

Karen S. Hardesty

Carteret County, NC

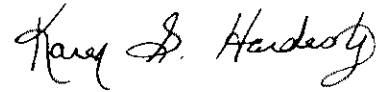
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White & Allen, P.A., 304 North 35th Street Morehead City, NC 28557

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

**DECLARATION OF COVENANTS AND RESTRICTIONS
SHOWBOAT COTTAGES, a Townhouse Development**

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS

THIS DECLARATION, dated for reference only this the 11th day of January, 2024, by **BALLOU-LEWIS PROPERTIES, LLC**, a North Carolina corporation, whose mailing address is PO Box 662, Greenville, NC 27835, (hereinafter referred to as "Declarant");

WITNESSETH:

Declarant is the owner of certain property located in Atlantic Beach, North Carolina more particularly described in Paragraph 2.1 herein which it has developed as a townhouse residential community. Developer desires to provide for the preservation of the values and amenities for such use and for the maintenance of common areas; and, to this end, desires to subject said property, together with such additions as may hereafter be made thereto, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property, Declarant and each subsequent owner thereof. Declarant deems it desirable for the efficient preservation of such values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created. To this end, Declarant has incorporated or will incorporate within one (1) month of recording of this declaration under the laws of the State of North Carolina, as a nonprofit corporation, Showboat Cottages Owners' Association, Inc., (the "Association"), for the purpose of exercising the functions aforesaid;

NOW THEREFORE, Declarant declares that the real property described in Paragraph 2.1 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I DEFINITIONS

1.1 The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a. "Association" shall mean and refer to Showboat Cottages Owners' Association, Inc.;
- b. "Common Element" shall mean and refer to those areas of land (i) shown on the Plat and Plans as "Common Area" or "Open Space", excluding Lots or Living Units, which have been or are hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the Owners of Lots;
- c. "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserve, all as provided for in the Declaration.
- d. "Declarant Control Period" shall mean that period of time measured from the date of the recording of this Declaration with the Carteret County Register of Deeds continuing therefrom until December 31, 2033 or upon sale of the final lot to a 3rd party, whichever occurs first;
- e. "Development" shall mean and refer to the Lots and Common Elements subject to the terms of this Declaration;
- f. "Limited Common Elements" shall mean those portions of the Common Elements allocated within this Declaration for the exclusive use of one but fewer than all of the Lots, specifically including HVAC systems, septic systems, docks and piers, utilities, and driveways serving a particular Lot which are located within the Common Elements, even if not identified as "limited common elements" on the plat; The Association is responsible for landscape maintenance of those areas identified as "limited common", except for docks and piers.
- g. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family, whether Owners or tenants.
- h. "Lot" shall mean and refer to the lots shown as such on the Plat and Plans and specifically exclude the Common Elements as heretofore defined;
- i. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Paragraph 3.1, hereof;
- j. "Occupant" shall mean any person or persons in possession of a Living Unit, including Owners, the family members, lessees, guests, and invitees of such person or persons, and family members, lessees, guests and invitees.

k. "Owner" shall mean and refer to any person or entity who is the record owner of a fee or undivided fee interest in a Lot or Living Unit. A tenant or lessee shall not be considered an "Owner".

l. "Person" shall mean a natural person, corporation, limited liability company, partnership, trust or other legal entity, including any combination thereof.

m. "Plat and Plans" shall mean that plat and plans showing the sixteen townhouse Lots shown on that map entitled "SHOWBOAT COTTAGES DUPLEX LOTS 614 A/B ... THRU 712 A/B", dated 02/03/23 by The Cullipher Group, P.A. and recorded in File # 34614 (Map Book 34, Page 614), Carteret County Registry (hereinafter "Plat").

n. "Properties" shall mean and refer to the real property described in Article II made subject to this Declaration;

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION;
ADDITIONS THERETO

The following property shall be submitted to North Carolina General Statutes 47F (The Planned Unit Development Act) hereinafter the "Act", and the terms, rights, responsibilities and regulations of said Act shall be incorporated into this Declaration by reference, except as modified herein.

2.1 **Properties.** The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to

That certain real property located in the Town of Atlantic Beach, Carteret County, North Carolina, shown as "SHOWBOAT COTTAGES DUPLEX LOTS 614 A/B THRU 712 A/B", dated 02/03/23 by The Cullipher Group, P.A. and recorded in File # 34614 (Map Book 34, Page 614), Carteret County Registry (hereinafter "Plat").

The entire townhouse project consists of 16 townhouse lots and 8 buildings built or proposed to be built on the lots, with each building setting on two lots and having two units, identified as "A" and "B". The townhouse Lot numbers correspond to the street address of each unit as assigned by the Town of Atlantic Beach. (hereinafter "Lots"), subject to the covenants, conditions, easements and restrictions herein set forth and which are for the benefit of, binding upon and shall run with the land, and are for the benefit of Declarant, the Association and the Owners, their heirs, personal representatives, successors and assigns, as well as any other property made subject to this Declaration under Article XI below;

2.2 **Description of Townhomes.** All Townhomes will be basically the same size. The development is proposed to be 8 buildings of 2 townhome cottages each. 14 cottages will have 3 bedrooms, a bonus room and 4.5 baths. 2 cottages will have 2 bedrooms, 2 bonus rooms and 4.5 baths. These configurations are subject to change prior to being completed.

2.3 **Townhome Boundaries.** The boundaries of each Townhome lot shall be as shown on the recorded plat or plats; provided that the side boundary of each Townhome shall be a line consistent with and along the center of all firewalls separating a Townhome from another Townhome. In the event of any discrepancy between the boundaries of a Townhome, as described herein and the

boundaries of such Townhome when shown on the recorded plats, the description of the boundaries of the Townhome set forth herein shall control. All of the area within the boundaries of each of the Townhomes, as herein described, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easement and restrictions of this Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.1 Association. To efficiently and effectively provide for the administration of the Properties by the Owners of the Lots, an association of all Owners has been organized pursuant to Chapter 55A of the General Statutes of North Carolina known and designated as "SHOWBOAT COTTAGES OWNERS' ASSOCIATION, INC.," and the Association shall administer the operation and management of the Properties and undertake and perform all acts and duties incident thereto in accordance with this Declaration.

3.2 Powers. In the administration of the operation and management of the Properties, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules and regulations governing the use of the Common Elements as the Board may deem to be in the best interests of the Association and to exercise all powers set forth in N.C.G.S. §47F-3-102, including the specific power to assign its rights to future income and to receive Common Expense assessments as provided in N.C.G.S. §47F-3-102(a)(15).

3.3 Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by this Declaration to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member.

3.4 Voting Rights. The Association shall have two classes of voting membership.

Class A. Class A Members will be all Owners, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and the vote for 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 such Lot.

Class B. The Class B Member will be the Declarant. The Class B Member shall be entitled to fifteen (15) votes for each Lot owned by the Declarant. The Class B membership shall cease and become converted to Class A membership at the earlier occurrence of the following events: (a) when the total votes outstanding in Class A membership exceed the total votes outstanding in Class B membership; but provided that the Class "B" membership shall be reinstated if thereafter, and before January 1, 2053 additional lands are annexed to the Property in accordance with this Declaration; (b) on January 1, 2053 or (c) such earlier date as the Declarant may choose to terminate the Class B Membership upon notice to the Association. From and after the happening of these events, whichever occurs earlier, the Class B Member will be deemed to be a Class A Member entitled to one vote for each Lot in which it holds the interests required for membership.

3.5 **Board of Directors.** The Association shall be governed by a Board of Directors. Subject to written waiver by Declarant or until Declarant's Class B membership is converted to Class A membership, Declarant shall appoint a majority of the members of the Board. As long as Declarant has the right to appoint a majority of the members of the Board, the Board shall consist of at least three (3) members. Declarant's appointees need not be members of the Association. Upon the conversion of the Declarant's membership interest into Class A membership, the Board will thereafter be selected in accordance with the Bylaws of the Association. All power and authority of the Association is exercisable by the Board of Directors.

Declarant may voluntarily surrender the right to appoint and remove members of the Board of Directors and Officers of the Association before the termination of such right as provided above, but in such event Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board of Directors, as described in an instrument signed by the Declarant and recorded with the Register of Deeds of Carteret County, North Carolina, be approved by the Declarant before becoming effective.

3.6 **Bylaws.** The Bylaws of the Association may be amended as set forth therein. In the event any provision of the Bylaws is inconsistent with the provisions of this Declaration, the provisions of this Declaration shall control. A copy of the Bylaws and filed Articles of Incorporation are attached as Exhibit A.

3.7 **Powers of the Declarant on Behalf of the Association to Enter into Management and Other Utility Provider Agreements.** The Declarant, on behalf of the Association, has the right to subject the Lots to utility agreements and or contracts for internet, cable television, sewer system maintenance and landscaping maintenance for the individual lots and common areas for a reasonable term of years from the date of recording of this Declaration, so long as the Declarant does not substantially financially benefit from the contract and it is in the best interest of the Association and its members at the time of execution of the contract. Any fees for such utility services may be a part of the regular Association assessment, whether such lot owners utilize the utility service or not.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON ELEMENTS

4.1 **Members' Easements of Enjoyment.** Subject to the provisions of Section 4.3 below, every Member shall have a right and easement of enjoyment in and to the Common Elements, including rights of access, ingress and egress to and from public streets and walkways and the right to park a motor vehicle in areas specifically designated for such purposes; such easement shall be appurtenant to and shall pass with the title to every Lot. In addition, Members shall have the right and privilege of using the designated parking spaces for the benefit of his or her Lot as more particularly specified in Paragraph 4.3.

Members may delegate this easement of enjoyment to members of their family, tenants, contract purchasers who reside on the property or in the case of the Member being a partnership, limited liability company, or corporation use may be delegated to the partners, members or shareholders as the case may be; however, such delegations of use shall be subject to regulation as to time and conduct by the Association.

4.2 ***Title to Common Elements.*** The record title to the Common Elements shall be vested with and held by the Association. Declarant agrees that all of the Common Area owned by Declarant shall be conveyed or assigned to the Association, subject to covenants, easements, restrictions and other matters of record, on or before ninety (90) days following the conveyance of the last Lot owned by Declarant. Upon recordation of the deed conveying Common Area to the Association, the Association shall be conclusively presumed to have accepted the conveyance.

4.3 ***Parking.*** As an Owner of a Lot, such person or entity is entitled to park and use the "concrete drive" adjacent to their Lot. No boats, trailers, campers, motorhomes, trucks over one and one-half (1 1/2) tons, service vehicles, tractors or other similar vehicles (excluding automobiles, bicycles and motorcycles) shall be parked anywhere within the Properties unless otherwise permitted. It is not anticipated that there will be any areas to park recreational vehicles on the project, however should conditions change, the Association may at their discretion designate certain areas for recreation vehicles to be stored and if designated each owner will be notified of such location.

Any vehicle located on the Properties must be operational and have a current registration and inspection. No portion of the Properties shall be used for performing repair work on a vehicle of any type, except such emergency repairs such as repairing or replacing a flat tire.

4.4 ***Extent of Members' Easements.*** The rights and easements of enjoyment created hereby shall be subject to the following:

a. The right of the Association, in accordance with the North Carolina Non-Profit Corporation, to borrow money for the purpose of improving the Common Elements and in aid thereof to mortgage said properties.

b. The rights of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;

c. The right of the Association, to suspend the voting rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;

d. The legal right of an Owner of property shown on the same plat to include portions of the Common Elements as may be necessary for said Owner to qualify under governmental requirements such as setback lines, open space, parking or other aspects which may be needed for issuance of a building permit to be secured to rebuild a damaged Living Unit; and

e. The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless such an instrument is approved by a majority of the members attending in person or by proxy a meeting called for such purpose. Written notice of the meeting along with the proposed agreement and action thereunder must be sent to every Member at least thirty (30) days in advance of any action taken.

f. The right of the Association to designate parking spaces within the Common Elements for the exclusive use of each Living Unit, all as more particularly set out in Paragraph 4.3 above.

g. The right of the Association to adopt, modify, change, amend rules and regulations regarding the use of the Common Elements from time to time including the right to prescribe reasonable rules and regulations governing the use of the Common Elements, which rules and regulations shall apply equally to all Owners, their family members, guests, lessees and invitees. Any violation of such rules may, after a hearing in front of the Board of Directors or adjudicatory panel, be punishable by a fine not to exceed \$100.00 per violation, suspension of voting rights and or suspension of rights to use the Common Elements all as set forth in N.C.G.S. §47F-3-107.1.;

h. The right of the Association to adopt, modify, change and amend rules and regulations regarding the suspension of the rights of any Owner as to (i) casting votes as a Member of the Association, and (ii) the use and enjoyment of the Common Elements for failure to pay assessments levied in accordance with Article V below. In no event, may a suspension exceed the date on which such past due assessments are paid.

4.5 Easements Upon the Common/Limited Common Area: The common property shall be subject to existing utility easements, including sewer, septic tank areas identified on the plat, waterline and access easements and those easements described on the Plat including Stormwater Easements that may benefit adjoining properties.

There is specifically reserved an easement for Lot owners to cross common and limited common elements for access to their assigned boat slip. This easement shall include reasonable access rights to perform maintenance on the docks and slips as needed.

4.6 Maintenance of Common Area, including limited common areas. The Association shall keep in good condition, order and repair, the Common Area, including but not limited to any portion of a private street located in the common area, sidewalks, curbing, yards and landscaping adjacent to lots, all entry features and entry landscaping, if any, all street signage and street lights, bulkheads (but not adjacent docks that are limited common elements), floating docks and ramp as designated on the Plat, septic tanks and their related lines and mechanical systems serving the townhomes, and any stormwater control features. In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owners, or the occupant, family member, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed against the Owner as a specific assessment.

4.7 Limited Common Elements. The plat identifies areas as “common area” between the rear line of all Lots and the adjacent waters of Bogue Sound and the Causeway Channel. Each lot owner shall be entitled to use of this area as limited common area adjacent to its lot to the exclusion of the other lot owners, except for the easements created herein for utilities and access to joint docks. The Association shall be responsible for the lawn maintenance of such limited common areas, except for those areas that may be fenced off as allowed by the Association, and Lot owners shall provide reasonable access to perform such maintenance on the limited common areas.

Areas at any time and from time to time, including the adding or modifying of landscaping improvements.

4.8 Septic Tank and System Easements. Each two-unit building shall have two tanks per duplex, septic tank and pump tank then echoflow treatment pods to service the two units and they are located with the common area. The septic tanks are specifically identified as limited common elements, but the maintenance and upkeep of such shall be a common expense of the Association. The aforesaid portion of the wastewater disposal system easement is hereby restricted, as to use (until termination as hereinafter provided), for disposal system and lines to service ground dispersal waste treatment system to service the above reference Lots. These easements shall include all rights of ingress and egress, system installation, operation, maintenance, monitoring and repairs as may be required by the Carteret County Health Department.

In the event, that public or private sewer shall become available to the property which is subject to this easement, the owner's rights and easements hereunder shall terminate upon connection to a public or private sewer system. Until the septic system is abandoned and the units are connected to public sewer, the responsibility for maintenance and upkeep of the septic system shall be upon the unit owners whose unit the systems serves.

From an after the date of recordation of this easement and until termination as above provided for, the Association shall be responsible for any ad valorem taxes attributable to the easement area located on the common property of the Association.

ARTICLE V COVENANT FOR ASSESSMENTS

5.1 *Creation of the Lien and Personal Obligation of Assessment.* Except as hereinafter specifically provided, each Owner of a Lot, by the acceptance of title thereto, shall be deemed to covenant and agree to pay to the Association assessments as outlined in this Declaration of Covenants and Restrictions. The assessments may be classified as (A) Regular for (1) operation, maintenance, repair, replacement and improvement of Common Elements, (2) routine maintenance and repair or improvements to the exterior of the Living Unit of an Owner(s) and (3) other purposes, and (B) Special for (1) capital improvements to Common Elements, (2) routine maintenance and repair or improvements to the exterior of a Living Unit of an Owner(s) and (3) purchase and reconstruction of a Living Unit as provided in Article VI. These assessments are to be fixed, established and collected from time to time as hereinafter provided.

The Regular and Special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

5.2 *Purpose of Assessment.* The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance (1) of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements and (2) of the Lots and Living Units situated upon the Properties. Without limitation, such uses shall include satisfaction of the Association's obligations regarding the Common Elements to pay

hazard and liability insurance, ad valorem taxes, the payment to governmental assessments for public and private capital improvements made to or for the benefit thereof, the repair, replacements and additions thereto, the maintenance and upkeep of any private road or access way and for the cost of labor, equipment, materials, management and supervision thereof.

5.3 *Basis for Computing Assessments.* The Board of Directors shall categorize the purposes for which it makes assessments so that each purpose will be one which is charged in the same amount to each Owner of a Lot.

5.4 *Maximum Increase in Regular Assessment.* The maximum increase in a regular assessment shall be no more than Fifteen Percent (15.00%) above the regular assessment for the previous year without a majority vote of the Members, by proxy or in person, at a meeting duly called for such purpose.

The Board of Directors may fix the annual regular assessment at an amount not in excess of the maximum.

5.5 *Special Assessments for Capital Improvements.* In addition to the annual assessments authorized by this document, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of 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 not less than two-thirds (2/3rds) of the Members entitled to vote thereon and in attendance, either in person or by proxy, at a meeting duly called for this purpose.

Pursuant to NCGS 47F-3-115 (c), incorporated herein by reference;

(1) Any common expense associated with the maintenance, repair, or replacement of a common or limited common element shall be assessed against the lots to which that limited common element is assigned, or against the lots that benefits from the assessment, equally, or in any other proportion that the Association shall deem appropriate;

(2) Any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefitted;

5.6 *Change in Basis of Assessments.* The Association may change the basis of the assessments fixed by Section 5.3 hereof prospectively for any such period, provided that any such change shall have the assent of not less than two-thirds (2/3rds) of the votes of the Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Member at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 5.3 hereof shall not apply to any change in the basis of the assessments undertaken as an incident to a merger of consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2.2, hereof.

5.7 Quorum for Any Action. Unless otherwise specifically provided herein, the quorum required for any action authorized by this Declaration shall be the presence at the meeting of Members, or of proxies, entitled to cast at least one-third of all the votes of the membership.

5.8 Date of Commencement of Assessments; Due Dates. The date of commencement of Assessments for these Lots shall be no later than 6 months after issuance of a final Certificate of Occupancy (CO) by the Town of Atlantic Beach for the completed townhouse unit built on the lot, or upon the conveyance to a third party after issuance of said CO, whichever occurs first, except as provided below to Declarant owned lots. The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment Period. Written notice of the Regular Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Notwithstanding any provision of this Declaration to the contrary, during the Declarant Control Period the Lots and other portions of the Property owned by the Declarant shall not be subject to any annual or special assessment levied by the Association or to any lien for such assessment. During the Development Period, the Declarant shall pay the balance of the actual operating expenses of the Association remaining after the Association levies and collects assessments from Owners. The Declarant shall be obligated to fund such balance only as the expenses are actually incurred by the Association during the Development Period. Upon the termination of Declarant's agreement to pay operating deficits, the Declarant shall become obligated to pay assessments on Lots owned by it within the Property on the same basis as the Owner. In no event shall the Declarant be obligated to pay for the operating deficits of the Association after the Declarant no longer owns any Lots within the Property.

Notwithstanding anything to the contrary, at the first conveyance of any Lot by the Declarant, the grantee shall pay the Association the sum of \$2,000.00 for each Lot acquired as a contribution to the capital of the Association (the "Capital Contribution"). The Association may use the Capital Contribution or any part thereof for any purposes authorized for assessments by this Declaration. Additionally, at the first conveyance of any Lot by the Declarant, the grantee shall reimburse the Declarant for any prepaid insurance premiums with said sum being prorated based upon the remaining effective period of the policy.

5.9 Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

5.10 Effect of Nonpayment of Assessment; Personal Obligation of the Owner; Liens; Remedies of the Association. If the assessments are not paid on the date when due (being the dates specified in Section 5.8), then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, become a continuing lien against the Lot or Living Unit when filed of record in the Office of the Clerk of

Superior Court of Carteret County in the manner provided therefor under Chapter 47F of the General Statutes of North Carolina. The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A, Chapter 45 of the General Statutes of North Carolina. Such lien shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives and assigns. The personal obligations of the Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date or a written arrangement for payment consented to by the Association, the assessment shall bear interest from the date of delinquency at the rate of EIGHTEEN PERCENT (18.00%) PER ANNUM and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property (both actions may be pursued without constituting an election of remedies), and there shall be added to the amount of such assessment court costs and the Association's actual attorney's fees incurred in bringing the action to collect such assessment or in foreclosing on the lien. (If a court determines that such attorneys' fees are not permitted under the then-current law, the Association shall be permitted to recover the maximum reasonable attorneys' fee permitted under law.)

5.11 *Acceleration of Assessments Payable by Installment.* In any case where an assessment is payable in installments, upon a default by an Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Board, and the entire remaining balance of the assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner.

5.12 *Subordination of the Lien to Mortgages.* The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a deed of foreclosure under power of sale or any other transfer in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments which thereafter become due, nor from the lien of any such subsequent assessment.

5.13 *Exempt Property.* The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; and (b) all Common Elements as defined in Article I, Section 1.1, hereof.

5.14 *Prohibition of Exemption From Liability For Contribution Toward Common Expenses.* No Owner may exempt himself from liability for his share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Lot or otherwise.

5.15 *Capital Reserves.* The Board of the Association, in adopting its budget for the operation, management and maintenance of the Development, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements and for meeting its responsibilities for exterior maintenance set forth in Article VIII below, which capital improvement and replacement fund ("Capital Improvement Fund") shall be

for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a portion of the Common Elements, the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of the Owners of Lots, as well as, its maintenance and repair responsibilities under Article VIII hereof. The amount to be allocated to the Capital Improvement Fund may be established by the Board so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement, maintenance or repair. The amount so collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to the Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board, be expended for current operations and maintenance.

ARTICLE VI EXTERIOR MAINTENANCE AND PARTY WALLS

6.1 ***Exterior Maintenance.*** In addition to maintenance of the Common Elements, the Association shall provide exterior maintenance to each Townhome which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, porches, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefore), and other exterior improvements. Such exterior maintenance shall not include glass' surfaces, or screens for windows and doors, or any improvements contained within Patio Area, or the repair or reconstruction of any improvements on any Lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect.

As a matter of information to future members of this Association, the Declarant wishes to make it known that it may be a part of the original plan of development to construct a variety of dwellings with a variety of exteriors for the good of the entire subdivision. Some dwellings will require more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of this subdivision as originally planned, are in accord in their belief that all Members of the Association will be benefited by the variety of exteriors and, therefore, the Association should provide exterior maintenance and make a uniform rate of charge based on the type of unit located on a Lot without further regard to the actual cost of maintenance of each dwelling. Except as otherwise provided for in this Article, the Owner of each Lot and Living Unit shall keep his Lot and all improvements thereon (including the Living Unit), in good order and repair, if not covered by the association, including but not limited to: (i) keeping all sidewalks and patios neat, clean and in good repair, and (ii) the exterior care of the Living Unit and all other structures on the Lot, including but not limited to, windows, screens, sliding glass doors, decks, and patios; however, excluding such maintenance being the responsibility of the Association under this article, all in a manner and with such frequency as is consistent with good property management and maintenance.

If, in the opinion of the Board of Directors, any Owner fails to perform the duties imposed hereunder, the Association, after thirty (30) days written notice to the Owner to remedy the condition in question, and upon failure of the Owner to remedy the condition, the Association shall have the right (but not the obligation), through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot and the improvements or structures thereon (including Living Unit) and the cost thereof shall be a binding, personal obligation of such Owner, and an additional assessment upon the Lot collectible as provided for in Article V.

6.2 Damage by Owner. In the event that the need for maintenance or repair of a Lot or Living Unit is caused through the willful or negligent acts or omission to act of its owner, or his family, tenants, contract purchasers, guests or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, or other casualty as defined and explained in North Carolina standard fire and casualty with extended coverage policies, the obligation and costs of such maintenance and repair shall be on the Owner. In the event such damage does not otherwise fall under the responsibilities of the Association as set out herein, and the Owner fails to take action to commence such maintenance and repair, the Association may, upon providing the Owner with thirty (30) days written notice, commence such maintenance and repairs and charge the costs of the same to the Owner as part of the regular assessment to his Lot under this Article. In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, lessees, guests, contractors, or invitees, or contract purchasers, the cost of such maintenance or repairs shall be added to, and become a part of, the assessment to which such Lot is subject.

6.3 Inspection and Access Rights Reserved. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association, its agents, employees or contractors, the right to unobstructed access over and upon each Lot at all reasonable times for inspection and to perform maintenance as provided in this Article after notice has been provided to the Owner. In the case of an emergency repairs, access will be permitted at any time with only such notice as under the circumstances is practical.

6.4 Common Party Walls. All common party walls between individual Townhomes shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

a. Each wall which is built as part of the original construction on a Lot which serves as the dividing line between two adjoining Lots or Townhomes shall constitute a common party wall and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. PURSUANT TO TOWN BUILDING REGULATIONS, OWNERS SHALL NOT BE ALLOWED TO FINISH THE FOURTH FLOOR OF THE RESIDENCE (UNFINISHED ATTIC SPACE) OR MODIFY ITS CONDITION TO MAKE IT LIVABLE SPACE.

b. The cost of reasonable maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

c. If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall or fence, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

d. Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

e. The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

f. Each Owner of a residence which shares a common party wall with one or more other residences and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other residences to the extent reasonably necessary to repair, restore, maintain or reconstruct the common party wall or fence. Such repair, restoration, maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

6.5 ***Weatherproofing.*** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

6.6 ***Right to Contribution Runs With Land.*** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6.7 ***Easement and Right of Entry for Repair, Maintenance and Reconstruction and Planting.*** Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably possible.

Plantings. An Owner desiring to landscape around his Lot with plants and flowers shall submit a request plans for the same to the Association pursuant to Article VII and, if approved, shall maintain the same at his own expense. Any such plantings or maintenance shall be done in a manner which does not hinder the Association in the performance of any of its maintenance duties as to the Living Units or Common Elements and/or detracts from the exterior appearance of the Living Units. The decision as to whether such landscaping detracts from the exterior appearance of the Properties shall rest solely with the Board of Directors. If the Board of Directors determines that said planting is inappropriate, then in such event, the Owner shall remove such landscaping within thirty (30) days after receiving notice thereof.

If, in the opinion of the Board of Directors, any Owner is failing to maintain his Lot or approved plantings in a neat and orderly manner which continues after twenty (20) days written notice to the Owner from the Board of Directors, the Association may enter upon the Lot or Common Elements perform such maintenance as it deems necessary to put such area in a neat and orderly condition. The cost of such maintenance by the Association shall be charged to the Owner and shall constitute a lien against the Owner's Lot and be treated in the same manner as assessment liens under this Declaration.

6.8 Certification with respect to Contribution. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner or Owners in writing that they certify in writing that they have no right of contribution against such Owner, whereupon it shall be the duty of each adjoining Owner to make such certification within ten (10) days of such request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital as to the amount claimed and the basis therefor. Failure by any Owner to provide such certification within the time periods appearing above shall conclusively be deemed to have waived and released any right of contribution against such Owner or Lot.

6.9 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each lot owner agrees that the disputed matter be arbitrated as provided by Section 14.10 of this Declaration.

ARTICLE VII AESTHETICS COMMITTEE

7.1 Review by Committee. Unless otherwise provided herein, no building, fence, wall or other structure, nor any exterior improvement, replacement nor any planting or landscaping change (including removal of any tree) shall be commenced, erected or maintained upon the Properties nor shall any exterior addition to or change or alteration therein be made 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 Board of Directors of the Association, or by an aesthetics committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with fully. The Association shall have the right to bring an action to enjoin any activity taken in violation of this Article.

ARTICLE VIII BOAT DOCKS/PIERS/SLIPS

8.1 Limited Common Areas (Boat Slips). All Lots shall have as part of their Limited Common Elements (a/k/a Areas) the right to access, reconstruct and use a joint boat dock, slip and the dock space surrounding it. Such boat slips and the dock space surrounding them are illustrated on the plat and further identified and assigned to a particular Lot as shown on Exhibit B. Once constructed, such boat slips and surrounding dock area shall be appurtenant to the Lot(s) as limited common area and may be transferred with the Lot to the Owner's heirs, successors and assigns. The limited common docks are designated with numbers 1-18. A boat slip and

surrounding dock space may not be transferred separately from the Lot to which it is made appurtenant. A conveyance of a Lot that has a boat slip as a limited common element shall include the related boat slip, whether it is included in the deed description or not. The utilities, including water and power for Slips 1-16 are connected to their respective units and the cost of such utilities are part of the utility bill for the assigned unit.

Boat Slips 17 and 18 are limited common elements that may be assigned by the Declarant to a Lot owner of any lot and such assignment will happen in the deed of conveyance or separate assignment document to be recorded. No lot Owner may own more than two (2) slips or fewer than one (1) slip. No slip may be assigned to a non-owner as shown of record.

Assignment of Boat Slips. During the Declarant control period, Declarant may reallocate the boat slip assignments on any unsold lots, and after transfer of a Lot to an individual, the Owners shall have the right among themselves and from time to time to swap the Boat Slip assigned to their Lot with a Boat Slip assigned to another Lot. Such assignment must be in writing, signed by the owners of each Lot involved in the assignment. The assignment must address payment of utilities that may be furnished to the slip by the original unit the slip was assigned to. The Board of Directors may adopt a form assignment to be used for such transfers. The assignment shall be recorded with the Register of Deeds of Carteret County, North Carolina and a copy thereof shall be provided to the Association. No assignment shall be effective unless it meets the requirements of this Paragraph. In no event shall a Lot Owner assign his Boat Slip without receiving in return the assignment of another Boat Slip.

Notwithstanding anything to the contrary contained herein all costs and expenses in any way related to the joint Boat Slips, and any related facilities (the "Boat Slip Facilities") including, but not limited to, the cost of maintaining, repairing, replacing and insuring the Boat Slip Facilities, as well as all utilities shared by the Boat Slips shall be the responsibility of the lot owners that utilize the boat dock and to which the Boat Slips have been assigned. In no event shall any Lot Owner bear any responsibility, or incur any expense, relating to the Joint Boat Docks other than the joint dock that is assigned to his lot. Each Lot Owner shall be responsible for keeping his Boat Slip in good condition and shall maintain the Boat Slip at his expense. All Boat Slip maintenance cost relating to a shared dock shall be negotiated between the owners who utilize the shared dock and such cost shall not be an expense of the association.

If a shared Boat Dock/Slip is destroyed in whole or in part, or damaged by fire or other casualty, any Owner of a residence which shares such Boat Dock wall may restore or repair it, and the Owners of the other residences which share the restored or repaired dock shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common dock, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

Notwithstanding any other provision of this Section, an Owner of a residence which shares a common dock who, by such Owner's negligent or willful act or omission, damages or causes the shared dock to be damaged by not removing a boat during severe or hurricane type weather, shall bear the entire cost of the necessary repair or restoration.

The area identified on the Plat as "Floating Dock" "Boardwalk" and "Platform" shall be common elements. The Association may adopt, modify, change, and amend rules and regulations regarding the use of this Common Element from time to time including the right to prescribe reasonable rules and regulations governing its use, which rules and regulations shall apply equally to all Owners, their family members, guests, lessees and invitees.

8.2 *Dock Regulations.*

a. The Association shall have the right to adopt from time to time reasonable rules and regulations regarding the use of Boat Docks which may restrict among other things, the following:

- i. Maintenance of the area in and around the Boat Dock in a clean, safe condition;
- ii. Installation of utilities serving slips, individually or collectively;
- iii. No living aboard or overnight stays;
- iv. Removal of vessels during severe weather i.e. hurricanes;
- v. No commercial-type vessels moored or commercial activities conducted from the Boat Docks);

b. Boat Lifts. Each Lot Owner shall be entitled to install and maintain one marine boat lift to serve the Boat Dock adjacent to their Lot. Declarant may, but is not required to, install the lift at the time of the initial conveyance. The design and plans for the installation of the boatlift shall be submitted to the Association for prior written approval. The Association may adopt rules related to the design, style and installation of boat lifts. Although installed within the Limited Common Elements, the Boat Lift shall remain and be the property of the Lot Owner and all maintenance, repair and/or replacement shall be at the sole expense of the Lot Owner not the Association. No other lot owner may access any boat dock or slip not assigned to it and the use of said limited common area shall be exclusive to the two lot owners to which such joint dock has been assigned.

c. Dock Boxes. Lot Owners shall be entitled to maintain a dock box adjacent to their Boat Slip. The purchase and installation of the deck box shall be at the sole cost and expense of the Lot Owner. The Association shall have the ability to adopt rules related to the design, location and appearance of dock boxes.

d. No Leasing. No Lot Owner shall lease, rent or otherwise allow anyone other than the following persons to use his Boat Slip: (i) Lot Owner, (ii) Occupant. It being the intent of this restriction that a Boat Slip not be rented or used separately from the person or persons, or their guest, occupying or owning the Lot.

ARTICLE IX INSURANCE

9.1 *Definitions.* As used in this Paragraph 9, the following terms shall be defined as described. "Structures" as used in this Article 9 shall mean and refer to all buildings and improvements, including Common Elements, Limited Common Elements, and Townhomes, affixed to that land described in Article Two and shown on the Plat, excluding, however, Owner Betterments as hereafter defined. With the exception of Owner Betterments, Structures are buildings and improvements that would be considered real property under the common law. Townhomes, except for any Owner Betterment contained therein, are included in the definition of Structures for purposes of the Association's property insurance.

Structures include improvements and betterments to Common Element made by the Association as opposed to an Owner.

"Owner Betterment" shall mean any upgrade or addition made to a Townhome, Common Element or Limited Common Element by an Owner that exceeds the replacement cost of the same item in the Basic Building Plans and Specifications (as defined below) or is an addition to the Townhome. For purposes of the Association's property insurance, an Owner Betterment is relevant only to the extent that its replacement cost exceeds the replacement cost of the same item or is an addition to the Unit. An example of an Owner Betterment would be a marble tile floor with a replacement cost of \$100.00 per square yard installed in a Townhome by an Owner in place of the carpeting shown as part of the Basic Building Plans and Specifications where the carpeting has a replacement cost of \$25.00 per square yard. If the townhome is totally destroyed by an insured casualty, the Association's property insurance would cover the value of carpeting shown in the Basic Building Plans and Specifications but not the replacement cost of the marble tile.

9.2. *Association's Insurance.*

a. The Association shall maintain, to the extent available:

i. Property insurance on the Structures, but not the docks and slips that are limited common elements, insuring against risks of direct physical loss commonly insured including fire, wind, and extended coverage perils. The total amount of property insurance shall be the full replacement cost of the Structures, if in the opinion of the Board of Directors, insurance in that amount is affordable; however, the total amount of property insurance after application of any deductibles shall be not less than ninety percent (90%) of the replacement cost of the Structures. The property insurance shall be subject to such deductibles as the board of directors deems appropriate.

No insurance is required to be maintained by the Association on the limited common elements as defined herein, including the docks and pilings allocated to a Lot/Unit. Should the Association decide to obtain insurance on the limited common elements, including the docks and slips, the cost of such insurance shall be considered a common expense of the Association and collected as such as provided herein. A Unit Owner may wish to obtain casualty insurance on the limited common elements associated with its unit but is not required to.

ii. Liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements. This liability insurance will cover only the liability of the Association, and Owners as members, but does not cover the Owner's individual liability for his acts or omissions while on Common Elements, within Limited Common Elements, or within his Townhome

iii. Fidelity insurance coverage to protect against dishonest acts in the handling of Association money by the officers, directors, volunteers, managers or employees of the Association.

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iv. Such other insurance as the Board deems advisable from time to time.

b. If the insurance described above of this Paragraph is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners.

c. Insurance policies carried pursuant to subparagraph 9.2(a) must provide that:

i. Each Owner is an insured person under the policy with respect to liability arising out of his membership in the Association;

ii. The insurer waives its right to subrogation under the policy against any Owner or members of his household;

iii. No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy; and

iv. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

d. Any loss covered by the property policy under Section 9.2 (a) shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to the Association as insurance trustee, and not to any mortgagee or beneficiary under a deed of trust. The Association as insurance trustee shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored. If there is a surplus of insurance proceeds after the property has been repaired or restored, the Owners of the affected Townhomes will share in any distribution of the surplus according to the formula used for assessing property insurance premiums. The Board may elect to credit the accounts of the Owners rather than making an actual distribution.

e. An insurer that has issued an insurance policy under this subparagraph shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

9.3. Insurance Required of Owners

a. Each Owner is required to purchase, and at all times maintain, one or more insurance policies that cover the following:

FLOOD INSURANCE REQUIRED: If within a flood zone A-E, or commonly identified as being in a flood hazard zone then an owner must obtain Flood Insurance on the structure and pay for such cost.

Insurance policies carried pursuant to this subsection (i) must provide that:

The Association is an insured under the policy;

The insurer waives its right to subrogation under the policy against the Association;