

**AMENDED DECLARATION OF RESTRICTIONS
OF THE MILLFAIR HEIGHTS ASSOCIATION, INC.**

KNOW ALL MEN BY THESE PRESENTS THAT THE BOARD OF DIRECTORS OF THE MILLFAIR HEIGHTS ASSOCIATION, INC., does make, publish and declare the following declarations and deed restrictions:

WHEREAS, the Board of the Millfair Heights Association, Inc. wishes to amend the original Declaration of Restrictions; NOW; THEREFORE, we declare that the property known as Millfair Heights Subdivision as identified in the Bylaws of the Subdivision, including the plotted position thereof and any unplotted sections of the Subdivision, is held and shall be conveyed subject to restrictions, conditions, covenants, changes and agreements which shall be covenants running with the land and binding upon all grantees, their heirs and assigns and enforceable by the Board of Directors of the Millfair Heights Association, Inc. or the Association herein provided, and by any appropriate action in law or in equity as follows:

1. (a) Any structure must observe the restricted building line as shown on said Plot of Millfair Heights which applies to structures. For purposes of these restrictions, a structure is defined as any man-made object protruding above the ground having an ascertainable stationary location on or in land or water, whether or not affixed to the land. For purposes of these restrictions, a structure shall include, but not be limited to, barns, attached and detached garages, houses, sheds, swimming pools, fences, additions and decks. Mailboxes are permitted within the set back provided they are of conventional style and size. Flagpoles 28 feet in height or less are permitted within the set back.
- (b) All residences constructed must have an attached garage with a minimum width of twenty (20 feet) and commonly known as a two-car garage constructed in conjunction therewith.
- (c) The frontmost part of the dwelling must coincide with the 35 foot building line of the lot. In the case of a corner lot, the front and one side must be coincident with the line. Should the building lines not form a 90 degree angle, then the side of the dwelling must have one point of contact with the line, but no portion shall extend beyond the line on the street side of said line.
2. No Lot shall be used for any purpose other than residential purposes.
3. No dwelling other than a single family dwelling shall be erected on any Lot in said Subdivision. Not more than one dwelling shall be erected on any Lot in said Subdivision, and any dwelling erected thereon shall have a living area, exclusive of porches, patios, breezeways and garages, of not less than 1200 square feet on the first floor in the case of one-story dwellings; of not less than 900 square

feet on the first floor in the case of one and one-half story dwellings, with a total minimum overall living area of 1400 square feet; of not less than 800 square feet on the first floor in the case of split-level or two-story dwellings, with a total minimum overall living area of 1400 square feet.

4. No building or other man-made structure shall be erected or maintained on any Lot in said Subdivision, unless the plans therefore showing nature, kind, shape, height, material, color scheme and location of said structure, the elevation thereof, and the grading plans of the Lot to be built upon, shall have been submitted to and approved in writing by the Board of Directors of the Millfair Heights Association, Inc. One set of plans shall be retained by the Board of Directors until the said building or other structure is constructed.
5. Variances: If a member believes that compliance with the Millfair Heights Deed Restrictions places undue hardship on him/her, the member may apply to the Board of Directors for a variance. The members on all sides of the applicant shall be contacted, and informed of the request. The President shall appoint a three member variance committee consisting of one Board Member and two members, none of whom own property adjacent to the property in question. The Committee shall hear from all interested parties. Once all the facts have been heard, the Variance Committee will report its findings to the Board, which will make a determination on the appeal. Each variance will be decided on its own merit. The decision of the Board is final and binding on the member applying for the variance.
6. No gas wells shall be drilled within the Subdivision.
7. No trailer, basement, tank, shack, garage, barn or other outbuilding shall at any time be used as a residence, either temporary or permanent, nor shall any residence of a temporary nature be permitted.
8. No dwelling shall be constructed for sale or occupancy as a partially completed building, but all dwellings shall be substantially completed before occupying, and this shall include the final coat of paint or siding on the exterior.
9. All lots shall be graded and seeded with grass, and in the case of new construction, it shall be done no later than the first planting season after construction of the dwelling is completed. Lawns and yards shall be kept mowed and presentable, and generally consistent with the appearance of other lawns and yards in the neighborhood.
10. All Lot Owners shall keep their lots mowed to a maximum height of 6 inches and free from weeds, brush, litter and debris. In the fall, Lot Owners are responsible for collecting and disposing of leaves by December 1st. In the event that the said Lot Owner does not keep his Lot mowed and free from weeds and brush and, in the fall, from leaves, the Board of Directors of the Millfair Heights Association, Inc. may have said Lot mowed and remove said weeds, brush and leaves

therefrom and bill the Lot Owner an amount comparable to the prevailing fees of professional landscapers for such services per occurrence.

The Board of Directors of the Millfair Heights Association, Inc. shall have the right to impose a fine of Twenty-Five (\$25.00) Dollars per day on any Lot Owner who fails to clean up debris on his/her Lot. Provided, however, that the Board of Directors must first give the Lot Owner thirty (30) days written request to remove said debris during which time no fine shall be imposed. The Board shall have the right to remove debris at the expense of the Lot Owner.

11. No animals except household pets shall be kept or maintained on said premises, and these shall not be maintained for breeding, kennel purposes, or boarding. The aforesaid animals permitted on the premises shall be maintained in accordance with local and State laws.
12. No dirt shall be removed from any Lot without the permission in writing of the Board of Directors of the Millfair Heights Association, Inc. All excess dirt removed shall remain in the Subdivision and be placed as directed by both the Board of Directors of the Millfair Heights Association, Inc. and the Subdividers. At no time will Lot Owners substantially change the natural grade of their property. The elevation of the dwelling must be in conformance with the surrounding properties and consistent with maintaining the natural grade.
13. The construction/installation of street lights in the subdivision shall be completed at the option of the Board of Directors of the Millfair Heights Association, Inc., or the Sub dividers, or when the owners of the lots comprising 60% of the frontage on both sides of any one street so agree in writing. In the event of the construction of street lights the cost for the street lights shall be shared by the lot owners of the affected street. The operating cost of said street lights shall be billed by Millcreek Township under prevailing Township procedures. This cost also shall be shared by the lot owners of the affected street.
14. Subdividers of property within the Millfair Heights Subdivision, will at their own expense, extend the water mains into the Subdivision at the time of opening a street therein so that water shall be made available to all Lots in the entire Subdivision as per the original Declaration of Restrictions. It is expressly understood that the Millfair Heights Association, Inc. shall not be responsible for any of the costs associated with extending to, or connection to existing water mains.
15. The Board of Directors of the Millfair Heights Association, Inc. will manage, maintain and operate the water system including the water wells, pump house and pump located on the following real estate (as set forth in this paragraph) of said Subdivision, and distribution mains in the Street including the extension thereof into Subdivision.

The real estate is described as follows: all the real estate as recorded in the Erie County Deed Book 457, page 517; Erie County Deed Book 461, page 44; Erie County Deed Book 842, page 168; Erie County Deed Book 301, page 369; Erie County Deed Book 382, page 8; and Erie County Deed Book 302, page 122.

16. Each Lot Owner shall, at his own expense, connect to said system and obtain water therefrom.
 - (a) New Construction connection to the water systems carries with it a Capital Improvement fee of \$1,040 PLUS a connection fee to be determined by the prevailing rate at the time of installation. These fees must be paid before water is furnished, and is payable to the Millfair Heights Association, Inc. This fee includes installation of water service to the property line and the provision and installation of a curb box and shut-off, as well as the furnishing and installation of a water meter, with initial reading upon completion and occupation of the dwelling. It is the homeowner's responsibility to connect from the curb box (using Type K copper) to the dwelling. Maintenance, repair, or replacement of the service line from the curb box to the house is the responsibility of the homeowner."
 - (b) Existing House being purchased: A fee of \$150.00 is due (Payable to Millfair Heights Association) at the time of closing on the purchase of the house. This is an administrative fee which facilitates the reading of the water meter and setting up the billing account.
17. No Lot Owner shall dig or drill a water well on land in said Subdivision owned by him, but will take water only from the water system above referred to. Water meters shall be required of all Lot Owners and shall be acquired from the Board of Directors of the Millfair Heights Association, Inc. At the time the water meter is installed it must be inspected by the proper designated inspector selected by the Board of Directors of the Millfair Heights Association, Inc.
18. Water meters installed at each Lot, shall be read at least semi-annually by a proper meter reader designated by the Board of Directors of the Millfair Heights Association, Inc. A minimum semi-annual billing of 15,000 gallons shall be paid for by said Lot Owner. Amounts of water over this minimum shall be paid for on a cost basis to be determined by the Board of Directors of the Millfair Heights Association, Inc. The actual cost of maintenance, operation and upkeep of the water system, plus a reasonable depreciation factor shall be used in determining the actual cost of the water. Failure to pay a water bill when due will result in termination of water service. A termination and reinstatement fee will be due along with all overdue charges before service is resumed.
19. The Millfair Heights Association, Inc. has title to the entire water system including the real estate as described in Paragraph 14 of these restrictions and the water well, pump house, pump and distribution mains and the extensions thereof and

shall assume the management, operation and maintenance of said system and of such other affairs of the Subdivision as may fall within its jurisdiction. The Board of Directors of the Millfair Heights Association, Inc. shall adopt such by-laws for the management of its affairs and Rules and Regulations to govern the management, maintenance and operation of the water system including tariffs and such other Subdivision affairs as it may deem in the best interest of Lot Owners and residents in the Subdivision.

20. **Breach of Restrictions and Remedy:** All Deed Restrictions shall be binding upon all lots and Lot Owners within the Millfair Heights Subdivision. If there is a breach of the restrictions and the breach continues for a period of 30 days after the date the Board of Directors or any other Millfair Heights Subdivision Lot Owner notifies the Lot Owner in writing to refrain from the breach and to correct the breach, the Board of Directors or any other Millfair Heights Subdivision Lot Owner may apply to any court of law or equity for an injunction or other equitable and legal relief. If the relief is granted, the court may, in its discretion, award the plaintiff in such action its reasonable expenses incurred in prosecuting the suit, including court costs, experts, and attorneys fees.
21. **Effect of Delay and Enforcement:** No delay or omission on the part of the Board of Directors of the Association or a Lot Owner of the Subdivision in exercising any right, which arises because of a breach of these restrictions shall be construed as a waiver or acquiescence. No right of action shall accrue nor shall any action be brought or maintained by anyone against the Millfair Heights Board of Directors because of its failure or refusal to exercise any right in the event of a breach.
22. **Term and amendments:** These Restrictions shall remain in force until and unless amendments to these restrictions are approved by the members of the Millfair Heights Association as called for in the Association Bylaws and item 23 of these restrictions and recorded in the Erie County Courthouse.
23. To amend these deed restrictions, a minimum of a simple majority of Lot Owners must approve a succeeding declaration of restrictions as required by the Millfair Heights Association Bylaws.
24. Each Lot Owner shall automatically become a member of the Association. If Lots are jointly owned, one vote per Lot shall be allowed in voting for approval of future changes to the Deed Restrictions.
25. The Board of Directors shall consist of a minimum of 9 residents. Board members shall serve a term of 3 years with terms staggered so that approximately one-third are elected each year.
26. A person must be a Lot Owner and a resident of the Association for a minimum of 3 years to be eligible for election to the Board of Directors of the Association.

A resident of the Association is defined as a person who resides in the Association for a minimum of 7 months a year.

27. If a resident subject to this Declaration of Restrictions, after notice, fails to comply with any of the restrictions set forth herein, the Board of Directors may initiate legal action to enforce compliance. The Association shall be entitled to recover attorneys fees and all costs and expenses incurred in pursuing such action.
28. This document is effective January 1, 2015, and amends and replaces the previous "Amended Declaration of Restrictions of the Millfair Heights Association, Inc." filed in the Erie County Court House, Recorder of Deeds Record Book 260, Page 679. This "Amended Declaration of Restrictions of the Millfair Heights Association, Inc." has been approved by a majority of the lot owners of the Millfair Heights Subdivisions, proof of which is on file with the Millfair Heights Homeowners Association.