

Recorded at request of SECURITY TITLE COMPANY Order No. _____ Fee Paid 34.50
Date AUG 25 1980 at 9¹⁴ A.M. by CAROL DEAN PAGE Recorder Davis County
By Shauna Martin Deputy Book 836 Page 318

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS OF SUMMERTREE, A SUBDIVISION

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Summertree 661-44 and

This Declaration is made this 22 day of August, 1980, by Vicor Construction, Inc., a Utah Corporation and the undersigned, being the record legal owners of certain real property located in Davis County, State of Utah, which is more particularly described as follows:

Beginning at a point on an existing fence line, west 447.46 feet and south 65.29 feet from the N $\frac{1}{4}$ Cor, Sec 24 T2N, RIW SLB 8 M, said point being west 200.0 feet from the westerly R/W line of 800 west street in the City of West Bountiful, Utah and running thence S 0°19'34"E 88.67 feet; thence east, 200.0 feet to the west side of said 800 West Street; thence S 0°19'34"E, 241.48 feet, thence west, 290.0 feet, thence S 0°19'34"E. 94.39' feet; thence S 89°48'06"W, 418.45 feet; thence N8°52'50"E, 1.00 feet, thence S89°48'06"W, 50.63 feet; thence S8°52'50"W, 1.00 feet; thence S89°48'06"W. 142.48 feet to the east side of a 66.00 foot R/W of the Denver & Rio Grande Railroad, thence N9°01'R, 431.99 feet, along said railroad; thence east 631.43 feet to beginning. Containing 323,277 sq. feet or 7.4214 acres.

The undersigned Declarant desires to establish the nature of the use and enjoyment of said property and to provide for the preservation of values in the development and maintenance of the subdivision. Accordingly, the following conditions, restrictions and stipulations shall run with the land and shall govern all conveyances of lots, located in the above subdivision and shall be binding on all parties and all persons claiming under them.

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Entered

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On Margin
Compared

RECITALS:

A) Summertree Subdivision as described above has been divided into 44 lots, such that upon each of the following pairs of lots there will be a two family structure, hereafter referred to as "duplex". Lots 1 & 2 are single family lots and do not possess "0" lot line qualities but shall otherwise be governed by these covenants.

<u>LOT #</u>	<u>LOT#</u>	<u>LOT #</u>
3/4	17/18	31/32
5/6	19/20	33/34
7/8	21/22	35/36
9/10	23/24	37/38
11/12	25/26	39/40
13/14	27/28	41/42
15/16	29/30	43/44

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B) The aforescribed lots are contiguous pieces of the real property described above (hereinafter referred to as 'Real Property') upon which will be or have been, constructed townhouses (hereinafter referred to as 'duplexes') such that virtually one half of each duplex is situated on one lot, and the other half of each duplex is situated on the other adjacent and corresponding lot, with a common wall, roof, foundation, and other items joining the two halves of the duplex. While each unit of a duplex contains a more or less self contained dwelling unit, the roof of each is joined with the roof of the other to form one contiguous rooftop; with the floor, exterior walls, foundation, and other aspects of the duplex experiencing the same features."

C) Because the esthetic and monetary value and structural integrity of each half of a duplex is inextricably linked to the condition and use of the other half of the duplex, the Declarant wishes to establish the following covenants, conditions, and restrictions, and reservations, which shall not only bind itself but shall constitute covenants running with the land and shall bind all future owners and occupants of said lots together with all their respective successors, heirs, and assigns.

NOW, THEREFORE, for the mutual benefit of the Declarant and the mutual benefit of each lot owner, Declarant and each lot owner do hereby covenants, and agree as follows:

1. The contents of the Declaration are intended by the Declarant to constitute covenants running with the land of all lots within said subdivision, binding not only Declarants, themselves but any and all future owners and occupants of all lots, together with all successors, heirs, and assigns of Declarants, and shall be enforced as equitable servitude to the extent permissible by law.

2. All successive future owners and occupants of said lots shall have the same right to invoke and enforce the covenants, conditions, restrictions and reservations contained in the Declaration as the Declarant now does to all their lot owners thereof.

3. When referred to collectively herein, each half of a duplex and its adjacent and corresponding other half shall be referred to as 'Parcels', and shall represent all duplexes within said subdivision, and each half of a duplex shall be referred to as a "Parcel" and shall represent all halves of duplexes within the subdivision.

4. The owner of each of said Parcels shall, at all times, maintain fire and extended coverage insurance for no less than one hundred percent (100%) of the replacement cost of the structures and other insurable property of his Parcel, containing any appropriate clauses or endorsements required by mortgagees. Nothing herein shall preclude the owners of said Parcels from obtaining a blanket insurance policy insuring both Parcels simultaneously, provided such a policy is available and provided the same shall be acceptable to all first mortgagees of said Parcels.

5. The owner of each of said Parcels shall furnish the owner of the other adjacent & corresponding Parcel, together with all first mortgagees, with a copy of the policy of fire and extended coverage on his Parcel. All policies of fire and extended coverage insurance shall provide that they are non-cancellable without at least thirty (30) days prior written notice to the owner of both Parcels and all first mortgagees with respect thereto; in addition, each such policy shall give the owner of either of said Parcels and any first mortgagee with respect to said Parcels the right, but not the obligation, to pay delinquent premiums on said policies and maintain such insurance on behalf of the owner of the insured Parcel, or to obtain fire and extended coverage insurance with respect to said Parcel for the benefit of the owner thereof should said owner fail to provide adequate insurance therefore.

6. Any premiums for insurance paid by a first mortgagee or an owner of either of said Parcels for the benefit of the owner of the other of said Parcels shall be immediately reimbursed by the owner for whose benefit the premiums are paid.

7. Any premiums for insurance paid by a first mortgagee or owner of either of said Parcels for the benefit of the owner of the other of said Parcels pursuant to the terms of paragraph 5 above shall be reimbursed, within ten (10) days of payments, by the owner of the Parcel for whose benefit the premiums were paid; and, until such reimbursement is paid, the amount of payment shall constitute a lien upon the Parcel owned by the owner obligated to pay the reimbursement.

8. The owner of each of said Parcels shall, upon damage to his Parcel by fire or other hazard, immediately restore his Parcel to its original condition unless both of the owners of both Parcels and all first mortgagees of said Parcels,

agree otherwise in writing. Unless required otherwise by the loan documents of first mortgagees of said Parcels, insurance proceeds from fire and extended coverage insurance shall be used exclusively for restoration of damage to the insured Parcel or Parcels, provided, however, that should all first mortgagees of both Parcels and the owners thereof all agree in writing, such proceeds may be applied for other purposes than such restoration.

9. Should either of the owners of either of said Parcels fail to restore his Parcel to its original condition as required in paragraph 8 above, all of the first mortgagees of said Parcels together with the owner of the other of said Parcels, and each of them, shall have the right, but not the obligation, to restore the damaged Parcel to its original condition; and the restoring party shall be entitled to an immediate reimbursement, for all sums expended and costs incurred, from the owner of the Parcel being restored. Until such reimbursement shall be made, such costs and expenses incurred to restore the damaged Parcel shall constitute a lien upon that Parcel.

10. The owner and occupant of each of said Parcels, together with his first mortgagee, is hereby granted continuing easements in the Parcel of the other for purposes of effectuating restoration as set forth in paragraph 9 above.

11. The owner of each of said Parcels shall maintain the grounds of his Parcel well landscaped and well maintained; and each shall keep the structures and other appurtenances in regard thereto in a state of good repair. Should either of the owners of said Parcels fail to meet his obligations under this paragraph, the owner of the other of said Parcels, together with any first mortgagees of either of said Parcels, and each of them, shall have the right but not the obligation, to enter upon the unmaintained Parcel and effectuate such repairs and work as would be necessary to render said Parcel in a state of good condition and repair, and shall be entitled to immediate reimbursement for costs and expenses for effectuating the same from the owner of the repaired Parcel, and the reimbursable amount shall constitute a lien upon the Parcel benefited until paid.

12. The owner of each of said Parcels shall equally share any and all costs and expenses relating to repair, replacement, restoration, or maintenance of the common interior wall joining the two halves of the aforescribed duplex situated upon said Real Property and of all other structural elements (including, but not limited to, roofing, flooring, exterior walls, plumbing,

electrical wiring and foundation) common to both halves of said duplex; provided, however, that should any particular such cost or expense be necessitated as a result of the act or omission of only one of the owners of said Parcels, that owner shall bear such cost and expense alone. All repairing, replacement, restoration, and maintenance of such common areas shall be conducted so as to maintain such common areas in their original design, color, size, location, and structural integrity, unless the owners of both Parcels and all first mortgagees of both Parcels shall otherwise agree in writing.

13. The owner of each of said Parcels is hereby granted a continuing easement and right of ingress and egress over, across, through and under the Parcel owned by the other owner as are reasonably necessary to permit each of said owners to perform his obligations hereunder, including, but not limited to, the conducting of proper repairs, replacement, restoration, or maintenance of his own Parcel and the aforescribed common areas.

14. Any owner of the Parcels performing the proper repair, replacement, restoration, and maintenance of such common areas as described above, shall be entitled to immediate reimbursement therefor by the owner of said Parcels, with the reimbursable amount constituting a lien upon the premises of the owner obligated to make the reimbursement until such reimbursement is made.

15. Neither of the owners of either of said Parcels, without the prior written consent of both owners of said Parcels and all first mortgagees with respect to said Parcels, shall remodel, restructure, change or alter in any manner (including, but not limited to, changes in the color of paint) the structures or other appurtenances of either of said Parcels in such a way as would substantially alter the design, appearance or structural integrity of such structures or other appurtenances.

16. No construction of fences, walls, patios or other structures shall be commenced, and no construction with respect to the remodeling of any appurtenance of either of said Parcels shall be started, without all plans and specifications to accomplish the same having been first submitted to and approved in writing by the owners of both Parcels and all first mortgagees of both Parcels, and the Architectural Control Committee.

17. Any and all repairs or construction conducted upon either of said Parcels shall be performed according to professional building standards and all codes, ordinances, and other local, state, and federal laws applicable to the locality where said Real Property is located.

18. The following use restrictions shall be applicable to both Parcels:

a. Each of said Parcels shall be used only as a residence for a single family and for no other purpose.

b. Neither of the owners of either of said Parcels shall use any part of his Parcel for any business, commercial, manufacturing, mercantile, storing vending or other such non-residential purpose, except as may be approved in advance by all first mortgagees of both Parcels and the owners of both Parcels, nor shall either of said owners permit, directly or indirectly, any part of his Parcel to be so used by any other person or entity.

c. No noxious or offensive activity (including, but not limited to, the repair of motor vehicles) shall be conducted or permitted to be conducted in or upon either of said Parcels by the owner thereof; nor shall the owner of either of said Parcels permit the existence, upon his Parcel, of any annoyance or nuisance to any of the other Parcel "owners".

d. Neither of the owners of either of said Parcels shall cause or permit any signpost, display billboard, or other advertising device of any kind to be displayed to the public view on or about the premises of his Parcel.

e. No animals, livestock, reptiles or poultry of any kind shall be raised, bred, or kept on or about the premises of either of said Parcels, with the exception of usual and ordinary dogs, cats, fish, birds and other household pets, which may be kept on the premises subject to all requirements for their maintenance under law and provided further that such pets are properly supervised and maintained. No more than two of any kind of pet shall be maintained upon the premises of either of said Parcels without the permission of the owner of the other of said Parcels. All pets belonging to the owner of either of said Parcels, or belonging to the occupants of either of said Parcels or their licensees, tenants, or invitees, must be kept within an enclosure or on a leash held by a person capable of controlling the animal.

f. Neither of the owners of either of said Parcels shall keep any rubbish, trash, garbage, or other waste materials upon the premises of his Parcel which is not kept in sanitary containers located in appropriate areas screened and concealed from public view; nor shall the owner of either of said Parcels permit any odor to arise from such waste material as would render his Parcel unsanitary, unsightly, offensive, or detrimental to the other Parcels

g. No building, basement, tent, shack, shed, or other temporary building or improvement shall be placed upon any portion of either of said Parcels with the exception of the brief erection of camping equipment for purposes of examining the same, making repairs, or other customary and inoffensive purposes; nor shall any garage, trailer, motor home, or recreational vehicle be used, temporarily or permanently, as a residence on or about the premises of either of said Parcels.

h. No dangerous or hazardous condition or substance shall be maintained on or about the premises of either of said Parcels that would increase the fire and extended coverage insurance premiums of either Parcel owner or cause higher than customary fire and extended coverage insurance premiums with respect to either of said Parcels.

19. The owner of each of said Parcels shall use and maintain his Parcel, and the structures and other appurtenances thereof, in a manner consistent with all ordinances and other laws applicable to the locality where the Real Property is situated.

20. Any and all rights and remedies set forth hereunder inuring to the benefit of any persons, organizations or entities shall be in addition to, and not by way of substitution of, any and all other rights and remedies which may inure to their benefit as a result of a breach by any person, organization, or entity of the provisions of this Declaration.

21. When appropriate hereunder, the plural shall include the singular, the singular shall include the plural, and the masculine shall include the feminine.

22. The term 'first mortgagee' and 'first mortgagees' shall include the beneficiary and beneficiaries of any deed of trust, the mortgagee and mortgagees of any mortgage, and the person, persons, organizations, or entity or entities, for whose benefit any other security interest is given, where that mortgage, deed of trust, or other security instrument constitutes a lien first and prior in position on any parcel to that of any other mortgagee.

23. Where appropriate hereunder, the term 'owner' shall include any occupany tenant, licensee, or invitee with respect to either of said Parcels.

24. Nothing in this Declaration shall be construed to allow any lien created by breach hereof or reimbursement to be made hereunder to take priority over any lien or encumbrance in existence at the time such breach occurs or the expenditure giving rise to the right to such reimbursement is made.

25. Should the terms of this Declaration conflict with the terms of any standard security instrument, promissory note, or other instrument relating to any loan of a first mortgagee that is an institutional lender, chartered by any state of the United States or by the United States, the terms of such standard security instrument, promissory note, or other instrument shall prevail.

26. To the extent, if any, that the terms and provisions of this Declaration shall not be enforceable as covenants running with the land, they shall be enforced, as much as possible, under notions of equitable servitude or other applicable legal principles. Should any provision hereof be found unenforceable, the remaining provisions hereunder shall be given full force and effect to the extent legally permissible.

27. The contents of this Declaration shall constitute perpetual covenants running with the land until such time as all of the owners of said Parcels and all first mortgagees relating to said Parcels shall state otherwise by a recorded instrument. This Declaration may be amended at any time by the consent of one hundred percent (100%) of all first mortgagees relating to said Parcels and all owners of said Parcels.

28. Should any person, organization, or other entity entitled to enforce the terms of this Declaration or exercise remedies hereunder and undertake the same in a court of law, the prevailing party shall be entitled to reimbursement for all reasonable expenses incurred therein, including, but not limited to, the payment of a reasonable attorney's fee.

29. This Declaration constitutes the entire declaration, agreement, and understanding between the parties hereto, and no oral statement, or other writing made outside of this document shall constitute a part hereof unless specifically incorporated herein by reference.

30. Each fire and hazard insurance policy hereunder must contain or

have attached the standard mortgagee clause commonly accepted by a private ³²⁶ institutional lender in the area in which said Parcels are located. The mortgagee clause must provide that an insurance carrier shall notify a first mortgagee having a lien on an insured Parcel at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

31. Policies are unacceptable where (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments that may be made against the insured or its designee; or (ii) by the terms of the carrier's charter, by-laws or policy, lost payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the insured or its designee from collecting insurance proceeds.

32. Each carrier of insurance must be specifically licensed or authorized by law to transact business within the State of Utah.

33. Each hazard insurance policy must be written by a hazard insurance carrier which has the financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V provided it has a general policy holder's rating of at least A.


34. No building^{or fence} shall be erected, placed, or altered on any lot or parcel until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship, materials and harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the front set back line unless similarly approved.

35. The Architectural Control Committee shall be composed of Marvin A. Blosch, Linda Blosch, and Steve Nelson. . A majority of the committee may designate a representative to act for it. In the event of death or ~~resig-~~ ^{resignation} of any member of the committee, the remaining members of the committee shall have full authority to select a successor. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of a majority of the lots shall have the power through a duly recorded

written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties. The committee's approval or disapproval, as required in these covenants, shall be in writing. In the event the committee or its designated representative fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required, and the related covenants shall be deemed to have been fully complied with.

36. Any lien provided for hereunder may be enforced, to the extent applicable by law, as any deed of trust or mortgage under the laws of the State of Utah. This remedy shall not be exclusive of any other remedies at law or in equity with respect to said lien.

IN WITNESS WHEREOF, the undersigned affix their respective signatures the date first written above.

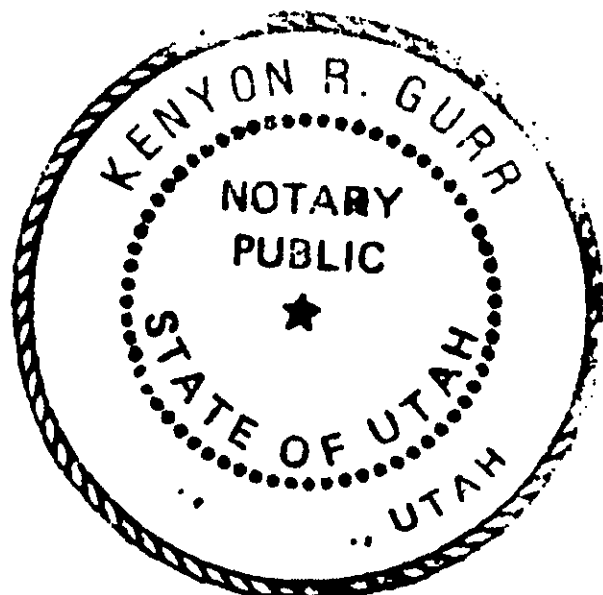

MARVIN A. BLOCH
PRESIDENT, VICOR CONSTRUCTION, INC.

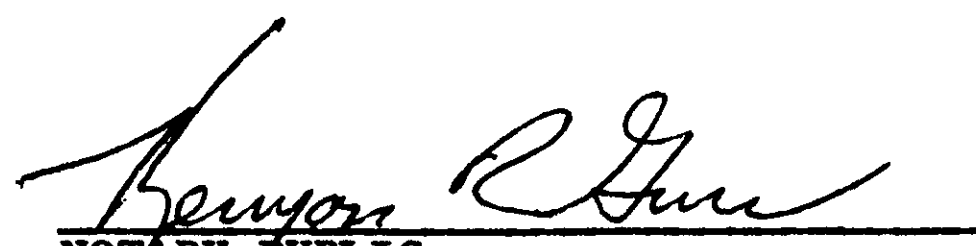
ATTEST:

STATE OF UTAH)
 } ss.
COUNTY OF DAVIS)

On the 22 day of August, 1980, personally appeared before me, MARVIN A. BLOCH, who being by me duly sworn did say, that he, the said is the President of Vicor Construction, Inc. and that the foregoing instrument was signed in behalf of said Corporation, by authority of a resolution of its Board of Directors, Marvin A. Bloch, duly acknowledged to me that said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 22 day of August, 1980.




NOTARY PUBLIC
Residing in Davis County, Utah

My Commission Expires:

April 4, 1982