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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**TERRACES AT MIDLAND**

**Washington Township, Hamilton County,**  
**Westfield, Indiana**

**Cross Reference:** Midland Section Two Replat of Common Area D and Blocks 2 & 3, Secondary Plat recorded on February 14, 2024, as Instrument Number 2024004888, Plat Cabinet 6, Slide 487, Recorder's Office of Hamilton County, Indiana, as corrected by that certain Secondary Plat Certificate of Correction for Easements on Lots 541, 552, 564, 577 & 585, recorded on November 12, 2024, as Instrument Number 2024043042, Recorder's Office of Hamilton County, Indiana



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**TERRACES AT MIDLAND**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Terraces at Midland (“**Declaration**”) is made as of the date set forth on the signature page hereof by CCD Ackerson, LLC, a Delaware limited liability company (the “**Declarant**”).

Declarant is the owner of the real property described on Exhibit “A,” which is attached hereto and incorporated by reference. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of each portion of the Properties. This Declaration also establishes a flexible and reasonable procedure for (a) the overall development, administration, maintenance and preservation of the Properties, and (b) the maintenance of open spaces, landscaping, and other Common Areas and Improvements located on the Properties. To achieve these purposes, Declarant desires to subject the Properties to the covenants, conditions, restrictions, easements, and liens hereinafter set forth. In furtherance of such plan, this Declaration provides for the creation of Terraces at Midland Owners Association, Inc., to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (capitalized terms are defined in Article 1 below).

Declarant hereby declares that all of the property described in Exhibit “A” and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner of any portion of the Properties.

This document does not and is not intended to create a condominium within the meaning of the Indiana Horizontal Property Act, Indiana Code, §32-25-1-1, *et seq.* In addition, the Association shall be subject to Indiana Code §32-25.5-1-1, *et seq.* Should the Indiana Code be amended to cause a re-numbering of any existing sections that are referred to in this Declaration, the section references in this Declaration that correspond to the Indiana Code as existing on the date of this Declaration shall be deemed to apply to the re-numbered sections of the Indiana Code without the need for additional amendment to the Declaration caused solely by the re-numbering of existing sections of the Indiana Code.

**ARTICLE 1: DEFINITIONS**

The terms in this Declaration and in the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 “Additional Property”: All of that certain real property which is more particularly described on Exhibit “B”, which is attached and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.2 “Area of Common Responsibility”: The Common Area, together with any additional areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any

Supplemental Declaration, any Cost Sharing Agreement, the Zoning Ordinance, or other applicable covenant, contract, or agreement.

1.3 "Articles of Incorporation" or "Articles": The Articles of Incorporation of Terraces at Midland Owners Association, Inc. as filed with the Indiana Secretary of State, as they may be amended and restated.

1.4 "Association": Terraces at Midland Owners Association, Inc., an Indiana nonprofit mutual benefit corporation, its successors and/or assigns.

1.5 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Indiana corporate law.

1.6 "Builder": Any Person who (i) purchases one or more Lots for the purpose of constructing Improvements thereon for later sale to consumers; (ii) purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business; or (iii) enters into a construction contract with an Owner of a Lot for the construction of a residential dwelling. Any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing Improvements for later sale to consumers.

1.7 "By-Laws": The By-Laws of Terraces at Midland Owners Association, Inc., attached as Exhibit "C", as they may be amended.

1.8 "City": The City of Westfield located in Washington Township, Hamilton County, Indiana.

1.9 "Common Area": All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use, benefit, and enjoyment of the Owners. The term also shall include any Exclusive Common Area, as defined below.

1.10 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve and any expenses pursuant to any Cost Sharing Agreement, all as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.11 "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout Terraces at Midland. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Terraces ARB.

1.12 "Cost Sharing Agreement": Any agreement, contract or covenant, between the Association and an owner or operator of property adjacent to, in the vicinity of, or within Terraces at Midland, for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or operator of such property.

1.13 "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday, or legal holiday in the State of Indiana or the United States of America, then such time period shall be automatically extended to the close of business on the next regular business day. Use of the term "calendar day" in the Declaration, Articles, or By-Laws in

a non-capitalized manner shall mean the number of days, even if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday, or legal holiday in the State of Indiana or the United States of America.

1.14 “Declarant”: CCD Ackerson, LLC, a Delaware limited liability company or any successor, successor-in-title, or assign who holds or takes title to any portion of the property described on Exhibits “A” or “B” for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) Person entitled to exercise the rights and powers of the “Declarant” hereunder at any particular time.

1.15 “Declarant-Related Entity”: Any Person or entity which is a parent, subsidiary or affiliate of the Declarant, and/or any Person or entity which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, the Declarant, and any Person that is a director, shareholder, partner, member, manager, trustee, officer or employee of any of the foregoing. For the purposes of this definition, the term “control” means the direct or indirect power or authority to direct or cause the direction of an entity’s management or policies, whether through the ownership of voting securities, by contract, or otherwise.

1.16 “Deed”: Any deed, assignment or other instrument other than a Mortgage conveying any interest in any Lot or in any portion of the Properties.

1.17 “Design Guidelines”: The design, architectural, use and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

1.18 “Development Period”: The period of time during which the Declarant or any Declarant-Related Entity owns any property which is subject to this Declaration, any Additional Property, or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1; provided, however, the Development Period shall not terminate prior to the time when one hundred percent (100%) of the total number of Lots permitted by the Master Plan for the property described on Exhibits “A” and “B” have certificates of occupancy issued thereon by the controlling governmental authority, have been conveyed to Persons other than the Declarant, any Declarant-Related Entity or a Builder, and initial vertical construction on each Lot is complete. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period upon an earlier date by recording a written instrument in the Public Records.

1.19 “Exclusive Common Area”: A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Lots, as more particularly described in Article 2.

1.20 “General Assessments”: Assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.1 and 8.2.

1.21 “Governing Documents”: The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the Zoning Ordinance, the rules of the Association, all Cost Sharing Agreements, the Master Documents, and all additional covenants governing any portion of the Properties or any of the above, as each may be supplemented and amended from time to time.

1.22 “Improvement”: Any exterior structure or improvement upon the Properties, broadly defined to include, but not be limited to: (i) dwellings and other buildings of a permanent or temporary nature (with temporary buildings being permitted only during the construction of other Improvements,

subject to approval by the Terraces ARB); (ii) outbuildings or other roofed structures; (iii) gazebos or playhouses; (iv) swimming pools or hot tubs; (v) items resulting from construction, erection, placement of any object or item, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved; (vi) items resulting from the exterior alteration of existing Improvements or changes in exterior color or shape; staking, clearing, excavation, grading and other site work; (vii) sediment control devices; (viii) underground installations; (ix) surface water drainage facilities; (x) slope alterations; (xi) berms; (xii) items resulting from installation or replacement of hardscape; (xiii) streets, roads, driveways, walkways, alley ways, or parking areas or facilities; (xiv) fences of any kind, including invisible fences, screening walls, retaining walls, walls and other enclosures; (xv) dog runs or animal pens; (xvi) stairs; (xvii) patios, decks, balconies, or windbreaks; (xviii) artificial vegetation or sculptures; (xix) mailboxes; (xx) basketball hoops, swing sets, and similar sports and play equipment; (xxi) clotheslines; (xxii) garbage cans, wood piles, poles, signs, cameras, recording devices, data collection devices, light projection devices, data collection devices, antennas and satellite dishes; (xxiii) utilities improvements, water lines, sewer, electrical and gas distribution facilities, and irrigation systems; (xxiv) heating, cooling and air circulation equipment and facilities, including window air conditioning units or fans; (xxv) solar panels; (xxvi) exterior illumination devices of any kind or nature; (xxvii) improvements as a result of planting or removal of trees, shrubs, hedges, or other landscaping materials; and (xxviii) all other structures or landscaping improvements of every type and kind initially or at any time thereafter placed or constructed on any Lot.

1.23 “Legal Costs”: The costs which a Person (including without limitation the Association) entitled to reimbursement for “Legal Costs” under any provision of the Governing Documents incurs in pursuing legal action (regardless of whether suit is filed or whether arbitration or court action is taken) to enforce the Governing Documents, including, but not limited to, reasonable attorneys’ and paralegals’ fees, legal consultants fees, expert witness fees, and court costs at all tribunal levels.

1.24 “Lot”: A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any Improvements thereon. The term shall include within its meaning, by way of illustration, but not limitation, to the extent any such product type is included upon the Properties, townhouse units, cluster homes, patio or zero lot line homes, and single family detached houses on separately platted lots as well as vacant land intended for development as such, but shall not include any Common Area or other property owned by the Association or property dedicated to the public. In the case of a building or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Lot, unless specified by a Supplemental Declaration.

In the case of a piece, parcel or tract of the Properties which consists of vacant land or land which Improvements are under construction, such parcel shall be deemed to be a single Lot until such time as a subdivision plat is filed of record in the Public Records for all or a portion of the parcel. If for a portion, the remainder of the parcel for which the subdivision plat does not apply shall be defined as a single Lot.

1.25 “Majority”: Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.26 “Master ARB”: The architectural review board (“ARB”) created pursuant to Article 9 of the Master Declaration.

1.27 “Master Association”: Midland Owners Association, Inc., an Indiana nonprofit mutual benefit corporation.

1.28 “Master Declaration”: Declaration of Covenants, Conditions and Restrictions for Midland recorded on May 5, 2023, as Instrument Number 2023016098 in the Public Records.

1.29 “Master Documents”: The Master Declaration, the by-laws, articles of incorporation, design guidelines and rules and regulations, if any, of the Master Association, as each may be supplemented and amended from time to time.

1.30 “Master Plan”: The land use plan or development plan for Terraces at Midland, the current plan of which is dated February 14, 2024, and prepared by Innovative Engineering and Consulting, Inc., as such plan may be amended from time to time, which plan includes the property described on Exhibit “A” and all or a portion of the Additional Property described on Exhibit “B” that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit “B” from the Master Plan bar its later annexation in accordance with Article 7. The Declarant shall not be bound by any Master Plan, use or restriction of use shown on any Master Plan, and may, in its sole and absolute discretion and from time to time, (i) change or revise the Master Plan (including, without limitation, adding or removing property depicted on the Master Plan), or (ii) elect to develop or not develop the remaining undeveloped property, Common Area, or amenities shown on the Master Plan. Notwithstanding the above, all present and future references to the Master Plan shall refer to the then latest version of the Master Plan prepared for the Declarant.

1.31 “Member”: A Person subject to membership in the Association pursuant to Section 3.1, provided that a Member may mean, by way of example and not limitation, a Class “A” Member or a Class “B” Member.

1.32 “Midland”: That certain residential community located on the property described on Exhibits “A” and “B” of the Master Declaration in the City and commonly known and referred to as Midland, of which Terraces at Midland (as defined below) is a “Neighborhood” (as defined in the Master Declaration).

1.33 “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

1.34 “Mortgagee”: A beneficiary or holder of a Mortgage.

1.35 “Occupant”: The Owner(s) or lessee(s) of any Lot and their respective guests, family members, tenants, agents, contractors, licensees and invitees or any other Person who either lawfully or unlawfully occupies or comes upon such Lot.

1.36 “Owner”: One or more Persons who hold the record title to any Lot, including the Declarant, any Declarant-Related Entity and any Builders, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is owned by more than one Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.37 “Person”: A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.38 “Plat”: Any subdivision plat of any portion of the Properties recorded in the Public Records and the recorded plat of any Additional Property made subject to the provisions of this Declaration pursuant to the provisions hereof, and any amendments or supplements thereto. The initial Plat for the subdivision is that certain Midland Section Two Replat of Common Area D and Blocks 2 & 3, Secondary Plat recorded

on February 14, 2024, as Instrument Number 2024004888, Plat Cabinet 6, Slide 487, Public Records, as corrected by that certain Secondary Plat Certificate of Correction for Easements on Lots 541, 552, 564, 577 & 585, recorded on November 12, 2024, as Instrument Number 2024043042, in the Public Records.

1.39 “Private Streets”: Those certain alleys (including, without limitation those “Alleys” as defined in the Zoning Ordinance), lanes or other thoroughfares within the Properties, whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way or Lots which may be more particularly described on a recorded subdivision plat. The Plat establishes certain private street easements over Private Streets pursuant to the terms of Section 11.14(c)(ii) of this Declaration. In addition, the Private Streets as defined herein shall include all improvements (such as utility lines, drainage systems, etc.) contained within the area covered by such roads, lanes, alleys or other thoroughfares.

1.40 “Properties”: The real property described on Exhibit “A” as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.41 “Public Records”: The Recorder’s Office of Hamilton County, Indiana or such other place which is designated as the official location for recording of Deeds and similar documents affecting title to real estate.

1.42 “Special Assessment”: Assessments levied in accordance with Section 8.4.

1.43 “Specific Assessment”: Assessments levied in accordance with Section 8.5.

1.44 “Supplemental Declaration”: An instrument filed in the Public Records which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.45 “Terraces ARB” The architectural review board for Terraces at Midland and applicable committees appointed pursuant to Section 9.2 hereof with the rights and obligations conferred upon such review board pursuant to this Declaration.

1.46 “Terraces at Midland”: That certain community of attached townhome residences that is subject to this Declaration and the Master Documents and commonly known and referred to as Terraces at Midland, including but not limited to the Properties subject to this Declaration. Terraces at Midland is currently planned to include twenty-two (22) detached dwellings and thirty-three (33) attached dwellings.

1.47 “Zoning Ordinance”: PUD Ordinance 06-47, an Ordinance of the City of Westfield and Washington Township, Hamilton County, Indiana Concerning Amendment to Title 16—Land Use Controls, approved by the City Council for the City on October 9, 2006, as may be further amended or supplemented from time to time, including, without limitation, by Ordinance Number 24-18 dated April 9, 2024, and recorded on April 18, 2024, as Instrument Number 20240131131, in the Public Records.

## **ARTICLE 2: PROPERTY RIGHTS**

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Lot, subject to:

- (a) this Declaration and all other Governing Documents;



(b) any restrictions or limitations contained in any Deed conveying such property to the Association;

(c) the right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area, to operate the Common Areas and to install cameras and other recording devices upon the Common Areas;

(d) the right of the Association to rent, lease or reserve any portion of the Common Area to any Owner for the exclusive use of such Owner and its Occupants upon such conditions as may be established by the Board;

(e) the right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Area and Exclusive Common Area pursuant to Section 4.3;

(f) the right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area pursuant to the Governing Documents;

(g) the right of the Board to permit use of the Common Areas, including but not limited to the facilities located thereon, by persons other than Owners, their families, lessees and guests, including the public, upon such conditions and payment of reasonable use fees, if any, established by the Board;

(h) the right of Declarant to designate certain facilities and areas as open to the public;

(i) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(j) the right of the Association, acting through the Board, or the Declarant, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;

(k) the rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.3; and

(l) the right of the Declarant or a Declarant-Related Entity to conduct activities and establish facilities within the Properties as provided by Article 13.

Any Owner may extend its right of use and enjoyment to the members of its family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases its Lot shall be deemed to have assigned all such rights to the lessee of such Lot, except that an Owner who leases a garage apartment or similar accessory dwelling approved pursuant to Article 9 may extend such rights of use and enjoyment to the lessee of such accessory dwelling without relinquishing such rights for the benefit of the Occupants of the main dwelling on the Lot. Notwithstanding any assignment of such rights, the Owner shall remain responsible for payment of all assessments and other charges.

2.2 Private Streets. Unless otherwise provided by Supplemental Declaration, every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across the Private Streets, whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way, including, without limitation, those certain Private Streets upon which private street

easements are depicted on the Plat and established pursuant to Section 11.14(c)(ii) of this Declaration. The rights and nonexclusive easements granted herein are appurtenant to the title to each Lot, subject to:

- (a) this Declaration and all other Governing Documents;
- (b) the right of the Declarant, so long as the Declarant owns the Private Streets, and the Association to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, provided that neither the Declarant nor the Association shall, by the adoption of any rule or regulation, bar access of the Owners across the Private Streets;
- (c) the right of the Declarant or the Association to dedicate all or any part of Private Streets to the City or Hamilton County, Indiana, or to any other local, state, or federal governmental or quasi-governmental entity without obtaining any membership approval;
- (d) the right of the Declarant or the Association to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners contained in this Section; and
- (e) the rights of the Declarant and the Association to maintain the Private Streets.

Any Owner may extend its right of use and enjoyment of the Private Streets to the members of such Owner's family, lessees, and social invitees, as applicable.

2.3 Exclusive Common Area. Subject to any restrictions or limitations in the Deed conveying property to the Association, certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and Occupants of specified Lots. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Lots to which the Exclusive Common Areas are assigned as a Specific Assessment, as applicable. No representation is made, however, that any portion of the Properties will ever be designated as Exclusive Common Area.

During the Development Period, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, (i) in the Deed by which the Common Area is conveyed to the Association, (ii) in this Declaration, (iii) by any Supplemental Declaration and/or (iv) on the subdivision plat relating to such Common Area. Any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Lots during the Development Period. Any reassignment of an Exclusive Common Area shall be set forth in a Supplemental Declaration executed by the Declarant during the Development Period and the Board thereafter or shall be shown on a revised subdivision plat relating to such Exclusive Common Area.

2.4 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area that is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.5 Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. If any part of the Common Area shall be taken by or conveyed under threat of condemnation

to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area under threat of condemnation only if approved by Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Area on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) Days after such taking, Members representing at least sixty-seven percent (67%) of the total Class "A" votes of the Association and, during the Development Period, the Declarant shall agree otherwise. Any such construction shall be in accordance with plans approved by the Board and the Terraces ARB. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any Improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

**2.6 View Impairment.** Neither the Declarant, any Declarant-Related Entity nor the Association guarantees or represents that any view over and across any lake, pond, other water body, Common Area, public park or other facility from Lots will be preserved without impairment. The owners of such areas shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping or to install Improvement or barriers (both natural and artificial) to such areas from time to time. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a Deed, acknowledges that any view of a lake, pond, other water body, Common Area, public park or other facility that the Lot may enjoy as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of Improvement or barriers (both natural and artificial) within such areas.

Neither Declarant, any Declarant-Related Entity nor the Association, shall have any liability whatsoever to any Owner for any claim based on degradation or impairment of any view from the Owner's Lot, including, without limitation, claims for loss of value. No Owner shall have the right to object to the construction of Improvements on any adjacent or nearby Lot based on the impact of such Improvements on the Owner's view. The following rights shall be superior to any claim by any other Owner of a right to prohibit or limit the construction of Improvements based on any impact on, or impairment of, any views: (i) the right of each Owner to construct Improvements that comply with the terms and conditions of the Governing Documents, including the approval processes in to Article 9; (ii) the right of the Declarant to designate building envelopes; and (iii) the right of the Declarant to construct Improvements on all Lots, Common Areas and the Additional Property, as reserved or established in the Governing Documents.

### **ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS**

**3.1 Membership Rights.** Every Owner shall be a Member of the Association. There shall be only one (1) Class "A" membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(d) and in the By-Laws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of the Owners hereunder. The membership rights of an

Owner that is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.2 Membership and Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Each Class "A" Member shall have one (1) equal vote for each Lot in which he or she holds the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Lot and no vote shall be exercised for any property that is exempt from assessment under Section 8.9. All Class "A" votes shall be cast as provided in Section 3.2(d) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member (i) shall have five (5) votes in the Association for every Lot owned by the Class "B" Member plus five (5) votes in the Association for every one (1) vote held by a Class "A" Member and (ii) may appoint the members of the Board of Directors, until such time as termination of the Class "B" membership of the Master Association pursuant to Section 3.2 of the Master Declaration.

At such time that the Class "B" membership of the Master Association terminates, the Class "B" membership of the Association also shall terminate, and the Declarant shall become a Class "A" Member entitled to one Class "A" vote for each Lot which it owns.

After termination of the Class "B" membership of the Association, the Declarant shall have a right to disapprove actions of the Board, the Terraces ARB, and committees as provided in the Governing Documents.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Section 7.1, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

(d) Exercise of Voting Rights. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it. No vote may be exercised on behalf of any Lot if any assessment for such Lot is delinquent for more than six (6) months.

3.3 Master Association. Each Owner, by acceptance of a deed to a Lot, acknowledges and agrees that pursuant to the Master Documents, all Owners shall be members of the Master Association and shall be subject to the Master Documents. Each Owner acknowledges that, pursuant to the Master Documents, Terraces at Midland has been or may be designated as a "Neighborhood". Each Owner hereby further acknowledges and agrees that, if the Owners are entitled to elect a member to the board of directors of the Master Association, the president of the Association shall serve as the member of the Master Association Board of Directors and the secretary of the Association shall serve as the alternate. If there are conflicts between the provisions of Indiana law, the Master Declaration, the Declaration, the By-Laws and

the Articles of Incorporation, the provisions of Indiana law, the Master Declaration, the Declaration, the Articles of Incorporation and the By-Laws (in that order) shall prevail.

#### **ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all Improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Indiana.

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the Deed or other instrument transferring such property to the Association. Declarant shall not be required to make any Improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake, pond or other body of water that may be conveyed. During the Development Period and upon the written request of Declarant, the Association shall reconvey to Declarant any portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

The Common Area, including all Improvements thereon, shall be conveyed in its "where is, as is" condition and without recourse. Declarant disclaims and makes no representations, warranties or other agreements, express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the conditions, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Common Area. No claim shall be made by the Association or any Owner relating to the condition, operation, or completeness of the Common Area or for incidental or consequential damages arising therefrom. Declarant will transfer and assign to the Association, without recourse, all warranties that it receives from manufacturers and suppliers relating to any of the Common Area that exist and are assignable.

4.3 Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in the By-Laws. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall constitute a lien upon the Lot of the violator;
- (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (c) suspending an Owner's right to vote in accordance with the terms of the Governing Documents;

(d) suspending any Person's right to use any recreational and social facilities within the Common Area and any part of the Exclusive Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; and

(e) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any Occupant of a Lot violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such Occupant and/or the Owner of the Lot that the violator is occupying or visiting. If a fine is imposed, the fine may first be assessed against the Occupant; provided however, if the Occupant does not pay the fine within the period set by the Board, the Owner shall pay the fine upon notice from the Board.

In addition, the Board, or the covenants committee, if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments or other charges, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, the removal of signs that are in violation of sign standards and restrictions, or the correction of any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy Specific Assessments to cover all costs incurred in exercising self-help and in bringing a Lot into compliance with the terms of the Governing Documents in accordance with Section 8.5(c). The Association may also elect to enforce any provisions of the Governing Documents by suit at law to recover monetary damages or in equity to enjoin any violation or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover, to the maximum extent permissible, all costs, including, without limitation, all Legal Costs incurred in such action, regardless of whether suit is filed and including any appeals.

The Association's decision to exercise its enforcement rights in any particular case shall be made in the Board's sole and absolute discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (a) the Association's position is not sufficiently persuasive to justify taking any or further action; (b) the covenant, restriction, or rule to be enforced is, or is likely to be construed as, inconsistent with applicable law; (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (d) it is not in the Association's best interests, considering, among other things, hardship, expense, or other reasonable criteria, to pursue enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or stop the Association from enforcing any other covenant, restriction or rule.

The Association may, but is not required to, by contract or other agreement, enforce county, city, state and federal laws, ordinances, rules, and regulations, if applicable, and permit local and other governments to enforce laws, ordinances, rules, and regulations on the Properties for the benefit of the Association and its Members.

4.4 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably

necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by applicable law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests. During the Development Period, the Declarant may designate sites within the Properties for fire, police, and utility facilities, public or private schools, parks, roads, streets, and other public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

4.6 Conveyance or Dedication of Common Area and/or Roads. The Association, or the Declarant during the Development Period, may dedicate or convey portions of or dedicate easements across any Common Area and/or roads within Terraces at Midland to the City or Hamilton County, Indiana, or to any other local, state, or federal governmental or quasi-governmental entity without obtaining any membership approval. Any dedication of roadways or other property shall be made free and clear of all encumbrances, including but not limited to, this Declaration unless otherwise agreed to by the governmental or quasi-governmental entity. Notwithstanding the foregoing, each Owner, on behalf of itself and its Occupants agrees to comply with any and all use restrictions, rules, covenants, and restrictions established pursuant to the Governing Documents, including but not limited to provisions regarding vehicles, parking, street vending, and use of any dedicated roadways and other property.

4.7 Indemnification. The Association shall indemnify every officer, director, Terraces ARB member and committee member against all damages, liabilities, and expenses, including all Legal Costs, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, Terraces ARB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Indiana law.

The officers, directors, Terraces ARB members and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, willful misconduct, or bad faith. The officers, directors, Terraces ARB members, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, Terraces ARB members or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, Terraces ARB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, Terraces ARB member or committee member may be entitled.

The Association shall also indemnify and forever hold harmless the Declarant to the extent that any officer, director or employee of the Declarant serves as an officer, director or committee member of the Association and the Declarant incurs any damages or expenses, including Legal Costs, in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding) by reason of having its officers, directors or employees serve as officers, directors, or committee members of the Association, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles, and Indiana law. This right to indemnification shall not be exclusive of any other rights to which the Declarant may be entitled.

The Association shall, as a Common Expense, maintain adequate general liability and directors and officers liability insurance to fund this obligation, if such insurance is reasonably available.

4.8 Grant of Easements on Common Area. The Association, or the Declarant during the Development Period, may dedicate or grant easements across portions of the Common Area to the City, Hamilton County, Indiana, or to any other local, state, or federal governmental or quasi-governmental entity, or to any public or private utility company, without membership approval.

4.9 Security and Safety. Each Owner and Occupant of a Lot shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security or safety within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security, safety or ineffectiveness of security or safety measures undertaken. No representation or warranty is made that any security or safety system or measure, even if installed, established, or approved by the Terraces ARB or the Association, cannot be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the service, detection or protection for which the system is designed or intended. No representation or warranty is made that the lighting facilities or systems (including the placement thereof) will adequately illuminate or capture or attempt to adequately illuminate or capture all of the Common Areas, or that such facilities or systems will be designed with safety measures in mind. Each Owner acknowledges, understands and covenants to inform its Occupants of its Lot that the Master Association, the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers or guarantors of safety and security within the Properties and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties. Any costs incurred by the Association to provide such services shall be paid by the Association and shall be charged either to all Lots, as a General Assessment or a Special Assessment, or only to those certain Lots benefited thereby, as a Specific Assessment, as determined by the Board in its sole and absolute discretion. The operation of cameras or recording devices of any kind within the Properties shall be subject to the terms of Sections 9.6(k) and 10.26, but each Owner acknowledges and agrees that the approval of cameras or recording devices or any other similar item by the Terraces ARB, the Association or otherwise shall not be deemed an endorsement of the effectiveness of such measures to address security at the Properties and that neither the Terraces ARB, the Declarant, the Association, or the Board of Directors shall be responsible for any security issues that may arise after the denial of a request to install a camera, recording device, or other similar item.

4.10 Utility Lines. Each Owner, on behalf of such Owner and the Occupants of such Owner's Lot, acknowledges that neither the Association, the Board, Declarant, nor any predecessor or affiliate of the Declarant shall in any way be considered insurers or guarantors of health or safety within Terraces at Midland and neither the Association, the Board, Declarant, nor any predecessor or affiliate of the Declarant shall be held liable for any and all losses, claims, damages (compensatory, consequential, punitive or otherwise), injuries or deaths, or expenses of whatever nature or kind, including, without limitation, Legal Costs caused by or related to the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, in, or on Terraces at Midland. Each Owner and Occupant assumes all such risks arising from the presence of utility lines, utility sub-stations or other utility facilities and further acknowledges that neither the Association, Declarant, nor any predecessor or affiliate of the Declarant have made any representations or warranties, nor has any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

4.11 Sidewalks and Trails. The Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within Terraces at Midland, including Common Areas, to



be used as recreational bike and pedestrian pathways and trails ("trail system"). Use of any trail system shall be subject to reasonable rules and regulations of the Association. Portions of any trail system may be designated as Exclusive Common Area pursuant to Section 2.3. No motorized vehicles shall be permitted to use the trail system. Each Owner acknowledges, understands and covenants to inform the Occupants of such Owner's Lot, that the Properties may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership and use of Lots adjacent to such trail system resulting from the use of the trail system by the Declarant, the Association, its Members, their Occupants and the public.

4.12 Access by General Public. Certain facilities and areas within the Properties may be open for use and enjoyment of the public, whether by operation of law or by designation as provided in this Section. Such facilities and areas may include, by way of example, greenbelts, trails and paths, roads, sidewalks, medians, parks, and other neighborhood spots conducive to gathering and interaction. The Declarant may designate such facilities and areas as open to the public during the Development Period, or the Board may so designate at any time thereafter. Use of such facilities and areas shall be subject to the reasonable rules and regulations of the Association. Each Owner acknowledges, understands and covenants to inform the Occupants of such Owner's Lot, that the Properties may contain such public areas and that there may be certain inconveniences and loss of privacy associated with the ownership of Lots near or adjacent to such public areas resulting from the use of public areas by the Declarant, the Association, its Members, their tenants, Occupants, guests and invitees and the public.

4.13 Relationship with Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area or convey portions of the Common Area, to non-profit, tax-exempt organizations for the benefit of the Properties and/or Terraces at Midland. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.14 Future Development. Each Owner acknowledges, understands and covenants to inform all Occupants of its Lot that the Properties and areas adjacent to the Properties are subject to further development and expansion, and therefore, there may be certain inconveniences during any period of construction. Each Owner, on behalf of such Owner and the Occupants of such Owner's Lot, waives all claims with respect thereto. Each Owner acknowledges and agrees that if Owner or Owner's Occupants enter onto any area of construction, they do so at their own risk, and that the Declarant, the Association, and their respective contractors, agents or employees shall not be liable for any damage, loss or injury to such Persons.

Notwithstanding anything contained in any written letter, document or materials, or oral statement received by any Owner, each Owner acknowledges and agrees that the present plans and themes for the development of Terraces at Midland may change and that such Owner has not relied on any representation, warranty, or assurance by any Person (a) that any Lots, or other property or facilities, will be added, modified, or eliminated within the Properties; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to the current or future: (i) design, construction, completion, development, use, benefits, or value of property within Terraces at Midland; (ii) number, types, sizes, prices, or designs of any residential or non-residential Improvements built or to be built in any part of Terraces at Midland; or (iii) use or development of any property adjacent to or within the vicinity of Terraces at Midland.

4.15 Provision of Services. The Association may provide or contract for services and facilities for the Members of the Association and their Occupants. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including the Declarant and Declarant-Related Entities, to provide such services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, garbage collection, recycling collection, bike-sharing services, car-sharing services, pest control service, cable, digital, satellite or similar television service, internet, intranet, data and other computer related services, security, caretaker, food delivery, mobile services, consumer delivery services, fire protection, utilities, and similar services and facilities.

The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association shall be further permitted to require Owners to utilize services delivered by a provider designated by the Association. The Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. Any Association contract for services or facilities may require Owners to execute separate agreements directly with the Persons providing such services or facilities in order to gain access to or obtain specified services or facilities. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or Occupant of a Lot, may result in termination of such benefits to the Owner's Lot. Any such termination and any failure or refusal to participate shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service or facilities that are assessed against the Lot as a Common Expense.

The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

4.16 Community Interaction. The Association may provide or contract for services and facilities. The Association may make use of computers, the internet, virtual reality, augmented reality applications, digital data sourcing and information, and expanding technology to facilitate interaction and encourage participation in Association activities. For example, the Association may sponsor a Terraces at Midland cable television channel, create and maintain a community intranet or internet home page, establish a social media group, create a group chat or group texting system, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and Occupants to interact and participate in Association-sponsored activities. The Association, however, shall not be responsible in any way for the content shared by those other than authorized representatives of the Association in any such communication mediums. To the extent Indiana law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices electronically, hold interactive web conferencing Board or Association meetings permitting attendance and voting by electronic means, and electronically send and collect assessments and other invoices.

The Association may promote community engagement by encouraging and facilitating the organization of volunteer organizations within Terraces at Midland. The Association also may cooperate with and support outside organizations, such as recreational leagues or cultural organizations, by making facilities available for the organization's use or sponsoring the organization's activities.

The Association, in its sole and absolute discretion, may establish or support the establishment of common interest groups, including, without limitation, social media groups, group chats or group texting services to encourage or facilitate the gathering of people to pursue common interests. The Association, however, shall not be responsible in any way for the content shared by those other than authorized

representatives of the Association in such communication mediums. A charter shall confer privileges and impose responsibilities on the group and its members. For example, the Association may grant privileges including financial support, material support, administrative and technical support, and liability insurance coverage.

The Association may grant charters to any group of individuals who share a particular field of interest. Any Owner or Occupant may submit a written request to the Association for a charter. In its sole and absolute discretion, the Association may grant or deny such request. The Association may fund the group as a Common Expense and/or require that group members pay use or consumption fees for materials, facilities use, or other group expenses.

The Association may use computer bulletin boards, social media applications, websites, and publications to assist common interest groups and other community groups, religious groups, civic groups, youth organizations, and support groups in publicizing meetings, events, and the need for volunteer assistance. However, the Association may not fund the specific advertising or promotion of a group's events, unless the Association, in its sole and absolute discretion, determines that such events or organizations benefit the entire community.

4.17 Rezoning. No Owner or any other Person may apply or join in an application to amend, vary or modify or seek relief from the Zoning Ordinance applicable to all or any portion of the Properties or rezone or apply for any zoning variance or waiver as to all or any portion of the Properties without the prior written consent of Declarant, which may be given or withheld at Declarant's sole and absolute discretion. Declarant or the Association (as applicable) may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the party pursuing the unapproved rezoning, in addition to and not in limitation of Declarant's or the Association's other rights and remedies set forth in the Governing Documents. Declarant and/or Declarant-Related Entities may apply for such rezoning at any time.

4.18 Use of Lakes, Ponds, and Other Bodies of Water. The Properties are intended to consist of a series of passive aesthetic ponds and other bodies of water as depicted on the subdivision plat that shall be Common Area. Notwithstanding the foregoing, neither the Association, the original Declarant, nor any successor Declarant shall be held liable for any loss or damage by reason of any permitted or prohibited use of any lake, pond, or other body of water for any purpose by Owners or Occupants. Each Owner acknowledges, understands and covenants to inform all Occupants of its Lot that the Association, its Board of Directors, Terraces ARB and committees, Declarant, and any successor Declarant are not insurers and that each Person using any lake, pond, or other body of water shall do so only in accordance with the restrictions set forth in Article 10, any rules and regulations adopted by the Board and applicable governmental laws, ordinances, rules and regulations. Each Person assumes all risks of personal injury, and loss or damage to property, including Lots, resulting from or associated with use of any lake, pond, or other body of water. Each Owner on behalf of itself and its Occupants acknowledges that lakes, ponds, and other water bodies in the Properties may be designed as water management areas and are not necessarily designed as recreation or aesthetic features. Due to fluctuations in ground water elevations within the immediate area, the water level of lakes and waterways will rise and fall. Neither the Declarant nor the Association has control over such water elevations, shore features or treatments, landscaping or any other matters related to water features in the Properties. In addition, the Association shall not be responsible for maintaining, increasing or decreasing the water level within any other water body or removing vegetation from any other water body.

4.19 Presence and Management of Wildlife. Each Owner and Occupant acknowledges that the Properties are located adjacent to and in the vicinity of wetlands, ponds, agricultural areas, and other natural areas. Such areas may contain wildlife, including without limitation, deer, opossums, wild turkeys,

raccoons, skunks, and snakes. Neither the Association, the Board, the original Declarant, nor any successor Declarant shall have any duty to take action to control, remove or eradicate any wildlife in the Properties nor shall they be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner and Occupant of a Lot shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the original Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to engage in wildlife management plans and practices on the Properties to the extent that such practices are permitted by applicable state and federal law. For the purpose of illustration and not limitation, this includes the right to manage and control any populations of white-tailed deer, raccoons, and other wildlife through a variety of techniques, including trapping, relocating, sterilization, and habitat manipulation. Declarant may, in its sole and absolute discretion, commission environmental studies and reports relating to the Properties and the wildlife habitats located thereon and may elect to follow or disregard any recommendations resulting from such studies. The Declarant may assign these management rights to the Association, in which event the expenses of such activities shall be funded by General Assessments.

4.20 Municipal Services. The Association may, but is not obligated to, contribute funds to the City or other applicable governmental authorities, for the purpose of increasing the applicable authority's capacity to provide municipal services, including, without limitation, enhanced infrastructure Improvements (i.e., curbing, alternative paving surfaces, road and street improvements, traffic control devices, street and directional signage, etc.), and police and fire protection services, within Terraces at Midland. The Association may also enter into agreements with the City or other applicable governmental authorities for the purpose of maintaining or contributing to the costs of maintaining any roads, related drainage easements, ponds, and sidewalks within Terraces at Midland.

4.21 Governmental Permits. To the extent permitted by law, Declarant shall have the right in its sole and absolute discretion to assign, delegate, and/or otherwise transfer to the Association any of its continuing obligations and/or responsibilities under governmental permits and approvals with respect to the Properties, including, without limitation, its continuing obligations under any permit. The Association shall accept and assume such obligations and responsibilities without condition or consideration. Such assignment, delegation, or transfer and assumption shall be effective without the consent of, or any further action by the Association, but upon Declarant's request, the Association shall promptly execute any documents that Declarant requests to evidence the assignment, delegation, or transfer and assumption of such obligations and/or responsibilities. The Association shall comply in all respects with the terms of, and shall not undertake any activity inconsistent with, such permits and approvals. The Association shall indemnify, defend and hold Declarant harmless from and against any claims or losses arising out of the violation or failure to comply with any permit(s), or out of the operation, maintenance or use of any improvement or facility authorized by the permit(s), provided such claim or loss first occurs after the effective date of the assignment, delegation, transfer (or tender of the assignment, delegation, or transfer, if wrongfully refused by an Association).

4.22 Cooperation with Master Association and Other Associations. The Association may contract or cooperate with the Master Association or any other property or homeowners associations or entities within Midland as convenient or necessary to provide services and privileges, such as access to recreational facilities in Midland, and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, guests, tenants and invitees. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense if for the

benefit of all Owners or shall be a Specific Assessment if for the benefit of one or more but less than all Owners.

The Master Association shall have the authority to veto any action taken or contemplated to be taken by the Association which the board of directors of the Master Association reasonably determines to be adverse to the interests of the Master Association or its members or inconsistent with the community-wide standard of the Master Association. The Master Association shall also have the authority require specific action to be taken by the Association in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Master Association may require specific maintenance or repairs of aesthetic changes to be effectuated by the Association, may require that a proposed budget include certain items and that expenditures be made therefor, and may veto or cancel any contract providing for maintenance, repair or replacement of any portion of the Properties.

The Master Association shall give the Association written notice of any action required pursuant to the foregoing paragraph to be taken by the Association. Such action shall be taken within the time frame set in such written notice. If the Association fails to comply with the requirements set forth in the notice, the Master Association shall have the right to effect such action on behalf of the Association and shall assess Owners for their pro rata share of any expenses incurred in connection with the foregoing in the manner provided in Article 8 of the Master Declaration. Such assessments may be collected as a specific assessment thereunder and shall be subject to all lien rights provided for therein.

## **ARTICLE 5: MAINTENANCE**

### **5.1     Association's Responsibility.**

(a)     The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which may include, but need not be limited to:

- (i)     all Common Area;
- (ii)    all landscaping and other flora, parks, lakes, ponds, structures, and Improvements, including any entry features, Private Streets, parking areas, sidewalks, bike and pedestrian pathways and trails situated upon the Common Area;
- (iii)   all furnishings, equipment and other personal property of the Association;
- (iv)    any landscaping and other flora, parks, bike and pedestrian pathways and trails, greenbelts, sidewalks, grass areas within road rights-of-way adjacent to Common Areas, buffers (including, by way of example and not limitation, the buffer areas between the ponds and the boundaries of the Lots adjacent to the ponds and buffer non-disturbance areas located where existing pipelines traverse the Properties), entry features, structures and Improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;
- (v)     such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, Zoning Ordinance, or any contract or agreement for maintenance thereof entered into by the Association;

(vi) all streetlights, cameras, directional and other signage, and street trees located in any right-of-way immediately adjacent to the Owner's Lot. In the event that a street tree within a right-of-way is diseased, significantly damaged or destroyed or in the event a streetlight becomes damaged, the Association shall be responsible for the installation of a replacement tree or light, as applicable, of the same variety that meets the minimum caliper as established by the Terraces ARB, if any;

(vii) all ponds, lakes, streams and/or wetlands located within the Properties that serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith; and

(viii) any property and facilities owned by the Declarant or a Declarant-Related Entity and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

(b) The Area of Common Responsibility shall also include certain portions of the townhomes built upon the Lots and the improvements thereon, including the following:

(i) Routine exterior maintenance of all dwellings including, but not limited to, painting, repairing for routine issues (but not for damage or casualty covered by Owner's insurance as required pursuant to Section 6.2 below), replacing (at the end of useful life but not in the event of damage or destruction) and caring for the following:

(1) Roof shingles only (but not the roof joists and trusses, crossbeams, roof decking and underlaying);

(2) gutters and downspouts;

(3) exterior walls and surfaces, including the brick, siding or other building material forming the exterior walls of any dwelling and/or garage (but not including the wood, drywall, plaster or other building material located behind the exterior covering of the dwelling or on the inside of any dwelling or garage, and not including foundations and footings below any dwelling or garage);

(4) exterior stoops, landings, railings and steps; and

(5) projecting cornices and copings;

(ii) All walkways, parking pads, driveways and other paved areas (but excluding garage floors);

(iii) All mailboxes serving Lots, as located in mailbox banks situated on easements over certain Lots as further detailed in Section 9.6(i) and Section 11.14(c)(vi) of this Declaration;

(iv) The sprinkler and irrigation system serving the Lot (with each Owner acknowledging and agreeing that (i) Owner shall comply with all rules, regulations and protocols established by the Association with respect to operation and use of the sprinkler system; and (ii) the Association shall have the right to enter the Lot to operate, maintain, and suspend operation of the sprinkler system (including, without limitation, annual opening and winterizing of the sprinkler system) and with

each Owner agreeing that the operational valves and apparatus of each sprinkler system shall be accessible to the Association at all times and that each Owner shall be responsible for all water usage and other utility billing associated with water utilized by the sprinkler system);

(v) All exterior surfaces of exterior party walls, retaining walls and fences, including any gates serving a Lot, that were constructed or installed by Declarant;

(vi) The storm drainage system located on the Lots; provided however that maintenance of that portion of the storm drainage system located within any screened or fenced area shall be the responsibility of the Owner; and

(vii) The fence, screen, landscaping and other flora within the front, side or rear yards of each Lot, exclusive of any landscaping or other flora located within the fenced or screened portion of the yard. (Maintenance of any item within the fenced or screened portion of the yard shall be the Owner's responsibility).

The Association's obligations pursuant to this subsection (b) shall commence as to each Lot on the later of (i) the date on which the Association is notified in writing that a certificate of occupancy has been issued for a dwelling on such Lot or (ii) the date on which such Lot has been conveyed to a Person other than Declarant.

(c) Declarant may establish specific minimum standards for the maintenance, operation and use of any Area of Common Responsibility in the Governing Documents and/or in the deed or other instrument transferring the property to the Association. Such standards shall become part of the Community-Wide Standard. These standards may contain general provisions applicable to all of the Area of Common Responsibility, as well as specific provisions that vary from one portion of the Area of Common Responsibility to another depending upon the nature of any Improvements located thereon, intended use, location, and/or unique characteristics.

(d) The Association may, as a Common Expense, maintain other property and Improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(e) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole and absolute discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of the Class "A" votes in the Association and during the Development Period the Declarant agree in writing to discontinue such operation.

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner (including items covered by Owner's insurance procured pursuant to Section 6.2 below) or Master Association; or (ii) such property is dedicated to any local, state, or federal governmental or quasi-governmental entity; provided however, that in connection with any such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(f) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Specific Assessment against the particular Lots to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

(g) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant or the Master Association may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2 Owner's Responsibility. Each Owner shall maintain its Lot and all Improvements located thereon, including without limitation, all structures (including, without limitation, foundation, footings, glass surfaces [including without limitations, windows], roof joists and trusses, crossbeams, roof decking and underlayment, any water intrusion into the dwelling or garage, terminate treatment, HVAC units, patios, all areas of the Lot enclosed by any fence or gate, and other Improvements on the Lot in a manner consistent with the Community-Wide Standard, the Master Plan, and all Governing Documents, including, without limitation, the Zoning Ordinance, unless such maintenance responsibility is otherwise specifically assumed by or assigned to the Association. In addition to any other enforcement rights, if an Owner fails properly to perform its maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment in accordance with Section 8.5(c). The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency. Entry by the Association or its designee under this Section shall not constitute a trespass.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents, including, without limitation, the Zoning Ordinance. Neither the Association or any Owner shall be liable for any damage or injury occurring on or arising out of the condition of property that such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4 Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two (2) adjoining Lots shall constitute a party structure. For purposes of this Section, any fence that serves to enclose only one Lot or which is otherwise installed at the option of the Owner of the Lot shall not be deemed a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to party walls and similar structures. Any dispute arising concerning a party structure shall be handled



in accordance with Section 14.6. Installation of cameras on any exterior shared party walls is permitted so long as installation occurs only on the Owner's side of the shared wall and nothing about the mount projects beyond the boundary of the Owner's Lot; additionally, no camera on a party wall shall capture any images other than that of Owner's Lot and not of any other property.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

5.5 Cost Sharing Agreements. Within or adjacent to or in the vicinity of Terraces at Midland, there may be certain residential, nonresidential or recreational areas, including, without limitation, single family and multifamily residential developments, retail, commercial, or business areas that are not subject to this Declaration and that are neither Lots nor Common Area as defined in this Declaration.

The Association may enter into one or more Cost Sharing Agreements with the Master Association, other associations or owners of adjacent properties:

(a) to permit use of any recreational and other facilities located on the Common Areas by the owners or operators of such properties and their designees;

(b) to obligate the owners or operators of such properties to perform and/or to share in certain costs associated with, the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners or operators of such properties and the owners within the Properties;

(c) to permit use of any recreational and other facilities located on such properties by the Owners of all Lots;

(d) to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such properties, if any, which are used by or benefit jointly the owners or operators of such properties and the owners within the Properties; and/or

(e) to establish rules and regulations regarding the use of areas that benefit jointly the owners or operators of such properties and the owners within the Properties.

The owners or operators of such properties shall be subject to assessment by the Association only in accordance with the provisions of such Cost Sharing Agreement(s). If the Association is obligated to share costs incurred by the owners of such properties, such payments by the Association shall be deemed to constitute Common Expenses of the Association unless the Cost Sharing Agreement provides otherwise. The owners or operators of the properties or the Master Association or other associations shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

In addition to the foregoing, there may be certain roads, related drainage easements, and sidewalks within Terraces at Midland that have been or will be dedicated or conveyed to the City or other applicable governmental authorities. In the event that any road, related drainage easement, or sidewalk has been or shall be dedicated or conveyed to the City or other applicable governmental authority, the Association may also enter into one or more Cost Sharing Agreements with the City or other applicable governmental authorities for the purpose of maintaining or contributing to the cost of maintaining such roads, related drainage easements, and sidewalks within Terraces at Midland.

## **ARTICLE 6: INSURANCE AND CASUALTY LOSSES**

### **6.1     Association Insurance.**

(a)     Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i)     property insurance on any improvements within the Area of Common Responsibility that are not part of the dwellings on the Lots (which are to be insured by Owner pursuant to Section 6.2 below). An example of such improvements would be the mailbox banks described in this Declaration and any other improvements within the Area of Common Responsibility constructed by the Association;

(ii)    commercial general liability insurance on all public ways located within the Properties and on all Areas of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least two million dollars (\$2,000,000.00) per occurrence with respect to bodily injury, personal injury, death, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii)   insurance coverages as may be required by the Master Documents;

(iv)    workers compensation insurance and employers liability insurance, if and to the extent required by law;

(v)     directors and officers liability coverage;

(vi)    fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vii)   such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") or any successor entity as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in

the amount of one hundred percent (100%) of current "replacement cost" of all affected Improvements and other insurable property or the maximum limit of coverage available, whichever is less.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment. In the event of an insured loss, the deductible shall be treated as a Common Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss resulted from the negligence or willful misconduct of one or more Owners or Occupants, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.5.

The Association shall have no insurance responsibility for any portion of the other properties.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the Westfield, Indiana, area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon written request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

(i) All insurance coverage obtained by the Board shall:

(1) be written with a company authorized to do business in the State of Indiana which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(2) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(3) not be brought into contribution with insurance purchased by Owners, Occupants, or their Mortgagees;

(4) contain an inflation guard endorsement;

(5) include an agreed amount endorsement, if the policy contains a co-insurance clause; and

(6) include an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

(ii) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(1) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and Occupants, their servants, and agents;

(2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(4) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(5) that each Owner is an insured person with respect to liability arising out of such Owner's status as a Member;

(6) a cross-liability provision; and

(7) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. In the event of any insured loss covered by insurance held by the Association, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition existing prior to the damage, allowing for changes or Improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and during the Development Period, the Declarant decide within sixty (60) Days after the loss either (i) not to repair or reconstruct or (ii) to construct alternative Improvements.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative Improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2 Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry liability and property insurance for the full replacement cost of all insurable Improvements on its Lot, less a reasonable deductible. This shall include blanket property insurance on all components of the Lot and the Improvements thereon, as well as all buildings and structures within the Lot, including, but not limited to, all portions of the Lot, regardless of maintenance responsibility: fixtures, improvements, alterations and appliances that are part of the building or structure and installed during original construction of the Lot, such as those used for heating/cooling, ventilating, cooking, dishwashing or security and the sprinkler and irrigation system. Notwithstanding the Association's maintenance responsibilities in Article 5 and elsewhere in this Declaration, the Association shall not be responsible for obtaining any insurance coverage on behalf of Owners for any portion of the Improvements on the Lot. Additionally, nothing in this Section 6.2 shall alter in any way any obligations any Owner may have to its Mortgagee.

Each Owner further covenants and agrees that, in the event of damage to or destruction of the Improvements, structures or landscaping on or comprising its Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner the damaged Improvement, structure or landscaping consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9 below. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that are not covered by insurance proceeds. Owner's insurance shall be the primary insurance to cover any casualty, damage, or construction to the Improvements on Owner's Lot notwithstanding whether any portion of the Improvements on the Owner's Lot is maintained by the Association as part of the Area of Common Responsibility in Article 5 above.

6.3 Limitation of Liability. Notwithstanding the duty of the Association to maintain and repair portions of the Common Area, neither the Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including the management company, if any) of any of them shall be liable to any Member or any Occupant or their agents, servants, contractors or lessees for any injury or damage sustained in the Area of Common Responsibility, the Common Area or other area maintained by the Association, or for any injury or damage caused by the negligence or misconduct of any Members, Occupants or any of their agents, servants, contractors or lessees, whether such loss occurs in the Common Area or in individual Lots.

Each Owner, by virtue of the acceptance of title to its Lot, and each other Person having an interest in or right to use any portion of the Properties, by virtue of accepting such interest or right to use, shall be bound by this Section and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed under this Section.

## **ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY**

7.1 Annexation by Declarant. Until twenty (20) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of the Members but shall require the consent of the owner of such property to be annexed, if other than Declarant.

Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Declarant intends to develop the Properties in accordance with the Master Plan but reserves the right to modify the Master Plan and any plat or any portion of the Properties from time to time in its sole and absolute discretion and at its option. Declarant shall not be required to follow any predetermined order of improvement and development within the Master Plan or Properties, and it may annex Additional Property and develop it before completing the development of the Properties. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2 Annexation by Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of the Members representing a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the property being annexed, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein. No property shall be subjected to this Declaration unless, simultaneously therewith or prior thereto, such property is subjected to the Master Declaration.

7.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall execute a written consent to such withdrawal, with such consent by the Association deemed to be given upon the filing of a Supplemental Declaration in the Public Records.

7.4 Amendment. Notwithstanding anything to the contrary contained in this Declaration, this Article shall not be amended during the Development Period without the prior written consent of Declarant (except that only with respect to amendments by Members pursuant to Section 14.2(c) below, the prior written consent of the Declarant shall be required until the occurrence of one of the three (3) events set forth in Section 14.2(c) below).

## **ARTICLE 8: ASSESSMENTS**

8.1 Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four (4) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.4; and (c) Specific Assessments as described in Section 8.5. Each Owner, by accepting a Deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and Legal Costs, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in Section 8.6. Each such assessment or charge, together with interest, late charges, costs, and Legal Costs, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments that accrued prior to such acquisition of title.

The Association shall furnish, upon request, to any Owner liable for any type of assessment a written statement signed by an Association officer or designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments, including, without limitation, quarterly or monthly. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first Day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on its Lot, the Board may require any unpaid installments of all outstanding assessments be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) Day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment or leasing of such Owner's Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any other action taken by the Association or Board.

The Association is specifically authorized to fully or partially exempt certain Lots from liability for and payment of assessments based on the Owner of and/or use of such Lots or portions thereof as the Board may from time to time determine in its sole and absolute discretion; provided, however, that such exemption shall be granted only to property that is owned by a charitable corporation, nonprofit corporation, quasi-governmental authority or public agency.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses, provided, however, that the fair market value of the "in kind" contribution of services, materials, or a combination of services and materials provided is of equal or greater value than the share of Common Expenses deemed satisfied by such contribution.

8.2 Computation of General Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.3, which may result in a Reserve Assessment as defined in Section 8.3 and referenced in Section 8.4 below.

General Assessments shall be levied equally against all Lots subject to assessment pursuant to Section 8.7 below and shall be set at a level that is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves.

In determining the level of General Assessments, the Board, in its sole and absolute discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any

assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year, and any income or expense expected to be generated from any Cost Sharing Agreement.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any fiscal year under no circumstances shall obligate the Declarant to continue such payments in future fiscal years unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year as well as of the amount of the proposed increase in decrease in the General Assessment compared to the prior year to each Owner at least thirty (30) Days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective upon approval of an annual or special meeting of the Members by Members representing a Majority vote of the Association in favor of the budget.

Assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is approved at such meeting.

If the proposed budget is not approved at a meeting for any reason, the budget in effect for the immediately preceding year shall continue for the current year, provided, however, that the Board may adopt an annual budget for the Association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the last approved annual budget.

8.3 Reserve Budget. The Board may, in its sole and absolute discretion, prepare reserve budgets annually that take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general budgets reserve amounts sufficient to meet the projected needs of the Association. The Board shall also have the right when preparing the general budget to prepare a separate reserve budget and levy a special reserve assessment (the "**Reserve Assessment**") as a type of Special Assessment as set forth in Section 8.4 below.

8.4 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted or budgeted reserve assessments in addition to the general budget as determined by the Board pursuant to Section 8.3 and this Section 8.4. The Association also may levy a Reserve Assessment annually as a type of Special Assessment as part of preparation of a reserve budget as set forth in Section 8.3 above. Any such Special Assessment may be levied against all Lots, if such Special Assessment is for Common Expenses. Special Assessments shall be allocated equally among all Lots subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting by the Members representing at least sixty-seven percent (67%) of the total Class "A" votes allocated to Lots that will be subject to such Special Assessment and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the



Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or Occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and Occupants (which might include, without limitation, landscape maintenance, garbage collection, pest control service, cable, digital, satellite, and similar services, internet, intranet, data and other computer-related services, street cleaning, waste collection, recycling collection, bike-sharing and car-sharing services, security, caretaker, fire protection, utilities, and similar services and facilities), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one or more Lots; and/or

(c) to cover all costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot.

Fines levied by the Association pursuant to Section 4.3 and shall constitute a Specific Assessment.

8.6 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of Indiana law), late charges in such amount as the Board may establish (subject to the limitations of Indiana law), costs of collection and Legal Costs. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies that by law would be superior, (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, or (c) the lien of the Master Association for delinquent assessments or other charges due under the Master Documents. Such lien may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

The Declarant, Declarant-Related Entity or the Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Lot owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall remain the personal obligation of the owner of the Lot prior to the foreclosure, and, unless and until collected from such prior owner, shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.7, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.7 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the later to occur of: (i) the month that the Board first determines a budget and levies assessments pursuant to this Article, or (ii) the date on which the Lot is conveyed to a Person other than the Declarant or a Declarant-Related Entity, except that, notwithstanding the foregoing, the obligation shall not commence as to Lots conveyed from the Declarant or a Declarant-Related Entity to a Builder until the first to occur of (a) the date the Builder conveys the Lot to another Person or (b) twelve (12) months after the date of conveyance to the Builder, except that the Association may grant a longer period than twelve (12) months for Lots that contain model homes or that are used as temporary parking areas. Once assessments have commenced upon any Lot, the obligation to pay assessments with respect to such Lot shall not be suspended or terminated unless the Lot is reacquired by Declarant or a Declarant-Related Entity, except as otherwise provided herein. The first annual General Assessment levied on each Lot shall be adjusted according to the number of Days remaining in the fiscal year at the time assessments commence on the Lot and shall be due and payable at closing.

8.8 Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as paid during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.9 Exempt Property. The following property shall be exempt from payment of General Assessments and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant or a Declarant-Related Entity as are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) Any property that is owned by a charitable nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of open space for public benefit and held by such agency or organization for recreational and open space purposes; and

(c) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public utility unless otherwise specified by Declarant in a Supplemental Declaration applicable to such property.

In addition, any property that is owned by a quasi-governmental authority or public agency may be exempted from such assessments in Declarant's sole and absolute discretion in a Supplemental Declaration applicable to such property.

With the exception of the property described in subsection (d) above, and unless a Supplemental Declaration applicable to such property otherwise provides, the owner of any property that is exempt from the payment of assessments shall make open spaces and recreational areas on such property available for use by the Association, Owners of other Lots, and their invitees, as consideration for such exemption. Use and enjoyment of such open spaces and recreational areas shall be subject to reasonable rules and regulations adopted by the owner of such property, with the consent of the Board.

8.10 Master Association. Each Owner acknowledges that the assessments and other charges provided for herein are in addition to, and not in lieu of, the assessments and other charges provided for in the Master Documents. Assessments and all other charges of the Master Association shall be paid directly to the Master Association, and the Association shall not be responsible for collecting such amount on behalf of the Master Association. Notwithstanding the foregoing, at the option of the Board and with the written consent of the Master Association, the Board may direct that assessments provided for herein be paid at the same time and at the same place as the assessment for the Master Association.

8.11 Contributions by Declarant. In accordance with Section 8.2, the Declarant may support the Association by funding operating deficits during the Development Period. At the sole election of Declarant, Declarant may recoup from the Association all such payments, which amounts may be paid from the operating account of the Association, or from the working capital contributions collected at the sale of Lots, but not from capital reserves. Regardless of whether the Declarant recoups any other deficit amounts, it is not the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by other Owners. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget of the Association, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, Declarant shall be reimbursed for all amounts paid by Declarant in the funding of deficits caused by the nonpayment of assessments by Owners which, if not sooner paid, shall be paid to Declarant at the time the unpaid assessment is collected. In addition, if not sooner paid, Declarant shall be reimbursed for any refundable deposit upon the Association's receipt of the same.

All deficits shall be collectible by Declarant at any time from the working capital contributions or from excess funds not designated for capital reserves. The Declarant shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by Declarant. The Board of Directors, specifically including members of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to evidence the repayment obligation of the Association; provided however, the failure to execute such a note shall in no way diminish such obligation.

## **ARTICLE 9: ARCHITECTURAL STANDARDS**

9.1 General. In addition to those requirements set forth in the Master Documents, no exterior structure or Improvement shall be placed, erected, installed, constructed, or altered upon, or removed from, any Lot or any other portion of the Properties except in compliance with the Governing Documents, including, without limitation, this Article 9 and the Zoning Ordinance, and with the prior written approval of the Terraces ARB, unless exempted from the application and approval requirements pursuant to Section 9.3(b). Owners must obtain such prior written approval from the Terraces ARB prior to submitting any application(s) for applicable permits and approvals to local, state, or federal governmental departments or agencies, which have jurisdiction over construction. All dwellings constructed on any portion of the Properties shall be built in accordance with the plans and specifications of a qualified building designer, unless otherwise approved by the Terraces ARB in its sole and absolute discretion.

This Article shall not apply to the activities of the Declarant or any Declarant-Related Entity or to Improvements to the Common Area by or on behalf of the Association. This Article may not be amended during the Development Period without the Declarant's written consent.

9.2 Architectural Review. Each Owner, by accepting a Deed or other instrument conveying any interest in any portion of the Properties acknowledges that, as the developer of the Properties, Declarant has a substantial interest in ensuring that all structures and Improvements within the Properties enhance

Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease any portion of Terraces at Midland. Therefore, in addition to the Terraces ARB pursuant to the Master Documents, the Declarant may, on its behalf, establish the Terraces ARB to be responsible for administration of the Design Guidelines and review of all applications for construction and modifications under this Article. The Terraces ARB shall consist of one or more Persons who may, but are not required to, be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Terraces ARB. The Terraces ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, landscape architects, engineers or other professionals that the Terraces ARB employs or with whom it contracts. The Board may include the compensation of such Persons in the Association's annual operating budget. In addition, the Terraces ARB may require the posting of deposits or bonds while construction is pending on any Lot to ensure completion of all work in compliance with plans approved by the Terraces ARB, in conformance with all Design Guidelines and the Zoning Ordinance, and without damage to the Properties.

The Terraces ARB shall have exclusive jurisdiction over all construction on any portion of the Properties. Until such time as the Declarant no longer has the right to appoint the members of the Master ARB pursuant to the terms of the Master Declaration, the Declarant retains the right to appoint all members of the Terraces ARB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the Terraces ARB, who shall thereafter serve and may be removed in the Board's discretion. Notwithstanding anything to the contrary contained herein, the Master ARB have the authority to review and disapprove any decision of the Board or the Terraces ARB.

### 9.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Properties in addition to the design standards that are set forth in the Zoning Ordinance. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions that vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to any lake, pond, stream or other body of water. By way of example and not limitation, the Design Guidelines may include specific restrictions applicable to Lots adjacent to ponds restricting fences to protect view sheds from the ponds, provisions that may but are in no way required to address the use of cameras, recording devices and/or other advances in technology over time such as augmented reality, virtual reality, artificial intelligence, digital footprint services, and/or digital data sourcing and information, and specific provisions that are needed or are desirable due to the terms of the easements set forth in this Declaration, such as, by way of example and not limitation, the easements in Section 11.14 hereof. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Terraces ARB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Terraces ARB and compliance with the Design Guidelines does not guarantee approval of any application.

The Terraces ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only. There shall be no limitation on the scope of amendments to the Design Guidelines except that no amendment shall require the modification or removal of any Improvement previously

approved once the approved construction or modification has commenced. The Terraces ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Terraces ARB shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and may charge a reasonable fee to cover reproduction costs. All structures shall be subject to restrictions in the Zoning Ordinance and on the All structures shall be subject to restrictions in the Zoning Ordinance and on the Plat, including, without limitation, the Building Setback Line (B.S.L.) and, if applicable, the Parkway Building Setback Line (P.B.S.L.) as shown on the Plat.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and Improvements shall be submitted to the Terraces ARB for review and approval or disapproval. In addition, information concerning irrigation systems, drainage, lighting, grading, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines and the Zoning Ordinance. In reviewing each submission, the Terraces ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations.

Each application to the Terraces ARB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the Terraces ARB, nor the distribution and review of the plans by the Terraces ARB shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the Terraces ARB shall hold the members of the Terraces ARB, the Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

In reviewing and acting upon any request for approval, the Terraces ARB shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The Terraces ARB shall have the sole and absolute discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed Improvements are consistent with Design Guidelines.

The Terraces ARB shall make a determination on each application after receipt of a completed application with all required information, materials and fees. If the Terraces ARB permits or requires an application to be submitted or considered in stages, a final decision shall not be required until after the final, required submission. The Terraces ARB may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. No approval shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Terraces ARB pursuant to Section 9.9.

In the event that the Terraces ARB fails to respond in writing to any application within thirty (30) Days after submission of all required information, materials and fees, the application shall be deemed denied.

Notwithstanding the above, the Terraces ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint or redecorate the interior of structures on its Lot without approval. However, modifications to the interior of screened

porches, patios, windows, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(c) Delinquent Assessments and Other Charges. Notwithstanding the provisions of subsection (b) above, any application for the approval of plans and specifications as set forth in this Article shall be deemed to be disapproved unless and until any and all delinquent assessments and other charges permitted by this Declaration have been paid current by the Owner submitting such plans and specifications for approval.

Subsequent to the approval of plans and specifications pursuant to this Article, if the Owner shall become delinquent in the payment of assessments or other charges permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in Section 9.11 and Section 4.3.

(d) Governmental Approvals. Approval under this Article shall be obtained prior to requesting any building or other permit or submitting any documentation to any governmental authority whose review or approval may be required for the proposed work, including, without limitation, any approval required by the Zoning Ordinance. The Declarant and the Association shall have the right and standing to take action to suspend or enjoin processing of any request for review or approval by a governmental authority submitted prior to any necessary approval being granted hereunder. Approval under this Article is not a substitute for any approvals or reviews required by the City or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters. Revisions or modifications required by governmental agencies that alter the design or appearance of Improvements shall require resubmittal of the plans to the Terraces ARB to ensure compliance with the Design Guidelines. There shall be no fee by the Terraces ARB for review of such submittals.

(e) Master Documents. The architectural review requirements set forth herein are in addition to, and not in lieu of, those requirements set forth in the Master Documents; provided, however, that to the extent that there is a conflict between any Design Guidelines promulgated hereunder and those promulgated pursuant to the Master Documents, the more restrictive Design Guidelines shall control.

9.4 Stop Work Orders. During special events, including but not limited to, educational, cultural, entertainment, promotional, charitable, sporting and other similar events, held, hosted or otherwise conducted within Terraces at Midland, including but not limited to the Properties, the Terraces ARB may, and upon request of the Declarant shall, issue "stop work" orders. "Stop work" orders may prohibit the commencement of or suspend the work on any architectural change, construction, addition, alteration, change, maintenance, repair, reconstruction or other work that is visible or audible from outside a Lot or that may cause an increase in traffic flow, from being performed by an Owner or Builder within the Properties. Any stop work order shall be set forth in writing, shall identify the Lot or Lots subject to the stop work order (if not applicable to all of the Properties), shall set forth the scope of the prohibited and suspended activities and shall specify the start and stop dates for such stop work order, which period of time shall not exceed seven (7) consecutive Days.

9.5 Architect, Builder and General Contractor Approval. In order to ensure that appropriate standards of construction are maintained throughout the Properties, all architects, Builders and general contractors must be approved by the Terraces ARB prior to engaging in any construction activities within the Properties. The Terraces ARB may implement an approval process utilizing established criteria and requiring the submission of a written application for approval. Approval of any plans may be withheld until such time as the Owner's architect, Builder or contractor has been approved by the Terraces ARB.

Approval of an architect, Builder or general contractor may be conditioned upon an agreement with the Terraces ARB to maintain certain insurance coverage required by the Terraces ARB, pay construction deposits to ensure completion of a project without damage to the Properties, and pay fees determined by the Terraces ARB, from time to time. Both the criteria and the application form are subject to change in the sole and absolute discretion of the Terraces ARB. Approval of architects, Builders and contractors may not be construed as a recommendation of a specific architect, Builder or contractor by the Terraces ARB or the Declarant, nor a guarantee or endorsement of the work of such architect, Builder or contractor. The criteria and requirements established by the Terraces ARB for approval of architects, Builders and contractors are solely for the Declarant's protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved architect, Builder, or contractor. Owner's selection of an architect, Builder, or contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such architect, Builder or contractor. Furthermore, Owner waives any and all claims and rights that Owner has or may have now or in the future, against the Terraces ARB or the Declarant with respect to the selection of or performance by such architect, Builder or contractor arising from or connected with approval or disapproval of architects, Builders or contractors.

9.6 Specific Guidelines and Restrictions. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of mailboxes (but with all mailboxes within the properties to be located within mailbox banks as further detailed in this Declaration); swing sets and sports and play equipment; clotheslines; cameras and other recording devices; garbage cans; wood piles; swimming pools, gazebos or playhouses; hot tubs; wells; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing and as further set forth in Section 9.6(f) below, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

In addition to the foregoing requirements, including those set forth in the Master Documents, the following items are strictly regulated, and the Terraces ARB shall have the right, in its sole and absolute discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless, expressly as to the prohibited or restricted item, approval or waiver in writing is obtained from the Terraces ARB. The Terraces ARB may, but is not required to, adopt additional specific guidelines as part of the Design Guidelines.

(a) Signs. No signs or displays of any kind shall be posted, erected, modified, maintained, held or displayed by or on behalf of an Owner or Occupant without the prior written consent of the Terraces ARB, except (i) such signs as may be required by legal proceedings; (ii) no more than a reasonable number of political signs (as may be further clarified by the rules and regulations of the Association) only to the extent specifically permitted by, and subject to the rights reserved to the Association in Indiana Code, §32-21-13-1 *et seq.*, as amended, and subject to the rights of the Association as set forth in said Chapter of the Indiana Code; and (iii) not more than one (1) professional security sign of such size deemed reasonable by the Terraces ARB in its sole and absolute discretion. All signs that are permitted shall be constructed in accordance with the standards set forth in the Governing Documents, including, without limitation, the Zoning Ordinance. Unless in compliance with this Article 9, no signs or other displays shall be posted, erected, modified, maintained, held or displayed by or on behalf of any Owner or Occupant within any portion of the Properties, including the Common Area, any Lot or any structure or dwelling located on the Common Area or any Lot (if such sign would be visible from the

exterior of such structure or dwelling as determined in the Terraces ARB's sole and absolute discretion). In no event shall signs be permitted to include dangerous or potentially dangerous objects installed on the sign to attempt to prevent the removal of the sign. No signage shall include a camera, recording device or data collection device unless approved by the Terraces ARB.

"For sale" or "for lease" signs shall be permitted only in accordance with the terms of the Design Guidelines. The Declarant and the Terraces ARB reserve the right to prohibit other types of signs and/or displays, and to restrict the size, content, color, lettering, design and placement of any approved signs and/or displays. The Design Guidelines may implement a standard sign program, which may vary according to, among other factors, location within the Properties, product type or intended use. All approved signs and/or displays must be professionally prepared. This subsection shall not apply to entry, directional, marketing, or other signs installed by the Declarant or its duly authorized agent(s) as may be necessary or convenient for the marketing and development of the Properties. In addition to all other rights and remedies set forth in the Declaration, the Terraces ARB, the Declarant, and the Board shall have the right to enter property and to remove any sign or display posted in violation of this provision, and such entry shall not constitute a trespass.

(b) Tree Removal. No trees that are more than six (6) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the Terraces ARB; provided however, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the Terraces ARB. The Terraces ARB may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed. The above requirements shall be in addition to, and not in lieu of, any requirements with respect to tree removal imposed by any governmental authority.

(c) Lighting. Exterior lighting visible from the street shall not be permitted except for: (i) approved lighting as originally installed on a Lot; (ii) one (1) approved decorative post light; (iii) pathway lighting; (iv) street lights in conformity with an established street lighting program for the Properties; (v) seasonal decorative lights during the usual and common season; (vi) front house illumination of model homes; or (vii) any additional lighting as may be approved by the Terraces ARB. All lights shall be installed or aimed so that they do not present a disabling glare to drivers or pedestrians or create a nuisance by projecting or reflecting objectionable light onto a neighboring property. No lighting shall include a camera, recording device or data collection device unless approved by the Terraces ARB.

(d) Temporary or Detached Structures. Except as may be permitted by the Terraces ARB, no temporary house, dwelling, garage or outbuilding shall be placed or erected on any Lot or in the Common Area. Except as provided in Section 10.7, no mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Lot as a temporary or permanent dwelling.

(e) Accessory Structures. With the approval of the Terraces ARB, detached accessory structures may be placed on a Lot to be used for a playhouse, swimming pool, tennis court, tool shed, dog house, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the dwelling on the Lot. With the exception of a garage that is attached to a dwelling and except as may be provided otherwise by the Terraces ARB, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot or in a location approved by the Terraces ARB. All accessory structures shall be located within side and rear setback lines as may be required by the Terraces ARB, the Plat, or by applicable zoning law, including, without limitation, the Zoning Ordinance. The Design Guidelines may include requirements with respect to accessory structures on Lots.



(f) Antennas and Satellite Dishes. Satellite dishes, antennae and other similar devices for the transmission of television, radio, satellite, or other signals of any kind shall not be permitted, except that notwithstanding the foregoing, antennae or satellite dishes designed to receive television broadcast signals (“**Permitted Devices**”) shall be permitted, provided that any such Permitted Device is placed in the least conspicuous location on the Lot in which an acceptable quality signal can be received and is screened from the view of adjacent Lots, streets and Common Areas in a manner consistent with the Design Guidelines. Such Permitted Devices may be installed only in accordance with Federal Communication Commission (“**FCC**”) rules and any requirements of the Terraces ARB and the Association that are consistent with the rules of the FCC, as they may be amended from time to time. Except as otherwise provided by this subsection, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Property, whether attached to a structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

(g) Solar Collecting Panels or Devices. Subject to prior approval of the plans by the Terraces ARB, solar collecting panels and other active solar devices may be placed, constructed or maintained upon a Lot so long as such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Terraces ARB may deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed from any street or from any other property (whether within or outside the Properties).

(h) Utility Lines. Overhead utility lines, including lines for cable television, are not permitted except for (i) existing utility lines within the boundaries of the Properties on the date of this Declaration, (ii) temporary lines as required during construction and approved by the Terraces ARB, and (iii) lines installed by or at the request of Declarant.

(i) Mailbox Bank. All mailboxes for the dwellings within the Properties will have mailboxes located within locations on the Lots designated as “Pedestrian Easements” on the Plat (as further detailed in Section 11.14(c)(vi) below) upon which will be contained mailbox banks that will be maintained by the Association. By accepting a Deed to a Lot, each Owner agrees that the Terraces ARB may remove any non-approved mailbox in a reasonable manner; all costs for such removal shall be paid by Owner of such Lot, and all claims for damages caused by the Terraces ARB are waived.

(j) Flags. No flags or banners of any kind shall be erected, maintained, or displayed by or on behalf of an Owner or Occupant without the prior written consent of the Terraces ARB. The Design Guidelines or the Terraces ARB, by resolution, may exempt certain flags and banners from the application and approval requirements of this Article. This provision shall not be construed to prohibit, nor shall the Design Guidelines or the Terraces ARB prohibit, the display of the United States flag or the flag of the State of Indiana. The Design Guidelines may establish requirements regarding the time, place, or manner of display of the United States flag consistent with the requirements of applicable law, including but not limited to the Freedom to Display the American Flag Act of 2005 and any other applicable state or local law or ordinance, as such laws may be amended from time to time.

(k) Cameras and Recording Devices. The Design Guidelines may, but by no means are required to establish requirements, rules, and regulations regarding the installation of cameras, recording devices, data collection devices, or other advancements in technology in the area of augmented reality or artificial intelligence. Additional requirements regarding cameras and recording devices are set forth in Section 10.26 and other provisions of this Declaration.

(l) Air Conditioning Equipment. No air conditioning equipment which is visible on the exterior of any Improvement shall be permitted in the Properties unless constructed in accordance with

the Design Guidelines and approved by the Terraces ARB. Approval shall be based on adequacy of screening and/or landscaping of the equipment. The Terraces ARB may prohibit or impose strict standards regarding window air conditioning units.

9.7 Construction Period. Each Owner other than the Declarant or a Declarant-Related Entity shall be required to commence construction of a dwelling upon the Lot within twelve (12) months of closing on the acquisition of the Lot and shall complete such construction within six (6) months of the date of commencement. In addition to Repurchase rights of the Declarant pursuant to Article 16 below and other remedies that Declarant may exercise, if an Owner does not commence construction of a dwelling upon the Lot within twelve (12) months after the date on which the Lot is first conveyed to a Person other than the Declarant, the Owner shall landscape the Lot in accordance with the landscaping requirements of the Design Guidelines. The time period to proceed with landscaping with respect to each Lot is a fixed period that is binding upon each subsequent transferee from Owner. Such period shall not restart upon any subsequent transfer.

After commencement of construction, each Owner shall diligently continue construction to complete such construction in a timely manner. The initial construction of all structures must be completed within six (6) months after commencement of construction, unless extended by the Terraces ARB in its sole and absolute discretion. All other construction shall be completed within the time limits established by the Terraces ARB at the time the project is approved by the Terraces ARB.

For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the Terraces ARB; (b) a building permit has been issued for the Lot by the appropriate jurisdiction; and (c) construction of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that a certificate of occupancy has been issued for a dwelling on the Lot by the appropriate jurisdiction.

9.8 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.9 Variance. The Terraces ARB, in its sole and absolute discretion, may authorize variances from compliance with any of its guidelines and procedures. In determining whether to grant a variance, the Terraces ARB may consider circumstances such as topography, natural obstructions, advancements in technology or products, hardship, or aesthetic or environmental considerations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration or the Master Documents; or (c) prevent the Terraces ARB from denying a variance in the future under similar circumstances. The Terraces ARB shall not be required to grant a variance under any circumstances, including but not limited to, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing. Additionally, the granting of any variance by the Terraces ARB shall not supersede any requirement for approval of such variance by the City and shall not serve as a representation or warranty by the Terraces ARB that such variance shall be approved by the City.

9.10 Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations, and neither the Declarant, the Association, the Board nor the Terraces ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, the effectiveness of any approved cameras or other such devices (or the denial of the right to place all or any cameras), nor for

ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, the Association, the Board or the Terraces ARB or any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Terraces ARB and its members shall be defended and indemnified by the Association as provided in Section 4.7.

9.11 Enforcement. The Declarant, any member of the Terraces ARB or the Association, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect the same for the purpose of ascertaining whether any structure or Improvement is in violation of this Article. Any structure, Improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written notice from the Terraces ARB, the Association, or the Declarant, Owners shall, at their own cost and expense, cure any violation or nonconformance or remove such structure or Improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to cure or remove and restore the property as required, any authorized agent of Declarant, the Terraces ARB, or the Association shall have the right to enter the property, cure or remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Association may enforce the decisions of the Declarant and the Terraces ARB by any means of enforcement described in Section 4.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment pursuant to Section 8.5.

Unless otherwise specified in writing by the Terraces ARB granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

Neither the Terraces ARB, the Association, the Declarant, nor their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the Terraces ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association nor its officers or directors shall be held liable to any Person for exercising the rights granted by this Section.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Terraces ARB. In addition to the foregoing, all activities upon the Properties shall be subject to the terms of the Zoning Ordinance.

## **ARTICLE 10: USE RESTRICTIONS**

10.1 General. This Article sets out certain use restrictions which must be complied with by all Owners and Occupants of any Lot. The Properties shall be used only for such purposes permitted within the Properties, as described in the Master Plan and the Governing Documents, including, without limitation, the Zoning Ordinance, which includes residential, recreational, and related purposes, such as model homes,

sales offices for Builders, an information center and/or a sales office for any real estate broker retained by the Declarant or a Declarant-Related Entity to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association, business offices for the Declarant, a Declarant-Related Entity or the Association or related parking facilities, and such purposes as are consistent with the Governing Documents. As set forth in Section 13.8, the Declarant may, during the Development Period, specifically limit and designate the uses permitted for any Lot or group of Lots to one or more of the uses permitted within the Properties, as described in the Governing Documents, including, without limitation, the Zoning Ordinance. Such specific permitted use designations may be amended only as provided in Article 13. Each Owner acknowledges that the use restrictions set forth herein are in addition to, and not in lieu of, the use restrictions provided for in the Master Documents.

10.2 Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant. The distribution of rules in a conspicuous manner and location within the Properties or the publication in a printed or "online" community newsletter of general circulation within the Properties shall be deemed sufficient notice to all Owners, Occupants and other permitted users of any portion of the Properties; provided, the Board, in its sole and absolute discretion, may provide notice by other means or methods.

10.3 Occupants Bound. All provisions of the Governing Documents governing the conduct of Owners and establishing sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. The Owner shall be responsible for ensuring that the occupant, and the guests, invitees and licensees of the Owner or the occupant strictly comply with all provisions of the Governing Documents. Fines may be levied against the Owners or occupants. If a fine is levied against an occupant and is not timely paid, then such fine may be levied against the Owner.

10.4 Leasing. Lots may be leased for residential purposes only, and all leases of Lots shall have a minimum lease term of at least ninety (90) days. Should a lease be terminated by either or both of the Owner and/or the tenant in less than ninety (90) days, then no lease of the Lot shall be permitted to be entered into until ninety (90) days after the commencement of the lease that has been terminated (such that at most during a 360-day period, four (4) new leases with a term of ninety (90) days each can be entered into). All leases of any Lot, or any portion thereof, shall require, without limitation, that the tenant acknowledge receipt of a copy of the Governing Documents. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board.

10.5 Residential Use. Lots may be used only for residential purposes of a single family and for ancillary business, home occupation, or home office uses. A business, home occupation, or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Lot by clients, customers, employees, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include deliveries within the Properties that are more frequent than usual and customary residential delivery traffic; (e) the activity conforms to the requirements of a customary home occupation as adopted from time to time by the City; and (f) the activity is consistent with the residential character and customary "home office" or "work-from-home" use of the Properties that are not recognizable as trades or businesses and does not constitute a nuisance, or a hazardous or offensive use,

or threaten the security or safety of other residents of the Properties, as may be determined in the sole and absolute discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Lot without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this Section and leasing shall be permitted as long as the terms of the leases are for at least ninety (90) days. In addition, the construction and use of Improvements that would permit multi-generational families to have separate living areas within a Lot shall be deemed to be consistent with single family use of a Lot; provided that such Improvements are constructed in compliance with the requirements of Article 9.

This Section shall not apply to restrict the activities of Declarant or any Declarant-Related Entity, or Declarant's use of any Lot that it owns within the Properties. Further, this Section shall not restrict the activities of Persons that Declarant approves with respect to the development, construction, and/or sale of property in the Properties nor apply to Association activities related to the provision of services and/or to operating and/or to maintaining the Properties, including, without limitation, the Properties' recreational and other amenities.

No garage sale, moving sale, rummage sale, auction or similar activity shall be conducted upon a Lot without the prior written consent of the Board and compliance with any rules adopted by the Board.

10.6 Occupancy of Unfinished Dwellings. No dwelling erected upon any Lot shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed.

10.7 Parking and Vehicles.

(a) Automobiles, non-commercial trucks and vans shall be parked only in garages, driveways, other appropriate spaces or areas designated for parking by the Declarant and/or the Association, or otherwise as permitted by applicable law. Owners shall only be permitted to regularly park a reasonable number of vehicles on the street directly in front of such Owner's dwelling, and the Association shall have the right to restrict Owners from consistently parking vehicles in front of the dwellings of other Owners, upon other parts of the Common Area, or in any other manner deemed by the Association to be a nuisance or annoyance to other Owners or to the Association. No motorized vehicles shall be permitted on pathways, sidewalks, or unpaved areas except for public safety vehicles authorized by the Board. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties.

(b) Recreational vehicles shall be parked only in the garages, if any, serving the Lots or, with the prior written approval of the Terraces ARB, other hard-surfaced areas which are not visible from the street. "Visibility" shall be determined by the Terraces ARB in its sole and absolute discretion. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, "jet skis" or other watercraft, trailers, other towed vehicles, motorcycles, mini-bikes, scooters, go-carts, golf carts, campers, buses, commercial trucks and commercial vans. Any recreational vehicle

parked or stored in violation of this provision shall be considered a nuisance and may be removed from the Properties. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) Construction, service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.

(d) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt. Any vehicle parked in violation of this Section or any parking rules promulgated by the Board may be towed at the expense of the Owner in accordance with the Governing Documents.

10.8 Mobile Vending. Selling, or offering for sale, or operating any motor vehicle, push cart, catering or food truck for sale of, or conducting any business for the purpose of causing the sale of, goods, merchandise and/or food from any motor vehicle, push cart, or catering or food truck parked, stopped, or standing upon any portion of the Properties or any dedicated roadways or other public property within Terraces at Midland shall require the prior approval of the Board. Such approval shall be granted or withheld in the sole and absolute discretion of the Board. Prior to any approval, the Board may require submittal of information, the issuance of permits, the payment of fees, and compliance with any rules and operational guidelines adopted by the Board. The approval of the Board shall not supersede any requirement for approval by or permits from the City and shall not serve as a representation or warranty by the Association that such approvals and permits may be obtained from the City.

10.9 Private Streets. The Private Streets shall be subject to the provisions of this Declaration regarding use of Common Area. Additionally, Owners of Lots and other permitted users of the Private Streets pursuant to Section 2.2 shall be obligated to refrain from any actions that would deter from or interfere with the use and enjoyment of the Private Streets by other authorized users of the Private Streets. Prohibited activities shall include without limitation, parking or obstruction of any of the Private Streets. All Persons shall operate vehicles on Private Streets within the Properties in compliance with the Association-designated speed limits.

10.10 Alleys. Owners of Lots located adjacent to alleys and other permitted users of any alley shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the alley by other authorized users of the alley. Prohibited activities shall include, without limitation, obstruction of any of the alleys. For the purposes of this Section, the term "alley" shall refer to a thoroughfare providing access to, through or within Lots which may be more particularly described on a recorded subdivision plat for such Lots or in the Zoning Ordinance. All Owners, Occupants and other Persons shall comply with all rules of the Association with respect to alleys.

10.11 Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association. With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Area for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Area as provided herein shall assume, on behalf of itself and its Occupants, all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

10.12 Animals and Pets; Feeding of Birds and Wildlife. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and

common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All permitted pets shall be reasonably controlled by the owner whenever outside a dwelling and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3. This provision shall not be construed to interfere with any provision under the Americans with Disabilities Act or any similar applicable federal, state or local law, ordinance or regulation. Service animals in active use shall be permitted on the Properties. It is in the common interest of all Owners and Occupants that wildlife not be attracted to dwellings or Common Areas within the Properties searching for the availability of sources of sustenance. Consequently, all Persons shall be prohibited from feeding wildlife while present at the Common Areas, and no Person shall feed any wildlife from within Lots except through the use of stationary birdfeeders within the Lots.

10.13 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on its property. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might, in the sole and absolute discretion of the Board, disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property.

No noxious or offensive activity shall be conducted within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. No Person shall maintain any plants or animals, devices or items of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the Terraces ARB, shall be located, installed or maintained upon the exterior of any Lot unless required by law. Any siren or device for security purposes shall contain a device or system that causes it to shut off automatically.

The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or Occupant.

10.14 Storage of Materials, Garbage, and Dumping. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any pond, lake, drainage ditch or stream within the Properties or on any Common Area, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff. Pursuant to Section 4.15 of the Declaration, the Association intends to enter into a contract with a waste removal provider and each Owner shall comply with all requirements with respect to the same, including, without limitation, purchasing trash receptacles from the waste removal provider if required.

Each Owner shall maintain its Lot in a neat and orderly condition throughout initial construction of a residential dwelling and not allow trash or debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Lot shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines and/or the Zoning

Ordinance. Each Owner shall keep streets, roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Lots and shall not be buried or covered on the Lot. During each weekend or other period of inactivity, all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Lot upon reasonable notice by Declarant in preparation for special events.

10.15 Combustible Liquid. There shall be no storage of gasoline, kerosene, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency purposes and operation of lawn mowers, grills, and similar tools or equipment and except as may be approved in writing by the Terraces ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.16 Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration but shall have no obligation to exercise self-help to prevent or stop any such discharge.

10.17 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed after a subdivision plat including such Lot has been approved and filed in the Public Records without the Declarant's prior written consent during the Development Period, and the prior written consent of the Terraces ARB thereafter. In addition, no home shall be subdivided or partitioned to create housing for more than a single family. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots which it owns. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.18 Site Plan Approval. The Declarant shall have the right to review and approve any subdivision of any portion of the Properties, including the right to approve all preliminary or final site plans and subdivision plats, Lot lay-outs and street locations. The Declarant shall also have the right to approve the size, density and configuration of any subdivided parcels within the Properties.

10.19 Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped, improved and maintained so as to permit safe sight across such areas. No fence, wall, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem.

10.20 Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No Improvements, obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Lot. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from its Lot. Owners shall be responsible for all



remedial acts necessary to cure any unreasonable drainage flows from Lots. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Lot.

(d) Use of any areas designated as “drainage easement areas” on any recorded subdivision plat of the Properties, including, without limitation, the Plat, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainage easement areas, and the right of the Declarant to enter upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any declaration of easements, notwithstanding approval of the landscaping as set forth in Article 9.

(e) No Person shall alter the grading of any Lot without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner’s consent.

(f) All Persons shall comply with any and all easements for drainage of the lots, including, without limitation, those set forth in Section 11.3 below, applicable erosion control ordinances and regulations in construction of Improvements on any Lot and in conducting any activity within non-disturbance buffer zones, such as, by way of example and not limitation, areas within certain pipeline easements within the Properties as depicted on the Master Plan and/or subdivision plats that shall be maintained by the Association as Common Area and otherwise shall not be disturbed.

10.21 Irrigation. Owners shall not install irrigation systems that draw upon ground or surface waters nor from any lakes, ponds, or other body of water within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility.

10.22 Streams. No streams, which run across any Lot, may be obstructed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 11.

10.23 Wetlands. All areas designated on a recorded plat as “wetlands” shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and must be approved by all appropriate regulatory bodies. Prior to any alteration of a Lot, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. If approved, the Association may maintain boardwalks around, and in such wetlands. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

10.24 Timesharing. No Lot shall be made subject to or be operated as a timesharing, fraction sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in a program on a fixed or floating time schedule over a period of years.

10.25 Unmanned Aerial Vehicles. Except those utilized for governmental purposes, including, without limitation, traffic control, life safety measures, crowd control, policing legal compliance and any other legitimate governmental functions, and subject to the terms of Section 11.17 below, the Board reserves the right to approve, disapprove or prohibit the use of unmanned aircraft systems (“UAS”) and drones within the Properties on a temporary or permanent basis and may adopt rules, regulations and

prohibitions regarding the time, place and manner of the use of such vehicles. Neither the Association, the Declarant, any Declarant Related Entity, nor any successor Declarant shall be held liable for any loss or damage by reason of use or operation of UAS or drones within the Properties.

10.26 Operation of Cameras. The placement of cameras at any location outside of the dwelling, including, without limitation, on the exterior of any dwelling or other structure on the Lot or on any other location on the Lot (even if not attached to a dwelling or structure) is an alteration that requires the prior approval of the Terraces ARB, who shall have the exclusive jurisdiction over the placement of cameras and the directional orientation. The Terraces ARB shall have the right to request plans showing the installation method, location, viewing area, and equipment to be submitted for approval. As the technology for cameras and recording devices advance, the Design Guidelines may be amended to acknowledge advances in technology. Each Owner acknowledges and agrees that the Terraces ARB is not obligated to approve the placement of exterior cameras on dwellings and also is not the guarantor of safety within the Properties. Each Owner acknowledges and agrees that the approval of cameras or recording devices or any other similar item by the Terraces ARB, the Association or otherwise shall not be deemed an endorsement of the effectiveness of such measures to address security at the Properties and that neither the Terraces ARB, the Declarant, the Association, nor the Board of Directors shall be responsible for any security issues that may arise after either the approval or the denial of a request to install a camera, recording device, or other similar item. Cameras shall be subject to removal by the Terraces ARB if it has been determined that they have been placed in a manner that is inconsistent with the Design Guidelines or the terms of Terraces ARB approval of the cameras. Each Owner shall expressly waive any and all claims and hold the Declarant, any Declarant-Related Entity, the Association, and members of the Terraces ARB harmless from any claim whatsoever with respect to cameras installed on the Properties (including, without limitation, any claim with respect to privacy or safety matters) and shall indemnify said parties against any and all damages, losses, liabilities, and expenses incurred as a result of any such aforesaid claim.

10.27 Lakes, Ponds, and Other Water Bodies. All lakes, ponds, and streams within the Properties, if any, shall be passive bodies of water and shall be used only in accordance with such rules and regulations as may be adopted and published by the Board, which rules and regulations may vary from one water body to another. No boats, kayaks, canoes, or other watercraft and no fishing, swimming, wading, or any other active uses of lakes or other bodies of water within the Properties shall be permitted, unless approved by the Board and subject to such conditions as established by the Board in its sole and absolute discretion. With the exception of any community access point to any pond or other body of water constructed on behalf of the Association, no piers, or gazebos shall be constructed, attached or floated upon or adjacent to any lake or pond without the prior written approval of the Terraces ARB. Except as designated by Declarant, no trails or pathways shall be established along the perimeter of any lake or pond.

10.28 Public Protests. Picketing, protest marches, sit-in demonstrations, protest speeches, and other forms of public protest or conduct, including displaying signs or placards on a Lot or any vehicle, apparatus or otherwise within public view in the Properties, which tends to vilify, ridicule, denigrate, or impugn the character of Declarant, a Declarant-Related Entity, the Association, their respective officers, directors or employees, or any Owner or Occupant shall be prohibited. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on such Owner's constitutional right of free speech.

10.29 Environmental Protection. Except as permitted by the Terraces ARB, any activities that materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties or adjoining buffer zones or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution are prohibited. Restricted and prohibited activities include the following: (a) capturing, trapping, or killing animals or wildlife, except that the Declarant, the Association, and its contractors, agents, and employees may engage in such activities as part of a continuing resource

management plan for Terraces at Midland as set forth in Section 4.19; (b) dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any buffer zone, drainage or irrigation ditch, swale, stream, pond, wetlands, creek or lake, or elsewhere within the Properties or adjoining areas is prohibited, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff; (c) burning of trash, leaves, debris, or other materials outside, except that the Declarant, the Association and its contractors, agents and employees may engage in ecological burning as part of a continuing resource management plan; (d) obstructing, rechanneling or interfering with drainage flows after location and installation of drainage swales, storm sewers, or storm drains is prohibited, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent; (e) sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties are prohibited unless approved by the Terraces ARB, except that the Declarant and the Association shall have the right to draw water from such sources (neither the Declarant nor the Association make any representations as to the suitability of the water for any purpose); (f) living trees shall be removed from the Properties only in conformance with the Design Guidelines; (g) all areas designated on a recorded plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies (prior to any alteration of a Lot, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland). Notwithstanding anything contained in this Section, the Declarant, any Declarant-Related Entity, the Association, and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

## **ARTICLE 11: EASEMENTS**

In addition to those easements reserved, created, established, promulgated and declared pursuant to the Master Documents, Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, any Declarant-Related Entity, the Association, the Members, the Owners, and their successors-in-title.

11.1 Easements of Encroachment. Declarant hereby reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots and between each Lot and any adjacent Common Area due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3') feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### 11.2 Easements for Utilities.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself and any Declarant-Related Entity during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital, satellite, or similar television

systems, master television antenna systems, cell towers, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; streets, roads, sidewalks, walkways, pathways and trails; lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity systems, lines and meters; and a non-exclusive, perpetual easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, natural gas supplier, internet service provider, cable television, satellite, or data service provider or any utility sub-metering company, the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility systems, equipment, lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole and absolute discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

(c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. Nothing contained herein shall obligate the Declarant, the Association or the Board to pursue legal recourse against any Person damaging a Lot or any portion thereof as a result of the exercise of this easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or Occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole and absolute discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3 Easement for Slope Control, Drainage and Waterway Maintenance. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself, any Declarant-Related Entity, and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Lot for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Lot which are or may be subject to soil erosion;

(b) enabling the drainage of natural or man-made water flow and water areas from any portion of the Properties;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot or Common Area;

(d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and

(e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties.

11.4 Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself, any Declarant-Related Entity, and its duly authorized successors and assigns, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of streets and roads, for the posting of signs, and for connecting into and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.5 Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner (unless such entry is to the exterior of the dwelling for the Association to perform its maintenance responsibilities as set forth in Article 5 of this Declaration, for which no such prior notice of entry onto the Lot shall be required). This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.6 Easements for Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Properties, including each Lot but excluding the interior of any residential dwelling, to (i) perform its maintenance responsibilities under Section 5.1, and (ii) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

(b) The Association may also enter a Lot, excluding the interior of any residential dwelling, to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents, including, without limitation, the removal or adjustment of cameras in violation of the Governing Documents. All costs incurred, including Legal Costs, may be assessed against the violator as a Specific Assessment.

(c) Entry under this Section shall not constitute a trespass, and prior notice to the Owner shall not be required except as provided in Section 5.2.

11.7 Easement for Walking Trail Access. Declarant hereby reserves, creates, establishes, promulgates and declares perpetual, non-exclusive easements for itself, any Declarant-Related Entity, its successors, assigns and designees, the Association and the Owners, over and across any areas designated as "walking trails" or "paths" on any recorded subdivision plat of the Properties regardless of whether such

trails or paths are located on Lots or Common Area. Use of such walking trails or paths shall be governed by operating practices of, and reasonable rules and regulations promulgated by, the Association and those rights set forth in Section 2.1. Additionally, Owners and other permitted users of the walking trails or paths shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the trails by other authorized users of the trails. Prohibited activities shall include without limitation obstruction of any trail and use of any motorized vehicle on any trail. No Person other than Declarant shall alter any trail without the prior written approval of the owner of the trail, the Association, and, during the Development Period, Declarant's prior written consent.

11.8 Easements for Lake and Pond Access, Maintenance and Flood Water. Declarant reserves, creates, establishes, promulgates and declares for itself, any Declarant-Related Entity, and its successors, assigns, and designees and the Association the nonexclusive, perpetual, appurtenant right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) draw water from such sources for purposes or irrigation; (c) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (d) remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any lake, pond, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves, creates, establishes, promulgates and declares for itself, any Declarant-Related Entity, and its successors, assigns and designees, and the Association the non-exclusive, perpetual, appurtenant right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within ten (10') feet of lake beds, ponds, streams and wetlands in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; (d) disturb existing landscaping; and (e) pile dirt and plant materials upon such areas. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. All affected areas shall be restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of any construction or maintenance activities authorized in this Declaration. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Declarant reserves unto itself the right, in the exercise of its sole and absolute discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (a) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (b) to define the limits of any such easements.

11.9 Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Lot, and any Improvements which contributes to the lateral support of another portion of the Common Area or of another Lot for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.10 Roadside Access Easements. There is hereby reserved to Declarant, the Association, Lot Owners, and the general public an easement for access, adjacent and parallel to all public road rights-of-way and Common Area streets and roads within the Properties, extending from the curb to the far side of any sidewalk or jogging or bicycle path running more or less parallel to the curb, for the purpose of using

such sidewalk or path. There is also hereby reserved to Declarant, the Association, and the designees of each, a right to go upon, over and across all property adjacent to public road rights-of-way and Common Area streets and roads within the Properties to construct, install, maintain, repair, and replace any street trees, street furniture (e.g., park benches), sidewalks and paths, and traffic and directional signs as well as to construct, install and maintain curb cuts as approved by the Terraces ARB.

11.11 Easement for Special Events. Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole and absolute discretion, deems appropriate. Each Owner, by accepting a Deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the Occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.12 Rights to Stormwater Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a Deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

11.13 General Development Easements. Declarant reserves for itself, its successors, assigns and designees a blanket easement over the Properties, to allow Declarant to take whatever action it determines is appropriate, necessary or beneficial to the construction, development, sales or operation of the Properties, including but not limited to the Lots. This blanket easement is for the purpose of enabling Declarant to construct Improvements within the Properties, whether on Common Areas or Lots, in the manner that it deems appropriate. Declarant shall have access and use of any Lot or Common Area as is appropriate, necessary and/or beneficial to construct any Improvement within the Properties or adjacent properties. This easement is for the further purpose of allowing Declarant, if it deems appropriate or necessary, to repair, relocate, construct, or maintain any of the Improvements installed in the Properties.

11.14 Easements Reserved on Plats.

(a) Plats of all or any portion of the Properties recorded by, or with the approval of, the Declarant may contain and reflect the locations of specific utility, drainage, ingress and egress, landscape, non-access and other easements ("**Platted Easements**"). With respect to any Platted Easement, Declarant hereby reserves for itself, its successors, assigns and designees, as well as the Association, and any of its designees, such easement for the purpose of exercising any right or performing any obligation thereto. The Declarant shall have the unrestricted right, without the approval or joinder of any other Person, to designate the use and to alienate, release, or otherwise assign any Platted Easement, unless such easement has been previously conveyed or dedicated. Such Platted Easements may include, without limitation, easements to construct, maintain, and operate water mains, drainage ditches, sewer lines, and other suitable installations for drainage and sewage disposal as well as easements to install, maintain, transmit, and use electricity, gas, telephone, telecommunications, cable systems, and other utilities, whether or not such easements are shown on the Plat to be for drainage, utilities, or any other purposes.

(b) The Owner of any Lot subject to a Platted Easement shall acquire no right, title, or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over, or under

any such Platted Easement area. The Owner of a Lot subject to any Platted Easement shall not construct any Improvements on such Platted Easement areas, nor alter the flow of drainage, nor landscape such areas with hedges, trees, or other landscape items that might interfere with the exercise of such Platted Easement rights.

(c) If any Owner constructs any Improvements or installs any landscaping on any Platted Easement area, the Owner of the Lot shall remove, at the Owner's expense, the Improvements or landscape items upon written request of Declarant, the Association, or the grantee of such Platted Easement. If the Owner fails to promptly remove any Improvements or landscaping located within the Platted Easement area, the Declarant, the Association, or the grantee of the Platted Easement may enter the Lot and remove such Improvements or landscaping at the expense of the Owner, who shall reimburse the cost of removal within fifteen (15) Days of demand. The party removing the Improvements or landscaping shall not be responsible for any damage caused by the removal and shall not be required to restore any portion of the Lot damaged by the removal.

Specifically, by way of example and not limitation, and in addition to other easements set forth in this Article 11 or elsewhere within the Governing Documents (such as Section 10.20 and Section 11.3), the Plat reserves the following easements as depicted on aforesaid Plat (which also includes certain narrative descriptions of certain of the easements, the narrative of which is incorporated herein by reference):

(i) D.&U.E. and D.E. Drainage and Utility Easement and Drainage Easement. Declarant creates and reserves this easement depicted as "D.&U.E." on the Plat and "D.E." on the Plat and as described under the "Dedication" on the Plat for the benefit of the Declarant during the Development Period and the Association thereafter to provide paths and courses for area and local storm drainage, either over land or in an adequate underground conduit, to serve the needs of the Properties and adjoining ground and/or public drainage systems. The Association shall be responsible to maintain the drainage across the Common Areas. The delineation of the Drainage and Utility Easement and/or Drainage Easement on the Plat shall not be deemed a limitation on the rights of any entity for whose such easement is created and reserved.

Such areas shall be subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage on the Properties, by the Declarant, and by the Association; provided, however, such easement shall not confer in any way any obligation upon the Declarant or the Association to perform such construction or reconstruction.

The Drainage and Utility Easement and the Drainage Easement shall not be blocked in any manner by the construction or reconstruction of any Improvement, nor shall any grading restrict, in any manner, the waterflow. Owners of Lots subject to the Drainage and Utility Easement and/or the Drainage Easement as depicted on the Plat shall be required to keep the area of such easement free from obstructions such that surface water drainage shall be unimpeded.

The Drainage and Utility Easement and the Drainage Easement are hereby created and reserved (i) for the use of Declarant during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Properties and any Adjacent Properties, and (ii) for the use of the Association for access to and maintenance, repair, and replacement of such drainage system. Drainage swales and ditches located within Drainage and Utility Easement or the Drainage Easement shall not be altered, dug out, filled in, tiled in or otherwise modified without the written consent of the Hamilton County Drainage Board and/or any other governmental authority having jurisdiction over the Properties (the "**Drainage Board**"). Owners shall maintain these swales and sodded grassways or other non-eroding surfaces. Owners that violate the



provisions of this paragraph may be subject to action by the Drainage Board that may include, without limitation, the Drainage Board restoring such swale to the proper state, the costs of which shall be the Owner's responsibility.

Areas on the Plat marked "Common Area" or "C.A." may be used for: (i) storm water retention drainage purposes; (ii) the aesthetic and visual enjoyment of the Owners of the Lots, and (iii) such other purposes allowed pursuant to this Declaration. Notwithstanding the foregoing, the lakes and ponds in the Common Area are part of the stormwater management plan and shall be reserved and maintained by the Association for such purpose.

Additionally, the Drainage and Utility Easement and the Drainage Easement each are created for the exclusive use of (i) the Declarant; (ii) any local governmental agency having jurisdiction over any storm and sanitary waste disposal system that obtains a sewer easement from the Declarant pursuant to and in accordance with this Declaration for the purposes of access to and installation and maintenance of sewers that are part of any storm and sanitary waste disposal system that may be designed to serve the Properties (with the terms more particularly set forth under "Sanitary Sewer Easement" on the Dedication section of the Plat); and (iii) any other utility service provider that obtains a utility services easement from the Declarant pursuant to and in accordance with this Declaration for the purpose of obtaining access to and installation and maintenance of lines, wires, cables, mains, ducts, pipes, conduits, poles, microwaves, satellites or other transfer or wireless technology.

(ii) D.U. & P.S.E. Drainage, Utility and Private Street Easement. Declarant hereby creates and reserves a Drainage, Utility and Private Street Easement as depicted on the Plat as D.U. & P.S.E. and as described under the "Dedication" on the Plat. The areas so designated on the Plat by D.U. & P.S.E. shall be Private Streets pursuant to this Declaration and shall be subject to the provisions governing Private Streets and the easements created and reserved thereon pursuant to Sections 2.2 and 10.9 of this Declaration in addition to this Article 11 of the Declaration and the terms set forth in the "Dedication" portion of the Plat.

(iii) L.E. Landscape Easement. Declarant hereby creates and reserves landscape easements as may be depicted on the Plat to be used for landscaping purposes, with the landscaping located within the Landscape Easement area being maintained by the Association. The Association shall have an easement of ingress and egress on and over such area for the purpose of maintenance. The landscaping and other improvements planted or installed by the Declarant and/or the Association in the Landscape Easement area may not be removed by an Owner, and no fence shall be placed in such area by an Owner, except as approved by the Association and, during the Development Period, the Declarant.

(iv) T.E, T. & L.E. and T. & D.E. Trail Easement, Trail and Landscape Easement, and Trail and Drainage Easement. Declarant hereby creates and reserves trail easements, trail and landscape easements, and trail and drainage easements as may be depicted on the Plat to be used for the trail system (as further described in Sections 4.11 and 11.7 of this Declaration) or for a combination of the trail system and landscape easement or drainage easement purposes as the drainage easements and landscape easements are described within this Section 11.14, this Declaration and on the Plat.

(v) V.W.U.E. Variable Width Use Easement. Declarant hereby creates and reserves a variable width use easement as may be depicted on the Plat in favor of Owners of abutting Lots to enter the V.W.U.E. area to enhance access to the benefitted Owner's dwelling and conduct landscaping activities within the V.W.U.E. as further described in the narrative description on the Plat, which is incorporated herein by reference.

(vi) Pedestrian Easement. Declarant hereby creates and reserves a pedestrian easement on Lots 541, 552, 564, 577, and 585, as further depicted on the Plat, for the Association to maintain and for all Owners and Occupants to access upon the pedestrian easement mailbox banks for the benefit of the Lots within the Properties as further set forth in Section 9.6(i) of this Declaration.

11.15 Drainage Board Easements. Declarant hereby creates and reserves an easement for the benefit of the Drainage Board to enter the Properties and, to the extent necessary, to exercise its rights with respect to any legal drain constituting part of the drainage system, ponds, sales, or lakes located upon the Properties.

11.16 Release of Easements. The Declarant reserves unto itself the right, in the exercise of its sole and absolute discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (a) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Article, or (b) to define the limits of any such easements.

11.17 Easement for Avigation. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself and any Declarant-Related Entity, a perpetual non-exclusive easement upon, across, and over, all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of operating UAS as part of a business in and through the airspace at any height and altitude above that the Properties to the extent such operation of UAS as part of a business is permitted under federal and state law (the "Avigation Easement Area"). The foregoing easement includes the right of UAS to cause noise, vibrations, fumes, deposits of dust, fuel particles (incidental to the normal operation of UAS), fear, interference with sleep or communication and any other effects associated with the normal operation of UAS taking off, landing or operating within and in the vicinity of the Properties. The easement granted herein includes on behalf of the Declarant, any Declarant-Related Entity and its successors and assigns a perpetual right of ingress and egress in and to the Avigation Easement Area and the right to remove any new structure or vegetation or other improvement within the Common Areas that interferes with the use of the Avigation Easement Area.

11.18 Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, the Association, and their successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, including, without limitation, the Plat, except in cases of willful or wanton misconduct.

## **ARTICLE 12: MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of the Declaration or By-Laws relating to such Lot or the Owner or Occupant which is not cured within sixty (60) Days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action that would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.2 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

12.4 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.5 Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Indiana law for any of the acts set out in this Article.

### **ARTICLE 13: DECLARANT'S RIGHTS**

13.1 Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association, to a Declarant-Related Entity, or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2 Development and Sales. The Declarant, Declarant-Related Entities and Builders authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, such as sales activities, tournaments, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant, Declarant-Related Entities and authorized Builders shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant, Declarant-Related Entities and Builders authorized by Declarant may establish within the Properties, including any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, including, but not limited to, business offices, signs, model units, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole and absolute discretion. The Declarant, Declarant-Related Entities and authorized Builders shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees. All rights of the Declarant set forth in the Governing Documents are subject to the Master Documents.

13.3 Improvements to Common Areas. Declarant may elect to construct and/or install Improvements upon portions of the Common Area, but is not obligated to do so, and may elect to leave portions of the Common Area in their natural, unimproved state. During the Development Period, Declarant shall have the absolute right and discretion to determine what Improvements, if any, will be located on the Common Area. Declarant and its employees, agents and designees shall have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such Improvements to the Common Area as it deems appropriate in its sole and absolute discretion. Declarant and its employees, agents and designees shall also have a right and easement over and upon each and every Lot, the boundary line or lines of which form a portion of the perimeter of the Properties for the purpose of constructing and installing a fence or wall along all or a portion of the perimeter of the Properties, if deemed appropriate by the Declarant, in its sole and absolute discretion. All Owners acknowledge that if the Declarant constructs a fence or wall along all or a portion of the perimeter of the Properties, such fence or wall may be built in phases and may not completely encircle the Properties.

13.4 Inspection of Common Areas. Declarant hereby reserves the right, in addition to other rights and remedies, at all times after conveyance of the Common Area to the Association, to exercise all rights and easements reserved hereby, including but not limited to, the right to create easements over the Common Area pursuant to Article 11 and to enter the Common Area, without prior notice, and to inspect the condition thereof and the Improvements and facilities thereon, if any. If Declarant determines, in its sole and absolute discretion, that the Association has failed to maintain any portion of the Common Area in a manner consistent with the Community-Wide Standard, it may so notify the Association, in writing, and the Association shall promptly perform the required maintenance or repairs. Failure of the Association to maintain the Common Area in a manner consistent with the Community-Wide Standard shall relieve Declarant and any predecessor Declarant of any liability to the Association or to any Member for any condition of the Common Area. Declarant shall have the right to make a record of its inspections by any means available, including, but not limited to, photographing, filming, and/or videotaping the Common Area or installing cameras upon the Common Areas, and shall have the right to perform tests or examinations to determine the condition of the Common Area. Notwithstanding the foregoing, Declarant shall have no obligation to perform inspections of the Common Area owned by the Association, and the Association shall not be relieved of its obligation to maintain the Common Area because of the election of Declarant or any predecessor Declarant to inspect or not to inspect or report to the Association the condition of the Common Area.

13.5 Right to Notice or Design of Construction Claims. No Person, including the Association, shall retain an expert for the purpose of inspecting the design or construction of any Improvements within the Common Areas in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing and given an opportunity to meet with the Person and conduct an inspection.

13.6 Exclusion of Declarant's Other Properties. By accepting a deed to a Lot, each Owner specifically acknowledges that nothing contained in this Declaration shall, in any way, either expressly or by implication, restrict, limit, or otherwise affect the use or disposition by Declarant or any Declarant-Related Entity of any property owned by them, whether contained within, contiguous to or in the vicinity of the Properties. Declarant and Declarant-Related Entities shall have full, free, and unrestricted use of its and their other lands, including the Additional Property, notwithstanding any incompatibility of such use with restrictions this Declaration imposes upon the Lots. By accepting a deed to a Lot, each Owner, specifically and expressly disclaims any reciprocal negative easement in any property owned by Declarant or any Declarant-Related Entity.

13.7 Liability for Association Operations. The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant and any predecessor Declarant (including, without limitation, their respective Declarant-Related Entities, successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, legal costs), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Area of Common Responsibility.

13.8 Limitation on Use. During the Development Period, the Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to limit the use of any portion of the Properties, including any Lot or group of Lots, to one or more, but less than all, of the uses permitted within the Properties pursuant to the Master Plan, and the Governing Documents, including, without limitation, the Zoning Ordinance.

Such limitations on the use of a particular Lot or group of Lots shall be set forth in Exhibit "A" to this Declaration or in a Supplement Declaration filed in the Public Records either concurrent with or after the annexation of the subject property in accordance with Article 7, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

The limitations on use imposed by the Declarant may not be changed without the written consent of the Declarant during the Development Period. Thereafter, or at such time as the Declarant assigns its rights in this regard to the Association, any change in the limitations on use shall require the consent of the Board and the Owner(s) of the affected Lot set forth in a written instrument recorded in the Public Records.

13.9 Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person may conflict with the Declaration, By-Laws or Articles.

13.10 Right of the Declarant to Disapprove Actions. Until two (2) years following the termination of the Class "B" membership, the Declarant shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant, the Class "B" Member, any Declarant-Related Entity or any Builder under the Governing Documents, or interfere with development of, construction on, or marketing of any portion of Terraces at Midland, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific

actions of the Association, the Board or any committee as may be granted to the Class "B" Member or the Declarant in the Governing Documents.

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the secretary of the Association, which notice complies with the By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at such meeting. The Declarant may waive its right to receive notice in the same manner as provided in the By-Laws.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any authorized representative, may exercise its right to disapprove at any time within ten (10) Days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) Days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Declarant exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services that the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

13.11 Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines shall be effective without prior notice to and the written consent of the Declarant, during the Development Period (except that only with respect to amendments by Members pursuant to Section 14.2(c) below, the prior written consent of the Declarant shall be required until the occurrence of one of the three (3) events set forth in Section 14.2(c) below). This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## **ARTICLE 14: GENERAL PROVISIONS**

### **14.1 Duration.**

(a) Unless terminated as provided in Section 14.1(b) below, this Declaration shall have perpetual duration. If Indiana law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of ten (10) years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities pursuant to

Indiana law, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Charles III, King of England.

(b) Unless otherwise provided by Indiana law, in which case such law shall control, this Declaration may not be terminated within twenty (20) years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least seventy-five (75%) of the total Lots within the Properties and by the Declarant, if the Declarant or any Declarant-Related Entity owns any portion of the Properties, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

#### 14.2 Amendment.

##### (a) By Declarant.

(i) Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose.

(ii) After termination of the Class "B" membership and during the Development Period, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (1) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (2) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (3) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans to make, purchase, insure or guarantee Mortgage loans on the Lots; or (4) to satisfy the requirements of any local, state or federal governmental agency.

(iii) In addition, after termination of the Class "B" membership and during the Development Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect on the title to any Lot unless the Owner of such Lot consents. The failure of an amendment to apply uniformly to all Lots shall not constitute a material adverse effect upon the title to any Lot.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Owners (i) to correct scrivener's errors and other mistakes of fact, (ii) to remove provisions creating impediments to the implementation, use and operation of advancements in technology or products within the Properties; and (iii) for the purposes of bringing any provision contained herein into compliance with the Fair Housing Laws (as defined in Section 14.4 below), provided that amendments under this provision have no material adverse effect on the title to any Lot unless the Owner of such Lot consents. During the Development Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total Class "A" votes in the Association, and, until the first to occur of (i) the expiration of the Development Period, (ii) the date that the Declarant no longer owns one (1) Lot within the Properties, or (iii) the date that is seven (7) years from the date of the recording of this Declaration, the written consent of the Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant, a Declarant-Related Entity or the Class "B" Member without the written consent of the Declarant, the Declarant-Related Entity, the Class "B" Member, or the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

(e) Master Association. Notwithstanding the foregoing, no amendment to this Declaration which materially affects the rights or interests of the Master Association, as determined in the sole discretion of the board of directors of the Master Association, shall be valid unless approved in writing by the board of directors of the Master Association.

14.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4 Fair Housing Amendments Act. The provisions of the Governing Documents shall be subordinate to the Fair Housing Act, Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.*, Indiana fair housing laws of any kind, and any local law or ordinance pertaining to fair housing, (hereinafter collectively referred to as the "**Fair Housing Laws**"), and shall be applied so as to comply with the Fair Housing Laws. In the event that there is a conflict between or among the Governing Documents and the Fair Housing Laws, the Fair Housing Laws shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the Fair Housing Laws, the Board, without the consent of the Members or of Declarant, shall have the unilateral right to amend this Declaration for the purpose of bringing this Declaration into compliance with the Fair Housing Laws. Furthermore, notwithstanding Section 2.3 hereof, the Board shall have the unilateral right to assign portions of the Common Area as Exclusive Common Area or to reassign Common Area previously assigned as Exclusive Common Area to one or more Lots to one or more Owner(s) or Occupant(s) should such action be required in order to make a reasonable accommodation under the Fair Housing Laws.

14.5 Merger or Consolidation. Upon a merger or consolidation of the Association with any other association, the property, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the property, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other property as one scheme; however, no such merger or consolidation shall effect any revocation, change or addition to the covenants established by this Declaration.

14.6 Dispute Resolution and Arbitration.

(a) Agreement to Enter into Arbitration. The Declarant, Declarant-Related Entities, the Association, its officers, directors and committee members, each Owner, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to



this Section (collectively, the “**Bound Parties**”) agree to be bound to the provisions of this Section. Upon demand of any Bound Party, whether made before or after institution of any judicial proceeding, any claim or controversy between Bound Parties arising out of or relating to the Governing Documents (a “**Real Estate Dispute**”) shall be resolved by binding arbitration conducted under and governed by the American Arbitration Association (“**AAA**”) under its Arbitration Rules for the Real Estate Industry or the Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Upon demand of any Bound Party, whether made before or after institution of any judicial proceeding, any claim or controversy between Bound Parties arising out of or relating to the design or construction of Improvements on the Properties (a “**Construction Dispute**”) shall be resolved by binding arbitration conducted under and governed by the AAA under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. (Real Estate Disputes and Construction Disputes shall collectively be referred to herein as “**Disputes**”). Disputes may include, without limitation, tort claims, counterclaims, a dispute as to whether a matter is subject to arbitration, claims brought as class actions, or claims arising out of documents executed in the future.

(b) Special Rules. Demands for arbitration (unless otherwise agreed upon by the Bound Parties) shall be served in accordance with the notice provisions of the By-Laws using the demand for arbitration forms prescribed by the AAA. There shall be one (1) arbitrator. The arbitrator shall be selected pursuant to the AAA Commercial Arbitration Rules from a panel provided by the AAA, Detroit, Michigan, Regional Office. All arbitration hearings shall be conducted in Hamilton County, Indiana. A hearing shall begin within 90 Days of demand for arbitration and all hearings shall conclude within 120 Days of demand for arbitration. The arbitrator shall make an award no later than one-hundred and fifty (150) Days following the service of the demand for the arbitration. These time limitations may not be extended unless a Bound Party shows cause for extension and then for no more than a total of 60 Days. The Expedited Procedures (for a Real Estate Dispute) or the Fast Track Procedures (for a Construction Dispute) as defined in the applicable AAA Rules shall be applicable to Disputes of less than \$500,000.00. The Bound Parties do not waive applicable Federal or state substantive law except as provided herein. All awards by the arbitrator shall be supported by findings of fact and conclusions of law. In making the award, the arbitrator shall be bound by the strict language of the agreements in dispute.

(c) Preservation of Remedies. Notwithstanding the arbitration provisions of this Section, the Bound Parties agree to preserve, without diminution, certain remedies that any Bound Party may exercise before or after an arbitration proceeding is brought. The Bound Parties shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) all rights to foreclose against any real or personal property or other security by exercising a power of sale or under applicable law by judicial foreclosure including a proceeding to confirm the sale; (ii) all rights of self-help including peaceful occupation of real property and collection of rents, set-off, and peaceful possession of personal property; and (iii) obtaining provisional or ancillary remedies including injunctive relief, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceeding. Any claim or controversy with regard to any Bound Party’s entitlement to such remedies is a Dispute.

(d) Exempted Disputes. Notwithstanding the arbitration provision of this Section, the Bound Parties agree that the following shall not be Disputes and shall not be subject to the provisions of this Section:

(i) any suit by the Association against any Bound Party to enforce the provisions of Article 8 (Assessments);

(ii) any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief, and such other ancillary relief as permitted to enforce the provisions of Article 9 (Architectural Standards) or Article 10 (Use Restrictions);

(iii) any suit between Owners (other than Declarant or a Declarant-Related Entity) seeking redress on the basis of a Dispute which would constitute a cause of action under the laws of the State of Indiana in the absence of a claim based on the Governing Documents;

(iv) any suit by the Association in which similar or identical claims are asserted against more than one Bound Party;

(v) any suit by a Bound Party for declaratory or injunctive relief which seeks a determination as to applicability, clarification or interpretation of any provision of this Declaration;

(vi) any suit in which any indispensable party is not a Bound Party; and

(vii) any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the arbitration provisions set forth in this Section.

(e) Waiver of Jury Trial. THE BOUND PARTIES ACKNOWLEDGE THAT BY AGREEING TO BINDING ARBITRATION THEY HAVE IRREVOCABLY WAIVED ANY RIGHT THEY MAY HAVE TO JURY TRIAL WITH REGARD TO A DISPUTE AS TO WHICH BINDING ARBITRATION HAS BEEN DEMANDED.

(f) Enforcement of Resolution. After resolution of any Dispute, if any Bound Party fails to abide by the terms of any resolution of the Dispute obtained from arbitration ("**Resolution**"), then any other Bound Party may file suit or initiate administrative proceedings to enforce such Resolution without the need to comply again with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce the Resolution shall be entitled to recover from the non-complying Bound Party (or if more than one non-complying Bound Party, from all such non-complying Bound Parties pro rata) all costs incurred in enforcing such resolution, including, without limitation, Legal Costs.

(g) Fees and Expenses. An award by the arbitrator shall specify which party is to be deemed the prevailing party. The AAA's and the arbitrator's expenses and fees together with other arbitration expenses including the Legal Costs of the parties, if advanced by the party, shall be allocated among the parties in the award according to the discretion of the arbitrator, subject to the presumption that all reasonable fees and expenses should be paid by the non-prevailing party. In determining the allocation of the fees and expenses of the parties, the arbitrator may review the settlement offers of the parties.

14.7 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Members holding at least eighty percent (80%) of the total Class "A" votes in the Association. This Section shall not apply, however, to: (a) actions brought by the Association to enforce the provisions of the Governing Documents against Owners (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it, or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or

supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.8 Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.9 Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

14.10 Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the Master Documents and any additional covenants, restrictions and declarations. The Association may, but shall not be required to, enforce the Master Documents and any such additional covenants, conditions and provisions; provided, however, in the event of a conflict between or among this Declaration and the Master Documents, the provisions of the Master Documents shall prevail. In the event of a conflict between or among this Declaration and any additional covenants or restrictions, and/or the provisions of any articles of incorporation, By-Laws, rules and regulations, policies or practices adopted or carried out pursuant thereto, other than those of the Master Association, this Declaration, the By-Laws, Articles and rules and regulations of the Association shall prevail. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Master Association and the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

14.11 Use of the Words "Midland" or "Terraces at Midland". No Person or entity engaged in any form of business involving real estate and/or real property, including but not limited to sales, rental, management, development or appraisal of property, shall use the words "Midland", "Terraces at Midland" or any derivative or the logo for "Midland" or "Terraces at Midland" in any printed or promotional material or website without the Declarant's prior written consent. However, Owners may use the term "Midland" or "Terraces at Midland" in printed or promotional matter or website where such term is used solely to specify that particular property is located within Midland or Terraces at Midland. The Association and any other owners association located in Midland or Terraces at Midland and the Declarant and Declarant-Related Entities shall each be entitled to use the word "Midland" or Terraces at Midland in their names.

14.12 Compliance. Every Owner and Occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association, the Declarant, or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

14.13 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Lot shall give the Board at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may

reasonably require. Notwithstanding the foregoing, the Board may permit Builders or sub-developers of Lots within the Properties to provide monthly sales reports of the transfer of title to Lots owned by such Builder or sub-developer in lieu of requiring the aforesaid seven (7) Days' prior written notice. Such monthly reports shall include the name, address and other contact information of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require on the monthly report. After the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title, except that for a Builder or sub-developer providing monthly reports as set forth above, responsibility for assessment obligations shall end upon the date of transfer of title.

14.14 Standards for Review. Whenever in this Declaration the Declarant, the Association or the Terraces ARB has the right to approve, consent or require any action to be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise provided herein, be in the sole and absolute discretion of the Declarant, the Association or the Terraces ARB, respectively, and such approval, consent or required action shall be final and conclusive. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

14.15 Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF: CCD ACKERSON, LLC, a Delaware limited liability company

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Roger Foster

\_\_\_\_\_  
Witness

STATE OF INDIANA )  
COUNTY OF HAMILTON ) ACKNOWLEDGMENT

I, \_\_\_\_\_ (Notary Public for the State of Indiana), do hereby certify that CCD Ackerson, LLC, a Delaware limited liability company, by and through \_\_\_\_\_, its authorized representative, personally appeared before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of said company.

Witness my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR INDIANA  
My commission expires: \_\_\_\_\_

[NOTARY SEAL]

This instrument was prepared by.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /John-William "Parker" Blessing/

**EXHIBIT "A"**

**Land Initially Submitted**

ALL THAT TRACT or parcel of land lying in being in Part of Section 4-T18N-R3E, Washington Township, Hamilton County, Westfield, Indiana, being more particularly described as Lots 535-589 on that certain Midland Section Two Replat of Common Area D and Blocks 2 & 3, Secondary Plat, prepared by Innovate Engineering & Consulting, recorded on February 14, 2024, as Instrument Number 2024004888, Plat Cabinet 6, Slide 487, in the Recorder's Office of Hamilton County, Indiana, as corrected by that certain Secondary Plat Certificate of Correction for Easements on Lots 541, 552, 564, 577 & 585, recorded on November 12, 2024, as Instrument Number 2024043042 in the Recorder's Office of Hamilton County, Indiana.

## **EXHIBIT "B"**

### **Additional Property**

All property now or hereafter shown on the Master Plan as defined in Section 1.30 of this Declaration, and any real property located within one (1) mile of the perimeter boundary of the real property described on Exhibit "A" attached hereto and as amended from time to time.

**EXHIBIT "C"**

**BY-LAWS OF TERRACES AT MIDLAND OWNERS ASSOCIATION, INC.**

[ATTACHED]

Exhibit "C" - 1



**BY-LAWS**  
**OF**  
**TERRACES AT MIDLAND OWNERS ASSOCIATION, INC.**

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**BY-LAWS  
OF  
TERRACES AT MIDLAND OWNERS ASSOCIATION, INC.**

**ARTICLE 1: NAME, PRINCIPAL OFFICE, AND DEFINITIONS**

1.1 Name. The name of the corporation is Terraces at Midland Owners Association, Inc. (the "Association"), an Indiana nonprofit mutual benefit corporation.

1.2 Principal Office. The initial principal office of the Association shall be located in Hamilton County, Indiana. The Association may have such other offices, either within or outside the State of Indiana, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 Definitions. The words used in these By-Laws shall have their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions for Terraces at Midland recorded, or to be recorded, in the public records of Hamilton County, Indiana, as it may be amended from time to time (the "Declaration"), unless the context indicates otherwise.

**ARTICLE 2: ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, AND PROXIES**

2.1 Membership. The Association initially shall have two (2) classes of membership, Class "A" and Class "B" as more fully set forth in the Declaration. The Declarant may establish additional classes of membership, voting or non-voting, as set forth in the Declaration. Provisions of the Declaration pertaining to membership are incorporated herein by this reference. Sections 3.3 and other provisions of the Declaration provide that each Owner shall be a member of the Midland Owners Association, Inc. (the "Master Association"). The Master Association is governed in accordance with the terms of the Master Documents.

2.2 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate within Terraces at Midland or at a nearby location as practicable. Meetings may be held by means of telephone conference, internet meeting service (i.e., Zoom, Teams Meeting), video conference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation by one of these methods shall constitute presence in person at such meeting.

2.3 Annual Meetings. The first membership meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular meetings shall be held annually on a date and at a time set by the Board.

2.4 Special Meetings. The president may call special meetings of the Association. It also shall be the president's duty to call special meetings if so directed by Board resolution or upon written, signed petition of Members representing at least ten percent (10%) of the total Class "A" votes in the Association or upon written request of the Declarant describing the

purpose or purposes for which the special meeting is to be held. If the president does not call a special meeting pursuant to this Section within thirty (30) calendar days after the date such written petition is delivered to the Association's secretary, any Member signing the petition or, if the meeting was requested by the Declarant, then the Declarant, may set the time and place of the special meeting and provide the notice to the other Members pursuant to the terms of Section 2.5 below.

2.5 Notice of Meetings. The Association's secretary shall cause written notice stating the place, day, and time of any Association meeting to be given in any manner permitted by applicable law. Notice may be sent by mail or private courier, published in a newspaper, or by radio, television, or other form of public broadcast communication in Hamilton County, Indiana, delivered by hand delivery, sent by facsimile, electronic mail, or other electronic communication device, or such other manner which is reasonably calculated, as the Board determines in its discretion, to provide personal notice to each Member entitled to vote at such meeting. Notice shall be given at least ten (10) Days and, in any event, not more than sixty (60) Days before the date of the meeting, by or at the direction of the president, the secretary, or the officers or Persons calling the meeting.

In case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No other business shall be transacted at a special meeting except as stated in the notice for the special meeting. The notice of regular or annual meeting shall state the items on the agenda of the Association meeting to the extent required by statute, including, without limitation, the general nature of any proposed amendment to the Governing Documents, any proposed sale of assets, and any proposal to dissolve the Association.

If mailed, the notice of a meeting shall be deemed given when deposited in the United States mail addressed to the Member at his or her address as it appears on the Association's records, with postage prepaid. If sent by facsimile, electronic mail, or other electronic communication device, notice shall be deemed delivered when transmitted to the Member at his or her address, e-mail address, or telephone or fax number as it appears on the Association's records. Failure to receive actual notice of an Association meeting shall not affect the validity of any action taken at such meeting.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Association, either before or after the date and time stated in the notice of such meeting. Attendance at a meeting shall be deemed a waiver of any objection as to lack of notice of the time, date, and place thereof, unless specific objection as to the lack of proper notice is given at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection to the consideration of the business is raised before or when the business is presented for a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, the Members representing a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than twenty (20) Days from the time the original meeting was called. At the reconvened meeting, if a quorum is

present, any business may be transacted that might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed in Section 2.5.

2.8 Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions from the Declaration are specifically incorporated by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access.

2.9 List for Voting and Roster.

(a) List of Voting. After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Members entitled to notice of such meeting. The list shall show the address of each Member and the number of votes each Member is entitled to cast at the meeting. The list for voting shall be made available for inspection in accordance with Indiana law.

(b) Roster. In addition to the List of Voting, the Association shall maintain and make available for inspection a roster of all members in accordance with the requirements of Indiana Code § 32-25.5-3-1.

2.10 Proxies. Any Member who is entitled to cast only the vote(s) for such Member's Lot(s) pursuant to Section 3.2 of the Declaration may cast such vote in person or by proxy. On any matter as to which a Member is entitled to personally cast the vote for such Member's Lot, such vote may be cast in person (if a corporation, partnership, limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject to any limitations of Indiana law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing specifying the Lot(s) for which it is given, signed by the Member or such Member's duly authorized attorney-in-fact, dated, and filed with the secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or one hundred eighty (180) days from the date that the proxy is given, unless a shorter period is specified in the proxy.

2.11 Quorum. The presence, in person or by proxy, of Members representing ten percent (10%) of the total votes in the Association shall constitute a quorum at all meetings of the Association. If a quorum is present, business may be continued until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

2.12 Conduct of Meetings. The president shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13 Use of Electronic Meeting. Any action that may be taken at any annual, regular, or special meeting of the Association may be taken by electronic meeting if: (i) the Association delivers a written or electronic ballot to every Member entitled to vote on such matter; (ii) the number of votes cast by written or electronic ballot satisfies the quorum requirements set forth in Section 2.11; and (iii) at least a Majority of the votes required to constitute a quorum approve such proposed action. A written or electronic ballot shall: (a) set forth each proposed action; (b) provide an opportunity to vote for or against each proposed action; (c) indicate the number of responses needed to meet the quorum requirements; (d) state the percentage of approvals necessary to approve each matter other than election of directors; and (e) specify the time by which a ballot must be received by the Association in order to be counted. Except as provided herein, no written or electronic ballot may be revoked.

### **ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS**

#### **A. Composition and Selection.**

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class "B" Member or serving as a representative of the Declarant, the directors shall be eligible Members or residents; provided, however, no Owner and resident representing the same Lot may serve on the Board at the same time. No Owner or resident shall be eligible to serve as a director if any assessment for such Owner's or resident's Lot is more than six (6) months delinquent. A "resident" for the purposes of these By-Laws shall mean any natural person eighteen (18) years of age or older whose principal place of residence is a Lot within the Properties. In the case of a Member or resident which is not a natural person, any officer, director, partner, member, manager, employee, or fiduciary of such Member or resident shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member or resident, provided that no Member or resident may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by or serving as representatives of the Class "B" Member or the Declarant.

3.2 Number of Directors. The initial Board shall consist of three (3) directors appointed by the Class "B" Member as provided in Section 3.3. Except as provided in Section 3.3, the Board shall consist of three (3) to seven (7) directors elected by the Class "A" Members of the Association. The Board may by resolution, increase or decrease the number of directors at any time.

3.3 Directors During Class "B" Membership. So long as the Class "B" membership exists, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member. Directors appointed by or serving as representatives of the Class "B" Member, or the Declarant shall not be subject to the qualifications for directors set forth in Section 3.1 nor the nomination and election procedures set forth in Section 3.4.

3.4 Nomination of Directors. The Board may establish a nominating committee consisting of a chairperson, who shall be a member of the Board, and three (3) or more Members or representatives of Members. If established, the nominating committee shall be appointed by the Board not less than thirty (30) Days prior to each election to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at the election. A nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled.

Nominations shall also be permitted from the floor at a meeting of the Association. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes. Directors appointed by or serving as representatives of the Class "B" Member or the Declarant shall not be subject to these nomination requirements.

3.5 Election and Term of Office.

(a) Not later than the first annual meeting after termination of the Class "B" membership pursuant to the Declaration, the directors appointed by the Class "B" Member shall resign and the Association shall hold an election at which the Class "A" Members shall be entitled to elect the directors. The two directors receiving the largest number of Class "A" votes shall serve for a term of two (2) years and the remaining directors shall serve for a term of one (1) year.

(b) Upon the expiration of the term of office of each director elected by the Class "A" Members, the Class "A" Members shall elect a successor to serve a term of two (2) years. Notwithstanding the stated length of any term, directors elected by the Members shall hold office until their respective successors have been elected.

(c) At all elections, there shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.6 Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by the Class "A" Members representing a Majority of the Class "A" votes. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than six (6) months delinquent (or is the resident of a Lot that is delinquent or is the representative of a Member who is delinquent) in the payment of any assessment or other charge due the Association, may be removed by a Majority of the directors, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term.

In the event of the death, disability, or resignation of an elected director or the adoption of a Board resolution increasing the number of directors, the Board may declare a vacancy and



appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member or to any director serving as a representative of the Declarant. The Class "B" Member or the Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or the Declarant.

B. Meetings.

3.7 Organizational Meetings. Within thirty (30) Days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one (1) such meeting shall be held during each year.

3.9 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the president or vice president or by any two (2) directors.

3.10 Notice. Notice of a regular meeting shall be communicated to directors in accordance with applicable law. Notice of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) electronic mail or e-mail using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an electronic mail or e-mail address. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, electronic mail or e-mail shall be deemed communicated when delivered, telephoned, telecopied, electronically mailed, e-mailed or given to the telegraph company.

3.11 Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the

meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12 Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference, or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.13 Quorum of Board of Directors. At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than four (4) nor more than twenty (20) Days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.14 Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a Majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the Board, excluding the interested director.

3.15 Conduct of Meetings. The president shall preside over all meetings of the Board, and the secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. In the case of a tie vote on a motion or resolution before the Board, the motion or resolution is considered lost.

3.16 Open Meetings. Subject to the provisions of Sections 3.12 and 3.17, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on a Member's behalf by a director. In such case, the president may limit the time any Member may speak. Notwithstanding the above, the president may adjourn any meeting of the Board, reconvene in executive session, and exclude Members to discuss matters of a sensitive nature, such as pending or threatened litigation or personnel matters.

3.17 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a

meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.18 Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things that the Governing Documents or Indiana law do not direct to be done and exercised exclusively by the membership generally.

3.19 Duties. The duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;

(b) levying and collecting such assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association, provided any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules in accordance with the Declaration;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) contracting for repairs, additions, and Improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the costs of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers or the Master Association to use portions of the Common Area reasonably necessary to the ongoing development or operation of Terraces at Midland;

(o) indemnifying a director, officer or Terraces ARB or committee member, or former director, officer or Terraces ARB or committee member of the Association to the extent such indemnity is required or permitted under Indiana law or the Governing Documents; and

(p) assisting in the resolution of disputes between Owners and others without litigation as set forth in the Declaration.

3.20 Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) an annual financial report shall be made available to all Members within one hundred twenty (120) Days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines; and

(g) assessments will be levied on an annual basis but payable quarterly.

3.22 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided however, that the Board shall comply with applicable provisions of Indiana law with respect to all borrowing activities.

3.23 Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common and/or long-term management, operational, or other agreements with trusts, condominiums, cooperatives, the Master Association, or other owners or residents associations, within and outside Terraces at Midland, the Declarant, the owner of any Adjacent Property, and/or any local, state, or federal governmental or quasi-governmental entity. Notwithstanding the foregoing, the Board shall comply with the provisions of Indiana law with respect to approval of certain contracts.

3.24 Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed pursuant to Section 5.2, within ten (10) Days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within ten (10) Days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided however, the Board or covenants committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) Day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the ten (10) Day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or covenants committee may impose a sanction without further notice to the violator. The Board may adopt a schedule of sanctions for violation of the Governing Documents.

(b) Hearing. If a hearing is requested within the allotted ten (10) Day period, the hearing shall be held before the covenants committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a

copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. If a hearing is held before a covenants committee, the violator shall have the right to appeal the committee's decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, president, or secretary of the Association within ten (10) Days after the hearing date.

3.25 Board and Officer Training. The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Indiana corporate and fiduciary law principles, other issues relating to administering community affairs and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys and accountants, as appropriate or necessary for such purpose. Expenses relating to such educational opportunities shall be a Common Expense of the Association.

The Board may also provide, or provide for, Owner and Occupant education designed to foster a better understanding of Terraces at Midland's governance, operations and leadership training classes designed to educate Members of the nomination, election, and voting processes and the duties and responsibilities of the directors and officers.

#### **ARTICLE 4: OFFICERS**

4.1 Officers. The officers of the Association shall be a president, secretary and treasurer. The president and secretary shall be elected from among the members of the Board; other officers may but need not be members of the Board. The Board may appoint such other officers, including one (1) or more vice presidents, one (1) or more assistant secretaries and one (1) or more assistant treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of president and secretary.

4.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each election of new directors. Such officers shall serve until their successors are elected.

4.3 Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the

chief executive officer of the Association. The president also shall serve as a member of the Board of Directors of the Master Association after termination of the Class "B" Membership of the Master Association pursuant to the Master Documents. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The secretary shall be responsible for preparing minutes of meetings of the Association and the Board and for authenticating records of the Association.

4.5 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, Deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.14.

## **ARTICLE 5: COMMITTEES**

5.1 General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Unless otherwise provided by the Board, committee members shall be eligible Members or residents; provided however, no Class "A" Member may have more than one (1) representative on a committee at any time. No committee appointed by the Board shall be empowered to take any affirmative action or to bind the Board or the Association without the consent of the Board.

5.2 Covenants Committee. In addition to any other committees that the Board may establish pursuant to the Declaration, these By-Laws and, specifically, Section 5.1, the Board may appoint a covenants committee consisting of at least three (3) and no more than seven (7) Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the covenants committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these By-Laws.

## **ARTICLE 6: MISCELLANEOUS**

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of Association proceedings when not in conflict with Indiana law, the Articles, the Declaration, or these By-Laws.

6.3 Conflicts. If there are conflicts between the provisions of Indiana law, the Articles, the Master Documents, the Declaration, and these By-Laws, the provisions of Indiana law, the Master Documents, Declaration, the Articles, and the By-Laws (in that order) shall prevail. These By-Laws are subject to the terms of Indiana Law, including, without limitation, Indiana Code § 32-25.5-1-1 *et seq.*

6.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to the Member's interest in a Lot: the Declaration, By-Laws, and Articles, any amendments and supplements to the foregoing, the rules of the Association, the minutes of meetings of the Members, the Board, and committees, committee and Board resolutions, written communications that have been sent to all Members within the past three years including financial statements furnished to Members, names and addresses of directors and officers then serving, and the most recent reports filed with the Secretary of State, together with those certain files, records, accounting records and the membership list as required to be made available pursuant to Indiana law. The Board shall provide for such inspection to take place at the office of the Association or at such other place within or near the Properties as the Board shall designate during normal business hours. The Association has the right to establish policies for inspection of any audio and video records of the Association consistent with applicable law.

(b) Rules for Inspection. Subject to the provisions of Indiana law, the Board may establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5 Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member at the address which the Member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Lot of such Member; or



(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

If mailed, any notice shall be deemed to be delivered when deposited in the United States mail addressed with postage prepaid. To increase flexibility, any Person, including the Association, may consent to or request in writing additional methods of receiving notice, including but not limited to, facsimile, electronic mail or e-mail.

#### 6.6 Amendment.

(a) By Declarant. During the Development Period, the Declarant may unilaterally amend these By-Laws at any time and from time to time:

(i) for the purpose of curing any ambiguity or any inconsistency among the provisions contained herein;

(ii) if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, to make, purchase, insure or guarantee Mortgage loans on the Lots; (d) to enable any reputable private insurance company to insure Mortgage loans on the Lots; or (e) to satisfy the requirements of any local, state or federal governmental agency; or

(iii) any other purpose.

The foregoing amendments may be made without the joinder or approval of any Owner, Mortgagee, or the Association.

(b) By the Board. The Board shall be authorized to amend these By-Laws without the consent of the Members (i) to correct scrivener's errors and other mistakes of fact, or (ii) to remove provisions creating impediments to the implementation, use and operation of advancements in technology, provided that, amendments under this provision have no material adverse effect on the rights of the Owners. During the Development Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in these By-Laws, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association, and, until the first to occur of (i) the expiration of the Development Period, (ii) the date that the Declarant no longer owns one (1) Lot within the Properties, or (iii) the date that is seven (7) years from the date of the recording of the Declaration, the written consent of the Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.