

DECLARATION  
OF  
CONDITIONS, COVENANTS, RESTRICTIONS AND RESERVATIONS  
OF  
MOUNTAINVILLE HEIGHTS SUBDIVISION

THIS Declaration of Conditions, Covenants and Restrictions is made and executed this 13th day of October, 1987, by DESERET FEDERAL SAVINGS AND LOAN ASSOCIATION, a federally chartered savings and loan association, authorized to do business in the State of Utah, hereinafter referred to as Declarant.

WITNESSETH:

R.O.  
WHEREAS, Declarant is the Owner of the real property described in Exhibit "A" to this Declaration, and is desirous of subjecting any and all platted developments within the real property described in Exhibit "A" to the conditions, covenants, restrictions, reservations, easements, liens and charges hereinafter set forth, each and all of which is and are for the benefit of and pass with said property, and each and every parcel or lot thereof, and shall apply to and bind the successors in interest, and any Owner thereof; and

WHEREAS, Declarant has platted the said real property as a Planned Unit Development consisting of the separate Ownership of Lots and the fee Ownership of an undivided interest as a tenant in common of the Common Areas; and

WHEREAS, Declarant has designated Mountainville Heights Property Owners Association, a non-profit corporation organized under the laws of the State of Utah for the purpose of providing an organization to serve as the representative of the Owners and tenants of the Property with respect to: the assessment, collection, and application of all charges imposed hereunder; the enforcement of all covenants, easements, restrictions, and conditions set forth herein and of all liens and charges created hereby; the construction, operation, maintenance, and management of the facilities and services herein described; and the promotion of the health, safety, and welfare of the Owners and tenants of the Property.

NOW, THEREFORE, it is hereby declared that any and all platted developments within the real property described in and referred to in Exhibit "A" hereof is, and shall be, held, transferred, sold and conveyed subject to the conditions, covenants, restrictions, reservations, easements, lien and/or charges hereinafter set forth.

## PROPERTY SUBJECT TO THESE COVENANTS

The plat or plats on file at the Utah County Recorder's Office, Provo, Utah, under the name of Mountainville Heights Subdivision, are subject to these Protective Covenants. The plat or plats are all contained within the boundaries of the real property. This real property, described hereafter, is named Mountainville Heights.

The lots which are, and shall be, held and shall be conveyed, transferred and sold subject to the conditions, covenants, restrictions, reservations, easements, liens, and/or charges with respect to the various portions set forth in the various clauses and subdivisions of these Protective Covenants are located within the boundaries of the real property in the County of Utah, State of Utah, which real property is more particularly described in Exhibit "A", attached hereto and by this reference made a part hereof.

The Declarants may, from time to time, subject additional real property to the conditions, covenants, restrictions, reservations, easements, liens and/or charges herein set forth by the appropriate reference hereto.

It is understood and agreed that all platted developments of the property shall be in compliance with these Protective Covenants as well as any city, county, state, federal or other governmental restrictions or requirements which apply thereto; and that all Owners of lots in this platted development are mandatory members of the Mountainville Heights Property Owners Association and subject to the requirements and assessments found in the Association's Articles of Incorporation and by-laws.

## GENERAL PURPOSES AND CONDITIONS

The platted portions of the real property described in Exhibit "A" hereof are subject to the conditions, covenants, restrictions, reservations, easements, liens and/or charges hereby declared to ensure the best use and the most appropriate development and improvements of each platted lot thereof; to protect the Owners of lots against such improper use of surrounding lots as will depreciate the value of their property to preserve, so far as practicable, the natural beauty of said real property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to ensure the highest and best development of said property consistent with the ordinances and land use development policies of Alpine City; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on the lots; to secure and maintain proper setbacks from roads, and adequate free spaces between structures; and in general provide adequately for a high type and quality of improvements in said property, and thereby to enhance the values of investments made by purchasers of lots therein.

(a) Duration of Covenants; Violations. These Covenants are to run with the land and shall be binding on all parties and all persons claiming under them until September 1, 2007, at which time said covenants shall be automatically extended for successive periods of 10 years, unless by vote of 75% of the then Owners of the platted lots these covenants are changed or terminated. Said voting shall be based on the eligible votes as determined hereinafter.

If the parties hereto or any of them, or their heirs or assigns, shall violate or attempt to violate any of the Covenants herein, it shall be lawful for any other person or persons owning any lot situated in said Mountainville Heights to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such Covenant, and either to prevent him or them from so doing or to recover damages, attorney's fees, costs of court or other dues for such violations.

(b) Invalidation of any Part of Covenants. Invalidation of any one or more of these Covenants or any part thereof by judgments or court order shall in no wise affect any of the other provisions herein which shall remain in full force and in full effect.

(c) Membership in the Association. The Owner of each lot to which these covenants apply shall and must be a member of the Association and participate in the operation of the Association in accordance with its Articles of Incorporation any by-laws or rules and regulations of said Association which may be adopted subsequent hereto. The transferee from an Owner of each said lot likewise shall and must be a member of the Association and be subject to each and all these Covenants.

(d) Inadmissible Activities. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Residences shall not be used for purposes of trades, office or commercial uses except when permitted by ordinances of Alpine City.

(e) Types, Design and Placement of Structures. No "improvement" or "structure" (these terms shall include home, guest facility, barn, shed, corral, fence, driveway, culvert, bridge, or the like) shall be erected, placed or altered on any lot in Mountainville Heights until the plans thereof, specifications and the plot plan showing the locations of such structures, has been approved in writing by Alpine City.

(f) Building Time. A lot Owner is not required to build any structure(s) on a lot, but once commenced, the building time for the exterior portion of any structure shall not exceed 12 months to completion. All debris, excavation dirt, etc., associated with the building process shall be removed within these specified building times. Excavation dirt shall either be removed entirely or shall be spread out and reseeded within this specified time so as to return the lot to a pleasing appearance.

(g) Lot Maintenance and Appearance. Each Owner shall be required to reasonably, necessarily, and adequately maintain his property to keep it in a reasonable state of appearance and preservation. No open storage of building materials, except during the course of actual construction, shall be permitted on any lot.

(h) Fences. No fence (included in this term is wall, hedge, mass plantings or the like) shall be permitted to extend beyond the minimum building setback line established by the city of Alpine on any corner lot which will create a traffic hazard by obstructing view.

(i) Hunting and Target Practicing Prohibited. Hunting or target practice, either with traps, guns or bows, shall not be permitted, except in specific designated areas, on any of the real property described in Exhibit "A".

(j) Parking. Unless otherwise permitted by the Association, no automobile, boat, trailer or recreational vehicle, camper, truck or commercial vehicle shall be parked or left on any street or any part of the Project other than in any parking area designated by the Association for the parking and storage of such vehicles, including Common Areas, as applicable.

(k) The public roadways and certain utility service lines shall be dedicated and conveyed to Alpine City, which shall have the responsibility of providing maintenance and workable service thereof.

#### ADMINISTRATION OF PROJECT

The project shall be administered by the Mountainville Heights Property Owners Association acting by and through its governing Board of Trustees, who shall be elected in accordance with the Articles of Incorporation and by-laws of the Association, and whose duties will be governed by the terms of this Declaration, the Articles of Incorporation and the by-laws of the Association. The Association may employ a professional management agent to perform, subject to the supervision of the governing Board of Trustees, such duties and services as the governing Board of Trustees shall direct.

The Association shall have the power to establish and enforce compliance with the Rules and Regulations and to amend the same from time to time and shall be responsible for the monthly payment of the common utility services that are provided to Common Areas.

#### ASSESSMENTS

The Association Board shall set the annual lot assessment rate for each calendar year (January 1 thru December 31) not later than September 1 proceeding said calendar year, and shall have power to establish rates for other special assessments as the need arises, including increasing the annual rate if necessary. The annual assessment shall be payable monthly.

(a) Covenants. The Declarant, for itself and for its heirs successors-in-interest, and assigns, and with respect to the Assessable Property owned by it, hereby covenants and agrees, and each Owner of a lot or other portion of the Assessable Property, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, with respect to each such lot or other portion of the Assessable Property owned by him, shall be deemed to have covenanted and agreed to pay to the Association the monthly and special assessments to be fixed, assessed, and collected by the Board from time to time, as provided herein.

Each such monthly and special assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided, shall be a charge upon the land and shall be a continuing lien upon the respective lots or other portions of the Assessable Property to the extent that any change in the Ownership thereof may result in any portion of same becoming Assessable Property.

- (b) Monthly Assessments. There shall be an assessment, payable monthly, for each lot and for the improvements attributable to each lot. The lot assessment begins the calendar month after the lot is purchased; if purchased under contract, then it is the calendar month after the down payment is made. The improvements assessment begins the calendar month after construction of an improvement is begun. (Also, any facility requiring hooking up the culinary water main and/or the electrical power cable is defined as an improvement.) The assessments are paid to the Association and are used for the responsibilities and functions of the Association.
- (c) Special Assessments. In addition to the monthly assessments authorized herein, the Board may levy, in any assessment year or a series of assessment years, a special assessment or series of special assessments for the purpose of defraying, in whole or in part, the cost of acquiring, constructing, reconstructing, altering, enlarging, laying, renewing, or replacing any of the facilities or amenities of the Association. In addition to the monthly assessments and special assessments for capital improvements authorized herein, the Board may levy, in any assessment year, a special assessment on the Property of any members for any additional services requested by those members; provided that the Board determines such services are required and/or beneficial.
- (d) Uniform Rate. Both annual and special assessments shall be fixed at a uniform rate for each lot and improvement thereon. The Declarant shall be assessed for any lots it may own, notwithstanding any provisions to the contrary herein. The Board shall apply all funds received by the Association for the purpose intended by this Declaration and not in contravention of the general interests of the members.
- (e) Maximum Annual Assessment. The annual assessment cannot be increased during any one year more than 15% above the assessment for the previous year, without a vote of the members; with an affirmative vote of two-thirds (2/3) of each class of members voting at a meeting duly called for this purpose.
- (f) Non-payment of Assessment. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate set by the Board, as allowable under law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.
- (g) Assessment Approval by Declarant. During the time period that Declarant remains the Class B member (as hereinafter outlined in the section on Membership and Voting Rights) all monthly, annual and special assessments shall require the approval of Declarant.

#### MEMBERSHIP AND VOTING RIGHTS

Each Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the Ownership of the lots. Ownership of a lot shall be the sole qualification for membership. The

membership held by an Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such lot. If more than one person is the Owner of the lot, such persons shall jointly hold one Association membership.

The Association shall have two classes of voting membership and be governed accordingly.

Class A. Class A members shall be all the Owners with the exception of the Declarant in the capacity as Declarant, and shall be entitled to one vote for each lot owned, except that where one dwelling and/or its appurtenant improvements is located on more than one lot, such Owner shall be entitled to only one vote, and as such one Association membership.

Class B. The Class B member(s) shall be the Declarant who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership no later than when the earlier of the first to occur of the following at which time Declarant shall transfer control of the Association to the Lot Owners:

(a) A period of five (5) years after the first lot in Phase I of the Project has been conveyed; or

(b) After nine-tenths of the lots have been sold to Class A members.

In the event there is multiple lot Ownership, the vote relating to such lot shall be exercised as such Owners may determine among themselves, but no more than one vote per lot shall be possible. The voting rights of any member shall automatically be suspended during any period in which he shall be delinquent in the payment of any amounts, expenses, fees or assessments due to the Association.

#### RIGHTS OF MORTGAGEES

Nothing contained herein or in the by-laws of the Association shall impair the rights of a mortgagee to:

(a) Foreclose or take title to a lot pursuant to the remedies provided in the lien document, or

(b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or

(c) Proceed with the subsequent sale or lease of the lot so acquired by the mortgagee, or

(d) Jointly and severally, pay taxes or other charges which are in default and which may or have become a charge against any of the Association's common property and may pay overdue premiums on hazard insurance policies, or secure a new hazard insurance coverage on the lapse of a policy, for such common property and mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

A mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by any lot Owner/mortgagor of any obligation of the borrower under the Articles of Incorporation or the by-laws of the Association, or of this Declaration, which default is not cured within thirty (30) days after notice to the lot Owner/mortgagor.

A mortgagee may, but shall not be required to, pay any delinquent assessments due upon the mortgaged lot, and the amount of such payment shall be added to the mortgage indebtedness. Failure to pay any assessment when due and payable by an Owner/mortgagor shall constitute a default under the terms and provisions of the mortgage instrument, authorizing foreclosure of the lien created therein, at the option of the mortgagee. The mortgagee shall have the right to examine the books and records of the Association upon request and to require annual reports of the financial status of the Association.

#### DEFAULT

Failure to comply with any of the terms of the Declaration, The Articles of Incorporation or by-laws of the Association or the Rules and Regulations of the Association, shall constitute an event of default and shall be grounds for relief, which may include without limitation an action to recover sums due for damages and injunctive relief, or any combination thereof.

(a) Remedies. In addition to all other remedies herein contained or as may be provided by law, the Association may discontinue the furnishing of any utilities or other services to an Owner who is in default of his obligations to the Association or other Owners as set forth herein upon thirty (30) days written notice to such Owner and to any mortgagee of such Owner's lot of its intent to do so.

(b) Costs. In a proceeding arising because of any alleged default by any Owner, the Association, if successful, shall be entitled to recover the costs of the proceedings and reasonable attorney's fees from such Owner.

(c) No Waiver. The failure of the Association or of any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles of Incorporation or by-laws of the Association, or the Rules and Regulations, shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies and privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges, as may be available to such party at law or in equity.

(d) Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all conditions, covenants, restrictions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## NOTICE AND SEVERABILITY

All notices or other documents required herein to be delivered by the Association or Owners may be delivered either personally or by mail. If any of the provisions of the Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any provisions, paragraph, sentence, clause, phrase or work in any other circumstances shall not be affected thereby.

## AMENDMENTS AND TITLES

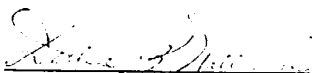
Amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Owners. Amendments may be adopted at a meeting of the Owners if two-thirds (2/3) of the Owners vote for such amendment, or without any meeting if all Owners have been duly notified and two-thirds (2/3) of the Owners consent in writing to such amendment. Amendments once properly adopted shall be effective upon recording in the appropriate governmental offices. Any decision changing the percentages of interest expressed herein, shall require the unanimous consent of the lot Owners and their mortgagees.

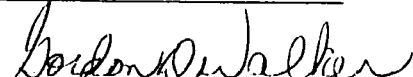
Paragraph titles are used in this Declaration for convenience of reference and are not intended to limit, enlarge or change the meaning of the contents of the various paragraphs.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration on this 13<sup>th</sup> day of October, 1987.

## DECLARANT

DESERET FEDERAL SAVINGS & LOAN ASSOCIATION

  
Secretary

  
President



STATE OF UTAH )  
 ) : ss  
County of Salt Lake )

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The foregoing instrument was acknowledged before me this 13th day of October, 1987, by Gordon D. Walker as President and Darlene K. Mallinson as Secretary of DESERET FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation.



Christina B. Morgan  
Notary Public

My commission expires: 11/5/88  
Witness my hand and official seal  
Residing at: Lehi, Utah

## EXHIBIT A

COMMENCING at a point which is South 1174.82 feet and East 762.45 feet from the Northwest corner of Section 19, Township 4 South, Range 2 East, Salt Lake Base and Meridian; thence as follows: South 19° 18' 46" East 124.52 feet; thence South 24° 52' 14" West 113.00 feet; thence South 71° 24' 46" East 151.45 feet; thence South 20° 32' 00" West 108.43 feet; thence South 22° 06' 00" West 196.00 feet; thence South 13° 58' 00" West 76.00 feet; thence South 13° 08' 00" West 281.65 feet; thence North 89° 42' 08" West 411.27 feet; thence North 20° 39' 08" East 339.31 feet; thence North 23° 16' 16" East 398.05 feet; thence North 13° 48' 16" West 85.52 feet; thence North 58° 13' 14" East 90.00 feet along Southeasterly side of Grove Drive; thence North 58° 13' 14" East 158.96 feet along Southeasterly side of Grove Drive to point of beginning.

ALSO KNOWN AS MOUNTAINVILLE HEIGHTS SUBDIVISION PLAT A