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RICHARD T. MAUGHAN  
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DEP RT REC'D FOR KAYSCREEK EST HOA

**FIRST AMENDMENT TO COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR KAYSCREEK ESTATES PHASE I, A P.R.U.D.  
LAYTON CITY, UTAH**

11-405 -  
0001 thru 0138  
0141 thru 0166, 0177, 0178

This First Amendment to Declaration of Covenants, Conditions and Restrictions For Kayscreek Estates Phase I, a P.R.U.D. ("First Amendment") is dated May 28, 2010.

**RECITALS**

A. The Declaration of Covenants, Conditions and Restrictions For Kayscreek Estates Phase I, A P.R.U.D. (the "CCRs") was recorded on July 22, 1997 as Instrument No. 1336169. Book 2154. Page 246 of the Davis County, Utah Recorder's Office, pertaining to the following real property:

All of Lots 1 through 166 of Kayscreek Estates Phase I, a P.R.U.D., according to the Official Plat thereof on file and of record in the Davis County, Utah Recorder's Office.

B. This Amendment to the CCRs has been approved by the Owners of 55% or more of the Lots in the Subdivision as required by Section 9.5 of the CCRs, and has been approved by Layton City.

NOW, THEREFORE, the CCRs are amended as follows:

1. Except as otherwise provided herein, the capitalized terms used in this First Amendment shall have the definitions set forth in the CCRs.

2. The first sentence of the fourth paragraph on page 7 of the CCRs, which provides, "Parcel E is to be used for agricultural and open space" is deleted in its entirety and the following is substituted in its place:

Parcel E is to be used for park, playground, agricultural and/or open space purposes.

3. The seventh paragraph on page 7 of the CCRs is amended by adding the phrase "Except as provided in Section 7.2," at the beginning of the paragraph, so that as amended, the paragraph provides:

Except as provided in Section 7.2, ownership of the underlying fee of the common areas shall remain with 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.

4. Section 7.2 of the CCR's is amended by adding the following at the end of the Section:

Notwithstanding the above, the Association is specifically authorized to enter into the Agreement with the City attached hereto as Exhibit A, and to convey a portion of Parcel E to the City for future development of a public park or to remain as open space. If the City acquires ownership of any portion of the Common Areas, it shall not become an "Owner" under the CCRs or the Articles of Incorporation and Bylaws of the Association.

5. Section 7.12 is deleted in its entirety and the following is substituted in its place:

7.12 Reserve Fund for Equipment Replacement of the Wastewater Lift Station Pumps. The Association presently has, and shall maintain, a "Reserve Fund" for replacement of the pump equipment for the wastewater lift station in the amount of \$17,500.00, subject to payments from and replenishment of the Reserve Fund as provided below. Within thirty (30) days after the date of written demand by the City, the Association shall pay over to the City from the Reserve Fund the cost to the City for the replacement of the pump equipment, not to exceed the then existing balance of the Reserve Fund, subject to the following restrictions: (a) The City will exclude from those costs the proportional share attributable to other users of the pumps outside of the Subdivision; and (b) The total demands from the City to the Association shall not exceed \$17,500.00 in any 5 year period, but if replacement costs of the pump equipment exceed \$17,500.00 in any 5 year period, the City may accrue the excess amount and make demand on the Association when additional amounts are available in the Reserve Fund. After any payment to the City from the Reserve Fund, the Association shall restore the Reserve Fund to \$17,500.00 within five (5) years.

6. In all other respects, and except as otherwise set forth herein, the remaining terms of the CCRs shall remain in full force and effect.



Exhibit A

**AGREEMENT**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, between the KAYSCREEK HOMEOWNER'S ASSOCIATION (hereinafter referred to as the "Homeowner's Association") and LAYTON CITY (hereinafter referred to as the "City").

**RECITALS**

**WHEREAS**, on the 9<sup>th</sup> day of May, 1997, the City entered into a Development Agreement with David Backman, Advantage Communities, Inc. (hereinafter the "Development Agreement"), which included certain provisions relating to the ownership, upkeep, and maintenance of a sewer pump station that would service portions of the Kayscreek Estates Subdivision (the "Subdivision"); and

**WHEREAS**, relevant portions of the Development Agreement provided that a reserve fund will be established by the Homeowner's Association guaranteeing sufficient funds to pay for maintenance and/or equipment failure in the pump station; and

**WHEREAS**, the Covenants, Conditions and Restrictions for the Subdivision provide for the establishment of a \$17,500 reserve fund (the "Reserve Fund") regarding the pump station; and

**WHEREAS**, under the Development Agreement, the pump station was to be operated and maintained by the City, "with one hundred percent (100%) of the costs thereof, including reasonable administrative costs and fees paid to a treatment facility, to be assessed to the residents of the development"; and

**WHEREAS**, neither the Development Agreement nor the Covenants, Conditions and Restrictions for the Subdivision impose any obligation on the Homeowner's Association regarding the costs of the pump station except the establishment of the Reserve Fund, "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"; and

**WHEREAS**, the City has born the cost of maintaining and operating the pump station to the present; and

**WHEREAS**, the City has allowed lots not located in the Subdivision to utilize the pump station; and

**WHEREAS**, the City has adopted utility fee schedules which do not include additional charges or assessments for the pump station, and has charged all City residents utilizing City sewer, including residents of the Subdivision, based on those fees schedules, but has not otherwise charged residents of the Subdivision or other users of the pump station with costs of the pump station pursuant to either the Development Agreement or the reserve fund and guarantee in the Covenants, Conditions and Restrictions for the Subdivision; and

**WHEREAS**, the City has submitted a proposal to the Homeowner's Association proposing that certain open space under the ownership of the Homeowner's Association be dedicated to and received by the City for the purpose of eventually developing a public park; and

**WHEREAS**, the City will commit to, construct the park at the City's expense at a future date; and

**WHEREAS**, after the City becomes fee owner of the property, the City will maintain the property as unimproved open space until a park is constructed, and as an improved City park subsequent to that date; and

**WHEREAS**, the City has invited and encourages the participation of the Homeowner's Association in the development of the public park at a future date; and

**WHEREAS**, in exchange for the City's commitment to accept all responsibility, except for the replacement of equipment for the pump station, and in consideration of the City's commitment to construct a public park on the open space, at the City's expense, the Homeowner's Association will convey to the City approximately sixteen and one half (16.5) acres of open space for the purpose of placing a future public park at that location; and

**WHEREAS**, both parties acknowledge that there is fair and adequate consideration underlying this Agreement; and

**WHEREAS**, the City Council of Layton City has determined that it is in the best interest of the City to enter into this Agreement identifying the respective obligations of the parties concerning the continued maintenance and operation of the sewer pump station and concerning the dedication and improvement of open space within the Kayscreek Estates Subdivision as a public park.

**NOW THEREFORE**, the parties hereby agree as follows:

1. The Homeowner's Association agrees to convey to the City approximately sixteen and one half (16.5) acres of property (hereinafter the "Dedicated Ground") currently designated as a portion of Parcel E within the Subdivision, for the purpose of the future development of a public park upon the ground. The conveyance shall be made in the form of the Special Warranty Deed, which is attached hereto as Exhibit "A" and incorporated herein by this reference. The Dedicated Ground is more particularly described in the Special Warranty Deed, and is marked on the site plan attached hereto as Exhibit "B". The Special Warranty Deed shall be executed and delivered upon the completion of the requirements set forth in paragraph 7 below, which the parties agree to diligently pursue. The City shall also execute an acceptance of the Special Warranty Deed for the purpose of accepting and agreeing to the provisions of the Special Warranty Deed. The Special Warranty Deed shall contain a provision requiring that the property be perpetually maintained as open space or a City park consistent with the requirements of this Agreement. The language shall also provide that the Homeowner's Association shall have the right to bring a challenge to any use inconsistent with the uses provided for and a provision for attorneys fees to the prevailing party in such a challenge. The term "City park" shall have its

regular ordinary meaning. In addition, the term "City park" shall incorporate the requirements and items expressly agreed to in writing in this Agreement as signed by the City and the Homeowner's Association.

2. The City agrees to accept the Dedicated Ground for the purpose of establishing, at a future date, the improvements for a public park upon the Dedicated Ground.

3. The City will maintain the Dedicated Ground as open space after it is conveyed to the City until such time funds are appropriated for the construction of a public park and the City improves the property as a City park, and as an improved park after that date. The owners of lots in the Subdivision shall continue to have the right to use the Dedicated Ground in a manner consistent with open space until the Dedicated Ground is improved as a public park. Prior to improving the Dedicated Ground as a public park, the City shall not use the Dedicated Property in any manner inconsistent with its use as open space or the construction and maintenance of a City park.

4. The City agrees to provide an opportunity for the Homeowner's Association to participate in the design of the public park by establishing an advisory committee including City Park Staff, members of the Homeowner's Association, as designated by the Homeowner's Association, and the general public, for the purpose of making recommendations on plans for the public park.

5. While plans for the public park will be finalized at some point prior to the construction of the public park by the City, the City agrees to incorporate the following guidelines relative to the public park:

a. The restrooms for the public park will be located as far towards the western portion of the property as technically possible in view of the existing topography



needed to satisfy the engineering needs for sewer and the availability of other utilities. The restrooms shall not be located within 100 feet (100') of the lot line of any lot in the Subdivision.

b. The City will install and maintain a uniform white vinyl privacy fence at a uniform location along the eastern boundary of the public park abutting homes within the Kayscreek Estates Subdivision. Each adjoining lot owner shall be allowed to install, at such owner's expense, a gate to allow access to the park.

c. The City will provide buffering, by way of plants, trees, and other buffering methods consistent with the park design and budget, to separate the public park from the abutting homes along the western edge of the Kayscreek Estates Subdivision, and to buffer the western edge of the dedicated property from the anticipated extension of the Legacy Highway. The City agrees to consider input from adjoining lot owners regarding the buffering, or lack thereof, for their individual lots and to consider such input in the design to the extent consistent with the park design and budget.

d. The public park, by its size and design, will not be designated nor used as a regional sports facility, but will accommodate local activities, including sports, as reflected in Exhibit "C", Park Conceptual Drawing, that is attached hereto and incorporated herein by this reference. The conceptual drawing is for reference only and should not be construed to reflect the actual size or design of the future park. The recreational fields in the park will be designed for multiple recreational activities.

e. All lighting, as reasonably feasible, will be directed away from the Kayscreek Estates Subdivision.

f. Parking will be limited to one hundred (100) spaces or less and will be buffered from the homes along the east side of the park.

6. In consideration of the dedication of the Dedicated Ground to the City, the City agrees as follows regarding the pump station:

a. The City agrees that it will not assess past, present, or future residents of the Subdivision, or lots in the Subdivision, with any fee, surcharge, tax, assessment, or other obligation, however characterized, for the maintenance and care of the pump station, excluding the replacement of pump station equipment, whether for past, present, or future periods, except that the City may continue to charge, on a non-discriminatory basis, sewer fees and other amounts on the same basis as charged to other City residents for sewer use whose property does not utilize the pump station.

b. Pursuant to the provisions of Section 7.12 of the Covenants, Conditions and Restrictions of the Subdivision, the Homeowner's Association agrees to pay over to the City from the Reserve Fund, within thirty (30) days of the date of written demand by the City, the cost to the City for the replacement of the pump equipment, not to exceed the then existing balance of the Reserve Fund. The City will exclude from those costs, the proportional share attributable to others outside of the Subdivision, using the pumps. After payment to the City from the Reserve Fund, the City will allow the Homeowner's Association five (5) years to reestablish the guarantee amount of Seventeen Thousand Five Hundred Dollars (\$17,500.00), once it has been depleted. The total demands from the City to the Homeowners Association shall not exceed \$17,500.00 in any 5 year period, but if replacement costs exceed \$17,500.00 in any 5 year period, the City may

accrue the excess amount and make demand on the Homeowners Association when additional amounts are available in the Reserve Fund.

c. The City hereby releases the Homeowner's Association, the past, present, and future residents of the Subdivision, and all lots within the Subdivision, from all claims that the City may have of any kind and nature regarding the maintenance and care of the pump station, excluding the replacement of the pump station equipment, whenever and however arising, except for the right to charge non-discriminatory sewer fees as provided in b. above. This release does not release any claims of the City for unpaid amounts for existing charges of such non-discriminatory fees.

d. Except as provided in this Agreement, the City agrees that the Homeowner's Association, the past, present, and future residents of the Subdivision, and all lots within the Subdivision, do not have any obligation for maintenance and operation of the pump station, and agree that the City has sole responsibility for the maintenance and operation of the pump station.

7. The City agrees to prepare, at the City's expense, all documents necessary for the Homeowner's Association to comply with the ordinances and subdivision requirements of the City and any other applicable laws for the conveyance of the Dedicated Ground for a public park, including but not limited to any amendments to the Subdivision or Subdivision plat. The Homeowner's Association shall have the right to review and modify as appropriate all such documents, and agrees to execute such documents in a reasonable form. Except as specifically provided in this Agreement, such documents shall not impose any additional obligations or restrictions on the Homeowner's Association. The Homeowner's Association agrees to amend, at the Homeowner's Association expense, the Homeowner's Association corporate documents and

the Covenants, Conditions and Restrictions for the Subdivision as necessary to allow for the dedication of the open space for a public park.

8. This Agreement shall not be interpreted to confer a benefit upon any third party.

9. If any party fails to comply with the terms of this Agreement, said party shall pay all of the other party's expenses of enforcing the Agreement, or any right arising out of the breach thereof, including reasonable attorney's fees.

10. This Agreement shall constitute the entire agreement between the parties and any amendment hereby shall be expressed in writing signed by both parties.

11. The obligations under this Agreement shall inure to the benefit to all successors and assigns.

12. This Agreement may not be assigned except by the written consent of the other party.

**LAYTON CITY CORPORATION**

**KAYSCREEK HOMEOWNER'S  
ASSOCIATION**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
J. STEPHEN CURTIS  
Mayor

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
THIEDA WELLMAN, City Recorder

STATE OF UTAH            )  
                                      : ss.  
COUNTY OF DAVIS        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, personally appeared before me \_\_\_\_\_, and \_\_\_\_\_ who duly acknowledged to me that he is the \_\_\_\_\_ and she is a \_\_\_\_\_ of the KAYSCREEK HOMEOWNER'S ASSOCIATION, and that the document was signed by him/her in behalf of said KAYSCREEK HOMEOWNER'S ASSOCIATION, they acknowledged to me that said KAYSCREEK HOMEOWNER'S ASSOCIATION executed the same.

\_\_\_\_\_  
NOTARY PUBLIC