

AFTER RECORDING PLEASE MAIL COPIES TO:

PATRIOT CAPITAL HIDDEN SPRINGS LLC
c/o Hawkins Homes & Communities
Attn: Mike Flood
39 East Eagleridge Drive, Suite 200
North Salt Lake, UT 84054

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
11/15/2006 10:51 AM
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IDDEN SPRINGS

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***AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS, AGREEMENTS &
RESTRICTIONS***

OF

HIDDEN SPRINGS master community

Fruit Heights, Utah

A Group of Residential Subdivisions & Developments

PATRIOT CAPITAL HIDDEN SPRINGS LLC
an Idaho limited liability company
DEVELOPER

**AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS & RESTRICTIONS
OF THE HIDDEN SPRINGS MASTER COMMUNITY**

This Amendment to Declarations of Covenants, Conditions, Agreements and Restrictions of the Hidden Springs master community (herinafter know as "Original Declaration"), filed with Davis County March 18, 2005, as Entry No. 2059700, in Book 3748, Pages 327 through 366, is made and executed this 14 day of NOVEMBER, 2006 by, Patriot Capital Hidden Springs LLC, an Idaho limited liability company, (also known in the original declaration as the "E-Class Declarant"), which shall be known hereinafter as the "Declarant."

**ARTICLE I
RECITALS**

WHEREAS, the Declarant previously recorded the Original Declaration as referenced above, wherein "future parcels that are developed as future phases of Hidden Springs master community" were referenced and made subject to and bound by the Original Declaration, and

WHEREAS, at the time of this recording, the Declarants are record owners 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 known as "Property"):

1. All of Lots 1 through 42 of DEER COVE AT HIDDEN SPRINGS PRUD SUBDIVISION, located in the City of Fruit Heights, according to the official approved final plat thereof, as recorded in the office of the County Recorder of Davis County, State of Utah; and

WHEREAS, at the time of this recording, the Declarant and record owner of DEER COVE AT HIDDEN SPRINGS PRUD SUBDIVISION, a parcel of land situated in Fruit Heights City, Davis County, Utah, has agreed that their land which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration,

WHEREAS, it is the desire and intention of the Declarant to subdivide and sell Property as described above, and, by the execution of this instrument,

WHEREAS, Declarant intends by this Declaration to impose upon the Real Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said Lots and the Owners thereof.

THEREFORE, it is the intention and desire of the Declarant that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved subject to the provisions and conditions of the covenants, conditions, agreements, restrictions, easements, reservations, limitations and equitable servitudes set forth in the Original Declaration, together with the amendments set forth herein; and shall be enforceable equitable servitudes, where reasonable, shall run with the land, and shall be binding upon Declarant, upon its successors and assigns, and upon all parties having or acquiring any right, title or interest in or to any portion of said Property.

I. AMMEND ARTICLE III – DEFINITIONS:**A. DEFINITIONS:**

1. DC-ACC: The Deer Cove Architectural Control Committee.
2. Building: Any building located and/or constructed on a Lot on the Property.
3. Common Area: Portions of the Property as defined on the Plat that is owned, or will be owned at some time, in common by the Members of the Association. Common Area property located outside the perimeter fence of the Deer Cove Property (or the area as defined to be outside the DC Fence Plan, regardless of the actual fence location) is owned, or will be owned in common and controlled by the Fruit Heights Hidden Springs Master Homeowners Association, Inc. Common Area property located inside the perimeter fence of the Deer Cove Property and the private rear and side yard areas of lots 1-7 are owned, or will be owned in common and controlled by the Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association as provided for and defined herein.

Common Areas as delineated on the Deer Cove Plat are considered un-developable by the City of Fruit Heights due to slopes of over 25%.

4. Limited Common Area: Portions of Common Areas that are labeled or designated "Limited Common Areas" on the Deer Cove Plat or described in this Declaration as Limited Common Areas, as those instruments may be hereafter amended or supplemented, and is owned, or will be owned at some time, in common by the Members of the Association. Limited Common Areas are typically appurtenant to a Lot as shown on the Plat. They generally consist of an exterior parking area immediately in front of the garage serving that Lot, a front yard area for approved landscaping improvements within that Limited Common Area, and, a rear yard area for a patio and other approved improvements within that Limited Common Area. Each of said Limited Common Areas are reserved for the exclusive use of the Owners and Occupants of the Lot it is designated to serve.

All exterior walls, shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or other apparatuses intended to serve a single Lot, and located on the outside of the structure on the Lot, shall not be constituted as Limited Common Area, but rather private property of the relative Lot Owner.

No portions of Limited Common Area may be owned in common or controlled by the Hidden Springs Master Homeowners Association, but rather the Deer Cove Sub-Homeowners Association as provided for and defined herein.

5. Open Space: Portions of the Property as defined on the Plat that is owned, or will be owned at some time, in common by the Members of the Association. Open Space property located outside the perimeter fence of the Deer Cove Property (excepting the Limited Common Area in front of lots 1-7) is owned, or will be owned in common and controlled by the Fruit Heights Hidden Springs Master Homeowners Association, Inc.

Open Space property located inside the perimeter fence of the Deer Cove Property, the private rear and side yard areas, and the Limited Common Area in front of lots 1-7 are owned, or will be owned in common and controlled by the Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association as provided for and defined herein.

Open Space areas in the Deer Cove Plat may be designated as jurisdictional wetland, and be preserved and restricted as to its use.

6. Trail: Portions of the Property as defined on the Plat, within the Open Spaces, that is for the express use and benefit to the Owners, and in some cases, the general public.

I. AMMEND ARTICLE V – PERMITTED USES AND PERFORMANCE STANDARDS:

A. Article 5 Section 5.2.a. **Buildings or Dwellings – Dwelling Size.**

1. Deer Cove at Hidden Springs:

- a. One Story Dwellings (Rambler): The required minimum above ground footage shall be 1500 square feet.
- b. Multiple-Story Dwellings: The required minimum above ground footage shall be 1800 square feet.
- c. Special consideration will be given by the DC-ACC to lots 1-3 due to dimensional, and/or topographical conditions or constraints on said lots.

B. Article 5 Section 5.2.c. **Dwelling Exterior Materials.**

1. Deer Cove at Hidden Springs: There are forty-two (42) single-family residential buildings that are a part of the Property. The residential Buildings are of specific architectural style, single story and two-story. These buildings are of wood frame construction, reinforced concrete footings & foundations, and concrete slabs, with brick or cultured stone and stucco exterior walls and asphalt/fiberglass shingle roofs. The principal materials of which these Buildings are constructed are wood, glass, concrete, brick, asphalt/fiberglass shingle, and drywall.
 - a. The dwelling's exterior shall not deviate from the original elevation without approval of the Architectural Control Committee. This is including, but not limited to exterior color changes, exterior material changes, window boxes, shutters, railings, concrete, or remodeling of any sort.
 - b. Detached structures are expressly prohibited on Common Area, Open Spaces, and Limited Common Areas unless otherwise approved by the DC-ACC.

- C. Article 5 Section 5.6. **Easements.** A perpetual public access easement shall be granted in perpetuity to the general public on all common areas and open spaces outside of the community fences. The Trails as designated on the plat are to remain open to all members of the public so long as reasonable care and caution is exercised by said members of the public. The Association shall have the right to set Time, Place and

Manner restrictions on the use of the Trails and all other parts of the Property bound by this easement.

- D. Article 5 Section 5.9. **Animals (Pets).** No more than two (2) small common domestic pets (i.e. cats, dogs and other indoor pets) per Lot are allowed. 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 on a leash as defined below; and (2) Pets in violation of the rules and regulations. Pets, which constitute a nuisance, in the sole discretion of the Management Committee, must be permanently removed from the Property.

Dog runs, dog houses, kennels, and pet cages are expressly prohibited on any outside portion of the Property or Lot; this includes Common Areas, Open Spaces, and Limited Common Areas. No pet will be allowed to roam unattended on the Property and shall be kept in the house at all times when unattended. If brought outside, a pet must be: 1) detained within a fenced rear Limited Common Area, and under the Owners direct supervision and oversight, or, 2) constrained by a leash when outside of the Owners home or fenced rear Limited Common Area. Dogs are not allowed to be left outside for extended periods of time. When allowed outside under these conditions, pet waste must be immediately cleaned up by the Owner. Fencing allowances for pets is found herein below.

Owners are completely and solely responsible for the care, maintenance, liability, and actions of their pets. Any costs and liability related to such shall be born solely by the Owner, this includes but is not limited to damages caused to lawns, fencing, sprinklers, or other common and private property. The association shall have the right to levy special assessments for related expenses, issue fines for damaging activities, and, at the sole discretion of the Management Committee, require that the offending pet be permanently removed from the Property.

- E. Article 5 Section 5.17. **Fences, Walls & Hedges.** All fencing placement, locations, and style, other than that installed by the Declarant in conjunction with the development, shall be in accordance with the conditions and restrictions found herein, and approved by the DC-ACC. This includes but is not limited to Limited Common Areas, rear Limited Common Areas and adjacent Open Spaces that may be fenced to provide privacy, and pet detainment. A Deer Cove at Hidden Springs Fence Location Plan (hereinafter referred to as the a "DC Fence Plan") is available from the DC-ACC for review of generally approved fence placement. The DC Fence Plan is intended to be a general guideline, however where landscaping, retaining, slopes, and drainage improvements prohibit the installation of fencing in accordance with the DC Fence Plan, approval is required by the ACC. The approval of said modifications shall be at the sole discretion of the ACC.

The following fencing guidelines apply:

1. All allowed fences shall be constructed of black powder-coated aluminum extruded material, with style, type, and brand as approved by the DC-ACC. If allowed by the

City, five (5) foot fences will be the standard. Fencing of more than five (5) feet in height shall not be allowed in the Property without express approval by the DC-ACC,

2. No fence may extend or continue towards the front of the Lot beyond the rear corners of the two adjacent buildings, unless delineated on the DC Fence Plan.
3. The fence separating the rear yard areas must be located at the center point between the two buildings, and generally extends perpendicular to the rear common fence, or ending point as approved by the DC-ACC, unless delineated on the DC Fence Plan.
4. Fences shall not extend further than the Property boundary line but no less than the actual boundary of the landscaped areas.
5. If gates are desired in the common perimeter fence by an individual Owner, they shall be approved by the DC-ACC for placement, mechanical operation, and locking capabilities.

THE PROPERTY IS CONSTRUCTED AS A GATED COMMUNITY, BUT SECURITY IS NOT GUARANTEED NOR IS IT IMPLIED. ALL OWNERS ARE INDIVIDUALLY RESPONSIBLE FOR THEIR OWN SECURITY AND THE SECURITY OF THEIR GUESTS WITHIN THE PROPERTY AT ALL TIMES.

- F. Article 5 Section 5.18. **Open Space Landscaping.** All Common Areas will be maintained by the relative Association. Any changes or modifications to the Common Area landscaping must be submitted to and approved by the DC-ACC in accordance with Article 10 Section 10.7 of the Original Declaration. These changes may include but are not limited to the addition of plantings (shrubs, small trees, etc.) for the purpose of providing privacy screening within the rear yard area not a part of the Limited Common Area. Approval of said plantings shall be at the sole discretion of the ACC. If the existence and/or location of said personal plantings limit access to or make maintenance of common area plantings and improvements difficult or unreasonable, the Association may at its sole discretion: 1) limit or restrict the personal plantings; 2) make special assessments to the relative Owner for additional costs relating to working around and/or with said personal plantings; 3) require the Owner to maintain the personal plantings themselves.
- G. Article 5 Section 5.19. **Landscaping of Lots & Limited Common Area.** Upon written approval of the DC-ACC Owners may plant personal plantings and gardenings in said Limited Common Areas, other than that approved and installed in the initial landscaping of the lot, on the condition that all maintenance of said personal plantings are provided solely by the Owner. Examples of said personal plantings may be small vegetable gardens, special flowers or shrubs, and, small ornamental trees. If the existence and/or location of said personal plantings limit access to or make maintenance of common area plantings and improvements difficult or unreasonable, the Association may at its sole discretion: 1) limit or restrict the personal plantings; 2) make special assessments to the relative Owner for additional costs relating to working around and/or with said personal plantings; 3) require the Owner to maintain the personal plantings themselves.

Areas on the lot that are not encumbered by the home (ex: jogs in the foundation behind the garage) will be landscaped and maintained as if it were Limited Common Area. The personal planting provisions herein will apply.

ALL OTHER PROVISIONS CITED IN "ARTICLE V" AS RECORDED IN THE ORIGINAL DECLARATION (OTHER THAN THOSE CHANGES MADE HEREIN) ARE STILL APPLICABLE.

II. AMMEND ARTICLE VI – OPEN SPACES AND ASSOCIATION PROPERTIES:

- A. Article 6 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:
1. 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.
 2. 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.
 3. 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.
 4. 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.

III. AMMEND ARTICLE VII -- FRUIT HEIGHTS HIDDEN SPRINGS MASTER HOMEOWNERS ASSOCIATION, INC.

- A. Section 7.8 **Organization of a Sub-association.** A Sub-association shall be organized by the Declarant for Deer Cove at Hidden Springs PRUD Subdivision 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.

The Sub-associations' organization, membership, governance, voting rights, architectural control, liability, litigation, and financial oversight & responsibility for the Deer Cove at Hidden Springs PRUD Property shall be the sole responsibility of the Owners within said property as stated herein. Owners of Lots within the Property are still members of the Fruit Heights Hidden Springs Master Homeowners Association, and retain all privileges and responsibilities that pertain to respective membership.

- B. **Section 7.9 Members of the Sub-association.** 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.
- B. **Section 7.10 Classes of Sub-association Membership.** The Sub-association shall have two (2) classes of membership as follows:
- (a) **Class A Members.** Class A Members of the Sub-association shall be all Owners of Lots (Is lot the proper term?) within the Deer Cove at Hidden Springs PRUD 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 of the Sub-association shall be the Declarant owners as defined in Original Declaration, 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 Declarant, and to which successor the Declarant has specifically granted rights of Class B 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 Member with respect to each Lot owned.
- C. **Section 7.11 Governance and Voting Rights of Members of a Sub-association.** The governance of the Sub-association and voting rights of the Class A and Class B Members shall be as follows:

- (a) Upon the effective date of the Sub-association's Articles of Incorporation, the right to govern the affairs of the Sub-association shall be vested solely in the Class B Members, as follows:
- (1) The right to govern the affairs of the Sub-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 B Members shall be entitled to ten (10) votes for each Lot owned. All Class B memberships shall automatically terminate and be converted to respective Class A 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 B members.
- (b) Upon the termination of governance by the Class B Members, the governance of the Sub-association shall thereupon be and remain vested in the Class A Members in accordance with its Bylaws.

- D. Section 7.12 **Sub-association Architectural Control Committee.** Said committee is separate from the Hidden Springs Master Homeowners Association ACC and governs all architectural and design decisions for Deer Cove at Hidden Springs afforded to the ACC in both the Original Declaration and this declaration. The Sub-association Board shall have the right to appoint and remove members of the DC-ACC. One or more members of the Board may serve on the DC-ACC. The DC-ACC shall be initially made up of four (4) members, who are:

Bart Longson, Hawkins Homes & Communities
 Matt Hawkins, Hawkins Homes & Communities
 Mike Flood, Hawkins Homes & Communities, and
 Cliff Allen, Hawkins Homes & Communities

See Article X of the Original Declaration for ACC policies, procedures and guidelines.

- E. Section 7.13 **Sub-association Litigation.**

- (a) In recognition of the expenses and disruption associated with litigation, the Sub-association shall not commence a judicial or administrative proceeding without the approval of the Declarant for so long as the Members govern the Sub-association

and thereafter only upon the approval of Owners representing at least 75% of the total vote of the Sub-association.

- (b) Neither the Sub-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 Sub-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 Sub-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 Sub-association in such action.
- (d) This Section shall not apply to: (i) actions brought by the Sub-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 Sub-association in proceedings instituted against it; or (v) actions brought by the Sub-association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Sub-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.

F. Section 7.14 Budgets and Financial Statements of the Sub-association.

Financial statements for the Sub-association shall be regularly prepared and copies distributed at the Sub-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 Sub-association, or its agent, shall cause to be prepared a balance sheet as of the last day of the Sub-association's fiscal year and an annual operating statement reflecting the income and expenditures of the Sub-association for that fiscal year.

ALL RIGHTS, PRIVILEGES, RESPONSIBILITIES AND OBLIGATIONS DEFINED AND OUTLINED IN:

ARTICLE VIII - ASSESSMENTS

ARTICLE IX - ENFORCEMENT OF ASSESSMENTS

ARTICLE X - ARCHITECTURAL CONTROL

ARTICLE XI - ANNEXATION, and,

ARTICLE XII - MISCELLANEOUS

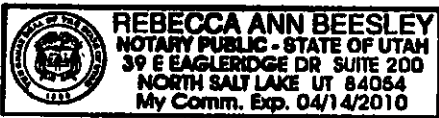
THAT ARE AFFORDED TO THE MASTER ASSOCIATION IN THE ORIGINAL DECLARATION, ARE HEREBY AFFORDED TO THE SUB-ASSOCIATION IN THEIR ENTIRETY AS THEY ARE APPLICABLE. ALL OTHER PROVISIONS CITED AS RECORDED IN THE ORIGINAL DECLARATION (OTHER THAN THOSE CHANGES MADE HEREIN) ARE STILL APPLICABLE.

IN WITNESS WHEREOF, the undersigned, being the Declarant and Record Owners herein, have hereunto set their hand this 14 day of November, 2006.

DECLARANT:

PATRIOT CAPITAL HIDDEN SPRINGS LLC
An Idaho limited liability company

BY: [Signature]
NAME: Bart S. Longson
TITLE: Development Partner



ACKNOWLEDGEMENT – Limited Liability Company

On the 14 day of November, 2006, personally appeared before me Bart Longson, who being by me duly sworn did say that he is an Authorized Agent of Patriot Capital Hidden Springs LLC, an Idaho limited liability company, who acknowledged to me that said Limited Liability Company executed the same.

Signed: Rebecca Ann Beesley

NOTARY PUBLIC

Residing at: Sandy, Utah

My commission expires: 4/14/2010