

Recorded FEB 24 1972 9:11 AM
Request of FMO, REC. DIV. & TOAM
Fee Paid JERADEAN MARTIN
Recorder, Salt Lake County, Utah
\$ 12.00 By [Signature] Deputy
Ref.

2438959

ENABLING DECLARATION

FOR

"CAPSTONE" CONDOMINIUM PROJECT

PHASE NO. TWO

SECTION ONE

THIS DECLARATION is made and executed this 23rd day of February, 1972 by CORPORATION NINE and TRIANGLE CONSTRUCTION COMPANY INC., a Joint Venture, hereinafter termed "DECLARANT" pursuant to the provisions of the Utah Condominium Ownership Act.

WITNESSETH:

WHEREAS, Declarant is the owner of a parcel of land together with easements, privileges and appurtenances thereunto belonging, together with residential buildings and certain other improvements heretofore or hereafter to be constructed upon said premises, situate in Salt Lake County, State of Utah, and hereinafter more particularly described, and

WHEREAS, Declarant has constructed or is in the process of constructing certain multiple residential buildings and certain other improvements upon the aforesaid premises in accordance with the plans and drawings set forth in the Record of Survey Map filed concurrently herewith dated the 12th day of February, 1972, consisting of five (5) sheets, prepared and certified to by Robert B. Jones, a duly Registered Utah Land Surveyor, and

WHEREAS, Declarant desires by filing this Enabling Declaration and the aforesaid Record of Survey Map, to submit the said property and the multiple residential buildings and other improvements being constructed, or to be constructed thereon, together with all appurtenances thereto to the provisions of the Utah Condominium Ownership Act as a condominium project to be known as "Capstone" Condominium Project - Phase No. Two, and

WHEREAS, Declarant desires and intends to sell the fee title to the individual units contained in said condominium project, together with the exclusive use of the garage and patio applicable to each building unit and the undivided ownership interests in the common and the limited common areas and facilities appurtenant to each of said units to various purchasers, subject to the covenants, restrictions and limitations herein reserved to be kept and performed.

NOW, THEREFORE, for such purposes, Declarant hereby makes the following Declarations:

I. DEFINITIONS

- 1. The terms used herein shall have the meaning stated in the Utah

VICTOR G. SAGERS
ATTORNEY AT LAW
7321 SOUTH STATE STREET
MIDVALE, UTAH 84047

BOOK 3044 PAGE 704

Condominium Ownership Act and as follows unless the context otherwise requires.

(a) The term "The Act" shall mean and refer to the Utah Condominium Ownership Act as the same may be amended from time to time.

2. The term "The Condominium Project", or sometimes "The Project" shall mean and refer to the entire hereinafter described tract of land, together with all improvements and appurtenances located thereon or belonging thereto and referred to in this Declaration.

3. The term "Record of Survey Map" shall mean and refer to that certain Record of Survey Map filed with this Declaration dated the 12th day of February, 1972, consisting of five (5) sheets, prepared by Robert B. Jones, a duly Registered Utah Land Surveyor.

4. The term "Common Areas and Facilities" shall mean and refer to:

(a) The hereinafter described land on which the buildings are located.

(b) Those Common Areas and Facilities specifically set forth and designated as such in the Record of Survey Map.

(c) All foundations, columns, girders, beams, supports, main walls, roof, exterior walkways, parking areas, service streets, stalls, recreational areas and facilities, yards, gardens, fences, storage spaces, all installations for the furnishing of central services including, but not limited to yard sprinkler systems, water services to buildings, roads and walkways, swimming pools, etc., and installations of power, light and other utilities to the outlets, and in general all other apparatus, installations and other parts of the property necessary or convenient to the existence, maintenance and safety of the Common Area, or normally in common use, including roadways.

(d) That part of the condominium project not specifically included within the respective unit or limited common areas and facilities as hereinafter defined.

(e) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.

5. The term "Limited Common Areas and Facilities" shall mean and refer to certain open parking spaces, patios, carports, garages, and storage areas which are set aside and reserved for the use of the respective units to which they are attached or appurtenant or designated and as indicated on the Record of Survey Map to the exclusion of the other units.

6. The term "Management Committee" shall mean and refer to the management committee of "Capstone" which is charged with and has the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the condominium

project and shall also refer to those persons duly elected thereto by the Unit Owners as provided by the Declaration of "Capstone" Condominium Project - Phase No. One and Phase No. Two, and future phases as may be developed by the Declarant, in accordance with the By-Laws attached hereto.

7. The term "Unit" shall mean and refer to one of the individual units contained within the Condominium Project comprising one of the respective parts of the Condominium Project which is designated as such on the Record of Survey Map and which is intended to be independently owned, encumbered and/or conveyed, including the walls and partitions which are wholly contained within a designated unit and the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings. The paint or other finishing on the inside surfaces of perimeter walls (the exterior walls of the building), shall be deemed to be a part of the pertinent Unit, but all other portions of said perimeter walls shall be deemed to be Common Areas and Facilities. Partition walls, i. e., walls common to two Units, shall be deemed to be part of the Units they separate, and each Unit shall be deemed to include as part thereof the entire area within and extending to the center of such partition walls. Should a Unit Owner own two or more adjoining Units, such Unit Owner shall be deemed to own, (i) the entirety of the partition wall between the Units which he owns, and (ii) all of the pipes, wires, conduits, or other utility lines within such Units, if he or his predecessor in interest originally paid for the cost thereof. The term "Unit" shall not, however, be deemed to include the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding such Unit, except as shown otherwise on the Record of Survey Map, nor shall it be deemed to include the patio or garage, nor shall it include the pipes, wires, conduits or other public utility lines running through or under such Unit which are utilized for or serve more than one Unit.

8. The term "Units" shall mean and refer to a part of the property intended for any type of independent use as defined in the Act and as designated in the Map.

9. The term "Unit Number" shall mean and refer to the number, letter or combination thereof designating the unit and the attached or designated garage and attached patio as designated in the Record of Survey Map.

10. The term "Unit Owner" shall mean and refer to the legal owner of a Condominium Unit as herein defined and the owner of a proportionate share and an undivided interest in the common and limited common areas and facilities as those terms are defined herein.

(a) The term "Unit Owners" shall mean and refer to Unit Owners of "Capstone" Condominium Project - Phase Two, and of past and future phases which the Declarant has and may develop, and including the original purchasers and others who may subsequently become Unit Owners.

11. The term "Property" shall mean and refer to the land, the building, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

12. The term "exclusive use" shall mean and refer to the use of the attached or designated garage and attached or designated patio by the unit owner of the same number as the attached or designated garage or patio.

13. The term "majority" or "majority of the unit owners" shall mean and refer to the owners of more than sixty per cent in the aggregate in interest of the undivided ownership of the common and limited common areas and facilities.

14. The term "common expenses" shall mean and refer to all items, things and sums described in the Act which are lawfully assessed by the management committee against the unit owners in accordance with the provisions of the Act, this Declaration, the By-Laws of the Management Committee (copy of which By-Laws is attached hereto marked Exhibit "B" and by reference made a part hereof), the management agreement for operation of the Condominium Project and such rules and regulations pertaining to the Condominium Project as the management committee may from time to time make and adopt and such other agreements and determinations lawfully made and/or entered into by the management committee.

15. The term "Profits" shall mean and refer to the balance of all income, rents, profits and revenues received by the management committee from or in connection with the management and operation of the condominium project which may remain after the deduction of the common expenses.

16. The term "Manager" shall mean and refer to the person, persons or corporation selected by the management committee to manage the affairs of the Condominium Project.

(a) To the extent applicable to the tenure hereof and not inconsistent herewith, definitions contained in the Act are incorporated herein by reference and shall have the same effect as if expressly set forth herein and made parts hereof.

II. SUBMISSION

Declarant hereby submits the hereinbelow described tract of land, buildings, and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of the Act as a Condominium Project to be known as "Capstone" Condominium Project - Phase No. Two. This Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith.

DESCRIPTION

Beginning at a point North 0°04' East 330.25 feet and North 89°53'40" West 945.10 feet from the Southeast Corner of Section 28, Township 1 South, Range 1 East, Salt Lake Base and Meridian and running thence North 89°53'40" West 300.90 feet; thence North 0°54'10" West 212.03 feet; thence South 89°56' East 394.49 feet; thence South 0°04' West 84.00 feet; thence North 89°56' West 26.00 feet; thence South 0°04' West 107.20 feet; thence North 89°56' West 64.00 feet; thence South 0°04' West 21.00 feet to the point of beginning.

SUBJECT TO any and all easements and rights of way for water, sewer, power, telephone and other utilities and any and all easements and rights of way shown on the survey plat of said "Capstone" Condominium Project - Phase No. Two consisting of five (5) sheets, and any and all easements of record, visible on the land or enforceable in law and equity or applicable to "Capstone" Condominium Project - Phase No. One, if applicable.

III. COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration and submission are made upon and under the following covenants, conditions and restrictions:

1. To establish a plan of condominium ownership for the Condominium Project, the Project is hereby divided into 16 residential units, described in Exhibit "A", attached hereto and by reference made a part hereof, which residential units together with their appurtenant interests in the common and limited common areas and facilities, as hereinafter established, shall constitute separate freehold estates for all purposes provided by the Act. The residential units are the elements of the Condominium which are not owned in common with the owners of other residential units.

2. If any portion of the common areas facilities encroaches upon any of the residential units, a valid easement shall exist for such encroachment, and for the maintenance of the same, so long as such encroachment exists. In the event the Condominium Project is partially or totally destroyed, and then rebuilt, minor encroachments shall be permitted, as required, upon the individual units, and easements for such encroachments, and for the maintenance of same, shall exist for such period of time as may be reasonably required for the reconstruction or repair of said premises.

Easements are reserved through the condominium property as may be required for utility services.

3. The Declarant contemplates that it will develop and construct Phase Three hereinafter sometimes referred to as the "Final Phase", after the completion of Phases One and Two. Such future development and construction of Phase Three shall be on land contiguous to the land of Phases One and Two and will consist of approximately 48 units, including the units of Phases One and Two. The common areas and facilities in such Final Phase shall be included in the common areas and facilities of Phases One and Two, and the common areas and facilities of Phase One and Phase Two shall be included in the common areas and facilities of the Final Phase where applicable and/or necessary. Phases One, Two and the Final Phase shall be treated, managed and governed as one Condominium Project. In this regard, Declarant reserves the irrevocable right and power to amend this Declaration, or the Declaration applicable to Phase One, from time to time, and at any time, to implement the foregoing, and such right and power is hereby granted to Declarant by the Unit Owners.

4. The percentage of ownership in the common areas and facilities of the Condominium shall be for all purposes, including voting. The common expenses shall be allocated among the unit owners in accordance therewith. The percentage of ownership in the common areas and facilities of Phase Two

shall be set forth in Exhibit "A" hereto attached, provided, however, that Declarant shall have the right and authority to alter such percentage if and when the declaration of condominium and the Record of Survey Map for the Final Phase is recorded, it being the intent that the aggregate percentage of ownership in the common areas and facilities of Phase One and Phase Two and Phase Three shall equal one hundred per cent (100%). To that end, the Declarant does hereby irrevocably reserve the right, power and authority to amend this Declaration, including Exhibit "A", upon said instruments creating the Final Phase being recorded. Upon such amendment being made and recorded, the percentage of ownership in the common areas and facilities shall be finally fixed.

5. The buildings and improvements of the "Capstone" Condominium Project are located and to be located upon the premises hereinabove described.

6. The Condominium Project is intended and restricted to use for individual housing purposes.

7. A description of the buildings showing the character of construction, the number of stories and basements, the number of units, garages, and patios and their identity, the approximate areas and immediate common access areas are set forth in and upon the record of survey map which is being recorded with this Declaration and to which reference is hereby made for all of such information.

8. The description of common and limited common areas and facilities and exclusive use areas are identified in the definition of terms in this Declaration hereinabove set forth. The units to which the use of the limited common areas is reserved are shown either upon Exhibit "A" attached hereto and by this reference made a part hereof, or upon the record of survey map, or both.

9. The percentage of undivided interest ownership in the common and limited common areas and facilities appurtenant to each unit and its owner for all purposes including voting, is more particularly shown upon said Exhibit "A" and as may hereinafter be modified as Phases One and Three are completed.

10. This Declaration and the covenants, restrictions, limitations, conditions and uses herein provided for shall constitute covenants to run with the land hereby submitted to the Condominium Project and shall be binding upon the Declarant and its successors and assigns, and upon all subsequent owners or users of all or any part of the Condominium Project and upon their grantees, successors, heirs, executors, administrators, devisees and assigns.

11. The name of the person to receive service of any process which may be authorized by law or under the provisions of this Declaration or under the provisions of the Act is John W. New, who resides at 3411 "B" Honeycut Road, Salt Lake City, Salt Lake County, State of Utah; provided, however, that the Management Committee shall have the right to appoint a successor or substitute process agent. Such successor or substitute process agent shall be designated and appointed by duly executed instrument filed in the Office of the County Recorder of Salt Lake County, State of Utah, for attachment to this Declaration.

12. The Condominium Project, including the common and limited common areas and exclusive use areas and facilities appurtenant thereto, and the business, property and affairs shall be managed, operated and maintained

by a Management Committee as agent of the unit owners in accordance with the terms, conditions and provisions of:

- (1) The Act;
- (2) This Declaration;
- (3) The By-Laws of the Management Committee attached hereto as Exhibit "B", and any amendments thereto;
- (4) Such rules and regulations pertaining to the condominium project as the Management Committee may from time to time adopt and all agreements and determinations lawfully made by the Management Committee and respecting the condominium project not in contravention of the Act, this Declaration and the By-Laws.

13. In the event of the destruction or damage of any building in the Condominium Project, the following procedure shall apply: (i) If loss arising from such destruction or damage to any unit does not exceed the sum of \$1,000.00, the Management Committee shall be responsible for repairing, rebuilding, and/or restoring the property to the condition it was in immediately prior to such destruction or damage, and the Management Committee shall in this connection be entitled to use for such purpose the proceeds of any insurance policies which it may have had in force on the said building as of the date of such destruction or damage. (ii) In the event that such destruction or damage to any unit exceeds the sum of \$1,000.00, but is less than 75 per cent of the value of the property destroyed or damaged, the proceeds of any insurance policies shall be paid as trustee to some bank or trust company in Salt Lake City agreeable to all mortgagees of the premises and the Management Committee, and such proceeds shall be employed in repairing, rebuilding, and/or restoring the property to the condition it was in immediately prior to such destruction or damage under a disbursement schedule and pursuant to appropriate agreement between such mortgagees and the Management Committee. (iii) In the event that such destruction or damage amounts to 75 per cent or more of the value of the property destroyed or damaged, the unit owners shall, at a meeting duly and regularly called by the Management Committee for that purpose, determine whether or not such property shall be rebuilt, repaired, or disposed of. Such determination, however, must be approved by all mortgagees of the premises or in the event any mortgagee refuses to approve such rebuilding or repair, the mortgage held by such mortgagee shall either be purchased or discharged by payment in full. The determination under this paragraph of the extent of any damage to the Project shall be made by a group of three (3) appraisers who shall be selected by the Management Committee for that purpose. In the event all of such appraisers cannot agree on the extent of the damage or destruction to the Project, the decision of any two (2) with respect thereto shall be conclusive unless unit owners representing the ownership of not less than 75 per cent of the units agree to the withdrawal of the Condominium Project from the provisions of the Act and to its subsequent disposal. If the unit owners so determine that the premises shall be repaired, rebuilt, or restored to the same condition that they were in immediately prior to such destruction or damage, the procedure outlined in (ii) above with respect to the handling of insurance proceeds shall apply and be employed. In the event the cost of such repair, rebuilding, or restoration shall exceed the amount realized by the Management Committee from the proceeds of any insurance policy or policies as above provided, all of the unit owners shall contribute to such additional costs in relation to their undivided interests in the common and limited common areas and facilities. In the event that 75 per cent or more of the unit owners agree to the withdrawal of the Condominium Project from the provisions of the Act and to its subsequent disposal, the proceeds of insurance and the proceeds arising from such disposal

shall be paid to the mortgagees, if any, or the premises to the extent of the amount of any indebtedness, and overplus of such proceeds shall be paid to the Management Committee for distribution to the unit owners as their interests may appear.

14. Except as herein otherwise provided, the vote of more than sixty-five per cent (65%) in the aggregate in interest of the undivided ownership of the common and limited common areas and facilities shall be required to amend this Declaration and/or the Record of Survey Map, which approval and consent shall be by duly executed and recorded instruments and as otherwise provided in Paragraph 3 of this section and Exhibit "A" attached hereto and as otherwise reserved and provided in recorded instruments applicable in Phase No. One.

15. As more fully provided in Section 2 of Article XIX of the By-Laws, the Management Committee shall insure that the Condominium Project is at all times covered by fire, liability and property insurance in the name or names of such person or persons and in such amounts as the Management Committee may from time to time determine to be proper, necessary and adequate. The individual unit owners shall carry insurance coverage of their own on such of their individual property as may be located in their units and shall procure such further insurance coverage respecting their ownership, use or occupation of their individual units as they may deem necessary; provided, however, that no unit owner shall be entitled to exercise his right to maintain insurance coverage on a unit of which he is the owner in such a way as to decrease the amount which the Management Committee may realize under any insurance policy which the Management Committee may have in force on the project at any particular time.

16. Each Unit Owner, tenant or occupant of any unit shall comply with the provisions of the Act, this Declaration, the By-Laws of the Management Committee and the rules and regulations referred to above and all agreements and determinations lawfully made and/or entered into by the Management Committee, including any amendments thereto and any failure to comply with any of the provisions of said Act, Declaration, Articles, By-Laws, rules, regulations, agreements and determinations, or any amendments thereto, shall be grounds for an action by the committee to recover any loss or damage resulting therefrom or for injunctive relief.

17. The Management Committee shall have and it is hereby given the authority to grant such utility easements over and across the common areas and facilities as shall be determined by the Management Committee to be in the interest of the Unit Owners.

18. The provisions of this Declaration shall be in addition and supplemental to the provisions of the Act.

19. The invalidity of any one or more phrases, sentences, clauses, paragraphs, or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained therein should be invalid or should operate to render this agreement invalid, this instrument

shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections had not been inserted.

20. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

21. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

22. The topical or other headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of this Declaration.

23. This Declaration shall take effect upon recording as provided by the Act.

Made and executed the day and year first above written.

CORPORATION NINE and TRIANGLE
CONSTRUCTION COMPANY INC., a
Joint Venture

By John W. New

CORPORATION NINE

By John W. New
President

TRIANGLE CONSTRUCTION COMPANY INC.

By Harvey G. Dalton
President

STATE OF UTAH)

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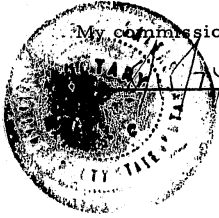
County of Salt Lake)

On the 23rd day of February, 1972, personally appeared before me JOHN W. NEW, who being by me duly sworn did say that he is the President of CORPORATION NINE, and HARVEY G. DALTON, who being by me duly sworn did say that he is the President of TRIANGLE CONSTRUCTION COMPANY INC., and the above and foregoing instrument was signed in behalf of said corporations by authority of a resolution of their respective Board of Directors and the said JOHN W. NEW and HARVEY G. DALTON acknowledged to me that said corporations executed the same; and JOHN W. NEW and HARVEY

G. DALTON did acknowledge to me that they signed the foregoing instrument on behalf of the Joint Venture.

John D. Super

NOTARY PUBLIC



My commission expires: _____

Residing at: _____

Salt Lake County Utah

EXHIBIT "A"

TO

"CAPSTONE" CONDOMINIUM PROJECT

PHASE NO. TWO

This Phase of the Project will have eight (8) buildings with two (2) units each. Each unit will own the percentage of the common areas and facilities as hereinbelow set forth with the exception that all installations for common areas and limited common areas and for the furnishing of central services, such as yard sprinkler systems, water services to buildings, roads, walkways, swimming pools, etc., essential to the furnishing of such services to prior Phase No. One and subsequent Phase No. Three, shall be shared pro rata with all such units of said phases heretofore completed and to be hereinafter erected and completed. Declarant shall have the right and authority to alter such percentage if and when the declaration of condominium and the Record of Survey Map for the Final Phase is recorded, it being the intent that the aggregate percentage of ownership in the common areas and facilities of Phase One, Phase Two and Phase Three shall equal one hundred per cent (100%). To that end, the Declarant does hereby irrevocably reserve the right, power and authority to amend this Declaration, including Exhibit "A", upon said instruments creating the Final Phase being recorded. Upon such amendment being made and recorded, the percentage of ownership in the common areas, limited common areas and facilities shall be finally fixed and adjusted.

PERCENT OWNERSHIP IN COMMON AND LIMITED COMMON AREAS OF THIS PHASE AND SUBJECT TO ADJUSTMENT AND TO USAGE AND OWNERSHIP OF PRIOR AND SUBSEQUENT PHASES (ALSO DETERMINATIVE OF VOTING RIGHTS AND PRO RATA SHARE OF OWNERS EXPENSES AS HEREIN SPECIFIED)

<u>BUILDING</u>	<u>UNIT NO.</u>	
6	201	06.564
6	202	06.564
7	203	06.564
7	204	06.564
8	205	06.564
8	206	06.564
9	207	06.062
9	208	06.062
10	209	06.062
10	210	06.062
11	211	06.062
11	212	06.062
12	213	06.062
12	214	06.062
13	215	06.062
13	216	06.062