

HOMES ASSOCIATION DECLARATION

CIMARRON TRAILS

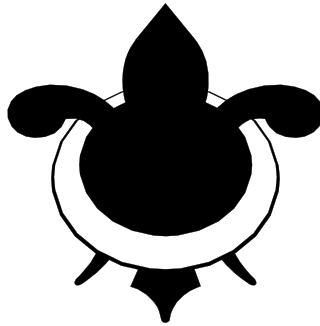


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HOMES ASSOCIATION DECLARATION CIMARRON TRAILS

THIS DECLARATION, made this 20th day of April, 1982, by Southwest Tracor Homes, inc., a corporation existing under the laws of the State of Missouri.

WITNESSETH:

WHEREAS, Southwest Tracor Homes, Inc. (hereinafter referred to as "Declarant") filed with the Recorder of Deeds of Cass County, Missouri, at Harrisonville, a plat of the subdivision known as CIMARRON TRAILS - 1st Plat, a subdivision in the City of Belton, Cass County, Missouri in Plat Book 9 at Page 1 on April 19, 1982; and

WHEREAS, said CIMARRON TRAILS - 1st Plat, is composed of the following described lots and tracts in said subdivision, to-wit;

Block 3, Block 4, Lots 1 through 12 inclusive; Block 5, Lots 1 through 16 inclusive; Block 6, Lots 1 through 14 inclusive; Block 7, Lots 1 through 22 inclusive; Block 8, Lots 1 through 12 inclusive; and Block 9, Lots 9 through 12 inclusive; all a Part of the East ½ of Section 10, and a Part of the Northwest 1/4 of Section 11, Township 46, Range 33, in Belton, Cass County, Missouri; and

WHEREAS, Declarant anticipates recording additional plats to the said subdivision of Cimarron Trails (the "Subdivision"); and

WHEREAS, all of the streets and roads shown on said recorded plat for use by the public have been dedicated to the public; and

WHEREAS, Declarant is the owner of all of the Blocks and Lots so shown on said recorded plat and now desires to place certain restrictions on the real property therein known as:

Block 4, Lots 1 through 12 inclusive; Block 5, Lots 1 through 16 inclusive; Block 6, Lots 1 through 14 inclusive; Block 7, Lots 1 through 22 inclusive; Block 8, Lots 1 through 12 inclusive; and Block 9, Lots 9 through 12 inclusive; all a Part of the East ½ of Section 10, and a Part of the Northwest 1/4 of Section 11, Township 46, Range 33, in Belton, Cass County, Missouri (the "Properties"),

all of which restrictions shall be for the use and benefit of Declarant as the present owner thereof and for its future grantees and assigns, it being Declarant's intention to sell, transfer and convey all lots and residential living units located within the Properties subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth.

NOW THEREFORE, in consideration of the premises, the Declarant, for itself and its successors and assigns, and for its future grantees, hereby agrees that all of the lots in the Properties, as shown on the above-described plat, shall be and they hereby are held and that said lots shall be held, transferred, sold, conveyed, and occupied, subject to the covenants, terms, conditions and restrictions as set forth in this Homes Association Declaration, in order to protect the value, desirability and attractiveness of the same. Said covenants, terms, conditions and restrictions shall run with the herein described Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties, or any part thereof, and shall inure to the benefit of each owner thereof. Every conveyance of any lot located within the Properties shall be and is subject to these covenants, conditions, charges, liens, restrictions and easements.

ARTICLE I. DEFINITIONS

The following words, *when used* in this Homes Association Declaration, or any supplemental Homes Association Declaration, shall have the following meanings:

1.1. "*Association*" shall mean and refer to the CIMARRON TRAILS ASSOCIATION, its successors and assigns.

1.2. "*Owner*" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot within the Properties or any residential living unit which is situated on the Properties, including contract sellers, but excluding and not referring to those having such interest merely as security for the performance of any obligation, until such excluded person shall have acquired title thereto pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.3. "*Properties*" shall mean and refer to that certain real property hereinbefore described as the included Blocks 2, 4 thru 9 inclusive, 11 through 15 inclusive and 17 thru 23 inclusive of CIMARRON TRAILS, and such additions thereto as may hereafter be brought hereunder.

1.4. "*Common Area*" shall mean any and all real property (including the improvements thereon) which may hereafter be owned by the Association for the common use and enjoyment of the Owners.

1.5. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map which map includes the Properties, on which plot of land there is located one residential living unit, with the exception of any Common Area.

1.6. "Declarant" shall mean and refer to Southwest Tracor Homes, Inc., its successors and assigns.

1.7. "Restrictions" as used herein shall refer to that certain Declaration of Covenants, Conditions and Restrictions for CIMARRON TRAILS filed in the office of the Recorder of Deeds, Cass County, Missouri, on [April 30], 1982, in Book [816], at Page [153], and all amendments thereto.

ARTICLE II. PROPERTY RIGHTS

2.1. *Owner's Easements of Enjoyment.* Every Owner shall have a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon any Common Area;
- (b) the right of the Association to suspend the voting rights and the right to the use of any such recreational facilities by an Owner for any period during which any assessment against its Lot remains unpaid and for a period not to exceed 60 days, for any single act which is an infraction of its published rules and regulations (the continuation of such act to be additional cause for continuing suspension until cure of such act);
- (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 of the Association; provided, however that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by the Members of the Association having two-thirds (2/3) of the voting rights of the Association at the time of such dedication or transfer has been filed of record in the office of the Recorder of Deeds, Cass County, Missouri.

2.2. *Delegation of Use.* Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities, if any, to the members of its family, its tenants or contract purchasers from it who reside on the Lot.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

3.1. *Membership.* Every Owner of a Lot which is subject to assessment hereunder shall be a member of the Association ("Member" herein). Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to such assessment.

3.2. *Voting Rights.* The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Class A Members. The vote for such Lot shall be executed as they determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B. The Class B Member(s) shall be the Declarant and shall be entitled to six votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership in the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A Membership are equal to the total votes outstanding in the Class B Membership, or
- (b) on January 1, 1987.

ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

4.1. *Creation of the Lien and Personal Obligation of Assessments.* The Declarant, for each Lot owned with 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 such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessment or charges, and (2) special assessments for capital improvements, both types of such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the Lot(s) against which any such assessment is made. Each such assessment, together with interest at the highest legal rate therefor, costs and reasonable attorney's

fees arising out of the efforts in collection thereof, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due.

4.2. *Purpose of Assessment.* The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of any Common Area, including, but not limited to, the establishment of adequate reserve funds for maintenance repairs and replacement of any portions or elements of the Common Area, if any, which must be replaced on a periodic basis.

4.3. *Basis and Maximum of Annual Assessments.* Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be ONE HUNDRED TWENTY and NO/100 DOLLARS (\$120.00) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership, in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July from the month of July for the year next preceding.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the above-described Consumer Price Index formula, by a vote of the Members, for the next succeeding two (2) years and at the end of each such period of two (2) years, for each succeeding period of two (2) years, *provided that* any such change shall have the assent of two-thirds (2/3) of the votes of the Members of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, pursuant to written notice. The limitations 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.

4.4. *Special Assessments for Capital Improvements.* In addition to the annual assessments authorized above, 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, reconstruction, repair or replacement of a capital improvement upon any Common Area, including fixtures and personal property related thereto, *provided that* any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

4.5. *Notice and Quorum For Any Action Authorized Under Articles III and IV.* Written notice of any meeting called for the purpose of taking any action authorized under Article IV hereof, shall be sent to all Members, not less than thirty (30) days nor more than sixty (60) days in advance of the date set for the meeting. At any such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.6. *Uniform Rate of Assessment.* Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

4.7. *Date of Commencement of Annual Assessment: Due Dates.* The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Lot to an Owner other than Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

4.8. *Effect of Nonpayment of Assessment: Remedies of the Association.* Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of twelve percent (12%) per annum or the highest legal rate of interest chargeable therefor, whichever is greatest. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien therefor against the Property. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area or abandonment of its Lot.

4.9. *Subordination of the Lien to Mortgages.* The lien of the assessment as provided for herein shall be subordinate to the lien of any first deed of trust against any Lot. Sale or transfer of any Lot shall not affect the assessment lien, provided however, that the sale or transfer of any Lot pursuant to mortgage foreclosure of any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment which thereafter becomes due or from the lien thereof.

ARTICLE V. ASSUMPTION OF RIGHTS OF DECLARANT

By virtue of the above-mentioned Declaration of Covenants, Conditions and Restrictions, it is contemplated that Declarant will, at the point in time when its membership in the Association is converted to Class A under Article III hereof, or on January 1, 1987, which ever first occurs, Declarant will assign to the Association, *inter alia*, its rights to Architectural Control, its rights to enforce exterior maintenance, interior maintenance and repair obligations, and its other rights all as set out in the above-mentioned Restrictions. Said assignment shall not require acceptance by an affirmative act of the Association or its Members, but rather shall be deemed accepted when a written instrument executed on behalf of Declarant, its successors or assigns, purporting to effectuate such an assignment, is filed of record in the office of the Recorder of Deeds of Cass County, Missouri. The rights, duties and obligations assigned by such writing shall inure to the benefit of, and be binding upon, the Association from and after the effective date of such writing so filed of record.

ARTICLE VI. EXERCISE OF AUTHORITY HEREUNDER

Except as otherwise specifically set forth hereunder, the rights of the Association hereunder, and its rights under the Restrictions when assigned to it, shall be exercised by vote of two-thirds (2/3) of its Directors in a duly called and convened meeting thereof at which a quorum is present.

ARTICLE VII. ADDITION OF OTHER LAND

The Declarant may from time to time add to the Properties as if now or hereafter owned or approved for addition by said Declarant, provided that the land so added to the Properties shall at the time be bound by all of the terms of this Declaration and any future modifications thereof.

ARTICLE VIII. GENERAL PROVISIONS

8.1. *Enforcement.* The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, the duties, charges, covenants and restrictions now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any duty or change herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8.2. *Severability.* Invalidation of any one of the duties, charges covenants or restrictions herein contained by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

8.3. *Amendment.* Each of the covenants, duties, rights, charges and restrictions herein set forth shall continue and be binding upon the Owners and the Declarant, and upon their and its successors and assigns, until December 31, 2030, and shall automatically be continued thereafter for successive periods of twenty-five (25) years each, providing, however that prior to January 1, 1984, the Declarant, and thereafter, the Owners of fee simple title to 75% of the Lots, may amend this Declaration and/or release all of the land specifically hereby restricted from any one or more of such restrictions, covenants, charges or duties by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and filing the same for record in the Office of the Recorder of Deeds of Cass County, Missouri.

8.4. *FHA/VA Approval.* As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area and amendment of this Declaration.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this [20th] day of [April], 1982.

[Secretary]

SOUTHWEST TRACOR HOMES, INC.
Declarant

By:

[F.B. Chris Freeman, Jr.]

[President]

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this [20th] day of [April], 1982, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came [F.B. (Chris) Freeman, Jr.] of Southwest Tracor Homes, Inc., and who is personally known to me to be the same person who executed the within instrument on behalf of said Southwest Tracor Homes, Inc., and such person duly acknowledged the execution of the same to be the act and deed of said Southwest Tracor Homes, Inc.; and that he has read the foregoing Declaration and knows the contents thereof, and that the same is true to his own knowledge.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

My Commission Expires:

[.....2, 1984]

[Linda S. Ray]
Notary Public
