

ARTICLE VI: EASEMENTS

- 6.1 **Easements for Utilities.** There is hereby reserved unto Declarant, the Association, Sub-Association and those designated by each (which include, without limitation, any Lot Owner, governmental body, political subdivision, any public or private utility company, the Open-Space-Lessee, and Independent-Facility-Operator, blanket easements upon, in, across, over, and under all portions of the Property within the Subdivision, including, without limitation, Lots, excluding Residences, 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 Lot or Residence, Open Space, Cluster Residence Block, Cluster Residence Common Area(s) and/or Open Space-Lessee and/or Independent-Facility-Owner 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 Open Space.** The Declarant, its agents, contractors, and employees, the Association, its agents, contractors and employees, Sub-Association, its agents contractors and employees, and all Lot Owners and his Occupants, 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 Open Space, 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 **Access and Right-of-Way to Cluster Residence Block Common Area(s).** The Declarant, its agents, contractors, and employees, the Association, its agents, contractors and employees, Sub-Association, its agents contractors and employees, and all Cluster Residence Lot Owners and his Occupants, Tenants, and their respective occasional guests within a specific Cluster Residence Block shall have the perpetual and non-exclusive right of ingress, egress, access and passage to, from and over the specific Cluster Residence Block Common Area wherein such Cluster Residence Lot Owners' Cluster Residence Lot is located , 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.
- 6.4 **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 Open Space, Cluster Residence Block Common Area(s) caused by the settlement or movement, and including easements for the maintenance and use of encroaching improvements in favor of the Declarant, a Lot Owner, Association, Sub-Association are hereby created, provided such encroachments are not intentionally created.

- 6.5 **Right To Granting Easements for Open Space, Cluster Residence Common Areas and Lots.** The Declarant, the Association, and any 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 Open Space and Cluster Residence Block Common Area(s) or within a Lot (excluding the Residence), and the drives and walks within the Open Space and Cluster Residence Block Common Area(s) of the Subdivision.
- 6.6 **Right to Grant Utility Easements to Adjacent Property.** The Declarant, the Association, and any 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 Open Space or Cluster Residence Common Area(s) or on a Lot (excluding a Residence) as may be desired by the Declarant, the Association (acting through the Board of Trustees) and a Sub-Association (acting through its authorized board of trustees). For example, the Declarant, the Association, and/or Sub-Association could grant to the owner of adjacent property to the Property of the Subdivision (or could reserve for use of the Declarant for the benefit of land owned by Declarant not within the Subdivision) the right to install and/or to tie into and use a Utility Facility in the Subdivision or to use a private drive located within the Open Space or Cluster Block Common Area(s) of the Subdivision, without violation of this Declaration and without the authorization of the Members of the Association.
- 6.7 **Declarant's Specific Reservation To Grant Easement.** Without limiting the foregoing Article VI, Sections 6.1 through Section 6.6, Declarant reserves 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 the Open Space, Cluster Block Common Area(s) or within a Lot (excluding a Residence) and private streets, drives and walks within the Open Space or Cluster Block Common Area(s) of the Subdivision, and to construct and maintain, repair, replace, inspect and maintain the Golf Course, for the benefit of Declarant and any other owners and occupants of any real property Declarant may have an interest in adjacent to the Subdivision, or within any real property which is now or subsequently becomes a part of the Subdivision or any real property deleted from the Subdivision by Declarant. In addition to any other ways in which such easements may be further acknowledged, Declarant shall have the right to record 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.
- 6.8 **Parking Easement.** The Declarant, the Association, any Sub-Association or any builder/contractor of a 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 Residences or

improvements or the repairs and maintenance thereof, or in connection with the sales of Lots or Residences, whether or not such construction is taking place on or off the Property.

- 6.9 **Easement to Maintain Sales Office, Models, Etc.** Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and sale of Lots and Residences by builders purchasing Lots from Declarant shall continue on/within the Subdivision 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 Open Space or Cluster Residence Common Area(s) such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the sale of Lots or the construction and sale of Residences on such Lots within the Subdivision, including, but not limited, administrative/customer services, construction offices/trailers, parking signs, signs, model 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.
- 6.10 **Easements Created and Granted by Declarant to the County, Township or the 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, the Association or to any Sub-Association. No structures (including to sidewalks and driveways without the consent of Declarant or the Association, the County or Township), 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. The easement areas and all improvements therein shall be maintained continuously by the Association and/or 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, the Association or Sub-Association shall have the right to enter upon and across each 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.
- 6.11 **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 roads or private drives and/or common drives within the Subdivision for the performance of their respective duties.
- 6.12 **Easements for the Golf Course.** There is hereby reserved for the benefit of the

Golf Course, the Declarant, its successors, assigns and successors-in-title with respect to the Golf Course, the following transferable and alienable rights and easements:

- 6.12.1 Golf Paths and Golf Course Maintenance.** The right and easement on, over, and across the Open Space situated adjacent to the Golf Course, for the creation of golf cart paths and for all authorized users of the Golf Course for the pedestrian, golf cart and maintenance vehicle use of the golf cart paths located in such portions of the Open Space and serving the Golf Course and the right and easement on, over, and across those same Open Spaces not to exceed fifteen (15) feet in width for access from one golf hole to the next if such access is not shown on a plat of the Subdivision.
- 6.12.2 Construction, Maintenance and Repair.** The right and easement on, over, through, under, and across the Open Space adjacent to the Golf Course for the purpose of construction such improvements on the Golf Course or such portions of such Open Space as the Declarant or any subsequent owner of the Golf Course shall desire from time to time and for maintaining, repairing, and replacing such improvements, provided the Declarant or any subsequent owner of the Golf Course shall not use such easement so as to unreasonably interrupt or interfere with any Lot Owner's use of the Open Space as permitted herein, and shall promptly repair and restore any damage to said Open Space caused by the use of the right and easement granted herein.
- 6.12.3 Entry by Golfers.** The non-exclusive right and easement over and across the portions of the Open Space on part of Golf Course players and their caddies, if any, to enter upon the Open Space or for their golf balls to enter upon or through the Open Space. This right and easement shall include but not limited to remove a golf ball, subject to the official rules of the Golf Course, and any such entering shall not be deemed to be a trespass. Golf Course players or their caddies, if any, shall not be entitled to enter on any part of the Open Space, except as permitted in Article VI, Section 6.12.1 and this section, nor spend an unreasonable amount of time on or upon the Open Space or in any way commit a nuisance while on any portion of the Open Space.
- 6.13 Environmental Easement.** There is hereby reserved for the benefit of any governmental authority, the Declarant, the Association, any subsequent owner of the Golf Course and their respective agents, employees, successors, and assigns an alienable, transferrable, and perpetual right and easement on, over, and across the Subdivision and any part thereof for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and promulgated by Declarant, the 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, the right to maintain any designated "wetland" areas or to enforce The Water Quality Protective Deed Restrictions.

- 6.14 Benefitted Property.** The real property benefitting from the easement 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 Association and/or Sub-Association shall keep the common Utility Facilities, those facilities that serve the Open Space or Cluster Residence Common Area(s) or more than one (1) Lot or Residence of the Subdivision, in good condition and repair. Each Benefitted Owner shall pay to the Association and/or Sub-Association such 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 Residences located within the Subdivision and the Benefitted Property which have the right to use the Utility Facility.
- 6.15 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 Lot, the Lot Owner of the Lot who is requested by Declarant or the Association or 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 Residence has or will be constructed. Each 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 Lot Owner and Mortgagees irrevocably appoint any member of the Board of Trustees as his 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 Lot Owner and his or her Mortgagees such easements, subordinations of mortgages, or other instruments as may be necessary or desirable to effect and/or enjoy the foregoing.

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ARTICLE VII: SPECIFIC USE RESTRICTIONS

- 7.1 **Specific Use Restrictions on Lots.** In order to insure that all Lot Owner(s) preserve a uniform use of a Lot and conformity of the use of a Lot for the efficient preservation of the values, aesthetic harmony, and amenities of the Subdivision, 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 Lot Owner his Occupants and Tenants, owner(s) of a Lot Ownership Interest, other estate holders of the 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 Lot.
- 7.1.2 **No Commercial Agriculture.** No commercial agricultural uses shall be permitted on a Lot.
- 7.1.3 **No Oil & Gas Wells.** No drilling or operating of any oil or gas well shall be permitted on a 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 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 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 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 Lot.
- 7.1.6.1 **Permitted Domesticated Pets.** A Lot Owner, his Occupants or Tenants shall have the right to keep domesticated pets in the 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 Lot Owner shall permit the housing, chaining, tying or keeping of any animal including any domesticated permitted dog or cat outside of the 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 the Subdivision, or adjoining real property to the Subdivision, including but not limited to the Golf Course or adjoining property belonging to the Independent-Facility-Owner.

7.1.6.3 No Fencing of Pets In Certain Areas. No Lot Owner, whose Lot adjoins or abuts any part of the Golf Course shall permit any dog or cat to be kept outside of the Residence by fencing of any type or construction, including but not limited to electronic fencing, "invisible fencing," on the portion of the Lot Owner's Lot that abuts or adjoins any portion of the Golf Course.

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 Open Space, Cluster Residence Block Common Area, the Golf Course Property, adjoining property of the Independent-Facility-Owner or any other Lot Owner's 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 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 Lot. [Nothing in this restriction shall prohibit temporary construction trailers and temporary structures used in connection with the development of the Subdivision, maintaining or construction or alteration of any 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 Lot at any time as a 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 Lot, except: (i) one (1) sign not larger than two hundred sixteen (216) square inches for the offering a Lot and any Residence for sale; (ii) political signs, not exceeding the above measurements, shall be permitted 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 two hundred sixteen (216) square inches during the period of construction of any Residence on a 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 Lots in the Subdivision.)

- 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 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 Residence or improvement and/or repair to same, installation of any utility or other worked performed in furtherance of Declarant's development of the Subdivision or Golf Course or any amenity being constructed or maintained by the Independent-Facility-Owner or Open-Space-Lessee.)
- 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 Lot or Residence thereon.
- 7.1.11 **No Above Ground Swimming Pools.** No storage, construction, placement or maintenance of an above ground swimming pool shall be permitted on a 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 a on the exterior of any Residence, Lot or adjacent public street, private right-of-way, 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 Lot or roadway or street an 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 Lot without said equipment, vehicle or other apparatus being housed in the 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 Association, the Sub-Association, the Independent-Facility-Owner, the Open-Space-Lessee or any 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 the Subdivision by Declarant; (ii) the construction and/or maintenance of any Residence; (iii) the maintenance of any lawn or other landscaping service on a contract service basis to the Declarant, Association, the Sub-Association, the Independent-Facility-Owner, the Open-Space-Lessee or any 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, Open-Space-Lessee or Independent-Facility-Owner.)

- 7.1.14 **No Outside Clothes Lines.** No hanging of laundry, carpets or other items on outside lines shall be permitted on a Lot.
- 7.1.15 **No Subdividing of Lot By Lot Owner.** No Lot Owner shall be permitted to subdivide or alter his Lot size or dimensions.
- 7.1.16 **No Lot to Be Used As Access to Property Not In the Subdivision.** No Lot Owner shall permit any portion of his Lot to be utilized for driveway or roadway purposes except for access to and from the Residence located upon that Lot. No Lot shall be utilized as access for ingress and egress to any real property not within the Subdivision, 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 Lot. A 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 Lot and/or 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 such Lot and/or 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 Residence or other structure on Property within the Subdivision, 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 the Subdivision or the Golf Course.)

- 7.1.18 **No Extension Of Utilities.** No Lot Owner shall permit his 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 Lot. The extension of Utility Facilities from any Lot to any adjoining or adjacent real property not in the Subdivision, whether or not owned by the same 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 Lot.
- 7.1.20 **No Fences.** The construction of or maintenance of fences of any kind, electrical or otherwise, on a Lot shall not be permitted without the approval of the Architectural Review Committee created hereunder.
- 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 Lot.
- 7.1.22 **No Dangerous Ordnances.** No hunting or shooting of firearms, rifles, or other dangerous ordnance, including, but not limited to, "B-B" guns, dart guns, air rifles or pistols, bows and arrows, explosives, fireworks shall be permitted on a 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 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 Residence or attached garage shall be permitted on a 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 Residence or 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 Residence or Lot violates this restriction. No portion of a Lot nearer to any street 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 Residence shall extend to the pavement line. (Nothing herein contained shall be construed as preventing the use of the front portion of a Lot for walks and drives, the planting of trees or shrubbery, the growing of flowers or ornamental plants, or for other similar ornamentations for the purpose of beautifying said Lot.)

- 7.2 Specific Restrictions On Open Space and Cluster Residence Block Common Area(s).** In order to insure that all Lot Owner(s) preserve a uniform use and conformity of the use of Open Space or Cluster Residence Block Common Area(s) and to provide for their respective natural and landscaped beauty and state and for the efficient preservation of the values, aesthetic harmony, and amenities of the Subdivision, 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 Lot Owner, his Occupants, Tenants, owner(s) of a Lot Ownership Interest, other estate holders of the 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 permitted in or upon Open Space or Cluster Residence Block Common Area(s).
- 7.2.2 No Waste.** No waste of any kind shall be committed in or upon the Open Space or Cluster Residence Block Common Area(s).
- 7.2.3 No Dumping.** No storage or depositing of anything shall be permitted in or upon the Open Space or Cluster Residence Block Common Area(s) without the written approval of the Association, a Sub-Association or the Open-Space-Lessee.
- 7.2.4 No Harvesting Or Gardening Within Open Space.** 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 Open Space or Cluster Residence Block Common

Area(s).

- 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 Open Space or Cluster Residence Block Common Area(s).
- 7.2.6 **No Nuisances Permitted.** No nuisances or safety hazards shall be permitted to remain in or upon Open Space or Cluster Residence Block Common Area(s). **Nor** shall any use or practice be permitted in or upon Open Space or Cluster Residence Block Common Area(s) which is the source of nuisances or safety hazards to a Lot Owner, his Occupants, Tenants or occasional guests, any person using the Walking Trail System, any person using the Fishing Rights Area, any person using any other amenity within the Open Space or Cluster Residence Block Common Area(s), any person playing golf on the Golf Course. **No** nuisances or safety hazards shall be permitted to remain in or upon Open Space or Cluster Residence Block Common Area(s) which interferes with the peaceful possession and proper use of the Open Space or Cluster Residence Block Common Area(s) 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 Open Space or Cluster Residence Block Common Area(s). (Non-motorized bike-riding and other electrical driven transportation for the handicapped shall be permitted on the Walking Trail System subject to the rules and regulations of the Open-Space-Lessee). Nothing contained in this restriction shall prohibit the Declarant Association, Sub-Association or the Open-Space-Lessee from operating vehicles under their control from accessing the Open Space or Cluster Residence Block Common Area(s) for maintenance of, without limitation, the Golf Course, lakes, streams, ponds or other amenity within the Open Space or Cluster Residence Block Common Area(s). Nothing contained in this restriction shall prohibit the Declarant, Open-Space-Lessee or Golf Course owner/operator from maintaining any easement within the Open Space for passage of maintenance vehicles, golf carts and persons playing golf on the Golf Course.
- 7.2.8 **Streams, Ponds and Lake Restrictions.** No pond, lake or stream within the Open Space or Cluster Residence Block Common Area(s) shall be permitted to be used for recreational use thereof, including without limitation, swimming, boating, playing, fishing, (except as permitted herein), or use of personal flotation devises. No toy or power toy boats or other

power water vehicles shall be permitted on any pond or lake at any time. Fishing shall be permitted from the shoreline of the area of the lakes designated as the Fishing Rights Area and no other areas on the Property within the Subdivision. All Lot Owners and all Persons acknowledge and are on public notice that all ponds, lakes and streams within the Subdivision are for irrigation, harboring of natural flora and fauna and aesthetic amenities only, except for the limited purpose of fishing from the shore in the designated Fishing Rights Area. The Declarant, the Association, a Sub-Association, Open-Space-Lessee or Golf Course owner/operator shall not be responsible for any loss, damage or injury to any Person or Property arising out of the authorized or unauthorized use of any ponds, lakes or other bodies of water within the Open Space or Cluster Residence Block Common Area(s).

7.2.9 No Outside Clothes Lines. No hanging of laundry, carpets or other items on outside lines shall be permitted in or upon Open Space or Cluster Residence Block Common Area(s).

7.3 Golf Cart Restrictions. No golf carts shall be permitted the use of any public street within the Subdivision, a Lot, or any non-dedicated rights of way, the Walking Trail System, the Fishing Rights Area or private drives, Open Space or Cluster Residence Block Common Area(s), except golf carts owned and controlled by the Golf Course owner/operator for the exclusive use of its employees and by persons playing golf on the Golf Course and only then as necessary for the crossing of same, (excluding Lots), to gain access, (means of ingress and egress), from one portion of the Golf Course to another portion of the Golf Course.

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ARTICLE VIII: BUILDING RESTRICTIONS

- 8.1 **No Construction Without Permits and Approvals.** No Lot Owner shall construct a Residence on any Lot within the Subdivision until the construction plans and specifications showing the location of the structure 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 Association, Sub-Association, the Architectural Review Committee created hereunder or any of the Lot Owner from enforcing these restrictions.
- 8.2 **Construction Restrictions.** In order to insure that a Residence constructed upon any Lot in the Subdivision will preserve a uniformly high standard of construction, the following specific building restrictions shall be conformed to in their entirety by each Lot Owner.
- 8.2.1 **Minimum Square Footage of a Residence.** No Lot Owner shall construct a Residence of one story, (including but not limited to ranch style construction), having less than twenty-four hundred (2,300) square feet of floor area, nor shall a Lot Owner construct any Residence having two stories, (including but not limited to Colonial or Cape Code style construction), having less than twenty-five hundred (2,600) square feet of floor area. (Cluster Residence Block H and any other Cluster Residence Blocks hereafter subjected to this Declaration by Subsequent Amendment are specifically exempted from Article VIII, Sections 8.2.1 to the extent that the minimum square footage requirement for a Residence constructed in a Cluster Residence Block shall not be 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 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 Lot Owner shall construct a Residence without meeting the minimum setback requirements for construction from 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 Lots are acquired and used

as a single building site, the side Lot lines shall refer only to the lines bordering on the adjoining Lot.

- 8.2.3 **Minimum Roof Pitch Requirements.** No Lot Owner shall construct a 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 Lot Owner construct any 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 Lot Owner shall construct a Residence with a flat roof of any kind. Any 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 10/12 pitch.
- 8.2.4 **Driveway Material Requirements.** No Lot Owner shall construct the driveway to his 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 Lot Owner shall construct a 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 Residence and/or like materials on the sides and rear of the Residence or the siding of such structure on the sides and rear of the Residence is brought down to grade.
- 8.2.6 **Exterior Front of Residence Requirements.** No Lot Owner shall construct a Residence that does not consist of a minimum of forty percent (40%) of the front exterior of the Residence to be faced with brick, stone or stucco.
- 8.2.7 **Garage Requirements.** No Lot Owner shall construct a Residence with a garage which is separated from the Residence. All garages must be sufficient to store at least two (2) or more full size passenger automobiles and **no** garage, except on Cluster Residence Lot(s), shall be constructed facing the public street, unless a written variance due to the uniqueness of a Lot is granted by the Declarant or the Architectural Review Committee created hereunder. Nor shall any 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 Lot Owner shall permit the installation or maintenance of sight lighting which interferes with the comfort, privacy, or general welfare of adjacent Lots or any other Lot Owner. All Residences

shall be required to have installed a post light of identical uniform design, ten feet (10') from the driveway, at the right-of-way line which is serviced by underground wiring, which design shall be designated by Declarant or the Architectural Review Committee created hereunder.

- 8.2.9 Heating and Air Conditioners.** No Owner shall construct a 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 the Subdivision. No Lot Owner shall construct a Residence that uses liquid heating oil, geothermal heating system or bottled gas, (propane), for its heating and/or air conditioning system. No Lot owner will allow any exhaust pipes to be vented through the front roof of a 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 Residence.
- 8.2.10 External Fireplace Chimneys.** No Lot Owner shall construct 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 Lot Owner shall construct or install a mailbox that does not conform to the identical uniform design designated by the Declarant or the Architectural Review Committee created hereunder or does not have printed or posted in identical uniform design designated by the Declarant or the Architectural Review Committee the assigned address lot numbers of such Lot.
- 8.2.12 Standard Numbering On Residence.** No Lot Owner shall construct a Residence that does not have in identical uniform design designated by the Declarant or the Architectural Review Committee created hereunder, the address numbers of the Lot permanently attached to the front exterior of the Residence.
- 8.2.13 Right To Establish Grades.** The Declarant or the Architectural Review Committee created hereunder shall have the right to establish grades and slopes and to fix grades for, without limitations, any Residence, driveway or patio, so that the same may conform to a general plan wherein the established grade and slope of each Lot, as the construction thereon is completed, will correspond to the grade of the 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 created hereunder shall have the right to approve any general contractor to be employed in conjunction with construction of any Residence, any other permissible building, improvement or other structure on any Lot or Property within the Subdivision, and such construction shall not commence until the contractor has been approved in writing.

8.2.15 Limit On Clearing. Prior to the commencement of the actual construction of any Residence, any other permissible building, improvement or other structure on any Lot or Property within the Subdivision by a Lot Owner or other person, certain trees will have to be removed to provide clearance for the planned construction. To preserve as many trees as possible, no trees five (5) inches in diameter or larger, which stand fifteen (15) feet or further from the proposed construction may be removed without the prior written approval of the Declarant, or the Architectural Review Committee, created hereunder. A Lot Owner and other persons and their respective contractors shall use reasonable precautions to safeguard the protection of trees during construction which are not scheduled for removal. If construction begins prior to the written approval required by this Section such act shall be considered immediate irreparable harm to Declarant or to the Association and Declarant or the Association shall be considered without an adequate remedy at law for such act, for which a temporary and/or permanent injunction shall lie in a court of competent jurisdiction. In the event Declarant or the Association finds it necessary to seek a temporary and/or permanent injunction to enforce this restriction, the Lot Owner who is found to have violated this restriction shall be responsible in full for the legal fees of Declarant and/or the Association. If trees are cut in violation of this restriction, the Lot Owner shall be required to plant trees of sufficient size and quantity to replace those trees so cut in violation of this restriction. The Declarant or the Association shall be the sole determiner as to size, quantity and location of the replanting of trees by the Lot Owner and whether such replanting has sufficiently addressed the damage caused by the cutting of trees in violation of this restriction.

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

8.3 Architectural Review Committee. The Board of Trustees shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Architectural Review Committee, (hereinafter referred to

as the "ARC"), established in this Article VIII, Section 8.3. 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 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" within the Subdivision by any Lot Owner or other person. The term "construction" 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 of Any Structure.** Construction or installation of any Residence, new building, fence, or improvement or exterior alteration or modification of existing buildings or improvements;
 - 8.3.1.3 Landscaping.** Plantings or removal of plants, trees, grass or shrubs (collectively referred to as "landscaping"), except for landscaped areas or beds within six feet (6') of a 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 Residence), and
 - 8.3.1.5 Installations.** Installations on or to the roof or exterior walls of a Residence or on or upon a Lot.
- 8.3.2 Structure of ARC.** The ARC shall be composed of three (3) natural persons who need not be Members of the Association or Occupants of a Residence. The affirmative vote of two (2) members of the ARC shall be required in order to adopt or promulgate any Rule, to issue any permit, authorization or approval, or to take any action pursuant to this Article VIII, Section 8.3 et seq.
- 8.3.3 Approval of Plans by ARC.** There shall be no "construction," (as defined in Article VIII, Section 8.3.1. et. seq. hereof) within the Subdivision unless detailed plans and specifications of the proposed construction shall have been submitted to and approved in writing (except where approval results from non-action) by the ARC. Two (2) copies (one of which may permanently retained by the Association) of plans and specification therefor shall be submitted to the ARC showing in such detail as the ARC may request, the size, location, type, costs, use, materials of construction, color

scheme, grading plan (or change of grading) of the Lot (including the grade elevations of any Residence, building an/or structure, landscaping, and such other information as the ARC shall request has been furnished to and approved in writing by the ARC.

8.3.3.1 Non-action by ARC. In the event the ARC fails to approve or disapprove any construction request as herein provided or fails to request additional information within thirty (30) days after receipt of all required plans and specifications by the Chairman of the ARC, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

8.3.4 Grounds for Disapproval. The ARC shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

8.3.4.1 Failure to Comply With This Declaration. Failure of such plans or specifications or requested construction to comply with any covenants and restrictions contained in this Declaration or in the declaration of covenants and restrictions for Cluster Residence Block(s);

8.3.4.2 Failure to Include Information. Failure to include information in such plans and specifications as may have been reasonably requested by the ARC;

8.3.4.3 Incompatibility of Design. Incompatibility of design or appearance of any proposed Residence, structure or building with any existing or contemplated Residence, structures, buildings or existing topography;

8.3.4.4 Location. Objection to the location of any proposed Residence, structure or building;

8.3.4.5 Color. Objection to the color scheme, exterior materials, finish, proportions, style of architecture, height, bulk or appropriateness of any proposed Residence, structure, or building;

8.3.4.6 Cost of Maintenance. Objection related to the cost of maintenance to the extent the Association is responsible or may become responsible for the maintenance thereof;

8.3.4.7 Interference. Likely interference of the installation with the quiet enjoyment of a neighbor; or

- 8.3.4.8 Other Matters.** Any other matter which, in the judgment of the ARC, will render the proposed Residence, building, structure or change inharmonious with the general plan of the Subdivision, or the Residences, buildings, structures or uses within the Subdivision, or below the community-wide standard then existing.
- 8.3.5 Statement of Disapproval** In any case where the ARC shall disapprove any plans and specifications submitted hereunder or shall approve the same only as modified or under specified conditions, such disapproval or qualified approval shall be accompanied by a written statement of the grounds upon which such action was based.
- 8.3.6 Right of Appeal.** If the ARC shall disapprove any plans and specifications submitted hereunder or any other matter brought before it, there shall be a right to appeal such decision to the Board of Trustees by the applicant. If any Lot Owner objects to the approval of any plans and specifications submitted hereunder or any other matter brought before it, any such objecting Lot Owner shall have a right to appeal to the Board of Trustees. Such appeal must be submitted to the Board by the applicant or objecting Lot Owner, in writing, within ten (10) days after receipt of notice of the decision from the ARC. No later than forty-five (45) days after receipt of the notice of appeal, the Board of Trustees shall examine the plans and specifications or other data submitted, as well as the grounds upon which the ARC disapproved or approved such plans and specifications. The affirmative vote of seventy-five percent (75%) of the members of the Board of Trustees shall be required to reverse or modify decisions of the ARC.
- 8.3.7 Violations of Article VIII, Section 8.3 et seq.** If any Residence, building, fence, wall or other structure shall be constructed, installed, altered, erected, or maintained upon any portion of the Subdivision; or any plantings made or removed, or changes made to Lots or exteriors of Residences, or exterior finishes of any Residence or installations made to any Lot, to a roof or exterior walls without the approval of the ARC (unless exempted pursuant to the provisions of this Article VIII, Section 8.3 et seq.), such construction, alteration, erection, placement, maintenance or use or other act shall be deemed to have been undertaken in violation of this Article VIII, Section 8.3 et seq. and without the approval required herein. Upon written notice from either the ARC, any trustee of the Board of Trustees or officer of the Association or the Declarant, any such Residence, building, structure, fence, wall, plant landscaping, exterior, exterior finish, or other structure so constructed, installed, changed, altered, erected, placed or maintained upon any Property of the Subdivision in violation hereof shall be promptly removed, replaced or altered and any such use shall be terminated so as to extinguish such violation.

- 8.3.8 Timely Action Required to Abate Violations of Article VIII, Section 8.3 et seq.** If within fifteen (15) days (or immediately in an emergency) after written notice of a violation pursuant to Article VIII, reasonable steps have not been taken toward the alleviation or termination of the same or if such mitigation or remedial action is not prosecuted with due diligence (not to exceed thirty (30) days unless a longer period is permitted by the Board of Trustees) until satisfactory completion of same, the Board of Trustees shall have the right, through agents and employees, to enter upon the land/Lot/property and to summarily abate and/or remove any building, fence, wall, plant, landscaping, tree, exterior of a Residence, exterior finish, or other structure, or to take such steps as may be necessary to cure the violation. In addition to the foregoing, the Board of Trustees shall have the right to obtain an injunction from any court having jurisdiction for the cessation of and/or removal of such alteration, erection, or other act which is in violation of Article VIII. The rights and remedies of the Board of Trustees contained in this Article VIII, Section 8.3 et seq. shall be non-exclusive and in addition to any other rights or remedies available at law or in equity. The Board of Trustees shall notify in writing the Person in violation of this Article VIII of all of the costs incurred to remedy same (including, without limitation, any attorneys' or consultants' fees, court costs, and all other expenses incurred in connection with the curing of such violation) and any damages to which the Board of Trustees may be entitled. If said amounts are not paid within thirty (30) calendar days following said notification, then the Board of Trustees shall have the right to levy a Special Assessment against said Lot Owner and his Lot for each amount, pursuant to Article IV, Section 4.1.4.
- 8.3.9 Costs of ARC.** The Board of Trustees shall establish an annual budget for the costs and expenses of any architects or other consultants or professionals on the ARC. All other members shall not be compensated for their services. The costs of ARC shall be a part of the General Maintenance Assessment of the Association, pursuant to Article IV, Section 4.1.1.
- 8.3.10 Liability of Members of ARC.** No member of the ARC (or the Board of Trustees acting pursuant to Article VIII, Section 8.3.6 or Section 8.3.13 hereof) shall be liable to the Association, any Member, or any person for his acts or omissions or for failure to act, except for acts of a malicious or wanton nature. Except for acts of a malicious or wanton nature by any member of ARC (or the Board of Trustees acting pursuant to Article VIII, Section 8.3.6 or Section 8.3.13 hereof), the Association shall indemnify and save each member of the ARC (or the Board of Trustees acting pursuant to Article VIII, Section 8.3.6 or Section 8.3.13 hereof) harmless from and against any and all costs, liabilities, damages, and expenses, including reasonable attorneys fees, which may be incurred by such member of the ARC (or the Board of Trustees acting pursuant to Article VIII, Section 8.3.6

or Section 8.3.13 hereof) in connection with or arising out of the activities of such person as a member of the ARC (or the Board of Trustees acting pursuant to Article VIII, Section 8.3.6 or Section 8.3.13 hereof). Any amounts payable pursuant to this Article VIII, Section 8.3.10 shall be deemed to be General Maintenance Assessments, pursuant to Article IV, Section 4.1.1.

- 8.3.11 No Waiver of Future Approvals.** The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawing, or matters whatever subsequently or additionally submitted for approval or consent.
- 8.3.12 Declarant Not Subject to ARC.** The Declarant shall not be subject to the provisions of this Article VIII, Section 8.3 et seq. and the Declarant may undertake any "construction," as defined in Article VIII, Section 8.3.1 et seq., without the approval of the ARC.
- 8.3.13 Board of Trustees' Right to Act as ARC.** At the option of the Board of Trustees, the Board of Trustees shall not be required to appoint an ARC and the Board of Trustees shall undertake the functions and duties of the ARC as set forth in this Article VIII, Section 8.3 et seq. In such event, there shall be no right to appeal the decisions of the Board of Trustees, except as may be otherwise afforded under applicable law.
- 8.4 No Obligation To Complete Any Residence etc.** Neither Declarant nor the Association or Sub-Association or any respective member or representative thereof shall have any liability or responsibility for the satisfactory completion of any Residence, structure, building, improvement or part or component thereof on any Lot or Property within the Subdivision by reason of any approval given pursuant to Article VIII.
- 8.5 Limits of Any Approval.** Any approval given pursuant to Article VIII shall not be deemed to constitute approval of the plans as containing a proper design for any other purpose than the purposes created under Article VIII or any other article or section of this Declaration. Any approval given pursuant to Article VIII or any other article or section of this Declaration does not constitute any warranty of guarantee that said plans and specifications will receive any and all necessary governmental approvals or is to be considered any warranty or guarantee for any specific purpose other than established by this Article VIII and any other Article or Section of this Declaration.

- 8.6 **Irreparable Harm.** If any construction of any Residence, any other permissible building, improvement or other structure on any Lot or Property within the Subdivision, begins prior to the written approvals required by Article VIII, such act shall be considered immediate irreparable harm to Declarant and/or to the Association. Declarant and/or the Association shall be considered without an adequate remedy at law for such act which a temporary and/or permanent injunction shall lie in a court of competent jurisdiction. In the event Declarant and/or the Association finds it necessary to seek a temporary and/or permanent injunction to enforce this restriction, the Lot Owner who is found to have violated this restriction shall be responsible in full for the legal fees of Declarant and/or the Association and the Board of Trustees shall have the right to levy a Special Assessment against said Lot Owner and his Lot for each amount, pursuant to Article IV, Section 4.1.4.

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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 the Property, Subdivision, Lot(s), Residence(s), Cluster Residence Block(s), Cluster Residence Lot(s), Open Space and Cluster Residence Common Area(s) 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 Association, Sub-Association, grantees, Tenants, Occupants, Lot Owners, and any owner of an Ownership Interest in a 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 the Property, Subdivision, Lot(s), Residence(s), Cluster Residence Block(s), Cluster Residence Lot(s), Open Space and Cluster Residence Block Common Area(s), 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 Owners.** In the event that any Lot Owner shall hold to title to a 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-Lot Owner"), the signature of any one of the co-Lot Owners shall be binding upon and shall be effective as an authorization from all of the other Lot Owners of such Lot. In addition, the vote cast at any meeting of the Association by one such co-Lot Owner of such Lot upon and shall be effective as an authorized vote from all of the co-Lot Owners of such Lot,

unless another co-Lot Owner objects at such meeting in which event the majority of Ownership Interest of said Lot shall prevail. If co-Lot Owners own fifty percent (50%) of the Ownership Interest, and there is an objection by one of the co-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 Association Binding.** The Declarant, the Association, or 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 the Subdivision, which interpretation of the Declarant, the Association or 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, the Association or 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, the Association or 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 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 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 Lot Owner or owner of any portion of the Property within the Subdivision.
- 9.9 **Notice to Lot Owners/Members.** Any notices required to be given to any Person, except as provided in Article IX, Section 9.10, under the provisions of this Declaration shall be deemed to have been given: (i) when personally delivered to such Person's 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 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 Lot Owner/Member shall be determined as appears on the records of the Medina County Auditor or the last address provided the Association. If no such address is found or provided or the Lot Owner/Member refuses delivery of said notice, then said notice may be posted for a period of thirty (30) days upon the Lot Owner/Member's Residence or Lot.
- 9.10 **Notice to Declarant, the Association or Sub-Association.** Notices to the Declarant, the Association or Sub-Association shall be deemed given only when received and must be delivered to Declarant, the Association or 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 pre-paid, 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 Association, a Sub-Association or a 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, condition, 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 Association, a Sub-Association, 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 Association, Sub-Association, ARC or any Lot Owner, to enforce any provisions hereof or to prevent violations thereof, shall in no event make the Declarant, the Association, Sub-Association and/or a 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 Lot Owner.** Unless a Lot Owner is liable under Ohio law, absolute liability shall not be imposed upon a Lot Owner for damage to the Open Space, Cluster Residence Block Common Area(s), Recreational Facilities or Lots, including improvements thereon, of others where maintained by the Association, Sub-Association, the Open-Space-Lessee and/or Independent-Facility-Owner, whether caused by such 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 Lots or any part thereof, whether or not such claim: (i) shall be asserted by a Lot Owner, his Occupants, or Tenants, the Association, 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 Lots containing any patent or latent defects, grading or leveling of any Lot by any builder or by reason of any act or neglect of any Lot Owner, his Occupants or Tenants, the Association, or Sub-Association, and their respective agents, employees, guests, and invitees, or reason of any neighboring property or personal property located on or about the Subdivision, or by reason of the failure to function or disrepair of any utility service, (heat, air conditioning, electricity, gas, water, sewage, etc.). Each Lot Owner takes his deed and title to his 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 Lot Owner's reconveyance of his Residence or an interest therein, such Lot Owner (i.e. seller) shall have the right to request the Association and/or Sub-Association to issue a Certificate of Compliance stating the Association and/or Sub-Association has no record of a violation of this Declaration and stating the unpaid Assessments and amount of monthly Assessments attributable to such Lot Owner and his Lot. A Certificate of Compliance may be relied upon by all persons for all purposes. Neither the Board of Trustees, no such officer or agent shall have any liability to the Lot Owner, seller, buyer, mortgagee of a Lot or to others if the Certificate of Compliance issued hereunder is not correct. The Association or Sub-Association may require the advance payment of a reasonable fee for the issuance of the Certificate of Compliance.

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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 the 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, Association, Sub-Association or 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 Association, a Sub-Association or Lot Owner(s) as they relate to the Open Space and Cluster Residence Common Area(s) 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 Open Space/ Cluster Residence Block Common Area(s).** After transfer of title to the Open Space or Cluster Residence Block Common Area(s) to the Association or 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 Open Space, or Cluster Residence Block Common Area(s) or the 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 Lot Owners and their respective Lots and collected by the 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 Lot Owner.

- 10.5 **Non-Dedicated Streets.** All Cluster Residence Lot Owners accept their respective deeds and title with specific notice that all access and means of ingress and egress to each Cluster Residence Lot is by non-dedicated rights-of-way or non-dedicated streets and drives within Cluster Residence Block(s) and/or Cluster Residence Block Common Area(s). And further, a Cluster Residence 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 and drives within Cluster Residence Block(s) and/or Cluster Residence Block Common Area(s). And that should any non-dedicated rights-of-way or non-dedicated streets and drives within each Cluster Residence Block and/or Cluster Residence Block Common Area(s), ever become public, any such non-dedicated rights-of-way or non-dedicated streets and drives within each Cluster Residence Block and/or Cluster Residence Block Common Area(s) 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 the Subdivision at any place that the respective governmental unit or public utility responsible for any easement or Utility Facility located on any Property within the Subdivision, 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.

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ARTICLE XI: DECLARANT'S RESERVATIONS

- 11.1 Reservation of Right to Grant Easements.** Declarant reserves the right and easement for itself and owners 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 and Utility Facilities, including but not limited to, all lines, pipes, utilities, conduits, ducts, wires, cables, private roads and rights-of-way in on, or over the Property and Subdivision (as same may be modified or expanded by Subsequent Amendment), including but not limited to Lots, (excluding Residences), in connection with the development and/or operation of the Subdivision 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 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 the Subdivision. Declarant further reserves the right to dedicate for public use any part of the Subdivision.
- 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 the Subdivision or adjacent thereto or may be later purchased by Declarant. Incident thereto shall include the right to go upon any part of the Subdivision with construction or any kinds 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, Residence, Recreational Facilities, signs, promotions, development, management, and/or in connection with the sale of any Lot.
- 11.5 Reservation for Additional Restrictions.** Declarant reserves the right to impose, reserve or enter into additional covenants, easements and restrictions with Lot Owners as long as such additional easements, covenants and restrictions are not in conflict with the duties and obligations of Lot Owners as set forth in this Declaration.
- 11.6 Reservation for Signs.** Declarant reserves the right to place signs in or upon the Open Space and any Cluster Residence Block Common Area(s) and on any Lot or Residence owned by Declarant.

- 11.7 **Reservation of Watering Rights.** Declarant reserves all rights in and to the waters of any pond, stream, lake, storm water or underground water within the Open Space or Cluster Residence Block Common Area(s) within the Subdivision (as same may be modified or expanded by Subsequent Amendment) for use, without limitation, for the irrigation of the Golf Course and any landscaping within or without of the Subdivision (as same may be modified or expanded by Subsequent Amendment). Incident to this reservation is the right to control the flow of water between any lake, stream or storm water, underground water; the right to control the direction of flow of water, without limitation storm water, onto or upon the Golf Course or any Property within the Subdivision.
- 11.8 **Reservation of All Mineral Rights.** The Declarant reserves **all** mineral rights to all Property within the Subdivision (as same may be modified or expanded by Subsequent Amendment), including but not limited to oil and gas, coal or other minerals subject to mining or extraction.
- 11.9 **Reservation of Timber and Flora Rights.** The Declarant reserves rights in and to **all** timber, trees, shrubs, grasses and other flora and the right to plant and harvest timber, trees, scrubs and other flora in the Open Space for use, protection and furtherance of the Subdivision and its development and/or the Golf Course and its development and operation.
- 11.10 **Reservation of Easement of Passage for Golf Course.** The Declarant reserves **all** necessary rights of access, means of ingress and egress and passage in, to and upon the Open Space for the development, construction and operation of the Golf Course, including but not limited to golf cart paths, walking paths, maintenance vehicles, maintenance Golf Course employees, players of the Golf Course and the respective flight of their golf balls that pass over, through or upon the Open Space, including the right to locate any golf ball and to hit any such golf ball out of the Open Space.
- 11.11 **Reservation of Certain Property.** Declarant reserves the right to retain title to all or any portion of the Open Space and/or Cluster Residence Cluster Common Area(s) within the Subdivision (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 Open Space and/or Cluster Residence Cluster Common Area(s) within the Subdivision (as same may be modified or expanded by Subsequent Amendment), including, without limitation, costs relating to taxes and assessments, insurance and maintenance.
- 11.12 **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:

- 11.12.1 **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.
- 11.12.2 **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 Association, Sub-Association or any Lot Owner of standing to bring an action to enforce any obligation of the transferor.
- 11.12.3 **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.
- 11.12.4 **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.
- 11.12.5 **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.
- 11.12.6 **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 Residences, who owns multiple Lots and who also received a transfer of any of Declarant's Rights, or a transferee of the remainder of a Cluster Residence Block 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 Lots of any such Builder or any remainder of a Cluster Residence Block 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.

- 11.12.7 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 Residences, who owns multiple Lots and who also received a transfer of any of Declarant's Rights, or a transferee of the remainder of a Cluster Residence Block, who also received a transfer of any of Declarant's Rights, a person acquiring any such Lots or remainder of Cluster Residence Block 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.
- 11.12.8 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.
- 11.12.9 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 relate 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.
- 11.12.10 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.
- 11.12.11 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.

11.12.12 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.

11.13 Declarant's Right to Establish Sub-Associations. The Declarant shall have the unilateral right to authorize any builder/developer, (who purchases from Declarant Cluster Residence Block H or any other Cluster Residence Block(s) hereafter created and made subject to this Declaration by Subsequent Amendment), to grant one or more Sub-Association(s), which shall be a not-for-profit Ohio corporation, the control and maintenance of one or more Cluster Residence Block(s) and the Cluster Residence Block Common Area(s) within the Cluster Residence Block(s). The right to grant Sub-Associations rights pursuant to this Section shall also be the right of the Association, upon the Declarant ceasing to own any Property within Montville Lakes Subdivision Phase III, allowable by the Montville Township Board of Zoning Appeals to be platted and sold as a Cluster Residence Block(s).

11.13.1 Declaration of Sub-Association's Rights. A Sub-Association shall be granted the rights herein by recording a declaration of restrictions and covenants creating such Sub-Association with the Medina County Recorder, after such declaration has been approved in writing by the Township and/or County and Declarant or Association, upon the right to establish Sub-Association(s) passing to the Association.

11.13.2 Sub-Associations Right to Hold Title To Common Areas. A Sub-Association granted rights pursuant to Article XI, Section 11.13 et seq. shall have the right and authority to hold title to Cluster Residence Block Common Area(s).

11.13.3 Obligations of Sub-Association. A Sub-Association receiving title to one or more Cluster Residence Block Common Area(s) shall assume full responsibility and obligation for the taxes, maintenance, care and control

of the Cluster Residence Block Common Area(s), including but not limited to all private right-of-ways, non public-dedicated streets, within such Cluster Residence Block Common Area.

- 11.13.4 Right of Sub-Association to Make Additional Assessments.** A Sub-Association receiving rights pursuant to Article XI, Section 11.13.1 et seq. shall have the right to make Assessments, pursuant to Article IV, Section 4.1.2, for the necessary maintenance of the Cluster Block Common Area(s) and for the maintenance, including but not limited to landscaping, snow removal, maintenance of non-public rights of way, drives and any other common amenities of the Cluster Residence Block, however, any such Assessments shall be in addition to all other Assessments authorized to be made by the Association.
- 11.13.5 Governing Restrictions.** A Sub-Association receiving rights pursuant to Article XI, Section 11.13.1 et seq. may establish governing restrictions, covenants and rules and regulations for the Cluster Residence Block and Cluster Residence Block Common Area(s) in addition to this Declaration, however, any such additional governing restrictions, covenants and rules and regulations of a Sub-Association which conflict with this Declaration, this Declaration shall control.
- 11.13.6 Cluster Lot Owner's Deed & Title.** Any purchaser of a Cluster Residence Lot subject to a Sub-Association and any restrictions, covenants and rules and regulations of a Sub-Association shall accept his deed for such Cluster Residence Lot, whether expressed in such deed or not, subject to this Declaration and the Sub-Association and the restrictions, covenants and rules and regulations imposed thereon by the Sub-Association.
- 11.13.7 Cluster Lot Owner A Dual Member.** A Lot Owner of a Cluster Residence Lot in a Cluster Residence Block subject to a Sub-Association shall be a member of the Sub-Association and a Member of the Association.
- 11.13.8 Sub-Associations May Be Merged.** After a Sub-Association receives rights pursuant to Article XI, Section 11.13.1 et seq. and it has been transferred ownership of all Cluster Residence Block Common Area(s), upon vote of two-thirds (2/3) of such Sub-Association's voting membership, such Sub-Association may elect to merge with any other Sub-Association.
- 11.14 Declarant's Reservation of Right to Participate.** The Open-Space-Lessee, Independent-Facility-Owner, manager, managing agent, or management company may be an entity owned, controlled by, affiliated with, or associated with the Declarant or any shareholder, partner, limited partner, officer, director, agent or employee of Declarant.

11.14.1 Waiver of Conflict of Interest and Non-Favorable Terms. Each Lot Owner, by acceptance of his deed to his Lot, whether or not from Declarant or subsequent Lot Owner, hereby waives any claims based upon any conflicts of interest arising out of the 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 described in Article XI, Section 11.14. This waiver extends to any claims based on any such arrangement with Declarant by the Association not being the result of an "arm's length negotiations."

11.15 Acceptance of Deed Is Specific Acceptance of Reservations. Declarant, on its own behalf and on behalf of all Lot Owners, hereby consents to and approves, and each Lot Owner and his mortgagee, by acceptance of a deed conveying any Ownership Interest in a 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

11.16 Reservation of Right to Amend Declarations. Declarant reserves, until it holds no title or interest in any Lot, Open Space or Cluster Residence Block(s), Cluster Residence Lot(s), Cluster Residence Block Common Area(s) within the Subdivision, 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 any Property within the Subdivision, if in its sole judgment, the development of Montville Lakes Subdivision Phase III 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 and 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, Hoffman Properties Limited Partnership has hereunto executed this Declaration by its authorized General Partner this 27th day of April, 2003.

HOFFMAN PROPERTIES LIMITED PARTNERSHIP

an Ohio limited partnership

By: Andrew Fishleder, Inc., a General Partner

By: Andrew Fishleder, Pres.

Andrew Fishleder, President

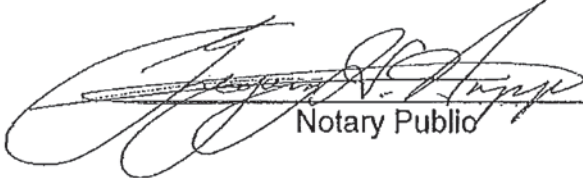
THE STATE OF OHIO

/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 Andrew Fishleder, and that he, Andrew Fishleder, is the duly elected President of Andrew Fishleder, Inc., who is a General Partner of Hoffman Properties Limited Partnership, and on behalf of said Limited Partnership has full authority and right to execute documents on behalf of the Limited Partnership, acknowledged before me, that the execution of this document is the voluntary act and deed of Andrew Fishleder, Inc., as a General Partner of Hoffman Properties Limited Partnership, for the uses and purposes therein mentioned and that he, as President of Andrew Fishleder, Inc., was duly authorized by the Board of Directors of Andrew Fishleder, Inc., to acknowledge the signing hereof to be the Corporation's voluntary act and deed as a General Partner of Hoffman Properties Limited Partnership.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Medina, Ohio, this 27th day of April, 2003.


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