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DECLARATION

OF

COVENANTS,

CONDITIONS

AND

RESTRICTIONS

FOR

KAYSCREEK ESTATES

PHASE ONE, a P.R.U.D.

LAYTON CITY, UTAH

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR KAYSCREEK ESTATES PHASE ONE, a P.R.U.D.  
LAYTON CITY, UTAH**

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAYSCREEK ESTATES PHASE ONE, a P.R.U.D., is made and executed this 16th day of June, 1997, 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 Davis County, Utah:

All of Lots 1 through 166 KAYSCREEK ESTATES PHASE ONE, a P.R.U.D., according to the Official Plat thereof on file and of record in the Davis 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, the Homeowners Association, 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.

**DECLARANT HEREBY DECLARES** that those parcels within the subdivision and designated with a letter, ie, Parcels A, B, C, D, E, F, G, H, and J are common areas and are restricted to specific uses as follows. A perpetual easement over said parcels is hereby granted to Layton City as follows:

Parcel A and Parcel B are to be used for park, playground and open space purposes.

Parcel C and Parcel D are to be used for pedestrian access ways connecting park areas within the subdivision.

Parcel E is to be used for agricultural and open space. A portion of Parcel E at its northwest corner comprising a site approximately 100' x 100' is to be used for a waste water lift station and other municipal uses as determined by Layton City.

Parcels F, G, and J are to be used for the right of way for the existing Kays Creek and for a pathway and trail way along the existing Kays Creek.

The common areas are restricted to the uses specified in this Declaration and those uses cannot be changed without amending this easement.

Ownership of the underlying fee of the common areas shall remain with the KaysCreek Estates Homeowners Association which association shall be responsible for the construction, maintenance and repair of the common areas. The Declarant does not intend to dedicate the common areas to the public.

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:****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 KAYSCREEK ESTATES Homeowners Association, whether incorporated or not, and as the context requires, the officers and directors of that Association.

"Common areas" shall mean those areas reserved for use as parks, playgrounds, Kays Creek right of way, pathway and trail way along Kays Creek, pedestrian access corridors, agricultural preserve, and open space areas.

"City" shall mean Layton 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 KAYSCREEK 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 KAYSCREEK ESTATES Subdivision, a P.R.U.D., as approved by Davis County and recorded in the office of the Davis 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 KAYSCREEK ESTATES Subdivision, a P.R.U.D., 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 KAYSCREEK ESTATES Subdivision Homeowners Association, whether incorporated or not.

**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 Layton 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 statute, law, or ordinance.

2.2 Right to Farm Notice. The area surrounding KaysCreek Estates, a P.R.U.D., has for many years been an agricultural community and it is anticipated that agricultural uses in the area will continue on the agricultural preserve that is part of the subdivision and on properties adjoining the boundaries of the subdivision. Protection and preservation of agricultural land uses is a goal of the declarant and of Layton City. Therefore, those persons buying property within the subdivision are, by this provision, put on notice that farm work hours run late and begin early, and that farm operations may contribute to noises and odors objectionable to some subdivision residents. Individuals buying property within the subdivision agree to hold harmless the declarant and Layton City from complaints or any other causes of action at any time because of continuing farm operations, which may take place on the agricultural preserve or on property that adjoins the subdivision.

2.3 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.

2.4 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 100% of the Lots are sold, whichever occurs later, or (b) the use by any Owner of his Lot for a home occupation pursuant to Layton City ordinance. 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.

2.5 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 or entry bridges. 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 eight 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 eight 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.

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

2.7 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.

2.8 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.

2.9 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.

2.10 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.

2.11 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.

2.12 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.

2.13 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).

2.14 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.

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2.15 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 or sport courts are prohibited.

2.16 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.

2.17 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.

2.18 Land Drain Connection Required. All Lots are served by a subdivision wide land drain system. Each house foundation must be provided during the construction phase with a perimeter foundation drain system, and that perimeter system must be connected to the subdivision land drain system.

2.19 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.

2.20 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.

2.21 Vehicles Restricted to Roadways. No motor vehicle will be operated on the Subdivision except on improved roads and driveways, except that small tractors, other appropriate farm equipment and trucks may be used on the Agricultural Preserve. 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.

2.22 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.

2.23 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.

2.24 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.

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2.25 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 Davis County Recorder upon the commencement of construction of the Dwelling on the combined Lots.

## ARTICLE III

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### ARCHITECTURAL 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 that 75% 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 by the Owners from the Board of Trustees. At the time that 100% of the Lots (including Lots anticipated on the Additional Property) have been built on, all of the members of the Architectural Committee will be elected by the Owners, however, the Architectural Committee will continue to retain a qualified planning or architectural professional to handle the day to day work of the committee.

**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. 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 foregoing 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 developer for remittance 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 \$300 for each new Dwelling, \$150 for each addition or remodel.

© 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, one of 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 Variances. Variances 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; provided, however, that any variance granted pursuant to this Section 3.3 is consistent with the intent of this Declaration, and any "hardship" is not (i) self-created, (ii) solely economic in nature, or (iii) generally present with respect to a majority of Lots. 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 will engage the services of an architect or professional planner or civil or structural engineer to assist in its review of any proposed improvements. Initially, the Committee has elected to engage the services of SWANER DESIGN 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 STEVE McCUTCHAN, DIRECTOR OF PLANNING, SWANER DESIGN, INC., 170 S. MAIN STREET, SUITE 555, SALT LAKE CITY, UT 84101. PHONE NUMBER - 801-363-1666, FAX NUMBER - 801 363-9559. The Committee may from time to time appoint another architect or professional to handle this. The initial review fee of \$300 has been collected from lot owners at closing by the developer to be remitted to the service provider as appropriate.

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 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

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4. All improvements on any lot are subject to the "KaysCreek Estates Phase One, a P.R.U.D., Architectural Guidelines" which follow as pages 19 through 27, and in addition, are subject to the following restrictions.

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 1,000 square feet. A two-story home shall have not less than 1,000 square feet above ground. Three and four level homes must have not less than 1,000 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 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).

4.5 Roof Design. 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.

4.6 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.

4.7 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.

4.8 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.

4.9 No Used or Temporary or Prefab 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. No prefabricated housing may be installed or maintained on any lot.

4.10 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.

4.11 Fences. See Article VI, Section 6.4 on page 32.

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4.12 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.

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4.13 Land Drain Connection Required. All Lots are served by a subdivision wide land drain system. Each house foundation must be provided during the construction phase with a perimeter foundation drain system, and that perimeter system must be connected to the subdivision land drain system.

4.14 Setbacks Established. Minimum front yard, rear yard and side yard setbacks have been established for each lot within KaysCreek Estates Phase One, a P.R.U.D. These setbacks are described in notes contained on the four page plat for KaysCreek Estates Phase One, a P.R.U.D, which has been recorded in the records of Davis County. Additional information about setbacks is contained on pages 25, 26, and 27 of these Covenants.

4.15 Basement Finished Floor Minimum Elevations Established. Lots 21 through 30 and 145 through 149 are restricted to a finished basement floor elevation to be not lower than 3 ½ feet below the top back of curb. All other lots within the subdivision are restricted to a finished basement floor elevation to be not lower than 4 ½ feet below the top back of curb. Builders and contractors are cautioned to not establish the finished floor elevation of the lowest level, that is basement level, until they have located and determined the installed elevations of both the land drain lateral and the sanitary sewer lateral. Individuals buying property within the subdivision agree to hold harmless the Declarant and Layton City from complaints or any other causes of action at any time because of the installed elevation of the sewer lateral or the land drain lateral.

4.16 Basement Waterproofing. Water table levels within the KaysCreek Estates subdivision, a P.R.U.D, are subject to variation because of seasonal, irrigation and other factors. Lots owners, home builders and contractors are strongly encouraged to waterproof every basement foundation and basement walls with the use of a third party guaranteed system such as the Tuff and Dry Waterproofing System provided by Salt Lake City based contractors. Individuals buying property within the subdivision agree to hold harmless the Declarant and Layton City from complaints or any causes of action at any time due to leaking basements, subsidence or other construction matters. Those issues are totally the responsibility of the contractors involved in construction of the home.

4.17 Finished Lot Grading. Lot owners and builders are responsible to complete the fine grading of the entire lot so that the finish grading complies with Layton City ordinance and with the Layton City approved grading plan for KaysCreek Estates Phase One. Copies of this plan are available from the Developer showing the grading requirements as they relate to a specific lot.

4.18 All Dwelling Construction is Subject to Prior Approval by the Architectural Committee. Prior to construction all dwelling plans must be reviewed and approved by the Architectural Committee (see page 14 through 16 of these Covenants) and all dwelling construction must meet the Architectural restrictions and architectural guidelines and the other requirements of these Covenants.

4.19 All Completed Dwelling Construction is Subject to Final Inspection and Approval by the Architectural Committee. Again, see pages 14 through 16 and the rest of the provisions of the Covenants. Note that landscape and fencing standards are part of the final inspection criteria.

# KaysCreek Estates Phase One, a P.R.U.D.

## Architectural Guidelines

### a. Use and Applicability of the Architectural Guidelines

It is hoped that there will be a significant variety in the homes that are constructed. The architectural guidelines are not intended to foster sameness. The architectural guidelines suggest several features or elements that can be combined to create different homes that complement one another. The combination of features or elements permits the lot owner to construct a home to personal tastes while complementing surrounding homes in the neighborhood.

### b. Architectural Features

#### (1) Forms and Massing

- One and two-story homes are encouraged.
- Front elevations shall be comprised of several alternating forms located along different planes to create shadows. The front elevation forms should include, but not be limited to, features such as:
  - distinguishable entries
  - exposed gables perpendicular to the street
  - "pop outs" for windows and similar features.

#### (2) Rooflines and Pitch

- Front elevations should be comprised of several rooflines designed at different heights.
- Long continuous rooflines parallel to the street should be avoided.

- Two story front elevations should be divided by a first story partial roof.

**(3) Eaves and Overhangs**

- Eaves and overhangs should be large enough to create noticeable shadows.
- Eaves and overhangs should be large enough to reduce summer sunlight on windows while permitting winter sunlight to pass under.

**c. Architectural Elements**

**(1) Entries**

- Front door areas should be readily distinguishable from the street.
- Sidelites and similar features to expand the size of the entry feature should be used.
- Where feasible, accent windows may be located over front entry areas to highlight the area.
- Columns or similar features may be used to frame the front entry area.

**(2) Windows**

- Windows should be used to divide large surface areas.
- Multi-pane windows (simulated) should be used to divide large glass surface areas.
- Bay windows, particularly on first floor windows, are highly encouraged.
- Windows may be located in "pop out" features to add variety to the front elevation and create additional shadows.
- Accent windows, either rectangular or elliptical, are highly encouraged.

**(3) Porches**

- A porch element should be included on the front elevations.
- The porch element should be sufficiently deep to protect those standing at the front door from inclement weather.
- The porch element should be sufficiently wide to permit some porch seating areas.
- Partial enclosure of the porch element, such as with a banister, is encouraged.
- Wrap around porches are encouraged, if they are appropriate for the style of the home.

**(4) Garages**

- Enclosed garages are required.
- Sectional garage doors with windows are encouraged.
- In the case of three car garages, the front of the third garage space should be located on a different plane, minimum two feet differential, than the larger two car space area.
- Garages should be located on a plane no more than ten (10) feet in depth greater than the majority of the front elevation.
- Where feasible, side entry garages are encouraged.

**(5) Chimneys**

- Chimneys should be constructed of the same materials — masonry or stucco — on the wall the adjoin. Chimneys shall not be covered with siding.
- All metal vent pipes and spark arresters should be painted a color complementary to the majority of adjoining elevation.
- Two story chimneys should not project above a one story element.

**(6) Lighting**

- House lighting is encouraged to highlight entry elements.
- Yard lighting is encouraged to highlight walkways.

**d. Architectural Materials**

**(1) Front Elevation**

- A minimum of 25% of the front elevation shall be masonry, either brick, stone or rock.
- The remaining areas should be covered with a complementary color stucco. Wood may be used as part of door and window surroundings or as an accent element.
- Siding is not permitted on the front elevation.

**(2) Side and Rear Elevations**

- Masonry, stucco or siding may be used to cover the entire side and rear elevations.

**e. Architectural Hardware**

**(1) Air Conditioning Units and Evaporative Coolers**

- Air conditioning units and evaporative coolers, if placed on the roof, shall be located out of view from the street in front of the home.
- Ground level air conditioning units shall be located outside of the front yard and behind a fence or screened, landscape area.
- Window type air conditioners or evaporative coolers are not permitted.

(2) Vent Pipes

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- All roof top vent pipes shall be painted a color similar to the roof color.

(3) Antennas and Satellite Dishes

- No roof antennas are permitted.
- Small satellite dishes - up to 24 inches in diameter - may be mounted on the roof, but out of view from the street in front of the home.
- Large, ground mounted satellite dishes are not permitted. Notwithstanding the forgoing, if at any time, applicable law does not allow such a prohibition of large, ground satellite dishes, any installation of such satellite dishes shall be in accordance with the following requirements:

(a) Any owner desiring to install such a satellite dish shall, prior to any installation, (i) make a formal application, in writing, to the Architectural Committee for approval of such installation, including, without limitation, detailed drawing of the proposed placement of such satellite dish, and (ii) pay a reasonable application fee, as set by the Architectural Committee from time to time, to cover the costs of the Architectural Committee's review of such application; and

(b) The Architectural Committee can withhold approval for such installation for any reason, including, without limitation, the fact that the proposed placement of the satellite dish is not appropriately screened from the view of other Lots.

f. Front Yard Treatments, Landscaping and Lighting

(1) Front Yard Treatments

- Within the R-9,000 areas, separate entry walkways, exclusive of the driveway, shall be constructed and landscaped from the sidewalk to the front porch and entry.
- Within the R-7,000 areas, separate entry walkways are encouraged.

(2) Front Yard Landscaping

- Front yard landscaping plans shall be prepared and submitted to the KaysCreek Estates Landscaping Review Committee prior to the installation of any front yard landscaping.
- Front yard landscaping shall be installed by the end of the first Summer season that the home is constructed.
- Front yard landscaping shall include a balance of turf, ground covers, shrubs and trees.
- Provisions should be made for spring and summer seasonal color in the ground covers, shrubs and trees.
- The use of rock and stone as part of the landscaping is encouraged.
- Automatic irrigation systems must be installed.

g. Mailboxes

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Mailbox units should be constructed for each unit. The unit should be located within the parkway area at the back of curb to the specifications of the U.S. Postal Service.

The mailbox unit for "A" and "B" lots will be installed by the developer and will be constructed of a wood post and cross member with two U.S. Postal Service approved mailboxes located on the cross member. The wood and mailbox will be painted an appropriate and consistent color.

Within the "C" lot areas, the homeowners will be required to construct a mailbox structure adjacent to the shared property line. The mailbox structure shall be constructed of the masonry material used on the front of the residence. The unit should be approximately 24" to 28" square and be no more than four feet in height.

The mailbox unit may make provisions for newspaper delivery as well.

**B. LANDSCAPE ARCHITECTURAL GUIDELINES**

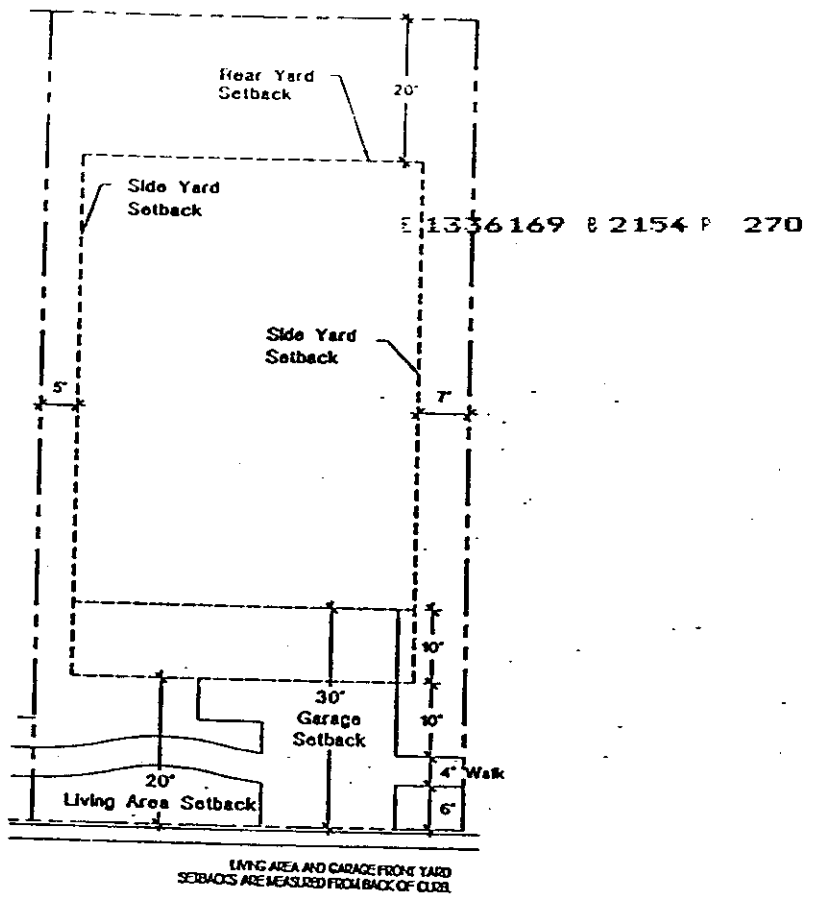
**1. APPROVAL BY LANDSCAPE PLAN REVIEW COMMITTEE**

The front yard landscaping for each lot shall be installed by the homeowner based upon a landscape plan that has been approved by the Kayscreek Estates Landscape Plan Review Committee. The plan shall be submitted prior to final inspection. Landscaping is required to be installed prior to the end of the first Summer after final inspection and occupancy of the home.

**2. ENTRY MONUMENTATION**

Entry monuments will carry the design theme of creekside area through the use of river rock as part of the construction. Community entry monuments are proposed at the three entrances from Weaver Lane.





A

These setbacks apply to the following lots in KaysCreek Estates Phase One, a P.R.U.D.:

Lots 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25,  
 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48,  
 75, 76, 86, 99, 100, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 139,  
 140, 141, 142, 143, 144, 145, 146, 147, 148.

## KaysCreek Estates Phase One, a P.R.U.D.

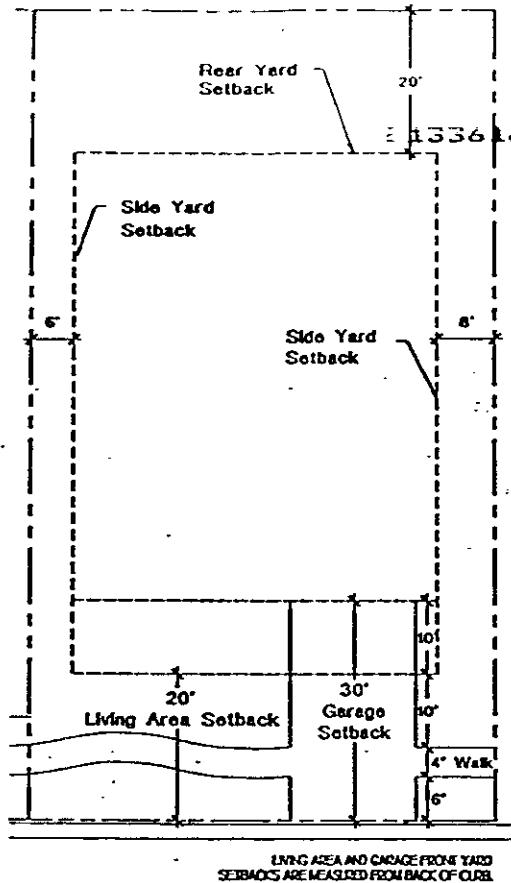
TYPICAL FRONT YARD LANDSCAPE AND  
 STREET ELEVATION PLAN

TYPICAL "A" LOT LAYOUT

AVERAGE LOT AREA 7,200 sq.FT



Scale 1"=20.0'



LIVING AREA AND GARAGE FRONT YARD SETBACKS ARE MEASURED FROM BACK OF CURB.

B

These setbacks apply to the following lots in KaysCreek Estates Phase One, a P.R.U.D.:

- Lots 1, 9, 41, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 137, 149.

## KaysCreek Estates Phase One, a P.R.U.D.

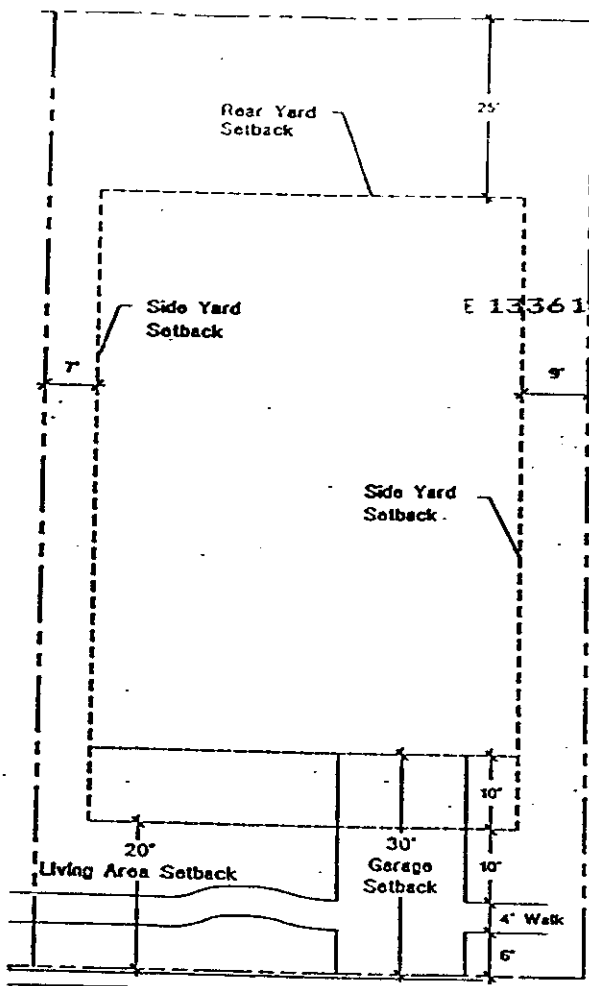
TYPICAL FRONT YARD LANDSCAPE AND STREET ELEVATION PLAN

TYPICAL "B" LOT LAYOUT

AVERAGE LOT AREA 8,300 sq.FT



Scale 1"=20.0'



C

LIVING AREA AND GARAGE FRONT YARD  
SETBACKS ARE MEASURED FROM BACK OF CURB.

These setbacks apply to the following lots in KaysCreek Estates Phase One, a P.R.U.D.:

Lots 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166.

## KaysCreek Estates Phase One, a P.R.U.D.

TYPICAL FRONT YARD LANDSCAPE AND  
STREET ELEVATION PLAN

TYPICAL "C" LOT LAYOUT

AVERAGE LOT AREA 11,000 sq.FT

SYLBER



DESIGN

275 South Main Street  
Suite 302  
Salt Lake City, UT 84101  
801-303-1486  
FAX 801-303-9229

## ARTICLE V

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### 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.

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## ARTICLE VI

### LANDSCAPE STANDARDS

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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, all in accordance with landscape plans that have been submitted to the architectural committee through its designated professional and processed and approved. Front yard landscaping shall include a balance of turf, ground covers, shrubs and trees. Provisions should be made for spring and summer seasonal color in the ground covers, shrubs and trees. The use of rock and stone as part of the landscaping is encouraged.

6.2 Parkway Street Trees and Meandering Sidewalk and Sprinkler System Required. At closing or before, upon request, the developer will provide the Buyer with a 1"=20' scale plot plan for the lot, which will show the location and dimensions for the meandering sidewalk, which sidewalk is to be installed on or before occupancy. In addition, that 20' to 1" scale plot plan will show the location of the two street trees (in the case of a corner lot, four street trees) which are to be installed as the landscaping is completed. Those trees will be 2" caliper, will be staked to minimize wind damage, and will be common species and will be obtainable from local nurseries. Those trees are to be installed in connection with the completion of the front landscaping for the property and the parkway street trees and all front landscaping shall be provided with automatic sprinklers controlled by an electric time clock.

The parkway where the parkway street trees are to be planted is the area between the back of the curb and the sidewalk. The front landscaping of homes shall include the planting of the required parkway street trees and the completion of the parkway area between the back of curb and sidewalk with pre-grown lawn sod only, with any exceptions specifically approved by the Architectural Committee.

6.3 KaysCreek Estates Phase One, a P.R.U.D., Approved Plant Species List. The following page identified as "Table 2" contains the KaysCreek Estates Phase One, a P.R.U.D., approved plant species list. Parkway street trees are to be selected only from the "Medium Tree" list or the "Ornamental Tree" list as per Table Two. With the balance of the parkway area to be provided with pre-grown lawn sod. With reference to front yard landscaping, (the area back of sidewalk), designers of landscape plans to be submitted for approval are encouraged to consider using trees and shrubs and ground cover from the Table Two list, although the use of those items is not required.

## KaysCreek Estates Phase One, a P.R.U.D., Approved Plant Species List

NOTE: FOR THE PARKWAY STREET TREES, USE ANY SELECTIONS FROM THE MEDIUM TREE LIST OR THE ORNAMENTAL TREE LIST. NO OTHER SELECTIONS ARE TO BE USED FOR PARKWAY STREET TREES.

<u>Common Name</u>	<u>Ultimate Size</u>	<u>Minimum Installed Size</u>
<u>Conifer Tree (Evergreen)</u>		
Austrian Pine	40' Tall 15' Spread	6' Tall
Colorado Spruce	40' Tall 20' Spread	6' Tall
Scotch Pine	40' Tall 15' Spread	6' Tall
<u>Medium Tree</u>		
Purple Robe Locust	50' Tall 30' Spread	2" Caliper
Skyline Locust	40' Tall 30' Spread	2" Caliper
Shademaster Honeylocust	45' Tall 35' Spread	2" Caliper
Greenspire Linden	40' Tall 30' Spread	2" Caliper
Little Leaf Linden	40' Tall 30' Spread	2" Caliper
Redmond Linden	40' Tall 30' Spread	2" Caliper
Linden (Any Variety)	40' Tall 30' Spread	2" Caliper
<u>Ornamental Tree</u>		
Hawthorne (Any Variety)	25' Tall 20' Spread	2" Caliper
Canadian Choke Cherry	20' Tall 15' Spread	2" Caliper
Ornamental Pear (Any Variety)	20' Tall 15' Spread	2" Caliper
<u>Large Shrub</u>		
Cistena Plum	8' Tall 6' Spread	5 Gallon
Hahs Cranberrybush (Viburnum)	7' Tall 7' Spread	5 Gallon
Variegated Dogwood	6' Tall 6' Spread	5 Gallon
Golden Privet	6' Tall 6' Spread	5 Gallon
Yellow Twig Dogwood	6' Tall 6' Spread	5 Gallon
Red Twig Dogwood	6' Tall 6' Spread	5 Gallon
Lilac (Any Variety)	6' Tall 6' Spread	5 Gallon
<u>Medium Shrub</u>		
Dwarf Winged Euonymus	4' Tall 4' Spread	5 Gallon
Red Leaf Barberry	5' Tall 5' Spread	5 Gallon
Yews	5' Tall 5' Spread	5 Gallon
English Laurel (Any Variety)	5' Tall 5' Spread	5 Gallon
<u>Ornamental Shrub</u>		
Spiraea (Any Variety)	3' Tall 3' Spread	5 Gallon
Potentilla	3' Tall 3' Spread	5 Gallon
Wagellia	3' Tall 3' Spread	5 Gallon
<u>Ground Cover</u>		
Spreading Cotoneaster	1' Tall 6' Spread	5 Gallon
Juniper (Any Variety Under 15")	1' Tall 8' Spread	5 Gallon
St. Johnsward	1' Tall 1' Spread	1 Gallon

## ARTICLE VI LANDSCAPE STANDARDS (Continued)

6.4 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 the chain link fence to be installed along Kays Creek by the developer and except that chain link fences may be used in certain applications in the parks or playground areas or in the agricultural preserve or in areas controlled by the city or other governmental entities.

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Standard Fence Detail. The only fencing permitted in KaysCreek Estates Phase One, a P.R.U.D., is the standard cedar residential fence in 4' height or 6' height as per the detail on file with the City of Layton and available from the developer or provided to each original buyer of a lot at the time of closing. The approved finish and the only finish permitted for the cedar fencing is to be Olympic Stain Semi Transparent Stain # . No other fencing construction and no other stain color is permitted.

### Fencing requirements for lots in Phase One:

The following lots which back up to the creek side trail shall install prior to completion the standard 4' high KaysCreek Estates Phase One, a P.R.U.D. cedar wood fencing along the rear lot lines. Those lots include lots 1 through 9 and lot 58 through 64.

The following lots adjoin the pedestrian trail which provides a connection between Park "A" and Park "B" and the creek side trail, and those lots shall install the KaysCreek Estates Phase One, a P.R.U.D. standard 4' high cedar wood fencing along the common property line with the pedestrian trail prior to completion. Those lots include lots 61, 62, 67, 68, 75, 76, 86, 87, 99, 100, 116 & 117.

Those lots with side yard lot lines common with Park "A" shall install the KaysCreek Estates Phase One, a P.R.U.D. standard cedar wood fencing at a height of 6' along the common property line with Park "A" prior to completion. Those lots include lots 20 & 21.

Those lots with a rear yard lot line common with Park "B" shall install the KaysCreek Estates Phase One, a P.R.U.D. standard cedar wood 6' high fence along those rear lot lines prior to completion. Those lots include lots 65, 66, 67, 68, 69 & 70.

Those lots with a rear yard line common with any portion of the Agricultural Preserve shall install the KaysCreek Estates Phase One, a P.R.U.D. standard cedar wood 6' high fence along those rear lot lines prior to completion. Those lots include lots 9 through 20, 21 through 58, and 150 through 160. The requirements of this paragraph and the preceding four paragraphs with reference to fence requirements cannot be changed without the consent of Layton City.

Layton City may require a lot owner and/or the Declarant to complete certain fencing as specified above at times as specified by the City and those times may be on or before the lot owner has constructed and completed a home with the required fencing. Therefore in the event that Layton City requires the Declarant to complete any Layton City required fencing, and the lot owner is unwilling or unprepared to complete that fencing, then Declarant may complete the standard KaysCreek Estates Phase One, a P.R.U.D. cedar wood fencing, based upon bids from reputable contractors, and assess the cost of that fencing to the specific lot. The lot owner will reimburse the Declarant for the cost of that fencing at the actual amount paid to the fencing contractor by the Declarant and in the event said amount is not repaid to the Declarant within 30 days of the lot owner receiving notice, then the amount shall become a lien against the lot and shall bear interest at the rate of 1.5% per month until such amount is paid in full. All such amounts shall be paid in full within 12 months of the date of said fence installation.

In addition, all lots within the subdivision shall complete the 6' high rear yard fence and 6' high fences along the side lot lines in the rear yard within 12 months of completion of construction of the home. The fence requirements of the preceding sentence may be modified under certain circumstances, but only with written approval of the Architectural Committee. All fencing shall be accomplished with the standard KaysCreek Estates Phase One, a P.R.U.D. cedar wood fencing as per the sketch design provided by Swaner Design.

No fencing of any kind shall be installed in front yards at KaysCreek Estates Phase One, a P.R.U.D.

6.5 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

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7. To effectively enforce these Covenants, the Declarant has created, or will create, a Utah non-profit corporation called KaysCreek Estates Homeowners Association. The Association shall be comprised of the Owners of Lots within the KaysCreek Estates Phase One, a P.R.U.D. 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 all Common Areas and Other Association Property. The Association will own, operate and maintain those parcels within the subdivision that are designated with a letter, ie, Parcels A, B, C, D, E, F, G, H, J. Plus any common areas to be added in the future. The Association will be responsible for the maintenance of all common areas presently owned by the Association or acquired in the future by the Association. The Association shall have the authority to assess 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, except the gravity sewer special assessment described in paragraph 7.11.

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. 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.

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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 21 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.

7.11 Gravity Sewer Connection Special Assessment. In the original construction of the subdivision, a waste water lift station was constructed and paid for by the developer and deeded to the City of Layton for operation and maintenance. There is a potential that in the future a gravity sewer line may be constructed in the area, which would allow sewer service to the subdivision without need for the waste water lift station. Layton City is requiring the subdivision to connect to any future gravity sewer system if such system should become available within five years from the time of recording of this Declaration for KaysCreek Estates Phase One, a P.R.U.D. The lot owners within the subdivision will be responsible for paying for such connection at a cost not to exceed a total of \$50,000, and that obligation to pay the \$50,000 will end at the five year time period from the recording of this Declaration. If such connection does occur within the five year time period, the \$50,000 cost will be allocated to all lot owners on a prorata basis within KaysCreek Estates Phase One, a P.R.U.D., and Phase Two, a P.R.U.D. With 276 lots, the cost per lot would be \$181. If only KaysCreek Estates Phase One, a P.R.U.D., is developed with 166 lots, the cost per lot would be \$301. If such expense occurs, the assessment will be considered a Special Assessment and the rights of the Homeowners Association specified under this Article VII will be applicable.

7.12 Reserve Fund for Maintenance and/or Equipment Failure of the Wastewater Lift Station. As soon as practical, the Association shall accumulate a cash fund in the amount of not less than \$17,500, which fund will be used to guarantee to the City of Layton sufficient funds to pay for maintenance and/or equipment failure of the wastewater lift station.

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7.13 Independent Accountant. The Homeowners Association will retain the services of an independent accountant who will be responsible for maintaining an accurate set of accounting records, information on bank accounts, and other records of the Association. The independent accountant will be directed to furnish each quarter a financial statement of the Association along with copies of appropriate bank account records to the City of Layton and such quarterly submissions to Layton City shall continue until such time as the Homeowners Association is notified by Layton City that such submission is no longer required. Layton City will have a continuing right to audit the funds in the Homeowners Association's accounts and review other records of the Association. The Homeowners Association independent accountant shall cooperate fully with audit requests by Layton City.

## ARTICLE VIII

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### 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

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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 Covenants 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 55% of the Lots may amend the provisions of this Declaration. Any amendment must be in writing and be approved by 55% 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.

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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.

E 1336169 B 2154 P 285

Advantage Communities, Inc.  
a Utah Corporation

By: *Dave Backman*  
Dave Backman, President

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

On the 16<sup>th</sup> day of June, 1997, 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.

*Margaret A. Petersen*

NOTARY PUBLIC

Residing at Salt Lake City Utah

My Commission Expires:

02-28-00



(CC&R,KCE)



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 Andersen  
Title: Vice President

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

On the 16<sup>th</sup> day of June, 1997, personally appeared before me, Kent Andersen, 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 Andersen duly acknowledged to me that said corporation executed the same.

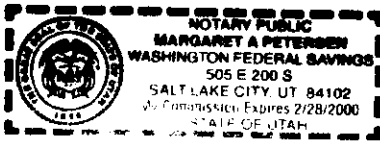
NOTARY PUBLIC

Margaret A. Petersen

Residing at: Salt Lake City, Utah

My Commission Expires:

02-25-00



(CC&R,KCE)