

PARTY WALL AGREEMENT

THIS AGREEMENT made effective as of the ____ day of _____, _____.

BETWEEN:

Heather Kyle North
Ewen Richard North
405 Wood Avenue
Salida, Colorado 81201

- and -

Upper Ten Development Inc.
403 Wood Avenue
Salida, Colorado 81201

WHEREAS Party 1 is the owner of certain property located in the City of Salida, State of Colorado, County of Chaffee designated as Block 1, Lot C, of LOT 1 OAK & WOOD SUB EXEMPTION PLAT 426286 MIS568 REC 432600 Records; (“Parcel A”)

AND WHEREAS Party 2 is the owner of certain property located in the City of Salida, State of Colorado, County of Chaffee designated as Block 1, Lot B, of LOT 1 OAK & WOOD SUB EXEMPTION PLAT 426286 MIS568 REC 432600 Records; (“Parcel B”)

AND WHEREAS Parcel A adjoins Parcel B, and the two properties together constitute one building structure separated by a common wall and/or fence (the “Party Wall and/or Fence”) as hereinafter more fully defined;

AND WHEREAS, in order to maintain a high degree of privacy for their respective properties while ensuring a consistent harmonious character to the properties and preserving their residential suitability to each of the parties, the parties desire to commit to writing the terms and conditions governing the Party Wall / Fence.

NOW THEREFORE THIS AGREEMENT WITNESSES that the parties hereto do hereby adopt and prescribe the following covenants and restrictions which should be and are hereby impressed upon and henceforth will run with the land, to wit:

1. The term “Party Wall” shall mean the dividing wall shared by Parcels A and B. Any matters concerning Party Walls which are not covered by the terms of this Agreement shall be governed by the applicable laws regarding party walls. “Party Fence” shall mean the exterior fences separating Parcel A and Parcel B. Any matters concerning Party Fences which are not covered by the terms of this Agreement shall be governed by the applicable laws regarding party fences.

2. The costs of maintaining all Party Walls and Party Fences shared by Parcel A and Parcel B shall be borne equally by the owners of such Parcels.

3. In the event of damage or destruction to any Party Wall, Party Fence, shared monolithic slab, or shared roof if the roofline is joined ("Common Structure" herein) from any cause, other than the negligence of either party hereto, the owners of Parcel A and Parcel B on either side of the Common Structure shall repair or rebuild the Common Structure, and the costs of such repair or rebuilding shall be borne equally by the owners of Parcel A and Parcel B, except if such damage or destruction was caused by the negligence or willful misconduct of one of the owners, in which case such owner shall bear the entire cost of repair or reconstruction. Each such owner shall have the right to the full use of the Common Structure so repaired or rebuilt. If either party shall neglect or refuse to pay its share of the costs of repair or reconstruction, or all of such costs in case of negligence, the other party may have the Common Structure repaired or restored and shall be entitled to have a mechanic's lien on the lot and dwelling unit of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement costs together with interest at the maximum rate allowable. The party having such Common Structure repaired shall, in addition to the mechanic's lien, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or by law. The mechanic's lien granted herein is effective only if filed in the Real Property Records of the County where the Property is located, by affidavit declaring under oath the claim of the mechanic's lien.

4. Neither party shall alter or change a Common Structure in any manner, with the exception of interior painting and decorating which is not structural in nature, and such Common Structure shall remain in the same location as when originally erected. The owner of each Parcel adjoining such Common Structure shall have a perpetual easement in that part of the premises of the other on which such Common Structure is located, for the purposes of repairing, replacing and maintaining such Common Structure.

5. Each owner shall keep all exterior walls of his dwelling unit in good condition and repair at his sole cost and expense. No owner shall do or permit to be done any act or thing that would tend to depreciate the value of the building.

6. Each owner shall maintain the roof over his dwelling unit in good condition and in such manner so as not to damage any other portion of the building. Each owner shall share equally in the costs to repair or maintain the roof over the Party Wall or Party Fence due to normal wear or physical damage. If a roofline is joined and both roofs must be replaced, replacement will be coordinated between the owners.

7. An owner who, by his negligence, disinterest or willful act causes a Party Wall or roof to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and shall pay all damages resulting from such exposure. The cost of normal and timely weatherproofing and maintenance of the roof shall be in accordance with Paragraph 6.

8. If any monolithic slab repairs are required, the entire monolithic foundation must be involved in the repair process. The owners of both Parcel A and Parcel B agree to cooperate in order to effect timely repairs to the slab. Each party shall share equally in any such repair.

9. In the event it shall be necessary for any owner to place this Agreement in the hands of an attorney for the enforcement of any of its rights hereunder or for the recovery of any monies due hereunder, and if it is necessary to bring suit for the enforcement of such rights or such recovery, the prevailing party in such suit shall recover from the losing party all costs of court and reasonable attorney's fees, as determined by the court, in addition to any other relief or recovery awarded by the Court.

10. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded.

11. Enforcement of these covenants shall be by proceeding at law or in equity against any person or persons violating or attempting to violate the same seeking either to restrain violation or to recover damages or both.

12. Invalidation of any one of these covenants by judgment or court order shall not affect any of the other provisions which remain in full force and effect.

EXECUTED AT _____ effective the _____ day of _____,
_____.

(signature of party 1)

(signature of party 2)

(signature of additional party 1, if joint owners)

(signature of additional party 2, if joint owners)

