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**DECLARATION  
OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**FOR**

**EDGEFIELD**

**Beaufort County  
South Carolina**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
EDGEFIELD**

**SECTION 1  
DEFINITIONS**

- 1.1. "Association" shall mean the Edgefield Homeowners Association, Inc., a South Carolina nonprofit corporation.
- 1.2. "Edgefield" shall mean the real property and interests described on Exhibit "A", generally known as the Edgefield subdivision and such additions to that real property as may be made by Declarant or by the Association pursuant to this Declaration.
- 1.3. "Edgefield Standards" shall mean the standard of conduct, maintenance, or other activity generally prevailing in Edgefield. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination must be consistent with Edgefield Standards originally established by the Declarant.
- 1.4. "Declarant" shall mean D.R. Horton, Inc. A Delaware Corporation. The Declarant may appoint and designate a successor Declarant by designating such appointment or designation in a Supplemental Declaration filed in the Beaufort County Register of Deeds Office.
- 1.5. "Declaration" shall include this Declaration and any Supplemental Declaration.
- 1.6. "Lot" shall mean any single family residential lot of land within Edgefield, whether or not improvements are constructed on that land, which constitutes a single-family dwelling site as shown on a plat recorded in the Beaufort County Register of Deeds Office. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property and membership in the Association.
- 1.7. "Mortgage" shall mean any mortgage used for the purpose of encumbering real property in Edgefield as security for the payment or satisfaction of an obligation.
- 1.8. "Mortgagee" shall mean the holder of a Mortgage.
- 1.9. "Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within Edgefield for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
- 1.10. "Owner" shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot, excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation.
- 1.11. "Person" shall mean a natural person, corporation, limited liability company, partnership, association, trust, or other legal entity.
- 1.12. "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional restrictions and obligations on Edgefield or adds additional land to Edgefield or assigns the Declarant's rights under this Declaration.

1.13. "Total Association Vote" means all of the votes attributable to members of the Association. If the Total Association Vote is taken during a time while Declarant has the right to appoint members of the Board of Directors, a Total Association Vote approving some item or proposition must contain the affirmative vote of Declarant or the item or proposition will be deemed not to have been approved.

### **PROPERTY SUBJECT TO THIS DECLARATION**

1.14. Property Subjected To This Declaration. All real property in Edgefield is subject to the covenants and restrictions contained in this Declaration, and all such real property is described in Exhibit "A".

1.15. Other Property. Only the real property described in Exhibit "A" is made subject to this Declaration. However, Declarant may subject additional property to this Declaration by recording one or more Supplementary Declarations, so long as such additional property is adjacent to the property described in Exhibit "A".

## **SECTION 2**

### **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

2.1. Membership. Every Owner shall be deemed to have a membership in the Association. If a Lot is owned by more than one Person, there shall be only one (1) membership per Lot, and the votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office in the Association, may be exercised by a Member or the Member's written designee, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

2.2. Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Association prior to any meeting. The Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it. Additionally, the Declarant shall have one (1) vote for each vote held by Members other than Declarant until the Declarant ceases to own two (2) or more Lots, or January 1, 2008, whichever occurs first. These votes of Declarant shall be in addition to the votes Declarant receives due to its ownership of Lots.

2.3. Association Board. As long as the Declarant owns more than one Lot in Edgefield, Declarant shall have the power to appoint all or a majority of the Board of Directors of the Association.

### **SECTION 3** **ASSESSMENTS**

3.1. Purpose of Assessment. The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots.

3.2. Creation of the Lien and Personal Obligation for Assessments and Fines. Each Owner shall timely pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration. Each Owner also agrees to pay to the Association reasonable fines as may be imposed in accordance with the terms of this Declaration.

3.3. Late Charges. All assessments shall accrue late charges and shall accrue interest not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due. Additionally, the costs of collection shall be added to any amount due, which costs of collection shall include, without limitation, reasonable attorney's fees, filing fees, and court costs incurred by the Association. The assessments and charges shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due.

3.4. Personal Liability. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for the assessments which are due at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings.

3.5. Accounting of Payment. The Association shall, within ten (10) business days after receiving a written request, furnish a written accounting setting forth whether the assessments on a specified Lot have been paid. Such written accounting shall be binding upon the Association as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this accounting.

3.6. Annual Assessments. For so long as Declarant has the authority to appoint all or a majority of the Board of Directors of the Association, annual assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may allow annual assessments to be paid in periodic payments, and the Board shall have the right to accelerate any unpaid annual installment in the event an Owner is delinquent in a periodic payment. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

3.7. Computation of Annual Assessments. The Board shall prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve account funding. The Board shall cause the coming year's budget and the assessments to be mailed or delivered to each Member at least thirty (30) days prior to the end of the then current calendar year, or shall present the budget and the proposed assessment to the Members at the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. In the event the membership disapproves the proposed budget and/or assessment, or the Board fails to establish



a budget and/or assessment for the succeeding year, the budget and/or assessment in effect for the then current year shall continue for the succeeding year until changed by the Board. In the event the Board's budget and/or assessment is disapproved, the Board shall have the right to make a new budget and/or assessment retroactive to the start of the calendar year upon approval of the same by the Association. Notwithstanding the preceding, or anything else contained in this Declaration, so long as the Declarant has the power to appoint all or a majority of the Board pursuant to Section 2.3 above, the Board may in its sole discretion amend the budget and the annual assessment at any time during any calendar year. In the event of such amended budget and/or assessment, the amended budget and/or assessment shall be mailed or delivered to each Member at least thirty (30) days prior to the due date of any additional assessment from any Member. Thirty (30) days after such mailing, any additional amount due to the Association shall be due and payable to the Association in the exact manner as an annual assessment.

3.8. Special Assessments. In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special Assessments must be approved at a meeting by two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the calendar year in which the special assessment is imposed. Special assessments shall be assessments levied for new improvements to the Common Property only. The funding of reserve accounts or capital contribution for maintenance and repair of Common Property shall not be deemed as special assessment.

3.9. Transfer Fee Due Upon Lot Resales.

3.9.1. The Association shall collect a transfer fee from the transferring Owner upon each transfer of title to a Lot in Edgefield, whether improved or unimproved. All transfer fees shall be deposited into a segregated account used for the maintenance of Common Areas within Edgefield.

3.9.2. Each owner of a Lot upon the resale of said Lot shall, at the closing of their resale, pay to the Association a transfer fee in an amount equal to one-quarter of one percent (0.25%) of the gross sales price of said Lot, whether improved or unimproved.

3.9.3. A transferring Owner shall notify the Association of a pending title transfer at least fourteen (14) days prior to the transfer. Such notice shall include the name of the transferee, the date of the transfer or closing, and other information as may reasonably be required by the Board of the Association.

3.9.4. An Owner's obligation to pay a transfer fee shall be secured by the Association's lien for assessments set forth herein, and shall be collectible as an assessment against the transferred Lot in the event the transfer fee is not paid by the transferring Owner at the time of closing.

3.9.5. For purposes of this Section 3.9, "resale" is defined as any transfer of legal or equitable title to all or any portion of the Lot for valuable consideration, other than by gift, inheritance, or mortgage foreclosure, where said transfer occurs subsequent to the initial sale by the Declarant, its successors or assigns, to a bona fide purchaser for value. A resale transfer of legal or equitable title shall also include, but is not limited to, the execution of (i) a contract of sale which provides for a closing more than one (1) year beyond the date of execution of said contract; (ii) a lease for a term, including renewal terms, in excess of one

(1) year with a purchase option which applies rental payments towards the purchase price; (iii) an option for a term, including renewal terms, in excess of one (1) year which applies option payments towards the purchase price; (iv) the transfer of any portion of the stock of a corporate Owner, or any portion of the partnership interest of a partnership Owner, or any portion of the beneficial interest of a Trust, or any portion of the legal or beneficial interest in any other form of legal entity which is a Owner.

3.10. Lien for Assessments and Fines. All sums assessed or fined against any Lot, Owner or member pursuant to this Declaration shall be secured by a continuing lien on such Lot in favor of the Association. This provision shall evidence the existence and priority of said lien. By owning a Lot, each Owner specifically acknowledges and agrees the continuing lien upon the Owner's Lot for unpaid assessments and fines.

3.11. Priority. The lien of the Association shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; (b) liens for all sums unpaid on a first priority Mortgage, or (c) a lien arising by virtue of any Mortgage in favor of Declarant which is duly recorded in the land records of the county where Edgefield is located. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to acknowledge that their liens shall be inferior to the lien of the Association for assessments in existence at that time or which arise in the future.

3.12. Effect of Nonpayment of Assessment or Fine Any assessments or fines (or installments) which are not paid when due shall be delinquent. Any assessment or fine (or installment) which is delinquent for a period of more than ten (10) days shall incur a late charge in an amount set by the Board. As set forth above, a lien shall attach to each lot for unpaid assessments and fines. The Association may file its lien in the Beaufort County records, but shall not be required to in order to perfect the lien. The lien shall cover all assessments or fines then due or which come due until the lien is canceled, and any other amounts provided in this Declaration or permitted by law. In the event that the assessment or fine remains unpaid after thirty (30) days, the Association may institute suit to collect such amounts and foreclose its lien. The Association shall have the right to foreclose its lien by any method allowed by law. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

3.13. No Set Off or Deduction. No Owner may waive or otherwise exempt itself from liability for the assessments provided for in this Declaration. No setoff, diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to, comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.

3.14. Application of Payments. All payments shall be applied first to costs of collection, then to late charges, then to interest and then to delinquent assessments.

3.15. Date of Commencement of Assessments. Assessments shall start on the date of the closing of the sale of a Lot to a Person other than the Declarant. The first assessment for any Lot shall be adjusted according to the number of days then remaining in that calendar year.

3.16. Specific Assessment. The Board shall have the power to specifically assess a Lot or Lots pursuant to this Section 3 as it shall deem appropriate, in its sole discretion. Failure of the Board to exercise its authority under this Section 3 shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section 3 afterwards. The Board may also specifically assess Owners for expenses of the Association which benefit less than all of the Lots. Such specific assessment shall be assessed equitably among all of the Lots which are benefitted according to the benefit received, as determined by the Board in its sole discretion.

3.17. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may, but shall not be required to:

3.17.1. advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association and the sum of the annual, special and specific assessments collected by the Association in any calendar year. Such advances may be evidenced by promissory notes from the Association to the Declarant. The failure of Declarant to obtain a promissory note shall not invalidate the debt;

3.17.2. cause the Association to borrow such amount to repay the obligation to the Declarant; however, no mortgage encumbering the Common Property or any improvements maintained by the Association shall be given to secure such a loan; and

3.17.3. provide services to the Association or the Common Property. Declarant shall designate the value of the services provided and such amount may be evidenced by a promissory note from the Association to the Declarant. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section 3.17.

3.18. Initiation Fees. For so long as the Declarant has the authority to appoint a majority of the Board, the Declarant may, but shall not be obligated to, charge an initiation fee to Members at the closing of the purchase of a Lot from the Declarant. The amount of such initiation fee shall be determined by the Declarant in its sole discretion. In the event a Member does not pay the applicable initiation fee at the closing of the purchase of a Lot from the Declarant, such initiation fee shall be due and payable and collectible as an assessment under this Declaration. Any initiation fee collected may be used by the Declarant for any expense arising out of, or related to, Edgefield and/or the Association and need not be included in the Association's annual budget. The initiation fee shall only apply to the sale of a Lot from the Declarant to an initial purchaser. Neither the Association, the Board, nor the Declarant shall have the ability to impose an initiation fee on any purchase or sale of a Lot within Edgefield after the initial sale of such Lot from the Declarant. This provision shall terminate after the Declarant loses its authority to appoint a majority of the Board.

#### SECTION 4

#### MAINTENANCE & CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION

4.1. Association's Responsibility. The Association shall maintain in good repair the Common Property. This responsibility shall include the operation, maintenance, repair, and replacement of all improvements and landscaping situated on the Common Property as set forth in this Section 4.

4.1.1. The Association shall maintain all wetlands, lakes and associated drainage within Edgefield to the extent such maintenance is not otherwise maintained by a governmental entity or public service district.

4.1.2. The Association shall be responsible for Common Property utility expenses such as water, sewer, and electricity. Additionally, each Owner shall be responsible to maintain all landscaping from the boundary line of the Owner's lot to the pavement of the roadway in front of the Owner's lot and, if applicable, from the rear boundary line of the Owner's lot to the waters edge of any lagoon behind the Owner's lot.

4.1.3. The Association shall operate and maintain all Common Property lighting with the exception of those street lights billed to Owners and other lighting maintained and operated by a utility company.

4.1.4. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without Edgefield if the Board determines that such maintenance would benefit the Owners.

4.1.5. The Association shall not be responsible for the maintenance, repair or replacement of any roadways and associated infrastructure within Edgefield which has been conveyed to the Town of Bluffton, Beaufort County or another governmental body, public service district, or utility company.

4.1.6. The Association shall not be responsible for any utility infrastructure which is not owned by the Association including, without limitation, water, sewer electricity, telephone, cable television, or propane gas infrastructure.

4.1.7. The Association maintenance shall be performed consistent with Edgefield Standards.

4.1.8. In the event that the Association determines that the need for maintenance, repair, or replacement of Common Property is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner or Occupant, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be a specific assessment against such Owner subject to the Association's lien and collection rights provided for in this Declaration.

4.2. Owner's Responsibility. All maintenance of Lots and all structures, parking areas, landscaping, and other improvements on each lot shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with Edgefield Standards and this Declaration. In the event the Board determines that any Owner has failed or refused to properly maintain, repair, or replace items for which such Owner is responsible, the Association may perform such maintenance, repair or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner prior written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have seven (7) days after receipt of such notice within which to complete such maintenance, repair, or replacement. If such maintenance, repair, or replacement is not capable of completion within the seven (7) day period, the Owner must commence such work within seven (7) days and

shall complete such work within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be an assessment against such Owner and its Lot.

4.3. Conveyance of Common Property by Declarant to Association. The Declarant shall convey to the Association any Common Property located within Edgefield and shown as Common Property, open space, or recreation area on a plat recorded in the Beaufort County Register of Deeds Office. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

## **SECTION 5**

### **USE RESTRICTIONS AND RULES**

5.1. General. All Owners and Occupants must comply with these use restrictions and rules. These use restrictions may only be amended as provided in this Declaration. In addition, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete other rules and regulations applicable to Edgefield, so long as the rules and regulations do not conflict with the terms of this Declaration. Such rules and regulations shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a majority of the Board.

5.2. Fines for Covenant, Rule and Regulation Violations. The Association may adopt fines to enforce the provisions of these Covenants and the published rules and regulations of the Association. Such fines may be adopted and amended from time to time by a majority vote of the Association Board of Directors. Association fines may not be levied against any Owner until the fines and rules and regulations have been mailed to all Owners to the addresses on record with the Association. Revised fines shall not take effect until mailed to all Owners similarly. Fines levied against Owners for violations of these Covenants, or the Association rules and regulations, shall be a charge against the Lot owned by the Owner in violation of the Covenant, rule or regulation, and shall be a charge and continuing lien on the subject Lot, as well as a personal obligation of the Owner, as set forth in Section 4 above. Owners shall have the right to appeal any Association fine. All appeals shall be in writing and shall be heard by the Board, or a committee selected by the Board. The determinations by the Board, or the Board's appeal committee, of all appeals shall be made in the Board's, or the Board's appeal committee's, sole discretion. Such determinations shall be final adjudications of all fines and shall not be subject to any further appeal whatsoever. The Board shall promulgate rules governing the fine appeal process.

5.3. Single Family Residential Use of Lots. All Lots shall be used for single family residential purposes only and no commercial activity of any nature whatsoever shall be conducted thereon. Residential purposes shall include home businesses or business activities which do not maintain advertising on a Lot, or invite customers or clients within Edgefield. Residential purposes include the sale and leasing of Lots. The Board may issue rules and regulations regarding

permitted business activities, so long as the rules and regulations do not conflict with the terms of this Declaration. The Declarant shall have the right to operate a sales office and a construction office from one or more Lots within Edgefield. No garage or part of a garage may be used for business purposes so as to prevent occupant's vehicles from being parked in the garage.

5.4. Architectural Standards for Improvements to Lots. No exterior improvement, alteration, addition, or erection whatsoever shall be commenced or placed upon any Lot, unless installed by the Declarant, or as approved in accordance with this Declaration. Except as provided above, no exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee to be established by the Board.

5.4.1. The Architectural Review Committee may be established and shall have jurisdiction over modifications and new construction on Lots.

5.4.2. The Board may employ architects, engineers, or other persons as it deems necessary to enable the Architectural Review Committee to perform its review.

5.4.3. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

5.4.4. Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee.

5.4.5. So long as the Declarant owns any property for development or sale in Edgefield, the Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration of earlier surrender in writing of such right, the Board shall appoint the members of the Architectural Review Committee.

5.4.6. If the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether or not these Persons shall not be deemed guilty of trespass by reason of such entry.

5.4.7. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the

Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every owner agrees that such person or owner will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

5.4.8. Signs. No sign of any kind shall be erected by an Owner or Occupant within Edgefield without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. The Declarant shall have the right to erect and maintain "For Sale" signs on any Lot in its sole discretion. No Owner shall erect "For Sale" signs other than the Declarant. Signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

5.4.8.1 No boat, motor home, trailer, or recreational vehicle or trailer may be left upon any portion of Edgefield. All vehicles shall be parked within the driveway of each Lot. No vehicles may be parked overnight in the streets of Edgefield.

5.4.8.2 Detached garages shall be permitted.

5.4.8.3 No unlicensed vehicle shall be left upon any portion of Edgefield. Vehicles which are inoperable for a period of five (5) days or more may not be stored upon any portion of Edgefield. Such vehicles identified above must be removed by the Owner. The Association shall have the right to remove any such vehicle if not removed by the Owner within ten (10) days of notice, and the costs of such removal shall be an assessment against such Owner.

5.4.8.4 Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

5.4.9. Off Road. No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

5.4.10. Leasing. Lots may be leased for long term residential purposes only, which means all leases must be for a period in excess of six (6) months. No short term leasing is allowed. All leases shall require, without limitation, that the tenant acknowledge that the tenant is subject to the Declaration, Bylaws, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the owner and specifically assess all costs associated therewith against the Owner and the Owner's lot.

5.4.11. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

5.4.12. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets. No pets shall be kept, bred or maintained for any commercial purpose. Dogs shall be kept on a leash when outside of a Lot. All Owners shall remove their pets' waste from Common Areas and Lots. Owners who do not remove their pets' waste from Common Areas and Lots shall be subject to fines which shall be collectible against the Owner as a specific assessment. No pets may be left unattended outside of a residence after 8 p.m. nor prior to 7 a.m.

5.4.13. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her lot. No lot within Edgefield shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within Edgefield.

5.4.14. Antennas. No exterior antennas of any kind, including, without limitation, satellite dishes, shall be placed, allowed, or maintained upon any portion of Edgefield, including any Lot, without the prior written consent of the Architectural Review Committee. Satellite Dishes which are dark in color and are 18 inches or less in diameter shall be allowed, provided they are not visible from the street, installed upon or adjacent to a residence, and are integrated with the surrounding landscape.

5.4.15. Tree Removal. No trees that are more than four (4) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the Architectural Review Committee. However, no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed without the prior written consent of the Architectural Review Committee.

5.4.16. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No



Owner or Occupant may alter, obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

5.4.17. Sight Distance at Intersections. All property located at street Intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

5.4.18. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, hot tubs, spas, and related equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.

5.4.19. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Committee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for Edgefield as to how the streets and common areas in Timbecrest are laid out.

5.4.20. Guns. The use or discharge of firearms in Edgefield is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, and small firearms of all types.

5.4.21. Fences. Alteration or movement of fencing upon any Lot may not be done without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, other than wood fencing, on any Lot during the period that such Lot is being used by Declarant as a model home. The Board shall have the right to erect fencing of any type other than wood fencing considered appropriate or desirable by the Board at any location on the Common Property. All other fencing on Lots must receive written approval from the Architectural Review Committee prior to it being erected, or the Owner and Lot shall be in violation of this Declaration.

5.4.22. Air Conditioning Units. No window air-conditioning units may be installed.

5.4.23. Lighting. Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) One (1) decorative post light, (c) street lights in conformity with an established street lighting program for Edgefield, (d) seasonal decorative lights; or (e) front house illumination of model homes.

5.4.24. Swimming Pools and Hot Tubs. Swimming pools, hot tubs and portable spas shall not be permitted without the prior written consent of the Architectural Review Committee. Swimming pools must be enclosed by an approved fence.

5.4.25. Play Equipment. All play equipment must be located between the rear dwelling line and the rear lot line.

5.4.26. Mailboxes. All mailboxes located on Lots shall be of a similar style approved by the Architectural Review Committee. Mailboxes shall be kept painted and in good repair by the Owners. Replacement mailboxes may be installed after the type has been approved in writing by the Architectural Review Committee.

5.4.27. Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the Architectural Review Committee.

5.4.28. Clothesline. No exterior clotheslines of any type shall be permitted upon any Lot.

5.4.29. Storage Sheds and Garages. Construction, installation or placement of a storage shed, tree house, play house, carport, or a building separate from the main house on the Lot is not permitted without the prior written consent of the Architectural Review Committee, in its sole discretion. All plans (which must include the length, width, height, materials, colors, and location) must be submitted to the Architectural Review Committee for written approval prior to obtaining building permits or starting construction. The structure must be constructed, installed or placed in a location inconspicuous as much as possible from public view. All materials used in the construction of such buildings must match the main dwelling located on the Lot.

## **SECTION 6**

### **INSURANCE AND CASUALTY LOSSES**

6.1. Insurance on Common Property. The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements whether or not located on the Common Property which the Association is obligated to maintain. This insurance shall provide fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

6.2. Liability Insurance. The Board shall obtain a general commercial liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). If available, the Board is authorized to obtain directors, and officers, liability insurance coverage.

6.3. Other Insurance. In addition to the other insurance required by this Section 7, the Board shall obtain workers' compensation insurance to the extent necessary to satisfy the requirement of South Carolina law. The Board shall also obtain a fidelity bond or bonds on Association directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be in an amount no less than three (3) month's prorated Assessments plus any reserves. Bonds shall contain a waiver of all defenses based upon the exclusion or person serving without compensation

and may not be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, also known as law and ordinance endorsements, and flood insurance if necessary, and to the extent necessary, to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, or the U.S. Department of Housing and Urban Development.

6.4. Declarant. The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

6.5. Premiums. Premiums for all insurance shall be common expenses of the Association. 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 insurance at least equals the full replacement cost.

6.6. Miscellaneous. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefitted parties, as further identified below. Such insurance shall comply with these provisions:

6.6.1. All policies shall be written with an insurance company authorized to do business in South Carolina.

6.6.2. Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

6.6.3. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

6.6.4. All casualty insurance policies shall have an inflation guard indorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be review annually by the Board.

6.6.5. The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

6.6.5.1 a waiver of subrogation by the insurer as to any claims against the Board, its manager, the Owners and their respective agents, tenants and guests;

6.6.5.2 a waiver by the insurer of its rights to repair and reconstruct instead of paying a cash settlement;

6.6.5.3 that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

6.6.5.4 that no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any Board member, Association officer or employ, or employee of the authorized manager of the Association without prior demand in writing deliver to the Association to cure

any defect or to cease the conduct and the allowance or a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

6.6.5.5 that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

6.6.5.6 that no policy may be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association.

6.7. Individual Insurance for Lot Owners. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The losses under policies obtained by an Owner shall be vested in the Owner.

6.8. Damage and Destruction -- Property Insured by Association. Immediately after damage or destruction by any casualty to any improvement covered by Association insurance, the Board or its authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost or repair or reconstruction of the damaged property. Repair or reconstruction, as used in this Section 7, means repairing or restoring the property to substantially the same condition and location that existed prior to the casualty, allowing for changes necessitated by changes in applicable ordinances. Repair or reconstruction procedures shall be as follows:

6.8.1. Any damage to property covered by Association insurance shall be repaired or reconstructed unless seventy-five percent (75%) or the Total Association Vote agree otherwise in a vote taken at a duly called Association meeting held sixty (60) days after the casualty. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) day.

6.8.2. If the insurance proceeds are insufficient to pay for the repair or reconstruction, the Board shall, without the necessity of a vote of the Owners, levy a special assessment against all Owners in proportion to the number of Lots owned by each Owner. Additional assessments may be made in like manner at any time during of following the completion or any repair or reconstruction. If the funds available from insurance exceed the

costs or repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

6.8.3. If the Association votes not to repair or reconstruct damage improvements, and no alternatives are authorized by the Association, then the property shall be restored to its natural state and maintained as an undeveloped portion of Edgefield in a neat and attractive condition.

6.9. Damage and Destruction to Improvements on Lots -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within ninety (90) days after such damage or destruction or, where repairs cannot be completed within ninety (90) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within ninety (90) days after such damage or destruction. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in this Declaration.

6.10. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall be paid by the Association or be allocated among the Persons who are responsible for the damage or destruction.

## **SECTION 7**

### **ANNEXATION OF ADDITIONAL PROPERTY**

#### 7.1. Unilateral Annexation By Declarant.

7.1.1. The Declarant shall have the unilateral right and option until five (5) years after the recording of this Declaration to subject the following property to the provisions of this Declaration ("Annexation"):

7.1.1.1 any real property touching, or adjacent to, any Lot or Common Property within Edgefield;

7.1.1.2 Annexation shall be made by filing a Supplementary Declaration with the Beaufort County Register of Deeds Office describing the annexed property;

7.1.1.3 Annexation shall be effective upon the date of the filing of the Supplementary Declaration;

7.1.1.4 Declarant shall have the right to modify the terms of the Declaration as it may apply to any annexed property. As long as the provisions of this Declaration applicable to property previously subjected to this Declaration are not changed and as long as rights of exiting Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

7.1.1.5 The rights reserved by the Declarant to subject additional property to this Declaration shall not imposed any duty or obligation upon the Declarant to subject additional property to this Declaration. If additional property is not subjected to this Declaration, Declarant's reserved rights shall not impose any

obligation on Declarant to impose any covenants or restrictions similar to those contained herein to any additional property. Nothing in this Declaration shall impair or restrict the Declarant's development of any additional property, whether such development is consistent with the covenants and restrictions in this Declaration or not.

7.2. Bluffton Annexation. By purchasing a Lot within Edgefield, each Owner expressly and impliedly consents to vote in favor of annexing Edgefield into the Town of Bluffton, in the event an annexation petition or application to do so is initiated. This consent is an obligation of each Owner and shall run with the lands comprising Edgefield and each Lot therein, and be binding upon each Owner, their successors, heirs, and assigns. If this provision is held invalid by any court of law, this provision shall be deemed severable from the remainder of this Declaration, which shall remain in full force and effect, and not be impaired, altered or amended by any such court determination regarding this Section 7.2.

## SECTION 8 MORTGAGEE PROVISIONS

8.1. Mortgagee Provisions. The following provisions are for the benefit of holders of first Mortgages on Lots in Edgefield. The provisions of this Section 8 apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

8.2. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association, such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder", will be entitled to timely written notice of :

8.2.1. any condemnation loss or any casualty loss which affects a material portion of Edgefield or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such eligible holder;

8.2.2. any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage or such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of an unencumbered Lot of any obligation under the Declaration or the Bylaws which is not cured within sixty (60) days;

8.2.3. any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

8.3. 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 such owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

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

8.5. Applicability of Section. Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or South Carolina law for any of the acts set out in this Section.

## **SECTION 9** **EASEMENTS**

9.1. Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot. Any Owner may delegate such Owner's right of use and enjoyment in and to the Common Property to the members of the Owner's family and to such Owner's tenants and guests. Such delegation shall be deemed when any Owner leases its Lot. The Owners' easements for use and enjoyment shall be subject to the following provisions:

9.1.1. the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions of the Common Property by an Owner, its guests and invitees, at designated times for special events upon such Owner's payment to the Association of a reasonable use charge, as set by the Board in its sole discretion;

9.1.2. the right of the Association to suspend a Lot Owners' voting rights and the right to use the Common Property for any period during which any assessment against such Owner remains unpaid, or for a reasonable period of time for a violation of this Declaration, Bylaws or the Associations rules or regulations;

9.1.3. the right of the Association to borrow money for the purpose of improving the Common Property, or for construction, repairing or improving any facilities located on the Common Property, and to give as security for the payment of any such loan a Mortgage encumbering the Common Property; provided, however, the lien and encumbrance of any such Mortgage shall be subject and subordinate to the provisions of this Declaration. Any such Mortgage on the Common Property shall be approved by at least two thirds (2/3) of the Total Association Vote. The exercise of any rights held by any mortgagee of Common Property shall not cancel or terminate any provisions of this Declaration, or the holder of any Mortgage on any Lot.

9.1.4. the right of the Association to dedicate or grant licenses, permits or easement over, under and through the Common Property to governmental entities for public purposes; and

9.1.5. the right of the Association to dedicate or transfer all or any portion of the Common Property subject to the such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless approved by at least two thirds (2/3) or the Total Association Vote.

9.2. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within Edgefield, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all

utilities serving Edgefield or any portion thereof. This easement shall include, without limitation, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service Edgefield. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement.

9.3. Easement for Drainage. Declarant hereby reserves a perpetual easement across all Edgefield property for the purpose of altering drainage and water across all Edgefield property for the purpose of altering drainage and water flow. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or any property in Edgefield. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

9.4. Easement for Entry. In addition to the other rights reserved to Declarant and the Association, the Declarant or the Association shall have the right (but not the obligation) to enter upon any property or Lot within Edgefield for emergency, security, and safety reasons. This right may be exercised by the Declarant or its designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

9.5. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant or the Association across such portions of Edgefield, determined in the sole discretion of the Declarant and the Association, as are necessary to allow for the maintenance required by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

9.6. Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for Edgefield, over and upon each Lot as more fully described on the recorded subdivision plats for Edgefield. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.



9.7. Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, so long as Declarant owns any property in Edgefield for development or sale, Declarant reserves an easement across Edgefield for Declarant, and any builder or developer approved by Declarant upon such portion of Edgefield as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near Edgefield. This easement shall include, without limitation:

9.7.1. the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of Edgefield as well as any Lot in Edgefield,

9.7.2. the right to tie into any portion of Edgefield with driveways, parking areas and walkways;

9.7.3. the right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services;

9.7.4. the right (but not the obligation) to construct recreational facilities on Common Property;

9.7.5. the right to carry on sales and promotional activities in Edgefield;

9.7.6. the right to place direction and marketing signs on any portion of Edgefield, including any Lot or Common Property;

9.7.7. the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities;

9.7.8. Declarant and any builder or developer authorized by Declarant may use residences, offices or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by Edgefield as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

9.8. Irrigation Easements. There is hereby reserved to the Declarant and the Association a blanket easement to pump water from ponds, lakes and other bodies of water located within Edgefield for irrigation purposes.

9.9. Fence Easement. Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

9.10. HUD/VA Approval. As long as Declarant has the right to appoint and remove Association officers and directors, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either agency is insuring or guaranteeing the Mortgage on any Unit; merger, consolidation, or dissolution of the Association; annexation of the property other than that adjacent to Edgefield, dedication, conveyance, or mortgaging of Common Area; or material amendment of this Declaration or the By-Laws.

## **SECTION 10**

### **GENERAL PROVISIONS**

10.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of lien, a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

10.2 Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of Edgefield to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restriction. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

10.3 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of this Declaration applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

10.4 Duration. The covenants and restrictions of this Declaration shall run with and bind Edgefield, and shall inure to the benefit of and shall be enforceable by Declarant, the

Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by South Carolina law. If South Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provision shall be automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of 2/3 of the Lots and the Declarant (if the Declarant still owns any property in Edgefield or has the right to annex additional property) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.

10.5 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, HUD, the VA, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended:

10.5.1.1 For so long as the Declarant owns any property in Edgefield or has the right to annex additional property, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots;

10.5.1.2 If the Declarant no longer owns any Property in Edgefield and no longer has the right to annex additional property, upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots.

10.6 Partition. The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within Edgefield and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within Edgefield.

10.7 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

10.8 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

10.9 Captions. The captions are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

10.10 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

10.11 Indemnification. To the fullest extent allowed by applicable South Carolina law, the Association shall indemnify every officer of the Association and director of the Association against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent 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 by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer of director, may be entitled. This indemnification shall also include attorneys fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

10.12 Books and Records.

10.12.1 Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

10.12.2 Rules for Inspection. The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the work when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.

10.12.3 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 extra copies of documents at the reasonable expense of the Association.

10.13 Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board may decide; provided, however, after having received the Board's financial statements at their annual meeting, by a majority of the Total Association Vote, the Owners may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

10.14 Notice of Sale, Lease or Acquisition. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

10.15 Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any property for development or sale in Edgefield, or has the right to unilaterally annex additional property to Edgefield) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in Edgefield or the privilege of possession and enjoyment of any part of Edgefield.

10.16 Implied Rights. The association may exercise any right or privilege given to it expressly by the Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

10.17 Variances. Notwithstanding anything to the contrary contained herein, the Declarant and the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for Edgefield.

10.18 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration, (c) proceedings involving challenges to ad valorem taxation or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended during the time period when

Declarant owns any property for development or sale in Edgefield, or has the right to unilaterally annex additional property to Edgefield unless such amendment is made by the Declarant.



**EXHIBIT "A"****Property Subject to this Declaration  
Legal Description to Edgefield Covenants**

All those certain pieces, parcels or tracts of land lying and being in Beaufort County, South Carolina shown and described as Parcel A, containing 86.954 acres upland, and 10.749 acres wetland, for a total of 97.703 acres; and Parcel B, containing 2.595 acres upland; said Parcels shown and described on a Plat entitled "A Plat of The Sivica Tract at Grande Oaks, Beaufort County, South Carolina"; said Plat prepared by Thomas & Hutton Engineering Co., Boyce L. Young, SCRLS No. 11079 dated April 15, 2003, last revised July 11, 2003 and recorded in Plat Book 94 at Page 171, Beaufort County Records. For a more detailed description of said property, reference is made to said plat.

**Beaufort County Tax Map Parcel R600 029 000 00145 0000**

This being the same property conveyed to the within Declarant by deed of Stoney Creek Land Investors, LLC recorded in the Beaufort County Register of Deed's Office in Official Record Book 1829 at Page 1505 on September 2, 2003.