

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE BLOOMINGTON FAIRWAY TOWNHOUSE ASSOCIATION

THIS DECLARATION of covenants, conditions and restrictions, made and executed this 17<sup>th</sup> day of June, 1976, in the County of Washington, State of Utah, by TERRACOR, a Utah corporation, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Washington, State of Utah, which is described as:

Bloomington Country Club No. 3, Block 3, according to the official subdivision plat map thereof on file in the Office of the County Recorder, Washington County, State of Utah;

and which is more particularly described as:

A tract of land in the N.E. 1/4 of Section 14, T. 43 South, Range 16 West, Salt Lake Base and Meridian, in the County of Washington, State of Utah, to wit:

Begin at a point on the south R.O.W. line of an existing 50' street which point is S 50°45'06" W, 1027.33 ft. from the N.E. corner of Sect. 14, T. 43 S., R. 16 W., S.L.B. & M., and running thence along the south R.O.W. line of said existing street to a point on a 20.0 ft. radius curve to the right, thence southerly along the arc of said curve an arc distance of 33.55 ft. (central angle = 96°07'30") to a point of reverse curvature on a 1580 ft. radius curve to the left, said point being on the west R.O.W. line of an existing 60 ft. street thence southwesterly along said R.O.W. line and arc of said curve a distance of 155.12 ft. (central angle = 5°37'31") to a point of reverse curvature on a 560 ft. radius curve to the right, thence southwesterly along the arc of said curve a distance of 593.98 ft. (central angle = 60°46'20"), thence to point of beginning.  
(Containing 3.80 acres)

WHEREAS, Declarant will convey the said properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed and occupied subject to the following easements, restrictions, covenants, conditions, assessments, charges and liens, which are for the purpose of protecting the value and desirability of, and which shall be construed as covenants of equitable servitude and 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.

Entry No. 176233 Fee \$15.00  
Recorded at Request of  
Jeff Morby  
Date July 1, 1976 at 9:00A M  
Book 197 Page 117-130  
Shirley J. Anderson  
Washington County Recorder

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to THE BLOOMINGTON FAIRWAY TOWNHOUSE ASSOCIATION, a Utah Nonprofit Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean and refer to all areas of real property shown on the recorded plat map of the Properties and intended for and dedicated to the common use and enjoyment of the owners therein, which common area is more particularly described as:

Bloomington Country Club No. 3, Block 3, according to the official subdivision plat map thereof on file in the Office of the County Recorder, Washington County, State of Utah, but excepting therefrom those twenty-six (26) lots identified as Numbers 1102, 1106, 1110, 1114, 1118, 1122, 3410, 3414, 3418, 3422, 3426, 3430, 3434, 3438, 3442, 3446, 3450, 3454, 3458, 3462, 3466, 3470, 3474, 3478, 3482, and 3486, according to said official plat map.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat map of the Properties with the exception of the Common Area.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding mortgagees or others having such interest merely as security for the performance of an obligation unless and until said mortgagee or other holder of a security interest has acquired title to any Lot which is a part of the Properties pursuant to a foreclosure or any proceeding in lieu of foreclosure.

Section 6. "Member" shall mean and refer to every owner of a fee or undivided fee, interest in any Lot which is, by covenants of record, subject to assessment by the Association.

Section 7. "Declarant" shall mean and refer to Terracor, a Utah corporation, its successors and assigns if such successors or assigns acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Class I Lots" shall mean and refer to any Lot upon which a residence or single family dwelling unit has been constructed and completed, as evidenced by a Notice of Final Inspection issued by the Association Board of Directors.

Section 9. "Class II Lots" shall mean and refer to any Lot upon which a residence or single family dwelling unit has begun to be constructed but has not been completed. Construction shall be deemed to have begun when the ground is broken.

Section 10. "Class III Lots" shall mean and refer to any vacant Lot or Lots upon which the construction of a residence or single family dwelling unit has not begun.

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Section 11. "Townhouse" or "Townhouse Unit" shall mean and refer to a single family dwelling unit with or without walls or roofs in common with other single family dwelling units and which shall include the following:

(a) Fee title to the real property lying directly below said single family dwelling unit;

(b) An equal and undivided interest in the Common Area, as defined and described above, subject to the right of the Association as set forth in Article III below.

Section 12. "Board of Directors" shall mean and refer to the governing board of The Bloomington Fairway Townhouse Association.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member unless and until said holder of a security interest has acquired title to any Lot which is a part of the Properties pursuant to a foreclosure or any proceeding in lieu of foreclosure. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association, and ownership of a Lot subject to such assessment shall be the sole qualification for membership.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all those owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B Members shall be the Declarant. The Class B Member shall be entitled to four (4) votes for each lot in which it holds the interest required for membership by Section 1, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On January 1, 1981.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot in which it holds the interests required for membership under Section 1.

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ARTICLE III  
PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Area. The Declarant may retain the legal title to the Common Area until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same, but notwithstanding any provision herein, the Declarant hereby covenants, for itself, its heirs and assigns that it shall convey the Common Area to the Association, free and clear of all liens and encumbrances, not later than January 1, 1981.

Section 3. Extent of Members' Easements. The Members' rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3rds) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken;

(d) The right of the Association to reasonably limit the number of guests of a Member;

(e) The right of the Declarant and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said Area. In the event of a default upon any such mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such Area, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such Area to a wider public until the mortgage debt is satisfied whereupon the possession of such Area shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

(f) The right of the Association to take such steps as are reasonably necessary to protect the above-described areas against foreclosure; and,

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(g) The right of individual Members to the exclusive use of garage and patio spaces as provided in Section 4 hereof.

Section 4. Garage Rights and Patio Rights. The Association shall provide upon the Common Areas at least one (1) garage space and one (1) patio area for each Townhouse Unit. Subject to reasonable rules and conditions, the Association shall designate at least one (1) garage space and one (1) patio area conveniently located with respect to each Townhouse Unit for the exclusive use of the Members residing therein, their families and guests. The use of such space by any other Member or person may be enjoined by the Association or the Members entitled thereto. The right to the exclusive use of such parking space and patio area and to its maintenance and designation by the Association shall be appurtenant to and shall pass with the title to each Townhouse Unit.

Section 5. Delegation of Use Privileges. Any Member may delegate, in accordance with the Articles and Bylaws of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS

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Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned by him within the Properties hereby covenants and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) Annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors-in-title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the homes situated upon the Properties, including, but not limited to, the payment of taxes and insurance thereon, the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Area, the payment of the cost of repairing, replacing, and maintaining the exteriors of each Lot as provided in Article VII, the payment of administrative expenses of the Association, and the establishment of a reserve account for repair, maintenance, replacement, taxes, insurance and other charges as herein specified, and may be used, at the discretion of the Board of Directors, for the payment of trash collection and sewer and water costs.

Section 3. Basis and Maximum of Annual Assessments. Until two (2) years after the recording of this document in the Office of the Washington County Recorder the maximum annual assessment shall be Six Hundred Dollars (\$600.00) for each Class I Lot, Sixty Dollars (\$60.00) for each Class II Lot, and Six Dollars (\$6.00) for each Class III Lot.

(a) From and after the date referenced in Section 3 above the maximum annual assessments may be increased once a year by the Board of Directors without a vote of the member by not more than the Annual Cost of Living percentage increase for the twelve- (12-) month period immediately preceding the annual assessment increase. The Annual Cost of Living percentage increase shall be determined by the United States Department of Labor or Department of Commerce.

(b) From and after the above-referenced date the maximum annual assessments may be increased above the Annual Cost of Living percentage increase by a vote of two-thirds (2/3rds) of each class of members voting, in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may, after consideration of current and future needs of the Association, fix the annual assessment at an amount not to exceed the maximum.

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Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of Members voting, in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance of said meeting and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 hereof and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3rds) of the votes of each class of Members, voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance of said meeting and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, as provided in Sections 3, 4 and 5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3, 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessment must be fixed at a uniform rate for all Class I Lots, Class II Lots, and Class III Lots, provided that the assessments of Class II Lots shall be fixed at a uniform rate of one tenth (1/10th) of the rate of assessment of Class I Lots and the assessments of Class III Lots shall be fixed at a uniform rate of one-tenth (1/10th) of the rate of assessment of Class II Lots. Both annual and special assessment may be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments; Dutes of Board of Directors; Due Dates; Adjustment of Assessments in Certain Cases. The annual assessment provided for herein shall commence on the date fixed by the Board of Directors of the Association to be the date of commencement, provided that said commencement date shall be the first day of a calendar month.

The first annual assessments shall be adjusted according to the number of months remaining in the calendar year. The same adjustment shall be made to the first assessment levied against any Class II Lot which becomes a Class I Lot and any Class III Lot which becomes a Class II Lot, at a time other than the beginning of any assessment period, and to the first assessment levied against any property which is hereafter added to the Properties now subject to assessment against each Lot at least thirty (30) day's in advance of each annual assessment period, and shall send written notice of the annual assessment to every Owner subject thereto.

The due dates shall be established by the Board of Directors, upon which dates the assessments for any year shall become due and payable; provided, that the Board of Directors may provide for the payment of annual assessments in twelve (12) equal monthly installments. The due date of any special assessments authorized herein shall be fixed by the Board of Directors, subject to the same notice and payment requirements pertaining to annual assessments.

The Board of Directors shall prepare a roster of the Properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, shall record payments of assessment, and shall be open to inspection by any Member of the Association at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 9. Effect of Non-Payment of Assessment: Remedies of the Association. Any assessment not paid within thirty (30) day's after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of twelve percent (12%) per annum until paid.

The Association may bring an action at law against the Owner personally obligated to pay any such delinquent assessment, or may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale or foreclosure in Deeds of Trusts or Mortgages, or in any manner permitted by law, or may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member, and there shall be added to the amount of such delinquent assessment the costs and expenses of said action, sale or foreclosure, and a reasonable attorney's fee.

The personal obligation of an owner to pay any assessments shall remain his personal obligation for the statutory period and shall not pass to his successor-in-title unless expressly assumed by them.

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No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Properties. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

(a) Any properties dedicated and accepted by the local public authority and devoted to public use;

(b) All Common Area;

(c) All properties exempted from taxation by the laws of the State of Utah, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein contained, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

Section 12. Insurance and Insurance Assessments. The Board of Directors of the Association, or its duly authorized agents, shall have the authority to, and shall, obtain and continue in effect all types of insurance necessary to protect the Association, its Officers, Directors, and Members, and mortgagees holding mortgages covering Townhouse Units or other building constructed upon the Properties, as their respective interest may appear, including but not limited to fire and extended casualty insurance coverage (including storm, smoke, and explosion damage) on all Townhouse Units and other buildings on the Properties, and broad form public liability insurance on the Association covering all damage or injury caused by the negligence of said Association, or its agents, in caring for the Common Areas or otherwise performing any of its authorized functions. However, should liability insurance for the protection of the officers or Directors of the Association be obtained, such insurance shall protect only against negligent acts of such persons and shall not protect against intentional or willfully negligent acts.

Said insurance coverage shall be written in the name of the Association as trustee for each of the Owners of the Properties and of the buildings situated thereon, and said coverage shall be in an amount equal to the full insurable value or replacement cost of all property covered thereby and, in the case of liability coverage, in an amount deemed adequate by the Board of Directors.

Premiums for insurance obtained by the Board of Directors pursuant to this Section shall be a common expense of the Association and shall be collectable from Members of the Association as part of the annual assessments in the manner specified in this Article IV.

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In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair said damaged or destroyed portions of the property, as rapidly as possible, in conformity with the plans and specifications by which said properties were erected; provided, that in the event that the cost of repair or rebuilding shall exceed the insurance proceeds received therefor, the Board of Directors shall levy a special assessment as provided in Article IV, Section 8, above, to make up any deficiency necessary to repair or rebuild said property.

Provision for the acquisition of insurance coverage written in the name of the Association shall be without prejudice to the right of each Owner to insure his own personal and real property for his own benefit.

ARTICLE V  
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhouses upon the Properties and placed on the dividing line between the Lots 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 liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 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.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, 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 others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, 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 elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

Section 5. Right to Contribution Runds With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) day's after written request to do so, the Board of Directors of the Association shall select an arbitrator for the refusing party.

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ARTICLE VI  
ARCHITECTURAL CONTROL COMMITTEE

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, colors, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) day's after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VII  
EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment under Article IV hereof, including, but not limited to the following: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, fences, street signs, lights, mailboxes, trees, shrubs, grass, walks, and other exterior improvements.

Section 2. Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such Lot is subject under Article IV hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article IV hereof, provided that the Board of Directors of the Association, when establishing the annual assessment against each Lot for any assessment year as required under Article IV hereof, may add thereto the estimated cost of the exterior maintenance for that year but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

Section 3. Maintenance of Garage and Patio Areas. The Owner of each Townhouse Unit shall provide exterior maintenance upon the patio area and interior maintenance of the garage designated for his exclusive use and enjoyment, and shall repair, replace and care for said patio area and said garage interior and shall not permit any rubbish, trash, garbage or other nuisance to accumulate thereon; provided that in the event an Owner of such Townhouse Unit shall fail to maintain said patio area or said garage interior in accordance with the requirements of this Section, the Board of Directors of the Association shall have the right, through its agents and employees, to enter in and upon said patio area or said garage and repair, replace, maintain and restore said patio area or said garage in accordance herewith, and the cost of such repair, replacement and maintenance shall be assessed against said Owner's Lot and shall be added to and become a part of the annual maintenance assessment or charge to which said Lot is subject under Article IV hereof.

Section 4. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Townhouse Unit at reasonable hours on any day except Sunday.

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ARTICLE VIII  
USE RESTRICTIONS

Section 1. General Use Restrictions. All of the Properties which are subject to this Declaration of Covenants, Conditions and Restrictions are hereby restricted to residential dwellings, including Townhouses and ancillary and accessory uses and buildings in connection therewith, including but not limited to community buildings. All buildings or structures erected in the Properties shall be of new construction and no buildings or structures shall be removed from other locations to the Properties and no subsequent buildings or structures other than Townhouses shall be built on any unit where the Declarant has theretofore constructed a Townhouse. No building or structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any unit at any time as a residence either temporarily or permanently.

Section 2. Construction, Business and Sales. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Townhouse Units during the period of construction and sale of said Townhouses and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yards, signs, model units and sales offices.

Section 3. Livestock. No animals, livestock or poultry of any kind shall be raised, bred or kept on any said Lots, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose and provided that said pets shall not be permitted outside of said Lots unless leashed and kept under strict control.

Section 4. Signs; Commercial Activity. Except that no more than one "For Rent" or "For Sale" sign of not more than five (5) square feet may be maintained on any Lot, no advertising signs, billboards, objects or unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb the residents of the Properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the Properties except activities intended primarily to serve residents in the Properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the constructions and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 5. Planting and Gardening. Except in the individual patio area appurtenant to a Townhouse, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representative.

Section 6. Use of Common Area. Except for the right of ingress and egress, the Owners of Lots are hereby prohibited and restricted from using any of said Common Area outside the exterior building lines, and the patio areas, other than as permitted in this Declaration of Covenants or as may be allowed by the Board of Directors of the Association. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Owners of Lots in the Properties and is necessary for the protection of the interests of all said Owners in and to the Common Area.

As part of the overall program of development of the Properties into a residential community and to encourage the marketing thereof the Declarant shall have the right of use of the Common Area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 7. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Properties or any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Properties or any Lot.

Section 8. Exterior Television or Other Antennas. No exterior television, radio or other antennas shall be placed, allowed or maintained upon any Townhouse Unit, or upon any structure or portion of the improvements situated and located upon the Properties without prior written approval and the authorization of the Board of Directors, other than an aerial for a master antenna system, should any such master system be authorized by the Board of Directors.

Section 9. Interior Utilities. All utilities, fixtures and equipment installed within a Townhouse, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Townhouse, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair any easement of hereditament nor do any act nor allow any condition to exist which will adversely affect the other Townhouses or their Owners.

ARTICLE IX  
EASEMENTS

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Section 1. Encroachments. Each Lot and the property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure containing two or more Townhouses is partially or totally destroyed, and then rebuilt, the owners of the Townhouses so affected agree that minor encroachments of parts of the adjacent Townhouse Units or Common Area due to contraction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities. There is hereby created a blanket easement upon, across, over and under all of the said Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephone and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said Townhouses. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said Property without conflicting with the terms hereof.

Section 3. Police, Fire and Ambulance Services. An easement is hereby granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties.

Section 4. Maintenance by Association. An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the Common Area and any Townhouse to perform the duties of maintenance and repair of the Townhouses or Common Area provided for herein.

Section 5. Other Easements. The easements provided for in this Article IX shall in no way affect any other recorded easement on said premises.

#### ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these Covenants. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant and lot owners, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the fact that any other article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

Section 3. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly recorded in the Deed Records of Washington County, Utah.

Section 4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

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Section 5. Gender and Grammar. 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.

Section 6. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3rds) of each class of members.

ARTICLE XI  
ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned. "Declarant" shall include all assigns or successors-in-interest of Declarant.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 17<sup>th</sup> day of June, 1976.

TERRACOR, a Utah Corporation  
DECLARANT

ATTEST:

Wm. B. Parsons III

By: C. Bruce Miller  
Its: Executive Vice-President

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STATE OF UTAH )  
: ss.  
County of Washington)

On the 17<sup>th</sup> day of June, 1976, before me, a Notary Public in and for the above State and County, personally appeared C. Bruce Miller and Wm B Parsons III who being by me first duly sworn, did depose and say: That he, the said C. Bruce Miller is the Executive Vice-President and he, the said Wm B Parsons III is the Assistant Secretary of TERRACOR, a Utah Corporation; that the above and foregoing instrument was signed by said Corporation by authority of a resolution of its Board of Directors; and that said Corporation duly executed the same and the seal affixed thereto is the duly authorized seal of said Corporation.

My Commission Expires:

May 12, 1980

Arden A. Smith

Notary Public

Residing at:

4017 1/2 S. 1000 E. Salt Lake City, Utah

