



BK 1359 PG 059-069



MISC 2000 15628

Nebr Doc  
Stamp Tax

Date

\$

By

RICHARD N TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

00 NOV 17 PM 2:56

RECEIVED

DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR MISSION PARK 2ND ADDITION, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA  
(Lots 152 - 295)

THIS DECLARATION, is made by TORCO DEVELOPMENT, INC., a Nebraska corporation, hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Douglas County, Nebraska and described as follows:

Lots 152 through 295, inclusive, in Mission Park 2nd Addition, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Such lots as herein referred to collectively as the "Lots" and individually as each "Lot".

The Declarant desires to provide for the preservation, protection and enhancement of the values and amenities of such community and for the maintenance of the character, value, desirability, attractiveness and residential integrity of the Lots.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots. These restrictions, covenants, conditions and easements shall run with such real estate and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots, and each Lot, is and shall be subject to all and each of the following conditions and other terms:

ARTICLE I  
ARCHITECTURAL CONTROL

A. No residence, building, fence, other than fences constructed by Declarant, wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, swimming pool, pool house, tennis court, dog house, television or radio antenna, satellite and receiving dishes, flag pole, basketball backboards, solar heating or cooling collecting panels, devise or equipment, outdoor lighting, or other external improvement, above or below the surface of the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed, planted, altered, or otherwise maintained or permitted to remain on any Lot, nor shall any grading, excavation, or tree removal be commenced without express written prior approval of the Declarant.

Return to:  
John O. Bachman  
GAINES, PANSING & HOGAN  
10050 Regency Circle, Suite 200  
Omaha, NE 68114

Misc  
11  
144  
FB  
SKP  
C/O  
DEL  
COMP  
SCAN  
dc  
FV

B. The Declarant shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the Lot boundary lines, and in relation to neighboring Lots and in the surrounding area, quality of construction, size and suitability for residential purposes and any general schemes or plans formulated by Declarant as part of its review procedure. Only exterior colors of certain earthtone hues will be acceptable. In this regard, Declarant intends that the Lots shall form a developed residential community with homes constructed of high quality materials consistent with the Preliminary Statement and this Declaration. The Declarant specifically reserves the right to deny permission to construct or place any of the Improvements which it determines will not conform to the general character, plan and outline for the development of the Lots.

C. Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of materials to be included in the Improvement may be required of the applicant at the Discretion of the Declarant. Submittals for the approval shall be made in duplicate and the comments and actions of the Declarant will be identically marked on both copies of said submittals. One copy will be returned to the applicant, and one copy will be retained as part of the permanent records of the Declarant. Each applicant shall submit to the Declarant the following documents, materials, designs and/or plans (herein collectively referred to as the "plans").

1. Site plan indicating specific improvement and indicating Lot number, street address, grading, location of the structure proposed for the Lot, surface drainage and sidewalks.

2. Complete construction plans, including but not limited to, basement and upper floor plans, floor areas of each level, wall sections, stair and fireplace sections, exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials, exterior color or colors and landscaping plans.

3. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

D. Written notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans or hand delivered. Such notice shall be mailed or delivered within thirty (30) days after the date of submission of the plans. If written notice of approval is not mailed or delivered within such period, the proposed Improvement shall be deemed refused by the Declarant.

E. No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to the approval or disapproval of any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Article, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

ARTICLE II.  
RESTRICTIONS FOR SINGLE FAMILY RESIDENTIAL DWELLINGS

A. The Lots shall be used only for single family residential dwelling purposes, and for no other purposes.

B. No building shall be created, altered, placed or permitted to remain on any Lot other than the one (1) detached, single family residential structure, and shall conform to the following minimum requirements:

- 1. One-story ranch type house with attached garage 1,600 sq. ft. On the main floor, exclusive of garage area (garage must be approximately at the same level as the main floor)
- 2. One-story house with basement garage 1,800 sq. ft. On the main floor
- 3. One and one-half and two-story houses 1,800 sq. ft. Total area above the basement level; minimum 1,200 sq. ft. on the main floor
- 4. Split entry (bi-level) house 1,800 sq. ft. On the main floor
- 5. Tri-level (split level) house 1,800 sq. ft. Total area above grade

C. For the purposes of these restrictions, two-story height shall, when the basement is exposed above finish grade, be measured from the basement ceiling on the exposed side(s) to the eave of the structure on the same side(s). Area means finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breezeways, courtyards, patios, decks, basements, garages or carports. The maximum height of the dwelling shall be two (2) stories. The basement is not considered a story even if it is one hundred percent (100%) above grade on one side, and essentially below grade on the other three (3) sides. All dwellings shall have attached, enclosed, side-by-side, two (2) car garages minimum which must contain area of not less than four hundred twenty (420) square feet.

D. No building or porch shall be constructed, erected, installed or situated within five (5) feet of the side yard lot line and within thirty (30) feet of the front yard line. Except as set forth herein, all Improvements on the Lots shall comply with all other set back requirements of the Zoning Code of the City of Omaha as the same may be amended from time to time.

E. Exposed portions of the foundation on the front of each residential structure are to be covered with clay-fired brick or stone even if the portion of those exposed foundations may be perpendicular, or nearly so, to the affronting street. Exposed portions of the foundation on the side of each residential structure facing the street, when said dwelling is located on a corner Lot, are to be similarly covered with clay-fired brick or stone. Exposed portions of the foundation on the sides or rear not facing a street of a residential structure located on a corner Lot, and the exposed portion of the foundation on the sides and rear of every other dwelling shall be covered with clay-fired brick, stone, siding or shall be painted. All foundations shall be constructed of concrete, concrete blocks, brick or stone.

F. In the event that a fireplace is constructed as a part of a residential structure on any Lot, except a corner Lot, and said fireplace and/or the enclosure for the fireplace flue, is constructed in such a manner so as to protrude beyond the outer perimeter of the front or side of the dwelling, or is exposed above the plane of the roof, the enclosure of the fireplace and flue shall be constructed of, or finished with, clay-fired brick or stone. If the fireplace and/or the enclosure for the fireplace flue is constructed in such a manner so as to protrude beyond the outer perimeter of the rear of the residential structure, the enclosure of the fireplace and flue may be constructed of, or finished with, the same material as is the residential structure at the point from which the

fireplace and/or the flue protrudes. If more than one fireplace is planned, all shall comply with the above requirements. Notwithstanding the foregoing, when any fireplace is constructed as a part of a residential structure on any corner Lot, and said fireplace and/or the enclosure for the fireplace flue is constructed in such a manner so as to protrude beyond the outer perimeter of the residential structure, or is exposed above the plane of the roof, the enclosure of the fireplace and flue shall be constructed of, or finished with clay-fired brick or stone. The parts of the pre-fabricated metal furnace flues that protrude from the roof of a residential structure must be painted and no furnace flue may protrude more than five (5) feet from the roof of the residential structure, as measured from the top cap of the flue to the point from which the flue emerges from the roof. All furnace flues must be located on the rear side on the roof ridge.

G. No fences may be built forward of the rear wall of the residential structure and, under no circumstances, closer to any adjoining street than the property line. In those instances where the residential structure has more than one rear wall, the Declarant shall determine in its discretion which rear wall shall be applicable. Fences shall be constructed only of wood, decorative iron, brick or stone and are subject to the approval of the Declarant. Wire or chain-link fences shall not be permitted. Temporary or permanent barbed wire, electrified, and/or snow fences are strictly prohibited.

H. No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on any Lot or used as a residence, temporarily or permanently. No prefabricated or factory built house or residential dwelling built elsewhere shall be moved onto or assembled on any of said Lots. No pre-cut dwelling shall be assembled on any of said Lots. No full or partial subterranean residential structure or log houses shall be constructed or erected on any Lot. No residential structure shall be moved from outside of Mission Park to any Lot.

I. No primary flat or mansard roof shall be permitted on any residential structure. All residential structures shall be roofed with wood cedar shakes or wood shingles. Hardboard, bonded wood, pressed wood, imitation wooden shakes, or the like may be permitted with the express written approval of Declarant. Asphalt shingles will not be approved by the Declarant for coverage of any roof.

J. Public sidewalks are the responsibility of, and shall be constructed by, the then Owner of a Lot prior to the time of completion of a residential structure and before occupancy thereof. The extent of sidewalks, location, and grades shall be in accordance with the regulations of the City of Omaha and any revision thereof. The maintenance of said sidewalks, after construction, shall be the responsibility of the Owners of each of the Lots. The sidewalks shall be constructed of concrete four (4) feet wide by four (4) inches thick.

K. The Declarant has created a water drainage plan by grading the Lots and installing improvements and easements for storm water drainage in accordance with accepted engineering principles. No residential structure shall be placed, nor any Lot graded, to interfere with such water drainage plan nor cause damage to the building or neighboring residential structures or lots.

L. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot except that a dog house constructed for one (1) dog shall be permitted; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by the Declarant. If approved by the Declarant, dog runs and dog houses shall only be allowed at the rear of a residential structure, concealed from public view. No animals, livestock, agricultural type animals, fowl, or poultry of any kind, including pot-bellied pigs, shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the residential structure may be kept, provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are kept confined to the Lot of their Owner and are not permitted to run loose outside the Lot of the Owner.

M. No incinerator, or trashburner shall be permitted on any Lot. No garbage, trash can receptacle, or container shall be permitted to remain outside of any residential structure for a continuous time period in excess of eight (8) hours. No garden, lawn, snow removal or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any residential structure except while in actual use. No garage door shall be permitted to remain open except when entry to and exit from the garage is required. No clothesline shall be permitted outside of any residential structure at any time. Any exterior air conditioning condensing units or heat pump units shall be placed in the rear yard (or side yard with the express written approval of Declarant) of the residential structure concealed from public view and in no case closer than five (5) feet to the neighboring property line. Detached accessory buildings are not permitted. No firewood storage shall be maintained on any Lot in excess of two (2) cords and only in the rear yard or a flat surface.

N. No automobile, boat, camping trailer, van-type campers, auto-drawn or mounted trailer of any kind, mobile homes, motorcycle, snowmobile, recreation vehicle (RV), other self-propelled vehicles or similar chattel shall be stored or maintained outside of the garage. For purposes of the preceding provisions, "stored or maintained outside of the garage" shall mean, parking the vehicle or trailer on the driveway, or any part of the Lot, outside of the garage for four (4) or more consecutive days. All repair or maintenance work on automobiles, boats, camping trailers, van-type campers, auto-drawn trailers of any kind, mobile homes, motorcycles, snowmobiles, recreation vehicle (RV) or other self-propelled vehicles or similar chattel must be done in the garage. The dedicated street right-of-way located between the pavement and the lot line of any Lot shall not be used for the parking of any vehicle, boat, camper, or trailer. Automobiles and other self-propelled vehicles parked out-of-doors within the Lots, or upon the streets thereof, must be in operating condition. However, this restriction shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of the Improvements during the construction period.

O. All Lots shall be kept free of rubbish, debris, merchandise and building material; however, building materials may be placed on Lots when construction is started on the main residential structure intended for such Lot. In addition, vacant Lots where capital improvements have not yet been installed shall not be used for dumping of earth or any other waste materials, and shall be maintained level and smooth enough for machine mowing. No vegetation on vacant Lots, where capital improvements have not yet been installed shall be allowed to reach more than a maximum height of twelve (12) inches.

P. Except for the purpose of controlling erosion on vacant Lots, no field crops shall be grown upon any Lot at any time.

Q. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Further, home occupations, as defined in the Zoning Code of the Municipal Code of the City of Omaha, Nebraska, shall not be permitted to take place within any of the residential structures.

R. A residential structure on which construction has begun must be completed within one (1) year from the date the foundation was dug for said structure.

S. Vegetable gardens not to exceed 100 square feet and rock gardens shall be permitted only if maintained in the designated rear yard of any Lot, behind the residential structure on said Lot.

T. No residential structure shall be occupied by any person as a dwelling for such person until the construction of such residential structure has been completed, except for minor finish details as determined and approved by the Declarant.

U. No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, residential structure or property unless approved in writing by the Declarant. No advertising sign, billboard, or posters of any kind shall be erected or placed on any of said Lots, except the residential "For Sale" signs, not exceeding six (6) square feet in size, shall be permitted and, provided further, that such restriction as to sign size shall not apply to any sign erected by the Declarant, or its agents, in its development of Mission Park or signs approved in writing by the Declarant.

V. All driveways shall be constructed of concrete or brick pavers.

W. None of said Lots shall be subdivided, split or in any manner combined with any other Lot, or portion of any other Lot, without approval of the Declarant.

X. The front, side and rear yards of all Lots shall be sodded, and one (1) tree, not less than two (2) caliper inches in diameter, shall be planted in the front yard of each residence. No trees shall be planted in the dedicated street right-of-way located between the pavement and the lot line. All yards shall be sodded and the trees planted within one (1) year from the date the foundation for the residence on the Lot was completed.

Y. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

Z. No exterior television or radio antenna of any sort shall be permitted on any Lot. Notwithstanding the foregoing, an antenna that is designed to receive direct broadcast satellite service not exceeding one meter in diameter and attached directly to the residence may be permitted provided that the location and size of the proposed satellite receiving dish be first approved by the Declarant, or its assigns. No treehouses, tool sheds, dollhouses, windmills, or similar structures shall be permitted on any Lot.

AA. No swimming pool shall be permitted which extends more than one (1) foot above ground level.

ARTICLE III  
HOMEOWNERS' ASSOCIATION

A. The Association. Declarant has caused the incorporation of MISSION PARK HOMEOWNERS ASSOCIATION, INC., a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

(1) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include dedicated and nondedicated roads, paths, ways and green areas, signs, center islands and entrances for Mission Park and Mission Park 2nd Addition; and Outlots 1, 2 and 3, Mission Park. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a Sanitary and Improvement District.

(2) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests,

and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

(3) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Mission Park and Mission Park 2nd Addition; and the protection and maintenance of the residential character of Mission Park and Mission Park 2nd Addition.

B. Membership and Voting. Mission Park was initially divided into One Hundred Sixty-Five (165) separate residential lots. One Hundred Fifty-Eight (158) lots were subsequently added to Mission Park and One Hundred Fifty (150) lots to Mission Park 2nd Addition (referred to collectively as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

With the addition and expansion of the Lots subject to this Declaration, there shall be Six Hundred Sixteen (616) Lots and Three (3) Outlots in Mission Park and Mission Park 2nd Addition.

The Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association.

C. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

(1) The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

(2) The landscaping, mowing, watering, repair and replacement of public property and improvements on public property within or near Mission Park and Mission Park 2nd Addition.

(3) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

(4) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

(5) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

(6) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(7) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

(8) The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

(9) General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

(10) The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

D. Mandatory Duties of Association. The Association shall maintain the monuments and landscaping within the easement areas located within Lots 1, 2, 3 and 10 and Outlot 2, Mission Park Subdivision, and center islands dividing dedicated roads, in generally good and neat condition.

E. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

F. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant.

G. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

H. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Sections 3 and 4 of this Article.

I. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

(a) One Hundred Fifty and no/100 Dollars (\$150.00) per Lot.

(b) In each calendar year beginning on January 1, 2001, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

J. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred and no/100 Dollars (\$200.00) per Lot.

K. Excess Dues and Assessments. With the approval of seventy-five percent (75%) of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximum established in this Declaration.

L. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 5, above.

M. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

N. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Facilities or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

O. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

ARTICLE IV  
EASEMENTS AND LICENSES

A. A perpetual license and easement is hereby reserved in favor of and granted to Qwest Corporation, City or County franchised cable television firms, Omaha Public Power District, Metropolitan Utility District, the City of Omaha, and Sanitary and Improvement District #376, their successors, and assigns, to erect and operate, maintain, repair, and renew cables, conduits, and other instrumentalities and to extend wires for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message services and cable television under an 8 foot (8') wide strip of land adjoining the rear boundary lines of said Lots, and a five foot (5') wide strip adjoining the side boundary lines of the Lots; the license is being granted for the use and benefit of all present and future owners of said Lots; provided, however, that said lot line easement is granted upon the specific condition that

if any said utility companies fail to construct such facilities along any of the said lot lines within twenty-four (24) months of the date hereof, or if any such facilities are constructed but hereafter removed without replacement within sixty (60) days after their removal, then this lot line easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted. All telephone, cable television and electric power service lines from property line to dwelling shall be underground.

B. Other easements are provided for in the final plat of Mission Park 2nd Addition, which is filed in the Register of Deeds of Douglas County, Nebraska (Book 2152, Page 308).

ARTICLE V.  
NOTICE OF POTENTIAL TELEPHONE FACILITIES CHARGE

In the event that ninety percent (90%) of all Lots within Mission Park 2nd Addition Subdivision are not improved within five (5) years from the date that Qwest Corporation shall have completed its distribution system and filed notice of such completion ("Five Year Term") then such unimproved Lot shall be subject to a charge of Four Hundred Fifty and no/100 Dollars (\$450.00). A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on a Lot. Construction shall be considered as having commenced if a footing inspection has been requested on the Lot in question by officials of the City or other appropriate governmental authority.

Should such charge be imposed by Qwest Corporation or its successors and remain unpaid, then such charge may draw interest at the rate of twelve percent (12%) per annum commencing after the expiration of sixty (60) days from the time all of the following events shall have occurred: (1) expiration of the Five Year Term, and (2) each owner of record is sent a written statement of charge for Four Hundred Fifty and no/100 Dollars (\$450.00) for each unimproved Lot.

ARTICLE VI  
GENERAL PROVISIONS

A. The Declarant, or its assigns, or any owner of a lot within Mission Park and Mission Park 2nd Addition, shall have the right to enforce by proceeding at law or in equity, all restrictions, conditions, covenants, and reservations, now or hereafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of same, or to recover damages or other dues for such violation. Failure by the Declarant 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.

B. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. This Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion for a period of eight (8) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the lots in the Properties.

C. Torco Development, Inc., a Nebraska corporation, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

D. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 16th day of NOVEMBER, 2000.

TORCO DEVELOPMENT, INC., a Nebraska corporation

By *Gerald L. Torczon*  
President

STATE OF NEBRASKA            )  
                                          ) ss.  
COUNTY OF DOUGLAS        )

The foregoing instrument was acknowledged before me this 16th day of NOVEMBER, 2000, by GERALD L. TORCZON, President of TORCO DEVELOPMENT, INC., a Nebraska corporation, on behalf of the corporation.

*Doris J. Nicholson*  
Notary Public

