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**PARTY WALL COVENANT AND
DECLARATION OF MAINTENANCE OF REAL PROPERTY**

**STATE OF NORTH CAROLINA
COUNTY OF ONSLOW**

Return To
Fuss & Fairley
P.O. Box 2550
Surf City, NC 28445

Prepared and return to: by Fuss & Fairley, PO Box 2550, Surf City, NC 28445

THESE DECLARATION AND PARTY WALL COVENANT,
made and entered into by Victor J. Schlotterer, hereinafter referred to as
"Declarant";

WITNESSETH:

THAT WHEREAS, Declarant is the owner of that certain parcel of
land (hereinafter referred to as "the Property", more particularly described as:

Being all of Lot 4, Block B, as shown on that plat entitled, "North
Topsail Shores, Phase III," according to a plat of same being duly
recorded in Map Book 20, Page 16, Onslow County Registry.

Together with all rights pursuant to that beach access easement as
shown in Book 1482 at Page 250, Onslow County Registry, North
Carolina.

WHEREAS, a duplex residence has been constructed on the Property
and may be sold in two parcels, each having a common wall, hereinafter
referred to as the "dividing or party wall," with the other which divides the
residences;

WHEREAS, the real property (land) surrounding the duplexes shall be owned as Tenants in Common, each unit owner having an undivided 50% interest in said property;

WHEREAS, for the benefit of present and all future owners or either unit, each unit owner shall be responsible for the use and maintenance of the real property that naturally surrounds his/her unit, and shall refrain from using the real property naturally surrounding the unit with which said owner shares the Party Wall.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be held, sold and conveyed subject to the following covenants and declarations, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property, and be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof:

- 1) **General Rules of Law to Apply.** Each wall, which is built as a part of the original construction of the duplex upon the Property and placed on the dividing line between the parcels, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, and of liability for property damage due to negligence or willful acts or omissions, shall apply thereto.
- 2) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

For the mutual benefit of all owners, the owners are hereby obligated to maintain the roof and exterior of the premises by causing the same to be maintained at reasonable times and places in a manner suitable to both owners, including the selection of color or paint and other matters that may mutually affect the other. Each owner shall maintain the premises and the exterior of the residence located thereon in a clean and neat condition and shall properly remove trash and debris from the premises that shall from time to time accumulate.

The owners shall share equally in the maintenance or replacement cost of any common decks or stairways now located on said premises.

Destruction by Fire and Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the Wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omission. Whenever the party wall or any portion thereof shall be rebuilt, it shall be erected on the same place or line where it now stands and shall be the same size as when originally erected unless otherwise agreed to, in writing, and duly recorded by the then owners thereof.

Each owner of the property shall agree that in the event of fire or other casualty causing destruction of the structures located on the aforesaid demised premises, that they will, within a period of ninety (90) days of such fire or other casualty or damage to said premises, restore the same to its former condition. Failure to do so shall give the right to the other owner to cause said premises to be restored, and the owner failing to restore shall be responsible to the restoring party for all expenses incurred for said restoration of that portion of the structure located on his property, and the restoring owner shall have the right to put a lien upon the other owner for all said costs and reasonable attorney fees incurred during restoration. The Owner who desires to repair such Party Wall shall be legally entitled to use as reasonably needed, the proceeds of all the insurance described in Paragraph 6 hereafter for such purpose and which right shall include the right to apply and obtain from a court of appropriate jurisdiction equitable relief, in addition to legal relief, for immediate court approval for this proceeds' use.

- 3) **Weatherproofing.** Notwithstanding any other provision herein, 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 element. Both parties shall further cause the demised premises to meet all building codes, be they State, Federal or Local requirements.
- 4) **Alterations.** The party wall shall not be materially altered or changed. No Person shall have the right to add to or detract from the party wall in any manner whatsoever, it being the intention that the party wall shall at all times remain in the same position as when erected, unless

otherwise agreed to, in writing, and duly recorded by the then owners thereof

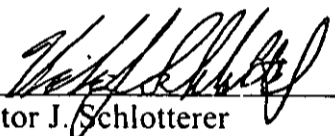
- 5) **Insurance.** In order to be protected from fire, wind, hail, flood and other casualty the parties owning the premises shall hence forth and forevermore cause the premises which they own to be fully insured at least up to eighty percent (80%) of the value of the said premises from fire, wind, hale, flood and other casualty, and agree to keep extended coverage on the premises, which fully insure all parties as to said party wall, and provide each other certification by letter or otherwise that said policy is in full force and effect.

In the event one side of the party wall has been damaged more extensively than the other, whether by act of nature, negligence, or any other cause whatsoever, the owner of the more damaged side shall use all insurance money to be used for restoration, so long as restoration is permitted within applicable law

- 6) **Utilities.** The owners of the above-described property shall share equally in the cost of the repair and maintenance of any common water and sewer facilities as may be necessary for their proper and continued service to both parties. Each owner, for himself, his heirs and assigns, is granted a perpetual easement over the other owner's property for the purpose of servicing, repairing, and maintenance of any water and sewer facilities. Neither owner may interrupt the other owner's use of any water and sewage facilities.
- 7) **Easements.** The owners of the above-described property each hereby grant unto the other an easement for eaves, roof overhangs, changes in location of structures due to settling, and minor deviations of the placement of the party wall of one foot or less, and the purpose of maintenance, repair or restoration.
- 8) **Maintenance of Real Property.** each unit owner shall be responsible for the use and maintenance of the real property that naturally surrounds his/her unit, and shall refrain from using the real property naturally surrounding the unit with which said owner shares the Party Wall.

- 9) **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under these covenants shall be appurtenant to the land and shall pass to such Owner's successors in title.
- 10) **Amendment/Revocation.** All of the owners of the land may unanimously alter, amend, or revoke this declaration at any time by appropriate document recorded upon the public records.
- 11) **Enforcement/Arbitration.** Any owner shall have the right to enforce, by any proceeding at law or in equity, all conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of an owner to enforce any such covenant, reservation, lien or charge, shall in no event be deemed a waiver of the right to do so thereafter; however, in the event of any dispute arising concerning a party wall, or any provision under this Declaration, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of the arbitrators.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name this the 1 day of OCTOBER, 2003.

By: 
Victor J. Schlotterer

Book 2123 Page 437 Was Missing