DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

Sandcastles by the Sea

Star Fish Investments, LLC

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May 22, 2006
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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
Sandcastles by the Sea

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(this “Declaration”) is made on this 22nd day of May, 2006, by Star Fish Investments, LLC,
having an address of 18 Folly Field Road, Hilton Head Island, South Carolina 29928 (the
“Declarant”):

WHEREAS, the Declarant is the owner of that certain real property located on Hilton
Head Island, Beaufort County, South Carolina, more particularly described on Exhibit “A”
which has been subdivided by the Declarant for a development to be known as Sandcastles by
the Sea; and

WHEREAS, the Declarant is developing Sandcastles by the Sea as a residential
community and wishes to submit Sandcastles by the Sea to the provisions of this Declaration in
order to impose upon the Property (as defined in Section 1 below) mutually beneficial
restrictions under a general plan of improvement and common development for the benefit of the
owners of each portion of the Properties; and

WHEREAS, in furtherance of the Declarant’s general plan of improvement and common
development, this Declaration provides for the creation of Sandcastles by the Sea Owners
Association, Inc. to own, operate and maintain the Common Property and to administer and
enforce the provisions of this Declaration;

NOW, THEREFORE, the Declarant hereby declares that the Property, including any
improvements which may be constructed on any portion thereof, is subjected to the provisions of
this Declaration. All portions of the Property shall be held, sold, transferred, conveyed, used,
occupied, mortgaged, or otherwise encumbered subject to the covenants, conditions, restrictions,
easements, assessments, and liens contained in this Declaration. The provisions of this
Declaration shall run with all the Property and subject all the Property to this Declaration. This
Declaration shall benefit, and be binding upon, all persons having any right, title, or interest in
any portion of the Property, their respective heirs, legal representatives, successors-in-title, and
assigns.

SECTION 1 – DEFINITIONS

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

The Architectural Review Committee, as described in Section 6.06.

1.02. Area of Common Responsibility

The Common Property, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration or any recorded plat.

1.03. Association

Sandcastles by the Sea Owners Association, Inc., its successors and assigns.

1.04. Board of Directors or Board

The appointed or elected board of directors, as applicable, of the Association.

1.05. Bylaws

The Bylaws of the Association.

1.06. Common Expenses

The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, or other applicable documents.

1.07. Common Property

The personal property and the real property, if any, including easements, together with improvements located thereon, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners, and any property which is depicted open space or recreation area on any plat of the Property recorded in the Public Records.

1.08. Property

The real property and interests described on Exhibit “A”, generally known as Sandcastles by the Sea, and such additions to that real property as may be made by Declarant or by the Association pursuant to this Declaration.

1.09. Community-Wide Standard

The standard of conduct, maintenance, or other activity generally prevailing within Sandcastles by the Sea. Such standard may be more specifically determined from time to time
by the Board of Directors; *provided, however,* that any such determination must be consistent with the standards originally established by the Declarant.

1.10. Declarant

Star Fish Investments, LLC, a South Carolina limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the Property for the purpose of development or sale and who is designated as the Declarant in an instrument executed by the immediately preceding Declarant and recorded in the Public Records; *provided however,* there shall be only one (1) Declarant hereunder at any one time.

1.11. Declaration

This Declaration and any Supplemental Declaration.

1.12. General Assessment

Assessments levied on all Lots subject to assessment under Section 4.01 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Section 4.05.

1.13. Majority

Those votes of members of the Board of Directors, Owners, Members, or any other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.14. Member

A Person subject to membership in the Association pursuant to Section 3.01.

1.15. Lot

A single family residential lot of land within the Property, whether or not improvements are constructed on that land, which constitutes a single-family dwelling site as shown on a plat recorded in the Public Records. 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.

1.16. Mortgage

A mortgage used for the purpose of encumbering any Lot as security for the payment or satisfaction of an obligation.

1.17. Mortgagee
The holder of a Mortgage.

1.18. Occupant

A Person occupying all or any portion of a Lot or any other portion of the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

1.19. Owner

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.

1.20. Person

A natural person, corporation, limited liability company, partnership, association, trust, or other legal entity.

1.21. Public Records

The records of the Office of the Register of Deeds for Beaufort County, South Carolina or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.22. Special Assessment

Assessments levied in accordance with Section 4.08.

1.23. Specific Assessment

Assessments levied in accordance with Section 4.09.

1.24. Supplementary Declaration

An amendment or supplement to this Declaration which subjects additional restrictions and obligations on the Property, or adds additional land to the Property, or assigns the Declarant's rights under this Declaration.

1.25. Total Association Vote

All of the votes attributable to members of the Association. If the Total Association Vote is taken during a time while the 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 the Declarant or the item or proposition will be deemed not to have been approved.

Final
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SECTION 2 – THE PROPERTY

2.01. Property Subjected to This Declaration.

All real property within the Property is subject to the covenants and restrictions contained in this Declaration, and all such real property is described in Exhibit “A”.

2.02. Other Property.

The Declarant may, at its sole discretion, subject additional property to this Declaration by recording one or more Supplementary Declarations in the Public Records, as more fully set forth in Section 8 below.

SECTION 3 – ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.01. Membership.

Every Owner shall be deemed to be a Member and 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 more than (1) office held for each Lot owned.

3.02. Voting.

Members shall be entitled to one (1) vote for each Lot owned. If a Lot is owned by more than one Person, then the Person entitled to cast the vote for the Lot shall be designated by a certificate signed by all the record owners of such Lot and filed with the Declarant and the Secretary of the Association. Further, if any Lot is owned by a corporation, partnership, limited liability company, or other entity, or by a fiduciary, then the person entitled to cast the vote for the Lot shall be designated by a certificate duly executed on behalf of such entity or fiduciary and filed with the Declarant and the Secretary of the Association. All co-Owners of a Lot shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is an entity or fiduciary may be exercised by any individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. A Lot’s vote shall be suspended if more than one Person seeks to exercise it.

In addition to any votes it may have by virtue of its ownership of one or more Lots, the Declarant shall have one (1) vote for each vote held by Members other than the Declarant until the Declarant owns fewer than two (2) Lots, or December 31, 2006, whichever occurs first.
3.03. Association Board.

As long as the Declarant owns more than one Lot, the Declarant shall have the right and power to appoint a Majority of the Board of Directors of the Association.

The Association shall indemnify and hold harmless every officer, director, ARC member, and committee member against all damages, liabilities, and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he or she may be a party by reason of being or having been an officer, director, ARC member, or committee member, except that such obligation to indemnify shall not be applicable to any action, suit, or other proceeding resulting from the gross negligence, willful misfeasance, malfeasance, or misconduct, or bad faith on the part of any officer, director, ARC member, or committee member.

The officers, directors, ARC members, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual gross negligence, willful misfeasance, malfeasance, or misconduct, or bad faith. The officers, directors, ARC members, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, ARC members, or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, ARC member, and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, ARC member, 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 the indemnity obligations set forth in this Section, if such insurance is available at commercially reasonable rates.

SECTION 4 – ASSESSMENTS

4.01. Creation of Assessments, Lien, and Personal Obligation.

There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Owners; (b) Special Assessments, as described in Section 4.08; and (c) Specific Assessments, as described in Section 4.09. Each Owner, by accepting a deed or entering into a contract of sale for any Lot, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorney’s fees, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in Section 4.10.
Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time or price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by non-use of the Common Property, abandonment of his or her 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 reason, including, but not limited to the 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.

The Association is specifically authorized to enter into subsidy contracts or contracts for ‘in kind’ contribution of services, materials, or a combination of services and materials with the Declarant for payment of Common Expenses.

4.02. Late Charges.

All assessments shall accrue late charges and shall accrue interest at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen (18%) percent 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.

4.03. Personal Liability.

Each assessment or charge, together with interest, late charges, costs of collection, and reasonable attorney’s fees, also shall be the personal obligation of the Person who is or was the Owner of such Lot at the time the assessment arose, 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, that, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

4.04. Accounting of Payment.

The Association shall, with ten (10) business days after receiving a written request, furnish a written accounting setting forth whether the assessments on a specific 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.

4.05. General Assessments.

General 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 General 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, General Assessments shall be paid in annual installments.

4.06. Computation of General Assessments.

Before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Association during the coming year, including a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 4.07. 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 at least sixty-seven (67%) percent of the Total Association Vote. If the membership disapproves the proposed budget and assessment, or the Board fails to establish a budget or assessment for the succeeding year, the budget and assessment in effect for the then current year shall continue for the succeeding year until changed by the Board. If the Board’s proposed budget or assessment is disapproved, the Board shall have the right to make a new budget and assessment retroactive to the start of the fiscal year upon approval of the same by the Association.

4.07. Reserve Budget.

The Board shall annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the budget reserve amounts sufficient to meet the projected needs of the Association.

4.08. Special Assessments.

In addition to the other assessments authorized by this Declaration, the Association may levy Special Assessments from time to time, but only for the purpose of new improvements to the Common Property. Any such Special Assessment shall be levied equally against all Lots, and shall become effective unless disapproved at a meeting of the Members by at least sixty-seven (67%) percent of the Total Association Vote. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in the By-Laws, which petition must be presented to the Board within twenty (20) days after delivery of the notice of such Special Assessment. Special Assessments shall be paid as determined by the Board, and the Board may permit
Special Assessments to be paid in installment extending beyond the calendar year in which the Special Assessment is imposed. The funding of reserve accounts or capital contribution for maintenance and repair of Common Property shall not be by way of a Special Assessment.

4.09. Specific Assessments.

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

4.09.01 To cover the costs, including overhead and administrative costs, of providing benefits, items, or services to one (1) or more Lot or the Occupants or Owner thereof upon request of an Owner (which may include, without limitation, landscape maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

4.09.02 To cover costs incurred in bringing a Lot into compliance with the terms of this Declaration, the Bylaws, the Architectural Review Guidelines, or other applicable documents, or costs incurred as a consequence of the conduct of the Owner or the Occupants, their agents, contractors, employees, licensees, invitees, or guests, including, without limitation, fines imposed and assessed under Section 6.02; provided however, that the Board shall give the Owner of such Lot prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any Specific Assessment under this subsection.

4.10. Lien for Assessments and Fines.

All sums assessed or levied against any Lot, Owner or Member pursuant to this Declaration, as well as applicable interest, late charges in such amount as the Board may establish (subject to the limitations of South Carolina law), costs of collection and reasonable attorney’s fees, 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 Member specifically acknowledges and agrees the continuing lien upon the Member’s Lot for unpaid assessments and fines.

4.11. Priority.

The lien of the Association shall be superior to all other liens and encumbrances on such Lot, except for (a) the liens of all taxes, bonds, assessments, and other levies which by law are superior; (b) the lien or charge for all sums unpaid on a first priority Mortgage of record in the Public Records (meaning any recorded Mortgage with first priority over any other Mortgages) made in good faith and for value, and (c) the lien or charge for all sums unpaid on any Mortgage in favor of the Declarant which is duly recorded in the Public Records. All other Persons acquiring liens or encumbrances on any Lot after this Declaration is recorded in the Public Records 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, whether or not
prior consent is specifically set forth in the instruments creating such liens or encumbrances.

4.12. Effect of Nonpayment of Assessment or Fine.

Any assessments not paid when due shall be delinquent. Any assessments delinquent for a period of more than ten (10) days shall incur a late charge in an amount set by the Board. The Association may file its lien for unpaid assessments in the Public Records, but shall not be required to do so in order to perfect the lien. The lien shall cover all assessments then due or which come due until the lien is canceled. If any assessment 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, and to acquire, hold, lease, mortgage, or convey any Lot acquired at foreclosure.

4.13. No Set Off or Deduction.

No Owner may waive or otherwise exempt itself from liability for any 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.


All payments shall be applied by the Association first to costs of collection, then to late charges, then to interest and then to delinquent assessments.

4.15. Date of Commencement of Assessments.

The obligation to pay assessments shall commence as to each Lot on the date which the Lot is conveyed to a Person other than the Declarant. The first annual General Assessment levied on each Lot shall be adjusted and pro rated according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

4.16. Budget Deficits during Declarant Control.

For so long as the Declarant has the authority to appoint a majority of the Board of Directors of the Association, Declarant may, but shall not be required to:

4.16.01. 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 General Assessments collected by the Association in any calendar year, any such advances to be evidenced by promissory notes from the Association to the Declarant, but the failure of
Declarant to obtain a promissory note shall not invalidate the debt;

4.16.02. Cause the Association to borrow such amounts on an unsecured basis; and

4.16.03. Provide services to the Association or the Common Property, with the Declarant designating the value of the services provided with such amount being evidenced by a promissory note from the Association to the Declarant, but the failure of the Declarant to obtain a promissory note shall not invalidate the debt.

SECTION 5 – MAINTENANCE OF AND CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION

5.01. The Association’s Responsibilities.

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 5.01.

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

The Association shall be responsible for Common Property utility expenses such as water, sewer, and electricity.

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.

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

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

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; provided, however, that the Association shall maintain all storm water drainage facilities on the Property.
The Association’s maintenance obligations shall be performed consistent with the Community-Wide Standard.

If the Association determines that the need for maintenance, repair, or replacement of Common Property is caused through, by or as the result of the willful or negligent act or omission 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.

5.02. The Owners’ Responsibilities.

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 the Community-Wide Standard and this Declaration. If 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, and at the sole cost and 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 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 cannot reasonably be completed within the seven (7) days period, the Owner must commence such work within seven (7) days and shall complete such work within a reasonable time thereafter. 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 thereof shall be a Specific Assessment against such Owner subject to the Association’s lien and collection rights provided for in this Declaration.

5.03. Conveyance of Common Property by the Declarant to the Association.

The Declarant shall convey to the Association any Common Property located within Property and shown as Common Property, open space, or recreation area on a plat recorded in the Public Records. Such conveyance shall be by quitclaim, and 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. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted by the Association pursuant to this Section.

SECTION 6 – USE RESTRICTIONS AND RULES

6.01. In General.
All Owners and Occupants must comply with the use restrictions and rules in this Declaration. These use restrictions and rules 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 the Property, 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 Total Association Vote.

6.02. Fines for Covenant, Rule and Regulation Violations.

The Association may adopt fines to enforce the provisions of this Declaration 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 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 this Declaration or the rules and regulations of the Association shall be a Specific Assessment against the Lot owned by the Owner, 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 may promulgate rules governing the fine appeal process.

6.03. Single Family Residential Use of Lots.

All Lots in the Property 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 or display any advertising on a Lot, or invite customers or clients to the Lot or the Property. Residential purposes include the sale and leasing of Lots. The Board may issue rules and regulations regarding permitted business activities, so long as the rule 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 the Property. No garage or part of a garage may be used for business purposes so as to prevent an Occupant’s vehicles from being parked in the garage.


No dwelling erected upon any Lot shall be occupied in any manner before commencement of construction, during the course of construction, or at any time prior to the dwelling being fully completed and the issuance of a Certificate of Occupancy without exception.
by the Town of Hilton Head Island, South Carolina for such construction.

6.05. Timesharing.

No Lot shall be made subject to any vacation time sharing ownership plan or to any
vacation time sharing lease plan, as defined in the South Carolina Vacation Time Sharing Plan
Act, §37-32-10, et seq. of the Code of Laws of South Carolina (1976), as amended, or be
operated as a timesharing, fraction-sharing, 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 over
a period of years. No Lot shall be used for interval occupancy purposes or use, as such use is
defined in the Land Management Ordinance, Title 16 of the Municipal Code of the Town of
Hilton Head Island, South Carolina.

6.06. Architectural Standards for Improvements to Lots.

No exterior improvements, alteration, addition, construction 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,
errection, 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.

The ARC may be established by the Board and shall have jurisdiction over modifications
and new construction on Lots. The Board or the ARC may employ architects, engineers, or other
persons as it deems necessary to enable the ARC to perform its review. The ARC 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 ARC for all matters delegated. Written design guidelines and procedures may be
promulgated by the Board or the ARC for the exercise of this review, which guidelines may
provide for a review fee.

So long as the Declarant owns any Lot for development or sale in the Property, the
Declarant shall have the right to appoint all members of the ARC. Upon the expiration or earlier
surrender in writing of such right, the Board shall appoint the members of the ARC.

If the ARC fails to approve or to disapprove submitted plans and specifications within
thirty (30) 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 shall assume all responsibilities for maintenance,
repair, replacement, and insurance to and on any change, improvement, modification, addition,
construction, or alteration on a Lot. The ARC shall be the sole arbiter of plans and specifications
submitted to it, and may withhold approval for any reason, including purely aesthetic
considerations, and it shall be entitled to stop any construction in violation of this Declaration.
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 construction of improvements to a Lot are in accordance with plans and specifications.
approved by the ARC, and these Persons shall not be deemed guilty of trespass by reason of such entry.

No review of any plans and specifications by the ARC shall be construed as a review of engineering or structural design or quality of materials, and by approving such plans and specifications neither the ARC, 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 the Declarant, the Association, the ARC, 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 this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval of, or failure to approve or disapprove, any such plans or specifications. Each person who submits plans or specifications and every Owner agrees that such person or Owner will not bring any action or suit against the Declarant, the Association, the ARC, 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 mistake in judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demand, and causes of action not known at the time the release is given.

In order to ensure that appropriate standards of construction are maintained throughout the Property, all architects, builders, and general contractors must be approved by the Declarant and the ARC prior to engaging in any construction activities. The ARC shall implement an approval process utilizing established criteria and requiring the submission of a written application for approval. Approval of architects, builders, and contractors shall not be construed as a recommendation of a specific architect or contractor by the ARC or the Declarant, nor as a guarantee or endorsement of the work of such architect, builder, or contractor. Once approved (unless such approval is withdrawn by the ARC), an approved architect, builder or contractor shall not be required to re-submit to the approval process.

The ARC 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. Such variances may only be granted, however, when unique circumstances dictate. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARC 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.

6.07. Signs

No sign of any kind shall be erected by an Owner or Occupant within the Property without the prior written consent of the ARC. 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. Signs required by legal proceedings may be erected upon any Lot.

6.08. Vehicles and Garages.

No boat, motor home, trailer, or recreational vehicle or trailer may be left upon any portion of the Property for a period longer than two (2) days, unless it is stored in a garage. Vehicles, boats, motor homes, trailers or recreational vehicles which are either unlicensed or inoperable for a period of five (5) days or more may not be stored upon any portion of the Property at any time unless fully enclosed in a garage. The term “vehicles,” as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles. All vehicles shall be parked within the driveway or garage of each Lot. All single-family detached homes shall contain a garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress form the garage. Garages shall not be altered to include living space.

No unlicensed vehicle shall be left upon any portion of the Property except in a garage. 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 a Specific Assessment against such Owner.

Trucks with mounted campers which are an Owners’ 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.

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

6.09. Leasing.

Lots may be leased for short or long term residential purposes. All leases shall require that the tenant acknowledge that the tenant is subject to this Declaration, the Bylaws, and all 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 all costs associated therewith shall be a Specific Assessment against the Owner and the Owner’s Lot.

6.10. Occupants Bound.

All provisions of this Declaration, the Bylaws, and 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 as Specific Assessments 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.
6.11. 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 and other usual and common household pets. No pets shall be kept, bred or maintained on any Lot 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 Property and Lots.


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 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 with the Property.


No exterior antennas of any kind, including, without limitation, satellite dishes, shall be placed, allowed, or maintained upon any portion of the Property, including any Lot, without the prior written approval of the ARC. 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.


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 approval of the ARC. However, no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed without the prior written approval of the ARC.

6.15. Drainage.

Catch basins and drainage areas are for the purpose of natural flow of storm water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct or redirect the storm water drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

6.16. Sight Distance at Intersections.

All Lots 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.


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.

6.18. Subdivision of Lot

No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the ARC. The Declarant, however, hereby expressly reserves the right to re plat 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. The Declarant’s right to re plat any Lot shall include the right to change the configuration of streets and otherwise make changes on any plat of the Property as to how the streets and Common Property in the Property are laid out.


The use or discharge of firearms on the Property is strictly prohibited. The term “firearms” includes rifles, pistols, “BB” guns, pellet guns, paintball guns, and other firearms of all types.

6.20. Fences.

No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written approval of the ARC. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, 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 considered appropriate or desirable by the Board at any location on the Common Property.

6.21. Air Conditioning Units.

No window air-conditioning units may be installed on any Lot.

6.22. Lighting.

Except as may be permitted by the ARC, 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 the Property. (d) seasonal decorative lights; or (e) house illumination of model homes.

Swimming pools, hot tubs and portable spas shall not be permitted, without the prior written approval of the ARC. Swimming pools must be enclosed by an approved fence.


All play equipment must be located between the rear dwelling line and the rear Lot line, and outside of any easements.

6.25. Mailboxes.

All mailboxes located on Lots shall be of a similar style approved by the ARC. 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 ARC.


Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the ARC.

6.27. Clothesline.

No exterior clothesline of any type shall be permitted on any Lot.

6.28. Storage Sheds and Garages.

Construction, installation or placement of a storage shed, tree house, play house, detached garage, or a building separate from the main house on the Lot is not permitted without the prior written approval of the ARC, in its sole discretion. All plans (which must include the length, width, height, materials, colors, and location) must be submitted to the ARC 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 7 – INSURANCE AND CASUALTY LOSSES

7.01. 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.

7.02. 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 ($1,000,000.00) Dollars. If available, the Board is authorized to obtain directors, and officers, liability insurance coverage.

7.03. 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 Board may also obtain such other insurance as it deems necessary.

7.04. The 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.

7.05. 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.

7.06. Miscellaneous.

All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified below. Such insurance shall comply with these provisions:
7.06.01. All policies shall be written with one or more insurance companies authorized to do business in South Carolina.

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

7.06.03. In no event shall any 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.

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

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

7.06.05.01. 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;

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

7.06.05.03. That no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

7.06.05.04. That no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or because of the conduct of any Board member, Association officer or employee, or employee of the authorized manager of the Association without prior demand in writing delivered 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;

7.06.05.05. That any “other insurance” clause in any policy exclude individual Owners’ policies from consideration; and

7.06.05.06. That no policy may be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association.
7.07. Individual Insurance for Lot Owners.

By virtue of taking title to a Lot, 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.

7.08. Damage to and Destruction of Property Insured by the Association.

Immediately after any 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 applicable insurance and obtain reliable and detailed estimates of the cost of 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:

7.08.01 Any damage to property covered by Association insurance shall be repaired or reconstructed unless seventy-five (75%) percent of the Total Association Vote agree otherwise in a vote taken at a duly called Association meeting held not less than 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, that any such extension shall not exceed an additional sixty (60) days.

7.08.02 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 to cover the cost thereof. Additional Special Assessments may be made in like manner at any time during or following the completion or any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

7.08.03 If the Association votes not to repair or reconstruct damaged or
destroyed 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 the Property in a neat and attractive condition.

7.09. Damage to and Destruction of Improvements on Lots Insured by Owners.

The damage or destruction by fire or other casualty to all or any portion of any improvements 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.

7.10. 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 as a Specific Assessment.

SECTION 8 -- ANNEXATION OF ADDITIONAL PROPERTY

8.01. Unilateral Annexation by the Declarant.

The Declarant shall have the unilateral right and option until five (5) years after the recording of this Declaration in the Public Records to subject any property touching, contiguous with, or adjacent to the Property to the provisions of this Declaration by filing a Supplementary Declaration in the Public Records describing the annexed property. Annexation shall be effective upon the date of the recording of any such Supplementary Declaration in the Public Records.

The Declarant shall have the right to modify the terms of the Declaration as it may apply to any annexed property. Provided that the provisions of this Declaration applicable to the Property and to any other property previously subjected to this Declaration are not changed, and further provided that the rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

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

8.02. Other Annexation.

Other real property may be subjected to this Declaration with the consent of the owners
thereof, and the consent of the Declarant so long as the Declarant owns any property in the
Property, upon the affirmative vote of sixty-seven (67%) percent of the Total Association Vote.
Any such annexation shall describe the property to be annexed in a Supplementary Declaration
signed by the President of the Association whose signature shall be attested by the Secretary of
the Association, and any such annexation shall be effective only upon the filing for record of
such Supplementary Declaration in the Public Records, unless a later effective date is provided
therein.

SECTION 9 – MORTGAGEE PROVISIONS


The following provisions are for the benefit of holders of first Mortgages on Lots in the
Property. The provisions of this Section 9 apply to both this Declaration and the Bylaws,
notwithstanding any other provisions contained therein.


An institutional holder, insurer, or guarantor of a first Mortgage who provides a written
request to the Association stating the name and address of such holder, insurer, or guarantor and
the Lot number shall be entitled to timely written notice of:

9.02.01. Any condemnation loss or any casualty loss which affects a
material portion of the Property or which affects any Lot on which there is a first
Mortgage held, insured or guaranteed by such holder, insurer, or guarantor;

9.02.02. Any delinquency in the payment of assessments or charges owed
by an Owner of a Lot subject to the Mortgage of such holder, insurer, or guarantor, where
such delinquency has continued for a period of sixty (60) days; provided, however, that
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; and

9.02.03. Any lapse, cancellation, or material modification of any insurance
policy maintained by the Association.
9.03. 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.

9.04. Notice to the 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.

SECTION 10 – EASEMENTS

10.01. 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 to have occurred when any Owner leases its Lot. The Owners’ easements for use and enjoyment shall be subject to the following rights of the Association:

10.01.01. 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.

10.01.02. 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, the Bylaws, or the Association’s rules or regulations.

10.01.03. 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, that the lien and encumbrance of any such mortgage shall be subject to and subordinate to the provisions of this Declaration. Any such mortgage on the Common Property shall be approved by at least sixty-seven (67%) percent 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 rights of the holder of any Mortgage
on any Lot.

10.01.04. 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.

10.01.05. The right of the Association to dedicate or transfer all or any
portion of the Common Property subject to such conditions as may be agreed to by the
Owners. No such dedication or transfer shall be effective unless approved by at least
sixty-seven (67%) percent of the Total Association Vote.

10.02. Easements for Utilities.

There are hereby reserved to the Declarant and the Association blanket easements upon,
across, above and under all portions of the Property, including all Lots, for access, ingress,
erection, installation, repairing, replacing, and maintaining all utilities serving the Property or any
portion thereof; provided, however, that such easements shall only encumber those portions of
Lots within five (5') feet of each boundary line, and as otherwise designated on any plat of the
Property recorded in the Public Records. 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 the Property. 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. If any
party furnishing any such utility or service requests 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.

10.03. Easement for Drainage.

The Declarant hereby reserves a perpetual easement across all portions of the Property
for the purpose of altering drainage and storm 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 water flow across any Lot or any portion of the Property;
provided, however, that such easement shall only encumber those portions of Lots within three
(3') feet of the front and rear boundary lines and one (1) side boundary line as determined by the
Declarant, and as otherwise designated on any plat of the Property recorded in the Public
Records. 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 any damage shall be repaired by the Person causing such damage at
its sole expense.
10.04. Easement for Entry.

In addition to the other rights reserved to Declarant and the Association, the Declarant and the Association shall have the right (but not the obligation) to enter upon any property or Lot within the Property for emergency, security, or 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 if an Owner of Occupant fails or refuses to cure the condition upon request by the Board.

10.05. Easement for Maintenance.

The Declarant hereby expressly reserves a perpetual easement for the benefit of the Declarant and the Association across such portions of the Property as may be determined in the sole discretion of the Declarant or 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 any damage shall be repaired by the Person causing such damage at its sole expense.

10.06. 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 the Property, over and upon each Lot as more fully described on any plats for surveys of the Property recorded in the Public Records. 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.


Notwithstanding any provisions contained in this Declaration, the Bylaws, the Association’s rules and regulations, design guidelines, and any amendments thereto, so long as the Declarant owns any property within the Property for development or sale, the Declarant reserves an easement across all portions of the Property for the benefit of any builder or developer approved by the Declarant for such purposes as the Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of the Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the property. This easement shall include, without limitation:

10.07.01. The right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of as the Property.
including any Lot;

10.07.02. The right to tie into any portion of the Property with driveways, parking areas, and walkways;

10.07.03. 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;

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

10.07.05. The right to carry on sales and promotional activities on the Property;

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

10.07.07. The right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to construction, development and sales activities.

The Declarant and any builder or developer authorized by the Declarant may use residences, offices or other buildings owned or leased by the Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use within the Property 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 such 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.

10.08. 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 the Property for irrigation purposes.

10.09. Fence Easement.

The Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility, lagoon, 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 necessary or desirable in the sole opinion of the Developer, or required by the subdivision
development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

10.10. Temporary Easement for Construction.

Every Owner of a Lot shall have a temporary right and easement to enter onto that portion of an adjacent Lot located between the boundary line of the adjacent Lot and the nearest building setback line on the adjacent Lot, as shown on the survey referred to in Exhibit A, for the purpose of access to his Lot in connection with the construction of improvements on his Lot; provided, however, that any Owner who exercises the right and easement afforded by this Section shall (a) be entitled to do so only for ninety (90) days from the date of issuance of a building permit by the Town of Hilton Head, South Carolina for the construction of a single family residence on the Owner's Lot; (b) exercise such right and easement in such a manner so as not to unreasonably interfere with the use and enjoyment of the adjacent Lot by the Owner thereof; (c) indemnify and hold harmless the Owner of the adjacent Lot from and against any and all losses, claims, damages and causes of action of any nature arising from the exercise of such right and easement; and (d) timely repair any damage to the adjacent Lot and any improvements and landscaping thereto that may result from the exercise of such right and easement.

SECTION 11 – THE DECLARANT’S RIGHTS

11.01. Transfer or Assignment.

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

11.02. Development and Sales.

The Declarant may maintain and carry on around and about the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Property, the sale of Lots, or the construction or sale of residences on Lots, such as sales activities, tournaments, charitable events, and promotional events, and the Declarant may restrict Members, Owners and Occupants from using the Common Property during such activities. Such activities shall be conducted in a manner to minimize, to the extent reasonably practicable, any substantial interference with the use and enjoyment of the Common Property by the Members, Owners and Occupants. The Declarant shall have easements over the Property for access, ingress, egress and conducting such activities.
In addition, the Declarant may establish within the Property such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Property, the sale of Lots, or the construction or sale of residences on Lots, including, but not limited to, business offices, signs, model homes, tents, sales offices, sales centers, and related parking facilities. During the period of time that the Declarant owns any Lot in the Property, Owners may be excluded from use of all or any portion of such facilities in the Declarant’s sole discretion. The Declarant and authorized general contractors shall have easements over the Property for access, ingress, egress, and use of such facilities.

The Declarant may permit the use of any facilities situated on the Common Property by Persons other than Owners without the payment of any use fees.

11.03. Improvements to the Common Property.

The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Property for the purpose of making, constructing and installing such improvements to the Common Property as it deems appropriate in its sole discretion.

11.04. Repurchase Option.

11.04.01. Each Owner acknowledges that the Declarant hereby retains and reserves unto itself a right of first refusal on all Lots within the Property on the terms and conditions set forth below. This Section shall not restrict an Owner’s right to enter into a binding contract for the sale of a Lot, provided that the contract is made subject to the Declarant’s right of first refusal. This right of first refusal shall not apply to any transfer or conveyance in connection with a Mortgage foreclosure or deed in lieu of foreclosure, but shall apply to any transfer or conveyance occurring after a foreclosure or deed in lieu of foreclosure.

11.04.02. If any Owner receives a bona fide, written offer to purchase an Owner’s Lot which is deemed acceptable by the Owner, that Owner shall promptly submit a copy of the offer to the Declarant. The Declarant shall have a period of thirty (30) days from and after the receipt of such offer in which to exercise its right of first refusal as to the Lot, on the same terms and conditions as the offer, by giving the Owner written notice of such exercise. If the Declarant fails or declines to exercise the right of first refusal, upon request, the Declarant shall execute a release of the right to repurchase the Lot. The release shall only apply to the offer submitted to the Declarant and shall not extinguish or otherwise affect the Declarant’s right of first refusal as to any other offers to, or future conveyances of the Lot by, the current or any future Owner of the Lot. If the Declarant elects to purchase the Lot, the transaction shall be consummated within sixty (60) days following delivery of written notice of the exercise of the right of first refusal by the Declarant to the Owner.
11.04.03. All Owners acknowledge and agree that the Declarant’s repurchase option shall remain viable and enforceable for as long as this Declaration remains in effect, including any period of time during which the Declarant no longer owns any Lot, or until terminated by the Declarant in a written release recorded in the Public Records.

11.05. Additional Covenants.

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

11.06. Amendments.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions, rules or regulations, or Design Guidelines made during the period of time the Declarant owns any Lot shall be effective without the prior written consent of the Declarant. This Section may not be amended without the written consent of the Declarant.

SECTION 12 – GENERAL PROVISIONS

12.01. Enforcement.

Each Owner and Occupant shall comply strictly with all provisions of this Declaration, the Bylaws, the Association’s rules and regulations, and the architectural guidelines, as they may be lawfully amended or modified from time to time. 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, Association’s the rules and regulations, or the architectural guidelines 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 Public Records a notice of lien, or a notice of violation of this Declaration, the Bylaws, the Association’s rules and regulations, or the architectural guidelines, and to assess the cost of recording and removing such notice as a Specific Assessment against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

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 the Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the Association's rules and regulations, or the architectural guidelines. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days prior 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 as a Specific Assessment against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

12.03. Condemnation.

Upon a taking by eminent domain or condemnation 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 (75%) percent 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.

12.04. Duration.

The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the 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 within the Property or has the right to annex additional property) is recorded in the Public Records within the year immediately preceding the beginning of a ten (10) year renewal period.

12.05. Amendment.

This Declaration may be amended unilaterally at any time and from time to time by the 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 any Lot; (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 the 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, that any such amendment shall not adversely affect the title to any Owner’s Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as the Declarant has the right unilaterally to subject additional property to his Declaration, the Declarant may unilaterally amend this Declaration for any other purpose; provided, however, that 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 thereto of the affected Lot Owner.

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

12.05.01. For so long as the Declarant owns any property within the Property 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 at least sixty-seven (67%) percent of the Total Association Vote; and

12.05.02. If the Declarant no longer owns any property within the Property and no longer has the right to annex additional property, upon the affirmative vote or written consent, or any combination thereof, of at least sixty-seven (67%) percent of the Total Association Vote.

12.06. Partition.

The Common Property shall remain undivided, and no Owner or any other Person may 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 and without the written consent of all holders of all first Mortgages encumbering any Lots.

12.07. Gender and Grammar.

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

12.08. 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.

12.09. 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 Section to which
they refer.


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.


12.11.01. Inspection by Members and Mortgagees.

This Declaration, the Bylaws, the Association’s rules and regulations, the
architectural guidelines, the Association’s membership register, the Association’s books
of account, and minutes of meetings of Members and of the Board and of committees
shall be made available for inspection and copying by the 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.

12.11.02. 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 week when such an inspection
may be made; and (3) payment of the cost of reproducing copies of documents.

12.11.03. Inspection by Directors.

Every member of the Board 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 member of the
Board includes the right to make extra copies of documents at the reasonable expense of
the Association.


A review of the books and records of the Association shall be made annually in the
manner as the Board may decide, provided, however, that after having received the Board’s
financial statements at their annual meeting, by a Majority vote 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.

12.13. Notice of Sale, Lease or Acquisition.

Whenever an Owner sells or leases such Owner's Lot, the Owner shall give to the Association written notice thereof prior to the effective date of such sale 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 written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.


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

12.15. Implied Rights.

The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, its Articles of Incorporation, any rule or regulation, and any law, statute or ordinance, 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.

12.16. Litigation.

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five (75%) percent 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 the Declarant owns any property for development or sale within the Property, or has the right to unilaterally annex additional property into the Property, unless such amendment is made by the Declarant.

[Signature page follows]
IN WITNESS WHEREOF, Star Fish Investments, LLC has caused this instrument to be signed and sealed this 22nd day of May, 2006.

WITNESSES:

Star Fish Investments, LLC

By: __________________________ (L.S.)

Michael F. Russo, Manager

STATE OF SOUTH CAROLINA )
COUNTY OF BEAUFORT )

ACKNOWLEDGEMENT

I, the undersigned notary, do hereby certify that Michael F. Russo, the Manager of Star Fish Investments, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 22nd day of May, 2006.

Notary Public for South Carolina
My Commission Expires: 5/2/16
EXHIBIT “A”

Property Subject to this Declaration
Legal Description of the Sandcastles by the Sea Property

ALL those certain pieces, parcels or tracts of land situate, lying and
being in the Folly Field area of Hilton Head Island, Beaufort County,
South Carolina, containing a total of 10.918 acres, more or less,
shown and described on that certain plat of survey entitled
“Subdivision Plat of Sandcastles by the Sea Folly Field Road”
prepared by Surveying Consultants, Terry G. Hatchell, SCRLS 11059,
dated June 15, 2005, last revised May 19, 2006 and recorded in the
Office of the Register of Deeds for Beaufort County, South Carolina
in Plat Book 113 at Page 164.