



**DECLARATION OF RESTRICTIVE COVENANTS  
CONDITIONS AND RESTRICTIONS OF  
MONTVILLE LAKES SUBDIVISION PHASE III  
KNOWN AS "BLUE HERON ESTATES"  
IN MONTVILLE TOWNSHIP, MEDINA COUNTY, OHIO**

**MEDINA COUNTY RECORDER  
NANCY ABBOTT**

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**DECLARATION OF RESTRICTIVE COVENANTS  
CONDITIONS AND RESTRICTIONS OF  
MONTVILLE LAKES SUBDIVISION PHASE III  
KNOWN AS "BLUE HERON ESTATES"  
IN MONTVILLE TOWNSHIP, MEDINA COUNTY, OHIO**

**KNOW ALL MEN BY THESE PRESENTS, that:**

**RECITALS**

**WHEREAS**, the undersigned, Hoffman Properties Limited Partnership (hereinafter called the "Declarant"), an Ohio Limited Partnership, 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**, 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 "Blue Heron Estates."

**WHEREAS**, Declarant is constructing a 27 hole golf course on its real property adjacent to and abutting the real property described herein.

**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.

**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, 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 Lot Owner for those costs of joint ownership and use of certain amenities owned and/or provided for by the Association and all "other Charges" which from time to time shall be payable by a Lot Owner pursuant to this Declaration.
  - 1.1.2 Association** shall mean and refer to Blue Heron 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 Open Space, (as hereinafter defined), the Utility Facilities, (as hereinafter defined), and Cluster Residence Block Common Area(s), (as hereinafter defined), providing services of general benefit to the Lot Owners, administering and enforcing this Declaration, collecting and disbursing the assessments, and exercising the functions hereinafter provided for.
  - 1.1.3 Blue Heron Estates** shall mean and refer to the Lots, Cluster Residence Lots, Cluster Residence Block(s), Cluster Residence Block Common Area(s), and Open Space, described in Article II of this Declaration and such additional real property as may be added pursuant to a Subsequent Amendment to this Declaration.
  - 1.1.4 Board of Trustees** shall mean and refer to the Board of Trustees of the Association
  - 1.1.5 Cluster Residence Block** shall mean and refer to an area of real property designated for the exclusive construction of Cluster Residences and which Cluster Residence Lots are created with the residual of same being a Cluster Residence Block Common Area.
  - 1.1.6 Cluster Residence Lot** shall mean and refer to any individual Residence that is platted as a single Residential envelope within a Cluster Residence Block and is deeded separately to an individual owner or owners for use as a single family residence. The term "Lot" shall include all Cluster Residence Lots, unless expressly exempted from the term "Lot, by a provision of this Declaration. Certain provisions of this Declaration are made expressly applicable solely to Cluster Residence Lot(s) and such term is used in such context. The plural of said term shall mean one or more of the plots of land defined herein in this definition.
  - 1.1.7 Cluster Residence Block Common Area** shall mean and refer to any area



within a Cluster Residence Block not platted as an envelope of a Cluster Residence Lot. It is the residual of any Cluster Residence Block within the platted Subdivision that remains after construction and re-platting of such Cluster Residence Block for the maximum number of Cluster Residence Lots allowable in the respective Cluster Residence Block. It shall include, without limitation, the non-dedicated streets, rights of way, and drives to each Cluster Residence Lot, the lawn of each Cluster Residence Lot, court yard or other amenity, landscaping maintained thereon outside of the platted envelope for each Cluster Residence Lot, electric sight lighting and any structures constructed therein.

- 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 Hoffman Properties Limited Partnership, an Ohio Limited Partnership, its successors and assigns. However, in no event for the rights reserved to Declarant, herein stated, shall an individual 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 Declarant on property adjacent to and abutting the Subdivision.
- 1.1.12 **Lot** shall mean and refer to any plot of land shown upon a recorded Plat of the Subdivision and any re-plat of the Subdivision hereafter filed, with the exception of the Open Space and Cluster Residence Block Common Area(s) and intended for independent ownership and use for the construction of a Residence thereon and made subject to these Declarations or any Subsequent Amendment hereafter made. Unless specifically stated otherwise, the term "Lot" includes the Residence situated upon a Lot including a Residence built or constructed on a Cluster Residence Lot within a Cluster Residence Block made subject to these Declarations or any Subsequent Amendment hereafter made. The plural of said term shall mean one or more Lots defined herein.
- 1.1.13 **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 Lot within the Subdivision. There shall be no differentiation between owners of a single family Lot and owners of Cluster Residence Lot constructed as a

single family Residence within the Subdivision. If a Lot is sold under a land installment contract, the purchaser (Vendee) (rather than the fee Owner) will be considered to be the Lot Owner. For the purpose of this Declaration, the Owner of a Lot that is leased and/or rented to others shall be as follows: (i) for the purpose of votes and Assessments, the record Lot Owner of the Lot; and (ii) for the purpose of use and enjoyment of common facilities and amenities set forth herein, the Tenant residing in the Residence situated on the Lot. The word "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.

- 1.1.14 Member** shall mean and refer to all Voting Members of the Association hereinafter provided.
- 1.1.15 Montville Lakes Subdivision Phase III** shall mean and refer to Blue Heron Estates, the Subdivision, and/or 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
- 1.1.16 Occupant** shall mean and refer to a natural person who is in possession of a Residence within the Subdivision including, without limitation, an Lot Owner or any guest, invitee, lessee, tenant, or family member of a Lot Owner occupying or otherwise using a Residence.
- 1.1.17 Open Space** shall mean and refer to those areas of the Subdivision and common facilities relating thereto shown on the recorded plat for Montville Lakes Subdivision Phase III and all Properties designated thereon as being devoted to and for the common use of the Lot Owners; landscaping within the boulevard and/or street islands, cul de sacs, or rights of way; walking trails, tunnels under the railroad tracks, lakes and any other areas which are deemed appropriate for the expenditure of funds by the Association and any recreational facilities deemed permissible by the Montville Township Trustees and constructed on an Open Space and maintained by the Association, if any. Cluster Residence Common Area(s) are not Open Space for the purposes of this Declaration.
- 1.1.18 Ownership Interest** shall mean and refer to the entire right title and interest of a Lot Owner in all of the fee simple and leasehold estates of a 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.



- 1.1.19 **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.
- 1.1.20 **Plat** shall mean and refer to the recorded plat of Montville Lakes Subdivision Phase III and all subsequent re-plat(s) of Montville Lakes Subdivision Phase III and filed of recorded with the Medina County Recorder's Office, Medina County, Ohio.
- 1.1.21 **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.
- 1.1.22 **Residence** shall mean and refer to any permitted structure or building constructed on a Lot or Lots within the Subdivision intended for a single family residence and shall include any garage or other permissible structure built on a Lot for the use or enjoyment of the Occupants of said Residence. A Model Residence shall become a "Residence" when it is used as a single family residence.
- 1.1.23 **Sub-Association** shall mean and refer to a non-profit organization formed under the Laws of the State of Ohio, which shall have the purpose of maintaining and administering the the Utility Facilities, (as hereinafter defined), and Cluster Residence Block Common Area(s), (as hereinafter defined), providing services of general benefit to the Cluster Residence Lot Owners, administering and enforcing this Declaration, collecting and disbursing permissible assessments, and exercising the functions hereinafter provided for in any Cluster Residence Block, pursuant to Article XI, Section 11.13 et. seq.
- 1.1.24 **Subdivision** shall mean and refer to the Lots, Cluster Residence Blocks, Cluster Residence Lots, Cluster Residence Common Areas and all Open Space of the Montville Lakes Subdivision Phase III, 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 "Blue Heron Estates."
- 1.1.25 **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.



- 1.1.26 **Tenant** shall mean and refer to any person(s) having a possessory leasehold estate in a Residence, other than the owner and Occupant of a Residence.
- 1.1.27 **Township** shall mean and refer to the Township of Montville, organized and existing under the laws of the State of Ohio.
- 1.1.28 **Utility Facility or Utility Facilities** shall mean and refer to any and all common water, sanitary sewer, storm sewer, drainage, swales, streams, lake shore, 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 Lots, the Open Space and/or Cluster Residence Common Area(s). Utility service lines exclusively serving a specific Lot Owner's Residence are not considered common Utility Facility or Utility Facilities.

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## 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 the Subdivision, 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 **Single Residence Lot(s).** Situated in the Township of Montville, County of Medina, and State of Ohio: And known as being the whole of the following Lots in the Montville Lakes Subdivision Phase 3A as per Plat 2003PL000047 of Medina County Plat Records, in Original Township Lots 83,84, 89, 90 and 103:

Lot # 155 PPN #030-11B-38-010	Lot # 184 PPN #030-11B-33-029
Lot # 156 PPN #030-11B-38-011	Lot # 185 PPN #030-11B-33-030
Lot # 157 PPN #030-11B-33-002	Lot # 186 PPN #030-11B-33-031
Lot # 158 PPN #030-11B-33-003	Lot # 187 PPN #030-11B-33-032
Lot # 159 PPN #030-11B-33-004	Lot # 188 PPN #031-11B-33-002
Lot # 160 PPN #030-11B-33-005	PPN #030-11B-33-033
Lot # 161 PPN #030-11B-33-006	Lot # 189 PPN #031-11B-33-003
Lot # 162 PPN #030-11B-33-007	PPN #030-11B-33-034
Lot # 163 PPN #030-11B-33-008	Lot # 190 PPN #031-11B-38-004
Lot # 164 PPN #030-11B-33-009	PPN #030-11B-33-035
Lot # 165 PPN #030-11B-33-010	Lot # 191 PPN #031-11B-38-005
Lot # 166 PPN #030-11B-33-011	PPN #030-11B-33-036
Lot # 167 PPN #030-11B-33-012	Lot # 192 PPN #030-11B-38-006
Lot # 168 PPN #030-11B-33-013	PPN #030-11B-33-037
Lot # 169 PPN #030-11B-33-014	Lot # 193 PPN #030-11B-33-038
Lot # 170 PPN #030-11B-33-015	Lot # 194 PPN #030-11B-33-039
Lot # 171 PPN #030-11B-33-016	Lot # 195 PPN #030-11B-33-040
Lot # 172 PPN #030-11B-33-017	Lot # 196 PPN #030-11B-33-041
Lot # 173 PPN #030-11B-33-018	Lot # 197 PPN #030-11B-33-042
Lot # 174 PPN #030-11B-33-019	Lot # 198 PPN #030-11B-33-043
Lot # 175 PPN #030-11B-33-020	Lot # 199 PPN #030-11B-33-044
Lot # 176 PPN #030-11B-33-021	Lot # 200 PPN #030-11B-33-045
Lot # 177 PPN #030-11B-33-022	Lot # 201 PPN #030-11B-33-046
Lot # 178 PPN #030-11B-33-023	Lot # 202 PPN #030-11B-33-047
Lot # 179 PPN #030-11B-33-024	Lot # 203 PPN #030-11B-33-048
Lot # 180 PPN #030-11B-33-025	Lot # 204 PPN #030-11B-33-049
Lot # 181 PPN #030-11B-33-026	Lot # 205 PPN #030-11B-38-012
Lot # 182 PPN #030-11B-33-027	Lot # 206 PPN #030-11B-38-013
Lot # 183 PPN #030-11B-33-028	

2.1.2 **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 Lots 83,84, 89, 90 and 103. PPN. # 030-11B-33-050.

- 2.1.3 Additional Cluster Residence Blocks.** And any other Cluster Residence Block(s) hereafter created by Declarant and included and subject to this declaration by Subsequent Amendment hereto.
- 2.1.4 Open Space.** Open Space shall be those Blocks identified as such by Declarant on a Plat filed with the Medina County Recorder's Office for the Subdivision and included herein by Subsequent Amendment and created as dedicated Open Space within the Subdivision and subjected to this Declaration by Subsequent Amendment. Excepting from definition of Open Space shall be Cluster Residence Block Common Area(s).
- 2.1.5 Cluster Residence Block Common Area(s).** Cluster Residence Common Area shall be all of the residual real property of Cluster Block H, and any residual real property of any other Cluster Residence Block(s), made subject to these Declarations by Subsequent Amendment, that remains after platting of all the planned and approved Cluster Residence Lots in any Cluster Residence Block(s).
- 2.2 Expansion and Inclusion of Additional Property.** The Declarant reserves the right from time to time to add additional real property to the Subdivision and the Property described above (including adjacent property of the Declarant) and to subject the same to the provisions of this Declaration. To exercise such right, Declarant shall record a re-plat of the Subdivision 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 the Subdivision 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 Lot, Cluster Residence Block, Cluster Residence Block Common Area and/or Open Space or to increase or decrease the number of Lots in the Subdivision. To exercise such right, Declarant shall record a re-plat of the Subdivision with the Medina County Recorder with all necessary governmental approvals and if necessary, record a Subsequent Amendment to this Declaration.

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### ARTICLE III: HOMEOWNERS ASSOCIATION

- 3.1 **The Association.** Blue Heron Homeowners Association, Inc., (hereinafter the "Association"), is a duly constituted not-for-profit corporation existing under the laws of the State of Ohio. The Association, as a non-profit corporation, is established to enforce and maintain Montville Lakes Subdivision Phase III a/k/a Blue Heron Estates, pursuant to this Declaration. Said Association shall undertake the duties, obligations, charges and restrictions herein provided.
- 3.2 **Membership in the Association.** The Declarant and each Lot Owner of the Subdivision shall automatically become and be a Member of the Association. In the case of a Lot Owner other than Declarant such membership shall terminate upon the conveyance of record by such Lot Owner of his Lot, at which time the new Lot Owner shall automatically become a Member of the Association.
- 3.3 **Voting Rights of Members.** Each Lot Owner is made a full voting member of the Association, subject to Article III, Section 3.3.1 written immediately below. Every Lot Owner shall be, as a condition of ownership, a member of the Association and shall be entitled to one vote for each single Lot owned. When more than one person holds an interest in a given single Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any Lot owned by a member.
- 3.3.1 **Grant of Voting Proxy** Each Lot Owner, accepting or being granted a deed to a Lot from Declarant or any subsequent owner of a Lot acquiring title to said Lot from a Lot Owner or his heirs or assigns, hereby covenants that such Lot Owner's voting rights in the 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 Lot Owner's voting rights in the 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 Lot Owner's full (100%) voting rights in the Association until such time as all of the Lots in the Subdivision have been sold to individuals or entities other than Declarant, 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 Association, each Lot Owner agrees to abide by these Declarations, the *Articles of Incorporation, Code of Regulations, and Resolutions* of said 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 of use to any Open Space and/or Recreational Facilities until all Assessments of the Lot Owner are paid in full.

**3.5 Powers of Association.** Declarant hereby covenants, for each Lot within the Subdivision, and each Lot Owner is hereby deemed to covenant by acceptance of the deed for a Lot, whether or not it shall be so expressed in the deed, to the 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 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 the Subdivision, or any part thereof, when necessary in connection with any maintenance, repair or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Lot Owner and Occupants thereof as practicable and any damage caused thereby shall be repaired by the Association.

**3.5.3 Special Authority Over The Water Quality Protective Deed Restrictions.** All Property within the Subdivision is subject to *The Water Quality Protective Deed Restrictions* filed of record with the Medina County Recorder's Office at 2002OR024031 and each Lot Owner shall abide by *The Water Quality Protective Deed Restrictions* and the Association shall have the right and authority to enforce *The Water Quality Protective Deed Restrictions*. In the event that any Lot Owner shall fail or refuses to keep a Lot in conformity with *The Water Quality Protective Deed Restrictions*, then the Association or its representatives may enter upon the Lot and maintain said Lot in conformity with *The Water Quality Protective Deed Restrictions* at the expense of the Lot Owner thereof and such entry shall



not be deemed a trespass. The expenses incurred by the Association shall be considered a Special Assessment against the Lot Owner and his Lot, pursuant to Article IV, Section 4.1.4.

- 3.5.4 Grant of Easements.** To dedicate, transfer or grant easements in all or any part of property, land or facilities owned by the 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 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 Lot Owners and/or the Association and further, to construct improvements and establish grade, and for such other purposes as may be determined by the Association.
- 3.5.5 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.
- 3.5.6 Right to Repair.** To repair, restore or otherwise correct a condition of disrepair or neglect to the exterior areas of any Lot, Cluster Residence Block Common Area(s) or Open Space and to perform any work or duties required of a Lot Owner or Tenant of same, pursuant to this Declaration, provided the 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 Association; provided, however, that the Association need not give notice if in its 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 Association shall be considered a Special Assessment against the Lot Owner and his Lot, pursuant to Article IV, Section 4:1.4.
- 3.5.7 Right to Lease Open Space.** To enter into a 99 year lease, with the right to renew same for a like period, for the Open Space with any entity that owns and operates the Golf Course adjacent to the Subdivision and Open Space, (hereinafter referred to as "Open-Space-Lessee"), however, any such Open-Space-Lessee shall agree to manage and control the activities within such Open Space not inconsistent with this Declaration and subject to the following conditions:



- 3.5.7.1 Control and Maintenance of Walking Trails.** The Open-Space-Lessee shall agree to maintain and control the Walking Trail System installed by Declarant and the tunnels underneath the railroad tracks as required and approved by the Montville Township Board of Zoning Appeals, (hereinafter referred to as the "Walking Trail System").
- 3.5.7.2 Fishing Rights:** The Open-Space-Lessee shall agree to maintain and control fishing areas along a minimum of two lakes located on the Property, (hereinafter referred to as the "Fishing Rights Area") and shall agree to periodically stock such lakes with fish.
- 3.5.7.3 Use Rights to Walking Trail System and Fishing Rights of Lot Owners.** The use of the Walking Trail System described in Article III, Section 3.5.7.1 and rights to the Fishing Rights Area described in Article III, Section 3.5.7.2 shall be limited to the use and enjoyment of Lot Owners who are Voting Members of the Association, and Lot Owners' Occupants, Tenants and occasional guests, subject to reasonable rules and regulations established by the Open-Space-Lessee.
- 3.5.7.4 Use Rights to Walking Trail System and Fishing Rights of Members of Montville Lakes Homeowners Association, Parcels 1, 2, & 3.** Qualified Voting Members and their immediate families residing within a "Dwelling Unit," as defined in the deed restrictions creating Montville Lakes Homeowners Association, Parcels 1, 2, & 3 filed with the Medina County Recorder's Office, shall have the right and use of the Walking Trail System and right to the Fishing Rights Area, subject to reasonable rules and regulations established by the Open-Space-Lessee, if and only if the Montville Lakes Homeowners Association, Parcels 1, 2, & 3 agrees to a reasonable annual monetary contribution by the Montville Lakes Homeowners Association, Parcels 1, 2, & 3 for the reasonable maintenance of the Walking Trail System and maintenance of the Fishing Rights Area and stocking of the lakes described in Section 3.5.7.2. Such annual monetary contribution shall be established by the Board of Trustees of the Association pursuant to this Declaration in conjunction with the Open-Space-Lessee. If the Montville Lakes Homeowners Association, Parcels 1, 2 & 3 refuse to or elects not to make such annual monetary contribution, the rights of the Members and their immediate families residing within a "Living Unit," as defined in the deed restrictions creating Montville Lakes Homeowners Association, Parcels 1, 2 & 3 filed with the Medina County Recorder's Office,

shall be limited to the portion of the Walking Trail System lying North of the railroad tracks that separate the lands owned by Montville Lakes Homeowners Association, Parcels 1, 2 & 3 and the Property subject to this Declaration.

- 3.5.7.5 **Agreement to Abide by The Water Quality Protective Deed Restrictions.** The Open-Space-Lessee shall abide by *The Water Quality Protective Deed Restrictions* filed of record with the Medina County Recorder's Office at 2002OR024031.
  - 3.5.7.6 **Agreement to Pay Taxes.** The Open-Space-Lessee agrees to pay all real property taxes and governmental assessments for the Open Space.
  - 3.5.7.7 **Agreement to Insure.** The Open-Space-Lessee agrees to obtain the insurance mandated by Article III, Section 3.6.6 et seq. and causes the Association to be additional insures under such policies.
  - 3.5.7.8 **Agreement to Maintain Open Space.** The Open-Space-Lessee agrees to maintain the Open-Space pursuant to the conditions and restrictions imposed by this Declaration upon the Open Space.
  - 3.5.7.9 **Agreement to Keep Open Space Free of All Liens.** The Open-Space-Lessee agrees to keep the Open Space free of all real property mortgages, except any mortgage placed against the lease from the Association by an institutional lender, all labor and mechanic liens.
  - 3.5.7.10 **Agreement to Maintain Lakes And Dams.** The Open-Space-Lessee agrees to maintain all lakes and their respective dams, spillways and stand-pipes in conformity with the rules and regulations of the Ohio Department of Natural Resources.
- 3.5.8 **Right to License Use of Recreational Facilities:** To enter into a license for a minimum term of ninety-nine years with an option to renew for a like period for the non-exclusive use of certain recreational facilities with the owners of the facility constructed adjacent to the Subdivision which has been approved by the Montville Board of Zoning Appeals for use as a clubhouse, banquet facility and meeting facility to be used in conjunction with the Golf Course, and to be constructed with the required recreational facilities pursuant to the requirements of Section 129 of the Montville Township Zoning Resolutions applicable to the Montville Lakes Subdivision Planned Unit Development, (hereinafter called the "Independent-Facilities-Owner"), and as authorized by



the Condition Zoning Certificates issued by the Montville Township Board of Zoning Appeals, subject to the following conditions:

- 3.5.8.1 Recreational Facilities.** The Independent-Facilities-Operator shall maintain on its property adjacent to the Subdivision a minimum of a swimming pool and a minimum of two tennis courts and a meeting room available to the Association and any Sub-Association for a meeting of the Association or any Sub-Association once a month. (hereinafter referred to as the "Recreational Facilities").
- 3.5.8.2 Use of the Recreational Facilities.** The Independent-Facilities-Operator shall agree to operate the Recreational Facilities during periods of normal seasonable and reasonable times of operations and shall allow the use of the Recreational Facilities to all Lot Owners who are Voting Members of the Association, Lot Owners' Occupants, Tenants and occasional guests subject to payment of the user recreational user fees established by Article III, Section 3.5.8.3 and subject to reasonable rules and regulations established by the Independent-Facilities-Operator for the use of the Recreational Facilities.
- 3.5.8.3 Annual Recreational User Fees.** In consideration of such license the Independent-Facilities-Operator shall be paid monthly a Recreational Facility User Fees by each Lot Owner through the Association, in an amount of Seventy-Five Dollars (\$75.00) per month per year per Lot Owner plus annual increases of Five Percent (5%) per annum for fifteen years. Any amount which exceeds the maximum amount established herein shall be approved by the Association at its annual meeting by FIFTY-ONE (51%) of it qualified voting members in attendance at such annual meeting. The monthly Recreational Facility User Fee shall be an Assessment of the Association (hereinafter referred to as "Recreational User Fee Assessment") and collected by the Association pursuant to the authority granted herein by the Association to assess and collect such Assessment.
- 3.5.8.4 Use Rights Extended to Montville Lakes Homeowners Association, Parcels 1, 2, & 3.** Qualified Voting Members and their immediate families residing within a "Living Unit," as defined in the deed restrictions creating Montville Lakes Homeowners Association, Parcels 1, 2, & 3 filed with the Medina County Recorder's Office, shall have the use of such Recreational Facilities, at the sole election of each individual member of the



Montville Lakes Homeowners Association, Parcels 1, 2, & 3, if such member shall pay the monthly Recreational Facility User Fee, established for each Lot Owner pursuant to Article III, Section 3.5.8.3 directly to the Independent-Facilities-Operator. The use of the Recreational Facilities by any Person pursuant to this Section shall be subject to the reasonable rules and regulations established for the use of the Recreational Facilities by the Independent-Facilities-Operator.

- 3.5.9 Right To Suspend Rights.** There is an automatic suspension of voting rights and use rights to the Walking Trail System, Fishing Rights Area and licensed Recreational Facilities of a Lot Owner and his Occupants, Tenants and occasional guests during any period that an Assessment against a Lot Owner and his Lot remains unpaid for a period of thirty (30) days or more or for any infraction of the Association published rules, policies and regulations and any rules and regulations published by the Open-Space-Lessee or Independent-Facilities-Operator.
- 3.5.10 Rules & Regulations.** To promulgate from time to time reasonable and non-discriminatory Rules, Policies and Regulations with respect to the use of Lot, any Open Space, Cluster Residence Block Common Area or Recreational Facilities, and to adopt any non-discriminatory Rules and Regulations promulgated by the Open-Space-Lessee and/or Independent-Facilities-Operator.
- 3.5.11 Assessments.** The Association shall have the right, authority and power to make Assessments and to create liens for same against each Lot and Lot Owner pursuant to and in the manner set forth in Article IV.
- 3.5.12 Assignment of Right to Collect Assessments.** The Association shall have the right to contract with the Independent-Facilities-Owner for the collection of the Recreational User Fee Assessment.
- 3.5.13 Management.** The 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.
- 3.5.14 Employees and Managers.** The 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. The Association shall have the right to delegate all or any portion of its authority and responsibilities to the Open-Space-Lessee, Independent-Facility-Owner, manager, managing agent, or management company. 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.

**3.5.15 Insurance.** The 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.

**3.5.16 Right to Amend Declaration.** Other than specifically set forth herein, the 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 Lot, Open Space or Cluster Residence Block, Cluster Residence Lot, Cluster Residence Block 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 11.16, by either of the following acts by the Lot Owners or Members of the Association:

**3.5.16.1 Written Consent of Lot Owners.** If, for any reason, no Association exists, then upon the written consent of seventy-five percent (75%) of the then Lot Owners. Any written consent to the waiver, amendment or modification by the 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 Lot Owners in the same manner and with all the requirements of a recordable deed in the State of Ohio.

**3.5.16.2 Vote of Association Members.** If the Association is lawfully formed and lawfully recognized by the State of Ohio then only by a vote of the Members of the 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 Association, the Board of Trustees of the 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.

**3.5.16.3 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 and filed of record with the Medina County Recorder's Office.

**3.5.16.4 No Right to Cancel Lease or License.** The Association shall not have the authority, power or right pursuant to Article III, Section 3.5.16 et seq. to unilaterally cancel any lease with the Open-Space-Lessee and/or license with the Independent-Facility-Owner, without the consent of the Open-Space-Lessee, the Independent-Facility-Owner, the Township and/or County. Prior to any such cancellation being effective the Association, the Open-Space-Lessee, the Independent-Facility-Owner, the Township and/or County must all agree and approve a recordable written instrument to be filed with the Medina County Recorder's Office.

**3.6 Obligations of the Association.** The Association shall have the mandatory obligations set forth below:

**3.6.1 Obligation For Open Space.** All of the Open Space described herein shall be owned by the Association upon the Declarant transferring the Open Space to the Association. The transfer of title to the Open Space by Declarant to the 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 Association. The Association shall have the following specific obligations for the Open Space:

**3.6.1.1 Obligation to Enforce Restrictions.** The Association shall have the obligation to enforce all restrictions and reservations on the Open Space set forth in this Declaration.

**3.6.1.2 Association's Duty to Maintain Open Space.** After title to the Open Space, or any portion thereof, has been conveyed to the Association, it shall have the duty to maintain the Open Space. The Association shall maintain and keep in good repair the Open Space, which shall include the maintenance and repair of such



non-dedicated right-of-ways, utility lines, pipes, wires, glass, conduits, and systems which are a part of the Open Space. The maintenance of the Open Space shall be deemed to include, but shall not be limited to, maintenance, repair and replacements, subject to insurance and casualty loss provisions contained herein, at the Association's cost and expense, of all trees, fences, shrubs, grass, streets, parking Space, walks and other improvements situated upon the said Open Space. Such obligation is subject to the right of the Association to lease the Open Space pursuant to Article III, Section 3.5.7 et seq.

**3.6.1.3 Association's Duty to Pay Taxes and Assessments on Open Space.** The Association shall pay, prior to delinquency, all taxes and assessments levied against the Open Space including without limitations, personal property taxes, general real estate taxes and special assessments by the County.

**3.6.1.4 Association's Duty to Pay Utilities for Open Space.** The 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 Open Space.

**3.6.2 Obligation For Cluster Residence Block Common Area(s).** All of the Cluster Residence Block Common Area(s) described herein shall be owned by the Association or one or more Sub-Associations upon the Declarant, its successors or assigns transferring a Cluster Residence Block Common Area(s) to the Association or a Sub-Association. The Association or a Sub-Association shall have the obligation to maintain the Cluster Residence Block Common Area(s). The transfer of title to the Cluster Residence Block Common Area(s) by Declarant to the Association or Sub-Association shall be not later than ninety (90) days following termination of 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 exclusive use and benefit of the Cluster Resident Lot Owners within each Cluster Residence Block, subject to the following obligations. (In the event a Sub-Association(s) is/are established or created pursuant to Article XI, Section 11.13 et seq., and take title to any Cluster Residence Block Common Area(s), all of the following obligations may be delegated to any such Sub-Association by the Declarant or Association pursuant to this Declaration).

**3.6.2.1 Obligation to Enforce Restrictions.** The Association shall have the obligation to enforce all restrictions on the Cluster Residence Block Common Area(s) set forth in this Declaration.

**3.6.2.2 Association's Duty to Maintain Cluster Residence Block Common Area(s).** The Association shall have the duty to maintain any and all Cluster Residence Block Common Area(s). The Association shall maintain and keep in good repair the Cluster Residence Block Common Area(s), which shall include the maintenance and repair of such non-dedicated right-of-ways, utility lines, pipes, wires, glass, conduits, and systems which are a part of the Cluster Residence Block Common Area(s). The maintenance of the Cluster Residence Block Common Area(s) shall be deemed to include, but shall not be limited to, maintenance, repair and replacements, subject to insurance and casualty loss provisions contained herein, at the Association's cost and expense, of all trees, fences, shrubs, grass, streets, parking space, walks and other improvements situated upon the Cluster Residence Block Common Area(s).

**3.6.2.3 Association's Duty to Pay Taxes and Assessments on Cluster Residence Block Common Area(s).** The Association shall pay, prior to delinquency, all taxes and assessments levied against the Cluster Residence Block Common Area(s) including without limitations, personal property taxes, general real estate taxes and special assessments by the County.

**3.6.2.4 Association's Duty to Pay Utilities for Cluster Residence Block Common Area(s).** The 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 Cluster Residence Block Common Area(s).

**3.6.3 Obligation to Enforce *The Water Quality Protective Deed Restrictions*.** The Association is obligated to enforce within the Subdivision *The Water Quality Protective Deed Restrictions* filed of record with the Medina County Recorder's Office at 2002OR024031 which are incorporated herein by reference, as if fully re-written herein, and are specifically made a part of this Declaration.

**3.6.4 Obligation to Enforce Rules & Regulations** The Association is obligated to enforce the reasonable and non-discriminatory Rules and Regulations with respect to the use of any Lot, the Open Space, Cluster Residence Lot, Cluster Residence Block Common Area or Recreational Facilities, and to enforce any non-discriminatory Rules and Regulations promulgated by the Open-Space-Lessee and/or Independent-Facilities-Operator and to insure any Lot Owner's due process rights.



- 3.6.5 Obligation to Enforce Assessments.** The Association shall have the obligation to make Assessments, to collect same and to enforce liens for non-payment of any assessment against each Lot and Lot Owner pursuant to and in the manner set forth in Article IV.
- 3.6.6 Obligation to Obtain Insurance.** The Association shall, if applicable obtain, and keep in full force and effect the following insurance or be named as a named insured on like policies of insurance held by the Open-Space-Lessee and/or Independent-Facility-Owner:
- 3.6.6.1 Casualty Insurance.** Fire, extended coverage, vandalism and malicious mischief insurance, or risk insurance, insuring all of the improvements in the Subdivision owned by the 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 Association shall not be required to maintain insurance on it.
- 3.6.6.2 Liability Insurance.** Comprehensive general liability insurance (with automobile liability coverage if the Association owns any vehicles) covering claims for bodily injury or death occurring upon, in, or about the Open Space and any other property in the Subdivision owned by the Association (if any), with contractual liability and "personal injury" coverage, such insurance to 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 insureds the Declarant, all parties to this Declaration and the Lot Owners.
- 3.6.6.3 Worker's Compensation Insurance.** The Association shall maintain Worker's Compensation Insurance if required under the applicable laws of the State of Ohio.
- 3.6.6.4 Additional Insurance.** The 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.
- 3.6.7 Obligation to Manage.** The Association shall provide the management and supervision for the operation of the Open Space, Cluster Residence



Common Area(s) and the Subdivision in general. The 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:

- 3.6.7.1 **Adopt Rules**. The Association may adopt its own rules, polices and regulations regarding the use of the Open Space and Cluster Residence Common Area and any amenity therein/thereon or adopt the rules, policies and regulations of the Open-Space-Lessee and/or Independent-Facility-Owner.
- 3.6.7.2 **Engage Employees and Agents**. The 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 Association by this Declaration.
- 3.6.8 **Obligation to Delegate**. If the Association does not employ sufficient staff to carry out the obligations imposed upon the 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 the Open-Space-Lessee, the Independent-Facility-Owner, to a manager, managing agent, or management company, it shall be obligated to do so.
- 3.6.9 **Obligation for Dispute Resolution**. The Board of Trustees, to the best of its ability, shall act as an arbitrator of disputes between Lot Owners, or between Lot Owner, a Occupant or Tenant(s) of such Lot Owner and the Open-Space-Lessee, or between a Lot Owner, a Occupant or Tenant(s) of such Lot Owner and the Independent-Facility-Owner. All parties to the dispute, however, must agree to submit such dispute to the Board of Trustees.
- 3.6.10 **Obligation to Issue Certificate of Compliance**. The Association shall have the obligation to issue "Certificate of Compliance" pursuant to Article IX, Section 9.16.
- 3.6.11 **Obligation to Enter Into Lease with Open-Space-Lessee**. The Association shall enter into a lease for the Open Space with the owner of the Golf Course, subject to the terms and conditions set forth in Article III, Section 3.5.7 et. seq.
- 3.6.12 **Obligation to Enter Into License with Independent-Facility-Owner**. The Association shall enter into a license for the use of the Recreational Facilities with the Independent-Facility-Owner, subject to the terms and conditions set forth in Article III, Section 3.5.8 et seq.

## ARTICLE IV: ASSESSMENTS AND LIEN RIGHTS

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

4.1.1 **General Maintenance Assessment.** A "General Maintenance Assessment" shall be levied yearly against each Lot Owner and his Lot. The General Maintenance Assessment shall be used to maintain any lands, rights or property titled in the Association or required to be maintained by the Association to include but not be limited to: Open Space, any building, street, undedicated roads/streets, landscaping, 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 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.

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

4.1.2 **Maintenance Assessment for Cluster Residence Block Common Area(s).** A "Cluster Residence Maintenance Assessment" shall be levied yearly against each Cluster Residence Lot Owner and his Cluster Residence Lot. The Cluster Residence Maintenance Assessment shall be used to maintain any Cluster Residence Block Common Area(s), required to be maintained by the Association or any Sub-Association, to include, but not be limited to: any building, street, undedicated roads/streets, landscaping, front entrance, street lighting, snow plowing, insurance and any other maintenance items within the Cluster Residence Block and/or Cluster Residence Block Common Area(s) and not the direct responsibility



of any governmental agency or any private Lot Owner. Such Assessments shall be made equally against each Cluster Residence Lot Owner and his Cluster Residence Lot. 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 by a majority vote of the Board of Trustees or the managing board of the Sub-Association and shall be an amount necessary to promote the health, safety, and welfare of the residents of any Cluster Residence Block for which the Association or any Sub-Association has the above responsibilities. If a Sub-Association is granted rights pursuant to Article XI, Section 11.13 et seq., then that Sub-Association shall have the exclusive authority to levy and collect the "Cluster Residence Maintenance Assessment" authorized by this Section.

**4.1.2.1 Manner of Computation of Cluster Residence Maintenance**

**Assessment.** All Cluster Residence Lot Owners shall pay the yearly Cluster Residence Maintenance Assessment in accordance with the fraction, the numerator of which being the total number of Cluster Residence Lots owned by a Cluster Residence Lot Owner and the denominator of which being the total number of Lots owned by all Cluster Residence Lot Owners in a Cluster Residence Block(s). By way of example, when there are ten (10) Cluster Residence Lots owned by Cluster Residence Lot Owners each Cluster Residence Lot Owner that owns one of those Cluster Residence Lots shall pay the Cluster Residence Maintenance Assessment equal to one-tenth (1/10) of the Cluster Maintenance Assessment. The Cluster Residence Maintenance Assessment shall be collected on a monthly basis.

**4.1.3 Recreational Facility User Fee Assessments.** A monthly "Recreational Facility User Fee Assessment" shall be levied against each Lot Owner and his Lot in an amount of Seventy-Five Dollars (\$75.00) per month per year per Lot Owner plus annual increases of Five Percent (5%) per annum for fifteen years. The Recreational Facility User Fee Assessment shall be paid in full monthly to the Independent-Facility-Owner for use of the Recreational Facilities. Any amount which exceeds the maximum amount established herein shall only be assessed upon an affirmative vote of at least FIFTY-ONE (51%) of the Voting Members of the Association.

**4.1.3.1 Assignment of Right to Collect Recreational Facility User Fee**

**Assessment.** The Association, upon entering into a license, as authorized by Article III, Section 3.5.8 and required by Article III, Section 3.1.12 with the Independent-Facility-Owner, may permit such Independent-Facility-Owner to collect the mandatory Recreational Facility User Fee Assessment directly from Lot

Owners. However, such Independent-Facility-Owner shall provide monthly statements to all Lot Owners for such Recreational Facility User Fee Assessment and provide a monthly collections report to the Association.

- 4.1.4 **Special Assessments Against a Single Lot and/or Lot Owner.** A "Special Assessment" shall be levied by the Board of Trustees against any Lot Owner and his 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 Association in enforcing a violation of any restriction set forth in this Declaration by a Lot Owner or any Lot Owner's Occupant Tenant and/or guest. The cost borne/incurred by the Association shall include, but not limited to, the actual cost expended by the Association to bring any Lot into compliance upon refusal of a 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.
- 4.1.5 **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 Association. A Major Improvement Assessment shall be defined as the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Open Space including fixtures and personal property related thereto.
- 4.1.6 **Special Emergency Assessments.** A "Special Emergency Assessment shall be levied by the Board of Trustees against each Lot Owner and his 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 of the Board of Trustee that such Special Emergency Assessment is necessary for the safety, welfare and protection of the Subdivision and that immediate funds must be expended to save loss of life or property.
- 4.1.7 **Manner of Computation of Major Improvement and/or Special Emergency Assessment.** All Lot Owners shall pay all Major Improvement Assessments, and/or Special Emergency Assessments in accordance with the fraction, the numerator of which being the total number of Lots owned by a Lot Owner and the denominator of which being the total number of Lots owned by all Lot Owners in the Subdivision. By way of example, when there are ten (10) Lots owned by Lot Owners each Lot Owner that owns



one of those 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, collected on a monthly basis.

- 4.2 Use of Assessments.** All Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision for the improvement and maintenance of the Open Space, for the intended use of any Assessment and/or as is otherwise consistent with the rights, obligations and responsibilities of the 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 Lot, shall not be liable for the Assessments levied against the owner of such Ownership Interest in a 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 Association's lien for Assessments. The 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 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 Lot pursuant to a voluntary conveyance for purposes of this Section.
- 4.5 No Right to Waive Assessments.** No Lot Owner or Board of Trustees of the Association shall have the right to waive any individual Lot Owner's obligation to pay past due, current or future Assessments. Any such representation by any 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 Lot with such representation whether written or oral.

**4.6 No Exemption for Non-Use of Recreational Facilities or Open Space.** A Lot Owner or any Ownership Interest in a 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 Walking Trail System, the Fishing Rights Area or licensed Recreational Facilities or any other amenity owned, leased, licensed and/or operated by the Association, or by abandonment of his Lot. Furthermore, no Lot Owner or any owner of an Ownership Interest in a Lot shall be entitled to any portion of the funds held for reserves; nor shall any Person have a claim against the Association with respect thereto.

**4.7 Creation of Lien for Unpaid Assessments.** Each Lot Owner hereby covenants and agrees by acceptance of the deed to an Ownership Interest in and to a Lot, whether or not expressed in any such deed, to pay to the Association or directly to an Independent-Facility-Contractor, all Assessments levied against such 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 Association or the Independent-Facility-Owner 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 Lot and any Ownership Interest of such Person with respect to such Lot and any Residence thereon and shall bind such Ownership Interest in the hands of the then Lot Owner, his heirs, executors, administrators, devisees, personal representatives, successors and assigns. Each co-Lot Owner of a Lot shall be personally liable, jointly and severally, with all other co-Lot Owners for all Assessments made by the Association with respect to said Lot. The assessment lien provided for herein shall be subordinate to the Lien of any first institutional mortgage on a Lot, but shall not be subordinate to any other mortgage lien unless the written consent of the Association to such further subordination is recorded in the Medina County Records.

**4.7.1 Perfection of Lien.** If any Lot Owner shall fail to pay when due an Assessment levied in accordance with this Declaration (such Lot Owner hereinafter referred to as the "Delinquent Lot Owner"), the Board of Trustees of the Association shall authorize the perfection of a lien on the Ownership Interest of the Delinquent Lot Owner on the Residence for



which Assessments have not been paid by filing for record with the recorder of Medina County, Ohio a Certificate of Lien. The Association upon entering into a license with an Independent-Facility-Owner pursuant to Article III, Section 3.5.8 shall authorize such Independent-Facility-Owner to prepare and file a Certificate of Lien for any unpaid Recreational Facility User Fee Assessment not paid in accordance with Article IV, Section 4.1.3 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 Association against the named Delinquent Owner.
- 4.7.1.2 **Description of Lot.** A description of such Delinquent Owner's 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 Association, however, Liens for Recreational Facility Assessments may be signed by a duly authorized agent of the Independent-Facility-Owner.
- 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 Association after authorization from the Board of Trustees of the Association. A Lien created for Recreational Facility User Fee Assessment may be brought by the Independent-Facility-Owner in the name of and on behalf of the Association.

- 4.7.5 **Dispute as to Assessment.** A Lot Owner who believes that any Assessment levied by the Association against his Ownership Interest in a Lot for which a Certificate of Lien has been filed by the Association or on behalf of the Association by the Independent-Facility-Owner 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 Association, or Independent-Facility-Owner on behalf of the 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 Lot Owner shall not waive, preclude or prejudice the Association or the Independent-Facility-Owner 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 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 **Property of the Declarant.** All properties of the Declarant so long as it is fee title owner to any Lot within the Subdivision.



- 4.7.8.4 **Property of Cluster Residence Block(s)**. All Cluster Residence Blocks that have not been platted as a Cluster Residence Lot.
- 4.7.8.5 **Model Residence**. A Model Residence Home constructed by a builder on a Lot utilized by the original builder as a Model for sale of like homes to potential purchaser(s) for a period not to exceed two (2) years from date of issuance of a building permit for such Model Home by the County.
- 4.7.8.6 **Speculative Built Residence**. A Lot deeded to a qualified builder upon which he builds a Residence for immediate sale to others for a period not to exceed 12 months from date of issuance of a building permit for such Residence by the County.
- 4.7.8.7 **Design Built Residence Under Construction**. A Lot deeded to a Lot Owner who contracts for the construction of a Residence upon the 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 Lot.

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## **ARTICLE V: GENERAL RESTRICTIONS ON AND OBLIGATIONS OF LOT OWNERS**

- 5.1 General Restrictions And Obligations.** All 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. These obligations and restrictions shall be covenants that run with the land and shall be perpetual in nature. In addition, each Lot Owner shall have the following general responsibilities and such responsibilities shall not in any manner be imputed to the Declarant, the Association and/or Sub-Association:
- 5.1.1 Taxes and Assessments.** Each Lot Owner shall pay, prior to delinquency, all taxes and governmental assessments and Assessments levied against the Lot owned by each Owner.
- 5.1.2 Utilities.** Each 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 Lot Owner's Residence, including, without limitation, the charges for electricity used in the light post in front of each Residence required by Article V, Section 5.6.5.
- 5.1.3 Insurance.** Each 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 Lot Owner shall maintain adequate insurance covering such Owner's Lot and Residence.
- 5.1.3.2 Hazard Insurance.** Each Lot Owner shall maintain fire and "all risk" hazard insurance coverage on each Owner's Residence in the amount of the full replacement cost of such Residence.
- 5.1.3.3 Hazard Contents Insurance.** Each lot Owner shall maintain hazard insurance on his contents and personal property, as such Lot Owner shall desire.
- 5.1.3.4 Workman's Compensation.** Each Lot Owner shall maintain workman's compensation insurance if required under the applicable laws of the State of Ohio.
- 5.2 Township Zoning.** All 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 Open Space.** No Lot Owner or any other Person shall construct or place upon anything on the surface of the Open Space, Cluster Residence Block Common Area(s) or on the surface of any easement which is for the benefit of the 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 Association, upon the Declarant ceasing to hold voting proxy rights pursuant to Article III, Section 3.3.1.
- 5.4 **General Use Restrictions On Lot and Open Space.** All Lot Owners and Occupants, Tenants and guests of a Lot Owner shall make use of a Lot, Open Space and/or Cluster Residence Common Area(s) in such manner as not to create or maintain a nuisance and shall conduct all activities and enjoyment of a Lot, Open Space and/or Cluster Residence Common Area to prevent offensive, immoral, improper, or unlawful activities of any kind and being mindful of Declarant's and each Lot Owner's, the Association's and/or Sub-Association's right to peaceful enjoyment of his respective Lot, Open Space and/or Cluster Residence Common Area(s).
- 5.5 **Abide by Rules and Regulations:** All Lot Owners agree as additional restrictions, covenants, and obligations for their respective Lot, and for themselves and their heirs, successors and/or assigns and anyone claiming title through a Lot Owner or claiming privileges of membership in the Association or use of any Open Space rights or Recreational Facilities, 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 Association, a Sub-Association the Open-Space-Lessee and Independent-Facility-Owner.
- 5.6 **General Conditions of Lot and Residence.** All Lot Owners shall provide good, neat, and orderly exterior maintenance repair upon each Lot and any Residence thereon, as follows:
- 5.6.1 **Exterior Maintenance of Residence.** Each Lot Owner shall keep such Lot Owner's 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 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

Residence constructed on a Lot.

- 5.6.2 Grounds and Landscaping.** A Lot Owner shall properly landscape his Lot (including any areas within the right-of-way of any publically dedicated street) and maintain all landscaping (including watering of grass) on a regular basis. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain anywhere on a Lot by any Lot Owner, irrespective of whether a Residence has been constructed on such 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 Lot Owner. No 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 Residence on the Lot.
- 5.6.3 Debris and Garbage.** No 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 Lot. In the event that any Lot Owner shall fail or refuse to keep a Lot in conformity herewith, then the Association or its representatives may enter upon the Lot and maintain said Lot in conformity herewith at the expense of the Lot Owner thereof and such entry shall not be deemed a trespass. The expenses incurred by the Association shall be considered a Special Assessment against said Lot Owner and Lot pursuant to Article IV, Section 4.1.4.
- 5.6.4 Cleaning - Snow Removal.** Each Lot Owner shall remove snow and ice, as may be reasonable in the circumstances, from, without limitations, all drives, sidewalks (including any sidewalks within the dedicated public right-of way in front of his Lot), steps, stoops, landings and other paved areas located on his Lot. This requirement may be undertaken by the Association or Sub-Association in Cluster Residence Block(s).
- 5.6.5 Electric Posts.** Each Lot Owner shall keep in good condition and repair any electric posts in/on a Lot with a Residence and shall replace light bulbs promptly as required. Each Lot Owner of a Lot with a 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 Lot Owner shall maintain all driveways, sidewalks, steps, stoops, landings, patios and other paved areas on his Lot or located between his Lot and the dedicated street adjacent to his Lot (including any areas within the right-of-way), in good condition and repair.
- 5.6.7 Repairs Caused by the Wrongdoing of a Lot Owner, Occupant or Tenant.** Notwithstanding anything in this Declaration to the contrary, each



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 Association, the Sub-Association, other Lot Owners, Open-Space-Lessee and/or Independent-Facility-Owner, if the repairs or replacements are required because of the acts or negligence of the Lot-Owner or his Occupants, Tenants and/or guests.

**5.6.8 Right of Association to Perform Maintenance Obligations of Owners.**

If a Lot Owner fails to perform any maintenance obligations or to make any repairs or replacements required to be performed or made by a 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 Association or Declarant gives written notice of such failure to the Lot Owner, (unless the 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 Association or the Declarant shall have the right to perform such maintenance or to make such repairs or replacements, and the Lot Owner shall reimburse the Association for all costs and expenses incurred by the Association in connection therewith within thirty (30) days following receipt of an invoice. Failure of a Lot Owner to pay any such invoice shall authorize the Board of Trustees to assess the Lot Owner and his Lot, as a Special Assessment pursuant to Article IV, Section 4.1.4. Notwithstanding the above, if the Declarant or Association believes that an emergency situation exists, no notice to the Lot Owner shall be required. Notwithstanding the rights set forth above shall not limit the right of the Association, Declarant or other 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 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 Lots, except as hereinafter expressly provided to the contrary, including all 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 Residence. Only one Residence shall be erected per Lot. A construction shed may

be placed on a Lot and remain there temporarily only during the course of active construction of a Residence. Otherwise, no portable building or trailers, mobile homes, campers may be moved onto a Lot.

**5.8 Land Use - Use of the Lot or 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 Lot or in any Residence, 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 Property subject thereto.

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

**5.8.1.2 Specific Exemption.** Nothing in Article V, Section 5.8 shall in any manner limit the Declarant, the Open-Space-Lessee, the Independent-Facility-Owner or other entity which may own or hereafter own and operate the Golf Course from operating its respective business enterprises on any portion of the Property within the Subdivision.

**5.8.2 Right of Lot Owner to Construct Residence And Maintain.** A 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 Lot or Residence.

**5.8.3. Right of Lot Owner To Lease Residence.** A Lot Owner shall have the right to lease his Residence for single family residential use, except, that no Residence shall be leased for a period less than one (1) year. No Lot Owner shall rent, let or lease a Residence on a month-to-month, weekly or nightly rental, in whole or part.

**5.8.4 Right of Lot Owner To Home Office.** A Lot Owner, his Tenant or Occupant shall have the right to use a portion of a 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 Lot Owner;

**5.8.4.2 No Walk-in Traffic.** That such use does not result in walk-in traffic to the 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 Lot Owner shall permit nuisances or any safety hazard to remain on a Lot or Residence nor use or practice which is the source of nuisances or safety hazards to other Lot Owner(s) or any other Person or any Person playing golf on the Golf Course, using the Walking Trail System or using the Fishing Rights Area or using any other amenity within the Subdivision or which interferes with the peaceful possession and proper use of any other Property within or adjacent to the Subdivision.

**5.10 No Illegal Activities.** No Lot Owner or other Person shall permit any unlawful or illegal activities on a Lot, within a Residence or any other Property within or adjacent to the Subdivision.

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