

TOWNHOUSE DECLARATION
AND PARTY WALL AGREEMENT

WHEREAS, TEXAS CONSTRUCTION COMPANY, a Colorado corporation, is the owner in fee simple of the following described real property ("subject property") situate in the County of Eagle, State of Colorado, to wit:

Lot 21 of the resubdivision of Buffer Creek, Eagle County, Colorado, said parcel being more specifically described as follows:

Beginning at the Northwest corner of said Lot 21, thence N 89°27'21" E 364.95 feet along the Northerly boundary of said Lot 21, to the Northeast corner, thence S 0°32'39" E along the Easterly line of said Lot 21 and the west end of Ridge Road 50.00 feet, thence S 52°48'42" W along the Southeasterly line of said Lot 21, 336.94 feet, thence N 21°11'17" W along the Southwesterly line of said Lot 21, 268.33 feet to the place of beginning; said Lot 21 contains 1.207 acres, more or less.

WHEREAS, Declarant is constructing or has constructed on the subject property, for the sale to other persons, a building consisting of six (6) dwelling units, which dwelling units are connected by division walls between each dwelling unit, said dwelling units to be known as the CAPSTONE TOWNHOUSES; and

WHEREAS, It is intended by the undersigned Declarant to create, in favor of each purchaser, an easement relating to party walls of approximate one (1) foot in thickness and placed equally divided on the lot lines separating the lots upon which the separate dwellings are erected or are to be erected, the footings underlying each such party wall and the roof over each such party wall, together with additional easements;

NOW THEREFORE, in consideration of these premises, the Declarant hereby makes, publishes and declares the following easements and restrictions which shall hereafter run with the land and be binding upon and inure to the benefit of Declarant, its successors and assigns forever:

1. Division of Subject Property. The subject property is hereby divided into six (6) separate parcels, each parcel having thereon one of the above described dwelling units, each parcel being more particularly described and shown on the Final Plat Townhouse Map of Capstone Townhouses, which descriptions are incorporated herein by reference and are hereby made a part hereof.

2. Creation of Separate Estates. The subject property, together with all improvements thereon, is hereby divided into six (6) separate estates as follows:

Unit 1, consisting of Parcel 1, all improvements thereon, and all easements and rights of way appurtenant thereto as provided herein.

Unit 2, consisting of Parcel 2, all improvements thereon, and all easements and rights of way appurtenant thereto as provided herein.

Unit 3, consisting of Parcel 3, all improvements thereon, and all easements and rights of way appurtenant thereto as provided herein.

Unit 4, consisting of Parcel 4, all improvements thereon, and all easements and rights of way appurtenant thereto as provided herein.

Unit 5, consisting of Parcel 5, all improvements thereon, and all easements and rights of way appurtenant thereto as provided herein.

Unit 6, consisting of Parcel 6, all improvements thereon, and all easements and rights of way appurtenant thereto as provided herein.

Each such separate estate shall be held subject hereto and may for all purposes be conveyed and described as Unit 1, Unit 2, Unit 3, Unit 4, Unit 5, or Unit 6, Capstone Townhouses, pursuant to this Declaration, respectively.

3. Party Wall Declaration. The said party walls dividing the Units are hereby declared to be party walls and each shall be construed as a party wall between such townhouses under the laws of the State of Colorado, except as specifically provided herein.

4. Maintenance of Party Wall. The cost of maintaining each party wall shall be borne equally by the owners on either side of said wall.

5. Damage to Party Wall. In the event of damage or destruction of said wall from any cause, other than the negligence of either party thereto, then the owners shall, at joint expense, repair or rebuild said wall, and each party, his successors and assigns, shall have the right to the full use of said wall so repaired or rebuilt. If either party's negligence shall cause damage to or destruction of said wall, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his share, or all of such cost in case of negligence, the other party may have such wall repaired or restored and shall be entitled to have a mechanic's lien on the premises of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement cost.

6. Drilling Through Party Wall. Either party shall have the right to break through the party walls for the purpose of repairing or restoring sewerage, water, utilities, subject to the obligation to restore said wall to its previous structural condition at his own expense and the payment, to the adjoining owner of any damages negligently caused thereby.

7. Destruction of Dwelling Unit. In the event of a destruction of said multiple dwelling unit or any portion thereof, the dwellings so destroyed shall be restored at the joint and equal expense of the adjoining owners, according to a uniform architectural plan and finish; and if any dwelling is but partially destroyed so that the cost of restoring it is not equal to that of restoring the adjoining dwelling, then the amount shall be apportioned according to the individual cost. If the owner of such damaged improvements does not commence repair or reconstruction within thirty (30) days from the date such damage occurs, the other owner may do so; provided, however, that such repair or reconstruction shall not be undertaken without prior notice to any holder of a first Mortgage or first Deed of Trust

encumbering the improvements damaged or destroyed and further provided that such mortgagee may, by reasonable notice, refuse to consent to such repair or replacement. Should any owner fail or refuse to pay his proportionate share of the costs of repair or replacement, the other owner may make payment, and shall be entitled to have a mechanic's lien on the premises of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement cost, interest accruing at the rate of 10% per annum, costs and attorney's fees.

8. Easement. Neither party shall alter or change said party walls in any manner, interior decoration excepted, and said party walls shall always remain in the same location as when erected, and each party to said common or division wall shall have a perpetual easement in that part of the premises of the other on which said party wall is located, for party wall purposes.

9. Exterior Decoration or Structures. The exterior of each and every dwelling, in said multiple dwelling unit, shall be decorated with a uniform color, which shall be agreed upon by a majority of the owners of dwellings within said multiple unit, and the decision shall be binding upon each and all the owners in said multiple unit. The necessity and time for making such exterior decoration shall be determined in the same manner. No owner shall make or suffer any structural or design change (including color change) of any type or nature whatever to the exterior of any improvement on the property without obtaining the prior written consent of the other owners, which consent shall not be unreasonably withheld or delayed. No exterior structures or entrances, in addition to those placed thereon according to the architectural plans on which the buildings are constructed, shall be added to any dwelling unit without the consent of all the owners, which consent shall not be unreasonably withheld or delayed. Should any owner fail or refuse to pay his proportionate

share of the cost of any decoration or structural change, the other owners shall be entitled to have a mechanic's lien on the premises of the owner so failing to pay, for the amount of such defaulting owner's share of the cost, interest accruing at the rate of 10% per annum, costs and attorney's fees.

10. Maintenance of Roofs. The expense of maintaining, repairing and replacing roofs shall be proportionately shared by the owners of adjoining dwellings, according to the relative cost thereof.

11. Insurance. The owners shall obtain and maintain at all times insurance against loss or damage by fire and such other hazards as are generally covered in the area under Standard Extended Coverage Provision for at least the full insurable replacement cost of the dwelling units. Proof of such insurance shall be supplied by each owner to the other owners of the subject premises each calendar year prior to the first day of January. The insurance shall provide that it cannot be cancelled by either the insured or the insurance company until after a written notice has been sent to the owner. Each owner may obtain whatever additional insurance he so desires.

In the event an owner fails to supply proof of insurance coverage, the owners of the adjoining units may increase the coverage of his insurance to include the uninsured units, and shall, upon recording of notice thereof, be granted a lien upon said units for the amount of premium paid. The lien shall attach on the date of recording and may be enforced by foreclosure upon the units in the same manner as foreclosure of a mortgage of real property.

12. Easement for Utilities. A mutual easement for the location, installation, maintenance, repair and removal of utility facilities (including but not limited to systems, lines, pipes, tanks, metering and distribution devices for gas, water, sewer, electricity, telephone, and television purposes) is hereby granted, together with the right of ingress and egress therefore, on, above,

over and through the above described premises and the improvements constructed thereon, subject to the obligation to restore as nearly as possible said premises and improvements.

13. Access Easement. The portion of the property above described which is designated "access easement" on the Final Plat Townhouse Map of Capstone Townhouses is hereby designated as the "access easement" and shall be considered a mutual easement for access; the owner has or intends to construct on said access easement a road or driveway to provide each individual owner access to his separate dwelling unit. The access easement shall be reserved for the common use of the purchasers of the units and shall be used exclusively for said purchasers and their guests. The cost of maintenance and repair of said easement and any improvements thereon shall be shared equally by the owners of the separate dwelling units. Should any owner fail or refuse to pay his proportionate share of the cost, the other owners may make payment, and shall be entitled to have a mechanic's lien on the premises of the party so failing to pay, for the amount of such defaulting party's share of the maintenance or repair cost, together with interest accruing at the rate of 10% per annum, plus attorney's fees.

14. Covenants Running With the Land. The easements hereby created are and shall be perpetual and construed as covenants running with the land and each and every person accepting a deed to any Unit in said multiple unit shall be deemed to accept said deed with the understanding that each and every other purchaser is also bound by the provisions herein contained, and each and every purchaser, by accepting a deed to any unit shall thereby consent and agree to be bound by the covenants herein contained to the same extent as though he had signed this instrument. The undersigned, in executing and delivering deeds to said units shall insert in said conveyances, by reference, that the same are made subject to the terms, conditions, reservations and covenants herein contained, designating the book and page of

the record in which this instrument and the attached plat are recorded.

15. Amendments. These easements and restrictions may be amended or revoked only by an instrument in writing duly executed and acknowledged by all owners of the subject property and all holders of recorded first Mortgages or first Deeds of Trust thereon, and upon the recording of said amending instrument.

16. Severability. If any provision of this Declaration or any section, sentence, clause, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this instrument and the application of any provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

17. General.

a) Any lien filed by any owner pursuant to this Declaration shall be subordinate to the lien of any first Mortgage or first Deed of Trust on the unit.

b) Should any owner or the Declarant be required to take action to enforce, by legal proceeding or otherwise, any condition, restriction, covenant or other right or obligation imposed pursuant to this Declaration, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

c) Each owner shall register its mailing address with the other owners and all notices or demands intended to be served upon owners shall be sent by registered or certified mail, postage prepaid, addressed in the name of the owner at such registered mailing address. In the alternative, notices may be delivered, if in writing, personally to owners.

d) Prospective purchasers of units shall be entitled to determine if a selling owner is in default with respect to any maintenance obligations or other obligation under these covenants by delivering a written inquiry with respect thereto to the owners of the other units. If no response is received to such inquiry

RECORDED

DATE 11/28/78

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