

**SECOND AMENDED AND RESTATED**  
**DECLARATION OF MASTER COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR THE MICHAYWÉ RESTRICTED PROPERTY**

This Second Amended and Restated Declaration of Master Covenants, Conditions and Restrictions for the Michaywé Restricted Property (also referred to as “Master Declaration”) is made and executed on this 2<sup>nd</sup> day of March, 2009 by the Michaywé Owners Association, a Michigan Nonprofit Corporation, (herein after referred to as the “Association”), whose office is located at 1535 Opal Lake Road, Gaylord, Michigan 49735, represented herein by Vicky O. Rigney, the President of Michaywé Owners Association, who is fully empowered and qualified to act on behalf of the Association pursuant to its Articles of Incorporation, Bylaws and the Michigan Nonprofit Corporation Act.

**WITNESSETH:**

The Association, pursuant to the Stipulation and Consent Order dated February 8, 2000, recorded in Liber 750, Pages 445-590, Otsego Records, and Final Order dated July 7, 2000, recorded in Liber 824, Pages 966-968, Otsego County Records, (both issued by the Otsego County Circuit Court in the case of Hees et al. v. Michaywé Limited Partnership et al., Otsego County Circuit Court Case No. 93-5492-NZ), and the authority granted therein, recorded a certain Declaration of Master Covenants, Conditions and Restrictions for the Michaywé Restricted Property, dated December 14, 2001, Liber 0853, Pages 640-687, inclusive, Otsego County records. Furthermore, the Association recorded a certain First Amended and Restated Declaration of Master Covenants, Conditions and Restrictions for the Michaywé Restricted Property dated February 8, 2003, Liber 0919, Pages 438-498 inclusive, Otsego County records. The Association, pursuant to Article VIII, Section 1 of said First Amended and Restated Declaration, hereby amends and restates, in total, said First Amended and Restated Declaration, and desires by recording this Second Amended and Restated Declaration of Master Covenants, Conditions and Restrictions for the Michaywé Restricted Property to impose upon the Restricted Property (as defined herein below), now or hereafter located within the Michaywé Community, a planned unit development located in Bagley and Otsego Lake Townships, Otsego County, Michigan, a uniform set of restrictive covenants in order to protect the economic value of the land, to provide for maintenance and upkeep, to provide for public sewer and/or water systems, and to ensure the continued attractiveness and value of the Restricted Property, as now or hereafter constituted as provided in this Document.

All references herein, and in all Individual Declarations applicable to any or all Land Developments (as defined herein below), and to any Property Unit (as defined herein below) located therein, shall mean and include the entire portion of such Land Development or Property Unit within the Michaywé Restricted Property, and any improvements located thereon.

It is contemplated and intended that Owners, purchasers and future owners of the various Property Units now or hereafter comprising the Restricted Property within the Michaywé Community, shall own such Property Units in accordance with this Master Declaration, with common rights to be shared and common obligations to be borne by such Owners, purchasers and future owners. All such Owners, purchasers and future owners of Property Units within the Restricted Property shall have Membership rights and obligations in the Michaywé Owners Association, which has been formed for the purposes of administering common rights and obligations, as set forth herein and in the other Governing Documents. This Master Declaration shall be deemed to run with and bind the land which is now and hereafter defined as, as well as those lands hereafter required to be (to the extent of that obligation), Restricted Property subject to this Master Declaration, and all such Restricted Property shall be held, conveyed, hypothecated, encumbered, leased, rented, occupied, improved, and utilized subject to the provisions of this Master Declaration and any other Individual Declarations, Master Deeds or other recorded covenants binding said property.

**NOW THEREFORE**, in consideration of the mutual benefits to be derived by the Association, the Grantor, its successors and assigns, and all Owners, purchasers and future owners of the various Property Units in the Restricted Property now or hereafter described in Exhibit A, the Association does hereby publish, declare and make known to all Owners, purchasers and future owners of Property Units now or hereafter included in the Restricted Property, that such Property Units in the Restricted Property shall be used, held and sold expressly subject to the easements, conditions, restrictions, covenants and agreements hereinafter set forth, which shall be deemed incorporated by reference into all deeds of conveyance and land contracts for the sale of any Property Units in the Restricted Property.

## ARTICLE I

### PROPERTY RIGHTS AND OBLIGATIONS

Section 1. Property Rights and Obligations. The property rights and obligations (including benefits, privileges and responsibilities) and limitations thereon, as defined in this Declaration, shall be deemed to run with and bind each Property Unit and shall be construed as incidents of ownership of each Property Unit in the Restricted Property, and shall not under any circumstances be assigned or transferred except as title to each such Property Unit shall be assigned, or transferred. Membership in the Association, which includes voting rights and the undivided share of any Member in the assets and liabilities of the Association (the Members' equity of the Association), shall also be construed as incidents of ownership of Restricted Property. The assets include the funds, Michaywé Common Properties, and other assets of the Association subject to the limitations defined herein and in other Governing Documents. The Association has been formed for the purposes of administering such common rights and obligations, as set forth herein, and in the other Governing Documents. Each Owner of each Property Unit in the Restricted Property shall automatically become a Member of the Michaywé Owners Association and be entitled to all rights and subject to all obligations with respect to the Restricted Property including requirements for the payment of annual charges and/or other assessments. As a Member of the Association, each Owner shall be entitled to the use and enjoyment of the Michaywé Common Properties which are an integral part of the Restricted

Property, and shall be obligated for related financial support for the Michaywé Common Properties as stated and limited in this Master Declaration and any recorded Declaration or covenants applicable to said Michaywé Common Properties.

No mortgagee of any portion of the Restricted Property shall become a Member and acquire a Membership in the Association unless he or it shall have first foreclosed such mortgage and shall have become the owner of record of the property so mortgaged following expiration or termination of any rights of redemption.

## **ARTICLE II**

### **DEFINITIONS**

“Grantor” shall mean and refer to Michaywé Limited Partnership, a Michigan Limited partnership, the original Developer of the Michaywé planned unit development.

“Michaywé Community” or “Michaywé Planned Unit Development” shall mean and refer to any and all real property comprising the planned unit development known as Michaywé, as the same may have been approved by the governmental departments and authorities responsible for approving such developments.

“Restricted Property” shall mean and refer to that real property identified on Exhibit A hereof, as the same may be amended as provided herein.

“Additional Land” shall mean and refer to additional land within the Michaywé planned unit development that may be added to the Restricted Property according to the terms and conditions described in this Master Declaration, and is limited to the Mandatory Future Development Property and the Discretionary Future Development Property, as defined below.

“Land Development” shall generically and collectively mean and refer to each subdivision (Plat), condominium, multiple unit development, other land division or development project located within the Restricted Property.

“Master Deed” shall mean and refer to the recorded document, together with all exhibits, required by the Michigan Condominium Act (MCL 559.101 et seq.) to establish a condominium project in the State of Michigan.

“Property Unit” shall mean and refer to each Lot, Condominium Unit, undivided and divided parcel of real property, development property, or any other parcel of real property located within the Restricted Property.

“Lot” shall mean any parcel of divided real property, intended for individual utilization for single-family residential purposes, created and existing pursuant to a Plat recorded pursuant to the Michigan Land Division Act (MCL 560.101 et seq.), or by way of a property division under MCL 560.101 et seq. that does not require, and has not resulted in, the recording of a Plat, specifically not including condominiums or units therein.

“Condominium” shall mean and refer to any condominium development established in accordance with the provisions of the Michigan Condominium Act (MCL 559.101 et seq.).

“Condominium Unit” shall mean and refer to any individual condominium unit within a Condominium, as defined in that Condominium’s Master Deed and the Michigan Condominium Act (MCL 559.101 et seq.).

“Multiple Residential Land” shall mean and refer to those lands now or hereafter included in the Restricted Property that are designated for use as multiple residential in the original planned unit development plan for Michaywé, or any original individual declaration recorded prior to this Declaration; or which are subsequently added to the Restricted Property under the terms hereof, and are newly designated as multiple residential with the express written consent of the Association based on approval by two-thirds (2/3) of all members of the Board of Directors. Lands so designated as multiple residential shall allow and permit a variety of multiple residential type uses such as, but not limited to, the following: apartment duplex, triplex, quadplex, resort hotel, garden terrace, condominiums, townhouses, and senior citizen multiple residential.

“Mandatory Future Development Property” shall mean and refer to vacant or unplatted land described in Exhibit B hereof. From the date of the Final Order, July 7, 2000, forward, the Grantor, or subsequent owner(s) if the subject land is conveyed, must subject these lands to this Master Declaration by recording an amendment hereto making said land part of the “Restricted Property” subject to the provisions of this Declaration, prior to, or simultaneous with, recording a plat or Master Deed or other division of any portion of said property to be developed.

“Discretionary Future Development Property” shall mean and refer to vacant or unplatted land described in Exhibit C hereof. From the date of the Final Order, July 7, 2000, forward, the Grantor, or the subsequent owner if the subject land is conveyed, may, but shall not be required to, subject said land or any portion thereof to this Master Declaration by recording an amendment hereto making said land part of the “Restricted Property” subject to the provisions of this Declaration, prior to, or simultaneous with, recording a plat or Master Deed or other division of any portion of said property to be developed.

“Qualified Subsequent Owner” shall refer to the initial purchaser from the Grantor of any land within the Discretionary Future Development Property, but is unrestricted with respect to the Mandatory Future Development Property.

“Dues Cap” shall mean and refer to the maximum annual charge per Property Unit that may be assessed by the Association.

“Governing Documents” shall mean and refer collectively to this Declaration, Individual Declarations and Master Deeds for the separate Land Developments, any Declarations of Covenants, Conditions and Restrictions for the Michaywé Common Properties, the Articles of Incorporation for the Michaywé Owners Association, the Bylaws of the Michaywé Owners Association, and any Rules and Regulations of the Michaywé Owners Association, all as amended from time to time.

"Owner(s)" shall mean and consist of the record owner, whether one or more persons or entities, of the fee simple title or a land contract vendee’s interest (as provided herein below) in each Property Unit. When more than one person or entity is the Owner of a Property Unit, all such persons or entities shall collectively be deemed Owner. If any Owner enters into a Land Contract for the sale of a Property Unit and the Land Contract or a Memorandum thereof has been properly recorded in the Office of the Otsego County Register of Deeds, then in such a

case, the Land Contract Purchaser shall be deemed to be the Owner for the purpose of this definition.

“Membership” shall mean and refer to that automatic interest acquired in the Michaywé Owners Association by each Owner of a Property Unit in the Restricted Property, as an incident of ownership of such Property Unit.

“Member” shall mean and refer to the holder of the Membership in the Michaywé Owners Association acquired by each Owner of a Property Unit in the Restricted Property in the Michaywé Owners Association, as an incident of ownership of such Property Unit.

“Designated Representative” shall mean and refer to the individual, who has been designated by the Owner of a Property Unit to receive all notices and other communications from the Association on behalf of the Owner and Member at a single address, and who may cast a single vote for each Property Unit owned at meetings of the Association or at meetings of the Owners.

“Benefiting Member” shall mean and refer to each adult individual, with a maximum of two per Property Unit, who has been designated by the Owner of a Property Unit to receive benefits and assume obligations relative to services and benefits provided by the Association, as defined in this Declaration and other Governing Documents.

“Michaywé Common Properties” shall mean and refer to parks, common areas, recreational facilities, and other lands that are owned by the Michaywé Owners Association and/or reserved for the use of its Members.

### **ARTICLE III**

#### **ADDITION OF LAND AS RESTRICTED PROPERTY**

Section 1. Land That Must Be Added As Restricted Property. From July 7, 2000, forward, the Grantor as owner, or any subsequent owner(s) if the land is conveyed (“Qualified Subsequent Owner”), of the Mandatory Future Development Property, must subject all or any part of said land to this Master Declaration, prior to or simultaneous with recording a plat or Master Deed or other division of any portion of said property.

Section 2. Land That May Be Added As Restricted Property By Others. From July 7, 2000, forward, the Grantor as owner, or the initial subsequent owner(s) if the land is conveyed (“Qualified Subsequent Owner”), of the Discretionary Future Development Property, may, but shall not be required to, subject all or part of said land to this Master Declaration. The option to add the Discretionary Future Development Property pursuant to this Section shall be exercised prior to or simultaneous with recording a plat, Master Deed or other division of any portion of said property, or it shall terminate.

Section 3. Procedure For And Effect Of Land Being Added As Restricted Property. The addition of any Mandatory Future Development Property or any Discretionary Future Development Property to the Restricted Property subject to this Master Declaration shall be accomplished through MOA recording an amendment to this Master Declaration with the Register of Deeds of Otsego County adding such lands as Restricted Property, as defined in

Exhibit A hereof. Such an amendment to Exhibit A hereof, upon written request of the Grantor or Qualified Subsequent Owner of said lands, and presentation by the requester to the Association of all required legal descriptions (metes and bounds and plat of Master Deed), fees, costs and information necessary for preparation of such an amendment, shall be timely prepared, executed and recorded by the Board of Directors of the Association, without the necessity of consent of the Members of the Association or Owners of Property Units in the Restricted Property, within ten (10) days of being provided such necessary information. Upon recordation of such an amendment to Exhibit A hereof, such lands shall become part of the "Restricted Property" and shall be subject to the provisions of this Declaration.

Such lands shall also be subject to such additional restrictions as may be imposed by Grantor and/or Qualified Subsequent Owner(s) upon such Additional Land, at the option of the Grantor and/or Qualified Subsequent Owner(s), by way of any separate declaration of restrictions ("Individual Declaration") or Master Deed. In such cases, the Grantor and/or Qualified Subsequent Owner(s) shall specifically provide that such Additional Land is subject to the terms of this Master Declaration in any Individual Declaration or Master Deed applicable to said Mandatory or Discretionary Future Development Property or portion thereof. Further, as to any Individual Declaration recorded against a Subdivision, Condominium or other Land Development made subject to the provisions of this Master Declaration, such Individual Declaration shall provide that all rights of approval and enforcement reserved to the Grantor and/or Qualified Subsequent Owner(s) thereof shall transfer to the Michaywé Owners Association upon the sale and closing by the Grantor and/or Qualified Subsequent Owner(s) to a third party purchaser of the first Property Unit in said Land Development, with the exception of those specifically reserved to the Grantor and/or Qualified Subsequent Owner(s) herein. Any Individual Declaration and/or Master Deed recorded as to property which becomes part of the Restricted Property shall concern only matters unique to that particular property, its development, geometry, terrain and land conditions, and shall be void to the extent any provisions conflict with this Master Declaration.

The owners of Property Units in or upon such newly added Restricted Property shall automatically become Members of the Michaywé Owners Association, and be entitled to all beneficial rights and subject to all obligations with respect to the Restricted Property and Michaywe Common Properties as referenced in Article I hereof. Until this Master Declaration becomes operative as to any such portion of the Mandatory Future Development Property or the Discretionary Future Development Property, the benefits, reservations, burdens and impositions set forth herein, except for the requirement to subject all of the vacant or unplatted Mandatory Future Development Property to this Master Declaration prior to or simultaneous with recording a plat, Master Deed or other division of any portion of said property, or development of same, shall be of no force or effect as to such lands or any remaining portions thereof.

No provision herein contained shall in any way limit, circumscribe or govern the manner in which the Grantor and/or Qualified Subsequent Owner(s) may utilize or further develop or elect not to develop other land owned by it which is currently vacant, undeveloped or not currently part of the Restricted Property, unless and until such land is subjected to the provisions of this Master Declaration, or required to be made subject to the provisions of this Master Declaration, as provided herein. This Master Declaration shall be applicable to the land, added as Restricted Property through amendment to Exhibit A herein, and shall be considered as reciprocal negative easements, thus making the provisions in this Master Declaration enforceable

by Owners of Property Units in such land, the Association and all other Owners of Property Units in the Restricted Property.

Section 4. Limitation On Adding Land As Restricted Property. No additional land, other than that already part of the Restricted Property as described in Exhibit A, or that described in Exhibits B and C, shall ever become subjected to this Master Declaration, or its Owners entitled to Membership in the Michaywé Owners Association, unless this provision is subsequently amended, as provided elsewhere herein.

Section 5. Land That May Be Acquired By The Association As Michaywé Common Properties. Pursuant to the Stipulation and Consent Order dated February 8, 2000, recorded in Liber 750, Pages 445-590, Otsego Records, and Final Order dated July 7, 2000, recorded in Liber 824, Pages 966-968, Otsego County Records, (both issued by the Otsego County Circuit Court in the case of Hees et al. v. Michaywé Limited Partnership et al., Otsego County Circuit Court Case No. 93-5492-NZ), the Grantor has covenanted that, if the parcels described in Exhibit D hereof are not developed or otherwise included within a development within a period ending seven (7) years from July 7, 2000, or should said property, or part thereof, during said seven year period become subject to possible forfeiture as a result of non-payment of taxes, assessments, mortgage, or for any other reason, the Association shall have the option to purchase said parcels for \$1.00 at the expiration of the seven (7) year period, or upon the date said property becomes subject to forfeiture as aforesaid, whichever is sooner. Evidence of this option being terminated may be recorded by Grantor in the form of a sworn affidavit by a licensed professional engineer certifying that any of the subject properties have been developed or included in a development in accordance with the terms of the court orders referenced above, within the relevant time parameters, and that the Association's option is therefore terminated.

The Association shall further have the right to acquire for the benefit of its Members any other property as Michaywé Common Properties, subject to any requirements and limitations thereon contained in the Bylaws and Articles of Incorporation of the Association. In addition, the Grantor may at any time convey to the Association title to any real property owned by the Grantor. The operation, maintenance, improvement and disposition of any real property so acquired or conveyed shall thereafter be the responsibility of the Association.

#### ARTICLE IV

#### ASSOCIATION OF OWNERS

Section 1. Association. The Association (the Michaywé Owners Association) shall be a nonprofit corporation and shall be incorporated under the laws of the State of Michigan.

Section 2. Responsibilities and Authorities. The Association shall have authority to manage, maintain and administer the affairs of the Association, the Michaywe Common Properties, and to manage, administer and enforce the provisions of the Governing Documents

Section 3. Membership, Member, Voting, Standing, and Related Provisions. Membership in the Association and voting by members of the Association shall be in accordance with the following:

(a) Membership and Members. Membership in the Association shall arise automatically upon the recordation of a deed of conveyance, land contract or other ownership interest relating to any Property Unit. The Owner of a Property Unit is the holder of the Membership for that Property Unit, and accordingly is a Member of the Association. When more than one person or entity is the Owner of a Property Unit, all such persons or entities shall collectively be deemed Member, and their collective Membership rights and obligations with respect to the Michaywé Owners Association shall be exercised as one. Those rights and obligations are further defined in the Michigan Nonprofit Corporation Act, the required Articles of Incorporation, and authorized Bylaws, and may be limited as provided in this Declaration and other Governing Documents.

(b) Designation of Designated Representative(s). Each Owner of a Property Unit shall jointly file a written notice with the Association designating a maximum of two individual person(s) who shall be Designated Representative(s). Such notice shall state the name(s) and address(es) for the Owner (each person, firm, corporation, partnership, association, trust or other entity that has an ownership interest in the Property Unit; see definition) and the name(s) of the individual Designated Representative(s) and one address to which notices and communications are to be mailed, the number or numbers of the Property Unit or Units owned by the Owner, and the Property Unit identification(s). Such notice shall be signed and dated by each person who has an ownership interest in the Property Unit and by the Designated Representative(s). The Designated Representative(s) may be changed at any time by the Owner. Any new Owner of a Property Unit shall file a new written notice with the Association. At any meeting, the filing of such written notice as a prerequisite to voting may be waived by the chairman of the meeting, or his designee.

(c) Voting. Each Member shall be entitled to one vote per Property Unit owned, to be exercised by a Designated Representative, regardless of the number of persons or entities owning undivided or divided interests in the Property Unit. In the event that fractional Memberships arise for any reason, the number of eligible votes for each Member shall be rounded down to the nearest whole number. Each Member through his/her/its Designated Representative(s) shall be entitled to vote on those matters reserved to Members in the Governing Documents; provided, however, that the Member is eligible to vote by being in good standing. At any meeting, votes must be cast by only one of the Designated Representatives described in Section 3(b) above, unless waived as therein provided.

(d) Standing. A Property Unit, Owner, and/or Member is/are in good standing on a specified date if all payments due and payable to the Association for dues, special assessments, fines and any other fees or charges assessed to the Owner, Member and Property Unit, have been fully paid, and the Owner and occupants of the Property Unit are in compliance with the provisions of these Restrictions, excluding violations of Article VI and fines related to those violations, if such violations are under appeal.

(e) Designation of Benefiting Members. Each Owner may designate in writing a maximum of two Benefiting Members per Property Unit. One of the individuals so designated must have an ownership interest in that Property Unit, (directly, as beneficiary or trustee of a trust or as an officer or principal of a legal entity having an ownership interest in that Property Unit) and shall be the long-term (more than 31 days) principal occupant in residence on the Property Unit, shall be an individual who has occupancy rights to the Property Unit in a trust, or



shall be an officer of a corporation or a principal in a legal entity that has an ownership interest in that Property Unit. The second Benefiting Member shall be his/her spouse. If the first individual so designated does not have a spouse, another individual who meets the same qualifications as for the first designated Benefiting Member may be designated as the second Benefiting Member. The Benefiting Member(s) may be changed by an Owner a maximum of one time per calendar year, excluding changes resulting from a change of ownership, by filing a new notice in the manner herein provided.

(f) Services and Benefits to Benefiting Members. Certain services, personal benefits and personal privileges, with limitations thereon are extended to a maximum of two Benefiting Members per Property Unit and their legal dependents as defined and limited in this Declaration and other Governing Documents; provided, however, that the Property Unit owner and member are in good standing as defined in Section 3(d) above. These services, benefits, privileges and limitations include the use and enjoyment of the Michaywé Common Properties, other services associated with those Properties, and any other personal benefits and privileges, such as participation in social and recreational activities, as defined in this Declaration and in other Governing Documents. The limitation of two individuals per Property Unit is intended to prevent overcrowding and overuse of the Michaywé Common Properties.

(g) Designated Users. If any Owner is the Owner of more than one Property Unit, the Owner acting as Member of the Association, may designate by written notice for each additional Property Unit owned, an adult, his or her spouse and their legal dependents to receive the Services and Benefits described in Section 3(f) above, but subject to the conditions stated therein and in other Governing Documents and applicable Rules and Regulations. Such persons shall be known as "Designated Users" and shall have the same rights as Benefiting Members defined in Section 3(e) above. The Designated Users may be changed no more than one time per calendar year. For long-term rental of a residence with a written lease of more than thirty-one (31) days, the services and benefits described in Section 3(f) above may be transferred to the renters who will then become Designated Users. A written notice to the Association by the Owner is required and may be made at any time occupants under such written lease may change.

Section 4. Delegation of Management. The Board of Directors of the Association may designate an independent agent to manage the affairs of the Association, which agent shall be entitled to receive reasonable compensation to be fixed by negotiation between it and the Board of Directors. Such compensation shall be an administrative expense of the Association.

Section 5. Rules and Regulations. The Association shall have the authority to develop, issue and enforce policies, procedures, rules and regulations relating to administration and operation of the Association, and for the enforcement and administration of this Declaration, the individual Declarations for the Land Developments in the Michaywé Community, and any Declaration for Michaywé Common Properties owned by the Association, that are consistent with the Governing Documents. Any such policies, procedures, rules and regulations shall be periodically reviewed and amended as required, and shall remain in force for a maximum of seven (7) years unless amended or renewed by the Association.

## ARTICLE V

### ASSOCIATION FINANCES

Section 1. Properties Subject To Assessment. All of the Property Units included in the Restricted Property, except streets, parks, and common areas maintained for the general use of the Members of the Association, shall be subject to an annual charge (also referred to as "Association Dues") and special assessments from time to time. Such annual charge is to be paid by each Owner for each Property Unit annually, in advance, on the first day of January of each year, or in installments including reasonable processing fees as may be provided by the Association; provided, however, that the Grantor shall make payment only as to Property Units in Land Developments within the Restricted Property to which it holds title and which were established by Plat, Master Deed, Property Split or Combination, Site Plan or other similar process, and recorded on January first of each year. This charge shall be in addition to any other fees and charges imposed pursuant to any Master Deeds, Condominium Bylaws, Cooperative Bylaws, Occupancy Agreements, Articles of Incorporation or other documents imposing other independent financial obligations on land within Land Developments within the Restricted Property.

Section 2. Amount of Association Dues. The amount of such annual charge shall be established and may be adjusted from year to year by the Board of Directors of the Association as the needs of the Association may in the judgment of the Directors require, but in no event shall such charge be more than the Dues Cap already approved by the Members. Increases in this Dues Cap are permitted only if approved by the Members of the Association at any duly called and constituted meeting of Members according to requirements specified in the Association's Bylaws, which vote shall make any additional Association Dues binding upon all Owners and Property Units in the Restricted Property.

If the property is classified as Multiple Residential Land, and is developed as apartments or as a hotel, lodge or motel or otherwise so as to permit multi-family residential units (other than single family condominium units, whether attached or detached), then for the purposes of determining liability for the foregoing annual charge or any special assessment, the following shall apply. For the purposes hereof, "multi-family residential unit" shall mean any unit or units or apartment or apartments or hotel/lodge/motel rooms designed for occupation as a separate quarters. Those multi-family residential units containing three (3) bedrooms or three (3) sleeping quarters shall be subject to a full unit of said charge(s), in the same manner as any other Property Unit. Any multi-family residential units of less or more than three (3) bedrooms or three (3) sleeping quarters shall incur a charge that shall be the amount of a charge on a full non-multiple Property Unit times a fraction, the numerator of which is the number of bedrooms or sleeping quarters in such unit or units or apartment or apartments or hotel/lodge/motel rooms and the denominator of which is three (3). The Owner of Multiple Residential Land containing multi-family residential units, as defined in this section, shall possess a vote in the MOA as a single Property Unit.

Section 3. Use Of Association Dues. Association Dues may be used only for the following purposes as the Board of Directors of the Association shall determine necessary and advisable: management, operation and administration of the Association, its property and the Michaywe Common Properties, in accordance with the Governing Documents; administration of

Governing Documents; operation, improvement and maintenance of such property as may from time to time be conveyed by the Grantor to the Association or otherwise acquired by the Association; maintenance of and weed control on road right-of-ways, Michaywé Community entrance ways and other public areas; construction, purchasing, maintaining, or operating any community service or facility (other than community water or sewer systems) including acquisition or leasing of property or facilities deemed necessary or advisable in the opinion of the Directors of the Association for the general welfare of the Association or its Members; for social and recreational activities; for expenses incident to the examination of plans as herein provided; for the enforcement of this Master Declaration and other Governing Documents, and for principal and interest payments for loans in connection with these uses of Association Dues.

Section 4. Special Assessments. Special assessments, for stated, specified and limited purposes not elsewhere covered, may be levied only with approval by the Members of the Association present at any duly called and constituted meeting of Members according to requirements specified in the Association's Bylaws, which vote shall make any additional assessment binding upon all Owners and Property Units in the Restricted Property.

Section 5. Enforcement.

(a) Lien. Sums assessed to an Owner which are unpaid, together with interest on such sums, collection and late charges, advances made by the Association for other liens to protect its lien, attorneys fees and fines (as allowed by the Governing Documents), constitute a lien upon the Property Unit or Units in the Land Development owned by the Owner at the time of the assessment before other liens except tax liens on the Property Unit in favor of any state or federal taxing authority and sums unpaid on the first mortgage of record, except that past due assessments (dues, special assessments, fees, fines and other charges) which are evidenced by a notice of lien, recorded as provided hereafter in this Section 5, have priority over a mortgage recorded subsequent to the recording of the notice and affidavit of lien. The lien upon each Property Unit owned by the Owner shall be in the amount assessed against the Property Unit, plus a proportionate share of the total of all other unpaid assessments attributable to Property Units no longer owned by the Owner but which became due while the Owner had title to the Property Units. The lien may be foreclosed by judicial action or by advertisement in the name of the Michaywé Owners Association as hereinafter provided.

(b) Remedies. A statement in writing setting forth all assessments and charges against a Property Unit shall be periodically issued by the Association or its agent and shall be delivered to any lessee, Owner, Designated Representative or purchaser liable for such charges. Delinquent payments of any charges shall accrue interest at the highest rate allowed by law. The Association may enforce collection of delinquent assessments by a suit at law for a money judgment or by foreclosure of the statutory lien that secures payment of assessments. An Owner may not assert in an answer or setoff to a complaint brought by the Association for nonpayment of assessments, the fact that the Association or its agents have not provided services or management to an Owner. The Association also may discontinue the furnishing of any services to an Owner in default. An Owner in default shall not be entitled to utilize any of the Michaywé Common Properties, shall not be qualified to run for or function as an officer or Director of the Association, and shall not be entitled to vote at any meeting of the Association so long as such default continues; provided, however, this provision shall not operate to deprive any Owner of ingress or egress to and from his Property Unit. In a judicial foreclosure action, a receiver may

be appointed to collect a reasonable rental for the Property Unit from the Owner thereof or any persons claiming under him, and if the Property Unit is not occupied by the Owner, to lease the Property Unit and collect and apply the rental there from. The Association may also assess fines for late payment or nonpayment of Association Dues, assessments and other charges in accordance with the provisions of Article VII hereof, and/or through duly promulgated rules and regulations, establish late fees for late payment of Association Dues, assessments and other charges, to compensate the Association for the administrative expense associated with handling delinquent accounts. All remedies shall be cumulative and not alternative. Payments on accounts in default shall be applied as follows: first, to costs of collection and enforcement of payment, including attorney's fees; second, to any interest charges, fines and late fees on such installments; and third, to installments in default in order of their due dates.

(c) Foreclosure of Lien. Each Owner, and every other person who from time to time has any interest in the Restricted Property, shall be deemed to have granted to the Association the unqualified right to elect to foreclose the lien securing payment of assessments, costs and expenses, either by judicial action or by advertisement. The provisions of Michigan law pertaining to foreclosure of mortgages by judicial action and by advertisement, as the same may be amended from time to time, are incorporated herein by reference for the purposes of establishing the alternative procedures to be followed in lien foreclosure actions and the rights and obligation of the parties to such actions. Further, each Owner and every other person who from time to time has any interest in the Restricted Property, shall be deemed to have authorized and empowered the Association to sell or to cause to be sold the Property Unit (and improvements) with respect to which assessment(s) is or are delinquent and to receive, hold and distribute the proceeds of such sale in accordance with the priorities established by applicable law. Each Owner of a Property Unit in the Restricted Property acknowledges that at the time of acquiring title to such Property Unit, he was notified of the provisions of this Section 5 and that he voluntarily, intelligently and knowingly waived notice of any proceedings brought by the Association to foreclose by advertisement the lien for nonpayment of assessments and a hearing on the same prior to the sale of the subject Property Unit.

(d) Notice of Action. Notwithstanding the foregoing, neither a judicial foreclosure action nor a suit at law for a money judgment shall be commenced, nor shall any notice of foreclosure by advertisement be published, until the expiration of ten (10) days after mailing by first class mail, postage prepaid, addressed to the delinquent Owner at his or their last known address, or to the Designated Representative(s) at his or their last known address, of a written notice that one or more assessments levied against the pertinent Property Unit is or are delinquent and that the Association may invoke any of its remedies hereunder if the default is not cured within ten (10) days after the date of mailing. Such written notice shall be accompanied by a written affidavit of an authorized representative of the Association that sets forth (i) the affiant's capacity to make the affidavit, (ii) the authority for the lien, (iii) the amount outstanding (exclusive of interest, costs, attorney fees and future assessments, which shall also be secured by said lien), (iv) the legal description of the subject Property Unit(s), and (v) the name(s) of the Owner of record. Such affidavit shall be recorded in the Office of the Register of Deeds in the County in which the Property Unit is located prior to the commencement of any foreclosure proceeding, but it need not have been recorded as of the date of mailing as aforesaid. If the delinquency is not cured within the ten (10) day period, the Association may take such remedial action as may be available to it hereunder or under Michigan law. In the event the Association

elects to foreclose the lien by advertisement, the Association shall so notify the representative designated above and shall inform such representative that he may request a judicial hearing by bringing suit against the Association.

(e) Expenses of Collection. All expenses incurred in collecting unpaid assessments, including interests, fines, costs, actual attorneys' fees (not limited to statutory fees) and other costs paid by the Association for taxes, other liens and other such expenses paid to protect its lien, shall be chargeable to the Owner in default and shall be secured by the lien on his Property Unit. Such collection fees shall also include, but are not limited to, the costs for additional billings and invoices, special correspondence, preparing and recording liens and releases, collection agencies, and court costs. The Association shall prepare a schedule of costs for routine transactions for such billing of costs. Non-routine costs shall be billed at the actual cost to the Association plus the appropriate transaction and administrative costs.

(f) Right to Collect Rent. When an Owner is in arrears to the Association for assessments or other charges, the Association may give written notice of the arrearage to a tenant occupying an Owner's Property Unit under a lease or rental agreement and the tenant, after receiving the notice shall deduct from rental payments due the Owner the arrearage and future assessments and charges as they fall due and pay them to the Association. The deductions shall not be a breach of the rental agreement or lease by the tenant. If the tenant, after being notified, fails or refuses to remit rent, otherwise due the Owner, to the Association, then the Association may issue a statutory Notice to Quit for nonpayment of rent, and enforce that notice by summary proceedings, in addition to any rights the Association may have against the Owner and the Property Unit.

Section 6. Assessment Status Upon Sale of Property Unit. Upon the sale or conveyance of a Property Unit, any unpaid assessments, interest, late fees, fines, costs and attorney's fees against the Property Unit shall be paid out of the net proceeds of the sale price to the purchaser in preference over any other assessments or charges of whatever nature except (a) amounts due the State of Michigan or any subdivision thereof for taxes or special assessments due and unpaid and (b) payments due under first mortgages having priority to the unpaid assessments. A purchaser of a Property Unit is entitled to a written statement from the Association setting forth the amount of unpaid assessments, interest, late fees, fines, costs and attorney's fees outstanding against the Property Unit and the purchaser is not liable for any unpaid assessments, interest, late fees, fines, costs and attorney's fees in excess of the amount set forth in such written statement, nor shall the Property Unit be subject to any lien for any amounts in excess of the amount set forth in the written statement. Any purchaser or grantee who fails to request a written statement from the Association as provided herein at least five (5) days before the conveyance shall be liable for any unpaid assessments against the Property Unit together with interest, late fees, fines, costs and attorneys' fees incurred in connection with the collection of such assessments. The assessment status shall also include the current annual Association Dues, the current Dues Cap, Special Assessments currently active with installment amounts and due dates, and any conditions thereto.

## ARTICLE VI

### RESTRICTIONS

#### Section 1. Uses of Restricted Property.

(a) Residential Purposes. Except as specifically provided in any Individual Declaration for land intended and allowed to be used for multiple residential or commercial use, as defined in Article II, no Property Unit in the Restricted Property shall be used for other than single-family residential purposes and uses incidental thereto, including a private garage or carport, for the sole use of the Owner, or occupant of the Property Unit.

(b) Short-Term Rental of Residences. For purposes of this Section 1, short-term rentals for temporary housing, defined as a rental of 31 days or less, of any dwelling used primarily as a residence by the Owner thereof, as described herein, shall not be considered a commercial use, and the Association hereby grants a revocable license permitting the same as long as the following restrictions and issued rules and regulations are met. Qualifying short-term rentals of any residential dwelling shall be permitted, provided they do not exceed more than a total of twenty-five (25) rentals per calendar year not exceeding a combined total of 150 days per calendar year, subject to the following conditions. The Owner shall be responsible to ensure that (i) the renters' conduct is consistent with a residential community, (ii) the renters shall comply with the applicable requirements in these Restrictions and applicable rules and regulations of the Association, (iii) the renters do not create an annoyance or nuisance to neighbors, and (iv) a method has been established to immediately correct any violations with the renters while the renters are occupying the dwelling. The Association is granted the authority to develop, issue and enforce reasonable and appropriate rules and regulations in support of these provisions concerning short-term rentals. Further, the Association has the authority to rescind and subsequently reinstate the above license for individual Property Units and Owners who fail to maintain compliance with these requirements. Short-term renters (lessees) shall have no standing in the Association and are not entitled to any benefits and privileges from the Association. The Association shall develop, publish and maintain reasonable and appropriate procedures to be used in all rescission and reinstatement decisions.

(c) Long-Term Rentals. For purposes of this Section 1, long-term rentals of any dwelling as described herein for use as a residence as defined in paragraph (a) above of more than 31 days with a written lease shall be permitted. They shall not be considered a commercial use since they are limited to single-family use. At the discretion of the Owner, the services and benefits to Members defined in Article IV, Section 3(f), may be transferred to the renters as defined and limited in Article IV, Section 3(g).

(d) Occupancy Restrictions. All Property Units shall be occupied in strict conformance with the restrictions and regulations of the BOCA National Property Maintenance Code, or such other codes or ordinances, which may be adopted by the municipality with jurisdiction from time to time. Accordingly, the number of persons allowed to reside in any Property Unit shall be restricted by the size and number of the bedrooms, and other areas of any dwelling located on said Property Unit. Such restrictions shall automatically change, without the necessity of an amendment to this document, upon the adoption of alternative regulations by the

municipality with jurisdiction, such that the occupancy of all Property Units in the Restricted Property shall be in accordance with all municipal regulations at all times.

(e) Grantor's Rights To Dedicate. Notwithstanding anything to the contrary contained herein, the Grantor shall retain the right to, at its sole cost and expense, dedicate or set aside any Lot owned by Grantor in a platted subdivision or condominium or otherwise subject to this Master Declaration, or any portion thereof, to any appropriate governmental authority for road purposes, if and only if, (i) there is existing or Mandatory or Discretionary Future Development Property that could be accessed through such Lot, or portion thereof, and (ii) express written approval of the Owners of any Lots abutting such proposed dedicated or set aside Lot, or portion thereof, is obtained and such approval has been recorded with the Otsego County Register of Deeds, and (iii) the Michaywé Owners Association is notified in writing at least thirty (30) days in advance of such dedication or set aside.

(f) Vehicle and Equipment Restrictions. House trailers, commercial vehicles (except while making normal deliveries or providing services), trailers, motor homes, camping vehicles, snowmobiles, any non-motorized vehicles (including but not limited to utility trailers, boats, other watercraft and trailers used to transport snowmobiles, watercraft and other payload), off-the-road vehicles, and all-terrain vehicles shall not be stored or parked on any Property Unit within the Restricted Property unless within a private completely enclosed garage. Automobiles, sport utility vehicles and noncommercial pickup trucks and passenger vans, not exceeding 22 feet in overall length, used as an occupant's primary means of transportation, may be parked on each Property Unit. The Association may issue a written waiver to the preceding restriction only to prevent significant, non-self imposed hardship or if the variance is inconsequential. Notwithstanding the above, parking of noncommercial vehicles and recreational/leisure vehicles and equipment during periods of use, loading and unloading shall be allowed for not more than ten (10) days. The Association shall have the authority to issue rules and regulations not inconsistent with this section relative to the temporary presence of any such listed vehicles or recreational/leisure equipment.

(g) Dividing and Combining Lots and Divided Land. No Lot or previously divided land in the Restricted Property may be further divided unless it is combined with abutting Property Units, all parcels are in good standing and the division is in accordance with State Law and local ordinance. Notwithstanding this provision, the division or consolidation of units within any condominium established pursuant to the Michigan Condominium Act shall be in strict accordance with the provisions of that Act.

In the event any Property Unit is divided, the division of voting rights for that Property Unit, and the division of its share of all Association Dues, assessments and charges, shall be irrevocably assigned in writing to the subject abutting Property Unit in the Restricted Property by the Parties involved, subject to the following. The obligation of the divided Property Unit for Association Dues, assessments and charges may be assigned to any of the subject abutting Property Units in whole or to each subject abutting Property Units fractionally. The vote of the divided Property Unit shall be assigned to any of the subject abutting Property Units in whole or to each subject abutting Property Units fractionally. An instrument, recorded with the Register of Deeds for Otsego County, Michigan, by the Owner of such divided Property Unit, shall define the division of a Property Unit and shall also include the assignment of voting rights and obligations for dues, assessments and charges. A copy shall be provided to the Association.

It is further provided that any of the Property Units in a Land Development may, upon written approval of Association, and if all affected Property Units are in good standing, be combined with any other abutting Property Unit or Property Units in abutting Land Developments in the Restricted Property, and for all purposes such combination of Property Units shall be considered as one building site. Any combined Property Units may thereafter be separated back to the original configuration, provided that the resulting separate Property Units meet all setback and other restrictions of this Declaration, as well as all requirements of municipal zoning and building ordinances. When two or more Property Units are combined, the Owner of those Property Units will no longer have the right to name Designated Users for the additional, individual Property Units being combined.

(h) Property Units may be irrevocably combined if an instrument combining the Property Units shall be recorded with the Register of Deeds, Otsego County, State of Michigan, by the Owners of the affected Property Units, and further provided that said instrument specifically provides that the combined lots **may not** be separated back into the original Property Units. Effective with the fiscal year 2005, any two irrevocably combined Property Units shall possess one and one half memberships in MOA (subject to adjustment of votes pursuant to Article IV, Section 3(c) hereof), and will be liable for a one and one-half (1 ½) share of the dues, assessments and charges applicable to any single, non-combined Property Unit in the Restricted Property. If more than two Property Units are irrevocably combined as allowed by the preceding provisions, all Property Units in excess of two will continue to have a full vote in MOA, and shall continue to pay a full share of the dues, assessments and charges applicable to any single, non-combined Property Unit in the Restricted Property.

## Section 2. Approval of Building and Site Plans.

(a) Approval of Construction. No building or other structure of any kind whatsoever, or site preparation related thereto, shall be commenced, erected, re-erected, or moved on any Property Unit within the Restricted Property, nor shall any addition, change or alteration to any structure be made, except interior alterations, until sufficient and detailed plans and specifications for the intended work, showing the nature, kind, shape, height, materials, color schemes, topography, location of structures, proposed tree removals, wells and septic system on the Property Unit and change or addition in relation thereto, the grading plan of the Property Unit to be built upon, and other details specified in applicable rules and regulations shall have been submitted to and approved in writing by the Association or its assigns.

(b) Association's Approval Rights. The Association and/or its appointees shall have the right to refuse to approve any plans, specifications or grading plans which are not suitable or desirable in its opinion for aesthetic or other reasons; and in so passing upon such plans, specifications and grading plans, it shall have the right to take into consideration the suitability of the proposed building or other structure to be built with relation to the site upon which it is proposed to be built and the harmony to be achieved with respect to neighboring properties. It is understood that the purpose of this Restriction is to cause the Restricted Property to be developed into a beautiful, harmonious residential recreational community, which is further described in Sections 1 and 3 of this Article. If a disagreement over the matters set forth in this Restriction should arise, the decision of Association shall control.

The decision to approve or not approve shall be guided by the following considerations, among others. Buildings should be located to be harmonious with buildings and



landscaping on adjacent Property Units and to minimize the cutting of healthy trees. Building details consistent with this character are moderately steep roofs, moderate overhangs, brick, stone, stucco, wood or wood-grained siding, softer colors such as earth tones, and avoidance of plain rectangular shapes. Other buildings on a Property Unit should be architecturally similar to that of the residence. Landscaping, including replanting of trees, should maintain the maximum number of healthy trees consistent with good forest management, safety and providing reasonable light for plants and ground cover. The Association has the authority to determine conformance with these guidelines as described in the above paragraph.

(c) Variances. The Association shall have the authority to grant variances to the provisions and requirements in this Article only if the following exist. A use variance (use of property for other than the stated purpose in these Master Restrictions) may be granted only if substantial evidence is presented that the property cannot reasonably be used in a manner consistent with these Master Restrictions. A non-use variance (such as changes in a structure's area, height, setback) may be granted only if a practical difficulty is shown, (not self created, but caused by unique or exceptional circumstances), that would prevent the property from being developed in accordance with the requirements of these Master Restrictions. The granting of any variance shall not be of substantial detriment to adjacent Property Units and shall not materially impair the intent and purpose of this Article or the interests of the Owners of Property Units in the Restricted Property as a whole.

(d) Rules and Regulations. The Association shall issue rules and regulations not inconsistent with the Restrictions in this Declaration for the documents and materials to be submitted and for the approval process which shall ensure reasonable and appropriate consideration for the Owner seeking approval of his building and site plans and for other affected Owners.

(e) Association's Approval Procedure. The Association must either approve or reject such approval request (written decision with written explanation) within fourteen (14) business days of receipt of the request and all necessary supporting documents/plans. In the event such request is not approved or rejected within said time period, the request will automatically be deemed approved; provided, however, that plans and location of the structures or improvements to be built on the Property Unit shall conform to, and are in harmony with, existing structures in the Restricted Property, this Master Declaration, and any zoning laws applicable thereto.

(f) Owners' Right to Appeal. Any Owner may request the Board of Directors of the Association to conduct a hearing to reconsider any decision made under the authority of Section 2(b) above and may present arguments at the hearing. The Board shall promptly render a decision with written explanation on the request. Should an Owner at any time feel aggrieved by the decision of the Association, (either with respect to the approval/denial or any procedural requirements of the Association prior to making a decision), he/it shall have the right to appeal the decision to an independent arbitrator qualified as to architectural, engineering and land planning issues, chosen by mutual consent of the parties. If the parties are unable to agree on an arbitrator, each party shall choose an independent arbitrator qualified as to architectural, engineering and land planning issues, and those two chosen arbitrators shall choose a third. The arbitrators shall expeditiously determine the procedure to be followed and render a decision as soon as reasonably possible. Their majority decision shall be final and pursuant to MCLA

600.5001 (1), a judgment of the Otsego County Circuit Court shall be rendered upon the decision of the arbitrators. All costs of arbitration shall be shared equally between the parties to the arbitration.

Section 3. Character, Restrictions and Size of Buildings and Other Structures.

(a) Residential Recreational Community. The Michaywé Community is a residential recreational community. The character of the Community and buildings shall be developed and maintained to be consistent with and enhance the north woods character and beauty of the original natural setting of the land. Guidelines related to the approval authority are contained in Section 2(b).

(b) Fences, Garden Walls, Retaining Walls And Pools. Fences, garden walls, retaining walls and similar devices shall be permitted within the Restricted Property. However, such fences, garden walls and similar devices shall be constructed only after plans, specifications and location thereof shall first have been submitted in writing to and approved in writing by the Association. In no event shall fences, garden walls or similar devices be permitted in the front yard of any Property Unit within the Restricted Property, except that ornamental fences not exceeding three feet in height shall be permitted. Furthermore, no fences shall be permitted in any rear Property Unit line easement or side Property Unit line easement so designated as a pedestrian easement in the Land Development. A fence will be permitted around any privately owned swimming pool as a safety precaution or in accordance with ordinances regulating the construction and use of swimming pools. Fences or enclosures to be used as dog runs or to cage any other acceptable household pets shall be attached to the rear of the main residence building or to the rear of an enclosed attached garage or carport, or attached to the side of the dwelling or garage and set back from the front-side corner of the dwelling by at least twenty (20) feet and shall be at least fifty (50) feet from any neighboring residential dwelling or potential residential dwelling location. Further, any such fence or enclosure shall be screened or located so as not to be visible from the street or from the side. The Association and/or its appointees shall have the right to specify any vegetation or screening which may be required to be planted in conjunction with the erection of fences, garden walls or similar devices.

(c) Outdoor Lighting. Any outdoor lighting shall be located, designed and directed as not to cast light high-intensity light directly on any adjacent Property Unit, or be distracting or annoying to neighbors.

(d) Size Requirements. No dwelling shall be permitted on any Property Unit in the Restricted Property unless the living area thereof is at least 1,200 square feet with a minimum first floor living area of at least 1,000 square feet. The site plan shall include provisions for at least a two-car garage.

Section 4. Building Lines. No building on any Lot within a plat or divided land for use as a single-family residence shall be erected nearer than 50 feet to the front Lot line (side facing the street) or nearer than 20 feet to the side Lot line, or nearer than 35 feet to the rear Lot line unless otherwise specified in the individual declaration for the Land Development in question because of unique conditions for that Land Development. For other Land Developments, no building can be nearer than 50 feet from the front and 35 feet from any other boundary of the Land Development unless otherwise specified in the Master Deed for the Land Development in question because of unique conditions for that Land Development. For corner lots and corner

divided land, the setbacks shall be 50 feet to both streets and 20 feet to both sides. These setback requirements shall be measured to the closest point from the site boundary line to the building including projections that extend outward from the foundation and other structures such as decks that are an part of the amenities for the dwelling. The Association retains the right to approve variances from the terms of this Restriction by the giving of its written consent according to the provisions of Section 2(c) of these Restrictions, subject at all times to the provisions of any applicable zoning ordinances and these Restrictions.

Section 5. Water Supply and Sewage Disposal.

(a) General Requirements. All dwellings constructed, erected or located within the Restricted Property must be served by a potable water supply system and sewage disposal system. For individual single-family residences, potable water supply and sewage disposal facilities shall, during the initial development of the Land Development, consist of private wells and private septic tanks and subsurface sewage disposal systems for each Property Unit, which shall be installed by each Property Unit Owner or purchaser. For multiple units, potable water supply and sewage disposal facilities shall, during the initial development of the Land Development, consist of public wells and public septic tanks and subsurface sewage disposal system for each Land Development, which shall be installed as common facilities for the Land Development. At some time subsequent to such initial development, the need may arise for the construction of public potable water supply and/or sewage disposal systems to serve all or part of the Restricted Property. (See subparagraphs (h) & (i), below.)

(b) Toilet Facilities. All toilet facilities must be located inside a dwelling. All septic tanks and subsurface sewage disposal systems shall be constructed in compliance with the regulations of the Northwest Michigan Community Health Agency, the Sanitary Code of Otsego County and with applicable Michigan Department of Public Health regulations.

(c) Septic Tanks and Tile Fields.

(1) Except for Property Units abutting a golf course or as otherwise specified in the individual declaration, all septic tanks and tile fields shall be located on the roadside or front of the dwelling to facilitate hookup to municipal sewer when it becomes available or, because of site limitations, with the specific approval of Northwest Michigan Community Health Agency, in an optional location.

(2) For Property Units abutting a golf course, all water wells shall be located on the roadside to provide maximum isolation from golf course fairways, unless otherwise approved by Northwest Michigan Community Health Agency prior to or at time of application and issuance of building permit for a specific Michaywé site or lot by the appropriate municipal authority.

(3) Whether the septic tank and tile fields are located in the front yard (the yard located abutting the public or private road right-of-way) or in the rear yard, the area of the septic tank and tile field, excluding the area of all required lot boundary required setbacks, driveway areas and required setbacks of septic tank and tile fields from house, shall contain not less than a "net" area of three thousand (3,000) square feet of surface land area suitable for installation of septic tank and tile field. The purpose of this requirement and restriction is to provide for adequate space in which to relocate a septic tank and/or tile file in the same general area in case of failure of same.

(4) The Association, and its successors, assigns or designee, in granting site plan and building plan approval, shall require as a condition of such approval the above referred to three thousand (3,000) "net" square feet of land for septic tank and tile field area. This requirement may be modified or waived by the Northwest Michigan Community Health Agency.

(5) All septic tanks and tile fields shall be located at least 20 feet away from any proposed or existing earth cut, to eliminate potential leaking of septic tank effluent into ground surface. Due to topographic limitations, raw sewage ejectors or effluent pumps may be required to pump septic tank effluent to a suitable location for a septic tank tile field. Tile fields may not be constructed on severe grades.

(d) Water Wells. All potable water wells drilled on individual Property Units shall utilize a casing of at least four-inch outside diameter and the well screen in each case shall be installed at least 100 feet below the land surface and at least 50 feet below the water table unless otherwise approved by the Northwest Michigan Community Health Agency. Requirements for public wells for multiple-unit Land Developments shall be individually developed, and shall require approval of Northwest Michigan Community Health Agency.

(e) Oil and Gas Drilling. Oil and gas well drilling shall not be permitted within the Land Developments in the Michaywé Community without written approval of the Michigan Department of Public Health and Northwest Michigan Community Health Agency. A minimum of 300 feet of isolation area shall be maintained from the boundaries of any oil or gas well drilling site, production well, and storage separation to the nearest Property Unit or habitable dwelling. Where Property Units abut existing oil or gas well installations, a minimum of 200 feet of isolation area shall be maintained between the wellhead and any proposed potable water wells serving the individual Property Units unless otherwise approved by Northwest Michigan Community Health Agency.

(f) Permits. Permits to construct individual water supplies and sewage systems for individual Property Units, or to construct public water supplies and public sewage systems for Land Developments, shall be obtained from Northwest Michigan Community Health Agency prior to any site clearing, placement of driveway, culverts or site excavation, prior to the commencement of any construction and prior to issuance of a building permit for the specific Property Unit by the appropriate municipal authority.

(g) Drilling of Water Wells. All potable water wells drilled on Property Units in the Restricted Property shall be drilled by a well driller licensed by the State of Michigan under the supervision of the Northwest Michigan Community Health Agency, and only after obtaining a well-drilling permit. A completed well log form for each such potable water well shall be submitted to the Northwest Michigan Community Health Agency within sixty (60) days following completion of such well.

(h) Construction Restriction. The construction of dwellings in the Restricted Property shall be limited to construction of not more than 800 single-family residences within the Restricted Property, including those in multiple units in multiple-unit Land Developments, until such time as a public water supply and/or public sewage disposal system has been constructed and made available to all or part of such Property Units or other Land Developments, or until a waiver or amendment of such 800-single-family-residence requirement shall have been obtained

from the Northwest Michigan Community Health Agency and the Michigan Department of Public Health.

(i) Requirement to Connect to Public Water and Sewer Facilities. The acceptance of a conveyance or the execution of any land contract to purchase any Property Unit in any Land Development by any Owner or purchaser shall constitute the agreement by each such Owner or purchaser, his heirs, executors, administrators and assigns that:

(1) The construction of all or any part of any such public water supply and any such public sewage disposal system may be financed, in whole or in part, by the creation of a special assessment district which shall include such Property Unit and that such Owner or purchaser shall execute any petition circulated for the purpose of creating such a special assessment district and shall vote in favor of the creation of such a district in any referendum called for that purpose.

(2) Each such Owner or purchaser shall pay any special assessment imposed by the creation of a special assessment district, which may be levied against his Property Unit.

(3) Each such Owner or purchaser shall take such steps and perform such acts as may be deemed necessary by appropriate state, county and township agencies to connect his water intake and sewage discharge facilities to such public system or systems within ninety (90) days following the completion of such system or systems, and further agrees that he will pay any tie-in or hookup charge related thereto.

(j) Water Quality Monitoring Program. To facilitate the gathering of necessary information concerning water quality, the Northwest Michigan Community Health Agency and the Association have developed a program, recorded in Liber 0843, Pages 37-71, Otsego County Records and which may be updated from time to time, to monitor water quality within the Restricted Property. The Association, its successors or assigns, and its authorized designees hereby reserves the right and authority, and all required easements, to take water samples from the water well(s) located on each of the Property Units for the purpose of testing and evaluation of the potability of the water and the contents and materials contained in the water samples. Such water samples may be given directly to the Northwest Michigan Community Health Agency for testing or may be tested by a private entity, and the results of such tests delivered to the Northwest Michigan Community Health Agency.

Section 6. Buildings Adjacent to Flood Plain. All buildings used or capable of being used for residential purposes and occupancy which are located in, near or adjacent to the flood plain of the North Branch of the AuSable River, said flood plain defined as all land area adjacent to the river lying below the contour elevation if and as specified in the individual declaration or master deed for the Land Development shall:

(a) Have lower floors, excluding basements, a minimum of one (1) foot higher than the elevation of the contour defining the flood plain limits.

(b) Have openings into the basement not lower than the elevation of the contour defining the flood plain limits.

(c) Have basement walls and floors, below the elevation of the contour defining the flood plain limits, watertight and reinforced to withstand hydrostatic pressures from a water level equal to the elevation of the contour defining the flood plain limits.

(d) Be equipped with a positive means of preventing sewer backup from sewer lines and drains which serve the building.

(e) Be properly anchored to prevent flotation.

Section 7. Animals. No chickens, other fowl, horses or livestock shall be kept or harbored on any of the Property Units within the Restricted Property. No animals shall be kept or maintained on any such Property Unit excepting household pets for use by the occupants of dwellings within the Restricted Property. No animals shall be kept on any Property Units for any commercial purpose. Household pets shall have such care as not to be objectionable or offensive on account of noise, odor or unsanitary conditions. Animals may be declared nuisances by the Association and must be removed within ten (10) days following the receipt by the owner of such animals of a request for removal in writing from the Association or its authorized representative.

Section 8. Signs. No sign or billboard shall be placed or maintained on any Property Unit except one professionally prepared sign located on the road side of the Property Unit advertising the Property Unit or house located thereon for sale or lease, and having not more than four (4) square feet of surface area, the top of which shall be not more than three feet above the ground and shall not be attached to trees or other vegetation. The Association shall have the authority to remove any sign in road right-of-ways within the Restricted Property if such signs are also in violation of local ordinance. The Association shall have the right to develop and issue rules and regulations permitting personal identification and other non-advertising signs as it deems appropriate for the Michaywé Community.

Section 9. Easements. Easements and rights-of-way are hereby reserved as shown on the recorded plat or Master Deed for the Land Development, to include rear and side Lot line easements designated as pedestrian easements. In addition to the above easements and rights-of-way there are hereby reserved easements on, in, over and through areas six (6) feet in width along all front, rear and side Lot lines of all Lots in the Subdivisions and along the boundaries of other Land Developments for the installation and/or maintenance of telephone or electric poles, lines or conduits, sewer lines, gas lines or water mains, for drainage purposes, or any other purpose or use deemed necessary by the Grantor. The use of all or any part of such easements and rights-of-way may be granted or assigned at any time hereafter by the Grantor to any person, firm, governmental unit or agency or corporation furnishing any of the aforementioned services.

Section 10. Refuse. No refuse pile or other unsightly or objectionable materials shall be allowed on any Property Unit within the Restricted Property unless the same shall be properly concealed. Refuse, ashes, building materials, garbage and debris of any kind shall be handled and stored in such a manner as not to be offensive to neighbors.

Section 11. Noxious Activity. No noxious or offensive activity shall be carried on upon any Property Unit within the Restricted Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Reasonable rules and regulations may be adopted by the Association concerning, but not limited to, the use of snowmobiles and motorized sport vehicles and the mowing and care of grass or lawn areas.

Section 12. Trees and Forest Management. Good forest management and practices shall be used by each Owner of each Property Unit and the Association to maintain and enhance the north woods character and beauty of the original natural setting of the land. Removal of dead

and diseased trees and brush is appropriate to improve appearance and to reduce fire and safety hazards. Except as may be required for construction, no more than 10% of the trees over six (6) inches in diameter (measured 12" above ground level) can be removed without approval of the Association. Commercial harvesting of trees is prohibited.

Section 13. Oil, and Mining Operations. Except with the written consent of the Association, all Owners and purchasers of Property Units within the Restricted Property, all holders of mineral rights and the Association shall be bound by the following: No oil drilling, oil development or oil refining operations, or quarrying or mining operations of any kind shall be permitted upon or in any Property Unit or parcel nor shall oil wells, tanks, tunnels, mineral excavations or shafts, except for domestic water wells, be permitted upon or in any Property Unit or parcel, and no derricks or other structures designed for use in drilling for oil or natural gas shall be erected, maintained or permitted upon any Property Unit or parcel.

Section 14. Boating and Lake Restrictions. No motorized boats and vehicles shall be permitted on any private lake within the Restricted Property either existing or proposed, unless in the case of an emergency or following receipt of the written approval of the Association.

Section 15. Fuel Storage Tanks. All fuel storage tanks shall be covered if below ground level, or if above ground, concealed from view from the street by a device or enclosure in architectural harmony with the buildings and landscaping.

Section 16. Exterior Completion Requirement. All buildings erected in the Restricted Property shall have their approved exterior finishes completed within six months from the date construction of such buildings shall have commenced. The Association, and/or its agents or appointees, reserves the exclusive right to approve such extension or extensions of this period as it shall deem appropriate.

Section 17. Fires and Equipment for Combustibles. Ground fires and open fires are prohibited. Furnaces, fireplaces, barbecues and incinerators shall be constructed so as to be spark-proof and to prevent ground fires. All burning of trash shall be performed in incineration devices approved by the municipality with jurisdiction.

Section 18. Hunting and Shooting. No hunting, shooting, or discharge of firearms shall be permitted in the Restricted Property.

Section 19. Drainage.

(a) Crossing Drainage Areas. No purchaser or Owner of any Property Unit in the Restricted Property shall build, grade or construct any driveway or road to his Property Unit from any street in the Restricted Property if such driveway or road shall cross any drainage ditch unless such Owner or purchaser shall provide and install in such drainage ditch, in accordance with the requirements of the Otsego County Road Commission, a culvert approved by such Commission to provide clear and unobstructed flow through such drainage ditch. The installation of said culvert shall be such as to avoid ponding in such drainage ditch. Any damage to such drainage ditch, which results from the installation of such culvert or from any other activity of such Owner or purchaser shall be promptly repaired by and at the expense of such Owner or purchaser.

(b) Grading. No Property Unit in the Restricted Property shall be graded or landscaped in any manner, which will create or result in ponding on such Property Unit or on any Property Unit within the Restricted Property.

## ARTICLE VII

### FINES

Section 1. General. The violation by any Owner, Member, Benefiting Member, Nonmember occupant, tenant or guest of any of the provisions of the Governing Documents including any duly adopted rules and regulations shall be grounds for assessment by the Association, acting through its duly constituted Board of Directors, of monetary fines against the Owner of the Property Unit involved. Such Owner shall be deemed responsible for such violations whether they occur as a result of his personal actions or the actions of his family, guests, tenants or any other person admitted through such Owner to any portion or part of the Michaywé Community, including Property Units, Common Areas, Restricted Property, and Michaywé Recreational Properties.

Section 2. Procedures. Upon any such violation being alleged by the Board, the following procedures will be followed:

(a) Notice. Notice of the violation, including the Governing Document provision violated, together with a description of the factual nature of the alleged offense set forth with such reasonable specificity as will place the Owner on notice as to the violation, shall be sent by first class mail, postage prepaid, to the address for such Owner, or Designated Representative as shown in the official records of the Association, or personally delivered to the Owner.

(b) Opportunity to Defend. The offending Owner shall have an opportunity to appear before the Board and offer evidence in defense of the alleged violation. The appearance before the Board shall be at its next scheduled meeting or the Board's earliest convenience, but in no event shall the Owner be required to appear less than 7 days from the date of the notice.

(c) Default. Failure to respond to the notice of violation within thirty (30) days of the violation, or failure to appear at any scheduled hearing shall constitute a default.

(d) Hearing and Decision. Upon appearance by the Owner before the Board and presentation of evidence of a defense or, in the event of the Owner's default, the Board shall by majority vote of a quorum of the Board decide whether a violation has occurred. The Board's decision is final.

Section 3. Fines. Upon finding of a violation of any of the provisions of the Governing Documents, or after default of the offending Owner, or upon the decision of the Board as recited above, the following fines may be levied:

- |                               |              |
|-------------------------------|--------------|
| 1. FIRST NOTICE OF VIOLATION  | No Fine      |
| 2. SECOND NOTICE OF VIOLATION | \$25.00 Fine |



- 3. THIRD NOTICE OF VIOLATION \$50.00 Fine
- 4. FOURTH NOTICE OF VIOLATION AND ALL SUBSEQUENT VIOLATIONS \$100.00 Fine

The Board of Directors, without the necessity of an amendment to this Declaration and according to the provisions in Article VIII, Section 1(b), may make such changes in said fines or adopt alternative fines, including the indexing of such fines to the rate of inflation, provided notice of such changes is distributed to all Designated Representatives at least thirty (30) days before the same shall become effective. For purposes of this Section, the number of the violation (i.e. first, second etc.) is determined with respect to the number of times that an Owner, or person for whom the Owner is responsible, violates the same provision of the Governing Documents, as long as that Owner may be an Owner of a Property Unit or occupant of the Michaywé Community, and is not based upon time or violations of entirely different provisions. In the case of continuing violations, a new violation will be deemed to occur each successive week during which a violation continues. Nothing in this Article shall be construed as to prevent the Association from pursuing any other remedy under the Governing Documents or State law for such violations, or from combining a fine with any other remedy or requirement to redress any violation.

Section 4. Collection. The fines levied pursuant to Section 3 above shall be assessed against the Owner and shall be due and payable in full no later than thirty (30) days from the date the notice of the fine is mailed to such Owner, or Designated Representative at the address for such Owner or Designated Representative as shown in the official records of the Association. Failure to pay the fine will subject the Owner to all liabilities set forth in the Governing Documents including, without limitation, those described in Article V, Section 5, of this Declaration.

## ARTICLE VIII

### GENERAL PROVISIONS

#### Section 1. Amendment.

(a) Amendment and Administration. Any group of at least five percent (5%) of the Owners of Property Units in the Restricted Property, a majority at a duly called and constituted Association meeting, or the Board of Directors of MOA may propose an amendment to this Declaration. Proposed amendments shall be in writing and reflect the current wording of this Declaration as well as the changed wording being proposed, together with a succinct rationale for the proposed change. Any group of at least five percent (5%) of the Owners of Property Units in the Restricted Property, or the Board of Directors of the Association, may submit a succinct rationale in opposition to the proposed change. A meeting of all of the Owners of Property Units in the Restricted Property shall be called and noticed (at least thirty [30] days from the date of the notice) by the Association, with the proposed amendments and succinct rationales being distributed to the Owners of Property Units along with the Notice, and the

proposed amendment shall be fully considered by the Owners at said meeting. Alternative versions of any amendment may be considered and approved for a vote of the Owners by a majority of those in attendance at such meeting.

Any proposed amendment, including approved alternative versions, shall then be placed in proper legal form by counsel for the Association, and a notice of vote shall then be mailed to each Owner (Designated Representative) at the address of record containing the proposed amendment(s) clearly identifying the provisions affected and the proposed changes together with any rationales. The Association shall set a time for submission of votes, receive all ballots, and count and tabulate them, and announce and report the results to all Owners (Designated Representatives).

(b) Requirements. From July 7, 2000 forward, this Master Declaration shall remain in effect unless and until amended. Any amendment must be approved by an affirmative vote of two-thirds (2/3) of the Owners of Property Units in the Restricted Property entitled to vote (those in good standing as defined in Article IV, Section 3(d)) and voting, not counting abstentions and blanks, cast by their Designated Representatives either in person or by proxy at a duly called and constituted meeting of Owners or by written ballot, as determined by the Association. Each Owner shall be entitled to one vote for each Property Unit owned. Owners shall be given notice of the vote in accordance with the provisions of the Bylaws of the Association for notice of meetings of the Association. The vote shall be valid only if the total number of Owners voting as permitted herein, equals at least one-third (1/3) of the Property Units in good standing. The Restrictions set forth in Article VI, Section 5 and 6 hereof may not be amended, and shall remain in effect as to each Land Development in the Restricted Property as long as the plat or Master Deed or other recorded land division instrument thereof shall remain of record. Any approved amendment shall be duly recorded by the Association with the Register of Deeds for Otsego County and shall be binding on all Restricted Property. No provision granting a substantive right solely to the Grantor shall be amended without the additional written consent of the Grantor.

Section 2. Assignment Of Rights And Procedure For Approvals. The Grantor has assigned its rights, privileges and duties of approval, supervision and control in connection with the Restricted Property to the Association. The Association shall have and exercise all of the rights so assigned, (with the exception of those reserved in Article III and Article VI, Section 1(e), of this Master Declaration to add land to coverage of this Master Declaration, and the other exceptions referenced herein), and the Grantor shall be fully released and discharged from further obligations and responsibilities in connection therewith. To the extent any of the rights and obligations so assigned concern, affect or relate to obligations of the Grantor vis-a-vis the approval of Michaywé as a planned unit development, the Association covenants to fully and faithfully discharge such rights and obligations, and hereby agrees to indemnify and hold Grantor harmless with respect thereto. In no way shall such transfer or assignment of rights and obligations be held or construed to render the Association a developer or proprietor for purposes of the planned unit development, or otherwise. The Association hereby consents, without further written evidence, to any plat or submission of land to a condominium by the Grantor or its successors upon the Restricted Property in accordance with the terms of this Declaration.

In the event the Grantor or Qualified Subsequent Owner should require the approval of any matter by the Association, as a result of the assignment or transfer of such rights to the Association pursuant to the provisions of this Section, as to any portion of the Restricted

Property, Mandatory Future Development Property, or Discretionary Future Development Property that is made subject to this Master Declaration or any Individual Declaration, the Association must either approve or reject (with written explanation) such request within fourteen (14) business days of receipt of the request and all necessary supporting documents/plans. In the event such request is not approved or rejected within said time period, the request will automatically be deemed approved. Should the Grantor or Qualified Subsequent Owner at any time feel aggrieved by the decision of the Association, (either with respect to the approval/denial or any procedural requirements of the Association prior to making a decision), it shall have the right to appeal the decision to an independent arbitrator qualified as to architectural, engineering and land planning issues, chosen by mutual consent of the parties. If the parties are unable to agree on an arbitrator, each party shall choose an independent arbitrator qualified as to architectural, engineering and land planning issues, and those two chosen arbitrators shall choose a third. The arbitrators shall expeditiously determine the procedure to be followed, and render a decision as soon as reasonably possible. Their majority decision shall be final. All costs of arbitration shall be shared equally between the parties to the arbitration.

Section 3. Violations. Violation of any restriction or condition or breach of any covenant or agreement herein contained shall give the Association, in addition to all remedies provided by law, the right to enter upon the land as to which such violation or breach exists, and to summarily abate and remove at the expense of the Owner or purchaser thereof, any erection, sign, thing or condition that may exist contrary to the intent and meaning of the provisions hereof, and the Association, shall not be deemed liable in any manner of trespass for such entry, abatement or removal. Failure of the Association to enforce this Master Declaration with respect to any violation shall not constitute a waiver of the right to enforce them with respect to subsequent violations.

Section 4. Severability. Each restriction herein set forth is intended to be severable and in the event that any such Restriction or covenant is for any reason held to be void such a determination shall not affect the validity of the remaining Covenants and restrictions set forth herein.

Section 5. Language Construction. The pronouns and relative words used herein are written in the masculine and singular only. Where applicable, such words shall be read as though they pertain to the feminine sex or to a corporation or as if written in the plural or neuter, respectively.

Section 6. Parties Bound. Acceptance of a conveyance or the execution of any land contract to purchase any Property Unit within the Restricted Property by any Owner or prospective owner shall constitute agreement to all of the Restrictions set forth herein by such Owner or purchaser, his heirs, executors, administrators and assigns whether or not any reference to this Master Declaration is made in any such conveyance or contract.

Section 7. Venue. The proper venue for any and all claims, causes of action, lawsuits or disputes of any kind or nature commenced or filed by Michaywé Owners Association against a Member or Members, or by a Member or Members against MOA shall be Otsego County, State of Michigan.

**IN WITNESS WHEREOF**, the Association has executed this Second Amended and Restated Declaration of Master Covenants, Conditions and Restrictions for the Michaywé Restricted Property as of the date first set forth above.

**MICHAYWÉ OWNERS ASSOCIATION,**  
a Michigan nonprofit corporation

BY: \_\_\_\_\_ / s/ \_\_\_\_\_  
VICKY O. RIGNEY, President

STATE OF MICHIGAN     }  
                                      }SS.  
COUNTY OF OTSEGO     }

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of March 2009 by Vicky O. Rigney, the President of Michaywe' Owners Association, a Michigan nonprofit corporation, on behalf of said corporation.

**This instrument drafted by,  
and after recording, return to:**

Todd Chwatun, General Manager  
Michaywé Owners Association  
1535 Opal Lake Road  
Gaylord, Michigan 49735

\_\_\_\_\_/ s/ \_\_\_\_\_  
Julie Dickson, Notary Public  
Otsego County, Michigan  
My Commission Expires: Oct. 29, 2014