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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

IRBY GLEN SUBDIVISION

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF SOUTH CAROLINA**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS**

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CHARLOTTE, NC 28208

# TABLE OF CONTENTS

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR IRBY GLEN SUBDIVISION

**This Declaration of Covenants, Conditions and Restrictions** is made ____May____ __29__, 2025 ("**Effective Date**"), by TMC Irby LLC, a South Carolina limited liability company (hereinafter sometimes called "**Declarant**" or "**TMC**").

## ARTICLE I
## Creation of the Community

**1.1** **Purpose and Intent**. Declarant owns the real property described on **ExhibitA**. Declarant hereby intends to establish a general plan of development for the planned residential community known as Irby Glen subdivision. As part of that plan, Declarant will create the Irby Glen HOA, Inc., a South Carolina nonprofit corporation an association comprised of all owners of real property in the Community (as defined in **Article II**), to own, operate and maintain common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents (as defined in **Article II**). This document establishes a planned residential community under the South Carolina Homeowners Association Act.

**1.2** **Governing Documents**. The Governing Documents for the Community consist of the following, as they may be amended and supplemented: (a) this Declaration; (b) the Association's Articles of Incorporation and Bylaws; (c) the Restrictions described in **Article VII**; (d) the Design Guidelines described in **Article VIII**; and (e) resolutions adopted by the Association's Board of Directors. If a conflict arises between or among any of the Governing Documents, the documents will be given priority in the order listed above.

## ARTICLE II
## Definitions

**2.1** **Definitions**. Capitalized terms have the definition assigned in this **Section2.1** or elsewhere in this Declaration.

2.1.1 "**Act**" means the South Carolina Homeowner's Association Act Carolina Planned Community Act, SC Code 27-30-110, et seq., as it may be amended.

2.1.2 "**Additional Property**" means the real property located in the City of Spartanburg, Spartanburg County, South Carolina, described on **Exhibit B**.

2.1.3 "**Annual Assessment**" means assessments levied on all Lots subject to assessment under **Article VI** to fund Common Expenses for the general benefit of all Lots, as determined in accordance with **Section 6.2**.

2.1.4 "**Applicable Law**" means all laws, ordinances, regulations and codes applicable to the Property.

2.1.5 "**Area of Common Responsibility**" means the Common Area and any land designated as Common Area (even if not yet conveyed to the Association), together with such other areas, if any, for which the Association is responsible pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable agreements.

2.1.6 "**Articles**" means the Articles of Incorporation of the Association filed with the South Carolina Secretary of State, as they may be amended.

2.1.7 "**Association**" means Irby Glen HOA, Inc., a South Carolina non-profit corporation, its successors and assigns.

2.1.8 "**Board**" means the Board of Directors of the Association.

2.1.9 "**Builder**" means any Person licensed as a residential home builder in the State of South Carolina that purchases one or more Lots from Declarant, including Eastwood Construction Partners, LLC, dba Eastwood Homes, a North Carolina limited liability company ("**Eastwood**"), or a Builder for the purpose of constructing a dwelling on the Lot for later sale to consumers.

2.1.10 "**Bylaws**" means the Bylaws of the Association attached as **ExhibitD** as they may be amended.

2.1.11 "**Class A Member**" is defined in **Section 4.2**.

2.1.12 "**Class B Member**" is defined in **Section 4.2**.

2.1.13 "**Common Area**" means all real and personal property, including easements, the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

2.1.14 "**Common Expenses**" means the actual and estimated expenses the Association incurs, or expects to incur, for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary or appropriate pursuant to the Governing Documents.

2.1.15 "**Community**" means the residential project known as Irby Glen subdivision to be developed on the Property.

2.1.16 "**Community-Wide Standard**" means the standard of conduct, maintenance or other activity generally prevailing in the Community or the minimum standards established pursuant to the Design Guidelines, Restrictions, and Board resolutions, whichever is the highest standard. Declarant initially shall establish that standard, and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Community change.

2.1.17 "**Declarant**" means TMC Irby LLC, a South Carolina limited liability company, or any successor or assign who takes title to any portion of the Property or Additional Property for the purpose of development and/or sale, and to whom the immediately preceding Declarant assigns its interest as Declarant under this Declaration pursuant to an instrument recorded in the Registry. Notwithstanding the foregoing, in the event TMC Irby LLC is in breach of that certain Contract and Option to Purchase Real Estate (Irby Glen Community, Spartanburg County, South Carolina) by and among TMC Irby LLC and Eastwood Construction Partners, LLC, dated as of November 5, 2024 and as amended by that certain Assignment and First Amendment dated February 27, 2025 (together, the "**Contract for Purchase and Sale**"), covering the purchase and sale of all of the single family residential lots which are intended to comprise the Community, after any applicable notice and cure periods have run (as defined in the Contract for Purchase and Sale) has occurred, Eastwood Construction Partners, LLC, or its designee may, but shall not be obligated to, without prior written notice to TMC Irby LLC, unilaterally assume all rights of TMC Irby LLC, as the Declarant arising under the Declaration, by recording an Assignment and Assumption of

Declarant Rights or similar document evidencing the assumption of such rights (the "**Assignment and Assumption of Declarant Rights**") in accordance with the terms and conditions of that certain Assignment of Purchase Contract And Intercreditor Agreement dated May 29, 2025 by and between TMC, Eastwood Construction Partners, LLC, and The Peoples Bank (the "Intercreditor Agreement"). Upon the date of the recording of said document by Eastwood Construction Partners, LLC, or its designee assuming the rights of Declarant under the Declaration in the Registry, then and thereafter, all rights of TMC Irby LLC, as Declarant, arising hereunder shall automatically cease and such rights shall be vested with Eastwood Construction Partners, LLC, or its designee.

2.1.18 "**Declarant Affiliate**" means any Person that controls, is controlled by or is under common control with Declarant, and any Person that is an owner, a member, a partner or a shareholder of Declarant.

2.1.19 "**Declarant Control Period**" means the period of time during which Declarant, as the Class B Member, is entitled to appoint the members of the Board, as provided in **Article III** of the Bylaws. The Declarant Control Period shall terminate not later than 90 days after the first to occur of the following: (a) 20 years after the date of recording of this Declaration; (b) such earlier date as the Declarant, in its sole discretion, executes and records a written notice voluntarily terminating the Declarant Control Period; provided, however, that while Eastwood owns any property subject to this Declaration, Declarant shall obtain the prior written consent of Eastwood before it may voluntarily terminate the Declarant Control Period pursuant to this subsection (b); and (c) the date that all of the Lots permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Class A Members other than Builders.

2.1.20 "**Design Guidelines**" means the guidelines and standards for design, construction, landscaping and exterior items placed on Lots adopted pursuant to **Article VIII**, as they may be amended.

2.1.21 "**Design Review Committee**" or "**DRC**" means the committee established pursuant to **Section 8.2.2**.

2.1.22 "**Eligible Mortgage**" means a Mortgage held by an Eligible Mortgage Holder.

2.1.23 "**Eligible Mortgage Holder**" means the holder of a first priority Mortgage on a Lot who has submitted a written request to the Association (such request to state the name and address of that holder) and the street address of the Lot to which the Mortgage relates.

2.1.24 "**Governing Documents**" means, collectively, this Declaration and any applicable Supplemental Declaration, the Bylaws, the Articles, the Design Guidelines, the Restrictions, and Board resolutions, all as they may be amended.

2.1.25 "**Lot**" means any numbered lot on a plat recorded in the Registry, and any other lot within the Property created by subdivision, recombination or otherwise and shown on a Plat approved by Declarant during the Declarant Control Period, and thereafter by the Board. The term "Lot" includes the land within any such Lot and any improvements on any such Lot. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Lots designated for residential use for that parcel on the Master Plan or Declarant's site plan, whichever is more recent, until such time as a subdivision plat is recorded subdividing all or a portion of the parcel. Thereafter, the portion encompassed by that plat shall contain the number of Lots as set forth on the plat and the number of Lots in any remaining portion shall continue to be calculated in accordance with this paragraph.

2.1.26 "**Master Plan**" means the master plan for the development of the Community approved by the applicable governmental authorities, as it may be supplemented or amended, which includes the Property and may include all or a portion of the Additional Property.

2.1.27 "**Member**" means a Person subject to membership in the Association pursuant to **Section 4.2**.

2.1.28 "**Mortgage**" means a mortgage, a deed of trust, or any other form of security instrument affecting title to any Lot.

2.1.29 "**Mortgagee**" means a beneficiary or holder of a Mortgage.

2.1.30 "**Owner**" means one or more Persons who hold the record title to any Lot, but excluding any party holding an interest merely as security for the performance of an obligation.

2.1.31 "**Person**" means a natural person, a corporation, a partnership, a limited liability company, a trust or any other legal entity.

2.1.32 "**Plans**" is defined in **Section 8.3.3(a)**.

2.1.33 "**Plat**" means any plat of all or any portion of the Property approved by Declarant during the Declarant Control Period, and thereafter by the Board and recorded in the Registry.

2.1.34 "**Property**" means the real property located in the City of Spartanburg jurisdiction, Spartanburg County, South Carolina, described on **Exhibit A**, and any other property made subject to this Declaration pursuant to the terms of **Section 3.2**, but excluding any property withdrawn from this Declaration pursuant to the terms of **Section 10.1**.

2.1.35 "**Registry**" means the Office of the Register of Deeds of Spartanburg County, South Carolina.

2.1.36 "**Restrictions**" means the initial restrictions and rules set forth in **Exhibit C**, as they may be supplemented, modified and repealed pursuant to **Article VII**.

2.1.37 "**Special Assessment**" means assessments levied in accordance with **Section 6.3**.

2.1.38 "**Specific Assessment**" means assessments levied in accordance with **Section 6.4**.

2.1.39 **"Stormwater Management Facilities"** means all culverts, ditches, pipes, grassed swales, wet detention basins, retention and detention ponds, and other facilities located within the Common Area and necessary to collect, convey, store and control stormwater runoff.

2.1.40 "**Supplemental Declaration**" means an instrument recorded pursuant to **Article III** that does one or more of the following: subjects Additional Property to this Declaration or imposes easements, restrictions and obligations on the land described in that instrument.

## ARTICLE III
## Property Submitted to this Declaration

**3.1** **Property Subject to this Declaration**. Declarant hereby submit the Property to this Declaration. The Property shall be owned, conveyed and used subject to this Declaration. This Declaration shall run with title to the Property and shall be binding upon all Persons having any interest in any portion of the Property, their heirs, successors, successors-in-title and assigns.

**3.2** **Expansion by Declarant**. Declarant may, from time to time, expand the Community to include all or any portion of the Additional Property by recording a Supplemental Declaration that describes the Additional Property being submitted to this Declaration; provided, that if the submission of such additional property occurs during the Declarant Control Period while Eastwood owns and property subject to this Declaration, then Declarant shall obtain the written consent of Eastwood prior to said submission. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such Additional Property, if other than Declarant (and if applicable, Eastwood as noted above). Declarant's right to expand the Community pursuant to this Section shall expire when all of the Additional Property has been subjected to this Declaration or 20 years after this Declaration is recorded, whichever is earlier. Until then, Declarant may transfer, assign or otherwise permit this right to be exercised by any developer of at least a portion of the Property or Additional Property. Any such transfer, assignment or permission shall be in a writing executed by Declarant and such developer and recorded in the Registry. Nothing in this Declaration shall be construed to require Declarant or any successor to subject any of the Additional Property to this Declaration or to develop any of the Additional Property. Inclusion of property on the Master Plan shall not obligate Eastwood or Declarant to submit that property to this Declaration, nor shall the omission of any Additional Property from the Master Plan bar its later submission to this Declaration as provided in this **Article III**. Any Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the portion of the Property described in the Supplemental Declaration to reflect the different character and intended use of that property.

**3.3** **Effect of Filing Supplemental Declaration**. A Supplemental Declaration shall be effective upon recording in the Registry unless otherwise specified in that Supplemental Declaration. On the effective date of the Supplemental Declaration, any Additional Property subjected to this Declaration by that Supplemental Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

## ARTICLE IV
## The Association and its Members

**4.1** **Function of Association**. The Association has been established to administer the Community in accordance with the Governing Documents. Its responsibilities include: (a) management, maintenance, operation and control of the Area of Common Responsibility; (b) interpretation and enforcement of the Governing Documents; (c) establishing and upholding the Community-Wide Standard; and (d) administering the design review process for the Community upon delegation or termination of Declarant's authority to do so under **Article VIII**.

**4.2** **Membership**.

4.2.1 Classes of Membership. The Association initially shall have two classes of membership, Class A and Class B. "**Class A Members**" shall be all Owners, including Declarant and Eastwood as to any Lot it each owns. The sole "**Class B Member**" shall be Declarant. Upon termination of the Declarant Control Period, Declarant shall hold a Class A membership for each Lot that it owns.

4.2.2 Automatic Membership; Exercise of Privileges. Every Owner automatically becomes a Member of the Association upon taking title to a Lot and remains a Member as long as the Owner holds title to that Lot. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of membership, subject to reasonable Board regulation and the restrictions on voting set forth in **Section 4.3** and in the Bylaws, and all the co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

**4.3** **Voting**. The voting rights of each class of membership shall be as follows:

4.3.1 Class A. Each Class A Member shall have one equal vote for each Lot in which that Member holds an interest required for membership under **Section 4.2**, except that there shall be only one vote per Lot and no vote shall be exercised for any property that is exempt from assessment under **Section 6.7**. If there is more than one Owner of a Lot, the vote for that Lot shall be exercised as the co-Owners determine among themselves and notify the Secretary of the Association in writing prior to the vote being taken. Absent that notice, the Lot's vote shall be suspended if more than one Person seeks to exercise the vote.

4.3.2 Class B. The Class B Member shall not have Class B voting rights relative to the number of Lots it owns; rather, the consent of the Class B Member shall be required for various actions of the Board, the membership and committees, as specifically provided elsewhere in the Governing Documents. In addition, the Class B Member may appoint the members (and remove such appointed members) of the Board during the Declarant Control Period, as specified in **Article III** of the Bylaws. Additional rights of the Class B Member are specified in the relevant sections of the Governing Documents. In addition, the Class B Member may disapprove actions of the Board and committees as provided in the Bylaws.

## ARTICLE V
## Association Powers and Responsibilities

**5.1** **Acceptance and Control of Association Property**.

5.1.1 The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property, subject to the provisions of **Article XVI**. The Association may enter into leases, licenses or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit of the Community.

5.1.2 Declarant, any Declarant Affiliate and their respective designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, within the Property. Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area that Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

5.1.3 Declarant may convey Common Area to the Association in one or more transactions. Each conveyance of Common Area shall be free and clear of all liens and encumbrances of a monetary nature.

5.1.4 The Association shall be responsible for management, operation and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring that Common Area to the Association. The Board may adopt reasonable rules regulating the use of the Common Area as it deems appropriate. The Association may permit the use of Common Area facilities by persons other than Owners and occupants of Lots and may charge use fees in an amount established by the Board for that use.

**5.2 Maintenance of Area of Common Responsibility.**

5.2.1 Except as otherwise provided in this **Section 5.2**, the Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes:

(a) all portions of, and structures situated on, the Common Area, including any neighborhood entrance monuments, trails and picnic shelters;

(b) all streets within the Property unless and until they are accepted by a public body for perpetual maintenance; except that the Association shall have no responsibility for removal of snow or ice on streets;

(c) any landscaping, signage, sidewalks and street trees within public rights-of-way or sidewalk easements lying within or abutting the Property, except to the extent that responsibility is otherwise assigned to Owners pursuant to **Section 9.1** or assumed by a governmental body or utility provider;

(d) streetlights and light poles along streets within the Property, unless those streetlights are leased from and maintained by the utility provider pursuant to the terms of any lease;

(e) all Stormwater Management Facilities, which shall be maintained in accordance with Applicable Law;

(f) any pipes, lines, pumps or other apparatus comprising any irrigation system supplying irrigation water to the Area of Common Responsibility, to the extent located within Common Area, rights-of-way or easements granted to the Association;

(g) any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, which property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until Declarant revokes that privilege of use and enjoyment by written notice to the Association.

5.2.2 The Association may maintain other property it does not own, including property dedicated to the public, if the Board of Directors determines such maintenance is necessary or desirable to maintain the Community-Wide Standard. Except as otherwise specifically provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense, subject to the right of the Association to seek reimbursement from the owner of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, or other recorded agreements with the owner thereof. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property it does not own except to the extent it has been negligent in the performance of its maintenance responsibilities.

5.3 **Insurance**.

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

(a) Blanket property insurance covering "risks of direct physical loss" for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent the Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at reasonable cost, that coverage (including primary and any umbrella coverage) shall have a limit of at least $1,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage; provided, if additional coverage and higher limits are available at a cost that a reasonably prudent person would obtain, the Association shall obtain those additional coverages or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by Applicable Law;

(d) Directors and officers liability coverage;

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment, but not less than an amount equal to one-quarter (1/4) of the Annual Assessments on all Lots, plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(f) Any additional insurance as the Board, in the exercise of its business judgment, determines advisable.

5.3.2 Policy Requirements. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of **Section 5.3.1**. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees or lessees, then the Board may assess the full amount of such deductible against such Owner and that Owner's Lot as a Specific Assessment.

(a) All insurance coverage obtained by the Board shall: (i) be written with a company authorized to do business in South Carolina that satisfies the requirements of the Federal National Mortgage Association ("Fannie Mae"), or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate; (ii) be written in the name of the Association as trustee for the benefited parties, except that policies on the Common Area shall be for the benefit of the Association and its Members; (iii) be primary and not be brought into contribution with insurance purchased by Owners, occupants or their Mortgagees individually; (iv) contain an inflation guard endorsement; (v) include an agreed amount endorsement, if the policy contains a co-insurance clause; (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of that Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member); (vii) provide a waiver of subrogation under the policy against any Owner or occupant of any Lot; (viii) include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and (ix) include an endorsement precluding cancellation, invalidation or condition to recovery under the policy on account of any act or omission of any one or more individual Owners or members of their households, unless that Owner is acting within the scope of its authority on behalf of the Association.

(b) In addition, the Board shall use reasonable efforts to secure insurance policies that list the Declarant, Eastwood, and the Owners as additional insureds and provide: (i) a waiver of subrogation as to any claims against the Association's Board, officers, employees and its manager, the Owners and their tenants, servants, agents and guests; (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash; (iii) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification or non-renewal; (iv) a cross liability provision; and (v) a provision vesting in the Board exclusive authority to adjust losses; provided, no Mortgagee having an interest in those losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

5.3.3 Restoring Damaged Improvements.

(a) In the event of damage to or destruction of Common Area or other property the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in Applicable Law.

(b) The Association shall cause damaged improvements on the Common Area to be repaired or reconstructed unless a decision not to repair or reconstruct is approved within 60 days after the loss or damage (a) by Owners of at least 80% of the Lots, and (b) during the Declarant Control Period, by Declarant. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within that 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

(c) Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed to all of the Owners or their Mortgagees, as their interests may appear, at an equal rate per Lot.

(d) If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under **Section 5.3.1**.

5.4 **Compliance and Enforcement**.

5.4.1 Every Owner and occupant of a Lot shall comply with the Governing Documents. The Governing Documents apply to all Owners and occupants of the Property, and to their respective tenants, guests and invitees. If a Lot is leased, the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents, and the lease shall so provide.

5.4.2 The Board may impose the following sanctions only after notice and a hearing in accordance with the procedures set forth in **Article VIII** of the Bylaws:

(a) imposing reasonable monetary fines (subject to the limitations set forth in the Act or under the laws of the State of South Carolina), which shall constitute a lien upon the violator's Lot (if any occupant, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; except that, if the fine is not paid by the violator within the time period set by the Board, then the Owner shall pay the fine upon notice from the Board);

(b) suspending the vote attributable to a violating Owner's Lot, suspending the privilege of using any recreational facilities within the Common Area and suspending any services the Association provides to an Owner or the Owner's Lot, during any period the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association or for a reasonable period for other violations of the Governing Documents;

(c) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of **Article VIII** from continuing or performing any further activities in the Community; and

(d) levying Specific Assessments pursuant to **Section 6.4** to cover costs the Association incurs to bring a Lot into compliance with the Governing Documents or costs incurred as a consequence of the conduct of an Owner or occupant of a Lot, their guests or invitees.

5.4.3 In addition, the Association, acting through the Board or its designee, may take the following action to enforce the Governing Documents without the necessity of compliance with the procedures set forth in **Article VIII** of the Bylaws:

(a) requiring an Owner, at the Owner's expense, to perform maintenance on such Owner's Lot or to remove any structure, item or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition;

(b) entering any portion of the Property and exercising self-help to remove or cure a violating condition upon failure of an Owner to take action as required pursuant to **Section 5.4.3(a)** within ten days after receipt of written notice to do so, and any such entry shall not be deemed a trespass;

(c) exercising self-help in any situation that requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including the towing of vehicles that are in violation of parking rules and regulations); and

(d) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in **Article XIII**, if applicable.

5.4.4 All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including administrative fees, attorneys' fees and court costs, reasonably incurred in that action.

5.4.5 The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (a) the Association's position is not strong enough to justify taking any or further action; (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with Applicable Law; (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (d) it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

5.4.6 The Association, by contract or other agreement, may enforce Applicable Law and may permit the applicable governmental authorities to enforce Applicable Law within the Property for the benefit of the Association and its Members.

**5.5 Implied Rights; Board Authority**. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and privileges of the Association may be exercised by the Board without a vote of the membership except to the extent the Governing Documents or Applicable Law specifically require a vote of the membership. The Board may institute, defend, settle or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation or administrative proceedings in matters pertaining to the Area of Common Responsibility or enforcement of the Governing Documents. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members. In exercising the rights and powers of the Association, making decisions on behalf of the Association and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in **Article VI** of the Bylaws.

## ARTICLE VI
## Association Finances

### 6.1 Authority to Levy Assessments for Association Expenses.

6.1.1 Purposes. The Association is hereby authorized to levy assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, the Articles and the Bylaws, specifically including: (a) expenses of maintaining, repairing, replacing, improving, operating and insuring the Area of Common Responsibility, including amounts due to third parties who perform those tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision and utilities; (b) taxes, if any, imposed on the Association or the Common Area; (c) the cost of insurance and fidelity bond coverage obtained pursuant to **Section 5.3**; (d) the cost of water or other utilities provided to the Area of Common Responsibility; (e) expenses of monitoring and enforcing compliance with the provisions of the Governing Documents; (f) expenses arising out of the Association's indemnification obligations; (g) expenses arising out of any measure undertaken to enhance the safety of the Owners and occupants of Lots and the Community; (h) expenses incurred in exercising design control under **Article VIII**; (i) expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports and corresponding with Members; (j) administrative expenses such as postage, copying expense, office supplies and equipment; (k) legal, accounting and other professional fees; and (l) such other expenses as the Board deems necessary or desirable to keep the Property in a good, clean and attractive condition, and to maintain and enhance property values and marketability of Lots. Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or other original construction costs unless approved by Members representing a majority of the total Class A votes in the Association and by Declarant; except, that payments due under leases of capital improvements (such as street lights) and costs of purchasing or installing capital improvements (such as street lights or an irrigation well), if the Board determines such purchase to be in the best interests of the Association, shall not be considered an initial development expense or original construction cost any may be assessed against the Owners.

6.1.2 Types of Assessments. There shall be three (3) types of assessments: (1) Annual Assessments; (2) Special Assessments as described in **Section 6.3**; and (3) Specific Assessments as described in **Section 6.4**. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments. The assessments shall commence at the time and in the manner set forth in **Section 6.5.**

6.1.3 Personal Obligation and Lien. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish by resolution, not to exceed 18% per annum), late charges as determined by Board resolution (subject to the limitations of Applicable Law), and costs and reasonable attorney fees, shall be the personal obligation of each Owner, and a charge and continuing lien upon each Lot as provided in **Section 6.6**, until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments that accrued prior to its acquisition of title.

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

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

Within ten (10) business days after receipt of a written request therefor, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth the amount of any unpaid assessments or other charges levied on the Lot. The certificate shall be binding on the Association and every Owner. The Association may require the advance payment of a reasonable processing fee for the issuance of the certificate.

6.1.4 Declarant's Obligations for Assessments. During the Declarant Control Period, Lots owned by Declarant shall not be subject to Assessments. During the Declarant Control Period, Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive or any allocation for capital reserves) and the annual and special assessments for such fiscal year, and Declarant may make "in kind" contributions of services or materials for the benefit of the Association. Declarant shall be entitled to a credit against any Assessments on Lots owned by Declarant in an amount equal to the amounts which Declarant has paid directly for Common Expenses, or has paid or contributed to the Association for the Association's payment of Common Expenses, or for in-kind contribution of services. After termination of the Declarant Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner, in accordance with the applicable rate of assessment under **Section 6.5**.

6.1.5 Deficit Funding. Declarant and/or Eastwood (each, an "**Approved Builder**"), may, but shall not be obligated to, reduce the Annual Assessment for any fiscal year by payment of a subsidy (i.e., deficit funding). Any deficit funding subsidy may be treated as a contribution, an advance against future assessments due or a loan from said Approved Builder. Any deficit funding subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. In addition, an Approved Builder may loan funds to the Association to cover one-time Common Expenses, to cover Association operational shortfalls, to fund Association contract requirements, to fund amenity or entrance monumentation construction, up-fitting, or maintenance, to include lighting, parking, furniture, irrigation or such other reasonable expenses, as determined in the sole discretion of said Approved Builder, and any such loans and the debt service shall be disclosed in the budget as applicable. If characterized as a loan, the Approved Builder may charge and collect interest on the outstanding principal balance of the loan at a rate not to exceed the greater of eight percent (8%) per annum or two percentage points over the prime rate published by the Wall Street Journal on the date of that loan, the interest rate to be set forth in a Deficit Funding Loan Agreement executed on behalf of the Association. Payment of a subsidy in any year shall not obligate an Approved Builder to continue payment of that subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

**6.2 Budgeting and Allocating Association Expenses.**

6.2.1 Preparation of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense. In determining the amount of that reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost and the contribution required to fund the projected need by an annual contribution over the useful life of the asset. Each budget also shall reflect the sources and estimated amounts of funds to cover the estimated expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots and the amount to be generated through the levy of assessments.

6.2.2 Calculation of Annual Assessments. After determining the total amount of income required to be generated through the levy of Annual Assessments, the Board shall establish the Annual Assessment at an equal rate per Lot, subject to discount for Lots never occupied, as provided in **Section 6.5**. Declarant may, but shall not be obligated to, reduce the Annual Assessment for any fiscal year by payment of a subsidy. Any subsidy may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. In addition, Declarant may loan funds to the Association to cover one-time Common Expenses, and any such loans and the debt service shall be disclosed in the budget as applicable. If characterized as a loan, Declarant may charge and collect interest on the outstanding principal balance of the loan at a rate not to exceed the greater of ten percent per annum or two percentage points over the prime rate published by the Wall Street Journal on the date of that loan, the interest rate to be set forth in a promissory note executed on behalf of the Association. Payment of a subsidy in any year shall not obligate Declarant to continue payment of that subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

6.2.3 Notice of Budget and Assessment. Within 30 days following the Board's adoption of any new or revised budget under **Section 6.2.1**, the Board shall send a summary of the applicable budget, together with notice of the amount of the Annual Assessment to be levied pursuant to such budget, to each Owner to be assessed thereunder. The budget shall be accompanied by notice of the date, time and location of a meeting to consider ratification, which meeting shall be set by the Board and shall occur no less than ten nor more than 60 days after mailing of the budget summary and notice. The notice shall include a statement that the meeting may be held and the budget may be ratified without a quorum being present.

6.2.4 Ratification of Budget. The Common Expense budget shall be deemed ratified unless rejected at the meeting by Owners of at least 75% of the total number of Lots then subject to the Declaration. If any proposed budget or budget revision is rejected by the percentage vote specified above, then the budget most recently in effect shall continue in effect until a new budget is determined.

6.2.5 Budget Revisions. The Board may revise the budget and adjust the Annual Assessment from time to time during the year, subject to the notice and ratification requirements set forth above.

**6.3 Special Assessments**. The Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted under **Section 6.2**. Any Special Assessment may be levied against the entire membership if the Special Assessment is for general Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the total votes allocated to Lots that will be subject to the Special Assessment and, during the Declarant Control Period, the written consent of Declarant. Except as otherwise provided in **Section 6.5**, Special Assessments shall be levied equally on all Lots subject to the Special Assessment.

**6.4 Specific Assessments**. The Association may levy Specific Assessments against a particular Lot for monetary fines imposed pursuant to **Section 5.4** and to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing in accordance with the Bylaws, before levying any Specific Assessment under this **Section 6.4**.

**6.5 Payment of Assessments**.

6.5.1 Except as otherwise provided herein, and provided the Board has determined a budget for Common Expenses, the obligation to pay assessments shall commence as to each Lot on the day on which the Lot is made subject to this Declaration. Notwithstanding the foregoing, until the Lot (as improved with a dwelling) is conveyed for residential purposes, such Lot shall be assessed only 25% of the full Annual Assessment rate, and shall pay only 25% of any Special Assessment for Common Expenses that would otherwise be payable during such period. The first Annual Assessment levied on each Lot, whether levied at the partial or full rate, shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

6.5.2 Assessments shall be paid in the manner and on the dates established by the Board.

6.5.3 If any Owner is delinquent in paying any assessments or other charges levied on that Owner's Lot, then the Board may require the outstanding balance on all assessments to be paid in full immediately or it may, in its discretion, permit payment of the outstanding balance in installments. Neither the Association nor the Owner is obligated to accept any proposed installment payment schedule. The Board may add reasonable administrative fees and costs for accepting and processing installments to the outstanding balance and include them in the installment payment schedule; except, that those costs may not include reasonable attorney fees unless the Owner has first been given notice of the Board's intention to recover attorney fees and court costs, as required by Section the Act, or the laws of the State of South Carolina and been given 15 days from the mailing of the notice to pay the outstanding balance without attorney fees and court costs. The notice also shall provide the name and telephone number for a representative of the Association with whom the Owner may speak to discuss a payment schedule.

**6.6 Lien for Assessments.**

6.6.1 Subject to Applicable Law, as it may be amended, if any assessment or installment thereof remains unpaid 30 days or more after the due date, the Association shall, upon filing a claim of lien in the office of the clerk of Court of Spartanburg County, South Carolina, conforming to the requirements of the Act or the laws of the State of South Carolina, have a lien against each Lot in favor of the Association to secure payment of assessments, as well as interest, late charges and costs of collection (including attorney fees and court costs, if and to the extent authorized under **Section 6.5** and the Act). Subject to Applicable Law, that lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law would be superior; and (b) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

6.6.2 The Association may foreclose its lien through judicial or, to the extent allowed by Applicable Law, nonjudicial foreclosure proceedings in accordance with Applicable Law, as it may be amended, except that any lien securing only fines and/or service or collection fees may be foreclosed only by judicial foreclosure.

6.6.3 The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot may be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged to that Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing those assessments or charges, in addition to pursuing any and all remedies allowed by law to enforce the lien.

6.6.4 Sale or transfer of any Lot shall not affect the assessment lien or relieve the Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Lot shall not be personally liable for assessments on the Lot due prior to the acquisition of title. Those unpaid assessments may be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under **Section 6.5**, including the acquirer, its successors and assigns.

**6.7 Exempt Property**. The following property shall be exempt from payment of Annual Assessments and Special Assessments: all Common Area, public streets and alleys and those portions of the Property owned by Declarant as are included in the Area of Common Responsibility. In addition, Declarant or the Association may, but shall not be obligated to, grant a full or partial exemption from assessments for: (a) any property owned by a governmental authority or public utility for public purposes; and/or (b) unimproved Lots.

**6.8** **Capitalization of Association**. Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant, Eastwood, or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of 100% of the full Annual Assessment for the year in which the acquisition occurs. This amount shall be in addition to, not in lieu of, the Annual Assessment and shall not be considered an advance payment of any assessments, but rather shall be considered a Specific Assessment secured by the Association's lien for assessments under **Section 6.6**. This amount shall be used by the Association for payment of operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

## ARTICLE VII
## Restrictions

**7.1** **Framework for Regulation**. The Governing Documents establish, as part of the general plan of development for the Property, a framework of covenants, easements and restrictions that govern the Property. Within that framework, Declarant and the Association must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires and trends. Therefore, this Article establishes rulemaking authority and procedures for modifying and expanding the initial Restrictions set forth in **Exhibit C**. This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area that the Board may adopt by resolution pursuant to **Section 5.1.4**, nor to administrative policies that the Board may adopt by resolution to interpret, define or implement the Restrictions.

**7.2** **Rule Making Authority and Procedures**.

7.2.1 The Restrictions may be modified, rescinded, limited or expanded as follows:

(a) Subject to **Section 7.4**, Declarant may amend unilaterally **Exhibit C** to add new Restrictions or to modify or rescind existing Restrictions until termination of the Declarant Control Period.

(b) Subject to the terms of this Article and the Board's duty pursuant to **Section 6.1** of the Bylaws to exercise its powers in a reasonable, fair and nondiscriminatory manner, the Board may modify, cancel, limit, create exceptions to or expand the Restrictions, except that during the Declarant Control Period, any such action shall require the written consent of Declarant. The Board shall send notice to Declarant and all Owners or publish notice concerning any proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

(c) Subject to the terms of this Article, Members may, at an Association meeting duly called for such purpose, modify, cancel, limit, create exceptions to or expand the Restrictions then in effect. Any such action shall require approval of Members entitled to cast at least 51% of the total Class A votes in the Association. In addition, during the Declarant Control Period, any such action shall require the written consent of Declarant.

7.2.2 Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions then in effect to any requesting Member or Mortgagee.

7.2.3 No action taken under this Article shall have the effect of modifying, repealing or expanding the Design Guidelines or any provision of this Declaration other than the initial Restrictions set forth in **Exhibit C**. In the event of a conflict between the Design Guidelines and the Restrictions, the Design Guidelines shall control.

7.3 **Owners' Acknowledgment and Notice to Purchasers**. ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR LOTS AND THE COMMON AREA IS LIMITED BY THE RESTRICTIONS AS AMENDED, EXPANDED AND OTHERWISE MODIFIED FROM TIME TO TIME. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of that Owner's Lot can be affected by this provision and that the Restrictions may change from time to time. All purchasers of Lots are on notice that the Association may have adopted changes. Copies of the current Restrictions may be obtained from the Association.

7.4 **Protection of Owners and Others**. Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Restrictions set forth in **Exhibit C**, all Restrictions shall comply with the following provisions:

7.4.1 Similar Treatment. Similarly situated Owners shall be treated similarly; however, the Restrictions may vary by housing type or area.

7.4.2 Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols and decorations inside structures on their Lots of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place and manner restrictions with respect to displays visible from outside the dwelling.

7.4.3 Flags. No rule shall regulate or prohibit the display on a Lot of the flag of the United States or the flag of South Carolina, provided the flag is of a size no greater than four feet by six feet and is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. Sections 5-10, as amended.

7.4.4 Political Signs. No rule shall regulate or prohibit the indoor or outdoor display of a political sign on a Lot by the Owner or occupant of the Lot, except that the Association may adopt rules (a) prohibiting the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (b) regulating the size and number of political signs that may be placed on a Lot, subject to the limitations set forth in the Act, or the laws of the State of South Carolina. For the purposes of this **Section 7.4.4**, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

7.4.5 Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association may require that all occupants be members of a single housekeeping unit and limit the total number of occupants permitted in each unit on the basis of the size and facilities of the unit and its fair use of the Common Area.

7.4.6 Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings to the extent in compliance with local laws and ordinances, except the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling or that create an unreasonable source of annoyance to persons outside the Lot.

7.4.7 Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in **Article VI**.

7.4.8 Alienation. No rule shall prohibit leasing or transfer of any Lot or require consent of the Association or Board for leasing or transfer of any Lot; however, rules may restrict leasing of multiple Lots by the same Owner or by related or affiliated Persons and may require a minimum lease term of up to 12 months. The Association also may require that Owners use lease forms approved by the Board.

7.4.9 Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

7.4.10 Reasonable Rights to Develop and Sell. No rule or action by the Association or Board shall impede unreasonably Declarant's right to develop the Property, nor restrict Declarant, Eastwood, or such Builders as Declarant may so authorize from maintaining upon Common Areas and Lots they own any facilities necessary or incidental to construction or sale of Lots. By way of example and not limitation, no rule shall prohibit Declarant, Eastwood, or such Builders as Declarant may so authorize from maintaining temporary structures for use during construction of a Lot or from using any home as a sales office.

The limitations in this **Section 7.4** shall only limit rulemaking authority exercised under **Section 7.2**. They shall not apply to amendments to this Declaration adopted in accordance with **Article XVII** provided such amendments are not inconsistent with the Act.

## ARTICLE VIII
## Architecture and Landscaping

**8.1 General.** No structure or thing shall be placed, erected or installed upon any Lot and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements or planting or removal of landscaping) shall take place within the Property, except in compliance with this Article and the Design Guidelines. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of that Owner's dwelling without approval. However, modifications to the interior of screened porches, patios and similar portions of a dwelling and Lot visible from outside the structure shall be subject to approval. All construction on Lots shall comply with all applicable building codes and requirements.

This Article and the Design Guidelines shall not be construed to regulate or prohibit those flags or political signs permitted under **Section 7.4.3** and **Section 7.4.4** or Permitted Devices (as defined in **Exhibit C**), provided they are installed in compliance with those sections and such rules as are specifically authorized in those sections. This Article shall not apply to structures in existence on the date of recording of this Declaration, nor to Declarant's or the Association's activities during the Declarant Control Period, nor to Eastwood's activities while it owns any property subject to this Declaration.

**8.2 Design Review.**

8.2.1 By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges that Declarant has a substantial interest in ensuring that the improvements within the Community enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease its property in, or in the vicinity of, the Community. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Lot unless and until Declarant or its designee has given its prior written approval for that activity, which approval may be granted or withheld in Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Property or any real property that may be made a part of the Community pursuant to **Section 3.2** and until a certificate of occupancy has been issued for a dwelling on every Lot, unless earlier terminated in a written instrument that Declarant executes and records in the Registry. Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to a Design Review Committee appointed by the Board in accordance with **Section 8.2.2(b)**. Any such delegation shall be in writing specifying the scope of responsibilities delegated and shall be subject to Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to them.

8.2.2 By Design Review Committee.

(a) Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRC, shall assume jurisdiction over design and aesthetic matters. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the DRC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over design and aesthetic matters.

(b) The DRC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the DRC need not be Members of the Association or representatives of Members and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish.

8.2.3 Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case is referred to as the "**Reviewer**." The Reviewer may establish and charge reasonable fees for review of applications and may require those fees to be paid in full prior to review of any application. Those fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers or other persons as deemed necessary to perform the review. The Board may include the compensation of those persons in the Association's annual operating budget. As a condition of granting any approval hereunder, the Association may require the Owner of the Lot upon which construction is to take place, other than Declarant, Declarant Affiliates, and Eastwood, to pay a construction deposit to provide security against damage to the Area of Common Responsibility and other portions of the Property ("**Construction Deposit**"). The Construction Deposit shall be in such amount as the Board may from time to time determine reasonable. The Board may draw upon an Owner's Construction Deposit as necessary to cover the costs of providing maintenance to the construction site or maintenance, repairs or replacements to the Area of Common Responsibility, any of which become necessary as a result of the Owner's construction activities or the activities of its builders, subcontractors, employees or agents, or to pay accrued and unpaid fines imposed for violations of the Governing Documents in connection with construction to the Lot. Nothing in this **Section 8.2.3** shall be construed as limiting the Association's right to seek reimbursement from the Owner for the total amount expended on the Owner's behalf if the amount expended exceeds the amount of the Construction Deposit, nor shall anything in this Section be construed to limit any of the rights or remedies granted to the Association by other provisions of this Declaration.

**8.3 <u>Guidelines and Procedures</u>.**

8.3.1 <u>Design Guidelines</u>. Declarant may establish initial Design Guidelines, but is under no obligation to do so, which may contain general provisions applicable to all of the Property as well as specific provisions that vary by housing type and from one area to another within the Property. The Design Guidelines, if adopted, are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Design Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Guidelines will not guarantee approval of any application.

8.3.2 <u>Amendment to Design Guidelines</u>. Declarant shall have sole and full authority to amend the Design Guidelines so long as it has any rights under this Article, as described in **Section 8.2.1**, notwithstanding a delegation of reviewing authority to the DRC, unless Declarant also delegates the power to amend to the DRC. Upon termination or delegation of Declarant's right to amend, the DRC shall have the authority to amend the Design Guidelines with the consent of the Board. However, no amendment shall be inconsistent with Applicable Laws. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines and amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

8.3.3 <u>Procedures</u>. Except as otherwise specifically provided in this Declaration or the Design Guidelines, no activities may commence on any Lot until an application for approval has been submitted to and approved by the Reviewer in accordance with the following procedures:

(a) The application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation and other features of proposed construction, as applicable ("**Plans**"). The Design Guidelines and the Reviewer may require the submission of additional information as may be reasonably necessary to consider any application. In reviewing each submission, the Reviewer may consider any factors it deems relevant, including harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to these matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive and binding determinations on matters of aesthetic judgment and those determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

(b) The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may (a) approve the application, with or without conditions; (b) approve a portion of the application and disapprove other portions; or (c) disapprove the application.

(c) The Reviewer shall notify the applicant in writing of the final determination on any application within five days after that final determination. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed given when deposited in the U.S. Mail, certified mail, return receipt requested, properly addressed to the applicant at the address stated in the applicant's notice, or upon receipt if given by any other means. If the Reviewer fails to give notice of its approval or disapproval of any application within the time period required above, the applicant may notify the Reviewer by certified mail, return receipt requested, at the address for the notices set forth in the current edition of the Design Guidelines, stating that no response has been received and that unless a written response is given at the address set forth in the notice within 15 days after the Reviewer's receipt of the applicant's notice, as evidenced by the return receipt, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with this Declaration or the Design Guidelines unless a written variance has been granted pursuant to **Section 8.5**.

(d) If construction does not commence on a project for which Plans have been approved within nine (9) months after the date of approval, whether expressly or deemed granted, that approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year after commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

(e) The Reviewer may (d) pre-approve Plans for Builders and excuse those Builders from all or a portion of the application and review procedures set forth in this Section with respect to construction undertaken in accordance with those pre-approved Plans; and (e) by resolution, exempt certain activities from the application and approval requirements of this Article, provided those activities are undertaken in strict compliance with the requirements of the resolution.

8.3.4 Fences. All fencing must have the written approval of the Design Review Committee prior to being erected on any Lot. Notwithstanding the foregoing, the Declarant and Eastwood shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is owned by Declarant or Eastwood, as applicable. No fence shall be erected on any Lot closer to any street right-of-way than the building setback lines shown upon the recorded map. All fences must be made of wrought iron, black metal material or white vinyl and shall not exceed six (6) feet, unless otherwise approved, in writing, by the Design Review Board. The Design Review Committee may modify acceptable materials from time to time, in its reasonably discretion. Once an approved fence or wall has been erected on a side Lot boundary line (a common boundary line shared with another Lot), that approved fence will be the only approved fence that may be erected on the common Lot line. No double fencing will be allowed on side or rear Lot lines. Fences are not permitted in the front and side yard and must tie into the home at the furthest back rear corners of the dwelling. All fences shall be kept well repaired and maintained consistent with the community-wide standard. In the event a fence is damaged or destroyed, the Owner is responsible for immediately repairing or replacing. Invisible fencing may be used for the restraint of pets in the rear yard. All wiring must be buried no less than six inches (6") inside the Lot's property lines. Regardless of the method of restraint used, owners are responsible for assuring that their pets do not run free. Owners are liable for any damage to persons or property caused by their pets.

**8.4 No Waiver of Future Approvals**. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case the Reviewer may elect not to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans or other matters subsequently or additionally submitted for approval.

**8.5** **Variances**. The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

**8.6** **Limitation of Liability**. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility or liability for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design or aesthetically pleasing or otherwise acceptable to neighboring property owners. Eastwood, Declarant, the Association, the Board, any committee, nor any member of any of the foregoing, shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Community; or any injury, damage or loss arising out of the manner or quality or other circumstances of approved construction on, or modifications to, any Lot. In all matters, the Board, the DRC and the members of each shall be defended and indemnified by the Association as provided in **Article VI** of the Bylaws.

**8.7** **Certificate of Compliance**. Any Owner may request that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing the certificate. Issuance of a certificate shall preclude the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of the certificate.

## ARTICLE IX
## Maintenance and Repair of Lots

**9.1** **Maintenance by Owners**. Except to the extent a maintenance responsibility is otherwise assigned to or assumed by the Association pursuant to **Section 5.2** or any Supplemental Declaration applicable to the Lot, each Owner shall maintain: (a) the Owner's Lot and all landscaping and improvements on the Lot; and (b) the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Lot boundary and any wall, fence, pavement or curb located on the Common Area or public right-of-way within 15 feet of the Lot boundary; all in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants, except that there shall be no right to remove trees, shrubs or similar vegetation without prior approval pursuant to **Article VIII**.

9.2 **Responsibility for Repair and Replacement; Insurance by Owners**. Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard. Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on that Owner's Lot, less a reasonable deductible. In the event of damage to or destruction of structures on or comprising a Lot, the Owner shall, within 180 days thereafter, complete the repair or reconstruction of the damaged structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with **Article VIII**. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds. Neither Eastwood, the Association, nor Declarant, shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Lot, or such Owner's or occupant's family, guests or invitees, nor shall Eastwood, the Association or Declarant be held liable for the condition of, or any loss or damage to, any such personal property except to the extent directly attributable to the reckless acts or willful misconduct of Eastwood, the Association, Declarant or their respective agents or employees.

## ARTICLEX
## Additional Rights Reserved to Declarant

**10.1** **Withdrawal of Property**. During the Declarant Control Period, Declarant may amend this Declaration to remove any portion of the Property that has not yet been improved with structures from the coverage of this Declaration, provided that (a) if the withdrawal of such property occurs during the Declarant Control Period while Eastwood owns any property subject to the Declaration, then Declarant shall obtain the written consent of Eastwood prior to said withdrawal and (b) the withdrawal does not reduce the total number of Lots then subject to the Declaration by more than 10%. The amendment shall not require the consent of any Person other than the Owner of the portion of the Property to be withdrawn, if not Declarant (and if applicable, Eastwood). If the portion of the Property to be withdrawn is Common Area, then the Association must consent to such withdrawal.

**10.2** **Right to Veto Changes in Standards**. During the Declarant Control Period, Declarant may veto any amendment to or modification of the Restrictions and Design Guidelines.

**10.3** **Development and Sales Activities**. During the Declarant Control Period:

10.3.1 Declarant, Eastwood, and Builders authorized by Declarant may construct and maintain on portions of the Common Area those facilities and activities that, in Declarant's sole opinion, may be reasonably required, convenient or incidental to the construction or sale of Lots, including business offices, signs, model lots and sales offices. Declarant, Eastwood, and authorized Builders shall have easements for access to and use of those facilities at no charge. Those rights shall specifically include the right of Declarant, Eastwood, and their respective designees to use Common Area facilities for an information center or for administrative, sales and business offices at no charge and to restrict use or access to those facilities by the Association, its members and others as long as Declarant and/or Eastwood, or their designees, are using them for those purposes.

10.3.2 Declarant, Eastwood, and their respective employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing improvements to the Common Area that it deems appropriate in its sole discretion.

10.4 **Control of and Changes in Development Plan**. Declarant reserves the right to modify, alter, or change the development plans for the Community. No statement contained in this Declaration shall be construed as a warranty or representation with respect to the nature of the services, utilities, amenities, and land uses to be located in the Community, or the administration and operation of the Community.

10.5 **Additional Covenants**. No Person shall record any declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's written consent. Any attempted recordation without that consent shall result in the instrument being void and of no force and effect unless subsequently approved by written consent signed and recorded by Declarant.

10.6 **Right to Transfer or Assign Declarant Rights**. Any or all of Declarant's special rights and obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and the transferee and recorded in the Registry.

10.7 **Exclusive Rights to Use Name of Development**. No Person other than Declarant, its authorized agents, Eastwood, and Builders, shall use the name of the Community, any derivative of that name, or associated logos or depictions, in any electronic, printed or promotional media or material without Declarant's prior written consent.

10.8 **Right to Convert Lot to Common Area or Roadway**. Declarant may convert any Lot it owns to Common Area or to public right-of-way or to a combination of Common Area and right-of-way. Declarant may convert a Lot to right-of-way for the purpose of providing permanent access to property adjacent to the Property, whether or not that adjacent property is made subject to this Declaration. Upon conveyance of any Lot by Declarant to the Association as Common Area, the Lot shall cease to be a Lot and shall thereafter be Common Area. Upon recordation by Declarant of a plat or other instrument establishing a public right-of-way over a Lot that Declarant owns, the Lot shall cease to be a Lot and shall thereafter be treated in the same manner as any other portion of the Property that has been dedicated to the public.

10.9 **Right to Notice of Design or Construction Claims**. No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Property in connection with or in anticipation of any potential or pending claim, demand or litigation involving that design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the applicable Owner to discuss the Owner's concerns and conduct their own inspection pursuant to the rights reserved in **Section 11.9**.

## ARTICLE XI
## Easements

11.1 **Easements in Common Area**. Every Owner, in addition to Declarant shall have a nonexclusive right and easement of use, access and enjoyment in and to the Common Area, subject to: (1) the Governing Documents and any other applicable covenants; (2) any restrictions, limitations or easements contained in any deed conveying the Common Area to the Association; (3) the right of Declarant and its designees, including Builders authorized by Declarant, to use portions of the Common Area pursuant to **Section 10.3**; and (4) the Board's right to: (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests that may use the Common Area; (ii) suspend the right of an Owner lo use recreational facilities within the Common Area pursuant to **Section 5.4**; (iii) dedicate or transfer all or any part of the Common Area, subject to **Section 16.3**; and (iv) mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in **Section 16.3**. Any Owner may extend that Owner's right of use and enjoyment to the members of that Owner's family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases that Owner's Lot shall be deemed to have assigned all such rights to the lessee of the Lot for the period of the lease.

**11.2 <u>Easements of Encroachment</u>.**

11.2.1 Declarant hereby reserves for the benefit of each Lot a reciprocal appurtenant easement for encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or right-of-way and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to that boundary. However, in no event shall an easement for encroachment exist if the encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of the easement.

11.2.2 Declarant hereby reserves for the benefit of each Lot a reciprocal appurtenant easement for encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or right-of-way and between adjacent Lots as reasonably necessary to install, maintain, repair and replace any fence constructed on or within one foot of the boundary line of any Lot.

**11.3 <u>Easements for Utilities and Other Infrastructure</u>.**

11.3.1 <u>Installation and Maintenance</u>. Declarant hereby reserves for itself, the Association and all utility providers, perpetual non-exclusive easements for the purposes of installing, operating, inspecting, maintaining, repairing and replacing utilities and infrastructure, including cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, stormwater drainage systems, spray irrigation systems and street lights and signage, over, across, under and through (a) a ten (10) foot wide strip of each Lot along the entire front and rear boundary lines of that Lot; (b) a five (5) foot wide strip of each Lot along each side boundary line of each Lot; (c) any area designated as a utility easement area (or similar designation) on a Plat, including those areas designated as "Private Storm Drainage Easement," "Private Storm Drainage Easement and BMP Easement" and "Sanitary Sewer Easement" on the Plat; and (d) any other portion of the Property (but not through a structure) to the extent reasonably necessary therefor.

11.3.2 <u>Specific Easements</u>. Declarant hereby reserves the non-exclusive right and power to grant and record specific easements as may be necessary, in the sole discretion of Declarant in connection with the orderly development of the Property and any Additional Property. The Owner of any property to be burdened by any easement granted pursuant to this **Section 11.3.2**. shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

11.3.3 <u>Minimal Interference</u>. All work associated with the exercise of the easements described in **Section 11.3.1** and **Section 11.3.2** shall be performed in a manner that minimizes interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

**11.4** **Easements to Serve Additional Property**. Declarant hereby reserves for itself and any duly authorized agents, successors, assigns and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access and development of the Additional Property whether or not that Additional Property is made subject to this Declaration. This easement includes a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities. Declarant and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of that Additional Property. If the easement is exercised for permanent access to that Additional Property and that Additional Property or any portion thereof benefiting from the easement is not made subject to this Declaration, then Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of any maintenance the Association provides to or along any roadway providing access to that Additional Property.

**11.5** **Easements for Maintenance, Emergency and Enforcement**. Declarant hereby reserves for itself, and any duly authorized agents, successors, assigns and mortgagees, and the Association easements over the Property as necessary to enable the Association to fulfill its maintenance responsibilities under **Section 5.2** and otherwise exercise its authority, and fulfill its duties, under the Governing Documents. The Association also may, but shall have no obligation to, enter upon any Lot for emergency, security and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with, and to enforce, the Governing Documents. This right may be exercised by any member of the Board and its duly authorized agents and designees and all emergency personnel, including law enforcement, firefighting, paramedic, rescue and other emergency vehicles, equipment and personnel, in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

**11.6** **Landscaping and Signage Easements**. Declarant hereby reserves for itself, and any duly authorized agents, successors, assigns and mortgagees, the Association and any designees perpetual, nonexclusive easements exercisable by their respective employees, agents and contractors over areas within the rights-of-way of streets within the Property and those portions of Lots, if any, designated as landscaping easements, signage easements, landscape buffers or by similar name ("**Landscaping and Signage Easement Area**") on any Plat for the purpose of installation, maintenance, repair and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems and landscaping. Nothing herein shall obligate Eastwood, Declarant or the Association to exercise those easements or to construct or install any of the foregoing within any Landscaping and Signage Easement Area. No fences, structures, driveways, plantings, swings, wood piles, dog runs or any other objects, temporary or permanent, shall be permitted in the Landscaping and Signage Easement Areas without the Association's prior written approval, other than those installed by Declarant or its designees.

**11.7** **Easements for Storm Water Collection, Retention and IrrigationSystems**. Declarant hereby reserves for itself and any duly authorized agents, successors, assigns and mortgagees, and the Association and their successors, assigns and designees a perpetual, nonexclusive easement to enter upon any portion of the Common Area and upon any utility or other easement area designated on any Plat, to (a) install, operate, maintain and replace pumps and lines to transport stormwater and/or treated effluent through the Property and sprinklers and other facilities and equipment for operation of a spray irrigation system to discharge treated effluent; (b) use any portion of the Common Area for spray irrigation; (c) construct, maintain and repair structures and equipment used for retaining stormwater runoff and holding treated effluent; and (d) maintain those areas in a manner consistent with the Community-Wide Standard. The Person exercising this easement shall promptly return any property damaged as a result of such exercise to substantially the same condition as the property existed prior to the exercise of the easement.

**11.8** **Easements for Maintenance of Water Bodies**. Declarant hereby reserves for itself, and any duly authorized agents, successors, assigns and mortgagees, the Association and their successors, assigns and designees, a perpetual, nonexclusive easement for access over the detention ponds and any other bodies of water and wetlands within the Property, and over the Common Area and Lots (but not the dwellings thereon) adjacent to or within 25 feet of those detention ponds or other bodies of water and wetlands, to perform any maintenance and repair as the Board may deem appropriate, which may include maintenance of shorelines, bulkheads and water quality, algae control, removal of silt and debris, breaching of dams, removal of dead or diseased trees, shrubs and plants. All persons entitled to exercise this easement shall repair any damage resulting from the intentional exercise of the easement. Nothing in this Section shall be construed to make Eastwood, Declarant, the Association or any other Person responsible for maintaining any dam, lake or pond or liable for any damage resulting from flooding due to weather events or other natural occurrences.

**11.9** **Easement to Inspect and Right to Correct**. Declarant hereby reserves for itself, and any duly authorized agents, successors, assigns and mortgagees, the Builders, and any designees, the right to inspect, monitor, test, redesign and correct any structure, improvement or condition that may exist on any portion of the Property, including Lots, and a perpetual, nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise that right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at that person's own expense, any damage resulting from such exercise.

**11.10** **Easement for Governmental Agencies, and Services.** Declarant hereby establishes a non-exclusive perpetual right of access over the Property for the benefit of governmental entities acting for the purpose of ensuring public safety and welfare, including, but not limited to the purpose of law enforcement, fire protection, animal control, emergency services, garbage collection, and public or private mail and package delivery.

## ARTICLE XII
## Party Walls and Other Shared Structures

**12.1** **General Rules of Law to Apply**. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots that serves and/or separates any two (2) adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute concerning a party structure shall be handled in accordance with the provisions of **Article XIII**.

**12.2** **Maintenance; Damage and Destruction**. Except to the extent that responsibility for maintenance or repair of a party structure is assigned to or assumed by the Association pursuant to this Declaration, any applicable Supplemental Declaration or other covenants or written agreement:

12.2.1 the Owners of the Lots separated by a fence that constitutes a party structure shall each be responsible for maintaining that side of the fence facing such Owner's Lot: and

12.2.2 to the extent any necessary repair or replacement of a party structure affects both sides of the structure, it shall be the joint responsibility of the Owners of both Lots, and either Owner may perform the necessary maintenance or repair; and, within 30 days after receipt of written evidence of the total cost incurred, the other Owner shall reimburse the Owner who has incurred such cost for one-half of the reasonable cost that Owner has incurred in performing such maintenance or repair.

Notwithstanding the above, if maintenance or repairs to a party structure are necessitated by the conduct of the Owners, occupants or guests of only one of the Lots that share that party structure, then the

Owner of that Lot shall be responsible for the necessary maintenance or repairs. If any Owner installs, constructs or erects a fence on the common boundary line of that Owner's Lot and an adjacent Lot and the Owner of the adjacent Lot thereafter attaches another section of fence to it or otherwise makes use of that fence for the purpose of enclosing all or a portion of the adjacent Lot, then that fence shall become a party fence for the purpose of each Owner's responsibility for contributing to the maintenance, repair and replacement of that fence. However, nothing herein shall confer any ownership interest in or right to remove that fence on the Owner of the adjacent Lot. If either Owner fails to provide necessary maintenance or repair to a party structure within ten days after the date of written notice from the Association advising of the need for that maintenance or repair, the Association may provide the necessary maintenance or repair and assess the costs incurred against the responsible Owner and that Owner's Lot. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to that Owner's successors-in-title.

## ARTICLE XIII
## Dispute Resolution and Limitation on Litigation

**13.1 <u>Agreement to Encourage Resolution of Disputes Without Litigation</u>.**

13.1.1 Declarant, the Association and its officers, directors and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in **Section 13.1.2**, unless and until it has first submitted that Claim to the alternative dispute resolution procedures set forth in **Section 13.2** in a good faith effort to resolve that Claim.

13.1.2 As used in this Article, the term "**Claim**" means any claim, grievance or dispute arising out of or relating to

(a) the interpretation, application or enforcement of the Governing Documents;

(b) the rights, obligations and duties of any Bound Party under the Governing Documents; or

(c) the design or construction of improvements within the Property, other than matters of aesthetic judgment under **Article VIII**, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 13.2**:

(a) any suit by the Association to collect assessments or other amounts due from any Owner;

(b) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration (relating to creation and maintenance of standards) and any suit by the Association to enforce the Governing Documents if the Association has already complied with the notice and hearing procedures set forth in the Bylaws;

(c) any suit that does not include Declarant or the Association as a party, if that suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

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

(e) any suit as to which any applicable statute of limitations would expire within 180 days after giving the Notice required by **Section 13.2.1**, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to that Claim for such period as may reasonably be necessary to comply with this Article.

**13.2 Dispute Resolution Procedures.**

13.2.1 Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") to each Respondent and to the Board stating plainly and concisely:

(a) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) the Claimant's proposed resolution or remedy; and

(d) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

13.2.2 Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

13.2.3 Mediation. If the parties have not resolved the Claim through negotiation within 30 days after the date of the notice described in **Section 13.2.1** (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Spartanburg County, South Carolina area. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of the Claim. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

13.2.4 Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of the settlement agreement, then any other party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Section. In that event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing the agreement or award, including attorneys' fees and court costs.

**13.3** **Initiation of Litigation by Association**. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of persons entitled to cast 75% of the total Class A votes in the Association, except that no approval shall be required for actions or proceedings:

13.3.1 initiated during the Declarant Control Period;

13.3.2 initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens;

13.3.3 initiated to challenge ad valorem taxation or condemnation proceedings;

13.3.4 initiated against any contractor, vendor or supplier of goods or services arising out of a contract for services or supplies; or

13.3.5 to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

## ARTICLE XIV
## Mortgagee Provisions

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

**14.1** **Notices of Action**. An Eligible Mortgage Holder will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss that affects a material portion of the Property or that affects any Lot on which there is an Eligible Mortgage held, insured or guaranteed by that Eligible Mortgage Holder; (b) any delinquency in the payment of assessments or charges owed for a Lot subject to the Eligible Mortgage of that Eligible Mortgage Holder, when the delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to the Lot or the Owner or occupant that is not cured within 60 days; (c) any lapse, cancellation or material modification of any insurance policy maintained by the Association; and (d) any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders.

**14.2** **No Priority**. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to that Owner of insurance proceeds or condemnation awards for losses to, or a taking of, the Common Area.

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

**14.4 Failure of Mortgagee to Respond**. Any Mortgagee that receives a written request from the Board to respond to or consent to any action shall be deemed to have approved that action if the Association does not receive a written response from the Mortgagee within 60 days after the date of the Association's request, provided the request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

**14.5 Amendmentby the Board**. If Freddie Mac, Fannie Mae, the Department of Housing and Urban Development or the Department of Veterans Affairs hereafter eliminate any of their respective requirements that necessitate the provisions of this Article or make any of those requirements less stringent, the Board, without the approval of the Members or any Mortgagee, may cause an amendment to this Article to be recorded to reflect such changes.

**14.6 Construction of Article XIV**. Nothing in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws or Applicable Law for any of the acts set out in this Article.

## ARTICLE XV
## Additional Relationships and Disclosures

**15.1 View Impairment**. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, any open space within the Community will be preserved without impairment. Declarant, Declarant Affiliates and the Association shall have no obligation to relocate, prune or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Common Area) may add trees and other landscaping and construct improvements from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

**15.2 Stormwater Facilities**. Some Lots may be located adjacent to Common Area containing lakes, ponds or stormwater detention or retention facilities that may from time to time contain water. Owners and occupants of those Lots have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear or otherwise disturb vegetation within natural areas located within the Common Area between the boundary of the Lot and the water's edge, or within the nondisturbance buffe r on any Lot.

## ARTICLE XVI
## Changes in Common Area

**16.1 Condemnation**. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of the taking or conveyance prior to disbursement of any condemnation award. Any condemnation award shall be payable to the Association and shall be disbursed as follows:

16.1.1 If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace the improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after the taking Declarant, during the Declarant Control Period, and Members entitled to cast at least 75% of the total Class A votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of **Section 5.3.3** regarding funds for restoring improvements shall apply.

16.1.2 If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any restoration or replacement is complete, then the award or net funds shall be treated in the same manner as if proceeds from the sale of Common Area pursuant to **Section 16.3**.

**16.2 Partition**. Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action seeking the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property that may or may not be subject to this Declaration, subject to such approval as may be required under **Section 16.3**.

**16.3 Mortgaging, Conveyance or Dedication of Common Area**. The Association may dedicate portions of the Common Area to any governmental or quasi-governmental entity, or may subject Common Area to a security interest, or may transfer or convey Common Area upon the (a) written direction of Members entitled to cast at least 80% of the total Class A votes in the Association; and (b) consent of Declarant during the Declarant Control Period. The proceeds from the sale or financing of Common Area shall be an asset of the Association to be used as the Board determines. No sale or encumbrance of Common Area may deprive any Lot of rights of access or support.

**16.4 Easements through Common Area**. The Board may, without the consent of the Owners, grant easements, leases, licenses and concessions through or over the Common Area.

## ARTICLE XVII
## Amendment of Declaration

**17.1 By Declarant**. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant unilaterally may amend this Declaration for any purpose; provided, however, that while Eastwood owns any property subject to this Declaration, Declarant shall obtain the prior written consent of Eastwood before it may unilaterally amend this Declaration. Further, while The Peoples Bank holds a mortgage on the Property, Declarant shall obtain the prior written consent of The Peoples Bank before it may unilaterally amend this Declaration. However, any unilateral amendment by Declarant pursuant to this Section shall not materially adversely affect the allocation of voting rights or assessment burdens among the Lots or title to any Lot unless the Owner of that Lot shall consent in writing.

**17.2 By Members**. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of (a) Members entitled to cast at least 67% of the total Class A votes in the Association and (b) during the Declarant Control Period, Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**17.3 Validity and Effective Date**. No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant (or the assignee of such right or privilege). So long as Eastwood owns any property subject to this Declaration, no amendment may remove, revoke or modify any right or privilege of Eastwood without the express written consent of Eastwood (or its assignee). If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of that amendment. Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one (1) year after its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

## ARTICLE XVIII
## Termination of Declaration

This Declaration may be terminated only upon recording a termination agreement signed by the then Owners of at least 80% of the Lots and, during the Declarant Control Period, by Declarant. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

## ARTICLE XIX
## General Provisions

**19.1** **Enforcement**. The Association, Declarant, Eastwood, and every Owner may take legal action to enforce the Governing Documents. The Association shall have the specific enforcement powers and remedies described in **Section 5.4** and elsewhere in the Governing Documents.

**19.2** **Consent or Approval**. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

**19.3** **Discretion and Determinations**. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

**19.4** **Interpretation**. Except as otherwise specified in this Declaration: (a) "includes" and "including" mean includes or including by way of illustration and not by way of limitation; (b) "may" is permissive; (c) references to Exhibits, Sections or subsections are to those attached to or included in this Declaration, and all Exhibits are incorporated into this Declaration; and (d) the section and other headings in this Declaration are for convenience only and do not limit or expand any provisions of this Declaration.

**19.5** **Severability**. If any provision of this Declaration shall be held to be invalid or unenforceable, then the validity and enforceability of the remaining provisions hereof shall not be affected. Furthermore, in lieu of such invalid or unenforceable provision, there shall be added automatically as a part of this Declaration a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be reasonably possible.

**19.6** **Special Declarant Provisions**. Provided that Eastwood is entitled to those certain rights as set forth within the Intercreditor Agreement, or TMC Irby LLC assigns Special Declarant Rights to Eastwood, or if TMC Irby, LLC is in breach of the Contract for Purchase and Sale and after all applicable notice and cure periods have run or all Lots have been sold to Eastwood and Eastwood owns property in the Community or otherwise subject to this Declaration, , the following provisions shall apply:

19.6.1 Eastwood or its designee may convey to the Association, and the Association shall accept, personal property and title, leasehold or other property interests in any real property, improved or unimproved within the Property.

19.6.2 shall have the right unilaterally to annex additional property to the Declaration.

19.6.3 Eastwood may require the Association to reconvey to Eastwood, or its designee any improved or unimproved portions of the Common Area that Eastwood, or its designee, originally conveyed to the Association for no consideration to the extent conveyed by Eastwood, or its designee, in error or needed by Eastwood or its designee to make minor adjustments in property lines.

19.6.4 Eastwood, or its designee may convey Common Area to the Association in one or more transactions. Each conveyance of Common Area shall be free and clear of all liens and encumbrances of a monetary nature.

19.6.5 There is hereby reserved to Eastwood, or its designee, for the benefit of each Lot a reciprocal appurtenant easement for encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or right-of-way and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to that boundary. However, in no event shall an easement for encroachment exist if the encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of the easement.

19.6.6 There is hereby reserved to Eastwood, or its designee for the benefit of each Lot a reciprocal appurtenant easement for encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or right-of-way and between adjacent Lots as reasonably necessary to install, maintain, repair and replace any fence constructed on or within one foot of the boundary line of any Lot.

19.6.7 There is hereby reserved to Eastwood, or its designee perpetual non-exclusive easements for the purposes of installing, operating, inspecting, maintaining, repairing and replacing utilities and infrastructure, including cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, stormwater drainage systems, spray irrigation systems and street lights and signage, over, across, under and through (a) a ten (10) foot wide strip of each Lot along the entire front and rear boundary lines of that Lot; (b) a five (5) foot wide strip of each Lot along each side boundary line of each Lot; (c) any area designated as a utility easement area (or similar designation) on a Plat, including those areas designated as "Private Storm Drainage Easement," "Private Storm Drainage Easement and BMP Easement" and "Sanitary Sewer Easement" on the Plat; and (d) any other portion of the Property (but not through a structure) to the extent reasonably necessary therefor.

19.6.8 Eastwood, or its designee hereby reserves for itself the non-exclusive right and power to grant and record specific easements as may be necessary, in the sole but reasonable discretion of Eastwood, or its designee, in connection with the orderly development of the Property and any Additional Property. The Owner of any property to be burdened by any easement granted pursuant to this Section shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

19.6.9 There is hereby reserved to Eastwood, or its designee an easement over the Common Area for the purposes of enjoyment, use, access and development of the Additional Property, provided that the Additional Property is made subject to this Declaration. This easement includes a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities. Eastwood, or its designee and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of the Additional Property.

19.6.10 There is hereby reserved to Eastwood, or its designee perpetual, nonexclusive easements exercisable by its respective employees, agents and contractors over areas within any Landscaping and Signage Easement Area on any Plat for the purpose of installation, maintenance, repair and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems and landscaping. Nothing herein shall obligate Eastwood, or its designee to exercise those easements or to construct or install any of the foregoing within any Landscaping and Signage Easement Area.

19.6.11 There is hereby reserved to Eastwood, or its designee a perpetual, nonexclusive easement to enter upon any portion of the Common Area and upon any utility or other easement area designated on any Plat, to (a) install, operate, maintain and replace pumps and lines to transport stormwater and/or treated effluent through the Property and sprinklers and other facilities and equipment for operation of a spray irrigation system to discharge treated effluent; (b) use any portion of the Common Area for spray irrigation; (c) construct, maintain and repair structures and equipment used for retaining stormwater runoff and holding treated effluent; and (d) maintain those areas in a manner consistent with the Community-Wide Standard. Eastwood, or its designee shall promptly return any property damaged as a result of the exercise of this easement to substantially the same condition as the property existed prior to the exercise of the easement.

19.6.12 There is hereby reserved Eastwood, or its designee a perpetual, nonexclusive easement for access over the detention ponds and any other bodies of water and wetlands within the Property, and over the Common Area and Lots (but not the dwellings thereon) adjacent to or within 25 feet of those detention ponds or other bodies of water and wetlands, to perform any maintenance and repair as the Board may deem appropriate, which may include maintenance of shorelines, bulkheads and water quality, algae control, removal of silt and debris, breaching of dams, removal of dead or diseased trees, shrubs and plants. Eastwood, or its designee shall repair any damage resulting from the exercise of the easement. Nothing in this Section shall be construed to make Eastwood, or its designee responsible for maintaining any dam, lake or pond or liable for any damage resulting from flooding due to weather events or other natural occurrences.

There is hereby reserved Eastwood, or its designee the right to inspect, monitor, test, redesign and correct any structure, improvement or condition that may exist on any portion of the Property, including Lots, and a perpetual, nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise that right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. Eastwood or its designee shall promptly repair, at its own expense, any damage resulting from the exercise of this easement.**19.7** The Consent of Lienholder is hereby approved as set forth hereinbelow.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, TMC hereby executes this instrument under seal this 29 day of May, 2025.

**DECLARANT:**

Signed, Sealed, and Delivered in the presence of:

_______________________
Witness #1

_______________________
Witness #2

TMC IRBY LLC,
a South Carolina limited liability company

By: TMC Irby Manager LLC, its Manager

By: _______________________
Name: Michael T. Roth
Title: Manager

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREEENVILLE )

I, Philip R. Brown, a Notary Public of the County and State aforesaid, certify that Michael T. Roth personally appeared before me this day and acknowledged that she/he is the manager of TMC Irby Manager LLC, the manager of TMC IRBY LLC, and that as manager of TMC IRBY LLC being duly authorized to do so, he voluntarily executed the foregoing instrument on its behalf, as its act and deed.

WITNESS my hand and notarial seal this the 29th day of May, 2025.

PHILIP R. BROWN NOTARY PUBLIC SOUTH CAROLINA

[Affix Seal]

_______________________
Notary Public

My Commission Expires: 8/31/31

## Consent of Lien Holder

The Peoples Bank ("Lien Holder"), is the current holder of a Mortgage from TMC IRBY LLC, a South Carolina limited liability company ("Borrower") in favor of Lien Holder dated May 29, 2025 and recorded June 2, 2025with the Spartanburg County, South Carolina Register of Deeds at Book 6988 Page 37 (the "Lien"). Lien Holder hereby consents to the grant and recordation of that certain Declaration of Covenants, Restrictions and Easements for Irby Glen Subdivision (the "Declaration") by Borrower encumbering the Property described in the Lien, and joins in the execution hereof solely as Lien Holder and hereby does agree that in the event of the foreclosure of the Lien, or a deed in lieu of foreclosure of the Property described in the Lien under judicial proceedings, the Declaration shall survive any foreclosure and sale of the Property, the Property shall be sold subject to said Declaration, and all rights and interests granted thereby shall be unaffected.

SIGNED AND EXECUTED this 29th day of May 2025.

Signed, Sealed and delivered in the presence of:

The Peoples Bank

Witness 1

Witness 2

By: Thomas A Drake
Name: T. A. Drake
Title: SVP

STATE OF South Carolina )
COUNTY OF Greenville )

I, Philip R. Brown, a Notary Public of Greenville County, State of South Carolina certify that Thomas A. Drake, (the "Signatory"), appeared before me this day and that Signatory, being authorized to do so, acknowledged the execution of the foregoing instrument.

I certify that the Signatory personally appeared before me this day, and *(check one of the following)*:

______(I have personal knowledge of the identity of the Signatory); **or**

✓ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of: *(check one of the following)*:

a driver's license *or*

in the form of ______________________); *or*

______(a credible witness has sworn to the identity of the Signatory).

Sworn to and subscribed before me this the 29 day of May, 2025.

Notary Public

Print Name: Philip R. Brown

My Commission Expires: 8/31/31

[NOTARY SEAL]

## TABLE OF EXHIBITS

# Exhibit A

## Property

All those tracts or parcels of land lying and being in Spartanburg County, South Carolina, and more particularly described as follows:

All that certain piece, parcel or tract of land, lying and being situate in the State of South Carolina, County of Spartanburg along the northern side of Irby Road and being shown and designated as 14.68 acres, more or less, as shown on survey dated November 5, 2024 and entitled "Boundary Survey for TMC Irby, LLC" prepared by Freeland & Associates, Inc. and recorded April 14, 2025 in the Register of Deeds Office for Spartanburg County, South Carolina in Plat Book 187, Page 118. Reference is made to aforesaid plat for a more complete and accurate metes and bounds description thereof.

For informational purposes only:

Derivation: This being a portion of the same property conveyed to TMC Irby LLC by deed from Virginia Davis, James E. Irby, Perry B. Irby, Diann Grimes a/k/a Dianne Grimes, Brenda Bashir a/k/a Brenda Basire, Shelia Hardison a/k/a Sheila Hardison, and Linda Durham dated May 29, 2025, and recorded simultaneously herewith in the office of the Register of Deeds for Spartanburg County, South Carolina.

TMS# 5-27-00-056.01 (portion of)

**ALSO:**

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as containing 0.68 acre on Irby Road, as shown upon plat of survey prepared for Betty J. Boyd by Joe E. Mitchell, Jr., RLS dated March 30, 1999 and recorded April 13, 1999 in Plat Book 144, Page 427, Register of Deeds Office for Spartanburg County S.C. For a more complete and particular description, reference is hereby made to the above referred to plats and records thereof.

For informational purposes only:

This being the same property conveyed to TMC Irby LLC by deed from Christina Hsiao Hsuan Suddeth f/k/a Christina H. Tan dated March 24, 2025, and recorded March 25, 2025 in Book 150-Z at Page 399 in the Office of the Register of Deeds for Spartanburg County, South Carolina.

TMS # 5-27-00-056.11

# Exhibit B

## Additional Property

Any real property situated within one-half mile of the perimeter boundaries of the property described on **Exhibit A**.

Note to clerk and title examiners:

**This Declaration is not intended to create an encumbrance on title to the property described on this Exhibit B. Such title may be encumbered only with the consent of the owner by filing a Supplemental Declaration in accordance with Article III.**

## Exhibit C

## Restrictions

The following restrictions shall apply to the Community until such time as they are amended, modified, repealed or limited pursuant to **Article VII** of this Declaration.

1. General. The Property shall be used only for residential, recreational and related purposes consistent with this Declaration and any Supplemental Declaration. Such purposes may include an information center and/or a sales office for any real estate broker retained by Declarant or Eastwood to assist each in the sale of Property or any Additional Property, offices for any property manager retained by the Association, business offices for Declarant, Eastwood, and the Association and public facilities.

2. Restricted Activities. The following activities are prohibited within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

(a) Parking of any vehicle (other than emergency vehicles in the course of their duties) on public or private streets or alleys within the Property (except within such areas, if any, designated for use as on-street parking and then, on-street parking may be limited to one side of the street only), or parking of more than two vehicles other than in enclosed garages, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages, except temporarily during loading and unloading; provided, construction, service and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area. For purposes of this provision, "commercial vehicles" shall be defined as trucks or vans with commercial writing on their exteriors or vehicles primarily used or designed for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, but shall not include passenger cars with identifying decals or painted lettering not exceeding a total area of one square foot in size or official vehicles owned by governmental or quasi-governmental bodies.

(b) Raising, breeding or keeping animals, livestock or poultry of any kind, except that a reasonable number of dogs, cats or other usual and common household pets may be permitted in a Lot;

(c) No animals, livestock, exotic pets, poultry, or other fowl of any kind (whether domestic or exotic) shall be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats, or other small in-door household pets (ex. Parakeets, fish, hamsters, gerbils) may be kept; provided, however, that they are not kept, bred, or maintained for any commercial purposes. "Reasonable number" shall mean not exceeding three (3) pets outdoors at any time. Any household pets must not constitute a nuisance or cause unsanitary conditions. No Prohibited Animals shall be allowed such as wolves, foxes, coyotes, hyenas, dingoes, jackals, and other undomesticated dogs; lions, tigers, leopards, jaguars, pumas, panthers, mountain lions, cheetahs, cougars, bobcats, lynxes, and other undomesticated cats, ferrets, weasels, minks, badgers, wolverines, skunks, and mongooses. Particular dog breeds are also prohibited: cane corso (Italian Mastiff), dogo argentino (Argentinian Mastiff), any other Mastiff or Bull Mastiff breed, rottweiller, pitbull, doberman pinscher, Rhodesian ridgeback, chow chow, bandog, kuvaz, caucasian ovcharka, or any wolf-dog hybrids. This list may be amended with retroactive effect by a majority vote of the Board. Any non-prohibited pets shall be securely fenced upon the Owner's Lot so as to prevent them from trespassing upon other Lots in the Development: however, those pets that are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside. All applicable local laws or regulations including leash laws, shall be observed. In addition, after due notice, repeat offenders will be subject to a fine not to exceed Twenty-Five and NO/100ths ($25.00) Dollars per incident. Pets are to be leashed in backyards. Dog houses must be in the rear yard directly behind the residence in such a manner that it cannot be seen from the street on which the residence fronts. Pets shall be registered, licensed and inoculated as required by Applicable Law.

(d) Any activity on a Lot or Common Area that emits foul or obnoxious odors outside a Lot or creates an unreasonable level of noise or other conditions that tend, in the Board's judgment, to unreasonably disturb the peace or threaten the safety of the occupants of other Lots (this paragraph shall not preclude normal and customary use of power tools, lawn mowers and other yard maintenance equipment).

(e) Any activity that violates Applicable Law; however, the Board shall have no obligation to take enforcement action in the event of a violation.

(f) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Lot.

(g) Any noxious or offensive activity that in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance or nuisance to persons using the Common Area or to the occupants of other Lots.

(h) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Lot.

(i) Use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound device so as to be audible to occupants of other Lots, except alarm devices used exclusively for security purposes.

(j) Use and discharge of firecrackers and other fireworks.

(k) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, lake or river or elsewhere within the Property, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff.

(l) Accumulation of rubbish, trash or garbage except between regular garbage pickups, and then only in approved containers that must either be stored in an enclosed garage or in the rear yard of the Lot and screened from view of adjacent property in a manner approved pursuant to **Article VIII**, except on the day garbage is collected.

(m) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers or storm drains, except that Declarant, Eastwood, the Association, and their respective designees, shall have such right, and Builders may alter drainage flow so long as the alteration does not adversely affect other Lots; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

(n) The installation of pipe for drainage purposes in a ditch or swale, except where a driveway crosses the ditch or swale.

(o) Subdivision of a Lot into two or more Lots, combination of two or more Lots into one Lot, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and recorded, except with Declarant's written consent during the Declarant Control Period and the Board's prior written consent thereafter, which consent shall not be unreasonably withheld or delayed.

(p) Conversion of any garage to finished space for use as an apartment or other integral part of the living area on any Lot without prior approval pursuant to **Article VIII**, or use of any garage for storage or other purposes which preclude its use for parking of that number of vehicles for which it was originally designed.

(q) Use of any Lot for operation of a timesharing, fraction-sharing, residence club, vacation club, destination club or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule on a reservation basis or on such other basis as may be set forth in the terms of the program, except that Declarant, Eastwood, and their respective assigns may operate such a program with respect to Lots which it each owns.

(r) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge.

(s) On-site storage of gasoline, heating or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to **Article VIII**.

(t) Any yard sale, garage sale, moving sale, rummage sale or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community-wide basis.

(u) Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) one (1) approved decorative post light; (3) landscape and pathway lighting: (4) street lights in conformity with an established street lighting program for the Property; (5) seasonal decorative lights during the months of November and December; and (6) front house illumination of model homes.

(v) Swimming or use of personal flotation devices in any stream, pond or other body of water (other than swimming pools, rivers and creeks designated by the Board) located within the Property, or fishing or boating in any such body of water except in accordance with such policies and rules as the Board may establish from time to time.

(w) Any business, trade or similar activity, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of residents of the Property; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked on the Property that is noticeably greater than that which is typical of Lots in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Property as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (1) such activity is engaged in full or part-time, (2) such activity is intended to or does generate a profit, or (3) a license is required. Leasing of a Lot in compliance with **Paragraph 4** of these Restrictions shall not be considered a business or trade within the meaning of this subsection.

(x) Any construction, erection, placement or modification of any thing, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of **Article VIII** of the Declaration. This shall include signs and flags (except as otherwise provided in **Section 7.4.3**, **Section 7.4.4** and **Section 8.1**), basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; mailboxes; hedges, walls, dog runs, animal pens or fences of any kind; and satellite dishes and antennas, except that:

(i) a satellite dish designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) a satellite dish designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "**Permitted Devices**") shall be permitted on Lots, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with Applicable Law, to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish or other apparatus for a master antenna, cable or other communication system for the benefit of all or a portion of the Property, should any master system or systems be utilized by the Association and require such exterior apparatus.

3. Prohibited Conditions. The following shall be prohibited in the Community:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Property.

(b) Structures, equipment or other items on the exterior portions of a Lot that have become rusty, dilapidated or otherwise fallen into disrepair.

(c) Sprinkler or irrigation systems or wells of any type that draw upon water from ground or surface waters within or adjacent to the Property, except that Declarant, its designees and the Association shall have the right to draw water from such sources.

(d) Trees or other vegetative canopy that extend into any street or alley below a height of 13'-6".

4. Leasing of Lots. "**Leasing,**" for purposes of this Paragraph, means regular, exclusive occupancy of a Lot by any person, other than the Owner for which the Owner receives any consideration or benefit, including a fee, service, gratuity or emolument. Each Owner shall not enter into any lease, rental, or other occupancy agreement for all or a portion of any residence for a duration less than six (6) months

of continual occupancy. Each Owner shall not advertise or market all or a portion of any residence for any lease, rental or other occupancy for less than six (6) months of continual occupancy, or accept any compensation or payment for occupancies which are less than six (6) months (which restrictions do not bar any Owner's guests from staying overnight or otherwise occupying a portion of residence where compensation or payment is not provided in exchange for such lodging from a guest to an Owner). This restriction is intended to bar any short-term rental of any form or type which involves Vacation Rentals by Owner, AirBnB, room rentals or other short term rentals where compensation nor payment is paid regardless of whether any written documentation exists which memorializes any short term accommodation arrangement. All leases shall be in writing. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten (10) days after execution of the lease. The Owner must provide to the lessee copies of the Declaration, Bylaws and the Restrictions. All leases shall provide that in the event of a lessee's noncompliance with the foregoing documents, the Association may evict such lessee on behalf of Owner. The Association may recover all costs associated with such eviction from Owner.

The Leasing of multiple Lots by a single Owner, or the Leasing of multiple Lots by two or more Owners related by blood, adoption or marriage, or by Owners with a common ownership interest, or by a group of Owners under the control or direction of a single Owner, shall be prohibited, except that this prohibition shall not apply to: (a) Lots leased to Declarant, Eastwood, or any Builder authorized by Declarant for use as model homes or sales offices, or to the continued Leasing of such Lots by the same Owner after expiration of any such lease if Declarant, Eastwood, or Builder does not offer to renew or extend the lease on substantially similar terms; or (b) the Leasing of a Lot by an institutional lender following foreclosure on that Lot.

5. Green Energy Improvements. The installation of solar panels or other green energy improvements ("**Green Energy Improvements**") to the roof or exterior of a home shall be permitted in accordance with applicable law after approval by the Design Review Committee, based upon the Owner providing pictorial and other requested details to the Design Review Committee regarding location(s) of Green Energy Improvements placement, visibility, color and information on the vendor(s) designing and installing such improvements. Provided that the following restrictions do not prevent the reasonable use of the applicable Green Energy Improvements, as determined in the sole discretion of the Association, any such Green Energy Improvements shall: (i) not be visible from the right-of-way in front of the applicable Townhome; (ii) shall be flush mounted on the far back side or rear of the roof of the home (positioned as low as possible on the rear side of the roof); and (iii) be installed to be as unobtrusive as possible. Upon any such approval for the installation of Green Energy Improvements, the Owner of such Lot, its successors and assigns, shall thereafter be responsible for the installation, maintenance and repair of the Green Energy Improvements and any and all damage caused to the home or to adjacent home's, if applicable, during the installation, maintenance or repair of such Green Energy Improvements, and, as a condition to such approval, Declarant and/or Design Review Committee may require the Owner of the subject Lot to enter into a license or other agreement relative to same. The Association shall not be responsible for the installation, maintenance or repair of Green Energy Improvements installed by an Owner. Should Association have a reasonable need to perform roof or exterior maintenance, Owner shall remove and reaffix Green Energy Improvements, solely at Owner expense, when such removal is reasonably necessary, as determined in the sole discretion of the Association, to perform roof or exterior maintenance.

**EXHIBIT D**

**Bylaws of Irby Glen HOA, Inc.**

**BYLAWS
OF
IRBY GLEN HOA, INC.**

**ARTICLE I
Name, Principal Office, and Definitions**

**1.1 Name**. The name of the corporation is Irby Glen HOA, Inc. ("**Association**").

**1.2 Principal Office**. The principal office of the Association shall be located in Mecklenburg County, North Carolina. The Association may have such other offices, either within or outside South Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

**1.3 Definitions**. Unless otherwise specified, the words used in these Bylaws shall be given their normal, commonly understood definitions. Each capitalized term used, but not defined in these Bylaws, has the meaning given in the Declaration of Covenants, Conditions, and Restrictions for Irby Glen Subdivision recorded in the Office of the Register of Deeds of Spartanburg County, South Carolina, as it may be amended ("**Declaration**"), unless the context indicates otherwise. The term "**majority**," as used in these Bylaws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**ARTICLE II
Membership: Meetings, Quorum, Voting, Proxies**

**2.1 Membership**. The Association initially shall have two classes of membership, Class A and Class B, as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated by this reference.

**2.2 Place of Meetings**. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

**2.3 Annual Meetings**. The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. The Board shall schedule subsequent regular annual meetings to occur during the third quarter of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

**2.4 Special Meetings**. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 10% of the total Class A votes in the Association.

**2.5 Notice of Meetings**. The President, the Secretary, or the officers or other persons calling a meeting of the Members shall deliver to each Member entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Declaration, or these Bylaws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under **Section 9.5**, not less than 10 nor more than 50 days before the date of such meeting.

2.6 **Waiver of Notice**. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 **Adjournment of Meetings**. If any meeting of the Members cannot be held because a quorum (see **Section 2.10**) is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the meeting when originally called, or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings. Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of Members leaving less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8 **Voting**. The voting rights of the Members set forth in the Declaration are specifically incorporated by this reference.

2.9 **Proxies**. Members may vote in person or by proxy, subject to the limitations of Applicable Law and subject to any specific provision to the contrary in the Declaration or these Bylaws. Every proxy shall be in writing, shall identify the Lot for which it is given, and shall be signed by the Member or the Member's duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon: (a) transfer of title to any Lot for which it was given; (b) receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person; or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 **Quorum**. Except as otherwise provided in these Bylaws or in the Declaration, the presence of Members representing 20% of the total Class A votes in the Association shall constitute a quorum at all meetings of the Association membership. If any meeting cannot be held because a quorum is not present, the quorum requirement for any subsequent attempt to convene such meeting shall be one-half (1/2) of the previous quorum requirement.

2.11 **Conduct of Meetings**. The President shall preside over all meetings of the Association. The Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.12 **Action Without a Meeting**. Any action required to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the

Association. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting.

**2.13** **Action by Written Ballot**. Any action that may be taken at a meeting of the Members may be taken without a meeting if the Association delivers to every Member entitled to vote on the matter a written ballot setting forth each proposed action, providing an opportunity to vote for or against each proposed action, and indicating the time by which the ballot must be received by the Association in order to be counted. An action shall be approved by written ballot when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.

## ARTICLE III
## Board of Directors: Selection, Meetings, Powers

**3.1** **Governing Body; Qualifications**. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) vote. Except with respect to directors appointed by the Class B Member, directors shall be Owners. No more than one (1) eligible person from any Lot may serve on the Board at any time. If a Member is not a natural person, any officer, director, or partner, or any other representative designated in writing by the Member, shall be eligible to serve as a director unless the Member otherwise specifies by written notice to the Association; provided, no Member may have more than one (1) such representative serving on the Board at a time, except in the case of directors appointed by the Class B Member.

**3.2** **Number of Directors**. The Board shall consist of three (3) directors, as provided in **Section 3.3**.

**3.3** **Selection of Directors; Term of Office**.

3.3.1 Initial Board. The initial Board shall consist of three (3) directors, who shall serve until their successors are appointed or elected as provided in this **Section 3.3**.

3.3.2 Directors During Declarant Control Period. The Class B Member shall be entitled to appoint, remove and replace the members of the Board in its sole discretion until termination of the Declarant Control Period.

3.3.3 Directors After the Declarant Control Period.

(a) Not later than 90 days after termination of the Declarant Control Period, the President shall call for an election by which the Class A Members shall be entitled to elect three (3) directors. Two (2) directors shall serve a term expiring at the second annual meeting following the six-month anniversary of their election and one director shall serve a term expiring at the first annual meeting following the six-month anniversary of their election, as such directors determine among themselves.

(b) Upon expiration of the term of office of each director elected by the Class A Members, Class A Members shall be entitled to elect a successor to serve a term of two (2) years, Directors elected by the Class A Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

The following diagram illustrates the concept of transition of control of the Board of Directors.

| TRANSITION OF CONTROL OF BOARD OF DIRECTORS | |
|---|---|
| Initial Board | 90 Days After Termination of Declarant Control Period |
| Class B | Class A |
| Class B | Class A |
| Class B | Class A |

**3.4 Nomination and Election Procedures.**

3.4.1 Nomination of Candidates. At least 30 days prior to any election of directors by the Class A Members, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a member of the Board of Directors, and three (3) or more Class A Members or representatives of Class A Members. The Nominating Committee shall serve a term of one (1) year or until their successors are appointed. The names of the members of the Nominating Committee shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Class A Members at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations shall also be permitted from the floor at any meeting at which an election is held, or by write-in on any ballot. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

3.4.2 Election Procedures. At each election, voting shall be by written ballot. Each Class A Member may cast all vote(s) assigned to its Lot(s) for each position to be filled by Class A votes. Cumulative voting shall be permitted. That number of candidates equal to the number of positions to be filled by Class A votes receiving the greatest number of votes shall be elected.

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

Any director elected by Class A votes who has three (3) consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

Except as provided below, in the event of the death, disability, or resignation of a director elected by Class A votes, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class A Members may elect a successor for the remainder of the term.

This **Section 3.5** shall not apply to directors appointed by the Class B Member, nor to any director serving as Declarant's representative. The Class B Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class B Member.

**3.6** **Organizational Meetings**. The first meeting of the Board shall be held immediately following each annual meeting of the membership.

**3.7** **Regular Meetings**. Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least two (2) such meetings shall be held during each fiscal year with at least one (1) every other quarter.

**3.8** **Special Meetings**. Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors.

**3.9** **Notice; Waiver of Notice**.

3.9.1 Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, or other electronic mail, messaging or communication device, with printed confirmation of successful transmission. All such notices shall be given at (or sent to) the director's telephone number, fax number, electronic mail address, or mailing or physical address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five (5) business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

3.9.2 Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**3.10** **Telephonic Participation in Meetings**. Members of the Board or any committee that the Board appoints may participate in a meeting of the Board or committee by conference telephone, video conference, or similar communications equipment, provided all persons participating in the meeting can hear each other Simultaneously. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

**3.11** **Quorum of Board**. At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of some directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

**3.12** **Conduct of Meetings**. The President shall preside over all meetings of the Board and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

**3.13** **Action Without a Formal Meeting**. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

**3.14** **Powers**. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or Applicable Law require to be done and exercised exclusively by the membership. Board determinations as to the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable.

**3.15** **Duties**. Duties of the Board shall include, without limitation:

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

3.15.2 levying and collecting such assessments from the Owners;

3.15.3 providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;

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

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

3.15.6 making and amending Restrictions in accordance with the Declaration;

3.15.7 opening bank accounts on behalf of the Association and designating the signatories required;

3.15.8 making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these Bylaws;

3.15.9 enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

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

3.15.11 paying the cost of all services rendered to the Association;

3.15.12 keeping books with detailed accounts of the Association's receipts and expenditures;

3.15.13 making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in **Section 9.4**;

3.15.14 permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Lots and Common Area;

3.15.15 indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Applicable Law, the Articles and these Bylaws; and

3.15.16 assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

## ARTICLE IV
## Officers

**4.1** **Officers**. Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. One (1) person may hold two (2) or more offices, except that the offices of President and Secretary shall be held by different persons.

**4.2** **Election and Term of Office**. The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

**4.3** **Resignation**. Removal and Filling of Vacancies.

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

4.3.2 The Board may remove any officer whenever in its judgment the best interests of the Association will be served.

4.3.3 The Board may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

**4.4** **Powers and Duties**. The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

## ARTICLE V
## Committees

**5.1** <u>**General**</u>. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

## ARTICLE VI
## Standards of Conduct; Liability and Indemnification

**6.1** <u>**Standards for Directors and Officers**</u>. The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents. In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under state law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under the South Carolina Nonprofit Corporation Act.

**6.2** <u>**Liability**</u>.

6.2.1 A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with **Section 6.1**.

6.2.2 Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(a) acts within the expressed or implied scope of the Governing Documents and the director's actions are not *ultra vires;*

(b) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(c) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which the director has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Lot); and

(d) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

6.2.3 The officers, directors, and committee members of the Association shall not be liable for any mistake of judgment, negligence, or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

**6.3** **Indemnification**. Subject to the limitations of Applicable Law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

6.3.1 brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under the South Carolina Nonprofit Corporation Act; or

6.3.2 to the extent that the individual is adjudged liable for conduct that constitutes:

(a) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(b) intentional misconduct or knowing violation of the law; or

(c) an unlawful distribution to members, directors or officers; or

(d) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**6.4** **Advancement of Expenses**. In accordance with the procedures and subject to the conditions and limitations set forth in the South Carolina Nonprofit Corporation Act, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

## ARTICLE VII
## Management and Accounting

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

**7.2** **Right of Class B Member to Disapprove Actions**. So long as the Class B membership exists, the Class B Member shall have a right to disapprove any action, policy, or program of the

Association, the Board and any committee which, in the sole judgment of the Class B Member, would tend to impair rights of Declarant, Eastwood, or Builders under the Declaration or these Bylaws, or interfere with development or construction of any portion of the Community, or diminish the level of services being provided by the Association.

7.2.1 Notice. The Class B Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with **Section 3.9**, and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting.

7.2.2 Opportunity to be Heard. The Class B Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy, or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of **Section 7.2.1** and the foregoing provisions of this **Section 7.2.2** have been met.

The Class B Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class B Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. The Class B Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

**7.3 Managing Agent**. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in **Section 3.15**. Declarant or its affiliate may be employed as managing agent or manager.

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

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Declarant Control Period unless such contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Declarant Control Period upon not more than 90 days' written notice.

No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. Any financial or other interest that the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.

**7.4 Accounts and Reports.**

7.4.1 The following accounting standards shall be followed unless the Board by resolution specifically determines otherwise:

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

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

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

7.4.2 Commencing at the end of the quarter in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(a) an income statement reflecting all income and expense activity for the preceding period on an accrual basis; and

(b) a statement reflecting all cash receipts and disbursements for the preceding period; and

(c) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format; and

(d) a balance sheet as of the last day of the preceding period; and

(e) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution).

7.4.3 Upon Members' request, an annual report consisting of at least the following shall be made available to all Members to copy at Members' own expense within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

**7.5 Borrowing.** The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year. During the Declarant Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least 51% of the total Class A votes, in addition to such approval as may be required under **Article XVI** of the Declaration.

**7.6** **Right to Contract**. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, within and outside the Community. Any common management agreement shall require the consent of a majority of the total number of directors on the Board.

**7.7** **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

## ARTICLE VIII
## Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

**8.1** **Notice and Response**. The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, (c) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to **Article V**; and (d) a statement that the proposed sanction maybe imposed as contained in the notice unless a hearing is requested within 10 days of the notice.

The alleged violator shall respond to the notice of the alleged violation in writing within such 10 day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 10 day period the Board may, but shall not be obligated to, waive the sanction.

Notwithstanding the foregoing, if the violation pertains to the failure to maintain one's Lot in accordance with Community-Wide Standard including, without limitation, keeping the grass at a reasonable length consistent with the Community-Wide Standard, the violator must request a hearing within five days of receipt of notice of such violation.

Prior to the effectiveness of sanctions imposed pursuant to this **Article VIII**, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

**8.2** **Hearing**. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (i.e., the decision of the Board or Committee) and the sanction, if any, to be imposed. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

**8.3** **Appeal**. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the hearing date.

## ARTICLE IX
## Miscellaneous

**9.1** **Fiscal Year**. The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

**9.2** **Parliamentary Rules**. Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Applicable Law or the Governing Documents.

**9.3** **Conflicts**. If there are conflicts among the provisions of Applicable Law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of Applicable Law, the Declaration, the Articles, and the Bylaws (in that order) shall prevail.

**9.4** **Books and Records**.

9.4.1 Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Community as the Board shall designate.

9.4.2 Rules for Inspection. The Board shall establish rules with respect to:

(a) notice to be given to the custodian of the records; and

(b) hours and days of the week when such an inspection may be made; and

(c) payment of the cost of reproducing documents requested.

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

**9.5** **Notices**.

9.5.1 Form of Notice and Method of Delivery. Except as otherwise provided in the Declaration or these Bylaws or by law, all notices, demands, bills, statements, or other communications under the Declaration or these Bylaws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by telephone facsimile or electronic mail with written confirmation of transmission.

9.5.2 Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(a) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member;

(b) if to the Association, the Board, or a committee of either, at the address, telephone facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(c) if to the Declarant, at the principal address of the Declarant as it appears on the Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

9.5.3 Effective Date. Notice sent in accordance with **Section 9.5.1** and **Section 9.5.2** shall be deemed to have been duly given and effective:

(a) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(b) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery;

(c) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

**9.6 Amendment.**

9.6.1 By Declarant. Prior to termination of the Declarant Control Period, Declarant may unilaterally amend these Bylaws, subject to the veto power set forth in **Section 9.6.3** below, if applicable; provided, further, that while Eastwood owns any property subject to this Declaration, Declarant shall obtain the prior written consent of Eastwood before it may unilaterally amend these Bylaws.

9.6.2 By Members Generally. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the total Class A votes in the Association and, during the Declarant Control Period, with the consent Declarant. Any such amendment shall be subject to the veto right set forth in **Section 9.6.3**, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specifie clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

9.6.3 Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon recordation unless a later effective date is specified therein; however, if the U.S. Department of Veterans Affairs or the U.S. Department of Housing and Urban Development is insuring or guaranteeing any Mortgage on a Lot, and if it provides written notice to the Board that it requests the same, it shall be given notice of and shall have an opportunity to veto any such amendment adopted during the Declarant Period prior to such amendment being recorded. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant, or the assignee of such right or privilege. Further, no amendment may remove, revoke, or modify any right or privilege of Eastwood without the written consent of Eastwood, or the assignee of such right or privilege, while Eastwood owns any property subject to the Declaration.