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**AFTER RECORDING PLEASE MAIL COPIES TO:**

**PATRIOT CAPITAL RESIDENTIAL II LLC  
c/o Hawkins Companies  
Attn: Mike Flood  
5 Triad Center, Suite 350  
Salt Lake City, UT 84180**

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03/11/2004 09:24 AM 73.00  
Book - 8956 Pg - 5330-5342  
GARY W. OTT  
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CITY OF DRAPER  
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DRAPER UT 84020  
BY: ALG, DEPUTY - WI 13 P.

***RIDGEWOOD***  
***(South Mountain Subdivision, PUD, Phase 11 South, Plat-A)***  
***Draper, Utah***  
***A Residential Subdivision & Development***

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

PATRIOT CAPITAL RESIDENTIAL II LLC  
an Idaho limited liability company  
DEVELOPER

**DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS AND RESTRICTIONS  
AFFECTING THE REAL PROPERTY KNOWN AS**

**RIDGEWOOD**

*(South Mountain Subdivision, PUD, Phase 11 South, Plat-A)*

THIS DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, Patriot Capital Residential II LLC, hereinafter referred to as "Declarant".

**WITNESSTH**

WHEREAS, the Declarant is an Idaho Limited Liability Company and record owner of real property more particularly described as follows:

Lots 101 through 135 in RIDGEWOOD otherwise known as South Mountain Subdivision, PUD, Phase 11 South, Plat-A Ridgewood; and, Lots A & B (also known as Common Area/Open Spaces A & B) inclusive; located in the City of Draper, according to the official plats thereof, as recorded or to be recorded in the office of the County Recorder of Salt Lake County, State of Utah;

WHEREAS, it is the desire and intention of the Declarant to subdivide, dedicate and/or sell the Property described above and to subject the Property to mutually beneficial restrictions under a general plan of improvement for the benefit of all the Property in the subdivision and the future owners of said Property;

WHEREAS, Ridgewood at South Mountain HOA, hereinafter referred to as the "Association", has been or will be incorporated as a Utah non-profit corporation to act as a homeowners' association with the powers of managing, maintaining the property, administering and enforcing the covenants, conditions and restrictions, and assessing and collecting for, on an annual basis, a prorated share of the cost for maintaining and repairing any and all common areas (and amenities found thereon) on the Property as described herein, and administering and performing such other acts as are provided for or set forth in this Declaration of Covenants, Conditions, Agreements and Restrictions for the Property (this "Declaration") or which generally benefit its members or the Property.

THEREFORE, to further the general purposes herein expressed, Declarant, for itself, its successors and assigns, hereby declares that all of the Property shall at all times, be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions herein contained.

The following additional words, phrases or terms used in this Declaration shall have the following meanings:

- **"Board"** or **"Association Board"** shall mean the Board of Directors of the Association.
- **"Lots"** shall mean any area of real property within the Property designated as an individual lot. (Lots A, B, C, D & E are not part of this definition).
- **"Member"** shall mean any person holding a membership in the Association.
- **"Owner"** (when so capitalized) shall mean the record holder of legal title to the fee simple interest in any lot. If there is more than one record holder of legal title to a lot, each record holder shall be an "Owner."

NOW, THEREFORE, Declarant hereby declares, for the purpose of protecting the value and desirability of the Property, that all of the Lots shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Lots, and be binding on all parties having any right, title or interest in the Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I – ASSOCIATION**

- 1.1 FORMATION OF ASSOCIATION:** The Association shall be a Utah non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in its articles of incorporation, its bylaws, and this Declaration. Neither the articles nor bylaws of the Association shall, for any reason be amended, changed or otherwise interpreted so as to be inconsistent with this Declaration.
- 1.2 BOARD OF DIRECTORS AND OFFICERS:** The Board and such Officers shall conduct the affairs of the Association as the board may elect or appoint in accordance with the articles and bylaws of the Association as the same may be amended from time to time. The initial Board shall be composed of three (3) directors. The Board shall appoint a president (who shall be one of the current Board Directors), and other officers, who shall be known as the Management Committee, who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association; the Board may also appoint various committees to assist with these duties.
- 1.3 PERSONAL LIABILITY:** Neither Patriot Capital Residential II LLC, or its members or employees, nor any director of the Board or committee member of the Association shall be personally liable to any Owner, Member, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, or performed intentionally and with malice.

## **ARTICLE II – ASSOCIATION MEMBERSHIP AND VOTING**

- 2.1 MEMBERSHIP:** Every Owner, upon acquiring title to a Lot, shall automatically become a Member of the Association and shall remain a Member thereof until such time as his/her ownership of such Lot ceases for any reason, at which time his/her membership shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be assigned or otherwise conveyed separately from the ownership of a Lot.
- 2.2 VOTING RIGHTS:** The Association shall have the following described classes of voting membership:
- a. Class A: Class A Membership shall be designated to each Lot(s) not owned by the Declarant. This membership shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held.
  - b. Class B: Class B Membership shall be designated to all Lot(s) owned by the Declarant. This membership shall be entitled to ten (10) votes for each Lot in which the interest required for membership in the Association is held.
- 2.3 RECORD OF OWNERSHIP:** Every Owner shall properly cause to be filed of record the deed conveying ownership of the Lot. The new Owner shall submit a copy of the deed to the Association, which shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee; and the secretary of the Association shall maintain all such information in the record of ownership.

## **ARTICLE III – RIGHTS AND POWERS OF ASSOCIATION**

- 3.1 ASSOCIATION'S RIGHTS:** In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its articles and bylaws.
- 3.2 RIGHTS OF ENFORCEMENT:** The Association, as the agent and representative of the members, shall have the right to enforce the covenants set forth in this Declaration. The Association, the Declarant or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions,

conditions, covenants, reservations now or hereafter imposed by the provisions of the Declaration. In addition, the Association and the Declarant shall have the right to enforce at law or in equity, all liens and charges now or hereafter imposed by the provisions of this Declaration. If the Association, Declarant or any Owner prevails in any proceeding at the Association, the Declarant or such Owner, as applicable, is entitled to judgment against the breaching Owner or Member for all costs and reasonable attorney's fees associated with the action. Failure by the Association or the Declarant to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither the Declarant, the Architectural Control Committee (individually or collectively), nor any director of the Board or committee member of the Association shall be personally liable to any Owner, Member, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, or performed intentionally and with malice.

**3.3 IMPROPER MAINTENANCE AND LIENS:** In the event any portion of any lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of surrounding Lots or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event any Owner is failing to perform any of its obligations under this Declaration or the architectural guidelines and standards of the Design Review Committee, the Board may give notice thereof to the offending Owner that unless corrective action is taken within fourteen days, the Board may cause such action to be taken at said Owner's costs. If at the expiration of said fourteen-day period of time the required corrective action has not been taken the Board shall be authorized and empowered to cause such action to be taken, and the cost thereof shall be assessed against such Owner.

If the assessed cost is not paid by such Owner within thirty days, the amount of the cost plus interest, collection costs and reasonable attorney's fees, constitutes a lien upon the Owner's lot and upon the recording of notice of the lien by the Board, it is a lien upon the Owner's lot in priority position to all other liens and encumbrances, recorded or unrecorded, except (1) tax and special assessment liens on the Owner's lot in favor of any assessing unit or special improvement district, and (2) encumbrances on the Owner's Lot recorded prior to the date such notice is recorded.

The Board in cases of extreme hardship may release any such lien if it received other security for the payment of the delinquent costs, which it deems sufficient to protect the interests of the Association.

In the event the Homeowners Association does not maintain the common facilities and improvements as proposed and indicated at the time of subdivision, the City may, at its option, do or contract to have done the required maintenance, maintain liability insurance and pay general property taxes, and recover the costs incident thereto by means of a lien against the involved properties of the members of the Homeowners Association.

**3.4 BY-LAWS:** These provisions allow for the establishment of by-laws which enable a duly elected Board with a majority vote (of legal lot owners of the Property) to assess monies to the legal lot owners of the Property for the installation, maintenance and upkeep of improvements for the common good of the property owners herein. The Board may amend said by-laws from time to time with majority vote of said lot owners. The Board shall be comprised of a minimum of three legal lot owners of the Property. The Declarant shall be exempt from any lot fees approved and assessed by the Board.

**3.5 OWNERSHIP, TAXATION & MAINTAINENCE OF COMMON AREA / OPEN SPACE:**

- a. **Ownership:** At the time of initial recording of these covenants, conditions, agreements & restrictions, the Declarant owns the Lots A & B common areas. Declarant will in due time deed said common areas to other Owner or Owners, which may include the Association.

- b. **Taxation:** If the taxes are levied on any of the Common Area/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.
- 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.
- d. **Monument Easements:** Lots #135 & 102 shall have at the time of plat recording, a "Monument Easement" or "Easement for Future Entrance Feature" recorded on the street corner providing space for the Ridgewood entry monument signs & landscaping. This easement shall run perpetually with the ground allowing for said entry features to remain as part of the common areas in the subdivision. The owner of record for each respective lot shall still own said property and said property owners of record shall pay any and all taxes associated with the property. Maintenance of the landscaping and common area improvements shall be borne by the Association in conjunction with the maintenance of the common areas within the subdivision. The Association shall approve any alteration of said improvements.

#### **ARTICLE IV - ARCHITECTURAL CONTROL COMMITTEE**

- 4.1 **COMMITTEE MEMBERSHIP:** The initial Architectural Control Committee shall consist of the following three members: Michael Flood, Bart Longson, and, Matt Hawkins, of Hawkins Companies. Action by this committee shall be ratified by at least two members. In the event of death or resignation of any member of the committee, the remaining members of the committee shall have full authority to select a successor.
- 4.2 **COMMITTEE DUTIES:** The Committee shall have all authority to interpret the architectural conditions and covenants found herein. Prior to the commencement of construction, the new owner or builder must submit two sets of plans to include all front, side and rear elevations detailing all exterior materials to be used, floor plans (including scale & dimensions of the structure to be erected), material specifications, and site plan before the review process can commence. A landscaping plan is required as specified in Article 5.7 herein, and may be required as part of the initial review if the Committee deems it necessary. The Committee will respond with an approval or disapproval as required in these covenants in writing within fourteen (14) calendar days. In the event the Committee or its designated representative fails to approve or disapprove within fourteen (14) 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 Committee as a result of misrepresentations by applicant or oversights by Committee.

#### **ARTICLE V - RESIDENTIAL AREA COVENANTS**

- 5.1 **DWELLING—SIZE, QUALITY, EXTERIOR MATERIALS:** The following minimum finished square foot living area requirements shall apply. Living areas shall be calculated exclusive of garages, open porches, and basements. The "ground floor," as herein referred, shall 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.
  - a. **Dwelling Size:**
    - One Story Dwellings (Rambler):** The required minimum above ground floor finished space shall be 1950 square feet.
    - Two Story Dwellings:** The required minimum above ground floor finished space shall be 2350 square feet.
    - Multi-Level Dwellings:** The required minimum above ground floor finished space shall be 2350 square feet.

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 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 Draper, Salt Lake 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 Architectural Specifics:** All homes must be constructed with a minimum three-car garage. Where possible, it is recommended that garages be designed and constructed as side loaded ("car-court" style garages, where one is visible from the front elevation and two from the side elevation, are also recommended); however, no garage door may be more than 60% of the front elevation exterior wall space of the home. If the garage exceeds 50% of the front exterior wall space of the home, a decorative style garage door (i.e. barn style, etc.) is required along with Architectural Control Committee approval in writing.

Roof pitches shall be a minimum of 8/12 pitch. The Architectural Control Committee must approve in writing any other variation from this specification.

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

- d. **Dwelling Exterior Materials:** The dwelling's front exterior shall have a minimum of 40% of the front elevation wall areas (not including glass, doors or garage doors) of brick or rock masonry; the dwelling's side exteriors shall have a minimum 40" wainscot of brick or rock masonry; all exteriors shall have a remainder in stucco or comparable product as approved by the Architectural Control Committee. Cedar lapboard or other types of wood or wood-composite sidings may be allowed by written approval from the Architectural Control Committee. Any of these exterior material requirements may be waived (at the discretion of the Architectural Control Committee) where the historic style 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 at least a 30-year architectural (laminated) asphalt type shingle.

**THE ARCHITECTURAL CONTROL COMMITTEE WILL REQUIRE FROM THE OWNER, ITS CONTRACTOR OR AGENT, A \$250.00 NON-REFUNDABLE REVIEW FEE, PER DWELLING PLAN BEING REVIEWED FOR ARCHITECTURAL CONTROL COMPLIANCE AND APPROVAL. THE ARCHITECTURAL CONTROL COMMITTEE MAY AT THEIR DISCRETION REVIEW THE PLAN OR ENGAGE THE SERVICES OF OUTSIDE AGENTS TO REVIEW SUCH PLANS FOR SAID FEE.**

**ALL DWELLING SIZES, FLOOR PLANS AND EXTERIOR MATERIALS MUST BE SUBMITTED TO THE ARCHITECTURAL CONTROL COMMITTEE IN WRITING, AS**

**OUTLINED IN ARTICLE 4.2 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 ARCHITECTURAL CONTROL COMMITTEE.**

**5.2 FENCES, WALLS, AND HEDGES:** All fences or walls should be kept to a minimum to encourage the use of the common areas and aesthetics. The use of hedges 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. Any fence or wall constructed on any lot shall be approved by the Architectural Control Committee and be constructed in conformity to the following guidelines:

a. **Material:** All allowed fences or walls shall be of brick, stone, or wrought iron. No fence or walls shall be constructed of vinyl, chain link (except for that required by Draper City along the pedestrian access or Lot D), wire mesh, slump block (painted or unpainted) or concrete block unless approved in writing by the Architectural Control Committee. See Section 5.2c below for fence material requirements and restrictions along common areas / open spaces.

Any and all retaining wall structures shall be of natural rock unless approved in writing by the Architectural Control Committee.

b. **Height:** Any fence, wall, hedge, or other similar structure (including without limitation, any "topping" on such structures) shall not be erected in a front yard to a height in excess of three (3) feet, nor shall any such structure be erected in any side or rear yard to a height in excess of six (6) feet. Where a retaining wall protects a cut below the natural grade and is located on the line separating Lots, a fence, wall or hedge or similar structure six (6) feet in height may top such retaining wall.

c. **Location:** Unless approved by the Architectural Control Committee, no fence, wall or hedge more than three (3) feet in height as outlined above, shall be erected; placed, altered, or permitted to remain on any lot closer than four (4) feet back on the residential structure on said lots. Where said hedge, fence or wall is located along the boundary line between two adjoining lots, it shall be erected no more than four (4) feet back on the residential structure that is furthest from the street.

Fences bordering the common areas/open spaces shall be of the same construction, style, color, and brand as determined by the Architectural Control Committee. Fences along corner 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.

Fencing along the common boundary of Lot D (Pedestrian Access) and lots 119 & 120 are to be constructed to Draper City specifications of either three (3) inch spaced black wrought iron semi-privacy fence or black vinyl coated chain link fencing. In either case, fencing along this pedestrian access shall be six (6) feet in height and shall be semi-private.

**5.3 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 structures or 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.

**5.4 SPECIAL PROVISIONS, CONDITIONS & DISCLOSURES:** The provisions, conditions and disclosures addressed by municipalities; professional civil, soils and geological engineers; and South Mountain L.C.; and the Declarant prior to the final approval and recordation of the plat of record are on file with the Draper City Community Development and Engineering Departments; The disclosure of these numerous geological reports, correspondence, along with the South Mountain Amended Development Standards was required as a condition of such plat approval. It is each Lot owner's responsibility, prior to and in conjunction with the ownership of their Lot, to review any and all supportive documentation including these reports, and that the home building and landscaping recommendations be followed.

**5.5 USE RESTRICTIONS:** The use of the Lots and common areas in the tract are subject to the following use restrictions:

- a. **Land Use.** Each lot shall be used for private residence purposes only, and no pre-existing structure of any kind shall be moved from any other location and placed upon said lot, nor shall any incomplete building be permitted to remain incomplete for a period in excess of one (1) year from the date the building was started, unless approved by the Architectural Control Committee. No Lot shall be subdivided or partitioned.
- b. **Nuisance.** No Owner or resident, or their family members, guests or invitees shall create or maintain a nuisance, or if a nuisance is created, it shall be promptly abated. A nuisance means any condition, activity or behavior which bothers, disturbs or annoys other residents, or interferes with their quiet and peaceful enjoyment of the neighborhood, or the creation or maintenance of any noxious or offensive condition including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property.
- c. **Temporary Structures.** No Owner or resident shall place upon any part of the Property any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Committee, although the Developer may install and use temporary structures in the development of the Property and marketing of the lots or homes.

No structures of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

- d. **Out Buildings.** It is understood that out buildings such as swimming pool dressing facilities, sheds, garages, etc., may be constructed on any lot as long as they are in conformity with the requirements found in Section 5.1c of this Declaration and are approved by the Architectural Control Committee. Not detached garage larger than 1300 square feet shall be permitted. The height of any out building shall not exceed the height of the home itself.

Light of said structures must be designed to have the least amount of impact as possible on the surrounding neighbors. All lighting of out building issues shall be addressed at the time the ACC reviews and approves the building plans.



- é. **Energy Conservation Equipment.** No solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Property without the prior written consent of the Architectural Control Committee.
- f. **Commercial or Business Use.** 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. The leasing of a Dwelling Unit shall not be considered a trade or business within the meaning of this subsection.
- g. **Storage and Parking of Vehicles.** Motor Vehicles in the Property shall be subject to the parking rules and regulations adopted by the Management Committee from time to time. No automobiles, trailers, boats, racks, snowmobiles, motor homes, recreational vehicles or any other type of vehicles shall be stored on driveways for more than 45 days. Such vehicles that are properly licensed and in running condition may be stored on side of the lot if properly screened from view behind a 6' privacy fence. Unlicensed vehicles or vehicles that are not in running condition must be stored in garages or at locations off the Property. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Lot, building or parking space, or to create an obstacle or potentially dangerous situation. No resident shall repair or restore any vehicle of any kind in, on or about any of the common areas or Public Rights of Way, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of motor vehicles that may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed.
- h. **Cooling Units, Aerials, Antennas, and Satellite Systems.** If the home is to have cooling units installed, central air conditioning units shall be required. Under no circumstances shall swamp coolers mounted to roofs, walls or windows be allowed.
- No television, ham radio, citizen band or radio antenna or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any home or elsewhere if exposed to the view from any other lot, unless approved by the Management Committee. New digital satellite style "mini-dishes" or the like may be excluded from this provision, but Management Committee approval is still required. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring lot owner's premises or home entertainment facilities or equipment.
- i. **Signs.** No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale; or signs (of any size) used by a builder

to advertise the property during the construction and sales period unless otherwise authorized by the Architectural Control Committee in writing.

- j. **Pets.** No more than two (2) domestic 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 should 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.

- k. **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.
- l. **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.
- m. **Common Area Structural Alterations.** No structural alteration to the common area or facilities is allowed without the prior written consent of the Association Board.
- n. **Repair of Buildings & Improvements.** No building(s) or improvement(s) upon any lot shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof.
- o. **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. The Owner is solely responsible to obtain instructions for proper mailbox installation and location from said entities. With this said, all mailboxes will be of identical style and architectural design as determined solely by the Architectural Control Committee, however, if individual mailboxes are selected, each homeowner shall be responsible to purchase and install or have installed said mailbox. At the time of this declaration, the cost of the mailbox is determined to be approximately Three Hundred and Fifty dollars. If the committee approves a central mailbox unit instead of single units, then each homeowner shall be responsible to pay a one-time fee of Three Hundred and Fifty dollars to off-set the cost of the construction of said mailboxes and protective apparatus or structure.
- p. **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 of Kaysville. All containers or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

- q. **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.

**5.6 OFF-SITE IMPROVEMENTS:** Before taking title or possession of any Lot, the Purchaser shall inspect the completed offsite improvements. Except for deficiencies or defects specified by the Purchaser to the developer before ownership is taken, purchaser hereby releases the developer from further obligations or responsibility as to the installation of the off-site improvements.

If the off-site improvements are not complete at the time ownership is taken, the Developer will, upon completion of the uncompleted off-site improvements, give written notice of completion to purchaser and, unless Purchaser notifies the Developer of any deficiencies within seven (7) days after the date of receipt of the notice of completion the off-site improvements shall be deemed acceptable to the Purchaser and the Developer will be released from any further obligations or responsibilities as to the installation of the previously incomplete off-site improvements.

**CONDITIONS OF ACCEPTANCE:** Upon transfer of title from Developer to Purchaser, Purchaser shall assume full responsibility for accepting property 'AS IS' and to make property inspection of the following prior to closing: 1) Sewer; 2) Water; 3) Gas (if installed); 4) Electric (if installed); 5) Telephone (if installed); 6) Curb & Gutter; 7) Sidewalks; 8) Asphalt roads; 9) Rough Grading; 12) others as applicable

The Property has been developed as a standard subdivision within Draper City and all streets, water, land drain (those found within the public rights-of-way), storm drain improvements and rights-of-way will be dedicated to and maintained by Draper City. Kaysville City will also be providing water service and garbage removal.

**5.7 LANDSCAPING:** Initial landscape requirements are as follows: The owner is to initially landscape all front and side yards (to the rear of the home) in a manner prescribed herein and as accepted and approved by the Architectural Control Committee; and, complete said landscaping within 3 months (90 calendar days) of builder's receipt of a Certificate of Occupancy from Draper City (weather permitting), or in the event that weather doesn't permit commencement of landscaping to begin the owner shall begin no later than April 1<sup>st</sup>. In either case, all of the aforementioned landscaping requirements shall be completed within a ninety-day period. Back yard landscaping shall be completed within 6 months of receipt of certificate of occupancy. Initial landscaping of the common areas shall be exempt from these time restrictions.

It is strongly recommended that homeowners strictly follow the recommendations given by IGES (Intermountain GeoEnvironmental Services, Inc.) in their geotechnical report (IGES Job No. 00503-001 dated October 27, 2003) submitted and on file with Draper City at the time of this recording, in which the incorporation of xeroscape landscaping is suggested (specifically around the foundation areas of the home). Front and side yards must be sodded, with hydroseed being allowed in the back yard if ACC approved fencing is installed prior to its application. It is strongly recommended that homeowners incorporate the existing vegetation into the overall landscape plan.

Each lot will be subject to a defensible space requirement as outlined by Salt Lake County Mountainous Fire Code. However, as a minimum, each lot shall have a minimum of 3 deciduous or evergreen trees in the front yard, or, (3) three clusters of existing trees of at least 100 square-feet, or, a combination of the two. Each lot must also have planted in the back yard a minimum of 1 tree per 1000 square feet of cleared area in the back yard. All deciduous trees shall be a planted at a minimum 2-inch

caliper and evergreen trees to be planted at a minimum of 8 feet high. Front yard shrub count must be at least 12-2 gallon or larger with planter beds at a 20% minimum. The Architectural Control Committee must approve landscape plans in the manner below.

On lots that have a parkstrip located in the front or partial front or their lots, landscaping and maintenance of this strip shall be the responsibility of the homeowner. Each homeowner shall be required to plant in the parkstrip street trees 30 feet apart or as per the street tree planting plan as approved by Draper City. Any trees planted within these public rights-of-way shall comply with Draper City's ordinances.

All trees, lawns, shrubs or other plantings shall be properly nurtured and maintained or replaced at the Owner's expense upon request of the Architectural Control Committee.

The Owner is required to submit two sets of plans that include all front and side landscaping plans detailing all trees, plants, and grass locations; planters, rocks, berms, and retaining locations to be used before the review process can commence. The Committee shall have the authority to disapprove any landscape practices including but not limited to extraordinary landscape treatments (i.e. lava rock gardens in park strips or other similar practices). The Committee will respond with an approval or disapproval as required in these covenants in writing within ten (10) calendar days. In the event the Committee 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 Committee as a result of misrepresentations by applicant or oversights by Committee. A landscaping plan may be required sooner if the Architectural Control Committee deems necessary as a part of approving the architectural style of the home as found in Section 5.1 above.

**THE ARCHITECTURAL CONTROL COMMITTEE WILL REQUIRE FROM THE OWNER, ITS CONTRACTOR OR AGENT, A \$250.00 NON-REFUNDABLE REVIEW FEE, PER LANDSCAPE PLAN BEING REVIEWED FOR ARCHITECTURAL CONTROL COMPLIANCE AND APPROVAL. THE ARCHITECTURAL CONTROL COMMITTEE MAY AT THEIR DISCRETION REVIEW THE PLAN OR ENGAGE THE SERVICES OF OUTSIDE AGENTS TO REVIEW SUCH PLANS FOR SAID FEE.**

#### **ARTICLE VII - GENERAL PROVISIONS**

- 6.1 ENFORCEMENT:** Any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any Owner to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 6.2 SEVERABILITY:** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision, which shall remain in full force and effect.

**6.3 AMENDMENT:** Exceptions to the strict interpretation of these guidelines that would cause undo hardship serving no public purpose may be appealed to the Architectural Control Committee. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of sixty (60) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended or terminated by a vote of at least sixty-six and two-thirds percent (66-2/3rd%) of the total allowable votes of all Lots except common area lots, which vote may be taken at a duly called meeting, or individually in person. Any amendment approved shall be written, signed, and recorded against the Lots.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have hereunto set their hand this day of February 17<sup>th</sup>, 2004.

DECLARANT:

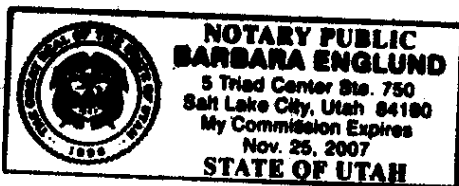
by Patriot Capital Residential II LLC, an Idaho Limited Liability Company

Matthew L. Hawkins

by MATTHEW L. HAWKINS

a Member Manager.

On the 17<sup>th</sup> day of February, 2004, personally appeared before me MATTHEW L. HAWKINS, who being by me duly sworn did say that he an Member Manager of Patriot Capital Residential II LLC, that he signed the foregoing instrument by proper authority, both in its capacity as a Limited Liability Company and in its capacity as a manager member of the said Limited Liability Company, and said MATTHEW L. HAWKINS, duly acknowledged to me that said Limited Liability Company executed the same.



Signed: Barbara Englund  
NOTARY PUBLIC  
Residing at 5 Triad Center, Ste 750  
Salt Lake City, UT 84180  
My commission expires November 25, 2007