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DECLARATION  
OF  
COVENANTS,  
CONDITIONS  
AND  
RESTRICTIONS  
FOR  
MOUNTAIN PARK ESTATES  
SPANISH FORK CITY, UTAH

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR MOUNTAIN PARK ESTATES  
SPANISH FORK CITY, UTAH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAINPARK ESTATES, is made and executed this 15th day of June, 1995, by Advantage Communities, Inc., a Utah corporation, referred to below as "Declarant".

**RECITALS:**

A. Declarant is the Owner of the following described real property (the "Entire Property") located in Utah County, Utah:

All of Lots 1 through 72 MOUNTAIN PARK ESTATES, according to the Official Plat thereof on file and of record in the Utah County Recorder's Office.

B. Declarant intends to develop a residential subdivision on the Entire Property. Declarant will develop and convey all of the Lots within the Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions and restrictions all as set forth in this Declaration, and which are deemed to be covenants running with the land mutually burdening and benefiting each of the Lots within the Subdivision.

**DECLARATION:**

DECLARANT HEREBY DECLARES that all of the Lots within the Subdivision shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the protective covenants, conditions, restrictions and equitable servitude set forth in this Declaration, all of which are created for the mutual benefit of the Owners of the Lots. It is the intention of the Declarant in imposing these covenants, conditions and restrictions to create a generally uniform pattern of development, to protect and enhance the property values and aesthetic values of the Lots by eliminating inconsistent uses or improvements, all for the mutual protection and benefit of the Owners of the Lots. The Covenants, Conditions and Restrictions are intended to, and shall in all cases run with the title of the land, and be binding upon the successors, assigns, heirs, lien holders, and any other person holding any interest in the Lots, and shall inure to the benefit of all other Lots in the Subdivision to be located on the Entire Property. The Covenants, Conditions, and Restrictions shall be binding upon the Declarant as well as its successors in interest, and may be enforced by the Declarant or by any Owner, of a Lot within the subdivision on the Entire Property. An instrument containing protective covenants, conditions and restrictions substantially similar to the covenants set forth in this Declaration, with such modifications or supplemental provisions as may be deemed appropriate by Declarant on a phase-by-phase basis to address differences in the circumstances affecting Lots to be constructed after the initial phase, shall be recorded against Lots in subsequent phases of the Subdivision on the Entire Property.

Notwithstanding the foregoing, no provisions of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) Installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City ordinances; (4) assignment of Declarant's rights under this Declaration in whole or part to one or more builders intending to construct homes within the Subdivision; and (5) retention of Declarant's rights with respect to subsequent phases of the Subdivision.

**COVENANTS, CONDITIONS AND RESTRICTIONS:**

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ARTICLE I

DEFINITIONS

1. Unless the context clearly requires the application of a more general meaning the following terms, when used in this Declaration, shall have the following meanings:

"Additional Property" shall mean the balance of the Entire Property not included within recorded Plats.

"Architectural Committee" shall mean the committee created under Article III of this Declaration.

"Association" shall mean the Mountain Park Estates Homeowners Association, whether incorporated or not, and as the context requires, the officers and directors of that Association.

"City" shall mean Spanish Fork City, Utah and its appropriate departments, officials and boards.

"Declarant" shall mean and refer to Advantage Communities, Inc., a Utah corporation.

"Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, together with any subsequent amendments or additions. The Subdivision Plats for Mountain Park Estates, and the easements and other matters shown on any such Plat, are also incorporated into this Declaration by reference.

"Dwelling" shall mean the single family residence built or to be built on any Lot, including the attached garage.

"Entire Property" shall have the meaning set forth in the recitals.

"Family" shall mean one household of persons related to each other by blood, adoption or marriage, or one group of not more than five people not so related living together as a unit who maintain a common household.

"Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Dwellings, garages, storage buildings, walkways, retaining walls, sprinklers, pipes, driveways, fences, landscaping, pools, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

"Lot" shall mean any numbered building Lot shown on any official plat of all or a portion of the Subdivision.

"Owner" shall mean the person or persons having title to any Lot. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of an obligation, including the trustee and/or beneficiary under a Deed of Trust or mortgagee under a mortgage.

"Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name, in the State of Utah.

"Plat" shall mean an official ownership plat of any phase of the Mountain Park Estates Subdivision as approved by Utah County and recorded in the office of the Utah County Recorder, as it may be amended from time to time.

"Property" shall have the meaning set forth in the recitals.

"Subdivision" shall mean all phases of the Mountain Park Estates Subdivision and all Lots, and other property within the Subdivision as shown on the Plats covering the Entire Property.

"Subdivision Improvements" shall mean all subdivision improvements to be installed outside of the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and utility service to the Lots, and including other construction work required to comply with any conditions of the City or County or other governmental agencies to the approval of the Subdivision or any Plat thereof.

"Trustees" shall mean the duly elected and acting Board of Trustees of the Mountain Park Estates Subdivision Homeowners Association, whether incorporated or not.



## ARTICLE II

### RESTRICTIONS ON ALL LOTS

2. The following restrictions on use apply to all Lots within the Subdivision:

2.1 Zoning Regulations. The lawfully enacted zoning regulations of Spanish Fork City and any building, fire, and health codes are in full force and effect in the Subdivision, and no Lot may be occupied in a manner that is in violation of any such statute, law, or ordinance.

2.2 No Mining Uses. The property within the Subdivision shall be used for residential purposes only, and no mining, drilling, prospecting, mineral exploration or quarrying activity will be permitted at any time.

2.3 No Business or Commercial Uses. No portion of the Subdivision may be used for any commercial business use, provided, however, that nothing in this provision is intended to prevent (a) the Declarant from using one or more Lots for purposes of a construction office or sales office during the actual period of construction of the Subdivision Improvements or until 75% of the Lots are sold, whichever occurs later, or (b) the use by any Owner of his Lot for a home occupation. No home occupation will be permitted, however, which requires or encourages the Owner's clients, customers, patients or others to come to the Lot to conduct business, or which requires any employees outside of the Owner's immediate family or household. No retail sales of any kind may be made in the Subdivision.

2.4 Restriction on Signs. The Subdivision may be identified by the permanent signs which have been or will be constructed as part of the entry structure. No signs will be permitted on any Lot or within the Subdivision, except for traffic control signs placed by the City, temporary signs warning of some immediate danger, or signs not in excess of six square feet identifying the contractor and/or architect of any Dwelling unit while it is under construction. Signs indicating the Lot is for sale may be placed in accordance with City sign regulations, and no such sign may exceed six square feet. The Declarant may erect a sign at the entrance to the Subdivision for a period of no more than two years after the recordation of the last Plat within the Subdivision announcing the availability of Lots and giving sales information. No permanent signs stating the address or the name of the owner of any Lot may be installed without the advance consent of the Architectural Committee.

2.5 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of a certificate of occupancy by Spanish Fork City.

2.6 Dwelling to be Constructed First. No garage, storage unit, or other out building may be constructed prior to the construction of the Dwelling on the Lot.

2.7 Livestock, Poultry and Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept; provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's control; provided further that no more than two such household pets shall be kept on any lot. "Control" for the above purposes shall only mean on a leash or lead, within a vehicle, within the residence of the owner, or within the fenced confines on the premises of the owner. Fierce, dangerous or vicious animals, or animals that cause a nuisance by barking or other offensive activity shall not be permitted.

2.8 Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Subdivision are to be underground, including lines within any Lot which service installations entirely within that Lot. No propane tanks or oil tanks may be installed on any Lot except for temporary heat during construction.

2.9 Service Yards. There shall be no clothes lines, service yards, or storage yards. Exterior mechanical equipment must be screened in a manner approved by the Architectural Committee so that it is not visible from adjoining Lots.

2.10 Maintenance of Property. All Lots, and the Improvements on them, shall be maintained in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his Lot or the Improvements on it to fall into disrepair.

2.11 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

2.12 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than properly supervised and contained barbecues).

2.13 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during construction of any Dwelling unit or addition); open storage or parking of farm or construction equipment, boats, campers, camper shells, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading) or inoperable motor vehicles; accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage; lawn or garden furniture except during the season of use; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that is visible from any other Lot or any public street.

2.14 No Annoying Lights. Any outdoor lighting shall be subject to approval by the Architectural Committee, and no outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by the City. Lighted tennis courts are prohibited.

2.15 No Annoying Sounds. No speakers, windbells, windchimes, or other noise making devices may be used or maintained on any Lot which create noise that might reasonably be expected to be unreasonably or annoyingly loud to adjoining Lots, except for security or fire alarms.

2.16 Sewer Connection Required. All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Dwelling units must be connected to the sanitary sewer system.

2.17 No Fuel Storage. No fuel oil, gasoline, propane, or other fuel storage tanks may be installed or maintained on the property. Dwellings shall be heated with natural gas, solar, or electric heat. Propane or other such containerized fuels may be used only during construction of the Dwelling until the permanent heating system is installed and operational.

2.18 Drainage. No Owner shall alter the direction of natural drainage from his Lot, nor shall any Owner permit accelerated storm run-off to leave his Lot without first using reasonable means to dissipate the flow energy.

2.19 Vehicles Restricted to Roadways. No motor vehicle will be operated on the Subdivision except on improved roads and driveways. No snowmobiles or motorcycles will be operated on any Lot except for ingress and egress or while loading the equipment for lawful transport on public streets.

2.20 Kennels. No kennel or dog run may be placed closer than 40 feet to any Dwelling other than that of the Owner of the kennel.

2.21 No Transient Lodging Uses. The Lots are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding house, "bed and breakfast", or other uses for providing accommodations to travelers. No lease of any Dwelling on a Lot shall be for a period of less than 30 days. No Dwelling on a Lot shall be subjected to time interval ownership.

2.22 No Re-Subdivision. No Lot may be re-subdivided without the consent of the Architectural Committee, and no re-subdivision of any Lot may result in the construction of any additional Dwelling units within the Subdivision.

2.23 Combination of Lots.

(a) Authority to Combine Lots. Subject to the provisions of this Declaration and the limitations set forth in this Section, any Owner may combine two or more adjoining Lots within the Subdivision.

(b) Dwelling Placement. The square footage of the living area in the Dwelling on the combined Lots should be concentrated at the center of the combined Lots, and should not be placed entirely, or predominately on one of the Lots.

(c) Combination Deemed Permanent. The combination of Lots is deemed to be permanent and the Lots may not be independently sold once construction has commenced on the Improvements for the combined Lot. The Owner of any Lots that have been combined will execute and deliver to the Committee a notice in recordable form, containing the name of the Owner and the legal description of the Lots combined, which Notice will state that the two Lots have been combined and cannot subsequently be subdivided. The Committee shall record this Notice with the Utah County Recorder upon the commencement of construction of the Dwelling on the combined Lots.

ARTICLE IIIARCHITECTURAL COMMITTEE

3. It is the intention and purpose of these covenants, conditions and restrictions to impose architectural standards on the Improvements to any Lot of a type and nature that result in buildings which are architecturally compatible in terms of lot coverage, proportion, materials, colors and general appearance, while at the same time allowing for appropriate diversity in style and design. To accomplish this goal, the Declarant hereby establishes the Architectural Committee, which is empowered to oversee and enforce the Architectural Design Standards set forth in this Declaration.

3.1 Architectural Committee Created. The Architectural committee will consist of three members, at least two of whom shall be members of the Board of Trustees of the Homeowners Association. The initial committee will consist of three people appointed by the Declarant, who do not need to be Owners. At the time 50% of the Lots (including Lots anticipated on the Additional Property) are sold to persons other than the Declarant, one member of the Committee will be elected from the Board of Trustees, other than a representative of the Declarant. At the time that 75% of the Lots (including Lots anticipated on the Additional Property) are sold to persons other than the Declarant, two members of the committee will be elected by the Owners from the Board of Trustees. At the time that 90% of the Lots (including Lots anticipated on the Additional Property) are sold to persons other than the Declarant, all of the members of the Architectural Committee will be elected by the Owners.

3.2 Approval by Committee Required. No Improvements of any kind, including without limitation the construction of any Dwelling, garage, out-building, parking area, driveway, tennis court, walkway, or other hard surfaced area in excess of 100 square feet, swimming pools, outdoor hot tubs or spas, fences, walls, curbs, poles, trampolines, satellite dishes or antenna, solar panels, or any other permanent structure may be constructed, erected, or installed in the Subdivision without the prior consent of the Architectural Committee. No excavation, grading, filling, draining, landscaping, shall be made without the advance written consent of the Architectural Committee. Approval of the Committee will be sought in the following manner:

(a) Plans Submitted. Plans for the construction of any new Dwelling must be submitted to the Committee for review. It is recommended that a preliminary plan be submitted before the expense of final construction drawings is incurred. The plan must be in sufficient detail to show the location on the Lot of the exterior walls of the Dwelling and all other structures to be built with it; detailed drawings of all elevations of all buildings showing locations of windows, doors, roof pitches, decks and other exterior elements; a list of exterior materials and roofing materials and/or a sample, including color samples; and a landscaping plan showing the location of landscaped areas, fences (including fence design), driveways, walkways, patios, decks and other hard surfaced or irrigated areas. In the case of an addition or modification of an existing Dwelling, the Committee may waive any of the forgoing it feels are unnecessary to its review of the remodel or addition. Submission of plans may be made in two parts, that is architectural plans without landscape plans and then a separate second submission of the landscape plans.

(b) Review Fee. The applicant will pay a review fee to the Committee in an amount necessary to cover the costs of review and the administration of the program in an amount to be established from time to time by the Architectural Committee. The initial review fee shall be \$100 for each new Dwelling, \$50 for each addition or remodel, or if the landscape plans are submitted separately then a \$50 fee shall be charged for that second submission.

(c) Review. Within 15 days from receipt of a complete submission, the committee will review plans and make an initial determination whether or not the plans comply with the conditions imposed by the Declaration. If they do not, the plans will be rejected. If they are in compliance, the committee will approve the plans. The Committee may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The Committee will review preliminary plans, without fee, and make its comments known to the Owner provided, however, that no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission. Upon approval, the Committee and the Owner will each sign a copy of the plans, which shall be left with the Committee. No construction that is not in strict compliance with the approved plans will be permitted.

(d) Written Record. The Committee will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of five years. The Committee will also provide evidence of this approval for the City if requested by the Owner.

(e) Failure to Act. If the committee has not approved or rejected any submission within 45 days after payment of the review fee and submission of complete plans, the submission is deemed to have been disapproved.

3.3 Variations. Variations to the design standards contained in this Declaration may be granted when strict application would create an unforeseen or unreasonable hardship to the Owner of any Lot. The Architectural Committee cannot grant any variance that has the effect of modifying applicable zoning or building code regulations. The burden of obtaining a variance is entirely on the applicant.

3.4 Professional Review. The Committee may engage the services of an architect or civil or structural engineer to assist in its review of any proposed improvements. Initially, the Committee has elected to engage the services of GREG MAGLEBY, P.E. to perform all reviews of plans for initial construction within the subdivision. Lot Owners are requested to submit their plans, prepared in accordance with paragraph 3.2 (a) directly to GREG MAGLEBY, P.E. at 1002 E. CROSSWINDS DRIVE, SPANISH FORK, UTAH 84660, (CALL FIRST 798-1574 FOR AN APPOINTMENT AND DRIVING DIRECTIONS). The initial review fee of \$100 is to be made payable directly to GREG MAGLEBY, P.E. The Committee may from time to time appoint another architect or professional to handle this function or may elect to perform the review function within the Committee.

3.5 General Design Review. The Committee will use its best efforts to provide a consistent pattern of development, and consistent application of standards of this Declaration. These standards are, of necessity, general in nature, and it is the Committee's responsibility to apply them in a manner that results in a high quality, attractive, and well designed community.

3.6 Declarant, Trustees and Committee not Liable. The Declarant, the Trustees, and the Committee and its members shall not be liable to the applicant for any damages, or to the Owners of any Lots within the Subdivision for their actions, inactions, or approval or disapproval of any set of plans submitted to the Committee for review. In the absence of bad faith or malicious actions, the Owners shall have no claim against the Declarant or Committee as a result of the performance or failure to perform the duties created by this Declaration. Each Owner has the right to enforce these covenants against every other Owner, and may seek independent redress if it believes the Committee has acted improperly.

3.7 Limitations on Review. The Committee's review is limited to those matters expressly granted in this Declaration. The Committee shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws, or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the Committee prior to construction.

3.8 Penalty for Failure to File Plans with Architectural Committee. The Architectural Committee is authorized to retain legal counsel and to instigate legal proceedings against any lot owner, contractor, or any other person or entity who proceeds with construction on any lot in the subdivision without first applying for and receiving the approval of the Architectural Committee or its designated professional reviewer. The Committee may give 10 days written notice of such failure to file plans and then may proceed with any and all legal remedies. The estimated cost of such legal action is a minimum of \$600 to \$1,000, and the Committee is authorized to assess all legal and associated costs of obtaining compliance against the lot and/or lot owner. The estimated cost of \$600 to \$1,000 is in no way intended to limit the amount of actual costs that may be assessed. The Committee may file a notice of lien for the costs involved against the lot and may take any and all action deemed appropriate to enforce this provision of the covenants, including foreclosure of the lien.

## ARTICLE IV

### ARCHITECTURAL RESTRICTIONS ON IMPROVEMENTS

4. All Improvements on any Lot shall be subject to the following restrictions and architectural design standards:

4.1 Number of Dwellings. Only one Dwelling may be constructed on any Lot. All Dwellings shall have an attached garage for at least two cars. No other storage building, out building, or habitable structure may be permitted on any Lot, unless specifically reviewed and approved by the Architectural Committee.

4.2 Dwelling Size. The ground floor area of the main structure of a (rambler) one-story not including open porches and garages, shall be not less than 1,200 square feet. A two-story home shall have not less than 1,700 square feet above ground, and a minimum of 900 square feet on the ground floor area. Three and four level homes must have not less than 1,200 square feet finished. A two car attached garage with not less than 400 sq. ft. is required, and Declarant would recommend three car garages.

4.3 Dwelling Height. No structure shall exceed two stories above the ground level for living space or be more than thirty-five feet in height, without prior written approval of the Architectural Control Committee.

4.4 Dwelling Setback and Placement. No building shall be erected upon any residential site so that any part thereof, excluding eaves and overhangs, shall be: All as required by Spanish Fork City.

Although all Lots meet minimum area requirements, the Owner or Builder of a Corner Lot needs to look closely at the setback requirements to insure there is adequate building pad area after all setbacks are applied.

4.5 Masonry Requirement. No structure shall be built with less than 100% of the front of the structure of either brick, stone or stucco (with at least 25% of the front being either brick or stone) unless otherwise approved by the Architectural Committee. The color of all masonry used shall be subject to approval by the Architectural Committee and Owners are encouraged to submit samples. Limited siding for special trim design areas may be approved by the Architectural Committee, amounting to no more than 15% of the front. The use of metal soffet or facia sections is encouraged.

4.6 Construction Completion. When construction has started on any residence or other structure, work thereon must be completed within a reasonable length of time (six months shall be reasonable).



4.7 Roof Design. Roof pitches must be within a range of 4/12 to a 12/12 slope. No more than one roof pitch may be used on any structure unless specifically approved by the Architectural Committee. Eaves and roofs must overhang by at least 18". Mansard, fake mansard, A frame, gambrel, flat, curvilinear, and domed roof designs are prohibited. All roof metal such as flashing, vent stacks, gutters, and chimney caps shall be made of anodized aluminum or galvanized metal painted to match the adjoining roof color.

4.8 Windows. All windows must be at least double glazed. Any trapezoidal window must follow the shape of the walls or roofs surrounding them, with the top parallel to the roof above, and the bottom horizontal or parallel to the roof structure below it. No mirrored or reflective glass may be used.

4.9 Chimney, Vents. Chimneys must be enclosed in an approved material. No exposed metal flues are permitted. All chimney tops on any Dwelling must be of identical design. Vent stacks must be combined to the extent possible to minimize the number of roof penetrations, and should generally not be visible from the street.

4.10 Antennas. All antennas must be enclosed within the Dwelling. Any satellite dishes must be located and screened in a manner approved in advance by the Architectural Committee so that they are not directly visible from adjoining Lots. Solar panels will be permitted only with the consent of the Architectural Committee, and if permitted at all, must lie flat against the roof and may not differ in pitch or color from the roof surface on which they are mounted.

4.11 No Used or Temporary Structures. No previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained on any Lot.

4.12 Driveways. Every garage shall be serviced by a driveway, which shall be of sufficient width and depth so as to park two vehicles side by side completely out of the street right of way. All driveways are to be constructed only of concrete.

4.13 Fences. See Article VI, Section 6.3 on page 20.

## ARTICLE V

### CONSTRUCTION COVENANTS

5. In order to minimize the inconvenience to adjoining Owners during periods of construction within the Subdivision, the following construction regulations shall be enforced. These regulations shall be made a part of the construction contract between the Owner and the Builder of each Dwelling or other Improvements on a Lot. The Owner shall be bound by these regulations, and violations committed by the Builder or its employees, subcontractors or others shall be deemed a violation by the Owner for which Owner is liable.

5.1 Portable Office or Trailer. A builder or general contractor constructing a home on a Lot may utilize a portable office or trailer during the construction period only. The portable office must be located within the Owner's Lot. The temporary office may not be installed prior to the commencement of construction, and must be removed upon the first to occur of (1) the issuance of a Certificate of Occupancy, (2) the termination, expiration, or cancellation of the Building Permit, (3) the suspension of construction activities for a period of 60 days, or (4) one year after the commencement of construction.

5.2 Construction Debris Removal. The Builder must comply with City ordinances requiring the placement and maintenance of a trash container or dumpster on the Lot. The Builder shall collect trash at the end of each work day and deposit construction trash, packing material, unusable scraps, and other debris in a suitable container, protected from the wind, and regularly serviced. No trash may be burned, buried, or otherwise disposed of within the Subdivision. No concrete trucks may be cleaned out on the Lot or elsewhere within the Subdivision.

5.3 Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of a Dwelling or other Improvements. Once the Dwelling is enclosed, materials shall be stored inside, and out of sight, whenever practical and possible.

5.4 Sanitary Facilities. The Builder is responsible for the installation and maintenance of an approved portable toilet facility during construction. The portable toilet must be removed from the site at such time as the permanent plumbing system is operational.

5.5 Construction Sign. During periods of actual construction on the Dwelling, the Owner or Builder may install a sign not to exceed six square feet in area identifying the Lot and the Builder. The sign must also comply with any signage ordinance enacted by the City after the date of this Declaration. The sign must be removed upon completion or abandonment of construction.

5.6 Hours of Work. Daily working hours on the site shall be limited to the period beginning one half hour after sunrise and ending one half hour before sunset, unless otherwise restricted by City ordinances. The Builder is responsible for controlling noise emanating from the site.

5.7 Removal of Mud. The Builder is responsible for cleaning up and removing mud, dirt and all debris from the construction site that is deposited on the roadways of the Subdivision.

5.8 Duration of Construction. No construction shall be undertaken without a Building Permit and all other necessary permits from the City and any other governmental entity having jurisdiction over construction on the site. No materials, tools, temporary offices or portable toilets, excavation or construction equipment, or similar materials or equipment may be delivered to this site prior to the issuance of the Permit. It is the obligation of the Owner to proceed with construction with all reasonable speed once construction has commenced, and in any event, all exterior surfaces of the building shall be substantially completed within a period of six months from the date of the foundation is completed. All landscaping and soil stabilization work must be completed as soon as possible after completion of the exterior of the Dwelling, but in no event later than the summer following completion of the exterior of the Dwelling.

## ARTICLE VI

### LANDSCAPE STANDARDS

6. It is the intent of the Declaration to require appropriate landscaping of Lots following construction of any Improvements, and to encourage the use of appropriate plant materials. The use and Improvement of each Lot is subject to the following Landscape Standards:

6.1 Landscaping Required. As soon as practical following completion of the construction of the Dwelling, but in no event later than the summer immediately following completion of construction, or not later than 18 months from the issuance of a building permit, whichever first occurs, each Owner is required to fully landscape his or her Lot. The Owner may plant lawns and gardens, plant shrubbery, trees or other ornamental plantings or replace natural species.

6.2 Sprinkler System. All landscape and lawn areas shall be provided with permanent automatic underground sprinkler systems.

6.3 Fences. Fencing of Lots along the Lot line shall be permitted in the Subdivision only upon approval from the Architectural Committee. The area that may be fenced shall be limited to the side yards and the rear yards of the Lots. No fencing shall occur in the front yard of any Lot. The precise area to be fenced on any Lot shall be subject to advance approval by the Architectural Committee. No chain link or other wire fencing is permitted, except at the community pool/playground area. Approved fencing types include cedar fencing that is six feet high consisting of one-by-fours or one-by-sixes, either straight on the top or dog-eared. Approved finishes for the cedar fencing include natural, clear wood finish or a very light stain that is a natural wood color or a very light driftwood color. No dark red stains or dark brown stains or other dark stains are permitted. Block fencing, or other masonry fencing may be approved by the Architectural Committee upon submission of a plot plan along with samples of the proposed material.

6.4 Lawn Areas to be Sodded. Lawn areas must be provided with pregrown sod and not grown from seed or power mulching.

## ARTICLE VII

### HOMEOWNERS ASSOCIATION

7. To effectively enforce these Covenants, the Declarant has created, or will create, a Utah non-profit corporation called Mountain Park Estates Homeowners Association. The Association shall be comprised of the Owners of Lots within the Mountain Park Estates Subdivision, and is established to perform the following functions and exercise the following rights and powers for the benefit of the Owners and the enforcement of these covenants. Membership in the Association is deemed an appurtenance to the Lot, and is transferrable only in conjunction with the transfer of the title to the Lot. The Association shall have and exercise, as necessary, the following powers:

7.1 Enforcement Powers. The Association shall have the power to enforce these covenants by actions in law or equity brought in its own name, the power to retain professional services needed for the enforcement of these covenants and to incur expenses for that purpose. The officers of the Association shall have the authority to compromise claims and litigation on behalf of the Association resulting from the enforcement of these Covenants. In the event that the Trustees of the Association initiate legal action against a specific lot owner or owners to enforce these covenants, and the Association prevails in a court of law, then the Trustees of the Association shall have the right to assess the costs of such litigation against the lot or lots in question. The Trustees of the Association may file a "Notice of Lien" against such lot or lots with the amount involved to carry interest at the current statutory rate for judgements until paid. The Trustees are further authorized to take whatever reasonable action is necessary to obtain payment including, but not limited to, foreclosure of the lien. The Trustees of the Association shall have the exclusive right to initiate enforcement actions in the name of the Association, however this shall not limit the individual rights of Lot Owners to personally enforce these Covenants in their own name. The Association may appear and represent the interests of the Subdivision at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners. Owners may appear individually.

7.2 Maintenance of the Entry Structure, Pool and Playground Area, and Other Association Property. The Association will be responsible for the maintenance of the entry structure, pool and playground area, and any other property presently owned or acquired in the future by the Association. The Association shall have the authority to asses its members for the costs of said maintenance and for restoring any damage to any such property owned by the Association.

7.3 Assessments. The Association has the power to levy assessments against each Lot as necessary to carry out these functions. All assessments will be equal on all Lots, whether vacant or improved. Assessments will be made annually to meet the anticipated and recurring costs, expenses and other expenditures of the Association including, but not limited to , the costs of maintenance, acquisition, repair and replacement of capital facilities, liability insurance, any water for irrigation of areas within the control of the Association, reimbursement of expenses incurred by the Trustees and Architectural Committee in performance of their obligations, the costs of complying with and enforcing rights under these covenants, and working capital, capital improvements and contingency reserves. Notice of the assessment and the proposed amount of the annual assessment will be given in advance along with the notice of the annual meeting of the Association, provided that the amount of the proposed assessment may be increased or decreased at the meeting in which it is approved by the Owners.

The Association may also levy special assessments to cover unanticipated expenses or shortfalls. No special assessment will be levied without approval of a majority of a quorum of the Owners in attendance in person or by proxy at a meeting called for that purpose.

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7.4 Assessments Constitute Lien, Mortgagee Protection. Any validly imposed assessment by the Association shall constitute a lien against the Lots in the Subdivision. The Association shall have the right to foreclose on that lien under the procedures available for the foreclosure of mortgages in the State of Utah when any assessment remains unpaid for a period of more than 90 days from the date the assessment was levied. Alternatively, if the lien is not foreclosed upon, it may be renewed from year to year by recording a new notice of the lien, together with accumulated interest at the maximum legal rate allowed by law. The lien of the Association against any Lot shall have priority from the date that the first Notice of Lien on a specific Lot is recorded in the office of the County Recorder, and is subordinate to any previously recorded liens or encumbrances filed against that Lot, specifically including any purchase money mortgage or trust deed. Notwithstanding the lien rights of the Association, the obligation to any assessments is a personal obligation of the Owner of each Lot, and the Association may proceed to collect against the Owner, or the prior Owner of any Lot (in the event of a sale) without any obligation to first take recourse against the Lot and Improvements to which the lien has attached. No Mortgagee or Beneficiary under a Trust Deed who takes title by foreclosure or non-judicial sale, or accepts in deed in lieu of foreclosure or non-judicial sale, shall be held liable for the unpaid assessment of the Owner whose Lot was acquired by the Mortgagee or Beneficiary under a Trust Deed.

7.5 Statement of Account. Any Owner may request the Association to provide a statement of his account to any lender or prospective buyer of that Lot showing the assessments to be paid in full, or the amount of any past due assessments. The Buyer or Lender for whom such statement was prepared will be entitled to rely on its accuracy, and will not be held liable for any amounts not shown on the statement. The Association may charge a transfer fee for providing such statements and for changing its records to reflect the name of the new Owner. Those individuals selling Lots and those individuals buying Lots subject to these Covenants agree to share that cost equally.

7.6 Indemnity of Association Trustees and Officers. The Association will indemnify the officers, agents and trustees of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under this Declaration.

7.7 Election. Unless otherwise provided in the By-Laws of the Association, the elections for members of the Board of Trustees, or any other matter which is presented to the Association, each Owner, including the Declarant, shall be entitled to cast one vote for each Lot her or she owns. In the case of a Lot with multiple Owners, the Owners will agree among themselves how the vote applicable to that Lot will be cast, and if no agreement can be reached, no vote will be received from that Lot. Any of the multiple Owners appearing at the meeting in person or by proxy is deemed to be acting with proper authority for all of the other Owners of that Lot unless the other Owners are also present or have filed written objections to that Owner's representation of the other Owners of the Lot in question.

7.8 Notice of Election, Notice of Meeting. Unless otherwise provided in the By-Laws of the Association, notice of any meeting for the election of members to the Board of Trustees or for any other purpose shall be sent to the Owners at their last known address (which may be determined from the most recent property tax assessment if no other address is known). Notice will be mailed not less than 30 days, nor more than 60 days in advance of the meeting. Any notice will state the purpose of the meeting, and the time, date and place of the meeting. At any such meeting, a quorum will exist if the Owners of 51% of Lots are present. Those present at the meeting may vote to continue the meeting to any date within 30 days. Notice of the continued meeting will be given by mail, and at the subsequent continued meeting, a quorum will consist of those members present. The Chairman of the Board of Trustees will give notice of any meetings, and will chair meetings of the Owners.

7.9 Special Meeting. When circumstances warrant, a special meeting of the Owners may be called as provided in the By-Laws. No business may be conducted at a special meeting without a full quorum of the Owners of 51% of the Lots being present in person or by written proxy.

7.10 Number of Trustees, Term of Office. Unless otherwise provided in the By-Laws of the Association, there shall be three members of the Board of Trustees, who will serve for terms of three years, or until their successors have been elected. At such time as the first Board of Trustees is named, whether by appointment by the Declarant or by election from among the Members, the Trustees will draw lots to divide themselves into terms of one, two and three years. Members of the Board of Trustees may serve consecutive terms, and may also serve as officers of the Association.

## ARTICLE VIII

### OWNERS' MAINTENANCE OBLIGATIONS

8. It is the obligation of each owner to maintain his Lot at all times in order to preserve and enhance the enjoyment of the Subdivision:

8.1 Duty to Maintain. It is the obligation of the Owner of each Lot to maintain his Lot and the Improvements to the lot in a good state of repair and in an attractive, safe, and healthy condition.

8.2 Repair by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary, or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demanding that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision. In addition, each Owner hereby grants to the Association a lien on the Lot and any Improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgement rate under applicable state law.

8.3 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Architectural Committee. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Committee.

8.4 Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Committee, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Architectural Committee, provided that any such measures must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.



ARTICLE IX  
GENERAL PROVISIONS

9. The Covenants, Conditions, and Restrictions contained in this Declaration may be enforced as follows:

9.1 Violation Deemed a Nuisance. Any violation of these Covenants which is permitted to remain on the property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

9.2 Remedies.

(a) Any single or continuing violation of the Covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by any other Owner, or by the Association in its own name. In any action brought to enforce these Covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including attorneys fees and costs of court.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These Covenants are to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the Convents contained in this Declaration in the future or against other similar violations.

9.3 Severability. Each of the Covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining Covenants shall remain in full force and effect.

9.4 Limited Liability. Neither the Declarant, the Trustees, or the Architectural Committee or its individual members, nor any other Owner shall have personal liability to any other Owner for actions or inactions taken under these Covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority, under these Covenants, and without malice

9.5 Amendment. At any time while this Declaration is in effect, the Owners of 65% of the Lots may amend the provisions of this Declaration. Any amendment must be in writing and be approved by 65% of the Owners at the time of the amendment and the consent of the Owner of the Additional Land, if any portion of the Additional Land has not been subdivided at the time. No such amendment will be binding upon the holder of any mortgage or trust deed unless the holder joins in the amendment. No amendment which limits the rights of the declarant or its successors in interest to expand the Subdivision or otherwise affects the Additional Land shall be effective without the written consent of the Declarant or other Owner of the Additional Land.

9.6 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Subdivision is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the Covenants, Conditions, and Restrictions against his Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any Lot.

9.7 Notices. All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

9.8 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Subdivision. Paragraph headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

9.9 Mortgagees Protection Provision. The breach of any of the foregoing covenants shall not defeat or render invalid the lien of any mortgage or deed of trust lien on the Entire Property that is made in good faith and for value; provided, however, that all of the covenants contained herein shall be binding upon and effective against any owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale or other foreclosure proceeding, from and after the date of such foreclosure, trustee's sale or other foreclosure proceeding.

Executed on the date stated above.

Advantage Communities, Inc.  
a Utah Corporation

By: *Dave Backman*  
Dave Backman, President

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

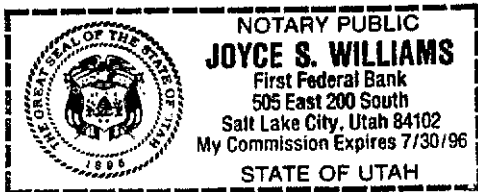
On the 29<sup>th</sup> day of June, 1995, personally appeared before me, DAVE BACKMAN, who being by me duly sworn, did say that he is the President of Advantage Communities, Inc. a Utah Corporation, and that the within and foregoing instrument was signed on behalf of said corporation by authority of a resolution of its board of directors and said DAVE BACKMAN duly acknowledged to me that said corporation executed the same.

*Joyce S. Williams*  
NOTARY PUBLIC

Residing at: Salt Lake City, UT

My Commission Expires:

2-30-96



Washington Federal Savings hereby acknowledges that, except as provided in the Mortgagee's Protection Provision, (paragraph 9.9), deeds of trust in favor of Washington Federal Savings are subject to all of the terms and conditions of this Declaration of Covenants, Conditions and Restrictions.

Washington Federal Savings, a Utah Corporation

By: Kent Anderson  
Title: VICE PRESIDENT

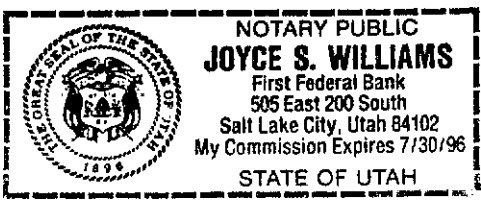
STATE OF UTAH )  
 ) :SS  
County of Salt Lake )

On the 29th day of June, 1995, personally appeared before me, KENT ANDERSON, who being by me duly sworn, did say that he is the VICE PRESIDENT of WASHINGTON FEDERAL SAVINGS, a Utah Corporation, and that the within and foregoing instrument was signed on behalf of said corporation by authority of a resolution of its board of directors and said KENT ANDERSON duly acknowledged to me that said corporation executed the same.

Joyce S. Williams  
NOTARY PUBLIC

Residing at: Salt Lake City UT.

My Commission Expires:  
7-30-96



(CC&R.MPE)

Prestige Properties, Inc. hereby declares and acknowledges that Lots 40 of Mountain Park Estates shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the protective Covenants, Conditions, Restrictions and equitable servitude set forth in this Declaration.

Prestige Properties, Inc., a Utah Corporation

By: *Cris Child*  
Title: PRESIDENT

STATE OF UTAH )  
 )  
County of Utah ) :SS

On the 3rd day of July, 1995, personally appeared before me, CRIS CHILD of PRESTIGE PROPERTIES, INC., a Utah Corporation, and that the within and forgoing instrument was signed on behalf of said corporation by authority of a resolution of its board of directors and said CRIS CHILD duly acknowledged to me that said corporation executed the same.

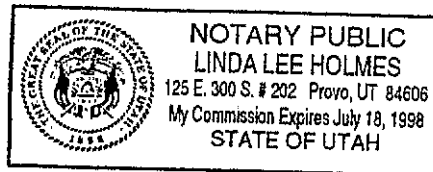
*Linda Lee Holmes*

NOTARY PUBLIC

Residing at: 1936 So. California Ave My

Commission Expires:

7/18/98



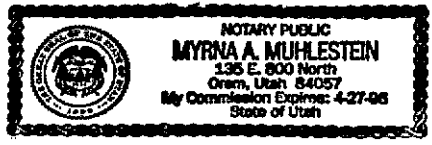
Panda Bear Homes, Inc. hereby declares and acknowledges that Lots 42 and 43 of Mountain Park Estates shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the protective Covenants, Conditions, Restrictions and equitable servitude set forth in this Declaration.

Panda Bear Homes, Inc., a Utah Corporation

By: [Signature]  
Title: V.P.

STATE OF UTAH

County of Utah



On the 5<sup>th</sup> day of July, 1995, personally appeared before me, Glen Arnett of PANDA BEAR HOMES, INC., a Utah Corporation, and that the within and forgoing instrument was signed on behalf of said corporation by authority of a resolution of its board of directors and said Glen Arnett duly acknowledged to me that said corporation executed the same.

NOTARY PUBLIC

Myrna A. Muhlestein  
Residing at: Orem, UT My

Commission Expires:

4-27-96

(CC&R.MPE)