

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
ALTA VIEW ESTATES HOMEOWNERS ASSOCIATION

Sandy, Utah

THIS DECLARATION made this 6 day of January, 1994  
by ALTA VIEW ESTATES HOME OWNERS ASSOCIATION ("Association"). These  
declarations are intended to rescind and supersede all other declarations of prior dates.

WITNESSETH:

WHEREAS, the Association has heretofore adopted a Declaration of Protective  
Covenants, Conditions, and Restrictions; and

WHEREAS, the Association desires to outline the Declaration to  
qualify as "Housing for Older Persons" as defined by the Fair Housing Act as  
Amended, 45 U.S.C. §§ 3607(b)(2)(c)(i),(ii), and (iii); and

WHEREAS, The Association desires to make minor clarifications and  
modifications to the Declarations; and

WHEREAS, the Association desires to continue and protect a residential  
community with permanent open spaces and other common facilities for the benefit of  
the said community; and

WHEREAS, the Association desires to provide for the preservation of the values  
and amenities in said community and for the maintenance of said open spaces and  
other common facilities, and, to this end, desires to subject the real property described  
in Article II together with such additions as may hereafter be made thereto to the  
covenants, restrictions, easements, charges, and liens, hereinafter set forth, each and all  
of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, the Association has been incorporated under the laws of the State  
of Utah and has deemed it desirable for the efficient preservation of the values and  
amenities in said community, to create an agency to which should be delegated and  
assigned the powers of maintaining and administering the community properties and

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facilities and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Association has been incorporated under the laws of the State of Utah, as a non-profit corporation for the purpose of exercising the functions aforesaid;

NOW THEREFORE, the Association declares that the real property described in Article II is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration of Protective Covenants, Conditions and Restrictions (sometimes referred to as "Declaration") hereinafter set forth.

## ARTICLE I DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Adult" shall mean a person 21 years of age or older.
- (b) "Association" shall mean and refer to Alta View Estates Homeowners Association, its successors and assigns.
- (c) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration under the provisions of Article II hereof, including all Common Properties.
- (d) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of the owners of the Properties, and shall include buildings and common facilities placed upon those Properties.
- (e) "Lot" shall mean and refer to any plot of land containing not less than 5,000 square feet and upon which is located a living unit or which is intended for location of a living unit shown upon any recorded subdivision

map of The Properties with the exception of Common Properties as heretofore defined.

- (f) "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residency by a single family.
- (g) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities of the fee simple title and the equitable owner, whether one or more persons or entities by virtue of a purchase contract to any Lot but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (h) "Member" shall mean and refer to all those Owners who are members of the Alta View Homeowners Association as provided in Article III, Section 1, hereof.
- (i) "Mortgage", "mortgagor" and "mortgagee" include a trust deed, trustor, and beneficiary respectively.
- (j) "Institutional Holder" shall mean and refer to a mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.
- (k) An R.V. is a recreational vehicle which is defined as "a camper or motor home, used for pleasure, traveling and recreation and Alta View Owner's boats, snowmobile trailers, camper vans, and travel trailers."

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION**  
**ADDITIONS THERETO**

Section 1. Existing Property. The real property, including any living unit located upon any lot, which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Sandy City, Salt Lake County, State of Utah, and is more particularly described in Exhibit "A" attached hereto, all of which real property shall hereinafter be referred to as "Existing Property."

Section 2. Additions. The Association has all rights necessary to expand The Properties of the Association which shall be subject to the Declaration filed herein.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS**  
**IN THE ASSOCIATION**

Section 1. Membership. Every person or entity who is an Owner as defined in Article I, Section (f) of any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have but one class of voting membership: All those Owners as defined in Section 1. These Owners shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. If a membership is jointly owned, all or any holders of the joint membership may attend any and all meetings of the Members of the Association, but such holders of any joint membership must act unanimously to cast the vote relating to their joint ownership of the Lot as set forth above.

## ARTICLE IV

### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section (2), every member shall have a right and easement of enjoyment and use in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Alienation of Common Properties. The Common Properties may not be alienated or encumbered without the approval of the holders of two-thirds of the first mortgages on all Lots subject to assessment.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties;

(b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;

(c) the right of the Association, as provided in its Articles, Bylaws and this Declaration to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for an infraction of its published rules and regulations;

(d) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and

(e) the rights of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer determination as to the purposes or as to the conditions thereof shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement

and action thereunder is sent to every member at least thirty (30) days in advance of any action taken.

Section 4. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Properties to those who reside on the property whether the members of his family, his tenants, or contract purchasers.

Section 5. Rules for Use of R.V. Lot.

- (a) Each Owner can use a space in the R.V. Lot on a first come, first served basis.
- (b) If extra spaces are available, an Owner can use more than one space.
- (c) If all spaces are full and an Owner wants to use a space, those with two (2) or more spaces must give up their extra space(s) on a last-in first-out basis.
- (d) An Owner using an R.V. space must show ownership to the R.V. unit to be stored there.
- (e) R.V. Lot spaces are for use by Owners only.
- (f) The fee for each R.V. space is established by the Alta View Board of Directors and is due and payable yearly on August 1.
- (g) Safety of and insurance of R.V. units stored in the Lot are the sole responsibility of the Owners who store their R.V. units there. Each Owner must sign a "Waiver of Responsibility" form before receiving a key and moving an R.V. onto the lot. A \$5.00 security deposit will be paid on each R.V. Lot key.
- (h) R.V. Lot keys are NOT to be duplicated or given to any non-Owner.
- (i) Money for any unused time left when a space is vacated will be refunded when the R.V. Lot key is returned to the Association's Treasurer, and at such time the security deposit will be refunded.
- (j) Units stored in the Alta View R.V. Lot are to be R.V.'s ONLY.
- (k) R.V. Lot spaces are NOT to be used for storage of construction equipment, pick-up trucks, tractors, etc.

## ARTICLE V

### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner and successive Owners of any Lot by acceptance of a deed or purchase contract therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association: (1) regular assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The regular and special assessments, together with such interest, costs of collection, and attorneys fees as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, cost of collection, and attorneys fees as hereinafter provided, shall also be the personal obligation of the person or persons who were the Owners of such property at the time when the assessment fell due. The Association may elect from time to time any remedy with regards to the defaults by Owners without regard to any rule of law concerning the election of remedies.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, aesthetics and welfare of the residents in the Properties and in particular for the improvement, operation and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and perimeter subdivision fences, and at the option of the Association, of the homes situated upon the Properties and of Lots to the extent of the front yard lying between the living unit and street.

Section 3. Initial Deposit. An initial one-time assessment of twenty-five dollars (\$25.00) shall be assessed and shall be payable at date of possession of first time buyers.

Section 4. Regular Assessments. The regular monthly assessments shall be 100 percent of the actual estimated monthly cost of maintenance and operations of Common Properties and other facilities and may include a management fee together with amounts necessary to pay any carry-over shortage from previous periods.

The Board of Directors of the Association may, after consideration of the current maintenance costs and future needs of the Association, provide for accumulation of reserves to meet projected needs.

Section 5. Special Assessments for Capital Improvements. In addition to the regular assessment authorized by Section 4 hereof, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of described capital improvements, including the necessary fixtures and personal property related thereto, provided that any such special assessment exceeding \$2,000.00 (two thousand dollars) shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least ten (10) days in advance and shall set forth the purpose of the meeting.

Section 6. Quorum for any Action Authorized Under Section 5. The quorum required for any action authorized by Section 5 shall be as follows:

At the first meeting called, as provided in Section 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, the meeting may be continued subject to the notice requirement set forth in Section 5, and the required quorum at any such continued meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Assessment Period. The assessment period for regular assessments shall be one month. All regular assessments shall be fixed at a monthly rate and may



be adjusted by the Board of Directors in accordance with Section 9 to reflect current estimated costs of maintenance and operations. All assessments must be fixed at a uniform rate for all Lots and may be collected monthly or at such other times as determined by the Board of Directors.

Section 8. Date of Commencement of Regular Assessments. Due Dates. The regular assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors for the Association to be the date of commencement.

The regular assessments shall become due and payable on the first day of each month beginning on the month of the commencement date or such other date as fixed by the Board of Directors.

The due date of any special assessment under Section 5 hereof shall be fixed in the resolution authorizing such assessment.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period, and shall at that time, prepare a roster of the properties and assessments applicable thereto and keep books of accounts showing receipts and disbursements which shall be kept in the office of the Association and shall be open to inspection by any Owner at reasonable times.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

Section 10. Effect of Non-Payment of Assessment: The personal obligation of the Owner; the Lien; Remedies of Association. If assessments are not paid on the date when due (being the dates specified in Section 8 hereof) then such assessments shall become delinquent fourteen (14) days after the due date (or on the fifteenth (15th) day of each month) and shall together with a penalty of ten dollars (\$10.00) be applied to the assessment due for each and every payment that goes beyond the delinquent date, together with such other costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Property which shall bind such

Property in the hands of the then Owner, his heirs, personal representatives and assigns. The personal obligations of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period and shall pass to his successors in the title unless paid by the Owner before title is transferred.

If assessment and penalty are not paid within thirty (30) days after the delinquent date, the Association may pursue any remedies hereinafter provided for the enforcement of this Declaration.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all property to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I, Section 1 hereof.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

## ARTICLE VI

### PERIMETER FENCES

Section 1. Subdivision Perimeter Fences. Any fence or wall which is built upon The Properties and placed on the boundary of the subdivision shall be maintained and controlled by the Association and shall therefore be considered as Common Properties.

Section 2. Easement for Repair and Maintenance. All lots within The Properties shall be subject to an easement in favor of the Association to permit reasonable egress and ingress over areas not occupied by residential structures for all reasonable repair and maintenance purposes as provided herein.

## ARTICLE VII

### PROHIBITION AND CONTROLS

Section 1. Architectural Control. No building, fence, wall, accessory, cabanas, steps or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration or improvements therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. References to Association in this Article shall mean the Board of Directors or its designated committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with; provided, however, the design, location, and the kind of materials and the buildings or structures to be built on said Lots shall be governed by all of the restrictions herein set forth and shall be in harmony with existing improvements in the immediate vicinity.

Section 2. Landscaping Control. No lot leveling, planting, landscaping or construction shall be commenced until a plan thereof has been approved by the Association or the Architectural Committee.

Section 3. Minimum Construction Requirements. No home may be placed on any Lot until approved in writing by the Association as to size, condition, and appearance. All homes shall have all axles removed and shall be attached to the foundation or otherwise permanently installed so as to become part of the realty. Each home owner covenants that his home shall not be removed from the property without the prior written approval of the Association and the holder of any mortgage on such Lot. All homes must have complete health facilities, and must be connected to sewage outlets in conformity with State Health requirements and other municipal requirements.

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No home having less than eight hundred (800) square feet of living area and not less than twenty (20) feet in width for at least forty (40) feet of its length, exclusive of cabanas, ramadas, awnings, porches and carports, shall be permitted on any Lot.

All homes shall be single story structures.

All homes that have removable hitches or tongues must have the hitches and/or tongues removed.

A patio awning and a carport are required with each home and must be attached directly to the dwelling unit unless a ramada is installed over the home and provides the equivalent appearance of a patio awning and carport. Materials used for the construction of said type appurtenances must be approved by the Association in accordance of Section 1 of this Article.

All lot owners shall install a paved or concrete driveway and a concrete patio slab within three (3) months after placing a home and other improvements on their lots in accordance with sizes and specifications provided by the Association.

Any exterior lighting erected on any lot shall be shaded so as to not create a nuisance to the owners of adjacent lots.

Section 4. Setback Control. No permanent or temporary structure or home shall be permitted to be maintained or constructed closer than three feet from the rear of the lot, nor closer than three feet from the side of any lot. The minimum setback shall be no less than ten (10) feet from the front of the lot.

Section 5. Use of Lots. Single Family Home. No more than one (1) single family home shall be constructed or permitted to be maintained upon any lot in said subdivision.

No camping trailer, boat trailer, travel trailer, boat or motor home, pickup camper or any R.V. unit may be stored overnight on any lot within Alta View Estates without prior permission of the Association. There is a designated storage area within Alta View Estates that may be used, and a charge for said use shall be at the discretion of the Association.

No sign, excepting a temporary "for sale" or "for rent" sign shall be erected, placed, permitted or maintained on any Lot except as herein expressly permitted. One sign only shall be allowed per lot. A name and address sign and street entrance light may be permitted subject to the prior written approval of the Association.

There shall be no new or additional construction of buildings, fences or other structures, or modifications to existing buildings, fences or other structures without written approval of the Association.

Laundry may be dried in any location on the Lot, but must be completely enclosed and screened from view from the front yard of said Lot. All facilities for the hanging and/or drying of laundry, clothing, household linens and bedding must be approved by the Association.

All personal cars must be fully parked on the Owner's Lot and in the carport or on the driveway, in operating condition. No in-street and cul-de-sac parking will be permitted at any time except for approved deliveries or pick-ups, or short-term visitors. No vehicles are to be parked on any part of the sidewalks.

No Lot or Lots shall be re-subdivided except for the purpose of combining two or more lots into one homesite, provided, however, that no homesite is created that is smaller than 5,000 square feet.

No animals, fowl or reptiles shall be kept on the premises except household dog, cat or bird pets owned by the Owner of the Lot on which they are kept. No animal, dog or cat, shall be allowed off the Lot of the Owner except on a leash; and no dog, cat or bird pet shall be kept on any Lot by anyone if, in the discretion of the Association, that pet is or becomes a nuisance, threat or otherwise is objectionable to surrounding property owners.

No accessory buildings shall be used as living quarters.

No elevated tanks of any kind shall be erected, or placed, or permitted on any Lots.

No outdoor burning of trash or other debris shall be permitted. This shall not prohibit the use of normal residential barbecue or other similar outside grill.

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 surrounding property owners. No Lot shall be used in whole or part for the storage of rubbish, trash, used or new building materials (except during construction), used or new metal, trucks, automobiles or machinery in whole or in parts. Bicycles, toys, and other similar items shall be placed out of sight within a storage building or other area. No personal property, substance, thing or material shall be kept on any Lot or part thereof that will emit foul or obnoxious odors, or that will cause any noise that might disturb the peace and quiet of the surrounding property Owners, or will cause the Lot or part thereof to appear in unclean or untidy condition.

Section 6. Maintenance of Lots. It shall be the responsibility of the Owners to keep their Lot neat and clean, lawn mowed, and landscaped in types of landscaping deemed reasonable and compatible to surrounding Lots by the Association, and the improvements on their Lot in a state of repair in such a way as not to destroy or impair the aesthetic qualities of Alta View Estates. The Association shall have the right, either itself or through any other person, to furnish the labor and/or materials necessary to bring said Lot or parcel up to a standard approved by the Association, and to maintain them according to such a standard. In such event, the Owner of such Lot shall pay to the Association an amount equal to all direct and indirect costs and expenses incurred by the Association in furnishing such labor and/or materials or having the same furnished; the amount that the Owner of any such Lot is obligated to pay hereunder shall constitute a lien on such Lot or parcel, and shall be payable within ten (10) days after the charge is made. The Association shall be entitled to enforce its rights hereunder by following the procedure provided for the enforcement of Mechanic's and Materialman's liens in the State of Utah. This paragraph shall constitute a request by each Lot or parcel Owner under the conditions stated herein for the Association to furnish any labor and/or materials which are furnished hereunder. No claim against the Association shall constitute a defense nor offset in

any action by the Association for non-payment of any amounts which may be assessed hereunder.

No storage of any kind will be permitted under or around the home or within the Lot boundaries except in utility building(s) approved in writing by the Association as set forth herein.

All garbage and trash shall be put in a container meeting the specifications of the Association and Sandy City. Garbage and trash will be placed in front of Lot only at those times designated by Sandy City for garbage and trash pickup. At all other times, said garbage and trash shall be located in a storage area or other area whereby said garbage and trash will not be visible from the street.

Section 7. Housing for Older Persons. At least one Owner occupying a Lot shall be 55 years of age or older, and no Owner shall allow any person under 55 years of age to live upon a Lot except (a) for the Owner's spouse, or (b) for short-term visits (not to exceed 90 days) of friends or relatives of any age. In the event that any Owner should receive any person under 55 years of age as a permanent or long-term resident of a Lot who is not the spouse of the Owner or there is no longer an Owner occupying a Lot that is 55 years of age or older, it shall be the responsibility of the Owner to use reasonable and necessary efforts to sell the Lot and Living Unit or otherwise comply with the intent of this provision. In the event that the noncompliance continues in excess of ninety (90) days, then the Association shall have the right to acquire said Lot and dwelling at a purchase price not to exceed the original purchase price of the Lot and Living Unit plus the purchase price of any improvements that can be reasonably substantiated. If such Lot is subject to a first mortgage, such purchase price shall be sufficient to pay the mortgage balance and all other sums owed to such mortgagee. This provision shall not be interpreted to restrict the Association from seeking any other legal or equitable remedy that is allowable by law. This section shall be grandfathered and shall not apply to an Owner occupying a Lot who is or has living with him or her at the time of the adoption of this Amended Declaration, any person under 55 years of age, but only with respect to that specific person.

The Board shall have the power to grant a hardship exception to the age limitation created hereby to allow up to two Adult people under 55 years of age to live as permanent or long-term residents of a Lot with the Owner. Such an exception may only be granted by the Board when the Owner shows that he or she will be placed in severe hardship absent the granting of the exception. To obtain this hardship exception, the Owner must make written application to the Board setting forth the identity of the individuals to live with the Owner, the relationship of the individuals to the Owner, if any, and the hardship under which the Owner will be placed if the individual is not allowed to live with the Owner. The Board shall review all hardship exception applications and convey a written decision granting or denying the exception within 20 days following the application. The granting of a hardship exception is within the sole and unfettered discretion of the Board.

It is the intent that housing in Alta View Estates shall be in accordance with "Housing for Older Persons" as defined by the Fair Housing Act as Amended, 45 U.S.C. §§ 3607(b)(2)(c)(i), (ii), and (iii), wherein at least 80% of the units are occupied by at least one person 55 years of age or older per unit, there is the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, and the Board of Directors of the Association shall adequately provide for the publication of, and adherence to, policies and procedures which shall demonstrate an intent by the Owners and Managers to provide housing for persons 55 years of age or older.

Section 8. Miscellaneous Prohibitions.

- (a) Repairing Cars. No major repairing or overhauling of cars or other vehicles is permitted on the streets, driveways or parking areas of Lots within the Alta View Estate boundaries.
- (b) Additional Prohibitions. Such other actions deemed from time to time by the Association to constitute a nuisance.

Section 9. Professional Management. The Association shall have the right to contract for services or to transfer to any corporation, person or partnership, all of its



rights and obligations hereunder, but upon such transfer and the assumption of such obligations by the transferee, the enforcement of covenants and obligations under this Declaration shall remain the sole responsibility of the Association. Any management agreement shall provide for termination by the Association for cause upon thirty (30) days' written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods.

## ARTICLE VIII

### INSURANCE

Section 1. Types of Insurance. The Association shall be responsible for the maintenance of adequate hazard insurance, liability insurance and fidelity bond consistent with the value of the Common Property improvements and the size and scope of operation. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by FNMA and GNMA so long as either is a mortgagee or Owner of a Lot within the Alta View Estates, except to the extent such coverage is not available or has been waived in writing by FNMA or GNMA.

Section 2. Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments made under policies obtained and maintained by the Association pursuant to this Article. To the extent that reconstruction or repair is required herein, all proceeds of such insurance shall be made available as a fund for such reconstruction or repair and shall be disbursed by the Association as provided in Article IX. To the extent that reconstruction or repair is not required herein and there is a determination that the portion of Alta View Estates which was damaged or destroyed and for which the loss shall have been paid shall not be rebuilt, the proceeds shall be disbursed by the Association to the Owners as provided in Article IX.

Section 3. Additional Coverage. The provisions of this Declaration shall not be construed to omit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration,

in such amounts and in such forms as the Association may deem appropriate from time to time.

Section 4. Adjustment and Contribution. Exclusive authority to adjust losses under policies hereafter in force, shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

Section 5. Owner's Own Insurance. Notwithstanding any other provisions of this Article, each Owner shall be responsible to obtain insurance at his own expense providing coverage upon his Lot, Living Unit, and any and all other improvements located thereon, his personal property, for his personal liability, and covering such other risks as he may deem appropriate; provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article.

Section 6. Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Common Properties and adjust the same at its discretion within the limitations set forth within this Article. Such review may include an appraisal by a representative of the insurance carrier or carriers providing the policy or policies or by such other qualified appraisers as the Association may select.

## ARTICLE IX

### **DAMAGE OR DESTRUCTION**

Section 1. Damage or Destruction of Lot or Residential Unit. In the event that a Lot or any improvement located thereon is damaged or destroyed by fire or other casualty, the Owner thereof shall be solely responsible for determining whether or not the improvement should be repaired, restored or reconstructed. Said Owner, however, shall be responsible to make certain that any structure that is damaged or destroyed is either repaired or torn down so as not to create an unsafe condition. In addition, if any Common Properties are damaged or destroyed in connection with the repair, restoration or reconstruction of a damaged Lot, then the cost of repair, restoration or reconstruction of the Common Properties so damaged shall be paid by the Owner of the said Lot.

Section 2. Damage or Destruction of Common Properties. In the event that the Common Properties or any portion thereof, are damaged or destroyed by fire or other casualty, the Association, unless determined otherwise by a majority vote of all the Owners, shall be responsible to promptly repair, restore, replace or reconstruct same to the extent required to return them to substantially the same condition prior to the occurrence of the damage or destruction. The Association shall have full and complete authorization, right and power to make, execute and deliver any contract or other instrument and may take all action which may be necessary or appropriate to exercise the powers herein granted and no consent or other action by any Owner shall be necessary in connection therewith.

Section 3. Repair or Reconstruction. Repair, restoration, replacement or reconstruction of damaged portions of Alta View Estates as used in this Article means restoring, by whatever means, method or process that shall be necessary, the damaged portions to substantially the same condition in which it existed prior to the damage. The term "repair" as used herein shall be deemed to include, without limitation, each and every process or procedure necessary to comply with the intent of the Article.

Section 4. Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Common Properties, the Association shall obtain complete and reliable estimates of the costs of repair of that part of the Common Properties damaged or destroyed. As soon as practicable after receiving said estimates, the Association shall diligently pursue to completion the repair of that part of the Common Properties damaged or destroyed.

Section 5. Funds for Reconstruction. The proceeds of any casualty insurance collected by the Association due to damage to the Common Properties shall be available to the Association for the purpose of repair of the Common Properties. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair, the Association may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair. Such Special Assessment shall be allocated and collected as provided in Article V, except that the vote therein specified shall not be necessary. Further levies may be made in like manner if the proceeds of insurance and the Special Assessment collected prove insufficient to pay the costs of repair.

Section 6. Disbursement of Funds for Repair. The insurance proceeds received by the Association and any amounts received from Special Assessments made pursuant hereto shall constitute a fund for the payment of costs of repair after casualty. It shall be deemed that the first money disbursed in payment for cost of repair shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair, such balance shall be distributed pro rata to the Owners.

## ARTICLE X

### CONDEMNATION OF LOTS

Section 1. Condemnation of Lot. If, at any time or times during the continuance of ownership pursuant to this Declaration, all or part of one or more Lots shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any

part of a Lot, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain.

Section 2. Proceeds. All compensation, damages, and other proceeds from any taking of a Lot by power of eminent domain (hereinafter the "Condemnation Award") shall be made payable to the Owner of each respective Lot so condemned.

Section 3. Termination of Membership. If all of a Lot is taken by condemnation or if such a portion of a Lot is taken by condemnation such that the remaining portion of the Lot may not practically or lawfully be used for any purpose permitted by this Declaration, then the membership, vote, easement rights, liability for payment of the Assessments and all other rights and duties granted by this Declaration which are appurtenant to such Lot shall be and are automatically terminated upon such taking.

Section 4. Remaining Portion of Lot. If any portion of a Lot shall remain after a complete taking as set forth above, then the remaining portion thereof shall be subject to purchase by the Association, at the sole election of the Association, at the fair market value thereof after such condemnation is complete and less any portion of the Condemnation Award paid to the Owner of such Lot which is properly allocated to such remaining portion of the Lot. Any portions of a Lot so purchased by the Association shall be Common Properties.

## ARTICLE XI

### CONDEMNATION OF COMMON PROPERTIES

Section 1. Condemnation of Common Properties. If, at any time or times during the continuance of ownership pursuant to this Declaration, all or any part of the Common Properties shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Properties in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain.

Section 2. Proceeds. All compensation, damages, and other proceeds from any such taking of Common Properties by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Association as herein provided.

Section 3. Complete Taking. In the event that all of the Common Properties are taken by power of eminent domain, ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners pro rata.

Section 4. Partial Taking. In the event less than all of the Common Properties are taken by power of eminent domain, the following shall occur:

(a) Allocation of Award. If apportionment of allocation is established by applicable negotiations, judicial decree, or statute, the Association shall employ such apportionment and allocation to the extent appropriate. Otherwise, as soon as practicable, the Association shall, reasonably and in good faith, apportion the condemnation award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Properties shall be allocated among and distributed to all Owners (including Owners whose entire Lots have been taken) pro rata;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Lots that have not been taken, pro rata;

(iii) The respective amounts apportioned to the taking of or injury to a particular Lot shall be allocated and distributed to the Owner or Owners of such Lot;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) Distribution of allocated proceeds shall be made by check payable jointly to each Owner and his respective Mortgagees, as appropriate.

(b) Continuation and Reorganization. If less than all of the Common Properties are taken by power of eminent domain, ownership pursuant hereto shall not terminate, but shall continue.

(c) Reconstruction or Repair. Any reconstruction or repair necessitated by condemnation shall be governed by the procedures specified in Article IX for cases of Damage or Destruction.

## ARTICLE XII

### GENERAL PROVISIONS

Section 1. Mortgagee Disclosure. The holders of first mortgages or other equivalent liens on any Lot shall have the right to (a) inspect the books and records of the Association during normal business hours, and (b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association, when requested.

Section 2. Termination. The Association shall be required to obtain the written consent by the holders of seventy-five (75) percent of the first mortgages prior to the termination or abandonment of the Association. Said consent shall be based on one vote for each mortgage. This provision and any provision of any document providing

or the consent by a mortgagee prior to any action shall be binding upon the Association and the Owners.

Section 3. Leases. Lease agreements between an Owner and a Lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, and Bylaws and that any failure by the Lessee to comply with the terms of such documents shall be a default under the lease. All such leases shall be in writing and shall include any agreement for the lease or rental of the property regardless of the term. Any lessor shall have the obligation to obtain prior review and written approval of the Board of Directors of any lease agreement.

Section 4. Duration. This Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot and subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots and the holders of two-thirds (2/3) of the first mortgages on all Lots has been recorded, agreeing to rescind said Declaration in whole or in part.

Section 5. Amendment. Amendment of this Declaration shall require the assent of the members entitled to cast seventy-five (75) percent of the votes excepting the following: (a) any amendment recommended or required by FHA or VA may be enacted by a two-thirds (2/3) vote of the Directors without the approval of the Owners, or (b) any amendment recommended or required by any institutional lender as a condition to any construction, permanent or other loan may be enacted by a two-thirds (2/3) vote of the Directors without the approval of the Owners. Notwithstanding any other provision contained within this Declaration, at least seventy-five (75) percent (based upon one vote for each first Mortgage owned per Lot) of the first Mortgagees of any Lot as then appears on the official records of Salt Lake County, Utah, shall have given their prior written approval before the Association shall be entitled to:



(a) By act or omission, seek to abandon or terminate this Declaration;  
(b) Change the pro rata interest or obligations of any individual Lot as set forth above for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(c) By act or omission seek to abandon, encumber, sell or transfer the easements for the Common Properties (the granting of easements for public utilities or for other public purposes consistent with the intended use of the roadways, parking areas and Common Properties shall not be deemed a transfer within the meaning of this clause); or

(d) Use hazard insurance proceeds for losses to the Common Properties for other than the repair, replacement or reconstruction of such property.

Section 6. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 7. Enforcement. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended, modified or adopted from time to time. The Association shall have full power to enforce compliance with this Declaration, Articles of Incorporation, the Bylaws and Rules and Regulations in any manner provided for by law or in equity, including without limitation, the right to bring an action for damages, an action to recover sums due, an action to enjoin a violation or specifically enforce the provisions thereof. Said action or actions may be maintainable by the Association, or in a proper case, by an aggrieved Owner. In the event of any action by the Association to recover Assessments or other amounts due hereunder, or to enforce the provisions hereof, the Association shall be entitled to recover from the offending Owner all costs and expenses incurred by the Association in connection with such action, including court costs and reasonable attorneys fees. The obligations, provisions, covenants, restrictions

and conditions contained in this Declaration, as the same may be lawfully amended or supplemented, with respect to the Association and/or the Lots within Alta View Estates, shall be enforceable by the Declarant, by the Association or by an Owner through a proceeding for prohibitive or mandatory injunction. The rights and remedies herein provided shall be in addition to any and all other rights now or hereafter provided by law for enforcement of the provisions of this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations and decisions and resolutions of the Association adopted pursuant thereto.

Section 8. Interest. Unless otherwise specifically set forth in this Declaration, all sums payable hereunder by an Owner shall bear interest at the rate of eighteen percent (18%) per annum from the due date, or if the amount due has been advanced or incurred by the Association or any other Owner pursuant to authorization contained in this Declaration, interest shall begin to accrue on such amounts ten (10) days after repayment is requested in writing by said Association or Owner.

Section 9. Certain Specific Enforcement Powers. In amplification of, and not in limitation of, the general powers specified above, the Association shall have the following rights and powers:

(a) Suspension of Privileges. If any Owner shall be in breach of this Declaration, the Bylaws or Rules and Regulations including, but not limited to, the failure of such Owner to pay any assessment on or before the due date thereof, subject to the limitations hereinafter set forth in this paragraph, the Association may suspend the Owner's right to use Common Properties and the right of such Owner to participate in any vote or other determination provided for herein. The decision as to whether such privileges should be suspended shall be made by a majority of the members of the Board present at a special meeting of the Board duly called and held for such purpose. No suspension under this paragraph shall be effective until written notice has been given to the Owner of the suspension, the reasons therefor and the actions that must be taken by said Owner to have all suspended privileges reinstated. If such suspension of privileges is based on the failure of an Owner to pay Assessments

when due, the suspended privileges of an Owner shall be reinstated automatically at such time as the Owner shall have paid to the Association, in cash or by cashier's or certified check, all amounts, including interest, costs, and attorney's fees past due as of the date of such reinstatement. If such suspension of privileges is based on any act or omission other than the failure to pay Assessments or any other amounts due hereunder when due, no such suspension shall be made except after a meeting of the Board of Directors of the Association at which a quorum of the Board is present, duly called and held for such purpose. Written notice of such meeting shall be given to the Owner whose privileges are being sought to be suspended for any act or omission other than the failure to pay Assessments at least ten (10) days prior to the holding of such meeting. Such Owner shall be entitled to appear at such meeting and present such Owner's case or provide a written response to the Board no later than the time scheduled for such meeting as to why privileges should not be suspended.

(b) Enforcement by Lien. If any Owner shall fail or shall refuse to make any payment of any Assessments when due, the amount thereof, including interest, costs and attorney's fees, shall constitute an encumbrance on the entire interest of the said Owner's Lot against which the Assessment has been levied. All of the rights and powers associated with such encumbrance on an Owner's Lot shall be collectively referred to herein as "Lien." To evidence a Lien for sums assessed pursuant to this Declaration, the Association shall prepare a written Notice of Lien setting forth the amount of the Assessment or Assessments, the due date thereof, the amount or amounts remaining unpaid, the name of the Owner, a legal description of the Owner's Lot and a statement that the amount of the Lien shall also include all costs and expenses, including attorney's fees, incurred in preparation, perfection and enforcement of the Lien. Such Notice of Lien shall be signed and acknowledged by a duly authorized agent of the Association and shall be recorded in the Office of the County Recorder for Salt Lake County, State of Utah. No Notice of Lien shall be recorded until there is a delinquency in the payment of an Assessment. Such Lien may be enforced by sale or foreclosure of the Assessment. Such Lien may be enforced by

sale or foreclosure of the Owner's interest in said Owner's Lot by the Association or its duly authorized agent. Such sale or foreclosure shall be conducted in accordance with the provisions of Utah law applicable to the exercise of the powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by the laws of the State of Utah. The Lien may be satisfied and released upon payment to the Association in cash or certified funds the amount set forth in the Lien plus all of the Association's expenses and attorneys fees incurred in the preparation, perfection and enforcement of the Lien and any Assessments against the Lot which may have become due since the date of said Lien. The Association shall have the right and power to bid in at any foreclosure sale, and to hold, lease, mortgage or convey the subject Lot.

Section 10. Priority of Lien. Upon recordation of the Notice of Lien, the Lien provided for herein shall be a charge or encumbrance upon the Owner's interest in the Lot prior to all other liens and encumbrances, recorded or unrecorded, except only tax and special assessment liens on the Lot in favor of any municipal assessing or taxing district and any encumbrances on the interest of the Owner recorded prior to the date when such Notice of Lien is recorded which, by law, would be a lien prior to subsequently recorded encumbrances.

Section 11. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

IN WITNESS WHEREOF, ALTA VIEW HOME OWNERS ASSOCIATION, a Utah corporation, has caused its name and seal to be hereunto affixed by its officers hereunto duly authorized this 6 day of January, 1993/

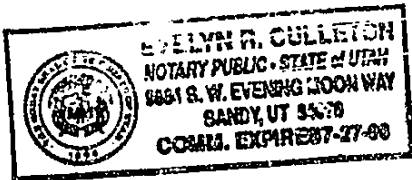
ALTA VIEW HOMEOWNERS ASSOCIATION, a Utah corporation

By: *John Lynn Welch*  
his President, as authorized by the Alta View Homeowners Association Board of Directors and Members

STATE OF UTAH )  
 ) :SS  
COUNTY OF SALT LAKE )

On the 6 day of January, 1993/ personally appeared before me the President of Alta View Homeowners Association who, being by me duly sworn, did say that he is the President of the Alta View Homeowners Association and that said instrument was signed in behalf of said corporation by authority of and pursuant to a vote of the members of the Association taken on the 30 day of November, 1992/ and said President acknowledged to me that said corporation executed the same.

[SEAL]



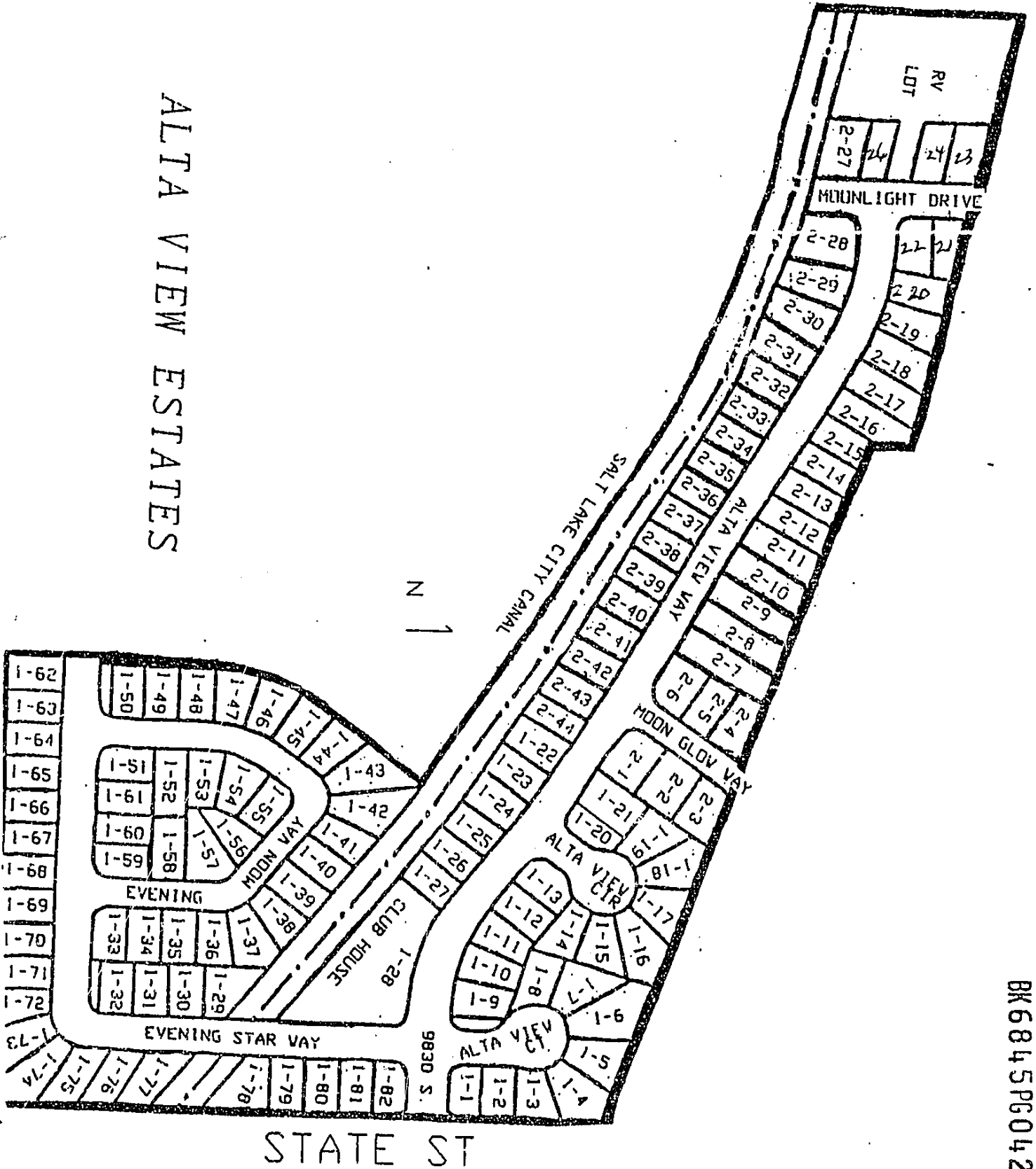
*Evelyn R. Cullerton*  
NOTARY PUBLIC  
Residing at Salt Lake City, Utah

My commission expires:

7-27-96

EXHIBIT A

ALTA VIEW ESTATES



BK6845PG0420

**SUPPLEMENTAL DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
ALTA VIEW ESTATES HOMEOWNERS ASSOCIATION  
SANDY, UTAH**

This Declaration, made this 6 day of January, 1997, by ALTA VIEW ESTATES HOMEOWNERS ASSOCIATION ("Association").

**WITNESSETH:**

WHEREAS, the Association is adopting an Amended Declaration of Protective Covenants, Conditions and Restrictions; and

WHEREAS, concerns have been raised by members of the Association regarding the validity of any amendment to the Declaration of Protective Covenants, Conditions and Restrictions prior to 1997; and

WHEREAS, the Association is desirous of averting any claim of invalidity to the Amended Declaration of Protective Covenants, Conditions and Restrictions and also forestalling the need to again vote on said Amended Declaration.

NOW, THEREFORE, the Association declares that the real property described in its Amended Declaration of Protective Covenants, Conditions and Restrictions shall be held, transferred, sold, conveyed and occupied subject to the Supplementary Declaration of Covenants, Conditions and Restrictions (referred to as "Declaration") as hereinafter set forth.

ADDENDUM TO ARTICLE XII--GENERAL PROVISIONS

The following Section shall be added to Article XII:

Section 12. Invalidity of Amended Declaration.

If the Amended Declaration is found to be invalid and unenforceable due to some inability of the Association to amend the Declaration prior to 1997 as a result of Article XII, Section 4 of the prior Declaration, this Amended Declaration shall remain of record with the County Recorders office and shall become enforceable on the earliest possible date in 1997. Any party that unsuccessfully challenges the validity of the Amended Declaration based on Article XII, Section 4 of the prior Declaration, shall be liable for costs and reasonable attorneys fees incurred by the Association in defending the Amended Declaration.

IN WITNESS WHEREOF, Alta View Estates Homeowners Association, a Utah corporation, has caused its name and seal to be hereunto affixed by its officers duly authorized this 6 day of January, 1997

ALTA VIEW ESTATES HOMEOWNERS  
ASSOCIATION, a Utah corporation

[SEAL]

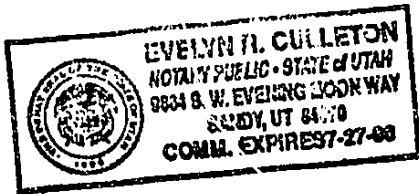
By: J. Lynn Welch.  
Its President, as authorized by the Alta View  
Estates Homeowners Association Board of  
Directors and Members



STATE OF UTAH )  
 :SS  
COUNTY OF SALT LAKE )

On the 6 day of January, 1994, personally appeared before me the President of Alta View Estates Homeowners Association who, being by me duly sworn, did say that he is the President of the Alta View Estates Homeowners Association and the said instrument was signed in behalf of said corporation by authority of and pursuant to a vote of the members of the Association taken on the 20 day of November, 1993; and said President acknowledged to me that said corporation executed the same.

[SEAL]



Evelyn R. Culleton  
NOTARY PUBLIC

My Commission Expires:

7-27-96

1920

5704584  
06 JANUARY 94 10:10 AM  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
ALTA VIEW ESTATES H.O.A.  
9877 EVENING MOON WAY SANDY, 84070  
REC BY: REBECCA GRAY , DEPUTY