement and Non-Waiver.** The Declarant, the Sub-Association or a Lookout Pointe Cluster Lot Owner or any other Person permitted in this Declaration to do so, shall be empowered and have the right to enforce by any proceeding at law or in equity, all provisions, restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.
- 9.12 Non-Waiver.** Failure, due to neglect or otherwise, or refusal by the Declarant, the Sub-Association, the Architectural Review Committee, a Lookout Pointe Cluster Lot Owner or any one permitted in this Declaration to enforce any provisions, restrictions, condition, covenants, reservations, liens and charges contained in this Declaration shall in no event be deemed a waiver of the right to do so.
- 9.13 Failure to Enforce Not Actionable.** The failure, refusal or neglect of Declarant, the Sub-Association, the Architectural Review Committee, or any Lookout Pointe Cluster Lot Owner, to enforce any provisions hereof or to prevent violations thereof, shall in no event make the Declarant, the Sub-Association, the Architectural Review Committee and/or a Lookout Pointe Cluster Lot Owner liable for such failure, refusal, or neglect or liable in damages for such failure, refusal or neglect.

**9.14 Limits of Liability of Lookout Pointe Cluster Lot Owner.** Unless a Lookout Pointe Cluster Lot Owner is liable under Ohio law, absolute liability shall not be imposed upon a Lookout Pointe Cluster Lot Owner for damage to the Lookout Pointe Cluster Common Area including improvements thereon, of others where maintained by the Sub-Association, whether caused by such Lookout Pointe Cluster Lot Owner, his Occupants, Tenants or guests.

**9.15 Limits of Liability of Declarant.** Neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authority granted, reserved or delegated to it by or pursuant to this Declaration or in Declarant's (or its representative's) capacity as owner, manager or seller of the Lookout Pointe Cluster Lots or any part thereof, whether or not such claim: (i) shall be asserted by a Lookout Pointe Cluster Lot Owner, his Occupants, or Tenants, the Sub-Association, or by any person or entity claiming through any of them; or (ii) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (iii) shall arise *ex contractu* or (except in the case of intentional tort or gross negligence) *ex delicto*. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Lookout Pointe Cluster Lots containing any patent or latent defects, grading or leveling of any Lookout Pointe Cluster Lot by any builder or by reason of any act or neglect of any Lookout Pointe Cluster Lot Owner, his Occupants or Tenants, the Sub-Association, and/or their respective agents, employees, guests, and invitees, or reason of any neighboring property or personal property located on or about Lookout Pointe, or by reason of the failure to function or disrepair of any utility service, (heat, air conditioning, electricity, gas, water, sewage, etc.). Each Lookout Pointe Cluster Lot Owner takes his deed and title to his Lookout Pointe Cluster Lot with the knowledge and acceptance that Declarant's responsibilities are limited by its original Utility Facility improvements, as approved by the Medina County Sanitary Engineer, Medina County Engineer, and any Conditional Zoning Certificate issued by the Montville Township Board of Zoning Appeals, as are on file with the Montville Township and/or County of Medina and/or as are herein established.

**9.16 Certificate of Compliance with Declaration.** Upon a Lookout Pointe Cluster Lot Owner's reconveyance of his Cluster Residence or an interest therein, such Lookout Pointe Cluster Lot Owner (i.e. seller) shall have the right to request the Sub-Association to issue a Certificate of Compliance stating the Sub-Association has no record of a violation of this Declaration and stating the unpaid Assessments and amount of monthly Assessments attributable to such Lookout Pointe Cluster Lot Owner and his Lookout Pointe Cluster Lot. A Certificate of Compliance may be relied upon by all persons for all purposes. Neither the Board of Trustees, or any such officer or agent shall have any liability to the Lookout Pointe Cluster Lot Owner, seller, buyer, mortgagee of a Lookout Pointe Cluster Lot or to others if the Certificate of Compliance issued hereunder is not correct. The Sub-Association may require the

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advance payment of a reasonable fee for the issuance of the Certificate of Compliance.

## ARTICLE X: RIGHTS RESERVED TO COUNTY AND TOWNSHIP

- 10.1 Township and County's Rights and Authority to Compel Maintenance of Open Space.** The Township and County, as third party beneficiaries, may, although under no obligation or duty to do so, compel compliance with this Declaration pursuant to this Article X, as the Township and the County deem necessary, by court action or by any other means. It is specifically acknowledged by all parties to this Declaration that the County and the Township are third party beneficiaries to this Declaration and have the same authority to administer and enforce this Declaration, including but not limited to the Open Space, Utility Facilities, non-dedicated right-of-ways and swales, as more fully set out herein, as does the Declarant, Sub-Association, or Lookout Pointe Cluster Lot Owner.
- 10.2 Certain Obligations Non-Waiverable.** Notwithstanding anything in this Declaration to the contrary, the duties and obligations of either the Declarant, the Sub-Association or Lookout Pointe Cluster Lot Owner(s) as they relate to the Lookout Pointe Common Area and the authority to enforce these duties and obligations, shall be of unlimited duration, shall be non-modifiable, and shall be non-waiverable without the prior written consent of the Township and/or County.
- 10.3 Third Party Beneficiaries.** The Township and/or the County, as third party beneficiaries to this Declaration and by giving approval to same, shall in no way be deemed to have waived any of their respective zoning, building, or other requirements or resolutions or general law, which shall still be binding upon the Property, if they are more restrictive than this Declaration.
- 10.4 Rights After Transfer of Lookout Pointe Common Area.** After transfer of title to the Lookout Pointe Common Area to the Sub-Association, the Township and/or the County shall have the right, but not the obligation, to impose any special assessments for improvements and/or taxes made and/or levied by the Township and/or County which would otherwise be a lien on the Lookout Pointe Common Area or the Lookout Pointe Cluster Lots within the development area, on an equitable basis to be determined by the Township and/or the County. The assessments shall be considered a Special Assessment against the Lookout Pointe Cluster Lot Owners and their respective Lookout Pointe Cluster Lots and collected by the Sub-Association, pursuant to Article IV, Section 4.1.4. If the Board of Trustees is not in any manner capable of acting pursuant to Article IV to insure collection of any such assessment, the Township and/or County shall have full power and authority to act in accordance with Article IV in full stead of the Board of Trustees with full power of substitution, with any and all objections thereto being specifically waived by acceptance of a deed by



a Lookout Pointe Cluster Lot Owner.

- 10.5 **Non-Dedicated Streets.** All Lookout Pointe Cluster Lot Owners accept their respective deeds and title with specific notice that all access and means of ingress and egress to all and each Cluster Residence and to all and each Lookout Pointe Cluster Lot is by non-dedicated streets/roads/right-of-ways or non-dedicated drives within the Lookout Pointe Common Area. And further, a Lookout Pointe Cluster Lot Owner, for himself his heirs, successors and assigns accepts his deed and title with the full obligation and understanding that no governmental body is responsible for the care and maintenance of said non-dedicated rights-of-way or non-dedicated streets/roads/right-of-ways or non-dedicated drives within Lookout Pointe Common Area. And that should any non-dedicated streets/roads/right-of-ways or non-dedicated drives within the Lookout Pointe Common Area, ever become public, any such non-dedicated streets/roads/right-of-ways or non-dedicated drives within the Lookout Pointe Common Area shall necessitate same being reconstructed to public street standards prior to its being accepted as a public street.
- 10.6 **Right of Entry.** The Township, the County or any other local governing body or public utility, now formed or hereafter formed, shall have the right to enter upon and across the Property within Lookout Pointe at any place that the respective governmental unit or public utility responsible for any easement or Utility Facility located on any Property within Lookout Pointe, deems necessary in order to install or maintain, or to perform any function or operation in accordance with any such easement now existing or hereafter granted.

#### **ARTICLE XI: DECLARANT'S RESERVATIONS**

- 11.1 **Reservation of Right to Grant Easements.** Declarant reserves the right and easement for itself and Owner of lands to whom Declarant, in Declarant's sole discretion, shall grant the same right and easement, to tie into, use, repair, maintain and replace without charge any Utility Facilities, including but not limited to, all lines, pipes, utilities, conduits, ducts, wires, cables, non-dedicated streets/roads/right-of-ways or non-dedicated drives in, on, or over the Property and Subdivision (as same may be modified or expanded by Subsequent Amendment), including but not limited to Lookout Pointe Cluster Lots, (excluding Cluster Residences), in connection with the development and/or operation of Lookout Pointe or other real property Declarant has an interest therein.
- 11.2 **Reservation of Right to Install.** Declarant hereby reserves the right to grant to or enter into any easements or covenants for the installation, maintenance, service, or operation of any and all Utilities Facilities, private roads and rights-of-way in, on, or over any part of the Property and/or Subdivision (as same may be modified or expanded by Subsequent Amendment). Any damage caused thereby shall be

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promptly repaired and the land shall be restored to its prior condition.

- 11.3 Reservation of Right to Dedicate for Public Use.** Declarant reserves the right to enter into covenants and easements with any utility or public authority which Declarant believes, in its sole discretion, to be in the best interests of Lookout Pointe. Declarant further reserves the right to dedicate for public use any part of Lookout Pointe.
- 11.4 Reservation of Right to Finish Development.** Declarant reserves the right to perform or cause to be performed such work as is incident to the development of all his real property within Lookout Pointe or adjacent thereto or may be later purchased by Declarant. Incident thereto shall include the right to go upon any part of Lookout Pointe with construction or any kind of vehicles, trailers, trucks, equipment, machinery, or otherwise, for or in connection with the construction, inspection, installation, maintenance, repair and replacement of utilities, Utility Facilities, Cluster Residence, common amenities, signs, promotions, development, management, and/or in connection with the sale of any Lookout Pointe Cluster Lot.
- 11.5 Reservation for Additional Restrictions.** Declarant reserves the right to impose, reserve or enter into additional covenants, easements and restrictions with Lookout Pointe Cluster Lot Owners as long as such additional easements, covenants and restrictions are not in conflict with the duties and obligations of Lookout Pointe Cluster Lot Owners as set forth in this Declaration.
- 11.6 Reservation for Signs.** Declarant reserves the right to place signs in or upon the Lookout Pointe Common Area and/or upon any Lookout Pointe Cluster Lot or Cluster Residence owned by Declarant.
- 11.7 Reservation of Watering Rights.** Declarant and the Sub-Association reserve the right to install an irrigation system throughout and within the Lookout Pointe Cluster Lots, (excluding any Cluster Residence), and the Lookout Pointe Common Area or to allow any Lookout Pointe Cluster Lot Owner to install an underground irrigation system on any portion of the Lookout Pointe Common Area immediately adjacent to a Lookout Pointe Cluster Lot, so long as the cost of installation and maintenance is borne exclusively by the Lookout Pointe Cluster Lot Owner and the Declarant and/or Sub-Association approve same in writing.
- 11.8 Reservation of Certain Property.** Declarant reserves the right to retain title to all or any portion of the Lookout Pointe Common Area, (as same may be modified or expanded by Subsequent Amendment) and to be reimbursed for all costs and expenses incurred by Declarant in connection with such Lookout Pointe Common Area, (as same may be modified or expanded by Subsequent Amendment), including, without limitation, costs relating to taxes and assessments, insurance and maintenance.

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- 11.9 Right to Assign and Transfer Rights & Reservations.** Declarant shall have the right to assign any and all of the rights reserved to it in this Declaration, without limitations the rights set forth in this Article XI, (hereinafter referred to as "Declarant's Rights), however, subject to the following:
- 11.9.1 Instrument Transferring Declarant's Rights.** Declarant may transfer any or all of Declarant's Rights, including, without limitation, voting proxies granted Declarant by Article III, Section 3.3.1 and any reservations in this Article XI, by an instrument evidencing the transfer recorded with the Medina County Recorder's Office. The instrument is not effective unless executed by both the transferor and transferee.
- 11.9.2 Liability of Transferor of Declarant's Rights.** A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor. Lack of privity (direct contractual relationship) does not deprive the Sub-Association or any Lookout Pointe Cluster Lot Owner of standing to bring an action to enforce any obligation of the transferor.
- 11.9.3 Transfer to Affiliate.** If the successor to any of Declarant's Rights is an affiliate of transferor, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor.
- 11.9.4 Liability for Retained Rights.** If a transferor retains any rights received by it from a transfer of Declarant's Rights, but subsequently transfers some, but not all of such transferred rights, to a successor who is not an Affiliate of the transferor, the transferor is also liable for any obligations and liabilities relating to the retained rights imposed on the transferor by this Declaration.
- 11.9.5 Limit of Liability of Transferor.** A transferor of any of Declarant's Rights has no liability for any act or omission, or breach of contractual or warranty obligations arising from the exercise of any of Declarant's Rights by a successor who is not an Affiliate of the transferor.
- 11.9.6 Acquisition of Declarant's Rights by Involuntary Sale.** Unless otherwise provided in a mortgage held by a first mortgagee, in case of foreclosure of mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, or sale under the Bankruptcy Code or receivership proceedings, of a transferee of any of Declarant's Rights, including but not limited to any transferee-builder of Cluster Residences, who owns multiple Lookout Pointe Cluster Lots and who also received a transfer of any of Declarant's Rights, or a transferee of the remainder of Lookout Pointe who also received a transfer of any of Declarant's Rights, a person acquiring title to all of such transferee's Declarant's Rights or Lookout Pointe Cluster Lots of any such Builder or any

remainder of Lookout Pointe being foreclosed (or deed in lieu of foreclosure) or sold, but only upon his request, succeeds to all of Declarant's Rights so held by the foreclosed holder, builder or owner, or only to any rights reserved in this Declaration to maintain models, sales offices, customer service offices and signs. The judgment or instrument conveying title shall provide for transfer of the Declarant's Rights requested.

- 11.9.7 Termination of Transferred Declarant's Rights.** Upon foreclosure (or deed in lieu of foreclosure, tax sale, judicial sale, or sale under the Bankruptcy Code or receivership proceedings, of a transferee of any of Declarant's Rights, including but not limited to any transferee-builder of Cluster Residences, who owns multiple Lookout Pointe Cluster Lots and who also received a transfer of any of Declarant's Rights, or a transferee of the remainder of Lookout Pointe, who also received a transfer of any of Declarant's Rights, a person acquiring any such Lookout Pointe Cluster Lots or remainder of Lookout Pointe and the foreclosed holder ceases to have any of Declarant's Rights unless the judgment or instrument conveying title provides for transfer of all such Declarant's Rights held by the foreclosed party to the successor of such foreclosed party.
- 11.9.8 Liabilities of Transferee Affiliate.** A successor to any of Declarant's Rights who is an Affiliate of a transferor is subject to all obligations and liabilities imposed on the transferor by this Declaration.
- 11.9.9 Limit of Non-Affiliate Transferee Liability.** A successor to any of Declarant's Rights, other than a successor described in Article XI, Section 11.12.10 and Section 11.12.11, who is not an Affiliate of a transferor, is subject to all obligations and liabilities imposed by this Declaration: (i) on a transferee which relates to such transferee's exercise or non-exercise of Declarant's Rights held by such transferee; or, (ii) on the transferor of such transferee, other than: (a) misrepresentations by any previous transferor or transferee; (b) warranty obligations on improvements made by any previous transferor or transferee or made before this Declaration is recorded with the Medina County Recorder's Office; (c) breach of any fiduciary obligation by any previous transferor or transferee or appointees to the Board of Trustees; or (d) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.
- 11.9.10 Limit of Liability if Transferee of Limited Declarant's Rights.** A successor to only a Declarant's Right reserved in this Declaration to maintain models, sales offices, customer service offices and signs, if such successor is not an Affiliate of a transferor of all of Declarant's Rights, may not exercise any other Declarant's Rights, and is not subject to any liability or obligation as a general holder of Declarant's Rights.

- 11.9.11 Limit of Liability of Temporary Holder of Declarant's Rights Pursuant to Foreclosure.** A successor to all Declarant's Rights held by the transferor, who is not an Affiliate of that transferor and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to any of Declarant's Rights pursuant to Article XI, Section 11.12.6, may declare the intention in a recorded instrument to hold those Declarant's Rights solely for transfer to another person. Thereafter, until transferring all such held Declarant's Rights to any person acquiring title to such Declarant's Rights owned by such successor-transferee, such successor-transferee may not exercise any of those rights for the duration of the period and any attempted exercise of the so held Declarant's Rights is void. So long as a successor-transferee may not exercise Developer's Rights, such successor-transferee is not subject to any liability or obligation as a holder of Declarant's Rights.
- 11.9.12 Limit of Liability of Transferee.** Nothing in this Article XI, Section 11.12 et seq. subjects any successor to any of Declarant's Rights to any claims against or other obligations of a transferor, other than claims and obligations arising under this Declaration.
- 11.10 Lookout Pointe Cluster Lot Owner A Dual Member.** A Lookout Pointe Cluster Lot Owner of a Cluster Residence shall be a member of the Sub-Association and a Member of Blue Heron Homeowners Association, Inc.
- 11.11 Sub-Associations May Be Merged.** The Sub-Association, after it has been transferred Ownership of all of Lookout Pointe Common Area, upon vote of two-thirds (2/3) of the Sub-Association's voting membership, such Sub-Association may elect to merge with any other Association and/or Sub-Association within Montville Lakes Subdivision, Phase III.
- 11.12 Waiver of Conflict of Interest and Non-Favorable Terms.** Each Lookout Pointe Cluster Lot Owner, by acceptance of his deed to his Lookout Pointe Cluster Lot, whether or not from Declarant or subsequent Lookout Pointe Cluster Lot Owner, hereby waives any claims based upon any conflicts of interest arising out of the Sub-Associations' granting any license, lease, agreement, easement or management rights or acquiring any license, lease, agreement, easement or management rights, to or from Declarant or any other entity. This waiver extends to any claims based on any such arrangement with Declarant by the Sub-Association **not** being the result of an "arm's length negotiations."
- 11.13 Acceptance of Deed Is Specific Acceptance of Reservations.** Declarant, on its own behalf and on behalf of all Lookout Pointe Cluster Lot Owners, hereby consents to and approves, and each Lookout Pointe Cluster Lot Owner and his mortgagee, by acceptance of a deed conveying any Ownership Interest in a Lookout Pointe Cluster

Lot, thereby consents to and approves these Declaration and the provisions of this Article XI, including, without limiting the generality of the foregoing, the amendment and modification rights of the Declarant.

**11.14 Reservation of Right to Amend Declarations.** Declarant reserves, until it holds no title or interest in any Lookout Pointe Cluster Lot, or Lookout Pointe Common Area within Lookout Pointe, as the same may be modified or expanded by Subsequent Amendment, or sooner termination of this reservation by Declarant by written document filed with the Medina County Recorder's Office, the unrestricted right to waive, change, modify, amend or cancel any and all of the provisions of this Declaration or in any other Deed given by the Declarant in respect to Lookout Pointe, if in its sole judgment, the development of Lookout Pointe Cluster Subdivision or lack of development of same warrants the same or if, in its sole judgment, the ends and purposes of said realty would be better served. Promptly following any modification, change, amendment to or decision to cancel this Declaration, the Declarant shall execute and record an instrument reciting any such waiver, change, modification, amendment or cancellation in whole or part, any and all of the provisions of this Declaration. Any action taken under the authority of this Section by Declarant, shall be submitted and approved by the Township and/or County, if required.

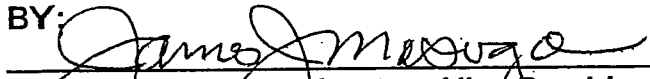
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IN WITNESS WHEREOF, The said Declarant, has caused its corporate name to be hereunto subscribed, by **James J. Masuga, Director - Vice President** of said corporation, thereunto duly authorized by resolution of its Board of Directors, this 11 day of June, 2004.

**GOLDEN FALCON CONSTRUCTION CO.**  
An Ohio Corporation

BY:

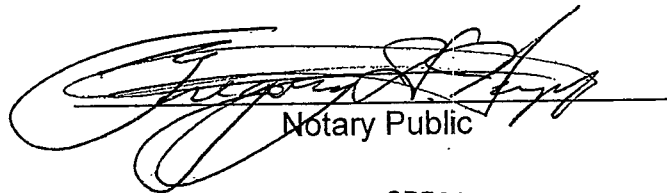
  
**James J. Masuga, Director - Vice President**  
By virtue of a duly passed resolution of the Board of Directors of Golden Falcon Construction Co.

**ACKNOWLEDGMENT**

THE STATE OF OHIO  
/SS  
COUNTY OF MEDINA

I certify that on this date before me, a Notary Public, an office duly authorized in the state and county named above to take acknowledgments, personally appeared **James J. Masuga, Director - Vice President** of Golden Falcon Construction Co., an Ohio corporation, who has full authority and right to execute the above document on behalf of the corporation, who acknowledged before me that the foregoing instrument is the voluntary act and deed of Golden Falcon Construction Co., as Grantor, for the uses and purposes therein mentioned and that as Vice President of the corporation, he was duly authorized by the Board of Directors of the corporation, to acknowledge the signing thereof to be the corporation's voluntary act and deed as Grantor.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Medina, Ohio this 11 day of June, 2004.

  
Notary Public

GREGORY W. HAPP  
Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration Date  
Section 147.03 R.C.

This Instrument Prepared By:  
Gregory W. Happ  
Attorney at Law  
OH. Sup. Ct. Reg. # 0008538

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