

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

TRIANGLE GOLF PROPERTIES, LLC)
3777 Rosemont Boulevard)
Fairlawn, Ohio 44333)

Plaintiff,)

CASE NO.

JUDGE

-vs.-

MONTROSE CLUB, INC.)
3777 Rosemont Boulevard)
Fairlawn, Ohio 44333)

COMPLAINT:
TYPE: BREACH OF CONTRACT;
TORTIOUS INTERFERENCE WITH;
CONTRACT; PROMISSORY
ESTOPPEL; UNJUST ENRICHMENT;
FRAUDULENT MISREPRESENTATION
FRAUD IN THE INDUCEMENT;
DECLARATORY JUDGMENT;
PERMANENT INJUNCTION;

and)

MONTROSE CLUB, INC.)
c/o Statutory Agent,)
Leonard M. Cosentino)
600 Superior Avenue, East, Suite 2100)
Cleveland, Ohio 44114)

JURY DEMANDED HEREON

Defendants.)

_____)

Now comes the Plaintiff, **TRIANGLE GOLF PROPERTIES, LLC** (hereinafter “**TRIANGLE GOLF**”) by and through its undersigned counsel and for its claims against the Defendant, **MONTROSE CLUB, INC.** (hereinafter “**MONTROSE CLUB**”) states as follows:

RECITALS AS TO ALL COUNTS

1. That the Plaintiff, **TRIANGLE GOLF** was at all times relevant hereto an Ohio limited liability company doing business in Fairlawn, Summit County, Ohio.

2. That the Defendant, **MONTROSE CLUB** is an Ohio corporation doing business amongst other places in Fairlawn, Summit County, Ohio.

3. That at all times relevant hereto the officers, individual directors and Board of Directors of the Defendant, **MONTROSE CLUB** were acting with the consent and authority of the corporation.

4. That the Defendant, **MONTROSE CLUB** is a for profit corporation originally formed in December of 1936 for the purpose of purchasing, taking or leasing, or otherwise acquiring, land and buildings for the purpose of providing a Country Club, to lay out and prepare such ground for golf links, or other athletic sports, and to provide pavilions, club house, refreshment rooms and other conveniences in connection therewith.

5. That the Defendant, **MONTROSE CLUB** originally authorized a maximum number of shares at Two Hundred and Fifty (250) with no par value.

6. That on January 30, 1941 The Rosemont Country Club (hereinafter "Rosemont CC") filed its original Articles of Incorporation.

7. That the purpose of Rosemont CC was to establish, maintain and conduct a golf course, to promote the game of golf, and other athletic sports and pastimes for the accommodation of members and their friends, and to provide a clubhouse and other conveniences, and generally to afford members and their friends all the usual privileges, advantages, convenience, social enjoyment, and accommodations of a golf course and club.

8. On May 17, 1957 the Defendant, **MONTROSE CLUB** filed an Amendment to its Articles of Incorporation with the Ohio Secretary of State increasing the number of shares it was originally authorized to issue from 250 to 1,000.

9. On or about June 29, 1973, the Defendant, **MONTROSE CLUB** filed a Certificate of Adoption of Amended Articles of Montrose Club, Inc. with the Ohio Secretary of State (hereinafter the “1973 Amendments”).

10. Amongst other provisions, the 1973 Amendments authorized 3,000 Class A Common Shares without par value and 2,000 Class B Common Shares without par value.

11. That Class A shareholders were granted the exclusive right and possession of all voting power for the election of directors and for all other purposes.

12. The 1973 Amendments were to take the place of and supersede all existing Articles of Incorporation and all amendments thereto.

13. In 1986 the Defendant, **MONTROSE CLUB** made additional amendments (hereinafter the “1986 Amendments”) to the 1973 Amendments stating that Class A Common Shares shall be required to be dues-paying members of Rosemont CC.

14. The 1986 Amendments provided that if at any time the Class A shareholder ceased to be a member of Rosemont CC, such shareholder must promptly give written notice thereof to the Corporation, accompanying with such notice his or her Class A common shares duly endorsed in blank.

15. That the 1986 Amendment provided that upon receipt by the Secretary of the Corporation of the certificate(s) and written notice the Secretary was to issue to the holder certificate(s) for that number of “Class B” Common Shares at the ratio of one (1) “Class A: share for one (1) “Class B” share.

16. In November of 1991 Rosemont CC entered into a complex real estate transaction which involved the acquisition by third-parties of a significant amount of its most valuable acreage.

17. The portion of the property which was sold included the clubhouse, tennis courts, driving range and practice green, pro shop and club/cart storage building, pool and halfway house, golf pro's house, maintenance barns, and the first, eighteenth, tenth and ninth holes, along with the tees from the eleventh hole of the pre-1992 course.

18. That as part of the major development of the Montrose commercial, business and retail district the portion of the property which was sold was replaced in a like kind exchange for similar but new facilities on the property across from the old eighth hole on the west side of Cleveland-Massillon Road now known as 3777 Rosemont Boulevard, Fairlawn, Ohio. (hereinafter the "Property").

19. A tunnel was built under Cleveland-Massillon Road to connect the new facilities with the remainder of the golf course.

20. The golf course architectural firm Hurdzan Golf Course Design, Inc. was retained to design several new holes which ultimately became what is the currently the first, second, seventeenth and eighteenth holes.

21. The old eleventh hole was abandoned and replaced with the current fourth hole. The remaining holes from the old course were renumbered as necessary.

22. With the sale of the property in 1991, Rosemont CC was able to stabilize its financial shortcomings, pay off debt and set aside substantial funds for future capital improvements.

23. Rosemont CC's financial condition unfortunately declined from 1992 through 2005 resulting in declining membership, insufficient revenue, no excess funds and the accumulation of significant debt.

24. The overall physical condition of the facilities, golf course, equipment and grounds had noticeably deteriorated.

25. In March of 2005 by unanimous resolution it was acknowledged by the Board of Directors of the Defendant, **MONTROSE CLUB** that Rosemont CC had defaulted on its financial obligations.

26. That in March of 2005, it was also acknowledged by unanimous resolution of the Board of Directors that the Defendant, **MONTROSE CLUB** had guaranteed certain loan obligations of The Rosemont CC which were in default.

27. That the Defendant, **MONTROSE CLUB** with the consent of its Board of Directors were granted authority to aid Rosemont CC in giving assurances to enter into a plan to repay the guaranteed obligations.

28. That in March of 2005, the Defendant, **MONTROSE CLUB**, Rosemont CC, Key Bank National Association (hereinafter “KeyBank”) and the Plaintiff, **TRIANGLE GOLF** entered into extensive negotiations in which the parties ultimately entered into a number of simultaneously executed contracts including a Prime Lease and Sublease of the Property.

29. On June 6, 2005, the Defendant, **MONTROSE CLUB** and Rosemont CC entered into a Prime Lease Agreement (the “Lease”).

30. The initial term of the Lease was for a term of ten (10) years.

31. The Lease was a “net-net-net” Lease and the Rosemont CC was to pay all rent and all other charges due under the Lease without notice or demand and free from any charges, impositions, claims, damages, expenses, deductions, setoffs, counterclaims, abatement, suspension or defense of any kind.

32. Under the terms of the Lease, the Rosemont CC was to pay water, sewer, power, heat, gas, electricity and all other utility services used or consumed at the Property.

33. The Rosemont CC was given the authority and right to sublease the golf course to Triangle Golf Properties, LLC pursuant to the Golf Course Lease Agreement also dated June 6, 2005 (the "Sublease" attached hereto as Exhibit A – Note portions of attachments have been redacted due to privacy).

34. The Rosemont CC was considered the Lessor and the Plaintiff, **TRIANGLE GOLF** was the Lessee. It was Rosemont CC's desire to lease the Property, the golf club, all third-party equipment and relinquish full control over all operations to the Plaintiff.

35. The general scope of the services to be conducted by the Plaintiff, **TRIANGLE GOLF** under the terms of the Sublease included:

- Pro Shop Operations
- Starter Services
- Tee Time Reservations
- Marshaling Services
- Golf Cart Rentals and Operations
- Driving Range Operations
- Food, Beverage and Banquet Services
- Swimming Pool
- Tennis Courts
- Grounds/Buildings and Equipment Operation

36. The Rosemont CC and the Defendant, **MONTROSE CLUB** agreed that neither would have a right to supervise or direct the manner or mode of the Plaintiff, **TRIANGLE GOLF's** mode of management and operation and no member of Rosemont CC would have any rights whatsoever arising out of the Sublease.

37. That the initial term of the Sublease was for a period of ten (10) years commencing June 6, 2005 and expiring on June 6, 2015.

38. That Article II, § 2.3.2 states:

“2.3.2 Lessor agrees that it shall have no right to supervise or direct the manner or mode of Lessee’s management and operation and no member of the Golf Club or of Lessor shall have any rights whatsoever arising out of this Lease.”

39. That under the terms of the Sublease, the Plaintiff, **TRIANGLE GOLF** was granted an option to extend the initial term of the Sublease for an additional ten (10) consecutive years upon the same terms and conditions of the original Lease.

40. That on June 6, 2005 the Plaintiff, **TRIANGLE GOLF** and the Defendant, **MONTROSE CLUB’s** lender, KeyBank entered into a Subordination, Non-Disturbance and Attornment Agreement in which the Plaintiff, **TRIANGLE GOLF** agreed in return for such assurances not to disturb operations, it would pay KeyBank \$38,694.59 plus \$264.92 per day towards the amount due under The Rosemont Country Clubs default and the Defendant, **MONTROSE CLUB’s** guaranty.

41. That in reliance upon the terms and conditions which were contained in the Lease and Sublease, the Plaintiff, **TRIANGLE GOLF** paid KeyBank the entire amount.

42. That in addition to the debt set forth in paragraph thirty-eight (38), the Plaintiff, **TRIANGLE GOLF** paid thousands of dollars due and owing to various vendors and creditors of Rosemont CC.

43. That also on June 6, 2005 the Defendant, **MONTROSE CLUB** executed a Guaranty, Non-Disturbance and Right of First Offer Agreement agreeing that it would guaranty the obligations of the Rosemont CC under the terms of the Lease and Sublease including that if Rosemont CC defaulted under the Prime Lease then the Lease would not terminate but rather the Defendant, **MONTROSE CLUB** would become the Prime Landlord and the Lease would remain as unto them. (See Exhibit B attached).

44. That the Plaintiff, **TRIANGLE GOLF** had required and negotiated the absolute right to exercise the Option Term by providing written notice of its option not later than six (6) months prior to the expiration of the Initial Term, whereupon the Rosemont CC would then have thirty (30) days to evaluate the exercise of the option and determine in good faith whether the Plaintiff, **TRIANGLE GOLF** had satisfactorily complied with the Lease.

45. That at the time that Plaintiff, **TRIANGLE GOLF** took possession of The Rosemont CC had dwindled to under a hundred resident members.

46. That at the time that the Plaintiff, **TRIANGLE GOLF** took possession of the Rosemont CC, the golf course was in poor condition, maintenance to the clubhouse facilities had been neglected, and most of the equipment was in disrepair.

47. That the Plaintiff, **TRIANGLE GOLF** immediately invested in made major capital investments to improve the conditions of the golf course, clubhouse, tennis courts, maintenance facilities and surrounding pool area.

48. That the Plaintiff, **TRIANGLE GOLF** established competitive membership initiatives to attract new members and new markets.

49. That the Plaintiff, **TRIANGLE GOLF** properties promoted outings, weddings, fundraisers and other miscellaneous events and marketed the Property so to attract outside revenue and business which promoted the available amenities all while improving the golf course, facilities and the membership experience.

50. That the Plaintiff, **TRIANGLE GOLF** worked with staff to coordinate better clubhouse services, food and a better environment.

51. That the Plaintiff, **TRIANGLE GOLF's** staff helped tremendously to improve the members experience and promote new memberships.

52. That the Plaintiff, **TRIANGLE GOLF** has been successful in its marketing in attracting hundreds of new members.

53. That during the years of the recession beginning in 2007, the Plaintiff, **TRIANGLE GOLF** decided not to assess the membership when the economy caused a drop in revenue resulting in financial shortfalls.

54. Since 2007 membership levels and gross revenues have continued to increase while the economy has begun to recover.

55. That the Plaintiff, **TRIANGLE GOLF** knew that by avoiding assessments and cost increases to the membership would result in membership retention, loss mitigation and give it the best opportunity to recoup those temporary losses when the economy improved.

56. That the Plaintiff, **TRIANGLE GOLF** relied on the term of the Lease and Sublease to recapture losses during the remaining years of the initial term and the additional ten years under the option period as set forth in the Lease and Sublease.

57. That for reasons still unknown to the Plaintiff, **TRIANGLE GOLF** on October 8, 2010 the Ohio Secretary of State cancelled the corporate charter of The Rosemont CC for failure to file a statement of continued existence.

58. That it is unclear whether the Defendant, **MONTROSE CLUB** operates with proper corporate authority due to the restrictions which were imposed by its 1986 Amendments.

59. That it appears that the only Class A shareholders of the Defendant, **MONTROSE CLUB** have retained the right to vote but the 1986 Amendments indicate those same shares are to be converted to Class B shares if the shareholder is no longer a member of Rosemont CC.

60. Since the entity “The Rosemont Country Club” appears to no longer exist, it is unclear under what authority the Defendant, **MONTROSE CLUB** conducts business.

61. The name Rosemont Country Club is currently a registered tradename of the Plaintiff, **TRIANGLE GOLF** and has been of record with the Ohio Secretary of State since May 16, 2011.

62. That Article III, §3.1.2 of the Sublease states as follows:

“3.1.2 Provided Lessee is not then in default (beyond applicable notice and cure periods) at the end of the Initial Term, subject to Lessor’s acceptance rights below, Lessee shall have the option to extend the Initial Term for an additional ten (10) consecutive years (the “Option Term”) upon the same terms and conditions of this Lease applicable to the Initial Term, except that Lessee shall have no further right to exercise any additional Option Terms other than the original Option Term specified herein. Lessee shall first provide written notice of the exercise of its option (an “Offer Letter”) not later than six (6) months prior to the expiration of the Initial Terms, whereupon the Lessor shall have thirty (30) days to evaluate the exercise of the option and determine in good faith whether Lessee has satisfactorily complied with this Lease such that an extended term is appropriate. If Lessor determines that Lessee has satisfactorily complied then Lessor shall send Lessee an acceptance letter (an “Acceptance Letter”) not later than expiration of the thirty (30) day period after delivery of such Offer Letter, to accept Lessee’s exercise of its Option Term, in which event this Lease shall continue for the Option Term. If Lessor does not deliver an Acceptance Letter within the aforesaid period by reason of having determined that Lessee has not satisfactorily complied, then this Lease shall not continue during the Option Term but rather expire upon the expiration of the Initial Term. Lessor need not evaluate Lessee’s Offer Letter, if (i) Lessor elects within the three month period prior to the deadline for Lessee to exercise its option, to operate the Golf Club itself at the end of the Initial Term without the use of a third party lessee or management company, or (ii) the Lessor and ground lessor elect to cease Golf Club Operations altogether at the conclusion of the Initial Term. If Lessor makes an election as provided in the preceding sentence, for a period of one (1) year after the expiration of the Initial Term, Lessee shall have a right of first refusal on any lease or management contract of the Golf Club. The right of first refusal in Section 17.11 shall also under such circumstances extend for an addition period of one (1) year after expiration of the Initial Term.”

63. That prior to exercising his Option Term and for months thereafter, Kevin Larizza, President of the Plaintiff, **TRIANGLE GOLF** attended numerous meetings with the Defendant, **MONTROSE CLUB**’s Board of Directors and was given assurances from which he relied that it was its desire that it extend the Lease and Sublease through the Option Period.

64. On October 18, 2014, Kevin Larizza, President of the Plaintiff, **TRIANGLE GOLF** exercised in writing the rights under the Option Term extending the Lease and Sublease from June 6, 2015 until June 6, 2025. (See Exhibit C attached).

65. That the Plaintiff, **TRIANGLE GOLF** properly exercised its Option and notified the membership as such in October, 2014.

66. That in reliance on the assurances by the Defendant, **MONTROSE CLUB** and after effectively exercising the Option Term for an extension of the Lease and Sublease for a period of an additional ten (10) years, the Plaintiff, **TRIANGLE GOLF** proceeded to make substantial capital improvements to the facilities and golf course including expending approximately Sixty-Five Thousand Dollars (\$65,000.00) on the pool and tennis courts in the Spring of 2015.

67. That in the Winter and Spring of 2015 the Plaintiff, **TRIANGLE GOLF** entered into numerous contracts for golf course improvements, fertilizers, machinery and equipment, fuel, repairs and golf products, services and inventory.

68. That shortly after the Option Term began, the Defendant, **MONTROSE CLUB** through its corporate officers and Board of Directors began to engage in a course of conduct to cause the intentional disruption of the golf course and club house operations and intentionally and negligently interfering with the terms and conditions contained in the Lease and Sublease.

69. That the Defendant, **MONTROSE CLUB** through its officers, directors and agents intentionally breached and interfered with the conditions and fees for club membership in violation of Article XI, §11.2 and §11.3; intentionally and actively violated the non-disturbance provisions contained in Article XVII, §17.10 and Article XVII, §17.11; intentionally interfered with the lawful exercise of the Option Term in violation of Article II, §2.3.2; intentionally interfered and breached the notice requirements, provided no written notice of default, and violated the notice requirements

contained in Article VIII, §8.2 and §8.3; failed to reimburse the Plaintiff for major capital expenditures which had or qualified for an amortization schedule of greater than 10 years as provided for in Article XVI, §16.1; and other terms and conditions in an effort to discourage the Plaintiff, **TRIANGLE GOLF** from continuing the Sublease, frustrate the purpose and golf course operations, illegally gain control of the Property and impose substantial financial loss.

70. Further, the Defendant, **MONTROSE CLUB's** through its Board of Directors, its officers and agents have directly interfered with golf course and clubhouse operations by approaching members, employees and vendors directly in violation of the Lease and Sublease and the Non-Disturbance Agreement as set forth in Exhibit B.

71. That under Article XI, §11.2, Conditions of Membership it states:

“Lessee shall determine the conditions of membership (including, but not limited to, membership classes, fees, assessment policy, rights and privileges) for the Golf Club throughout the Term and Option Term of this Lease, provided the Lessee shall not assess the members of the Golf Club in a lump sum for any amount for Capital Improvements or Alterations (defined below) without obtaining an affirmative vote from at least (fifty-one percent (51%) of all members of the Golf Club, and Lessee shall not charge the one lifetime member of Lessor any monthly dues should that member elect to continue his/her membership (in no event however shall such life member be considered a third party beneficiary of this Lease). In regard to such membership decisions, Lessor shall have the ability to offer any input and recommendations that Lessor deems important, however, Lessor understands that all membership and dues decisions and the conditions thereof shall be made by Lessee and not Lessor. Lessee hereby automatically admits as full members of the Golf Club during the Term each and every existing individual shareholder, trustee, member, or other participant of Lessor for so long as such individual accepts such membership promptly after the Effective Date and thereafter pays, as and when due, his or her individual monthly dues, cart dues, guest fees and food and beverage expenses. Any such individual that accepts such new membership at the Golf Club shall have no liability to Lessee to pay any initiation fee, transfer fee, assessment, start up charge or other similar, onetime cost. On an interim basis to be effective until Lessee determines otherwise it is absolute discretion, Lessee adopts the existing rules and regulations of the Lessor pertaining to member conduct, privileges and club customs.”

72. That the Defendant, **MONTROSE CLUB** informed the Plaintiff, **TRIANGLE GOLF** that it was not to communicate directly with the membership regarding marketing of certain membership dues programs and promotions in violation of the Lease, Sublease and Non-Disturbance Agreement and the provisions set forth in paragraph seventy-one (71) and informed it to no longer market certain membership programs, rates, dues or incentives.

73. That the Plaintiff, **TRIANGLE GOLF** justifiably relied upon the assurances given by the Board of Directors, its officers and agents that he would be entitled to continue through its Option Term.

74. That officers, directors and members of the Defendant, **MONTROSE CLUB** have threatened to remove the Plaintiff, **TRIANGLE GOLF** in breach of its Lease and Sublease.

75. That officers, directors and members of the Defendant, **MONTROSE CLUB** have entered into a course of conduct which has resulted in a division in the membership and a loss of members dues to the improper perception and representations that the Plaintiff, **TRIANGLE GOLF** was not in fact in the ten year Option Term and that it had little or no authority.

76. That officers, directors and members of the Defendant, **MONTROSE CLUB** have contacted outside golf management companies in an effort to conduct an illegal takeover of the management of the Golf Club all in violation of the terms and conditions of the Lease and Sublease.

77. That officers, directors and members of the Defendant, **MONTROSE CLUB** have contacted the Plaintiff, **TRIANGLE GOLF**'s employees informing them that management will be changed shortly.

78. That officers, directors and/or members of the Defendant, **MONTROSE CLUB** have disseminated to members and committee members that a change in management is imminent in violation of the provisions of the Lease, Sublease and Non-Disturbance Agreement.

79. That upon information and belief the Plaintiff, **TRIANGLE GOLF** believes that officers, directors and/or members of the Defendant, **MONTROSE CLUB** are conspiring to illegally seize the premises including inventory which is the rightful property of Plaintiff, **TRIANGLE GOLF**.

80. That the Defendant, **MONTROSE CLUB** has illegally and wrongfully served a Notice to Leave the Premises upon the Plaintiff, **TRIANGLE GOLF** in an effort to wrongfully seize control of the Property, thousands of dollars of inventory including golf retail inventory, equipment, food and alcohol.

81. That the Liquor License for the property is in the name of the Plaintiff, **TRIANGLE GOLF**.

82. That the liquor inventory if seized and resold by the Defendant, **MONTROSE CLUB** would be a violation of the Rules and Regulations promulgated under Ohio Revised Code Section 4301: Liquor Control Law.

83. That the interference by the officers, directors, and/or members of Defendant, **MONTROSE CLUB** have caused and continues to cause irreparable harm to the Plaintiff, **TRIANGLE GOLF** from which it has had a dramatic effect on the management, operations, employees, members and financial operations.

COUNT I – BREACH OF CONTRACT

84. The Plaintiff, **TRIANGLE GOLF** reaves and realleges each and every allegation contained in paragraphs one through eighty-three (83) above as if fully rewritten herein.

85. That on June 6, 2005, the Plaintiff, **TRIANGLE GOLF** entered into a Golf Course Lease Agreement (the “Sublease”) with The Rosemont CC.

86. That it was the desire of The Rosemont CC to Lease the Golf Club premises and all pertinent equipment to the Plaintiff, **TRIANGLE GOLF** to fully undertake the operations of the golf course and all facilities.

87. Article II, §2.3.2 states that The Rosemont Country Club shall have no right to supervise or direct the manner or mode of the Plaintiff, **TRIANGLE GOLF's** management and operation and no member of the Golf Club or of Rosemont CC shall have any rights whatsoever out of the Lease.

88. That from June 6, 2005 until the present, the Plaintiff, **TRIANGLE GOLF** has managed and operated The Rosemont Country Club consistent with the terms and conditions contained within the Lease.

89. That on October 18, 2015, the Plaintiff, **TRIANGLE GOLF** exercised its Option Terms pursuant to the terms and conditions of the Lease.

90. That the Lease is currently in the Option Term from June 6, 2015 through June 6, 2025.

91. That on or about June 6, 2005 the Defendant, **MONTROSE CLUB** executed a Guaranty, Non-Disturbance and Right of First Offer Agreement in which it agreed to guaranty the obligations of The Rosemont Country Club to the Plaintiff, **TRIANGLE GOLF**. In addition the Defendant agreed to “. . . respect Lessee's rights under this Lease for the remainder of the Term as a direct lease between Prime Landlord and Lessee; and (iii) Prime Landlord hereby grants to Lessee a right of first refusal on the same terms and condition as Section 17.11 of the Lease, such that Prime Landlord shall be bound by all of the terms and conditions of Section 16.11 of the Lease.”

92. That the Rosemont CC franchise was cancelled in 2010 without notice to the Plaintiff, **TRIANGLE GOLF**.

93. That the Defendant, **MONTROSE CLUB** is now bound to the terms, conditions and obligations of Rosemont CC under the Lease.

94. That the Defendant, **MONTROSE CLUB** and its officers and directors have and continue to interfere with golf course operations, management decisions, the membership and overall operations of the Golf Club in direct breach of the terms and conditions of the Lease and Sublease as set forth above.

95. That as a direct and proximate result of the interference with management and operations, the membership has been disrupted, employees and management have been misinformed, revenues have suffered and doubt the continuation of future management by the Plaintiff, **TRIANGLE GOLF** with future uncertainty has created a significant drop in revenue and membership participation.

96. In addition and as a direct and proximate consequence of the Defendant, **MONTROSE CLUB's** constant threats to illegally remove the Plaintiff, **TRIANGLE GOLF**, vendors and members are uncertain with the continuance of their memberships and have not committed to future participation all causing financial loses.

97. That the Defendant, **MONTROSE CLUB** has interfered with employees and operations all to the detriment of the Plaintiff, **TRIANGLE GOLF**.

98. **WHEREFORE**, as a direct and proximate result of the Defendant, **MONTROSE CLUB's** breaches, the Plaintiff, **TRIANGLE GOLF** has been irreparably harmed asks that this Court award compensatory damages in excess of Twenty-Five Thousand Dollars (\$25,000.00) plus attorney fees, court costs, interest allowable by law and any further amount this Court deems fair and reasonable.

99. **WHEREFORE FURTHER**, Plaintiff request that this Honorable Court issue an immediate Order with a directive that the Defendant, **MONTROSE CLUB**, its officer and directors immediately cease interference with management of golf operations and the membership.

COUNT II – TORTIOUS INTERFERENCE WITH CONTRACT

100. That the Plaintiff reavers, restates and realleges each and every allegation contained in paragraphs one through ninety-nine (99) above as if fully rewritten herein.

101. That the Defendant, **MONTROSE CLUB** was and is undeniably aware of the Lease and Sublease as set forth above.

102. That the Defendant, **MONTROSE CLUB** is undeniably aware that it is bound to the terms and conditions contained in the Lease and Sublease.

103. That the Defendant, **MONTROSE CLUB** is undeniably aware that it is bound to the terms and conditions of the Guaranty, Non-Disturbance and Right of First Refusal as set forth in Exhibit B.

104. That the officers, directors and members of the Defendant, **MONTROSE CLUB** have intentionally breached the terms and conditions of the Lease and Sublease and have directly interfered with the membership, employees and vendors of the Plaintiff, **TRIANGLE GOLF**.

105. That the Defendant, **MONTROSE CLUB** lacks any justification for the intentional breach of the Lease and Sublease, has issued no written notice of default, has informed members and staff that management and operational changes are imminent.

106. That as a direct and proximate result of the Defendant, **MONTROSE CLUB**'s actions as set forth in paragraphs one through one hundred and five (105) above, the Plaintiff, **TRIANGLE GOLF**'s golf course operations have been disrupted, membership has been

wrongfully displaced and disrupted, renewal memberships have declined, revenues have declined and capital improvements have been frustrated.

107. **WHEREFORE**, as a direct and proximate result of the Defendant, **MONTROSE CLUB's** breaches, the Plaintiff, **TRIANGLE GOLF** has been irreparably harmed asks that this Court award compensatory damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) plus attorney fees, court costs, interest allowable by law and any further amount this Court deems fair and reasonable.

COUNT III – PROMISSORY ESTOPPEL

108. That the Plaintiff repeats, restates and realleges each and every allegation contained in paragraphs one through one hundred and seven (107) above as if fully rewritten herein.

109. That the Defendant, **MONTROSE CLUB** guaranteed, promised and represented to the Plaintiff, **TRIANGLE GOLF** that it would abide by the terms of the Lease, Sublease and Non-Disturbance Agreement.

110. That the Defendant, **MONTROSE CLUB** promised to the Plaintiff, **TRIANGLE GOLF** that it would have complete control over golf course operations and all financial aspects as set forth in the Lease and Sublease.

111. That in reliance on these promises, the Plaintiff, **TRIANGLE GOLF** paid significant debt owed by Rosemont CC which had been guaranteed by the Defendant, **MONTROSE CLUB**.

112. These payments were a conditioned upon entering into the Sublease with the promise that the Plaintiff, **TRIANGLE GOLF** would be in complete control of golf course operations, management and all significant financial decision making.

113. That the Plaintiff, **TRIANGLE GOLF** reasonably expected relied upon the terms of the contracts and representations that the Defendant, **MONTROSE CLUB** would abide by the terms and conditions contained in the Lease, Sublease and Non-Disturbance Agreement.

114. That the Plaintiff, **TRIANGLE GOLF** justifiably relied on the promises contained in the Lease, Sublease, Non-Disturbance Agreement and the continued assurances that the Option Term would be continued for a period ending June 6, 2025.

115. That the Defendant, **MONTROSE CLUB** has derived significant benefits by the Plaintiff, **TRIANGLE GOLF** abiding by the terms and conditions of the Lease and Sublease including a substantial reduction in the note and mortgage balance which encumbers the property.

116. That the Defendant, **MONTROSE CLUB** promised that if the Plaintiff, **TRIANGLE GOLF** fulfilled the terms and conditions under the Lease and Sublease that it would approve the Option Term.

117. That the Plaintiff, **TRIANGLE GOLF** fulfilled the terms and conditions under the Lease and Sublease for the initial term and properly exercise the Option Term which it is currently under.

118. That the Defendant, **MONTROSE CLUB** made no objection nor raised any concern at the time the Plaintiff, **TRIANGLE GOLF** exercised the Option.

119. That in reliance of the Defendants promises as set forth in the preceding paragraphs, the Plaintiff, **TRIANGLE GOLF** committed substantial assets, labor resources and entered into financial commitments which, if not honored, would cause an injustice and unjustified enrichment to the Defendant, **MONTROSE CLUB**.

120. That the Defendant, **MONTROSE CLUB** is estopped from interfering with the golf course operations, management and membership.

121. **WHEREFORE**, as a direct and proximate result of the Defendant, **MONTROSE CLUB**'s promises, the Plaintiff, **TRIANGLE GOLF** has relied to its detriment, has been irreparably harmed.

122. **WHEREFORE FURTHER**, the Plaintiff asks that this Court award compensatory damages in an amount excess of Twenty-Five Thousand Dollars (\$25,000.00) plus attorney fees, court costs, interest allowable by law and any further amount this Court deems fair and reasonable.

COUNT IV – UNJUST ENRICHMENT

123. That the Plaintiff reavers, restates and realleges each and every allegation contained in paragraphs one through one hundred and twenty-two (122) above as if fully rewritten herein.

124. That the Plaintiff, **TRIANGLE GOLF** has conferred benefits on the Defendant, **MONTROSE CLUB**.

125. Upon information and belief, the Defendant, **MONTROSE CLUB** has entered into discussions and negotiations with governmental agencies regarding the road widening of Cleveland-Massillon to the exclusion of the Plaintiff, **TRIANGLE GOLF**.

126. That it is believed that the Defendant, **MONTROSE CLUB** will gain substantial financial benefit through eminent domain but that there may be effects to the golf course and property.

127. That the Defendant, **MONTROSE CLUB** has made a substantial reduction of its mortgage as a result of the continued payments of the Plaintiff, **TRIANGLE GOLF** creating significant equity in the property.

128. That the Defendant, **TRIANGLE GOLF** has made substantial improvements to the golf course, the swimming pool, tennis courts, equipment maintenance and has substantially increased inventory including furniture, food, beverage, golf equipment and products at great expense.

129. That the Plaintiff, **TRIANGLE GOLF** has in February and July of 2015 made all property tax payments on the Property in an approximately Ninety-Thousand Dollars (\$90,000.00).

130. That it would be unjust for the Defendant, **MONTROSE CLUB** to retain these benefits under the circumstances in which it would retain said improvements inventory and benefits without payment or compensation to the Plaintiff, **TRIANGLE GOLF**.

131. That it would be unjust for the Defendant, **MONTROSE CLUB** to retain additional benefits which the Lessee may be entitled in the future expansion of Cleveland-Massillon Road.

132. **WHEREFORE**, Plaintiff asks that this Court award compensatory damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) plus attorney fees, court costs, interest allowable by law and any further amount this Court deems fair and reasonable.

COUNT VI – FRAUDULENT MISREPRESENTATION

133. That the Plaintiff repeats, restates and realleges each and every allegation contained in paragraphs one through one hundred and thirty-two (132) above as if fully rewritten herein.

134. The factual representations detailed in this Complaint demonstrate a pattern of fraudulent misrepresentation and fraudulent concealment by the Defendant, **MONTROSE CLUB** its officers and Board of Directors.

135. That the officers and directors of the Defendant, **MONTROSE CLUB** failed to disclose facts and concealed facts in order that the Plaintiff, **TRIANGLE GOLF** continue operations all the while conspiring to have it removed and reap the financial benefits which have been conferred upon it for more than 10 years.

136. That the Defendant, **MONTROSE CLUB** through its officers and directors have never notified that Plaintiff, **TRIANGLE GOLF** in writing or otherwise that it is and/or was in breach of any term and/or condition of the Lease and/or the Sublease.

137. That the Defendant, **MONTROSE CLUB** entered into discussions with the Plaintiff, **TRIANGLE GOLF** regarding future plans for improvements, an infusion of capital to certain areas and establishing funds to raise capital with an inducement directed to Plaintiff, **TRIANGLE GOLF** to continue to invest financial resources, capital and labor into the operation.

138. That the Defendant, **MONTROSE CLUB** concealed the fact that it had entered into negotiations in 2014 to have a new management company undertake golf course operations and the facilities.

139. That the Defendant, **MONTROSE CLUB** misrepresented that it would continue to honor the provisions of the Lease and Sublease while encouraging the Plaintiff, **TRIANGLE GOLF** to make major capital expenditures and improvements to the swimming pool and tennis courts, golf course and physical facilities.

140. That the Defendant, **MONTROSE CLUB** concealed the fact that it only intended to honor its obligations under the Lease and Sublease so that it could would have time to devise a plan to abruptly divest the Plaintiff, **TRIANGLE GOLF** from possession all the while encouraging it to spend significant funds on the golf course and facilities and replenish future inventory.

141. That the representations made by the officers and directors of the Defendant, **MONTROSE CLUB** were made falsely, with knowledge of falsity or with such utter disregard and recklessness as to whether they were true or false that knowledge may be inferred.

142. That the Defendant, **MONTROSE CLUB** intended to mislead the Plaintiff, **TRIANGLE GOLF** into relying upon its representations to the Plaintiffs detriment.

143. That the Plaintiff, **TRIANGLE GOLF** relied on the representations and concealments.

COUNT VI – FRAUD IN THE INDUCEMENT

144. That the Plaintiff repeats, restates and realleges each and every allegation contained in paragraphs one through one hundred and forty-three (143) above as if fully rewritten herein.

145. That the Defendant, **MONTROSE CLUB** through its officers, agents and board of directors misrepresented to the Plaintiff, **TRIANGLE GOLF** that it would remain in possession pursuant to the terms and conditions of the Lease, Sublease and further it made representations that it would not disturb or interfere with decisions regarding operations, management, dues and membership.

146. That all the while the Defendant, **MONTROSE CLUB** represented that it would abide by the terms and conditions of the agreement, it had contacted third-parties about taking over golf course operations and the facilities, had contacted members and indicated that the Plaintiff, **TRIANGLE GOLF** would be removed.

147. That the Defendant, **MONTROSE CLUB** intended to mislead the Plaintiff, **TRIANGLE GOLF** into relying on these misrepresentations and assurances when in fact it was intentionally concealing the fact that it intended to wrongfully attempt to gain control of the Property.

148. That the Plaintiff, **TRIANGLE GOLF** made substantial capital improvements, financial expenditures, increased inventory and entered into contracts which it would not have otherwise done without such misrepresentation and/or inducement.

149. That the Plaintiff, **TRIANGLE GOLF** justifiably relied upon these misrepresentation and concealments.

150. That had the Defendant, **MONTROSE CLUB** had not concealed its intent to wrongfully terminate the Lease and Sublease and not abide by the terms and conditions of the Non-Disturbance Agreement, the Plaintiff, **TRIANGLE GOLF** would not have made substantial capital

expenditures in the Spring of 2015 nor continued to make substantial capital and financial contributions from which it would arrive no benefit.

COUNT VIII – DECLARATORY JUDGMENT

151. That the Plaintiff reavers, restates and realleges each and every allegation contained in paragraphs one through one hundred and fifty (150) above as if fully rewritten herein.

152. That the Plaintiff, **TRIANGLE GOLF** entered into a Lease and Sublease under the terms and conditions as set forth in Exhibit A.

153. That the Defendant, **MONTROSE CLUB** entered into a Guaranty, Non-Disturbance and Right of First Offer Agreement as set forth in Exhibit B.

154. That the Plaintiff, **TRIANGLE GOLF** has performed and met all conditions of the Lease and Sublease and has properly exercised its Option Term.

155. That the Plaintiff, **TRIANGLE GOLF** hereby requests that this Court enter an Order determining the rights and obligations of the parties as set forth in Exhibits A and B.

156. That the Plaintiff, **TRIANGLE GOLF** hereby requests that this Court enter an Order finding that the Defendant, **MONTROSE GOLF** is a proper party to the Lease, Sublease and Non-Disturbance Agreement and is subject to all terms and conditions as set forth therein.

157. That the Plaintiff, **TRIANGLE GOLF** be determined to be in rightful possession pursuant to the terms and conditions contained in the Lease and Sublease.

158. That the Plaintiff, **TRIANGLE GOLF** be determined to have properly exercised its option and that it has been exercised until June 6, 2025.

COUNT VIII – PERMANENT INJUNCTION

159. That the Plaintiff reavers, restates and realleges each and every allegation contained in paragraphs one through one hundred and fifty-eight (158) above as if fully rewritten herein.

160. The Plaintiff, **TRIANGLE GOLF** requests an injunction preventing the Defendant, **MONTROSE GOLF** its agents, employees, officers and directors from interfering with the Lease and Sublease and from directly interfering with golf course operations, management, membership dues and fees structure, from disparaging comments to the membership and from the threats of an unlawful takeover of the premises.

161. If the Defendant, **MONTROSE GOLF** does not cease and desist from interfering with golf course operations and the membership, the Plaintiff, **TRIANGLE GOLF** will suffer irreparable harm as membership will be disrupted and financial losses will be significant.

162. The Plaintiff, **TRIANGLE GOLF** has requested that the Defendant, **MONTROSE GOLF** cease and desist from interfering in breach of the Lease and Sublease to no avail.

163. In fact, agents of the Defendant, **MONTROSE GOLF** have informed numerous members that a change in management is imminent.

164. **WHEREFORE**, Plaintiff, **TRIANGLE GOLF** hereby requests that the Court issue an order for injunctive relief ordering the Defendant, **MONTROSE CLUB** to cease and desist from interfering with the employees, management, golf course operations, facilities and premises which are the subject of the Lease, Sublease and Non-Disturbance Agreement and that it order a permanent injunction preventing any further interference.

RELIEF SOUGHT

WHEREFORE, Plaintiff, **TRIANGLE GOLF** respectfully requests:

A. Judgement be entered against the Defendant, **MONTROSE CLUB** for compensatory damages on Counts I - VII in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) plus court costs, interest allowable by law, attorney fees and any further amount this Court deems fair, equitable and reasonable;

B. Judgment be entered against the Defendant, **MONTROSE CLUB** for punitive damages as permitted by law on Counts II, V and VI in an amount in excess of Twenty-Five Thousand Dollars plus court costs, interest allowable by law, attorney fees and any further amount this Court deems fair, equitable and reasonable ;

C. That this Honorable Court grant such other injunctive relief as set forth in Count I and VIII and any further injunctive relief which this Court deems fair, equitable and reasonable.

Respectfully submitted,

THOMAS A. SKIDMORE CO., L.P.A.

/s/ Thomas A. Skidmore, Esq.
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JURY DEMAND

Plaintiff, Triangle Golf Properties, LLC demands a trial by jury of all issues as of right or discretion, with the maximum number of jurors allowed.

/s/ Thomas A. Skidmore, Esq.
THOMAS A. SKIDMORE, ESQ.