

AFTER RECORDING PLEASE MAIL COPIES TO:

**PATRIOT CAPITAL HIDDEN SPRINGS LLC**  
C/O Hawkins Companies  
5 Triad Center, Suite 350  
Salt Lake City, UT 84180

**RICHMOND AMERICAN HOMES OF UTAH, INC.**  
849 West Levoy Drive, Suite 100  
Salt Lake City, UT 84123

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## ***HIDDEN SPRINGS master community***

***Fruit Heights, Utah***

***A Group of Residential Subdivisions & Developments***

### **DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS & RESTRICTIONS**

PATRIOT CAPITAL HIDDEN SPRINGS LLC  
an Idaho limited liability company  
DEVELOPER

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR THE HIDDEN SPRINGS MASTER COMMUNITY**

This Declaration of Covenants, Conditions, Restrictions and Easements for the Hidden Springs master community (hereafter this "Declaration") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005, by Patriot Capital Hidden Springs LLC, an Idaho limited liability company, (hereafter the "E-Class Declarant") and Richmond American Homes of Utah, Inc., a Colorado Corporation, (hereafter the "D-Class Declarant"), which collectively shall be known as the "Declarant."

**ARTICLE I  
RECITALS**

WHEREAS, the Declarant is the record owner of certain land situated in Fruit Heights City, Davis County, Utah, which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration, consists of the following described real property (hereafter the "Property" or "Subdivision"):

1. All of Lots 1 through 59 of DEER FIELD AT HIDDEN SPRINGS SUBDIVISION, inclusive, along with and inclusive of all Common Area / Open Space Parcels, located in the City of Fruit Heights, according to the official approved final plats thereof, as recorded or to be recorded in the office of the County Recorder of Davis County, State of Utah;  
*07-247-0001 thru 0059*
  2. All of Lots 1 through 25 of DEER RIDGE AT HIDDEN SPRINGS SUBDIVISION, inclusive, along with and inclusive of all Common Area / Open Space Parcels, located in the City of Fruit Heights, according to the official approved final plats thereof, as recorded or to be recorded in the office of the County Recorder of Davis County, State of Utah;  
*07-246-0001 thru 0025*
- and,
3. Any and all future lots or parcels that are developed as future phases of Hidden Springs master community that have been conceptually approved by Fruit Heights City, will be recorded with a Declaration of Covenants, Conditions, Agreements and Restrictions, as an amendment to this declaration and will be subject to and bound by these covenants.

WHEREAS, It is the desire and intention of the Declarant to subdivide and sell the Property described above, and, by the execution of this instrument, it is the intention and desire of the Declarant, to make the Property subject to the covenants, conditions, agreements, restrictions, easements, reservations, limitations and equitable servitudes set forth in this Declaration to: (i) insure the enhancement and preservation of property values, (ii) provide for the proper design, development, improvement and use of the Property by the Declarant and all other persons or entities who may subsequently acquire an interest in the Property consistent with a general master plan approach, (iii) create a residential development of high quality, and, (iv) provide for the continued maintenance and protection of certain common areas and common facilities in the master community;

WHEREAS, in order to achieve the objectives and desires of the Declarant, the Declarant will control the management and government of the Property and the non-profit association of Owners to be created until such time as the Owners take over the management functions through the Association upon conveyance of the last lot in the Subdivision and in accordance with the management transfer conditions more particularly set forth in this Declaration.

## **ARTICLE II DECLARATION**

NOW, THEREFORE, the Declarant hereby submits the Property to the provisions of this Declaration and declares that the Property and each lot, tract or parcel thereof is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitudes (hereafter collectively called "Covenants and Restrictions"), all of which are declared and agreed to be in furtherance of a general plan for the subdivision, protection, maintenance, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The Covenants and Restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property and any Lot therein; and shall inure to the benefit of and be binding upon the Declarant and its successors-in-interest, and may be enforced by the Declarant, or by any Owner, or by the Association, or by the Architectural Control Committee on behalf of the Association, as hereafter provided.

Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Declarant's right to complete development of the Property in accordance with the plan therefore as the same exists or may be modified from time to time by the Declarant nor prevent normal construction activities during the construction of Improvements upon any Lot in the Subdivision. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Declaration may be granted by the Architectural Control Committee provided that such waiver shall be for a reasonable period of time. Any such waiver need not be recorded and shall not constitute an amendment of this Declaration.

In the event of any conflicts between the provisions of this Declaration and the requirements of the applicable ordinances of the City of Fruit Heights, Utah or any municipality that may annex any portion of said project (as to that portion or portions), the more restrictive provisions shall control.

## **ARTICLE III DEFINITIONS**

As used in this Declaration, unless the context otherwise specified or requires, the following words and phrases shall be defined as follows:

ACC: The Architectural Control Committee for the Subdivision.

**ACC Rules/ACC Standards:** The written rules and standards developed and adopted, initially by the Declarant and, subsequently by the ACC pursuant to the powers granted under Article X hereof, as amended from time to time. Such ACC Rules/ACC Standards shall be developed and contain rules and standards which will promote both high quality architectural, design, engineering and building standards while, incorporating a reasonable degree of variety and flexibility while maintaining an overall design and conceptual consistency congruent with a master planned community concept.

**Annexation:** The process by which additional tracts or parcels of land, including platted lots improved with single family, or multi-family dwellings, not initially a part of the Property are made subject to this Declaration.

**Assessment:** A payment required of Association members, including Regular, Special or Limited Assessments as provided in this Declaration.

**Association:** The Fruit Heights Hidden Springs Master Homeowners Association, Inc., a Utah non-profit corporation organized by the Declarant and existing for the purpose of providing self-government for the Property as set forth in this Declaration.

**Basement:** Any living area that is more than 5 feet below the average adjacent grade.

**Board:** The duly elected and qualified Board of Directors of the Association.

**Building:** A structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

**Bylaws:** The Bylaws of the Association, including any amendments thereto duly adopted.

**City:** City of Fruit Heights.

**County:** Davis County, State of Utah.

**Declaration:** This instrument as it may be amended from time to time.

**Development:** The project to be undertaken by the Declarant resulting in the improvement of the Subdivision or any additional property annexed hereunder, including landscaping, amenities, construction of roadways, utility services and other Improvements.

**Improvements:** All structures and appurtenances thereto of all kinds and types, including but not limited to, Buildings, roads, storm drains, driveways, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs and lighting. Improvements shall not include those items which are located totally on the interior of a Building and cannot be readily observed when outside thereof.

**Initial Construction:** The first construction of permanent Improvements on a Lot.

**Limited Assessment:** An Assessment levied by the Association upon one or more Lots, but not upon all Lots within the Subdivision, for the purpose of securing payment by the Owner(s)

thereof of amounts expended by the Association to (i) correct a condition prohibited, (ii) to cure an Owner's breach hereunder, (iii) pay for special amenities or services provided to the lot or lots.

Lot: A portion of the Property which is a legally described tract or parcel of land within the Subdivision or which is designated as a Lot on any recorded subdivision plat relating to the Property.

Master Plan: Shall mean the master development plan for the Property (as amended and expanded from time to time to include additional property annexed to the Subdivision and to accommodate reasonable variations from the original master concepts for subdivisions within the Property and to meet the requirements of governmental authorities having jurisdiction over the development of the Property), which development plan has been created by the E-Class Declarant, reviewed by and conceptually accepted by appropriate governmental authorities, combined with certain recreational and open-space uses.

Member: Any person(s) who is an Owner of a Lot within the Subdivision.

Occupant: Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Building or Improvement on a Lot whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities, excluding the Declarant(s), holding fee simple title to a Lot in the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any Mortgagee (of any priority) or other security holder provided said Mortgagee or other security holder is in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through such Mortgagee or other security holder by purchase at foreclosure sale or otherwise.

Plat: A final subdivision plat covering any real property in the Subdivision, as recorded in the office of the County Recorder, Davis County, Utah, as the same may be amended by duly recorded amendments thereto.

Regular Assessment: An assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.

Special Assessment: An assessment levied by the Association other than a Regular or Limited Assessment.

Subdivision: The whole of the Property and any additional land annexed thereto as provided herein, including any such additional land as may be platted and annexed hereunder under a different name (also sometimes referred to herein as "Property").

Supplemental Declaration: The additional or different conditions, covenants, conditions, restrictions and easements relating to a particular tract or parcel of real property within the Subdivision promulgated by the Declarant and recorded in the official records of Salt Lake County, Utah. Unless specifically provided to the contrary, or unless the context otherwise requires, a reference to "Declaration" shall include "Supplemental Declaration."

**ARTICLE IV  
PURPOSE**

The Property is hereby made subject to the Covenants and Restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors-in-interest and assigns, to insure the proper design, development, improvement, use and maintenance of the Property for the purpose of:

- (a) Enforcing quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Improvements;
- (b) Preventing the erection of Improvements of improper design or construction with improper or unsuitable materials or with improper quality and method of construction;
- (c) Encouraging and insuring the erection of quality and attractive Improvements appropriately located within the Property to assure visual quality and harmonious appearance and function;
- (d) Securing and maintaining proper set-backs from streets and open areas in the Subdivision;
- (e) Integrating the development of the different Lots by setting common general standards consistent with the ACC Rules/ACC Standards existing from time to time;
- (f) Encouraging attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem;
- (g) Taking advantage of and utilizing, for purposes of promoting all of the foregoing and further enhancing the value and quality of each Owner's and each Occupant's interest in the Subdivision or in any Lot or Lots therein, a master planned residential community concept accommodating a diversity of residential property uses and designs within a common and harmonious community plan with recreational and open space uses supportive of the overall planned community concepts envisions by the Declarant;
- (h) Managing, operating, insuring, constructing, improving, repairing, replacing, altering and maintaining the Association Property;
- (i) Providing certain facilities, services and other benefits to the Owners including without limitation distributing culinary water;
- (j) Administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby;
- (k) Levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto including without limitation those necessary to purchase water from respective entities (if so required);
- (l) Developing and maintaining common area parks;

- (m) Taking any action that it deems necessary or appropriate to protect the interests and general welfare of Owners; and
- (n) Any other purpose permitted by law.

As used hereafter, "Project Objectives" shall mean the foregoing specified purposes. Each purpose specified herein is an independent purpose and is not restricted by reference to or inference from the terms of any other purpose.

## **ARTICLE V PERMITTED USES AND PERFORMANCE STANDARDS**

Section 5.1 **Use.** Unless otherwise specified in a Supplemental Declaration covering a particular Lot(s) or parcel(s), Lots shall be used only for single family residential purposes and such uses as are customarily incidental thereto. Lots with a letter designation (i.e. "Parcel A") on the Plat shall be dedicated (as designated on the plat) for open space, recreation, storm water detention, public utility and public access purposes.

Section 5.2 **Buildings or Dwellings.** Each detached dwelling unit shall have an attached or fully enclosed garage adequate for a minimum of two (2) and a maximum as determined by the ACC, for standard size automobiles. No carports or front-yard (meaning anywhere closer to the front property line of the lot than the front-most portion of the Building) parking pads shall be allowed (except for typical driveways). Unless otherwise specified in a Supplemental Declaration recorded after the date of this Declaration, the following minimum living requirements for detached dwelling units shall apply. (Living areas shall be calculated exclusive of garages, open porches, and basements. The "ground floor," as herein referred, shall typically be defined as the first floor with a floor elevation extending above the top back of curb at the driveway approach side of the lot.), exceptions to this definition shall be determined by the ACC.

a. Dwelling Size:

1. Deer Field at Hidden Springs:

- a. One Story Dwellings (Rambler): The required minimum above ground floor finished space shall be 1600 square feet.
- b. Multiple-Story Dwellings: The required minimum above ground floor finished space shall be 2000 square feet.

2. Deer Ridge at Hidden Springs:

- a. Lots less than 15,000 sq. ft.:
  - i. One Story Dwellings (i.e. Rambler): The required minimum above ground footage shall be 2100 square feet with a minimum 3-car garage required, and 2350 square feet with a minimum of 2-car garage required
  - ii. Multiple-Story Dwellings (i.e. Two-Story): The required minimum above ground footage shall be 2400 square feet with a minimum 3-

car garage required, and 2800 square feet with a minimum of 2-car garage required

- b. Lots larger than 15,000 sq. ft.:
  - i. One Story Dwellings (i.e. Rambler): The required minimum above ground footage shall be 2300 square feet with a minimum 3-car garage required.
  - ii. Multiple-Story Dwellings (i.e. Two-Story): The required minimum above ground footage shall be 2800 square feet with a minimum 3-car garage required.
- c. Special consideration will be given by the ACC to lots 1-11, & 12-14 due to geological and topographical conditions or constraints on the lots.

3. Futures Phases: Dwelling sizes for future phases shall be defined in Amended Declarations recorded with each phase.

THE ARCHITECTURAL CONTROL COMMITTEE RESERVES THE RIGHT TO GRANT EXCEPTIONS TO THE ABOVE RESTRICTIONS IN ORDER TO PLACE AN APPROPRIATE HOME ON A SPECIFIC LOT DUE TO SLOPE RESTRICTIONS, LOT IRREGULARITY OR FOR ANY OTHER REASON THEY DEEM REASONABLY APPROPRIATE.

b. Dwelling Quality: All construction shall be comprised of new materials, with exception to the use of used brick or timbers with prior written approval of the Architectural Control Committee. All improvements on a Lot shall be made, constructed and maintained, and all activities on a Lot shall be undertaken, in compliance and conformity with all laws and ordinances of the city of Fruit Heights, Davis County, and the State of Utah which may apply, including without limiting the generality of the foregoing, all zoning and land use ordinances.

c. Dwelling Exterior Materials: All exterior materials and colors shall be selected and used as approved by the ACC. No gravel roofs shall be permitted. Any alterations in exterior colors or materials must be approved by the ACC.

1. Deer Field at Hidden Springs:

The dwelling's front exterior shall have minimum 3' high wainscot of brick or rock masonry, and, 1 or more, large full-front facing panel of brick or rock masonry ("large full-front facing panels" defined as at least 8 feet high with a minimum 100 square feet of masonry area in each panel), with the remainder in stucco or comparable product as approved by the ACC. Cedar lapboard or other types of wood or wood-composite sidings may be allowed by written approval from the ACC. Any of these exterior material requirements may be waived (at the discretion of the ACC) where the historic architectural style of the home will not permit its use. Vinyl or Aluminum siding shall be not allowed except for the soffit, fascia and/or rain gutter areas.

Each dwelling must have a minimum 30-year architectural (laminated) asphalt type or cement tile type shingle. The ACC must approve any other variation from this specification.



If the ACC permits detached structures, they are to be constructed of identical exterior materials of the primary structure unless otherwise approved by the ACC. All property owners are required to check with the governing municipality for building code requirements and zoning restrictions related to said detached structures.

Notwithstanding anything to the contrary referenced herein, the ACC has pre-approved the Richmond American Homes of Utah home plans and elevations signed and dated September 28, 2004, along with the color schemes with the following stipulations:

1) No 'A' Elevation home plans or the 'James' plan with the extended family room are to be constructed on Lots 6, 7, 16, 18-20, 31, 32, and 43-54.

2) The ACC reserves the right to approve the color schemes for the homes on Lots 6, 7, 16, 18-20, 31, 32, and 43-54.

## 2. Deer Ridge at Hidden Springs:

It is the intent of the E-Class Declarant to define a general "feeling" and "vision" of the homes that are to be built in Deer Ridge at Hidden Springs through these guidelines. The homes are encouraged to take on a European flavor. Examples of this in design terms are: "French Country", "Old World", "English Tudor", & "European/French Cottage" (this list is not all-inclusive). The exteriors of these types of homes combine dominant uses of brick, stone, rough-sawn exposed timbers (cedar, fir, etc), and copper accents. Most have features of window boxes, shutters, coupala's, turrets, multiple chimney's and heavy wrought iron that add to their appeal. Stucco or comparable finishes have a "Faux" or "Old World" texture and weathered color. Colors are natural and "earth-tone" in character. They generally have majority of 10/12 – 12/12 roof pitches. These general guidelines shall be considered and incorporated into plans submitted to the ACC for approval. Specific exterior requirements are as follows:

- i. The dwelling's front exterior shall have a minimum 40% of the total front wall space of brick or rock masonry with the remainder in wood, wood composites, stucco or comparable product as approved by the ACC. In no case shall the front exterior have more than 20% of stucco or comparable product unless approved by the ACC. Any of these exterior material requirements may be waived (at the discretion of the ACC) where the historic architectural style of the home will not permit its use. Vinyl or Aluminum siding shall be not allowed except for the soffit, fascia and/or rain gutter areas.
- ii. Each dwelling must have a minimum 30-year architectural (laminated) asphalt type shingle. The ACC must approve any other variation from this specification. Roof pitch minimum shall be 8/12, unless otherwise approved by the ACC. Hip roof or flat soffits shall be a minimum 18", rake or gable ends soffits shall be a minimum of 12", unless otherwise approved by the ACC. No complete hip-roof home designs will be allowed unless approved by the ACC.

- iii. Garages: Wherever possible, side-load garages are encouraged. The garage door(s) shall not equal greater than 40% of the total front exterior of the home. All garage door shall be of a decorative style as approved by the ACC.

If the ACC permits detached structures, they are to be constructed of identical exterior materials of the primary structure unless otherwise approved by the ACC. All property owners are required to check with the governing municipality for building code requirements and zoning restrictions related to said detached structures.

- 3. Futures Phases: Exterior materials for future phases shall be defined in Amended Declarations recorded with each phase.

Section 5.3 **Approval of Use and Plans**. The overall architectural style and detailing of each Improvement (including each Building) and the associated landscaping and site use is subject to ACC review and approval. Extraordinarily stylized or unique building shapes, or styles, such as geodesic domes, A-Frames, or cubic block homes are prohibited. The determination of whether or not a proposed Building is within this prohibited category of unique building styles shall rest with the ACC and such determinations shall be made in the sole and absolute discretion of the ACC; provided, that in making such determination, the ACC may consult with Owners of Lots in the immediate surrounding area of the Lot where the subject Building is proposed. No Initial Construction, including any site preparation or excavation of the Lot or other preparatory construction of Improvements for such Initial Construction shall be undertaken, built, constructed, erected or placed on a Lot unless and until the plans, specifications and site plan therefore have been reviewed in advance and approved by the ACC in accordance with the provisions of Article X, below, and as referenced above in Section 5.2. After Initial Construction, no other work of construction, excavation, or any exterior alteration to Improvements on a Lot shall be undertaken without obtaining the same advance approvals as are required with respect to Initial Construction. Except for work being performed by the E-Class Declarant, each Owner shall submit two sets of site, building, fencing, and landscaping plans to the ACC for approval. Only the Owners of the specific lots in Deer Field at Hidden Springs referenced in Section 5.2 c. 1. above shall be required to submit plans to the ACC as contained in this Section. All other lot Owners in Deer Field at Hidden Springs shall be exempt from this requirement, as the ACC has pre-approved the plans.

THE ACC WILL REQUIRE THE OWNER, ITS CONTRACTOR OR AGENT, TO PAY A \$200.00 NON-REFUNDABLE REVIEW FEE, PER PLAN BEING REVIEWED FOR ARCHITECTURAL CONTROL COMPLIANCE AND APPROVAL. THE ACC HAS THE AUTHORITY TO ENGAGE THE SERVICES OF AGENTS TO REVIEW SUCH PLANS. NOTWITHSTANDING THE FOREGOING, THE OWNER, CONTRACTOR OR AGENT OF THE SPECIFIC LOTS IN DEER FIELD AT HIDDEN SPRINGS REFERENCED IN SECTION 5.2 c.1. SHALL PAY A \$200.00 NON-REFUNDABLE REVIEW FEE FOR EACH PLAN ALREADY REVIEWED AND APPROVED. ALL PLANS REPLICATED FROM THE AFOREMENTIONED PRE-APPROVED PLANS FOR ANY LOT IN DEER FIELD AT HIDDEN SPRINGS SHALL BE SUBJECT TO A \$50.00 RE-REVIEW FEE, AS THE ACC HAS PRE-APPROVED THE PLANS.

ALL DWELLING SIZES, FLOOR PLANS AND EXTERIOR MATERIALS MUST BE SUBMITTED TO THE ACC IN WRITING, AS OUTLINED IN ARTICLE 5.2 OF THESE COVENANTS, AND APPROVALS MUST BE OBTAINED IN WRITING PRIOR TO THE BEGINNING OF CONSTRUCTION ON THE HOME. IF SAID APPROVALS ARE NOT OBTAINED AND CONSTRUCTION BEGINS, OWNER SHALL BE SUBJECT TO A \$1000.00 FINE, WHICH MAY BE LEVIED AS A LEIN, AT THE SOLE DISCRETION OF THE ACC.

THE DWELLING SIZES, FLOOR PLANS AND EXTERIOR MATERIALS FOR THE RICHMOND AMERICAN HOMES ON THE LOTS IN DEER FIELD AT HIDDEN SPRINGS HAVE BEEN APPROVED BY THE ACC, SUBJECT TO THE STIPULATIONS OUTLINED IN SECTION 5.2 c. 1. ABOVE.

Section 5.4 **Prohibited Buildings/Uses**. No trailer or other vehicle, tent, shack, garage, accessory building or out-building shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done or any use made thereon or thereof which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Property by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise. Nothing herein is intended to prohibit Declarant from placing a construction trailer and/or sales trailer on a Lot, making reasonable use of construction equipment or otherwise undertaking efforts to develop the Subdivision.

Section 5.5 **Antennae**. No exterior radio antennae (including but not limited to HAMM), television antennae or other antennae, including a satellite dishes larger than 24 inches in diameter, shall be erected or maintained on a Lot without the prior written approval of the ACC.

Section 5.6 **Easements**. Certain easements, as hereinafter described, are hereby reserved for the use and benefit of the Declarant and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association and/or the City, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Property, in conformance with the following:

(a) The easements are as follows:

(1) Public Utility Easements so designated on the Plat serving as easements for the installation, maintenance and location of public utility facilities of all kinds, including but not limited to power, telephone, natural gas, and radio and television transmission cables.

(2) An easement running in favor of Declarant and its agents, employees or independent contractors, to enter upon any portion of the Project for the purposes of constructing or installing Improvements.

(3) An easement for the purpose of permitting the Declarant, the Association and/or the City, their contractors and agents, to enter onto those portions of Lots contiguous to any property owned by the Association and/or the City to maintain, replace and restore landscaping and other Improvements within the Association and/or City property.

(4) Reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot and any property owned by the Association and/or the City adjacent thereto, or between adjacent Lots, due to the unintentional placement or settling or shifting of the Improvements including fences constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner.

(5) No Owner shall obstruct, divert, alter or interfere in any way with the drainage of water upon, across or over any portion of the Property to the detriment of any other Owner. Each Owner shall, at its own expense, maintain the drainage ways and channels on his Lot in proper condition free from obstruction.

(6) A Restricted Disturbance Easement so designated on the Deer Field at Hidden Springs plat restricting the construction of buildings, structures, landscaping and other improvements (including but not limited to homes, outbuildings, grass, trees, rocks, plants, fencing, etc.) on the easterly, southeasterly, and southerly portions of the respective lots that border the adjacent open space / wetland property to the east. The Owner of said lots, other than the E-Class Declarant, are required to submit a full landscape plan to the ACC for approval, complete with site plan, planting schedules, materials lists and scaled drawings of any improvements or structures that may encroach upon the easement. Said easement is established by the Declarant to insure, preserve, protect and maintain physical and visual value of the open space view corridor being provided and preserved by the Declarant. It is important to note that if there are any impacts on the jurisdictional wetlands shown on the plat, a Department of the Army Corps permit is required. An Owner of a Lot shall not take any action that would impact the jurisdictional wetlands unless such action has been approved in advance in writing by the ACC.

In Deer Ridge at Hidden Springs, the restricted disturbance easement line is the Geotechnical Setback line, as shown on the plat as the northerly portions of lots 1-11, and the westerly portion of lot 12. Unless stamped and approved in writing by a licensed Geotechnical Engineer and the ACC, said easement restricts the construction of buildings, structures, landscaping and other improvements (including but not limited to homes, outbuildings, grass, trees, rocks, plants, fencing, etc.) The Owner of said lots, other than the E-Class Declarant, are required to submit a full landscape plan to the ACC for approval, complete with site plan, planting schedules, materials lists and scaled drawings of any improvements or structures that may encroach upon the easement. Said easement is established by the Declarant to insure, preserve, protect and maintain physical and visual value of the vegetated slope, 30% or greater slope, and open space view corridor being provided and preserved by the Declarant. Mass grading and or clearing will not be permitted in said areas for any purpose unless permitted in writing by the ACC.

(7) Landscape Buffer Easements so designated on the plat wherein the E-Class Declarant will initially improve with various landscaping features. Said easement shall allow perpetual public access over, through and across the property. Said easement will be owned and property taxes will be paid for by each respective lot owner. All responsibilities for maintenance, additional improvement of and/or costs associated with the maintenance or additional improvement of common amenities associated with or found within said easements shall be paid for by Association through the means of collection prescribed herein.

(8) Any additional easements, if any, as shown and designated on the recorded Plat(s) for the Subdivision including without limitation easements along the sides, front and rear of each Lot as shown on the Plat for maintenance, repair and/or replacement of drainage facilities.

(b) Except as provided herein, the above easement areas (excluding any equipment or appurtenances owned by the Declarant, the Association, the City, or a utility company

located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.

(c) No Improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

(d) The easements reserved to the Declarant hereunder shall be fully assignable or otherwise transferable by the Declarant to the Association and/or the City at the sole discretion of the Declarant.

Section 5.7 **Drainage.** Generally, the side and rear property lines are deemed drainage easements, and no lot shall be graded and no structure or other obstacle shall be erected, placed, or permitted to remain thereon in such a way as to interfere with the established drainage pattern over the lot to and from adjoining land. In the event it becomes necessary to change the established drainage over a lot, adequate provision shall be made for proper drainage. Any fence or wall erected along the side or rear property line of any lot shall contain "weep holes" or shall be otherwise constructed so as to not prevent the flow of surface water from adjoining land where such flow is in accord with the established drainage. The owner of the lot shall continuously maintain the sloped areas of each lot and all improvements in them, except for those improvements for which a public authority, utility company or the Association is responsible.

Section 5.8 **Lighting.** All private exterior lighting and interior lights reflecting outside shall not be placed in any manner which shall cause glare or excessive light spillage on any neighboring Lot(s). Reasonable holiday lighting and decorations may only be displayed during the period starting November 15 of each year to January 15 of the next year.

Section 5.9 **Animals.** No more than 2 (two) common domestic pets (i.e cats, dogs and other indoor pets) per Lot are allowed unless the Management Committee grants a variance in writing. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on or about the property. Residents with pet(s) shall abide by the pet rules and regulations adopted by the Committee from time to time. No pet may be allowed to create a nuisance. The following activities are deemed to be a nuisance: (1) Pets outside a Dwelling Unit and not in a fenced yard or in a cage or on a leash and under the control of the pet owner or his designee at all times; and (2) Pets in violation of the rules and regulations. Pets, which constitute a nuisance, in the sole opinion of the Management Committee, must be removed from the Property.

No dog will be allowed to roam unattended in the Property. Dogs shall be kept in the house, a dog run, kennel, or a fenced yard. All dog runs or kennels shall be screened off and out of the direct view from any street, and shall be in the rear yard of the home. At other times, dogs shall be on a leash and under the direct control and supervision of the owner.

Section 5.10 **Commercial Use Prohibited.** No commercial trade or business may be conducted in or from any Lot unless: 1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; 2) the business activity conforms to all zoning requirements for the Property, and the necessary and required permits and

licenses are obtained; 3) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and 4) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Committee. The terms "trade or business" shall have their ordinary and generally accepted meanings, which shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or a license is required therefore. As used herein, "commercial or business" activity shall not include the rental or leasing by an Owner of a Lot and the Improvements thereon for residential purposes. This Section specifically prohibits the use of a Lot for the commercial repair or sale of any vehicle, equipment, boat or other fuel operated equipment.

The Declarant or persons authorized by the Declarant may use a Lot(s) for development and sales activities relating to the Subdivision, model homes or real estate sales.

Section 5.11 **Maintenance**. The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- (a) Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows unbroken and glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition.
- (b) Each Owner of a Lot shall have the responsibility for all upkeep and maintenance of their Lot to the lip of the curb, whether sidewalk Improvements have been constructed or not.
- (c) All damage to any Improvements shall be repaired as promptly as is reasonably possible.
- (d) A Building that is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals.
- (e) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- (f) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- (g) Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall, in a manner satisfactory to the ACC, be corrected,

removed or screened from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.

(h) In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board and/or its assignees, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as other assessments set forth in Article VIII of this Declaration.

The foregoing provisions shall not apply to subdivided land owned by builders or by the Declarant, that is used for open space or is otherwise in a predevelopment status.

Section 5.12 Boats, Campers and Other Vehicles. Trailers, recreational vehicles, trucks larger than standard pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles, when not in actual use, shall be kept at all times in an enclosed structure, approved by the ACC or screened from public view; and at no time shall any of said vehicles or equipment be parked or stored on a public or private right-of-way within the Subdivision. The parking or storage of commercial equipment, including, but not limited to, truck trailers or cabs, construction or excavation equipment, etc., is prohibited. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles and other vehicles. No other use of a garage or conversion of a garage, which prohibits or limits the use of a garage for the parking or storage of the number of automobiles for which is it designed, shall be permitted. Parking on the lawn or unpaved portion of the Lot or in a public or private right-of-way within the Subdivision, other than for temporary purposes (as determined by the ACC), is prohibited. No inoperative vehicle shall be parked or stored at any time on a Lot unless wholly within an enclosed structure. A minimum of two (2) off-street parking spaces for automobiles shall be provided on each Lot in addition to the garage spaces, provided that parking in the front yard setback area of the Lot shall be allowed only in the space directly in front of the garage. In no event shall streets be utilized for parking inoperative vehicles, recreational vehicles, boats, campers, trailers or other similar vehicles. No repairs of any vehicle shall be undertaken within the subdivision, except wholly within the owner's garage and with the garage door closed.

Section 5.13 Garage Doors. Garage doors shall be kept closed except when open for a temporary purpose.

Section 5.14 External Energy Devices. No energy producing devices including, but not limited to, solar panels and generators of any kind, shall be constructed, installed or maintained on any Lot without the prior written approval of the ACC, except as follows:

(a) Heat pumps, air conditioning compressors, or similar appliances shown on the plans approved by the ACC. Owners making use of such equipment shall take reasonable efforts to mitigate the sound of such equipment and to screen it from public view from the front of a Lot. Evaporative coolers, whether roof mounted or window mounted are expressly prohibited.

(b) The use of generators and other external energy producing devices shall be authorized on a temporary basis in the event and during the period of an emergency.

Section 5.15 **Signs.** No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, vacancy sign or "For Sale" sign, thereon, with the sign and hanging apparatus not exceeding a total of 9 square feet. Signs advertising the name of the builder and the name of the institution providing financing may be displayed on a Lot during construction of the improvements; said sign and hanging apparatus may not exceed 16 square feet. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions provided the same is approved by the ACC prior to installation. The Declarant shall regulate project and builder signage during the development phases of construction and marketing of homes within the Subdivision. Signs advertising the development of the Subdivision may be displayed at the entrances to the Subdivision or elsewhere within the Subdivision as approved by the ACC. The E-Class Declarant is exempt from signage restrictions.

Section 5.16 **Subdividing.** No Lot which has been platted and approved as a final building or residential lot (whether for single-family buildings or otherwise) may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the ACC; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the ACC therefore. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

Section 5.17 **Fences, Walls & Hedges.** It is the intent of the Declarant to create an open, spacious and landscaped appearance throughout the Subdivision. Therefore, all fences or walls should be kept to a minimum to encourage the use of the common areas and aesthetics. The use of hedges and high plantings are encouraged, but are required to be in conformance with the guidelines found in this section as well as any and all landscape requirements found herein. All fences, walls, hedges, high plantings, obstructions and other visual or privacy barriers (hereafter collectively "fences") shall be constructed and installed in compliance with the applicable ordinances of the City, and in conformance with fencing standards and specifications set forth below. In the event there are conflicts between the requirements of the City ordinances and the ACC standards and specifications, the more strict requirement shall control. OWNERS SHOULD NOT ORDER FENCE MATERIALS THAT ARE NOT IN COMPLIANCE WITH SUCH ORDINANCES, STANDARDS AND SPECIFICATIONS. All fences constructed on Lots within the Subdivision shall be subject to the following additional conditions and restrictions:



(a) Fences greater than 36" in height shall not project beyond the front yard setback or 4' back from the front corner of the Building (whichever distance is greater). No fence higher than six feet (6') shall be allowed unless reviewed and approved by the ACC.

(b) Street side yard fences on corner lots shall not be erected within a required street side yard. It is strongly encouraged that privacy between Lots be established by hedges, trees, shrubbery or other landscaping, provided that the same complies with the intent of this Declaration and the ACC fencing standards and specifications. Heavy foliage and fences are not allowed to interfere with the vision triangle of traffic. Fences along corner side property boundaries shall not be permitted to be up against the sidewalk. Said fences shall be at least 1 foot from the sidewalk and shall be located on the Owner's property.

(c) All fences shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.

(d) No fence shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on the recorded Plat(s) of the Property.

(e) Fences bordering the common areas / open spaces shall be of the same construction, style, color, and brand as determined by the ACC. Any and all fences approved for construction along the common areas / open spaces that are along the 30% slope or vegetated slopes shall be dug by hand or by small mechanical auger means so as to not destroy or inappropriately disturb these sensitive landscapes. Mass grading and or clearing will not be permitted in said areas for the purpose of installing fencing.

(f) Fences installed by the Declarant, City or other public agency, or the Association on or along property owned by the City or Association, and/or on or along landscape buffer easements owned by Owner of Lot, shall not be altered or modified by any Owner or Occupant in any manner other than for routine maintenance (including painting, repair and replacement). Except as may be approved by the ACC, any Owner of Lots bordering the landscape buffer along Hidden Springs Parkway shall not be allowed to install any secondary fence, that is within public view, inside the common fence installed by the Declarant.

(g) Materials:

(1) Deer Field at Hidden Springs: All allowed fences or walls shall be of brick, stone, wrought iron, pre-cast concrete, or vinyl. No fence or walls shall be constructed of chain link, wire mesh, slump block (painted or unpainted) or concrete block unless approved in writing by the Architectural Control Committee. See Section 5.16f above for fence material requirements and restrictions along common areas / open spaces. Except as provided herein, chain link fencing is not a permitted fence type. Exceptions may be granted by the ACC on a case-by-case basis where: (1) such fence would be limited to a small area (such as a dog run), and (2) where the chain link fence is not used as a perimeter fencing method and would not be open to public view, with the following exception: Chain link fence is approved along the south border of Deer Field at Hidden Springs subdivision, which was approved at the time of Final Plat, serving as a barrier between the Property and the adjacent property. In all events, uses of chain link fencing

must receive prior approval by the ACC in writing with respect to location, color and other compliance with the ACC fencing standards and specifications. Notwithstanding the foregoing, the E-Class Declarant shall be authorized to utilize chain link fencing at its sole discretion, as necessary for any phase of the Development.

(2) **Deer Ridge at Hidden Springs:** All allowed fences shall be constructed of black powder-coated wrought iron or aluminum extruded material, with style and type as approved by the ACC. Except as provided herein, chain link fencing is not a permitted fence type. Chain Link fence is approved along the south border of the Parcel E Common Area / Open Space, which was approved at the time of Final Plat, serving as a barrier between the Property and the adjacent James Knight property. Notwithstanding the foregoing, the E-Class Declarant shall be authorized to utilize chain link fencing at its sole discretion, as necessary for any phase of the Development.

Section 5.17 **Party Walls and Fence.** The rights and duties of Owners with respect to party walls or party fences, which are constructed as part of initial construction, shall be as follows:

(a) Each Owner shall be responsible to provide its own uphill or downhill retainage as necessary for the building of the home.

(b) The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one (1) Owner does not interfere with the use and enjoyment of the other Owner.

(c) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner, or any of its agents or guests, or members of its family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining Owner or Owners.

(d) In the event any such party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by the act of an adjoining Owner, its agents, guests or family, it shall be the obligation of the Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.

(e) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(f) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the ACC, the decision of which shall be binding.

Section 5.18 **Open Space Landscaping.** Large common areas of open space will be maintained by the Association.

Section 5.19 **Landscaping of Lots.** The following provisions shall govern the landscaping of Lots within the Subdivision:

(a) The ACC shall promulgate a list of trees, including street trees and other trees, and a list of shrubbery which shall be approved for planting by Owners in landscaping their Lots.

No tree or shrub shall be planted in any Lot within the Subdivision that is not included within the approved lists without the prior approval of the ACC.

(b) Owners shall be responsible to landscape and maintain any portions of the public rights-of-way contiguous to their property that is not incorporated in common amenity landscaping. Any trees, shrubs or landscape treatments planted within public rights-of-way shall comply with the City's ordinances and approved tree species list (if it exists, is applicable &/or required). All trees, lawns, shrubs or other plantings shall be properly nurtured and maintained or replaced at the Owner's expense upon request of the ACC.

(c) Front yards must be fully landscaped within ninety (90) days after initial occupation of a Building or ninety (90) days after the weather permits completion of the landscaping, whichever is later, but in no event more than six (6) months after initial occupation of a Building.

(d) The minimum landscaping requirements for Lots within the Subdivision shall be as follows:

(1) An innovative landscape design and plan, including sculptured planting areas, berms or other features with screening or bordering of foundations, fences (if any), curbs and other similar elements. Said plan shall be submitted to the ACC or its authorized contractor for review and approval prior to the commencement of construction. Owner is required to submit two sets of plans that include the features listed above. The ACC shall have the authority to disapprove any landscape treatments including but not limited to extraordinary landscape treatments (i.e. lava rock gardens in park strips or other similar practices). The ACC will respond with an approval or disapproval as required in these covenants in writing within ten (10) calendar days. In the event the ACC or its designated representative fails to approve or disapprove within ten (10) calendar days after plans and specifications have been submitted to it, approval will not be required but all related covenants must be fully complied with. Liability for non-compliance with said restrictions and covenants should not be borne by ACC as a result of misrepresentations by applicant or oversights by the ACC. A landscaping plan may be required sooner if the ACC deems necessary as a part of approving the architectural style of the home as found in Section 5.3 above.

(2) The initial landscaping shall include, as a minimum, the planting of lawn, trees and shrubs from the approved lists as follows: All lawn shall be sod; two (2) two inch (2") caliper deciduous trees in the front yard, and, one (1) 5' high conifer tree; two (2) street friendly two (2) inch deciduous trees (Corner lots to have a total of four (4) planted in the parkstrip); 5 (5) five-gallon shrubs; and, twelve (12) one-gallon shrubs in the front yard.

(3) All yards (front and back) shall be irrigated with an automatic underground sprinkler system.

(4) Rear yards must be fully landscaped within nine (9) months after occupation.

(5) A photosensitive light; style type, design and color to be determined by the ACC, is to be installed approximately 6' back of sidewalk on each lot. Said light is to be purchased,

and installed by the Owner or its contractor, and kept operable at all times upon occupation of home.

(6) Owners shall use best efforts to position landscaping around utility boxes, vaults, and pedestals so as to screen it from street view.

Section 5.20 **Laws.** Nothing shall be done or kept in, on or about any Lot or common area, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

Section 5.21 **Damage or Waste.** No damage to, or waste of, the common area shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

Section 5.22 **Mail Boxes.** The mailbox location is regulated by the US Postmaster and is restricted by the same. Some restrictions may also be placed by the city. Owners of Deer Field at Hidden Springs lots are solely responsible to obtain instructions for proper mailbox location from said entities, and for installation of the same. Owners of the Deer Ridge at Hidden Springs lots shall have a uniform decorative mailbox that will be provided and installed for them, in a pre-determined location, by the E-Class Declarant.

Section 5.23 **Refuse & Disposal.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in the sanitary containers provided by the City. All containers or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 5.24 **Excavations & Completing Improvements.** No excavation shall be made on any lot except in connection with the erection, alteration, or repair of a dwelling or other improvement thereon. When excavation or the erection, alteration, or repair of a structure or other improvements has once begun, the work must be executed diligently and completed within a reasonable time.

Section 5.25 **Off-Site Lot Improvements.** Before taking title or possession of any Lot, the Owner shall inspect the completed offsite lot improvements. Except for deficiencies or defects specified by the Owner to the Declarant before ownership is taken, the Owner hereby releases the Declarant from further obligations or responsibility as to the installation of the off-site lot improvements.

(a) **CONDITIONS OF ACCEPTANCE OF UNCOMPLETED LOTS AT CLOSING:** If the off-site lot improvements are not complete at the time ownership is taken, the Declarant will, upon completion of the uncompleted off-site lot improvements, give written notice of completion to the Owner and, unless such Owner notifies the Declarant of any deficiencies within seven (7) days after the date of receipt of the notice of completion, the off-site lot improvements shall be deemed acceptable to the Owner and the Declarant will be released from any further obligations or responsibilities as to the installation of the previously incomplete off-site lot improvements.

(b) **CONDITIONS OF ACCEPTANCE OF COMPLETED LOTS AT CLOSING:** Upon transfer of title from Declarant to Owner, Owner shall assume full responsibility for accepting property 'AS IS': 1) Sewer; 2) Water; 3) Secondary Water; 4) Gas; 5) Electric; 6) Telephone; 7) Land Drains (if applicable); 8) Curb & Gutter; 9) Sidewalks; 10) Asphalt roads; 11) Rough Grading; 12) others as applicable.

(c) All Owners understand that the Declarant does not own or exercise any control over the water rights from the existing irrigation structures and piping installed throughout the property. All Owners further understand that the Declarant is powerless in seeking to have said water rights assigned.

(d) The Property has been developed as residential subdivisions within the City and all streets, water, storm drain improvements and rights-of-way will be dedicated to and maintained by the City (unless so designated on the recorded Plats). The City will also be providing water service and garbage removal (unless otherwise designated).

Section 5.26 **Other.** Without limiting the generality of any of the foregoing provisions:

(a) Unless otherwise approved by the ACC, no horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot or home. The ACC, in its sole discretion, shall have the right to determine the existence of any such nuisance.

(b) No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Project.

(c) The discharge of firearms, including without limitation, "B-B" guns (or of similar nature), and pellet guns, is prohibited.

(d) On-site storage of gasoline or other fuels is prohibited on any Lot, with the exception of up to five (5) gallons of fuel stored for emergency purposes and operation of lawn mowers or similar tools or equipment.

(e) All bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers, and similar items shall be stored so as not to be visible from the streets or adjacent property. No such items shall be allowed to remain on the front of the Lots so as to be visible from adjacent property when not in use.

(f) Reflective window coverings are prohibited.

(g) Above ground swimming pools greater than five feet in diameter are expressly prohibited, unless otherwise approved by the ACC.

Section 5.27 **Addition of ACC Rules/ACC Standards.** The Declarant, or in the event of the Declarant's failure to do so, the ACC, shall have the power to promulgate ACC Rules/ACC Standards relating to the planning, construction, alteration, modification, removal or destruction of Improvements within the Property as shall be deemed necessary or desirable by the Declarant, or the ACC, as the case may be, to carry out the purposes of this Declaration.

Section 5.28 **Exemption Of Declarant.** Nothing herein contained shall limit the right of the Declarant to subdivide or re-subdivide any Lot or portion of the Property or to grant licenses, reservations, rights-of-way or easements to utility companies, public agencies or others; or to complete excavation, grading and Development to or on any Lot or other portion of the Property owned or controlled by the Declarant, or to alter the foregoing and its Development plans and designs, or construct additional Improvements as the Declarant deems advisable in the course of Development of the Subdivision. This Declaration shall not limit the right of the Declarant at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. The Declarant need not seek or obtain ACC approval of any Improvements constructed or placed within the Property by the Declarant in connection with the Development of the Subdivision. The Declarant shall be entitled to the non-exclusive use, without charge, of any property owned by the Association within the Subdivision in connection with the marketing of the Lots therein.

## **ARTICLE VI OPEN SPACES AND ASSOCIATION PROPERTIES**

Section 6.1 **Common Areas, Wetlands, Parks & Open Space Parcels.** At the time of initial recording of this declaration, all common areas, wetlands, parks, and open spaces in the Subdivision are owned and operated by the Declarant.

(a) **Ownership Changes:** Declarant will in due time deed common areas, wetlands, parks, and open spaces to other Owner or Owners, which may include the Association.

(b) **Taxation:** If the taxes are levied on any of the common areas, wetlands, parks, and open space properties within the Property, they shall be assessed equally to each property Owner. Prorations shall be observed if ownership changes at any time during the tax year. The Owner of the Lots that have landscape buffer easements shall be responsible to pay the taxes for the respective property located within the landscape buffer easements.

(c) **Maintenance:** All responsibilities for the maintenance of and/or costs associated with the maintenance of common amenities associated with or found within the common areas shall be paid for by Association through the means of collection prescribed herein.

Section 6.2 **Association Property.** The Association may own, hold and control real property and easements within the Subdivision, together with facilities, equipment and other related personal property, and operate and maintain the same, for the use, enjoyment and/or benefit of the Owners of Lots and property within the Subdivision. Each Owner of a Lot, the Owner's family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the property owned by the Association subject to the following:

(a) **Articles, etc.** The provisions of the Articles and Bylaws of the Association applicable to the Lot, this Declaration, and the rules, regulations and standards promulgated thereunder, and each Owner, in using the Association properties, shall comply with the same.

(b) Suspension of Rights. The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by the Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction of published rules and regulations of the Association.

(c) Dedications. The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board.

(d) Mortgage or Conveyance of Association Property. Except as provided in subsection (c) above or in the Bylaws, after governance of the Association vests in the Class A Members, no portion of the Association's property shall be mortgaged or conveyed by the Association without the prior approval of at least two-thirds (2/3) of all Members, which approval may be obtained in writing or by a vote of the respective Members at a meeting called for such purpose.

Section 6.3 Damages. An Owner shall be liable for any damages to property owned by the Association which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of his family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in Article IX, below.

Section 6.4 Damage and Destruction. In the case of damage by fire or other casualty to property owned by the Association, insurance proceeds to compensate for damage and destruction shall be paid to the Association, and the Association shall thereafter determine what repair or reconstruction shall be undertaken.

## ARTICLE VII

### FRUIT HEIGHTS HIDDEN SPRINGS MASTER HOMEOWNERS ASSOCIATION, INC.

Section 7.1 Organization of Association. The Association shall be organized by the Declarant as a Utah non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its Bylaws and this Declaration. Neither said Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted as to be inconsistent with this Declaration.

Section 7.2 Members. Each Owner (including the Declarant) of a Lot by virtue of being such an Owner and for so long as such ownership is maintained shall be a Member of the Association. No Owner shall have more than one membership in the Association, but shall have such voting rights as hereafter set forth. A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

Section 7.3 **Classes of Membership.** The Association shall have four (4) classes of membership, as follows:

(a) **Class A Members.** Class A Members shall be all Owners of Lots within the Deer Field at Hidden Springs Subdivision, which shall be entitled to one (1) vote per Lot. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as the several owners determine, but in no event shall more than one vote be cast or counted with respect to any Lot. In the event that multiple votes are cast for any Lot, the votes shall be deemed void and shall not be counted for any purpose. The Declarant is not an owner in this class.

(b) **Class B Members.** Class B Members shall be all Owners of Lots within the Deer Ridge at Hidden Springs and Deer Crest at Hidden Springs (all phases), which shall be entitled to one (1) vote per Lot. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as the several owners determine, but in no event shall more than one vote be cast or counted with respect to any Lot. In the event that multiple votes are cast for any Lot, the votes shall be deemed void and shall not be counted for any purpose. The Declarant is not an owner in this class.

(c) **Class C Members.** Class C Members shall be all Owners of Lots within future Planned Unit Development Phases of Hidden Springs, which shall be entitled to one (1) vote per Lot. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as the several owners determine, but in no event shall more than one vote be cast or counted with respect to any Lot. In the event that multiple votes are cast for any Lot, the votes shall be deemed void and shall not be counted for any purpose. The Declarant is not an owner in this class.

(d) **Class D Members.** Class D Members shall be the D-Class Declarant owners of Deer Field at Hidden Springs Subdivision, its successors, or assigns, which shall be entitled to one (1) votes for each Lot owned. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as the several owners determine, but in no event shall more than one vote be cast or counted with respect to any Lot. In the event that multiple votes are cast for any Lot, the votes shall be deemed void and shall not be counted for any purpose.

(e) **Class E Members.** Class E Members shall be the E-Class Declarant owners, and its successor or successors in title to one or more Lots, which Lots are held by any such successor in an unimproved condition (i.e., without a residential dwelling thereon) for resale to a builder or other person for the purpose of constructing thereon a residential dwelling or if improved, held for initial sale to an Owner other than the E-Class Declarant, and to which successor the E-Class Declarant has specifically granted rights of Class E membership in writing; provided, that if such membership rights are not so granted, such successor shall be entitled to the membership rights of a Class A, B, or C, Member, respective to the phase the lot is located within, and, with respect to each Lot owned.

Section 7.4 **Governance and Voting Rights of Members.** The governance of the Association and voting rights of the Class A, B, C, D and Class E Members shall be as follows:

(a) Upon the effective date of the Association's Articles of Incorporation, the right to govern the affairs of the Association shall be vested solely in the Class E Members, as follows:



(1) The right to govern the affairs of the Association shall be in accordance with its Bylaws.

(2) In order to assure its right of governance and voting control during this period, the Class E Members shall be entitled to ten (10) votes for each Lot owned. All Class E memberships shall automatically terminate and be converted to respective Class A, B, or C memberships (with one (1) vote for each Lot then owned) on the happening of either of the following events, whichever occurs earlier:

- (i) Transfer of ownership of the respective Lot as outlined in Section 7.3 (e) above.
- (ii) December 31, 2010; or
- (iii) 120 days after the date on which 90% or more of the Lots have been conveyed to third party purchasers.
- (iv) Upon early formal relinquishment by vote of the Class E members.

(b) Upon the termination of governance by the Class E Members, the governance of the Association shall thereupon be and remain vested in the Class A, B, C, and remaining Class D Members in accordance with its Bylaws.

Section 7.5 **Architectural Control Committee.** The Association Board shall have the right to appoint and remove members of the Architectural Control Committee, all subject to the provisions of this Declaration. One or more members of the Board may serve on the Architectural Control Committee. The Architectural Control Committee shall be initially made up of three (3) members appointed by the E-Class Declarant.

Section 7.6 **Association Litigation.**

(a) In recognition of the expenses and disruption associated with litigation, the Association shall not commence a judicial or administrative proceeding without the approval of the D-Class and E-Class Declarant for so long as the Members govern the Association and thereafter only upon the approval of Owners representing at least 75% of the total vote of the Association.

(b) Neither the Association nor any Owner shall institute an action against any person which arises out of an alleged defect in the development of the Subdivision until:

- (i) Declarant and the person(s) who physically constructed the portion of the subdivision in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect or other portions of the Subdivision (provided, however, that the terms of this Section shall not create an obligation of any person to effect a repair of an alleged defect);
- (ii) the Association or Owner(s) have pursued their remedies under any express warranty covering all or any portion of the alleged defect;
- (iii) the Declarant and the affected contractor(s) have been given the opportunity to be heard at a meeting of the Association regarding the alleged defect; and
- (iv) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation.

(c) No action affected by this Section shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorneys fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

(d) This Section shall not apply to: (i) actions brought by the Association to enforce this Declaration or the Bylaws (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Association or its manager for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 7.7 **Budgets and Financial Statements**. Financial statements for the Association shall be regularly prepared and copies distributed at the Association's annual meeting as follows:

- (a) A pro forma operating statement (budget) for each fiscal year.
- (b) Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.

## **ARTICLE VIII ASSESSMENTS**

Section 8.1 **Covenant to Pay Assessments**. Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges levied by the Association, in such amounts as the Board shall determine to be necessary, in conformance with the provisions hereof. All such Assessments, together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall, upon conveyance of a Lot from Declarant, be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment becomes due and payable, provided, however, that all such assessments shall be junior and subordinate to the lien of a first mortgage or first deed of trust encumbering the Lot or in the case of a Declarant-owned Lot, to Declarant's debt covenants. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the property of the Association or by abandonment of his Lot.

Section 8.2 **Regular Assessments**. Regular Assessment shall be levied in conformance with the following:

- (a) Regular Assessments shall be assessed on a calendar year basis unless otherwise determined by the Board.

(b) The Regular Assessments shall be based upon advance estimates of annual cash requirements as determined by the Board for the maintenance and operation of the property owned by the Association and all easement areas, if any, controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, administration and funding of ACC activities, preservation and architectural control of a park intended for the recreational use of the Owners, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, snow removal from access roads and pathways, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s), and other expenses or obligations incurred or expected as they may be required by the Association in compliance with this Declaration.

(c) The initial annual Regular Assessment due and payable for that calendar year during which the Declarant conveys fee title to a Lot to an Owner shall be in the amount of:

(1) \$5.00 per Lot per month for developed lots (with infrastructure), without homes completed. A Lot will be considered "developed" when the Lot is eligible for building permit and the lot has been conveyed from the Declarant to an individual or Builder.

(2) \$25.00 per Lot per month for a completed home.

Section 8.3 **Special Assessments.** In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

(a) To defray, in whole or in part, the cost of any construction or reconstruction of Improvements on property owned by the Association, unexpected repair or replacement of property or any facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in the Declaration.

(b) To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

(c) To pay any tax or assessment of local governmental units including without limitation the City of Fruit Heights and Davis County.

Section 8.4 **Limited Assessments.** In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

(a) **Special Service Area.** The Association shall have the power to levy a Limited Assessment against Owners and Lots that are benefactors of special services or amenities (For Example: Full yard landscaping maintenance, snow removal, pool facilities, etc.) the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense. Said Limited Assessments should typically be associated with a specific phase of lots within the Subdivision.

(b) Maintenance and Repair. The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements on a Lot, if such maintenance and repair is necessary, in the opinion of the Board, to protect the property owned by the Association or any other portion of the Property, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefore.

(c) Correction of Violations. In addition to maintenance and repair, the Board, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of this Declaration or the ACC Rules/ACC Standards, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith. The reasonable cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in Article X of this Declaration.

(d) Limited Purpose. The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing before the Board with respect to said Limited Assessment.

Section 8.5 **Commencement of Regular Assessments.** Regular Assessments of the Association against each Lot shall commence on the date the Declarant conveys title to the Lot to an Owner who is not the Declarant. If the Declarant pays all or any portion of the expenses of the Association in excess of the amount assessed to Lots owned by the Declarant, such excess amounts so paid shall constitute a prepayment of Assessments (Regular and Special) to become due and payable on the Lots owned by the Declarant within the Subdivision; provided that unless such excess amounts so paid by the Declarant are paid pursuant to a written agreement with the Association to the contrary, the Declarant shall not be entitled to reimbursement in cash of any such Assessment credit nor shall such credit inure to an Owner purchasing a Lot from the Declarant, unless such person is the successor to substantially all of the interest of the Declarant in the Property. Nothing herein contained shall obligate the Declarant to pay any Assessment with respect to a Lot within a separately platted phase or subdivision within the Subdivision in which the Declarant owns all of the Lots or for any Lot which Declarant owns.

Section 8.6 **Uniform Rate Or Assessment.** Except as expressly provided to the contrary in this Declaration, Regular and Special Assessments of the Association shall be levied at a uniform rate for all Lots. Limited Assessments for Special Service Areas shall also be levied at a uniform rate for all lots.

Section 8.7 **Assessment Due Date.** The due dates for Regular, Special and Limited Assessments shall be the first day of the first month after imposition of the assessment, unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained

shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

Section 8.8 **Interest and Penalties**. Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

Section 8.9 **Capitalization of Association**. Upon acquisition of a fee title of Record to a Lot from Declarant, the acquiring Owner of such Lot shall make a contribution to the capital of the Association in an amount of Three-Hundred Dollars (\$300.00) for such Lot. Such capital contribution shall be (a) deposited by the Owner into the purchase and sale escrow and disbursed therefrom to the Association, and (b) in addition to, and not in lieu of, annual Regular Assessments.

## **ARTICLE IX ENFORCEMENT OF ASSESSMENTS**

Section 9.1 **Right to Enforce**. The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees and court costs in connection therewith.

Section 9.2 **Creation of Assessment Liens**. Upon conveyance of a Lot by Declarant to an Owner other than Declarant there is hereby created a continuing lien with power of sale on each and every Lot so conveyed to secure payment of any and all Assessments levied against any and all Lots in the Subdivision pursuant to this Declaration, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage or first Deed of Trust, duly recorded in the County, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior and superior by reason of applicable law. All other lien holders acquiring liens on any Lot after recordation of this Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

Section 9.3 **Notice of Delinquency**. If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written Notice of Delinquency setting forth the type of Assessment, the amount of the Assessment, the due date thereof, including the amount

and due date of installments (if the same are permitted), the amount remaining unpaid at the time of filing, the name of the record Owner of the Lot and a legal description of the Lot. Such Notice shall be signed by the President and Secretary of the Association, acknowledged by a Notary Public and recorded in the office of the Salt Lake County Recorder. At such time as a delinquent Assessment which is described in the Notice is paid, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

Section 9.4 **Enforcement.** Upon the failure of an Owner other than Declarant to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Utah for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

Section 9.5 **Notice Required.** Notwithstanding anything to the contrary contained in this Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

Section 9.6 **Term of Assessment.** Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Declaration or any applicable Supplemental Declaration shall expire and be of no further force or effect after a period of five (5) years from the later of (i) the date of said Assessment, or (ii) the date the last installment thereof is due and payable; provided, however, that the expiration of the lien as provided herein shall not release an Owner from the personal obligation to pay any Assessment.

Section 9.7 **Non-Exclusive Remedy.** The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

## **ARTICLE X ARCHITECTURAL CONTROL COMMITTEE**

Section 10.1 **Members of the Committee.** The Architectural Control Committee shall be initially comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until they have resigned or has been removed, but in any event, until said Member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

Section 10.2 **Appointment.** So long as the governance of the Associations remains vested in the Declarant, the members of the ACC shall be as set forth in Section 7.5. Thereafter, all

members of the ACC shall be appointed or removed by the Board. The ACC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

Section 10.3 **Compensation**. The members of the ACC may receive compensation for services rendered upon execution of an agreement with the Board relative to such compensation, and may be reimbursed for actual expenses incurred by them in the performance of their duties hereunder.

Section 10.4 **Non-Liability**. Neither the ACC, or any member thereof, or the Declarant or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of it in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ACC, or any member thereof, or the Declarant or any officer, partner, employee, agent, successor or assign thereof to recover such damages.

Section 10.5 **Approval Required**. No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Subdivision without the prior express written approval of the ACC.

Section 10.6 **Variances**. The ACC may authorize variances from compliance with the requirements of any conditions and restriction contained in this Declaration, the ACC Rules/ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ACC. If a variance is granted as provided herein, no violation of this Declaration, ACC Rules/ACC Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the ACC Rules/ACC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby. The ACC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon. The granting of a variance by the ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the applicable ordinances of the County, or any annexing municipality and the P.U.D. standards and other conditions of approval for the Subdivision.

Section 10.7 **Application**. To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in conformance with the following:

(a) The application shall be in a form required by the ACC, which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

(b) All applications must contain, or have submitted therewith, two (2) copies of each of the following (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

(1) **Site Plan.** A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements, at a scale no smaller than 1" = 20'.

(2) **Building Plan.** A building plan at a scale no less than 1/8" = 1". Building elevation drawings of the north, south, east and west sides, and detailed specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof, to be used, and shall be in accordance with submittal information required in Section 5.2 above.

(c) The ACC may, in its discretion, require the Owner to furnish additional specification, drawings, material samples or such other information as the ACC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.

Section 10.8 **Decision.** In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to insure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Subdivision as a quality residential development. Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within ten (10) business days after the receipt of a properly submitted and complete application. The decision of the ACC may be in the form of an approval, a conditional approval or denial, as follows:

(a) The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application.

(b) In addition to the requirements of Section 10.8(a), a conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

(c) In addition to the requirements of Section 10.8(a), a denial of an application shall state with particularity the reasons for such denial.

Section 10.9 **Inspection and Complaints.** The ACC is empowered to inspect all work in progress on any Lot at any time and receive complaints from other Owners as follows:



(a) An ACC inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Declaration or the ACC Rules/ACC Standards or the approved plans and specifications. Each owner or builder shall instruct their respective workers and employees to proceed with construction only per ACC approved plans. Any modifications or deviations from approved plans must be re-approved by the ACC prior to installation.

(b) The ACC is further empowered to receive from other Owners (each a "Complainant"), complaints in writing involving deviations from approved applications or violations of this Declaration or any applicable ACC Rules/ACC Standards. In the event the ACC receives such a complaint from a Complainant:

(1) It shall first determine the validity of such complaint by inspection or otherwise. Should the ACC determine that there has been a substantive deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- (A) The Owner shall immediately cease the activity which constitutes a deviation or violation.
- (B) The Owner shall adhere to the corrective measures set forth in the written notice.

(2) Should the ACC determine there has been no substantive deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant.

Section 10.10 **Hearing.** An Owner submitting an application under Section 10.7, or an Owner served with a written notice of deviation or violation, or a Complainant, shall have the right to a hearing to be held by the ACC for the purpose of presenting facts and information to the ACC relative to the application, deviation or violation or complaint, as the case may be. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner or Complainant, as evidenced by the records of the ACC. The hearing shall be held within ten (10) days following receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC members. A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the ACC and legal fees, such costs shall be paid by the Owner requesting the hearing, or in the case of a complaint, a Complainant, unless an Owner is found to be in violation in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 10.12, below.

Section 10.11 **Appeal.** The Owner or Complainant shall have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a

denial thereof, or a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 10.10, above, subject to the following:

(a) Neither an Owner nor a Complainant shall be entitled to an appeal with respect to deviations or violation unless said Owner or Complainant, or their authorized representatives, has participated in the ACC hearing.

(b) A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the ACC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, as the case may be, together with a copy of the written decision or determination of the ACC.

(c) The failure to an Owner or Complainant to appeal a decision of the ACC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.

(d) The Board shall fix a date for the hearing of such an appeal which date shall be not later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner and Complainant, if any, shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the ACC.

(e) The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal.

(f) At the hearing the Owner or the Complainant, as the case may be, and the ACC, together with their representatives and other witnesses, shall present their position to the Board. The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board; provided, however, that the Owner or the Complainant, as the case may be, and the ACC, shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner or the Complainant, as the case may be, and the ACC, will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the ACC or the Board.

(g) Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner or the Complainant, as the case may be, and the ACC members, shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed.

(h) If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs

shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 10.12, below.

(i) A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal.

Section 10.12 **Enforcement.** The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association, to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Subdivision, the continuation of which violates the provisions of this Declaration, the ACC Rules/ACC Standards or the approved plans and specifications subject to the following:

(a) The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings.

(b) The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

(c) In the event the ACC and/or Association shall prevail in any such legal or equitable proceedings, the Board may elect to require that all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefor is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said assessments or any installment thereof when due, shall be enforceable in the manner provided in Article IX, above.

Section 10.13 **Additional Damages.** In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article IX, above.

Section 10.14 **Non-Exclusive Remedy.** The right of the Association to levy a Limited Assessment as described in Sections 10.12 and 10.13, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

## ARTICLE XI ANNEXATION

Section 11.1 **Annexation**. Additional property may be annexed to the Subdivision and brought within the provisions of this Declaration by the E-Class Declarant, at any time, without the approval of any Owner or the Association. To annex additional property to the Subdivision, the E-Class Declarant shall record an amendment to this Declaration which shall describe the additional property to be annexed to the Subdivision, and the E-Class Declarant may supplement this Declaration with additional or different Covenants and Restrictions applicable to the annexed property, as the E-Class Declarant may deem appropriate, and the E-Class Declarant may delete or modify such covenants as are contained herein which the E-Class Declarant deems inappropriate for the annexed property. Upon such annexation, the Owners of the Lots within the annexed property shall become members of the Association with the same rights, privileges and obligations as all other members. The amendment of this Declaration as authorized by this Section, to annex additional property to the Subdivision, shall be controlled by the provisions of this Section and shall be expressly excluded from the requirements of Section 12.3 of this Declaration. Notwithstanding the foregoing, it is anticipated that each annexed parcel shall be developed and platted as a separate and distinct subdivision and the annexation thereof shall not, by virtue of such annexation, be considered an alteration, amendment or change to the plat for any prior subdivision comprising the Property governed by the provisions of this Declaration.

## ARTICLE XII MISCELLANEOUS

Section 12.1 **Term**. This Declaration and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2070, unless amended as hereafter provided. After December 31, 2070, said covenants, conditions, restriction and easements shall be automatically extended for successive period of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots covered by this Declaration and such written instrument is recorded with the Davis County County Recorder.

Section 12.2 **Interpretation of Restrictions**. All questions or interpretations of the Restrictions, shall be resolved by the Board, and its decision shall be final, binding and conclusive on all the parties affected.

Section 12.3 **Amendment**. This Declaration may be amended as follows:

(a) **By Declarant**. This Declaration may be amended by the E-Class Declarant from time to time, for the purpose of incorporating or amending any and all future lots or parcels that are developed as future phases of Hidden Springs master community that have been conceptually reviewed by Fruit Heights City, as described in Article 1 of this Declaration. Said amendment shall be made by recordation of a written instrument signed by the E-Class Declarant and acknowledged setting forth such amendments. Said amendments may include, but are not limited to: modifications, clarifications, and/or special covenants, conditions, agreements, restrictions and easements which shall be pertinent to the parcels being incorporated or amended. In no case shall said amendments be allowed to change or affect covenants, conditions, agreements, restrictions or easements binding upon Deer Field at Hidden Springs subdivision.

(b) **By Owner(s).** Except where a greater percentage is required by an express provision in this Declaration, the provisions of this Declaration, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by a vote or written consent of 67% of the Class A, B, C & D Members and 100% of the Class E Members (for so long as Class E Memberships shall exist) and such amendment shall be effective upon its recordation with the Davis County County Recorder.

Section 12.4 **Books and Records.** All books, record and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by an Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

Section 12.5 **Non-Waiver.** The failure of the Declarant, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

Section 12.6 **Acceptance.** Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restriction, easements and other provisions set forth in this Declaration and agrees to be bound by the same.

Section 12.7 **Limitation on Liability.** Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no representations or warranties whatsoever that the plan presently envisioned for the complete development and use of the Property can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be committed to or developed for a particular use, or that if land is one used for a particular use, that such use will continue in effect. Declarant shall not be liable to any Owner for any action taken or omitted to be taken so long as the conduct of Declarant was in good faith, except such as may arise from the willful misconduct or gross negligence of Declarant.

Section 12.8 **Indemnification of Board Members:** Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or the ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Declarant and its employees, officers, directors and shareholders during the period that the governance of this Association is vested in the Declarant.

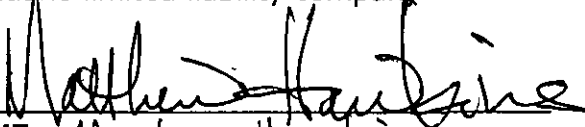
Section 12.9 **Notices**. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

Section 12.10 **Interpretation**. The provisions of this Declaration and any Supplemental Declaration shall be liberally construed to effectuate objectives set forth in Article IV, above, and shall be construed and governed by the laws of the State of Utah. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine feminine or neuter shall include the masculine, feminine or neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

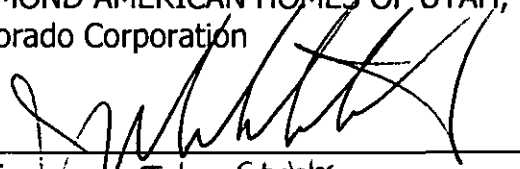
Section 12.11 **Severability**. Notwithstanding anything herein to the contrary, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF the Declarant has executed this Declaration as of the date first hereinabove set forth.

E-CLASS DECLARANT:  
PATRIOT CAPITAL HIDDEN SPRINGS LLC  
An Idaho limited liability company

BY:   
NAME: Matthew Hawkins  
TITLE: Manager

D-CLASS DECLARANT:  
RICHMOND AMERICAN HOMES OF UTAH, INC.  
A Colorado Corporation

BY:   
NAME: John Stubbs  
TITLE: Division President

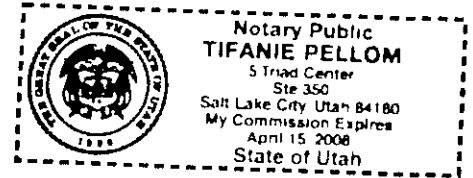
**ACKNOWLEDGMENT**

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On the 19<sup>th</sup> day of January, 2005, personally appeared before me Matt Hawkins, who being by me duly sworn did acknowledge that he is the manager and authorized signer of Patriot Capital Hidden Springs LLC, an Idaho limited liability company, who acknowledged to me that said company executed the same.

Tifanie Pellow  
Notary Public

My Commission Expires: 4-15-08 Residing at: West Jordan



**ACKNOWLEDGMENT**

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On the 19<sup>th</sup> day of January, 2005, personally appeared before me John Stubbs, who being by me duly sworn did acknowledge that he is the Division President and authorized signer of Richmond American Homes of Utah, Inc., a Colorado Corporation, who acknowledged to me that said company executed the same.

John Stubbs  
Notary Public

My Commission Expires: 6-9-07 Residing at: Salt Lake City, UT

