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I hereby certify that the within  
Instrument was received for record and  
recorded in the County of Tillamook,  
State of Oregon.



Tassi O'Neil, Tillamook County Clerk

*AFTER Recording Return To:*

TICOR TITLE INSURANCE COMPANY  
P.O. BOX 519  
TILLAMOOK, OR 97141

## PARTY WALL AND MAINTENANCE DECLARATION

### ARTICLE 1 DEFINITIONS

This Party Wall and Maintenance Declaration ("Agreement") is made on the date hereinafter set forth by the Declarant, who owns Lots 78 and 77 of Sahhali Shores at Neskowin, in Tillamook County, Oregon.

1.1. "Common Expense Items" shall mean and refer to the paving and driveway in front of the townhomes, the roof and siding on the townhomes, and the party wall between the two homes and the townhomes.

1.2. "Home" shall mean and refer to either of the two portions of the townhomes, which portion is situated upon a lot and is designed and intended for use and occupancy as a residence by a single family. Each home shall include the soundboard or wallboard attached to the interior of the party wall that divides the two homes of the townhomes.

1.3. "Lot" shall mean and refer to either Lot 78 or Lot 77 of Sahhali Shores at Neskowin. "Lots" shall mean and refer to both of said Lots.

1.4. "Occupant" shall mean and refer to the occupant of a Home in the Townhomes, whether the Owner, lessee or any other person authorized by the Owner to occupy the premises.

1.5. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to either Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities who hold an interest in either Lot merely as security for the performance of an obligation.

1.6. "Party Wall" shall mean and refer to the wall between the two homes in the Townhomes defined as described in Article 2 of this Agreement.

1.7. "Townhomes" shall mean the structure that contains two Homes, one on each Lot, which are divided by a party wall.

### ARTICLE 2 PARTY WALLS

2.1 **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Townhomes which divides the two Homes, and which is placed on the dividing line between the two Lots, shall constitute a Party Wall. The Party Wall shall consist of the studs, blocking, insulation, cement and airspace lying between the wallboard of one Home and the wallboard of the other Home in the

Townhomes. The Party Wall will not consist of the wallboard, paneling, sheetrock, tiles, wallpaper and paint on the interior of the Party Wall which shall be considered part of the Home, the maintenance of which shall be the responsibility of the homeowner. To the extent not inconsistent with the provisions of this Agreement, the general rules of law regarding Party Walls shall apply thereto.

**2.2 Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, the provisions of Article 5 of this Agreement shall apply with regard to repair or reconstruction of such Party Wall.

**2.3 Weatherproofing.** Notwithstanding any other provision of this Agreement, an Owner who by his or her 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, subject, however, to reimbursement and/or contributions from available insurance policies.

**2.4 Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Agreement, together with the obligations of such other Owners to contribute to expenses related to the Party Wall, or as otherwise required by this Agreement, shall be appurtenant to the land and shall pass to such Owner's successors in title.

**2.5 Maintenance and Repair.** Each Owner must provide reasonable notice to the other Owner when maintenance work is required. Additionally, all exterior carpentry, painting and maintenance shall be agreed to by both owners before the work commences.

**2.6 Roofing.** The roof of the entire Townhomes containing both Homes must be replaced at one time. The expense of maintenance, repair or replacement of the roof shall be equally born by the owners of the two Homes.

**2.7 Right to Maintain, Repair or Reconstruct Without Consent.** Any painting, roofing, repair, reconstruction or other maintenance to the exterior or structure of the Townhomes which reasonably needs to be done and one Owner refuses to proceed, may be completed by the other Owner with the cost apportioned between the Owners in proportion to the benefit to the Homes. There shall be a rebuttable presumption that the benefit of such exterior painting, roofing, repair, maintenance or reconstruction of or to the Townhomes benefits the Homes equally.

**2.8 Utility Easements.** Each Owner shall have an easement through the Party Wall for the purpose of installing, repairing, replacing or maintaining utility lines, wires, pipes and conduits.

### **ARTICLE 3 CONDEMNATION**

In the event that all or any portion of the Party Wall is appropriated as the result of condemnation or threat or imminence thereof, the following rules and guidelines shall apply:

**3.1. Allocation of Condemnation Award.** Any condemnation award received by the Owners with respect to the Party Wall or the Townhomes shall be allocated to the Owners in proportion to the diminution in fair market value incurred by them with respect to their respective Lots and Homes as a result of said condemnation.

**3.2. Repair and Restoration.** Any such condemnation award shall be used to repair and restore the Townhomes. Party Wall or the Lot if such restoration or repair is feasible.

**3.3. Retention of Rights.** No provision of this Article shall be construed as negating the right of the individual Owners to such incidental relief as the law may provide as a result of the condemnation of the Party Wall, the Townhomes or any portion thereof, and/or the Lots or any portions thereof.

### **ARTICLE 4 INSURANCE OF HOMES**

Each Owner of a Lot shall purchase and maintain insurance sufficient to cover any loss relating to the Lot and the Home thereon, including extended coverage for full replacement value of the Property. Each Owner shall also purchase and maintain insurance covering their interest in the Party Wall. Copies of such policies or other appropriate evidence of such insurance coverage shall be forwarded to the other Owner at least ten (10) days before the expiration of all previous insurance coverage. If an Owner fails to furnish a copy of an appropriate insurance policy or evidence thereof within the time required, the other Owner may procure such policy in his or her own or both names and charge the defaulting owner the cost of the premium.

### **ARTICLE 5 COVENANTS FOR REPAIR AND MAINTENANCE COSTS AND EXPENSES**

**5.1. Sharing of Repair and Maintenance Costs and Expenses.** The cost of repair and maintenance of a Party Wall shall be shared equally by the Owners whose Homes are divided by such Party Wall. The costs of exterior painting, roofing, driveway repair and maintenance, repair, maintenance or reconstruction of the Townhomes shall be apportioned between the owners in proportion to the benefit to their Homes. There shall be a rebuttable presumption that such benefit is equal.

**5.2. Procedure for Maintenance of Common Expense Items.** When, in the reasonable opinion of an Owner, maintenance, repair or replacement of a Common Expense Item is needed, such Owner shall notify the other Owner of such need and the

Owners together shall determine how to complete the work; if, however, such work is reasonably needed and the other Owner refuses to proceed with such work, one Owner may complete such work, with the cost apportioned between the two Owners in proportion to the benefit to the Homes. There shall be a rebuttable presumption that such work benefits the Homes equally.

**5.3. Siding and Roofing.** All siding on the Townhomes must be replaced at one time. Likewise, the entire roof of the Townhomes must be replaced at one time. The expense of maintenance, repair or replacement of the siding and/or roof shall be equally borne by the Owners of the two Townhomes.

**5.4. Owner's Individual Maintenance Responsibility.** Structural elements of the Townhomes, other than those specifically listed in Section 1.1; and the interior elements of the two Homes in the Townhomes are not Common Expense Items.

Each Owner shall be responsible for and shall bear the costs of maintaining, repairing and replacing the windows within his Home; and structural elements of his Home, other than those listed in Section 1.1. Such maintenance, repair, and replacement shall be done in accordance with applicable laws, ordinances and regulations and in a workmanlike manner.

**5.5. Damage Caused by Owner.** Any damage to Common Expense Items caused by the negligence or intentional act of an Owner, his family, invitees, or guests shall be repaired by such Owner at such Owner's expense.

**5.6. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of either Lot joined by the Party Wall by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay his/her share of the costs and expense of repair and maintenance of the Party Wall and the exterior of the Townhomes.

If either Owner of such Lot fails to pay the other Owner for such expenses or fails to reimburse for expenses already incurred relating to the repair and maintenance of the Party Wall and the exterior of the Townhomes, then all such costs and expenses, together with interest thereon at the rate of twelve percent (12%) per annum, and all other costs, fees and charges allowed by law shall be a lien and charge on the land, and shall be a continuing lien upon the Lot against which each such cost, expense and repair is incurred. Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law. No particular form of lien shall be required as long as it states the names of the parties, identifies the Lots, describes the repairs or improvements made, and states the amount of the obligation. Such lien shall be superior to all other liens except first mortgages, first trust deeds, or the vendor's lien of a land sale contract, property taxes, and other liens having priority as a matter of law.

**5.7. Effect of Nonpayment of Maintenance Costs and Expenses by Either Owner; Remedies.** In addition to any other remedies provided by law, either Owner may bring an action at law against the Owner personally obligated to pay the same or foreclose a lien upon the Property. No such action or a judgment entered therein shall

be a waiver of the lien of the Owner. No Owner may waive or otherwise escape liability for the maintenance costs and expenses provided for herein by non-use of the Party Wall or abandonment of his or her Lot or Home.

## **ARTICLE 6 GARAGES AND PARKING**

Each Home in the Townhomes has one garage. Each Owner shall use the garage of his Home to store one of his automobiles, if he has any, when such automobile is not in use, or to store a boat. No Owner shall convert the garage of his Home for any purpose other than storage of an automobile or a boat. No Owner shall store anything that interferes with proper operation and closure of garage doors in his garage. An additional car or cars may be stored in front of an Owner's garage, but must be parked in a manner that does not interfere with or prevent the ingress or egress of the cars of other owners, occupants or their guests over the common driveway area for ingress and egress.

## **ARTICLE 7 DAMAGE AND DESTRUCTION**

**7.1. Insurance and Proceeds Sufficient to Cover Loss.** In case of fire, casualty or any other damage or destruction to the Townhomes, the insurance proceeds of the Owners' policies, if sufficient to reconstruct the Townhomes, shall be applied to such reconstruction.

**7.2. Insurance Proceeds Insufficient to Cover Loss.** Subject to the other provisions of this Section, if available insurance proceeds are insufficient to reconstruct or repair the damaged or destroyed Townhomes, it shall, nonetheless, be promptly repaired. Any insurance policies of the Owners covered by such policies shall be contributed to the repair or reconstruction costs of the Home so insured, and each Owner shall be liable for his or her share of any deficiency for such repair or reconstruction not paid from insurance proceeds. Provided, however, if three-fourths or more in value of the Townhomes is destroyed or substantially damaged and if either Owner wishes, and all mortgagees, trust deed beneficiaries and land sale contract vendors agree, and the insurers who have issued policies on the Townhomes allow, the Townhomes will not be reconstructed or repaired. In such case, insurance proceeds will be paid to the covered Owner after the expenses of demolition, debris removal, and Lot restoration are paid.

**7.3. Architectural Changes After Damage or Destruction.** Reconstruction of the damaged or destroyed Townhomes as used in the Article means restoring the Townhomes to substantially the same condition in which it existed prior to the fire, casualty or disaster unless other action is agreed to by the Owners and first trust deed holders, and/or land sale contract vendors. In any event, any architectural changes shall conform to the Declaration.

## **ARTICLE 8 DISPUTE RESOLUTION**

**8.1. Mediation.** The Owners recognize that they are interdependent and must rely on the cooperation of one another to fulfill the obligations of this Declaration. Situations may occur when communication between the Owners is poor in either quality or quantity, and neither Owner may be able to resolve this situation on his or her own. For example, the Owners may differ in their views on whether improvements or repairs to the Townhomes are required. With only two Home Townhomes, there is the inherent possibility that the Owners may be split in their view as how best to proceed on maintenance and repair questions and be unable to resolve questions or problems that require affirmative action. In the event that Owners are deadlocked, or a dispute, question, concern or problem arises, that the Owners are unable to take action on because they have not reached agreement, either Owner may request that the two Owners participate in the mediation process to resolve the dispute, and then the issue or question will be mediated. If the Owners cannot agree upon a mediator, then each Owner will select a representative. The two representatives of the Owners will then select a mediator. The mediator selected can, but does not have to, be a professional mediator. The role of the mediator will be to help facilitate agreement between the Owners. The mediator's fees, if any, shall be paid one-half by each Owner.

**8.2. Arbitration.** In the event that mediation does not resolve a dispute between the Owners, arising concerning the Party Wall, the Lots, the driveways, the Townhomes, or concerning the obligations of the Owners pursuant to the provisions of this Agreement, the Owners shall choose an arbitrator, and the dispute shall be resolved by the arbitrator. If the parties cannot agree upon an arbitrator, either may apply to an appropriate Court having jurisdiction for the appointment of a single arbitrator pursuant to the provisions of ORS 36.300, *et seq.*, as amended. The decision of the arbitrator shall be final and unappealable. The arbitrator's decision or award may be entered in the appropriate court and shall have the same effect as any other final unappealable judgment or decree.

## **ARTICLE 9 ENFORCEMENT**

Either Owner or the holder of any first mortgage, trust deed or land sale contract of any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Agreement as may appertain specifically to such parties or Owners. Failure by any Owner or mortgagee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event arbitration is requested by an Owner or suit or action is brought by an Owner to collect the other Owner's share of expenses payable hereunder, the prevailing Owner shall be entitled to reasonable attorney fees in such arbitration, suit or action and in any appeal therefrom.

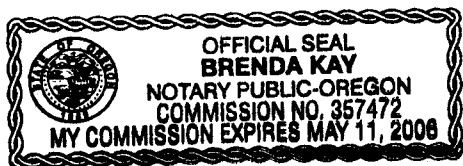
DATED: June 13, 2003.

*[Handwritten Signature]*

Printed Name: Fred Butterfield  
Title: President

STATE OF OREGON        )  
  ) ss.  
County of Tillamook    )

On this 13<sup>th</sup> day of June, 2003, before me personally appeared Fred Butterfield, the President of Butterfield Homes, Inc., a corporation and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and acknowledged said instrument to be its voluntary act and deed.



Brenda Kay  
Notary Public for Oregon  
My Commission Expires: May 11, 2006