

2a
82



FOR REGISTRATION REGISTER OF DEEDS
TAMMY THEUSCH BEASLEY
NEW HANOVER COUNTY, NC
2015 JAN 09 02 54 11 PM
BK 5861 PG 2220-2249 FEE \$82 00

INSTRUMENT # 2015000686

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BATTERY PARK AT LANDFALL**

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

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

Prepared by:
J. Craig Kiser & William B. Aycock II
Mail after recording to:
Schell Bray PLLC
100 Europa Drive, Suite 271
Chapel Hill, NC 27517

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BATTERY PARK AT LANDFALL, made as of JANUARY 9, 2015 by DTS Holdings, LLC, a North Carolina limited liability company (“Declarant”).

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in New Hanover County, North Carolina, which is more particularly described in **Exhibit A** attached hereto (the “Property”);

WHEREAS, Declarant is developing on the Property a Planned Community, as defined in the North Carolina Planned Community Act, which shall be a residential community of detached single family homes to be known as Battery Park at Landfall;

WHEREAS, Declarant desires to provide for the preservation and maintenance of the Common Elements (also referred to as Common Areas) and for certain other responsibilities in connection with Battery Park at Landfall and to this end desires to subject the Property, together with such additions as may hereafter be annexed thereto, to the covenants, conditions, restrictions, and easements hereinafter set forth, each and all of which is and are for the benefit of Battery Park at Landfall and each Owner thereof, and

NOW, THEREFORE, Declarant declares that all of the Property described above shall be held, sold, occupied and conveyed subject to the following covenants, conditions, restrictions and easements, all of which are for the purpose of protecting the value and desirability of, and which shall run with such real property, shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. It is the intent of the Declarant that the provisions of this Declaration in all respects conform and comply to the requirements set forth in the North Carolina Planned Community Act, and to the extent any provision contained herein does not conform or comply with the North Carolina Planned Community Act, the provisions of the Act shall control.

ARTICLE I
DEFINITIONS

Section 1. “Association” shall mean and refer to Battery Park at Landfall Community Association, Inc., a North Carolina non-profit corporation, its successors and assigns. The Association has all powers set forth in Section 3-102 of the Planned Community Act.

Section 2. “Board of Directors” or “Board” means the body designated in the Declaration and Bylaws to act on behalf of the Association.

Section 3. “Builder” shall mean any person who purchases one or more Lots from Declarant for the purpose of constructing improvements for later sale to consumers and is designated as a Builder in a written instrument by Declarant.

Section 4. “Bylaws” shall mean the Bylaws of the Association as they now or hereafter exist.

Section 5. “Common Elements” (also sometimes referred to as Common Areas) shall mean and refer to all interests in real property (including the improvements thereto) owned or

leased by the Association for the common use and enjoyment of the Owners. "Lots" are not part of the Common Elements.

Common Elements will include those Common Elements which the Declarant designates as Common Elements on future plats recorded from time to time by Declarant, in its sole discretion.

Declarant reserves the right, in its sole discretion, without the consent of the Association or its Members, to convey from time to time such additional Common Elements to the Association, which Common Elements may include portions of any Additional Property annexed by Declarant pursuant to Article XI hereof; and the Association shall accept any such conveyance of additional Common Elements; and thereafter, such additional Common Elements shall be held and maintained by the Association.

Declarant further reserves the right, in its sole discretion, without the consent of the Association or its Members, to convert one or more Lots to Common Elements and some or all of the Common Elements (prior to any conveyance thereof to the Association) to Lots. Should Declarant exercise such right, it shall cause additional Plats to be recorded showing such new Lots and/or Common Elements.

Section 6. "Declarant" shall mean and refer to DTS Holdings, LLC, its successors and assigns Declarant may appoint and designate a successor Declarant by an instrument recorded in the New Hanover County Registry.

Section 7. "Declarant Control Period" shall mean and refer to the period of time commencing on the date of this Declaration and continuing for so long as the Declarant or any affiliate of Declarant, or any successor Declarant, shall own any Lot within the Property, including any Additional Property annexed pursuant to Article XI hereof.

Section 8. "Dwelling" shall mean and refer to a detached single-family residence constructed on a Lot in the Property

Section 9. "Battery Park at Landfall" shall refer to the residential Planned Community development to be constructed on the Property.

Section 10. "Lot" shall mean any separately numbered plot of land, regardless of size, as shown on a recorded subdivision plat of the Property. Declarant reserves the right to reconfigure from time to time, without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by the Declarant to create additional Lots, to eliminate existing Lots or to create additional Common Elements, provided such changes comply with the requirements of the appropriate governmental authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots; and upon the recording by Declarant of a revised plat, each Lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration, and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

Section 11. “Member” shall mean and refer to every person or entity entitled to membership with voting rights in the Association

Section 12. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. “Planned Community Act” shall mean the North Carolina Planned Community Act set out in Chapter 47F of the General Statutes of North Carolina.

Section 14. “Plat” shall initially mean and refer to that certain map of Battery Park at Landfall, Phase 1, Lots 1-24 recorded in Book 60, Page 68, New Hanover County Registry, together with any subsequent plats of the Property as may be recorded by Declarant in its sole discretion, or by the Association pursuant to Section ____ hereof.

Section 15. “Property” shall mean and refer to that certain real property shown on the Plat, which Property is herein made subject to this Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Association as may be recorded by Declarant in its sole discretion.

ARTICLE II LANDFALL MASTER ASSOCIATION

Section 1. Landfall Master Easement and Master Declaration. Battery Park at Landfall is a part of that certain master planned community more commonly known as Landfall (“Landfall”). The property within Landfall is governed by the terms of that certain Master Cross Access Easement and Maintenance Agreement recorded in Book 1515, Page 1583, New Hanover County Registry (as amended and supplemented, the “Master Easement”) and that certain Declaration of Covenants, Conditions, and Restrictions for Landfall Subdivision II and Annexation of Master Cross Access Easement and Maintenance Agreement recorded in Book 1871, Page 205, New Hanover County Registry (as amended and supplemented, the “Master Declaration”).

Section 2. Landfall Council of Associations. The Landfall Council of Associations, Inc., (the “COA”) is a non-profit corporation created to, among other things, provide for the maintenance, preservation and control of the Shared Common Areas within Landfall pursuant to the Master Easement and Master Declaration.

Section 3. Subjection of Battery Park at Landfall to Master Easement and Master Declaration. In addition to the terms, covenants, restrictions and conditions herein, Battery Park at Landfall, and all Owners of Lots therein, shall be subject to all of the applicable terms, covenants, restrictions and conditions of the Master Easement and the Master Declaration, and the Association shall delegate authority to the COA in a manner consistent with prior delegations made by other property owners associations within Landfall.

ARTICLE III
PROPERTY RIGHTS;
COMMON ELEMENTS

Section 1. Owners' Easements and Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements, including a non-exclusive easement for ingress, egress and regress over the Common Elements to the extent necessary to provide access to his or her Lot, and for utilities serving that Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the easements set out in Article IX hereof and to the other provisions of this Declaration.

Section 2. Delegation of Use. Any Owner may delegate his or her rights of enjoyment of the Common Elements to the members of his or her family, lessees, contract purchasers who reside on such Lot, or guests.

Section 3. Rules and Regulations. The Declarant, during the Declarant Control Period, and thereafter the Association acting through its Board, shall have the power to formulate, publish and enforce rules and regulations concerning the use and enjoyment of the Common Elements, including rules and regulations concerning parking and vehicular traffic flow. Such rules and regulations shall be maintained in a place reasonably convenient to the Members and available to them for inspection during normal business hours. The Association may impose reasonable monetary fines for the violation of established rules and regulations and for the violation of any of the covenants and conditions contained in this Declaration, which monetary fines shall be assessed and collected pursuant to the provisions of Articles V and XI hereof. Any such fines shall be subject to the terms of the Planned Community Act. Copies of such rules and regulations and the amendments thereto shall be furnished by the Association to all Owners prior to the effective date thereof. All such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees and agents.

Section 4. Suspensions. After notice and an opportunity to be heard, the Association may levy fines and suspend privileges of membership in, or services provided by, the Association (except rights of access to Lots) for any period during which any assessment against an Owner's Lot remains unpaid, and for any Owner's infraction of this Declaration, the Bylaws or any rules and regulations published by the Association. All such action by the Association shall be taken in accordance with the terms of the Planned Community Act. No such fine or suspension shall constitute a waiver or discharge of the Owner's obligation to pay assessments or to abide by all published rules and regulations

Section 5. Mortgaging Common Elements. The Association, acting through its Board, shall have the power to borrow money for the purpose of improving the Common Elements and facilities thereon, acquiring additional Common Elements, or constructing improvements thereto, and pursuant thereto to mortgage, pledge, grant a deed of trust, or hypothecate ("mortgage") the Common Elements, or any portion thereof, as security for money borrowed; provided, however, that any such action shall be taken only if persons entitled to cast at least 80% of the votes in the Association agree in writing to such action. Provided, no such mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created shall cause any Lot or any

remaining Common Elements to fail to comply with applicable laws, regulations or ordinances, and shall not interfere or obstruct utility service to, or ingress, egress, and regress to or from the Lots or the Common Elements; and provided further that for so long as Declarant shall own any portion of the Property, Declarant must also consent to such action.

In addition, any such mortgage given by the Association shall be subject and subordinate to any rights, interests, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any mortgage irrespective of when executed or given by Declarant or any Lot Owner encumbering any Lot or any other part of the Property; and any provision in this Declaration and in any such mortgage given by the Association to the contrary notwithstanding, the exercise of any rights by the holder of the mortgage in the event of a default thereunder shall not terminate or cancel any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot Owner, or the holder of any mortgage irrespective of when executed given by Declarant or any Lot Owner encumbering any Lot or other Property in Battery Park at Landfall.

Section 6. Common Elements Dedication or Transfer. The Association, pursuant to Section 3-112 of the Planned Community Act, acting through its Board, shall have the right to dedicate or transfer interests in all or any part of the Common Elements to any public agency, authority, or utility (including any entity authorized by New Hanover County or other local governmental authority to supply cable television / data services), or to transfer such interests to any other party for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless persons entitled to cast at least 80% of the votes in the Association agree in writing to such action, and by the Declarant if the Declarant then owns any Lot within the Property. No such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from the Lots or any remaining Common Elements, or deprive any Lot of its rights of support, or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances.

Section 7. Encroachments. The Association, acting through its Board, shall have the right to exchange portions of Common Elements with Declarant for substantially equal areas of Property for the purpose of eliminating unintentional encroachments of Dwellings or other improvements onto portions of the Common Elements or for the purposes of enhancing the utility of the Common Elements to be retained by the Association

Section 8. Maintenance. The Association shall maintain the Common Elements and facilities and improvements thereon, as hereinafter provided in Section 1 of Article VII. Any portion of the Common Elements for which insurance is required to be maintained by the Association under the Planned Community Act which is damaged or destroyed shall be repaired or replaced promptly by the Association except as otherwise provided in Section 3-113 of the Planned Community Act.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. The Declarant, for so long as it shall be an Owner, and every person or entity who is an Owner of a fee simple or undivided fee simple interest in any Lot which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership; and no Owner shall have more than one membership, except as expressly provided hereinafter. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The Association may promulgate reasonable rules relating to the proof of ownership of a Lot.

Section 2. Classes of Members and Voting Rights. The Association shall have two classes of voting Members:

Class A. Class A Members shall be all Owners with the exception of the Declarant during the period Declarant is a Class B Member as defined below. Class A Members shall be entitled to one vote for each Lot in which they hold the required ownership interest. When more than one person or entity holds the required ownership interest in a Lot, all such persons or entities shall be Members. The vote for each such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to 10 votes for each Lot appearing on Declarant's site plans for the Property and any Additional Property, provided that the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs first:

(a) When the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership, provided, however, that the Class B Membership shall be reinstated if after such conversion and before the time stated in subparagraph (b) below, additional lands are annexed to the Property pursuant to the provisions of Article XI hereof, containing a sufficient number of Lots to give the Class B Member a total number of votes in excess of the Class A Member; or

(b) When Declarant, at its option, so determines.

Section 3. Right of Declarant to Select Members of the Board of the Association. Notwithstanding anything contained herein to the contrary, Declarant (or the assignee of the right granted in this Section) during the Declarant Control Period shall have the right to designate and select all of the persons who shall serve as members of the Board of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on the Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation or Bylaws of the Association. Declarant shall have the right to remove any person or persons selected by it to act and serve on the Board and to replace

such person or persons with another person or persons by it to act and serve in the place of any member of the Board so removed for the remainder of the unexpired term of office of any member of the Board removed. Any Member designated and selected by Declarant need not be an Owner. Any representative of Declarant serving on the Board of the Association shall not be required to disqualify himself or herself from any vote upon any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest. Similarly, Declarant, as a member of the Association, shall not be required to disqualify itself upon any vote upon or entrance into any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest. The method of electing, removing and replacing members of the Board not appointed by the Declarant shall be as provided in the Articles of Incorporation and/or Bylaws of the Association.

ARTICLE V

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay

- (a) to the Association:
 - (i) annual and other assessments and charges provided for herein, together with interest and late fees, costs and reasonable attorney's fees;
 - (ii) special assessments for capital improvements and other charges provided for herein, such assessments to be established and collected as hereinafter provided; and
- (b) to the appropriate governmental taxing authority:
 - (i) a pro rata share of ad valorem taxes levied against the Common Elements; and
 - (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Elements if the Association shall default in the payment of either or both for a period of six months.

All assessments and charges provided for herein, together with interest, any late fees, costs and reasonable attorney's fees, shall be a charge on the land and shall constitute a continuing lien upon the property against which each such assessment is made when a claim of lien is filed of record in the Office of the Clerk of Superior Court, New Hanover County, North Carolina. Each such assessment and charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them

Section 2. Purpose of Assessments

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, and the payment of taxes assessed against the Common Elements; the acquisition (including via financing) of additional Common Elements; the maintenance of water lines or sewer facilities in and upon the Common Elements (if not maintained by the utility provider), the maintenance of open spaces and streets which have not been accepted for dedication by a public authority, roadway medians and islands, drives and parking areas within the Common Elements; the procurement and maintenance of liability insurance in accordance with this Declaration or Bylaws; the maintenance of entranceways, landscaping and lighting of Common Elements, road medians and islands and entranceways; the cost of leasing, owning, operating, maintaining and repairing any street lights erected by the Association or the Declarant in the streets (whether public or private), or other Common Elements, or in any other easement provided therefor within the Property; the payment of assessments for public and private improvements made to or for the benefit of the Common Elements; charges for garbage collection services furnished to the Lots; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Elements; the employment of attorneys and other agents to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and for such other needs as may arise.

(b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Elements and those other portions of the Property which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expenses

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, and the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his or her Lot. When any Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his or her Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and

management of the Property.

Section 3. Adoption of Budget and Fixing of Annual Assessments: Annual Assessment and Annual Meeting

(a) At least 30 days in advance of each annual assessment period, the Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. Within 30 days of the adoption of any proposed budget, the Board shall provide to all of the Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for the annual meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting the Owners of a majority of the Lots reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The failure to receive such notice shall in no way affect the obligation of each Owner therefor or the lien therefor as provided herein.

(b) Declarant shall establish the Maximum Annual Assessment and initial annual assessment for the Lots. The Maximum Annual Assessment for the calendar year immediately following the year in which Declarant so establishes the Maximum Annual Assessment and initial annual assessment, and for each calendar year thereafter, may be increased by the Board without approval by the membership by an amount not to exceed 20% of such amounts for the previous year. The Maximum Annual Assessment for the calendar year immediately following the year in which Declarant so establishes the Maximum Annual Assessment and initial annual assessment, and for each calendar year thereafter, may be increased without limit by a vote of the Members entitled to cast at least two-thirds of the votes of each class of Members of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose, provided, however, if Declarant then owns a Lot or any other portion of the Property, Declarant must also consent to such action.

(c) The Board may fix the annual assessment at an amount not in excess of the amount permitted in this Section 3 (subject to the provisions of Section 6 of this Article).

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized herein, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Members entitled to cast at least two-thirds of the votes of each class of Members of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, if Declarant then owns a Lot or any portion of the Property, Declarant must also consent to such action. All special assessments shall be fixed at a uniform rate for all Lots (subject to the provisions of Section 6 of this Article) and may be collected on a monthly, quarterly or semi-annual basis, as determined by the Board.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and

4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than 15 days not more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast 10% of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Rate of Annual Assessment; Exclusions.

With the exception of any assessments related to maintenance performed on behalf of Owners pursuant to an election by the Association under Article VII, Section 4 hereof, both the annual and special assessments must be fixed at a uniform rate for all Lots. Notwithstanding the foregoing, however, no assessments or other amounts hereunder shall be due with respect to any Lot owned by Declarant. Further, Declarant, in its sole discretion, may prescribe a maximum assessment amount for any Lot owned by a Builder or may exempt any Lot owned by a Builder from the payment of assessments. Any such action by Declarant shall be made in writing, with a copy thereof to be kept in the Association's records.

Section 7. Date of Commencement of Annual Assessments: Due Dates.

The annual assessments provided for herein shall commence as to a particular Lot on the day of the conveyance by Declarant of that Lot to an Owner (other than Declarant). The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates shall be established by the Board. Annual assessments may be collected on a monthly, quarterly, semi-annual or annual basis, as determined by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Working Capital Assessment.

In addition to the annual assessments authorized above, at the time of the closing of the first sale of each Lot by Declarant to an Owner (other than Declarant), such Owner shall pay to the Association an amount equal to the greater of two-twelfths of the then current annual assessment established by the Association or \$650.00. Such funds shall be used by the Association to establish a Working Capital Fund, the purpose of which is to insure that the Association will have sufficient monies available to meet its initial operational needs. No such payments made into the Working Capital Fund shall be considered an advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of the Declaration and the Bylaws.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within 30 days after the due date shall bear interest from the due date at a rate from time to time established by Association not to exceed 18% per annum. In addition, the Association may charge a reasonable late fee, the amount of which shall be established from time to time by the Board of the Association, for assessments not paid within 30 days after the due date. After notice and an opportunity to be heard, the Association may suspend privileges of

membership in, or services provided by, the Association (except rights of access to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of 30 days or longer, which suspension may continue without further hearing until the delinquency is cured. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of a mortgage or deed of trust on real estate under power of sale, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of any of the Common Elements or abandonment of his or her Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

Section 10. Effect of Default in Payment of Ad Valorem Taxes or Assessments for Public Improvements by Association. Upon default by the Association in the payment to the governmental authority entitled thereto of any assessments for public improvements or ad valorem taxes levied against the Common Elements, which default shall continue for a period of six months, each Owner of a Lot in the Property shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the Property. If such sum is not paid by the Owners within 30 days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his or her heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lots.

Section 11. Subordination of the Lien to Mortgagees: Foreclosure of First Mortgages. The lien provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust, and subordinate to ad valorem property taxes. When the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot, obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust or deed in lieu of foreclosure, such purchaser and its heirs, successors and assigns, shall not be liable for the assessments against such Lot which become due prior to the acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all Owners, including such purchaser, its heirs, successors and assigns. Such sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer; provided, however, no such sale or transfer shall relieve such Lot or the Owner thereof from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

Section 12. Exempt Property. All property dedicated to, and accepted by, a local governmental authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from

said assessments.

ARTICLE VI **ARCHITECTURAL CONTROL**

Section 1. Improvements. No construction, improvements, alteration, repair, change in paint color, excavation, change in grade, exterior lights, fencing, planting, landscaping or other work (including, without limitation, yard ornaments, bird baths and feeders, flower boxes, mailboxes and similar items) which in any way alters the exterior of any Lot or the improvements located thereon from their natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be commenced, erected or maintained upon any Lot, and no building, shed, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered or removed, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant during the Declarant Control Period and thereafter by the Board or by an architectural committee composed of one or more representatives if appointed by the Board (the "Architectural Control Committee"). Landscaping improvements or plantings of flowers, shrubs and trees by the Owner shall require approval by the Declarant during the Declarant Control Period and thereafter by the Board or the Architectural Control Committee if appointed. Nothing herein contained shall prevent or interfere with the right of Declarant to improve and develop the Property, including the Lots, as Declarant chooses. Accordingly, Declarant need not seek or obtain the approval of the Board or the Architectural Control Committee for improvements erected on the Property by or at the direction of Declarant.

Section 2. Procedures

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Declarant during the Declarant Control Period and thereafter by the Board or the Architectural Control Committee if appointed, which shall evaluate such plans and specifications in light of the purposes of this Article

(b) Upon approval of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited in the permanent records of the Association and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specifications shall not be deemed a waiver of the right of the Declarant, Board, or Architectural Control Committee, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of any such plans and specifications relating to any Lot, however, shall be

final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved. For any request made under this Article, the Association may require that the Owner requesting such change be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner shall evidence consent thereto by a written document in recordable form satisfactory to the Association. Thereafter, the Owner, and any subsequent Owner of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth herein, and subject to the lien rights described herein.

(c) Neither Declarant, nor any other member of the Board or Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by them, nor for any structural defects in any work done according to such plans and specifications. Further, neither Declarant, nor any member of the Board or Architectural Control Committee, shall be liable in damages to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or the exercise of any other power or right provided for in this Declaration. Every person who submits plans or specifications for approval agrees, by submission of such plans and specifications, and every owner of any Lot agrees, that he or she will not bring any action or suit against Declarant, or any member of the Association's Board or Architectural Control Committee, to recover any such damage

(d) No provision of this Declaration shall be construed to prevent or limit Declarant's rights, or require Declarant, or any Builder, to obtain approval of the Association or the Architectural Control Committee, to commence, maintain and complete the development, construction, promotion, marketing, sale and leasing of property within Battery Park at Landfall

ARTICLE VII **MAINTENANCE**

Section 1. Maintenance to be Performed by the Association. The Association shall maintain the Common Elements in a manner consistent with this Declaration, the Master Easement and Master Declaration and all requirements of New Hanover County and any other local governmental authority. In addition, the Association shall maintain, repair and replace. (a) all water lines or sewer facilities and other utilities located in the Common Elements which are not maintained by the applicable public utility (or other utility provider/servicer), and notwithstanding anything to the contrary herein, and any facilities located within any drainage easement on any Lot; (b) any retaining walls that benefit any Lot, and (c) all entrances and signage located at the entrances. In the event that the need for any maintenance, repair or replacement required hereunder to be performed by the Association is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The Owner of any Lot may plant flowers, shrubbery or trees on his or her Lot only with the prior written consent of the Association, as provided in Section 1 of Article VI. No such plantings by an Owner shall reduce the assessment payable by the Owner to the Association.

Notwithstanding anything to the contrary herein, and in addition to the foregoing, the Association shall explicitly dedicate, designate and allocate the following improvements as Common Area, which shall be maintained exclusively by the Association:

1. Any and all timber vehicle bridges;
2. Any and all timber foot-bridges;
3. The timber section of any and all sidewalks;
4. Any and all wells utilized for irrigation of the Common Areas;
5. Any and all landscape lighting, hardscape features and/or landscaping, and associated irrigation located within the Common Area.

Section 2. Maintenance to be Performed by the Owners. Each Owner shall be responsible for the repair, maintenance and upkeep of the exterior of the Dwelling on such Lot, together with all improvements located on the Lot, including, but not limited to, any and all vegetation, driveways, sidewalks (excluding public sidewalks), walls, glass surfaces, window and door screens, patios, decks, basement and crawl space areas, and any other exterior improvements approved pursuant to Article VI. The external appearance of all such repairs, maintenance and upkeep shall be subject to the provisions of this Declaration. Each Owner shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of the interior of the Dwelling, of all glass surfaces, window or door screens, any doors and storm doors (any such installation being subject to Article VI hereof), air conditioning and heating equipment of the Dwelling.

The Owner shall also maintain, repair and replace, unless the obligation of the Association under Section 1 above, all utility lines, sewer systems, fixtures and/or their connections on the Owner's Lot which are required to provide water, sewer, power, gas, telephone, cable television and any other utilities to his or her Lot which are not publicly maintained.

In the event an Owner neglects or fails to provide such maintenance in a manner consistent with other Lots and Dwellings within the Property, the Association may provide such maintenance, and all cost incurred by the Association in providing such maintenance, plus a service charge of 20% of such costs, shall be added to the annual assessment for such Lot and subject to the lien rights described in Article V, provided, however, that the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Association intends to perform and the Owner shall have 20 days from the date of mailing of said notice within which to perform such exterior maintenance himself or herself. The determination as to whether an Owner has neglected or failed to maintain his or her Lot and/or Dwelling in a manner consistent with other Lots and Dwellings within the Property shall be made by the Board of the Association, in its sole