

THE DECLARATION OF PROTECTIVE COVENANTS  
CONDITIONS AND RESTRICTIONS OF TODD TOWN HOUSE PARK AND POOL  
COMMON AREA ASSOCIATION

This Declaration of Covenants, Conditions, and Restrictions, hereinafter called "Declaration" is made and executed in Utah County, State of Utah, this        day of       , 1975, by Ralph Britsch, general partner of Todd Town Houses, a partnership hereinafter called "Declarant" pursuant to the provisions of the Utah Condominium Ownership Act and the Rules and Regulations of Orem City, Utah County, Utah.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Utah County, State of Utah, and more particularly described as follows:

Commencing at a point located North  $0^{\circ}06'50''$  West along the quarter Section line 2292.72 feet and South  $89^{\circ}38'00''$  East 144.00 feet from the South one-quarter corner of Section 11, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North  $0^{\circ}19'00''$  West 249.25 feet; thence North  $89^{\circ}38'00''$  West 102.88 feet; thence along the arc of a 10.00 foot radius curve to the left 15.83 feet (chord bearing and distance of said curve being South  $45^{\circ}01'30''$  West 14.23 feet); thence North  $0^{\circ}19'00''$  West 34.12 feet; thence South  $89^{\circ}38'00''$  East 322.25 feet; thence South 518.21 feet; thence North  $89^{\circ}38'00''$  West 34.06 feet; thence along the arc of a 10.00 foot radius curve to the left 15.77 feet (chord bearing and distance of said curve being North  $45^{\circ}11'00''$  East 14.19 feet); thence North 474.21 feet; thence along the arc of a 10.00 foot radius curve to the left 15.64 feet (chord bearing and distance of said curve being North  $44^{\circ}49'00''$  West 14.10 feet); thence North  $89^{\circ}38'00''$  West 115.06 feet; thence South 409.16 feet; thence North  $89^{\circ}38'00''$  West 22.00 feet to the point of beginning.  
Area = 0.925 acres.

WHEREAS, it is the desire of Declarant that said real property and the improvements constructed thereon be used as a Park and Pool Common Area, to be used by the owners of condominium units and family dwellings in the Todd Town Houses Project, subject to the covenants, conditions, and restrictions herein reserved to be kept and observed; and

WHEREAS, Declarant has executed a Declaration of Covenants, Conditions and Restrictions for Todd Town Houses Planned Unit Development and two subsequent amendments thereto and related instruments entitled "Record of Todd Town Houses Planned Unit Development and two subsequent amendments thereto and related instruments entitled "Record of Todd Town Houses referred to therein as "Second Amended Maps," providing for the ownership and use of the property described herein, subject to the conditions of this Declaration; and

WHEREAS, Declarant desires and intends by filing this Declaration and the aforesaid Second Amended Map to submit the above described property and the improvements thereon, together with all appurtenances thereto, to the provisions of the aforesaid act as a condominium project and to impose upon said property mutually beneficial restrictions under a general plan of improvements for the benefit of said property and the owners thereof.

NOW, THEREFORE, Declarant hereby declares that all the properties described above shall be owned by the Park and Pool Association for the common use and enjoyment of the members of the Association. Membership shall be appurtenant to and may not be separated from ownership of any unit or lot which is subject to assessment by the Association. Each owner will have an equal five percent (5%) share of the area. Ownership of units or lots shall be the sole qualification of membership.

Section 1: Members' Easements of Enjoyment. Every member shall have an easement of enjoyment in and to the Park and Pool Common Area, and such easement shall be appurtenant to and shall pass with the title to every assessed lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of members;
- (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (c) the right of Orem City, a municipal corporation to inspect and perform maintenance on the Park and Pool Common Area, and charge back said maintenance to the members, if and only if the Association does not perform maintenance in accordance with the maintenance practices of Orem City in the care of its parks.
- (d) the right of the Association in accordance with its By-Laws, to borrow money for the purpose of improving the Park and Pool Common Area and facilities and in aid thereof to mortgage said property, subject to rights of such mortgagee in said properties being subordinate to the rights of the Association members hereunder;
- (e) the right of the Association to suspend the voting rights and the right to use the recreational facilities by a member for any period during which

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any assessment against his lot remains unpaid; and for a period not to exceed 180 days for any infraction of its published rules and regulations.

SECTION 2 : Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the Park and Pool Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

SECTION 3: Title to the Park and Pool Common Area. The Declarant has conveyed fee simple title to the Park and Pool Common Area to each owner of a Condominium Unit or a home lot as part of the recording of Todd Town House Planned Unit Development.

SECTION 4: Right of Inspection for Orem City. Orem City shall have the right at any time it sees fit to inspect any part or portion or thing connected in any way with any street, water system, sewer system, in the Todd Town House Park and Pool Common Area.

SECTION 5: Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefore, 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, except as hereinafter described: (1) annual assessments or charges, and (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 cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees 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 shall not pass to his successors in title unless expressly assumed by them.

SECTION 6: 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, services, and facilities devoted to this purpose and related to the use and enjoyment of the Park and Pool Common Area.

SECTION 7: Basis and Maximum of Annual Assessments. Until a duly elected Board of Directors shall be elected, the monthly assessment shall be fifteen dollars (\$15.00) per lot or unit. After March 30, 1976, the annual assessment may be increased without a vote of the membership in conformance with the appropriate expenditures for the following year. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount sufficient to fulfill the needs of the Association.

SECTION 8: Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association also may levy in any 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, unexpected repair or replacement of a described capital improvement upon the Park and Pool Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) days, nor more than sixty (60) days in advance of the meeting.

SECTION 9: Uniform Rate of Assessment. Both the monthly and special assessments must be fixed at a uniform rate for all lots and units and may be collected on a monthly basis.

SECTION 10: Quorum for any Action Authorized under Section 4. At the first meeting called as provided in Section 4 hereof, the presence at the

meeting of members or of proxies entitled to cast sixty percent (60%) of all votes of members shall constitute a quorum. If the required quorum is not forth coming at any meeting, another meeting may be called subject to the notice requirement set forth in Section 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at any such meeting shall be held more than sixty (60) days following the prior meeting.

SECTION 11 Annual Assessments. The Board of Directors shall fix the amount of the annual assessment against each lot at the annual meeting of the Board of Directors for the following fiscal year. Written notice of the annual assessment shall be sent to every owner subject thereto. Dues may be paid either (a) monthly or (b) yearly in advance. The association shall upon demand at any time furnish a certificate in writing signed by an officer of the association setting forth whether the assessments on a specified unit or lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

SECTION 12: Orem City's Enforcement of Maintenance. In consideration of the approval of the Todd Town House Planned Unit Development including the Todd Town House Park and Pool Common Area by Orem City Corporation, the declarant hereby obligates the lands that are located within the P. U. D as follows:

In the event the Association or its agents do not maintain the streets, or water system, or sewer system, Orem City may provide said maintenance, and shall have the right, each time there is a failure to so maintain, to file a lien on the lots in Todd Town House P. U. D. at a uniform amount per owner; and if said lien is not paid within 30 days after the date of filing of the lien, then Orem City may foreclose the same.

SECTION 13: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any unit or not which is subject to any

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mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to the 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 14: The Park and Pool Common Area shall be managed by a Three member Board of Directors.

SECTION 15: Election and Proceedings of the Board of Directors

(a) Election. At each annual meeting of the Park and Pool Association the Owners shall elect a Board of Directors for the forthcoming year, consisting of three members. One member shall represent the six family dwellings and two members shall be members of the Condominium Units. Every Owner of a family dwelling lot or condominium lot is entitled to vote at any election of the Park and Pool Common Area Association. Each owner shall be entitled one vote for the lot or condominium unit owned. In the event more than one person is the record owner of a given lot or unit, all owners of said lot or unit shall be entitled to a total of one vote representing said lot or unit, but it shall be necessary for those present to act unanimously in order to cast the vote to which they are entitled. Any Owner may attend and vote at such meeting in person, or by a agent duly appointed by an instrument in writing signed by the Owner and filed with the Board of Directors. Any designation of an agent to act for an Owner may be revoked at any time by written notice to the Board of Directors, and shall be deemed revoked when the Board of Directors shall receive written notice, and shall be deemed revoked when the Board of Directors shall receive actual notice of the death or judicially declared incompetence of such Owner or of the conveyance by such Owner of his condominium unit or family dwelling lot. Any

designation of an agent to act for more than one owner must be signed by all such persons. Declarant shall be entitled to vote with respect to any unit or lot owned by Declarant.

In the event that a notice of default is recorded by any mortgagee who holds a mortgage, then and in that event and until the default is cured, the right of the Owner of such lot or unit to vote shall be transferred to the mortgagee recording the notice of default.

(b) Term. Members of the Board of Directors shall serve for a term of two (2) years; provided that one of the three members of the first Board of Directors shall serve a one-year term. The other two shall serve until their respective successors are elected or until their death, resignation or removal; provided that if any member ceases to be an Owner, his membership on the Board of Directors shall thereupon terminate.

(c) Resignation and Removal. Any member may resign at any time by giving written notice to the chairman, and any member may be removed from membership on the Board of Directors by vote of the owners; provided that unless the entire Board of Directors is removed, an individual member shall not be removed if the number of votes cast against his removal exceeds Twenty percent (20%). If a member resigns or is removed, the remaining Board may appoint a person from the same group represented by the former Board member. Such person to serve as a temporary Board Member until the next regular election is held and new Board Members elected.

(d) Proceedings. Three (3) members of the Board of Directors shall constitute a quorum and, if a quorum is present, the decision of a majority of those present shall be the act of the Board of Directors. The Board shall elect a chairman, who shall preside over both its meetings and those of the Owners. Meetings of the Board may be called, held, and conducted in accordance with such regulations as the Board may adopt. The Board may also act without a meeting by unanimous written consent of its members.

SECTION 16: Authority of Park and Pool Board of Directors

The Board of Directors shall enforce the provisions hereof, and prepare yearly budgets, pool schedules, plans for major capital improvements, be responsible for hiring pool maintenance personnel, make plans for fruit trees, (spraying, picking, ladders, distribution of fruit), playground equipment, other recreational facilities, supervision of watering, mowing, gardening in the Park Area.

The Board of Directors of the Park and Pool Common Area along with the Management Committee of the Condominiums will have the authority to select, or hire, a business manager or treasurer to serve both groups, and a caretaker to operate the watering systems of both areas.

SECTION 17: Board of Directors' Powers, Exclusive . The Board of Directors shall have the exclusive right to contract for all goods, services, insurance and other expenses, payment for which is to be made from the common expense fund.

SECTION 18: Alterations, additions, and improvements of Common Area. There shall be no structural alterations, capital additions to, or capital improvements of the property requiring an expenditure of more than Five Thousand Dollars (\$5,000.00) without the prior approval of Owners holding a majority of the total votes.

SECTION 19: Default. Default in the payment of any assessments shall be governed by and subject to the conditions set forth in Paragraph 12 of the Amended Declaration of Covenants, Conditions and Restrictions referred to herein.

SECTION 20 Ownership. The owner or owners of each family dwelling lot or condominium unit shall be entitled to an undivided Five percent (5%) interest in the Park and Pool Common Area, described herein.

SECTION 21: Limitation of Board of Directors' Liability. The Board of Directors shall not be liable for any failure of services to be obtained and paid for by the Board of Directors hereunder, or for injury or damage to person or



property caused by the elements or by another Owner or person in the project, of resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Board of Directors. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the property or from any action taken to comply with any law, ordinance or orders of a government authority.

SECTION 22: Indemnification of Board of Directors. Each member of the Board of Directors shall be indemnified by the Owners against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Board of Directors, or any settlement thereof, whether or not he is a member of the Board of Directors at the time of such expenses are incurred, except in such cases wherein the member of the Board of Directors is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Board of Directors.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 29<sup>th</sup> day of October, 1975.

TODD TOWN HOUSES

By Ralph A. Britsch  
President

ATTEST:

M. Matthew C. Britsch  
Secretary

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STATE OF UTAH )  
 ) ss.  
COUNTY OF UTAH )

On this *29<sup>th</sup>* day of *October*, 1975, personally appeared before me, a notary public in and for said County and State, Ralph A. Britsch, and Dorothy C. Britsch, known to me to be the President and Secretary respectively of the Partnership that executed the foregoing instrument and upon oath, did depose that the signatures to said instrument were made by officers of said Partnership as indicated after said signatures; and that the said Partnership executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

*[Signature]*  
NOTARY PUBLIC



*Utah*  
My Commission Expires: *11/27/78*

*585 - Book*  
*3400 - Books*  
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*Ralph A. Britsch*  
R.A. BRITSCH  
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