

2766208

Recorded DEC. 4 1975 at 11:08 a.m.  
Request of Development Assoc.  
KATHIE L. DIXON, Recorder  
Salt Lake County, Utah  
S. 13<sup>th</sup> By William King Deputy  
REF. \_\_\_\_\_

350 So. 400 E  
84111

DECLARATION OF  
PROTECTIVE COVENANTS FOR  
DAYBREAK SUBDIVISION

THIS DECLARATION is made this 1st day of September,  
1975, by DAYBREAK, a Utah Limited Partnership.

I. PURPOSE OF COVENANTS

1.1 It is the intention of Daybreak, expressly by its execution of this instrument, that the property within Daybreak Subdivision, situated in Sandy City, Salt Lake County, State of Utah, the plat with relation to which is recorded in the office of the County Recorder of Salt Lake County, Utah (hereinafter designated the "Subdivision"), be developed and maintained as a highly desirable residential area. It is the purpose of these covenants that the present natural beauty, view and surroundings of the Subdivision shall always be protected insofar as is possible in connection with the uses and structures permitted by this instrument. Daybreak hereby declares that the Property and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved and otherwise affected in any manner subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plan and scheme of ownership referred to herein and are further declared to be for the benefit of the Property and every part thereof and for the benefit of each owner thereof. All provisions hereof shall be deemed to run with the land and all structures as erected or as equitable servitudes as the case may be, and shall constitute benefits and burdens to the Declarant, its successors and assigns, and all parties hereafter owning any interest in the Property.

II. DEFINITIONS

2.1 Declarant: "Declarant" means Daybreak Limited Partnership, together with its successors and assigns.

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2.2 Property: "Property" means that certain real property located in Salt Lake County, Utah described in Exhibit "A" attached hereto.

2.3 Building: "Building" means any house and garage constructed on the property.

2.4 Lot: "Lot" shall mean any parcel of property shown as separate numbered lot on the recorded Plat of the Subdivision.

2.5 Subdivision: "Subdivision" shall mean Daybreak according to the Plat thereof recorded in the records of Salt Lake County.

2.6 Plat: "Plat" shall mean the Plat of the Subdivision as recorded in the office of the County Recorder of Salt Lake County, Utah.

### III. DAYBREAK HOMEOWNERS ASSOCIATION

3.1 General Purpose and Powers: The Daybreak Homeowners Association (the "Association") has been formed and incorporated as a Utah non-profit corporation to be constituted and to perform functions as provided in this Declaration and to further the common interests of all owners of property which may be subject, in whole or in part, to any or all of the provisions, covenants, conditions and restrictions contained in this Declaration. The Association shall be obligated to and shall assume and perform all functions or obligations imposed on it or contemplated for it under any Supplemental or Amended Declaration with respect to any Property now or hereafter subject to this Declaration. The Association shall have all powers necessary or desirable to effectuate these purposes. It shall not engage in commercial, profit-making activity.

3.2 Membership in the Daybreak Homeowners Association: All persons who own or acquire the title in fee to any of the lots or houses in the Subdivision by whatever means acquired, shall automatically become members of the Association, in accordance with the Articles of Incorporation of said Association as presently in effect and filed in the office of the Secretary of State of Utah, and as the same may be duly amended from time to time and also filed in the office of the Secretary of State of Utah.

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IV. ARCHITECTURAL COMMITTEE

4.1 Architectural Committee: The Architectural Committee shall consist of three members. The Committee shall consist of one member selected by the Declarant, with the two remaining memberships being selected by the Association. At such time as 90% of the Lots are sold, or five years following the date hereof, whichever comes first, the Declarant's membership shall pass to the Association. Said Architectural Committee shall have the powers, duties and responsibilities set out in this instrument.

4.2 Approval by Architectural Committee: No building of any kind, including but not limited to dwelling houses, barns, stables, swimming pools, and garages, nor any fences, shall ever be erected altered or permitted to remain on any lands within the Subdivision, unless the architectural plans and specifications, a site plan, and a grading plan showing the location and orientation thereof are approved by the Architectural Committee prior to the commencement of such work. The complete architectural plans and specifications, must be submitted and must include at least four different elevation views, and must be in accordance with this Declaration. In the event the Architectural Committee fails to take any action within fifteen (15) days after complete architectural plans for such work have been submitted to it, then all such submitted architectural plans shall be deemed to be approved. No alteration of any stream or clearing, removal of shrubs or trees or landscaping on any Lot within the Subdivision shall be done unless the same has been approved in advance in writing by the Architectural Committee. In order to obtain such approval, the owner must submit for consideration of the Architectural Committee such details and information with relation to the contemplated action as the Architectural Committee shall reasonably request.

4.3 Variances: Where circumstances, such as topography, hardship, location of property lines, location of trees, brush, streams, or other matters require, the Architectural Committee may, by a affirmative vote of a majority of the members of the Architectural Committee, allow reasonable variances as to any of the covenants and restrictions contained in this instrument, on such terms and conditions as it shall require.

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4.4 General Requirements: The Architectural Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the lands within the Subdivision conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, setting, height, topography, grade and finished group elevation. The Architectural Committee shall exercise its best efforts to protect the natural view of each Lot insofar as such protection is consistent with the overall development.

4.5 Architectural Plans: The Architectural Committee shall disapprove any plans submitted to it which are not sufficient for it to exercise the judgment required of it by these covenants.

4.6 Architectural Committee Not Liable: The Architectural Committee shall not be liable in damages to any persons submitting any architectural plans for approval, or to any owner or owners of lands within the subdivision, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such architectural plans. Any person acquiring the title to any Property in the Subdivision or any person submitting plans to the Architectural Committee for approval, by doing so shall be deemed to have agreed and covenanted that he or it will not bring any action or suit to recover damages against the Architectural Committee, its members as individuals, or its advisors, employees or agents.

4.7 Written Records: The Architectural Committee shall keep and safeguard complete written records of all applications for approval submitted to it.

#### V. GENERAL RESTRICTIONS ON ALL PROPERTY

5.1 Zoning Regulations: No lands within the Subdivision shall ever be occupied or used by or for any building or purpose or in any manner which is contrary to the zoning regulations applicable thereto validly in force from time to time.

5.2 No Mining, Drilling or Quarrying: No mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock and earth shall ever be permitted on the surface of the Property.

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5.3 No Business Uses: The lands within the Property shall be used exclusively for single family residential living purposes, such purposes to be confined to approved residential buildings within the Property. No lands within the Property shall ever be occupied or used for any commercial or business purpose, provided, however, that nothing in this Paragraph 4.3 shall be deemed to prevent:

- (a) Declarant or its duly authorized agent from using any lot or house owned by Declarant as a sales office, sales model, property management office; or
- (b) Any owner or his duly authorized agent from renting or leasing said owner's residential building from time to time. Such rentals will only be permitted for not less than a thirty (30) day period. The owner of property being rented will remain responsible and subject to all of the provisions of this Declaration; or
- (c) Any artist, artisan or craftsman from pursuing his artistic calling upon private area if such artist, artisan or craftsman also uses such private area for residential purposes, is self-employed and has no employees working in such private area, and does not advertise or offer any product or work of art for sale to the public upon or from such private area.

5.4 Restriction on Signs: With the exception of a sign no larger than six square feet for the owner to advertise his home for sale, no signs or advertising devices, including, but without limitation, commercial, political, informational or directional signs or devices shall be erected or maintained on any lot or house, except signs approved in writing by Declarant as to size, materials, color and location:

- (a) As necessary to identify ownership of the lot or house and its address;
- (b) As necessary to give directions;
- (c) To advise of rules and regulations;
- (d) To caution or warn of danger; and
- (e) As may be required by law.

5.5 No Resubdivision: No lot shall be resubdivided, and only one single family residence shall be constructed or allowed to remain per lot.

5.6 Service Yards: All clothes lines, equipment, service yards, or storage piles on any lot shall be kept screened by approved planting or fencing so as to conceal them from the view of neighboring lots, houses, streets, access roads and areas surrounding the lot. Fencing

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shall only be allowed within the area designated by the Declarant. This area shall be roughly defined by the back wall of the garage, the common property line and the imaginary line at the rear of the house. In all cases the declarants decision shall be final.

5.7 Maintenance of Property: All lots and houses and improvements on any lot shall be kept and maintained by the owner thereof in clean, safe, attractive and sightly condition and in good repair.

5.8 No Noxious or Offensive Activity: No noxious or offensive activity shall be carried on upon any lot or house nor shall anything be done or placed on any lot or house which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

5.9 No Hazardous Activities: No activities shall be conducted on any lot or house which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any lot or house and no open fires shall be lighted or permitted on any lot or house except in a contained barbecue unit while attended and in use for cooking purposes or within safe and well-designed interior fireplaces.

5.10 No Unsightliness: No unsightliness shall be permitted on any lot or house without limiting the generality of the foregoing:

- (a) Any unsightly structures, facilities, equipment, tools, boats, vehicles other than automobiles, objects and conditions shall be enclosed within approved building or appropriately screened from view, except equipment and tools when in actual use for maintenance or repairs;
- (b) No lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored, or allowed to accumulate on any of the Property, except in service yards meeting the requirements of Section 5.6;
- (c) Refuse, garbage, and trash shall be placed and kept at all times in a covered container, and such container shall be kept within an enclosed structure or appropriately screened from view;
- (d) Hanging, drying or airing of clothing or household fabrics shall not be permitted within Building or on Lots if visible from Buildings or areas surrounding the Lot;
- (e) Utility meters or other utility facilities and gas, water or other tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure within the Property.

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- (f) No television antenna shall be permitted on the exterior of Buildings or any portion of the Lot or house not improved with a Building.

5.11 No Annoying Lights, Sounds or Odors. No light shall be emitted from any Lot or house which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot or house which is unreasonably loud or annoying, including without limitation, speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively to protect any of the Buildings, and no odors shall be emitted from any Lot which is noxious or offensive to others, including without exception yards and fenced areas as approved by Declarant.

5.12 Rules and Regulations. No owner shall violate the rules and regulations for the use of Lots or houses as adopted from time to time by the Association. No such rules or regulations shall be established which violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Lot or house by the owner thereof.

5.13 Location of Structures and Service Yards. Houses, garages, driveways, service yards and other structures may be located only in the permitted areas as per Sandy City Zoning Regulations.

5.14 Maintenance of Property. The owners of Lots or Houses within the Daybreak Subdivision shall maintain the area within the property lines as required by these Covenants. The open spaces shall be at all times maintained by the individual owner according to all of the rules and regulations of the Daybreak subdivision restrictive covenants.

5.15 Living Area. The residence structure which may be constructed on a Lot in the Property shall have a minimum living floor area, exclusive of garages, balconies, porches, and patios as follows:

- (a) Two story houses, minimum 900 square feet on 1st floor.
- (b) Split levels, minimum of 1,100 square feet on 1st floor.
- (c) One story houses, minimum 1,250 square feet on 1st floor.

5.16. A-frame Structures. A-frames and modifications of A-frames will NOT be allowed.

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5.17 Height Limits: No residence structure and no other structure or above-ground improvement on a Lot shall rise more than 35 feet, measured in either case from the average grade level adjoining the structure.

#### VI. RESTRICTIONS ON LOTS

6.1 Maintenance on Animals: A reasonable number of generally recognized house or yard pets only shall be allowed to be maintained on any Lot.

6.2 Number and Location of Buildings: No buildings or structures shall be placed, erected, altered, or permitted to remain on any Lot other than a single family dwelling house, and a garage.

6.3 Used or Temporary Structures: No temporary structures, house trailer, mobile home, camper, or non-permanent out-building shall ever be placed, erected on any Lot.

#### VII. ENFORCEMENT

7.1 Enforcement and Remedies: The obligations, provisions, covenants, restrictions and conditions contained in this Declaration or any Supplemental or Amended Declaration with respect to the Association or houses shall be enforceable by Declarant or by any owner of a house subject to this Declaration by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration or any Supplemental or Amended Declaration with respect to a person or entity or property of a person or entity other than the Association or Declarant shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fees.

7.2 Protection of Encumbrancer: No violation or breach of any provision, restriction, covenant or condition contained in this Declaration or any Supplemental or Amended Declaration and no action to

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enforce the same shall defeat, render invalid, or impair the lien of any mortgage or deed of trust taken in good faith and for value and perfected by recording prior to the time of recording of an instrument giving notice of such violation or breach, of the title of interest of the holder thereof or the title acquired by any purchaser upon foreclosure of any such mortgages or deed of trust. Any such purchaser shall, however, take subject to this Declaration or any Supplemental or Amended Declaration except only that violations or breaches which occur prior to such foreclosure shall not be deemed breaches or violations hereof with respect to such purchaser, his heirs, personal representatives, successors and assigns.

7.3 Limited Liability: Neither Declarant, the Association, the Board of Trustees of the Association, nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

#### VIII. GENERAL PROVISIONS

8.1 Duration of Declaration: Any provision, covenant, condition or restriction contained in this Declaration or any Supplemental or Amended Declaration which is subject to the common law rule sometimes referred to as the rule against perpetuities, shall continue and remain in full force and effect for the period of fifty years or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions, covenants, conditions and restrictions contained in this Declaration or in any Supplemental or Amended Declaration shall continue to remain in full force and effect until January 1, 2025 A.D., provided, however, that, unless at least one year prior to said time of expiration there is recorded an instrument directing the termination of this Declaration, executed by the owners of not less than fifty-one percent (51%) of the lots and houses then subject to this Declaration, said other provisions, covenants, conditions and restrictions shall continue automatically for an additional ten years and thereafter for successive periods of ten years unless, at least one year prior to the expiration of any such extended period of duration, this Declaration is terminated by a

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recorded instrument directing termination signed by the owners of not less than fifty-one percent (51%) of the Lots and Houses then subject to this Declaration as aforesaid.

8.2 Amendment or Revocation: At any time while any provision covenant, condition or restriction contained in this Declaration or any Supplemental or Amended Declaration is in force and effect, it may be amended or repealed by the recording of a written instrument specifying the amendment or the repeal, executed by the owners of not less than fifty-one percent (51%) of the Lots or Houses then subject to this Declaration. No such amendment or repeal shall be effective with respect to the holder or successor or assign of the holder of a mortgage or deed of trust recorded prior to recording of the instrument specifying the amendment or repeal unless such holder executes the said instrument.

8.3 Severability: Invalidity or unenforceability of any provision of this Declaration or any Supplemental or Amended Declaration in whole or in part shall not affect the validity or enforceability or any other provision of this Declaration.

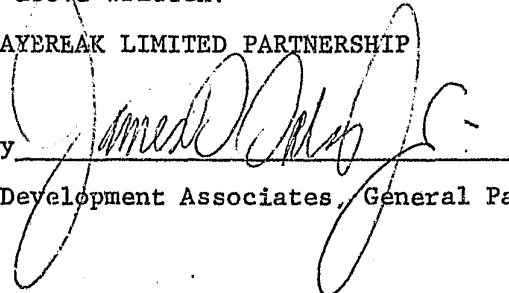
8.4 Captions: The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision, restriction, covenant or condition contained in this Declaration.

8.5 No Waiver: Failure to enforce any provision, restriction, covenant or condition in this Declaration or in any Supplemental or Amended Declaration shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provision, restriction, covenant or condition.

EXECUTED the day and year first above written.

DAYBREAK LIMITED PARTNERSHIP

By

  
Development Associates, General Partner

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STATE OF UTAH            )  
                                  ): ss.  
COUNTY OF SALT LAKE )

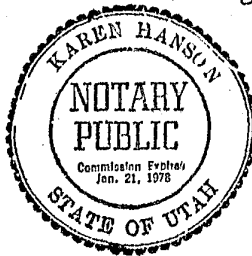
On the 1st day of September, 1975 personally appeared before me James D. Fahs, who, being by me duly sworn, did say that he is the General Partner of Daybreak Limited Partnership, a Utah Limited Partnership, and that the within and foregoing Declaration of Protective Covenants for Daybreak Subdivision was signed in behalf of said Limited Partnership and said James D. Fahs duly acknowledged to me that said limited partnership executed the same and the seal affixed.

Karen Hanson  
Notary Public

Residing at Salt Lake County, Utah

My Commission Expires:

Jan 21, 1978



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EXHIBIT "A"

LEGAL DESCRIPTION

All of the Northeast Quarter of the Southwest quarter and the South 99 feet of the Southeast Quarter of the Northwest Quarter of Section 3, Township 3 South, Range 1 East, Salt Lake Base and Meridian.

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