

After Recording Return to:

[Tax I.D.'s: 07-257-0001 through 07-257-0045]

**AMENDED & RESTATED SUPPLEMENTAL  
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
For  
DEER COVE SUBDIVISION  
(A Neighborhood and Sub-Association within Hidden Springs Master Community)  
Davis County, Utah**

THIS AMENDED & RESTATED SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DEER COVE SUBDIVISION, a Neighborhood and Sub-Association within Hidden Springs Master Community (this "Declaration") is hereby adopted by Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association, Inc. ("Association"), for and on behalf of its Members, and made effective as of the date recorded in the Davis County Recorder's Office.

In the event of conflict between this Declaration and the Amended & Restated Declaration of Covenants, conditions and Restrictions for the Hidden Springs Master Community ("Master Declaration"), this Declaration shall control with regard to the Lots and Owners within the Deer Cove Sub-Association, *i.e.* if this Declaration adds further detail, specific and/or additional restrictions applicable to Owners within Deer Cove that are interpreted to conflict with Master Declaration, this Declaration shall control.

**RECITALS:**

(A) This Declaration affects and concerns the real property located in Davis County, Utah and more particularly described in **Exhibit "A"** attached hereto ("Property"):

(B) On or about March 18, 2005, the Declaration of Covenants, Conditions, Agreements & Restrictions for Hidden Springs Master Community was recorded in the Davis County Recorder's Office, as Entry No. 2059700, as amended ("Master Declaration"). The Owners and Property are subject to both the Master Declaration and this Declaration.

(C) On or about November 30, 2005, Bylaws of the Fruit Heights Hidden Springs Master Homeowners Association, Inc. were signed by the Secretary of the Association, as amended ("Master Bylaws"). The Owners and Property are subject to both the Master Bylaws and the Bylaws.

(D) On or about August 21, 2006, a Plat Map depicting Deer Cove at Hidden Springs was recorded in the Davis County Recorder's Office as Entry No. 2194583 ("Deer Cove Plat").

(E) On or about November 15, 2006, an Amendment to the Declaration of Covenants, Conditions, Agreements & Restrictions of Hidden Springs Master Community ("Enabling Deer Cove Declaration") was recorded in the Davis County Recorder's Office as Entry No. 2219117.

(F) On or about May 28, 2010, a Notice of Assessment & Notice of Reinvestment Fee Covenant was recorded in the Davis County Recorder's Office as Entry No. 2531391.

(G) The Association and its Members, consistent with the Master Declaration and Enabling Deer Cove Declaration, and any subsequent amendments (including any not referenced herein), hereby adopt this Declaration. This Declaration hereby amends, replaces and supersedes all prior declarations and amendments for Deer Cove Subdivision, rendering the prior declarations and amendments of no further force and effect. This Declaration, along with any future amendment(s), shall be the sole Declaration for the Property.

(H) The Property is subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Project. Common Areas and Limited Common Areas are those areas that are depicted as Common Areas and Limited Common Areas in the recorded Plat Map(s). A Plat Map for the Property is attached hereto as **Exhibit B.**"

(I) The Association and its Members desire that the Board amend the existing Articles of Incorporation with the Utah Department of Commerce in conjunction with the approval of this Declaration. The Association and its Members hereby authorize and approve filing the Amended & Restated Articles of Incorporation of Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association, Inc. ("Articles") with the State of Utah, a copy of which has been previously provided to and approved by the Owners.

(J) The Association and its Members desire that the Board amend the bylaws for the Association and hereby authorize and approve the recording of the Amended & Restated Bylaws of Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association, Inc., a copy of which is attached hereto as **Exhibit "C"** ("Bylaws"), which shall be recorded in the Davis County Recorder's Office contemporaneously with the recording of this Declaration. The Association and its Owners, consistent with any prior, existing bylaws and any subsequent amendments thereto (including any not referenced herein), hereby adopt the Bylaws. These Bylaws hereby amend, replace and supersede all prior bylaws and amendments, rendering the prior bylaws and amendments of no further force and effect. These Bylaws, along with any future amendment(s), shall be the sole Bylaws for the Property.

(K) The Class B period has ended. Pursuant to Article 12.1 of the Master Declaration and the Utah Community Association Act, Owners of record, holding not less than sixty-seven percent (67%) of the total voting power of the Association, provided their written consent approving and consenting to the recording of this Declaration, the attached Bylaws, and filing of the Articles.

### **CERTIFICATION**

By signing below, the Board hereby certifies that the above described approval was obtained, approving and consenting to the recording of this Declaration, Bylaws and filing of the Articles.

(L) The Association and its Members desire to subject the Property to the terms and conditions of this Declaration, the Utah Community Association Act, Utah Code Ann. § 57-8a-101 *et. seq.*, and the Utah Revised Nonprofit Corporation Act, Utah Code Ann. § 16-6a-101 *et. seq.* The Property does not constitute a cooperative.

(M) The Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, improvement and sale of the Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with each Lot located on the Property, including any additions thereto, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon the Association and its Owners, and its successors in interest; and may be enforced by the Association, any Owner, and their successors in interest.

(N) The Association has received the approval of the Master Association, consenting to the recording of this Declaration.

(O) These Recitals are made a part of this Declaration.

### **COVENANTS, CONDITIONS AND RESTRICTIONS**

#### **ARTICLE I** **DEFINITIONS**

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) "Act" means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et. seq.*

(B) "Architectural Control Committee" or "ACC" shall mean the Architectural Control Committee created by Board in accordance with the Governing Documents. The Master Association may adopt policies and procedures governing cooperation between the Master Association ACC and the ACC contemplated by this Declaration

(C) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, special assessment, neighborhood assessment, recreation center assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(D) "Articles" shall mean the Amended & Restated Articles of Incorporation of Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association, Inc., as amended.

(E) "Association" shall mean Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association, Inc. and, as the context requires, the duly elected and authorized Board through its officers, directors and managers.

(F) "Board" or "Board of Directors" shall mean the duly elected and acting Board of Directors of the Association.

(G) "Bylaws" shall mean the Amended & Restated Bylaws of Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association, Inc., as amended.

(H) "City" shall mean Fruit Heights, Utah and its appropriate departments, officials and committees.

(I) "County" shall mean Davis County, Utah and its appropriate departments, officials and committees.

(J) "Common Area(s)" shall include "Open Space" as utilized in the Plat and shall mean all property designated on the recorded Plat(s) as Common Area(s), Open Space or described within this Declaration as Common Area(s), being owned or intended ultimately to be owned by the Association, together with all improvements or structures thereon and all of the easements appurtenant thereto.

- (i) The Master Association shall also maintain, repair and replace certain portions of the Association's Common Area/Open Space), which may be accessed all Members of the Master Association, as further set forth in this Master Declaration and this Declaration. This area of responsibility

generally includes the Trail and adjacent Open Space that lies to the north/northwest of the existing perimeter fence in the Deer Cove Subdivision, which area is generally located north of Mirabella Way. This responsibility does not include the seven (7) Dwelling and property surrounding said Dwellings, which is located outside of the Deer Cove Subdivision's existing perimeter fence.

(K) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) managing, operating, insuring, improving, repairing, replacing and maintaining those portions or items of Limited Common Areas that are the responsibility of the Association; (C) providing facilities, services and other benefits to Owners as set forth in this Declaration; (D) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (E) levying, collecting and enforcing the assessments; (F) operating the Association; and (G) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act

(L) "Declaration" shall mean this Amended & Restated Supplemental Declaration of Covenants, Conditions and Restrictions for Deer Cove Subdivision, together with any subsequent amendments or additions through subsequent recording amendments or supplements.

(M) "Dwelling" shall mean a residence that is designed and intended for use and occupancy as a single-family residence, together with all Improvements located on the same Lot and used in conjunction with such residence.

(N) "Governing Documents" shall mean this Declaration, Plat, Bylaws, Articles, Rules, and any other documents or agreements binding upon an Owner.

(O) "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, single family homes, Dwellings, residences, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(P) "Limited Common Areas" shall mean all property designated on the recorded Plat(s) or as described in this Declaration as Limited Common Area, being intended ultimately to be owned by the Association but for the exclusive use and enjoyment of the appurtenant Lots but fewer than all of the Lots.

(Q) "Lot" shall mean any numbered building lot shown on any official and recorded Plat(s), including all Improvement located thereon.

- (a) "Lots Designed with an 'S'" may require retainage structures to address slope stability as referenced in the geotechnical reports prepared by Earthtec Testing & Engineering, P.C., and on file at Fruit Heights City. Retaining wall design details must be submitted and approved in conjunction with building permit issuance.
- (b) "Lots Designated with an 'L'" have been identified by licensed Geotechnical Engineers to have higher liquefaction potential. Construction on said lots must be in accordance with Addendum No. 3 to the Geotechnical Reports on file with Fruit Height City, prepared by Earthtec Testing & Engineering, P.C., dated December 15, 2005.

(R) "Manager" shall mean any entity or person engaged by the Board of Directors to manage the Property.

(S) "Master Declaration" shall mean the Amended & Restated Declaration of Covenants, Conditions and Restrictions for Hidden Springs Master Community, together with any subsequent amendments or additions through subsequent recording amendments or supplements.

(T) "Master Association" shall mean Fruit Heights Hidden Springs Master Homeowners Association, Inc. and, as the context requires, the duly elected and authorized Board through its officers, directors and managers.

(U) "Member" or "Owner" shall mean and refer to the person or persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the Davis County Recorder's Office, including buyers under any contract for deed, trustees, managers, members or authorized representatives of entities, trusts and other legal organizations owing a Lot. Notwithstanding, "Owner" or "Member" shall exclude any person or entity holding title solely for purposes of securing performance of any obligations, including the trustee and/or beneficiary under a deed of trust or mortgagee under a mortgage. Membership in the Association is appurtenant to each Lot and an Owner shall be deemed a "Member" of the Association.

(V) "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

(W) "Plat(s)" or "Plat Map(s)" shall mean an official and recorded plat of Deer Cove Subdivision in the Davis County Recorder's Office, as it may be amended from time to time.

(X) "Private Area" shall mean the area on a Lot, as designated on the Plat, for placement of the Dwelling.

(Y) "Property", "Project" or "Subdivision" shall mean all phases of Hidden Springs

Deer Cove Subdivision, all Lots, Common Areas, Limited Common Area, and other property within the subdivision, as shown on the Plat(s) and any future Plat(s) covering the Property.

(Z) "Recreation Center" shall mean the clubhouse and pool area and related amenities owned and operated by the Master Association for the benefit of Owners in the Deer Ridge, Deer Crest and Deer Cove Neighborhoods. The Master Association may charge a Recreation Center Assessment to Lots in the Deer Ridge, Deer Crest and Deer Cove Neighborhoods. Consistent with the original intent and use of the Recreation Center, the Deer Ridge, Deer Crest and Deer Cove Neighborhoods shall have access to the Recreation Center and shall pay a Recreation Center assessment.

(AA) "Rules" shall mean any instrument adopted by the Board for the regulation and management of the Association as provided in the Governing Documents.

(BB) "Trail" shall mean any community trail designated on the Plat or later developed and physically designated by the Association or Master Association.

## ARTICLE II EASEMENTS

2.1 Easement Concerning Common Area Outside of Perimeter Fence in Deer Cove. Each Owner in the Master Association shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area and Trails outside the Deer Cove perimeter fence, generally located to the north/ northwest of Mirabella Way. Such right and easement shall be appurtenant to and shall pass with title to each lot in the Master Association and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for use in common with others.

(a) The Association and the Master Association shall have the right to set the time, place and manner regarding use and rules concerning this area.

2.2 Easement Concerning Common Area inside Perimeter Fence in Deer Cove & Surrounding Lots 1-7. Each Owner in the Association shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area and Trails inside the Deer Cove perimeter fence and surrounding Lots 1-7 and south of Lot 3 along Mahogany Road. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or

interest in any easements forming a portion of the Common Area except for use in common with others.

2.3 Easement Concerning Limited Common Area. The Association shall have a non-exclusive drainage and public utility easement and an easement for maintenance, if any, in and to the Limited Common Area. With the exception of the rights and easements granted to the Association, the Owner(s) of a Lot shall have the exclusive use of all Limited Common Area appurtenant to their Lot.

2.4 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall also be subject to the following:

(a) The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area.

(b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied Assessment or fee.

(c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, utility access/installation, and providing any other governmental or municipal service.

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to in writing by the Owners of at least sixty-seven percent (67%) of the Lots. No such dedication or transfer, however, may take place without the Association first receiving written approval from City and/or County pursuant to all applicable state and City laws, rules and ordinances in effect at the time of such proposed dedication or transfer.

2.5 Reservation of Access and Utility Easements. The Association hereby reserves an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, fiber, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such



purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

2.6 Easements for Encroachments. If any part of the Common Area or Limited Common Area now existing upon any Lot or hereinafter constructed by Association encroaches upon a Lot, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any Common Area or Limited Common Area or Improvement on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon a Lot or upon any portion of the Common Area or Limited Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.7 Easement in Favor of Association. The Lots (limited to the exterior of the Improvements), Common Area and Limited Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, manager, agents, employees and independent contractors:

- (a) For inspection during reasonable hours in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of portions of the Common Area and Limited Common Area (if applicable);
- (c) For correction of emergency conditions on one or more Lots or on portions of the Common Area and Limited Common Area;
- (d) For the purpose of enabling the Association, the Architectural Control Committee or any other committees appointed by the Association to exercise and discharge during reasonable hours their respective rights, powers and duties; and
- (e) For inspection during reasonable hours in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of

the Governing Documents.

**ARTICLE III**  
**COMMON AREAS & MAINTENANCE**

3.1 The Common Areas shall be and are hereby conveyed to the Association, a Utah non-profit corporation, subject to this Declaration and subject to all easements as set forth in this Declaration. The Common Areas consist of areas designated as Common Areas or Open Space on the recorded Plat(s), including any structures related to the operation or maintenance of the Common Areas.

(a) Common Areas Maintained by the Association. The Association shall maintain, repair and replace the following Common Areas, which shall generally include (where applicable):

- i. Asphalt repair, maintenance and replacement of the private roadway referred to as Mirabella Way
- ii. Any curb and sidewalk abutting the private roadway;
- iii. Deer Cove community mailboxes, if any,
- iv. Street lamps,
- v. Gate and entryways
- vi. Wrought iron perimeter fencing within Deer Cove;
- vii. Common Area and Open Space surrounding Lots 1-7;
- viii. General landscape and sprinkler maintenance, including the repair, maintenance and replacement of existing sprinkler systems and landscaping within the Common Areas;<sup>1</sup>
- ix. The Association shall make reasonable and prudent efforts for the removal of snow from relevant areas within the Common Area, which may include contracting with a third party. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation.
- x. Repair, maintenance and replacement of fencing within the Property that has not been modified or added to by an Owner;
- xi. Private utility lines/infrastructure that serves more than one Lot (not maintained by the City or County); and

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1. If the existence and/or location of prior, approved 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 an individual assessment to the relative Owner for additional costs relating to working around and/or with said personal plantings; or (3) require the Owner to maintain the personal plantings themselves.

- (b) Common Areas Maintained by the Master Association.
- i. The Master Association shall maintain the Trails and adjacent Open Space generally located outside of the Deer Cove perimeter fence to the north of Mirabella Way. This shall include maintenance, repair and replacement of the main drain pipe in retention basin in this area. Members of the Master Association have general easement rights with respect to this trail area, which shall be maintained by the Master Association.
  - ii. Common Area and Open Space extending south of Lot 3-S to the community trail area to the north of the Deer Cove perimeter fence;
  - iii. Any areas formally designated as Wetlands within the Common Area shall be maintained in compliance with any existing agreement with the relevant government agencies.

(c) Owners Maintenance Responsibilities. Owners shall maintain their Dwelling and other Improvements located within the Private Area. Owners shall also maintain the drainage pipe that extends from their Dwelling/Private Area landscaping up to the point that the pipe connect with the main drain pipe in the Open Space outside of the Deer Cove perimeter fence.

#### ARTICLE IV LIMITED COMMON AREAS, PRIVATE AREAS & MAINTENANCE

4.1 The Limited Common Areas shall be and are hereby conveyed to the Association, a Utah non-profit corporation, subject to this Declaration and subject to all easements as set forth in this Declaration. The Limited Common Areas consists of the areas designated as Limited Common Areas on the recorded Plat(s), or described in this Declaration, for the exclusive use of one or more appurtenant Lots but fewer than all of the Lots. The Limited Common Areas are depicted on the Plat and generally consist of the driveway and exterior parking area immediately in front of the garage serving that Lot, and the front yard area and any Improvements located within the Limited Common Area.

4.2 Limited Common Area Maintenance. The Owners shall maintain, repair and replace the Improvements within the Limited Common Area. The Association shall continue to insure the Common Areas and Limited Common Areas within the Association. Owners are at liberty to purchase any additional insurance they deem prudent with respect to the Limited Common Areas.

4.3 Private Area Maintenance. The Private Areas are generally depicted in the Plat and intended to include the Dwelling and exterior Improvements related to the Dwelling such as: the Dwelling (including, but not limited to: all exterior walls, shutters, awnings, window boxes, doorsteps, porches, and balconies), gardens, flower beds, or other apparatuses intended to serve a single Lot, and located on the outside of the structure on the Lot shall constitute Private Areas and

not Limited Common Areas. Owners shall maintain the Private Areas. Each Owner, at such Owner's sole cost and expense, shall maintain and/or replace such Owner's Dwelling, Improvements and other elements located within the Private Area in good order and repair in order to preserve and enhance the enjoyment of the Property, including any pipes, wiring, power, water and other utility lines to the extent such infrastructure serves only that Owner's Lot.

- (a) Maintain in Clean Condition. The Owner shall be responsible for keeping the Dwelling and Improvements thereon in a clean and sanitary condition, free of pests and rodents, and uncluttered. The Board of Directors may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, or installed in any Dwelling, which may include a prohibition on leaving, installing or storing any items in such places.
- (b) Alterations of Exterior Appearance. The Owners will maintain their Lots, Dwellings and Improvements in substantially the same condition and appearance as that approved by the ACC. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the ACC.
- (c) Repair Following Damage. In the event of casualty loss or damage to the Lot or Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the ACC, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the ACC, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.
- (d) Repairs by Association. In the event that an Owner permits his Dwelling or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the

condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision. In addition, each Owner hereby grants to the Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest as set forth in the Declaration.

#### ARTICLE V MEMBERSHIP

5.1 Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association and Master Association, so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in the Lot. Upon the transfer of an ownership interest in a Lot the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Master Association and Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Lot is held.

#### ARTICLE VI VOTING

6.1 Only an Owner that is current on all Assessments and/or other fees shall be deemed in good standing and entitled to vote. With regard to any approval that requires a specified percentage of total membership, the total membership shall be calculated from the total number of Owners eligible to vote at the time such approval is sought.

6.2 The Association shall have one class of voting membership, and each Owner shall be entitled to one (1) equal vote for each Lot in which they are an Owner. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association that Person shall be entitled to cast all votes appertaining to that Lot. But if more than one of such Person(s) is present, the votes appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Lot may not be divided between Owners of such Lot or with respect to matters before the Association, and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

**ARTICLE VII**  
**HOMEOWNER ASSOCIATION**

7.1 Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation.

7.2 Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense (with the exception of water, sewer, power and natural gas); (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

(a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Lot(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

7.3 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy assessments against each Lot as necessary to carry out its functions. Assessments shall be levied against all Lots in the Property, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

(a) Assessments. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

(b) Special Assessment. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.

(b) Individual Assessment. The Association may levy individual assessments on every Lot, Owner or occupant that shall cause any damage to the Project or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Lot(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.

(c) Reserve Fund Assessment. The Association may levy a reserve fund assessment, as set forth in this article.

(d) Master Association Assessment. The Master Association may levy a Master Association assessment to Owners within the Association, including a Recreation Center Assessment, for costs, special services or amenities available for Owners as members of the Master Association.

(e) Reduced Assessment. Lots located outside the Deer Cove Perimeter Fence shall pay a correspondingly reduced amount, as such Lots do not contribute to those costs and reserves related to maintenance and replacement of the private road and entrance gates.

(f) The Association may levy other assessments or fees, as authorized by the Governing Documents.

7.4 Budget. The Board is authorized and required to adopt a budget for each fiscal year. The adopted budget shall be presented to the Owners at or before each Annual Meeting.

(a) The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget.

(b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

7.5 Reserve Fund Analysis. The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area and Limited Common Areas that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

(a) The Board may not use money in a reserve fund:

(i) For daily maintenance expenses, unless a majority of the Owners vote to approve the use of reserve fund money for that purpose;

(ii) For any purpose other than the purpose for which the reserve fund was established, unless a majority of the Owners vote to approve the alternate purpose; or

(iii) In the event that the Association experiences a surplus in any fiscal year, the Board may elect to place said surplus in the reserve fund account.

7.6 Reserve Fund Account Creation. The Board shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board's discretion, to fund the reserve account.

7.7 Reinvestment Fee. The Board shall have power to levy a reinvestment fee, as set forth in the Notice of Reinvestment Fee Covenant, as amended.

7.8 Date of Commencement of Assessments. The assessments provided for herein



shall commence as to each Lot on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide.

7.9 Fines. Following notice as required by the Act, the Association shall have the power to assess a fine against an Owner and/or their Lot for a violation of the terms and conditions of the Governing Documents in an amount set by the Board.

7.10 Hearing Process. The Board shall have authority to create a reasonable hearing process applicable when the Association takes an adverse action related to any particular Owner(s) in accordance with the Act.

7.11 Association Rules. The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing: (a) the use of the Common Areas and Limited Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; (e) collection policies and procedures; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents.

7.12 Statement of Account & Payoff Information. Upon a written request from an Owner that the Association provide the Owner with a statement of his/her account, the Association may charge a fee, not to exceed \$10.00, for providing such statements. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Lot Owner's sale of his/her Lot, the Association may charge a fee not to exceed \$50.

7.13 Availability of Documents. The Association may adopt a policy to make appropriate documents available to Owners (and their lenders, insurers and/or authorized agents) consistent with the Act. The Board may adopt a record retention policy to govern its record retention procedures.

7.14 Indemnity of Association Board and Officers. The Association will indemnify the officers, agents and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under the Governing Documents.

7.15 Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Articles of Incorporation and Bylaws of the Association.

7.16 Number of Board, Term of Office. The appointment, election and term of the

Members of the Board are set forth in the Bylaws and Articles. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association.

7.17 Independent Accountant/Bookkeeper. The Association may retain the services of an independent accountant or bookkeeper to assist the Board of Directors and officers to maintain accurate financial records of the Association.

**ARTICLE VIII**  
**NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE**

8.1 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

8.2 Due Date, Charges & Interest. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10<sup>th</sup> of each month. The Board may charge a late fee in an amount set by the Board, but not to exceed \$50, for each unpaid or late assessment. In addition to late fees, interest shall accrue on all unpaid balances, including prior, unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges imposed by a Manager or attorney related to collections.

8.3 Lien. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

8.4 Foreclosure. The Association shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Lot not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

8.5 Other Remedies. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts

shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally.

8.6 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Lot, the amount of any assessment that is more than sixty (60) days past due.

8.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the prevailing party shall be entitled to recover all reasonable attorney fees and costs incurred as a result of a breach of the Governing Documents. When the Association is the prevailing party, these fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

8.8 Appointment of Trustee. The Association hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Burt R. Willie, Esq., a licensed member of the Utah State Bar, with power of sale, the Lot and all Improvements to the Lot or Unit for the purpose of securing payment of assessments under the terms of this Declaration.

**ARTICLE IX**  
**SUBORDINATION OF LIEN TO INSTITUTIONAL**  
**FIRST AND SECOND MORTGAGES**

9.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Association. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

**ARTICLE X**  
**ARCHITECTURAL CONTROL COMMITTEE**

10.1 Architectural Control Committee ("ACC"). An Architectural Control Committee may be appointed by the Board to oversee any construction, re-construction, remodeling or altering of exterior Improvements. If no ACC is appointed, the Board will assume the duties and responsibilities of the ACC. The Master Association may coordinate and adopt a process with the Association's ACC regarding to any necessary coordination or involvement with Improvements within the Property.

10.2 Approval by Board or ACC Required. No exterior Improvement of any kind will be constructed or commenced on any Lot(s) without the prior, written approval of the ACC, which plans must be harmonious with existing Improvements and the existing character within the Subdivision. The overall architectural style and detailing of each Improvement (including each Dwelling) 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 Dwelling 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 Dwelling is proposed.

Approval of the ACC will be sought in the following manner:

(a) Plans Submitted. A written rendering, prepared by a licensed architect or engineer when requested by the ACC, of the proposed remodeling or construction must be submitted. The Plans shall also include: (1) a description of how debris will be removed; (2) name, address and phone number of contractor(s) performing the work; (3) when construction or remodeling will begin and conclude; and (4) proposal to mitigate any nuisance to other Owner(s).

(b) Review. Within 45 days from receipt of the submitted plans, the ACC will review the plans and respond in writing to the Owner determining whether or not the plans comply with the conditions imposed by the Declaration and are consistent with and in architectural harmony with other Improvements within the Project. The ACC may: (1) approve the plans; (2) reject the plans; (3) request additional information; or (4) require that certain conditions be met.

(c) Failure to Act. If the ACC fails to respond, the Owner may complete the construction in accordance with the submitted plans. Notwithstanding the Improvement(s) shall not violate the terms and condition of the Declaration and shall be in architectural harmony and consistent with the other Improvements in the Project.

10.3 Variances. The ACC cannot grant any variance that has the effect of modifying applicable zoning or building code regulations or directly violates the Governing Documents. The burden of obtaining a variance is entirely on the applicant.

10.4 Board and ACC Not Liable. The Board, ACC and its members shall not be liable to the applicant for any damages, or to the Owners of any Lots within the Project for their actions, inactions, or approval or disapproval of any set of plans submitted for review. The Owners' shall have no claim against the Board or ACC as a result of the performance or failure to perform the duties created by this Declaration. Each Owner has an equal duty and right to enforce these covenants against every other Owner, and may seek independent redress if it believes the Board or ACC has acted improperly.

10.5 Limitations on Review. The ACC's review is limited to those matters expressly granted in this Declaration. The ACC shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved

in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the ACC prior to construction.

10.6 Architectural Review Fee. The ACC may charge a fee to an Owner submitting a plan for review not to exceed the actual costs to review the plans.

## ARTICLE XI ARCHITECTURAL RESTRICTIONS

11.1 Use. Lots shall be used only for single family residential purposes and such uses as are customarily incidental thereto.

11.2 Community Built Out. As of the date of recording this Declaration, all Lots within Deer Cove contain a completed Dwelling and there are no vacant lots.

11.3 Repair, Remodeling, Exterior Construction.

- (a) Licensed Contractor. Unless the ACC gives a written waiver, all exterior Improvements must be constructed, remodeled by a licensed contractor, duly qualified and licensed by the appropriate governmental authorities.
- (b) Procedure. The ACC may adopt further rules and policies with respect to the submission and review of proposed Improvements.
- (c) Harmonious. All Improvements must be harmonious with existing Improvements and the existing character within the Subdivision. The Board may adopt Design Guidelines. The allowed construction colors, materials, and appearance should be contained within the Design Guidelines.
- (d) Landscaping. No landscaping may be significantly modified or changed, without the express written consent of the ACC.

## ARTICLE XII USE LIMITATIONS & RESTRICTIONS

12.1 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.

12.2 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.

12.3 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.

12.4 Animals. No more than two (2) common domestic pets (*i.e.* cats, dogs and other indoor pets) per Lot, with a maximum weight per animal of 50 pounds. The Board reserves the right to request weight information from those animals that appear to be close to or over 50 pounds. At the time of this recording, if a current owner or resident has a pet above 50 pounds, such pet's size shall be grandfathered in for the remainder of its life or until the Owner or Occupant moves from the Property. Service and/or assistance animals shall count toward the total pet limit. No 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 Board 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 and not in an approved fence, enclosure 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, may be removed from the Property. No dog will be allowed to roam unattended in the Property. All dog runs or kennels shall be approved and appropriately screened off and out of the direct view from any street, and shall be in the rear yard of the home. The Board may also adopt Rules with respect to information needed to properly apply to the Board for an accommodation for a service or assistance animal. Pet owners are also responsible to abide by City ordinance.

(a) Any complaint with regard to a pet or animal in the Subdivision shall first be made to the Davis County Animal Control Department prior to contacting the Board or Manager.

12.5 Commercial Use Prohibited. No portion of the Property may be used for any commercial or business use, provided, however, that nothing in this provision is intended to prevent the use by any Owner of his Dwelling for a home occupation pursuant to City Ordinance. Businesses, professions or trades may not require heavy equipment, create a nuisance within the Property, or noticeably increase the traffic flow to the Property. 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.

12.6 Vehicles & Parking. All Passenger Vehicles (which generally include common, non-commercial passenger cars, trucks, SUVs and vans) that are parked on streets or driveways within the Subdivision must be in compliance with City Ordinances and Rules adopted by the Association. Passenger Vehicles parked in streets or driveways within the Subdivision must be in good running condition, properly licensed, regularly used and in compliance with City, County

and State requirements. Commercial vehicles and commercial equipment must be parked within garages or outside of the Subdivision.

(a) Recreational Vehicles (which include, but are not limited to: boats, RVs, campers, large vans, trailers, dirt bikes, atvs, snowmobiles, UTVs (side by sides) and similar vehicles) shall not be parked or stored on streets or driveways within the Subdivision except for loading/unloading up to 48 hours.

(b) Recreational Vehicles must be property maintained and may not be in a dilapidated condition.

(c) No resident shall repair or restore any vehicles within the Subdivision, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

(d) The Association reserves the right to adopt Rules relating to the parking of vehicles within the Project including, without limitation: (1) the right to immediately remove or cause to be removed any vehicles that are improperly parked, (2) restrictions on the time period and duration that any guest or visitor parking may be utilized; (3) restrictions or bans on vehicles without Department of Transportation compliant mufflers and exhaust systems, and (4) other reasonable rules and restrictions related to parking and to assess fines and take other appropriate action against those who violate such Rules.

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

12.8 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.

12.9 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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during construction of an Improvement); open storage or parking of construction equipment; open storage or parking of vehicles, trailers or other pieces of equipment that are unusable, in poor condition or unsightly; accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; and the storage or accumulation of any other material that is unsightly.

### ARTICLE XIII RENTAL/LEASE RESTRICTIONS

13.1 No Short Term or Nightly Rentals. Daily, nightly, weekly or monthly occupation is prohibited (whether pay or not), and Dwellings shall not be advertised or listed for short term



rental on such sites as Airbnb, VRBO, HomeAway, Flipkey, Wimdu, House Trip and similar international, national or local providers.

13.2 Less than Entire Dwelling. An Owner may not lease less than the entire Dwelling for an otherwise qualifying Dwelling.

13.3 Long Term Leasing. As of the date of the recording of this Declaration, those Dwelling that are currently being utilized as long term leasing shall be allowed to until the sale or transfer of ownership of said Dwelling, or if an Owner re-occupies the Dwelling.

With the exception of these existing Dwellings, leasing of any kind, including long term leasing, is prohibited except under the following circumstances:

- (i) An Owner in the military for the period of the Owner's deployment.
- (ii) A Dwelling occupied by an Owner's parent, child, or sibling.
- (iii) An Owner whose employer has relocated the Owner for less than two years.
- (iv) A Dwelling owned by a trust or entity that is occupied by an individual who:
  - a. Has voting rights under the organizing documents and has 25% or greater share of ownership, control and right to profits and losses of the entity; or

A trust or other entity created for the estate planning purposes if the trust or other estate planning entity was created for:

- a. The estate of a current resident of the Dwelling; or
  - b. The parent, child, or sibling of the current resident of the Dwelling.
- (v) A Dwelling whose Owner (i) moves out temporarily (up to three years), and (ii) has the intent to reoccupy the Dwelling within that three year period.

When one of the above identified exceptions applies, the following criteria must also be satisfied:

- (a) Any long-term lease shall be in writing, shall be for an initial term of at least six months, and shall provide as a term of the agreement that the occupant shall comply with the Governing Documents, and that any failure to comply shall be a default under the lease. If a lease does not include these provisions, they shall

nonetheless be deemed to be part of the lease and binding on the Owner and the occupant.

(b) An Owner shall provide the Board with information identifying the occupants, vehicles, phone numbers, and other applicable contact information.

(c) A copy of any lease agreement shall be delivered to the Association upon request.

(d) The Owner(s) of a Dwelling shall be responsible for the occupant's or any guest's compliance with the Governing Documents. In addition to any other remedy for noncompliance with this Declaration, the Association, following notice to the Owner, shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending non-owner occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph. For purposes of this subparagraph, each Owner in accepting the deed to a Dwelling expressly consents to such authority and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments and pursue any and all remedies available to remove the offending non-owner occupant.

(e) The Board of Directors may adopt Rules requiring:

- (i) Reporting and procedural requirement related to non-owner-occupied Dwellings; and
- (ii) Other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration.
- (iii) Violations of the provisions of this Article shall result in the imposition of a fines, as allowed by the Utah Community Association Act.

#### ARTICLE XIV INSURANCE

14.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

14.2 Property Insurance.

(a) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas and Limited Common Areas.

- (i) At a minimum, any required blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.
- (ii) Any blanket policy shall be in an amount not less than one-hundred percent (100%) of current replacement cost of all property covered by such policy (including the Dwellings if applicable) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
- (iii) A blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one-hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
- (iv) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available (ii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per occurrence at least equals the lesser of one million dollars (\$1,000,000) or the insurable value of the building containing the equipment.

(b) Association's Obligation with Regard to The Deductible. The Association shall maintain an amount equal to the Association's property insurance policy deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible. If the amount held in this account is used to pay any deductible, it shall be replenished within twelve (12) months.

(c) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

14.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area, Limited Common Areas, or membership in the Association. The coverage limits under such policy shall not be less than one million dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

14.4 Directors and Officers Insurance. The Association shall obtain Directors and Officers liability insurance protecting the Board of Directors, the Officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available), which insurance shall not be less than one million dollars (\$1,000,000). The policy shall:

- (a) Include coverage for volunteers and employees;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager

14.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds that shall:

- (a) Provide coverage for an amount of not less than the sum of three months regular assessment in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and

- (b) Provide coverage for theft or embezzlement of funds by:
- (i) Officers, Board of Directors, or Owners of the Association;
  - (ii) Employees and volunteers of the Association;
  - (iii) Any manager of the Association; and
  - (iv) Officers, directors and employees of any manager of the Association.

14.6 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.

14.7 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

14.8 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable the Association, and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and, if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Dwellings. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

14.9 Owner Act Cannot Void Coverage under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

14.10 Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

14.11 Owners' Individual Coverage. EACH OWNER SHOULD PURCHASE INDIVIDUAL PROPERTY COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT.

**ARTICLE XV**  
**DAMAGE & DESTRUCTION**

15.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas and/or Limited Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas and/or Limited Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas and/or Limited Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

15.2 Any damage or destruction to the Common Areas and/or Limited Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas and/or Limited Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

15.3 In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas and/or Limited Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas and/or Limited Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

**ARTICLE XVI**  
**DISBURSEMENT OF PROCEEDS**

16.1 If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas and/or Limited Common Areas shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account.

**ARTICLE XVII**  
**REPAIR AND RECONSTRUCTION**

17.1 If the damage or destruction to the Common Areas and/or Limited Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

**ARTICLE XVIII**  
**CONDEMNATION**

18.1 Whenever all of any part of the Common Areas and/or Limited Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of members representing at least sixty-seven percent (67%) of the total Association vote by any authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas and/or Limited Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas and/or Limited Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas and/or Limited Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

**ARTICLE XIX**  
**MISCELLANEOUS PROVISIONS**

19.1 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by an Owner or by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local

laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

19.2 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

19.3 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Dwelling, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

19.4 No Representations and Warranties. Each Owner and occupant understands, agrees, and acknowledges through taking title or residing in the Project that the Association and the Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Property.

19.5 Gated Community. The Property is constructed as a Gated Community. Notwithstanding, security is not implied or guaranteed. All Owners are individually responsible for their own safety and security of their Lots, guests and residents.

19.6 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration and the Plat, the Articles, Bylaws, and then the Rules.



19.7 Amendment. At any time while this Declaration is in effect, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total eligible votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners. In order to make any amendment impacting the Association's responsibilities within the Property or Deer Cove Subdivision, the Association must provide its written consent.

19.8 Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Lot in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against his/her Lot, whether or not there is any reference to this Declaration in the instrument by which he/she acquires interest in any Lot.

19.9 Notices. All notices under this Declaration are provided as set forth in the Bylaws.

19.10 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association, Inc., a Utah non-profit corporation

Mark G Cottrell

By: Mark Cottrell  
Its: Board Member

STATE OF UTAH )

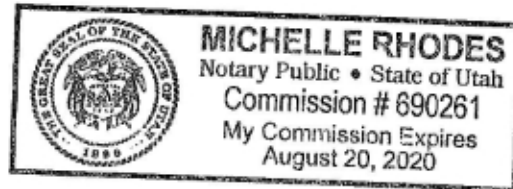
COUNTY OF <sup>: ss</sup> Davis

On this 10 day of Jan, 2019, personally appeared before me Mark Cottrell, who being by me duly sworn, did say that he/she is a Board Member of Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association, Inc., a Utah non-profit corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority and said individual duly acknowledged to me that said corporation approved the same.

Michelle Rhodes  
Notary Public

Residing at: Centerville, UT

My Commission Expires: 08/20/20



**Exhibit "A"**  
**Legal Description**

**Parcel 1:**

BEGINNING AT A POINT WHICH IS N00°02'53"W 313.37 FEET AND S89°57'07"W 777.21 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 1, TOWNSHIP 3 NORTH, RANGE 1 WEST SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N49°31'42"W 58.81 FEET; THENCE S47°30'49"W 18.39 FEET; THENCE N42°29'11"W 73.37 FEET; THENCE N68°30'21"W 129.02 FEET; THENCE S89°57'34"W 97.21 FEET; THENCE N17°49'17"E 52.01 FEET; THENCE N55°20'50"E 189.66 FEET; THENCE N50°41'28"E 48.20 FEET; THENCE N11°15'03"E 63.89 FEET; THENCE N27°33'00"E 174.79 FEET; THENCE N89°25'39"E 26.00 FEET; THENCE S23°36'07"E 108.45 FEET; THENCE S45°04'54"E 62.46 FEET; THENCE N83°18'27"E 296.94 FEET; THENCE N43°37'46"E 156.48 FEET; THENCE N25°49'05"W 160.31 FEET; THENCE N45°18'33"E 149.09 FEET; THENCE N26°40'00"E 205.69 FEET; THENCE S69°53'00"E 289.89 FEET; THENCE S03°13'00"W 375.00 FEET; THENCE S71°03'00"E 370.74 FEET; THENCE N12°08'00"E 600.60 FEET; THENCE N86°17'45"E 132.38 FEET THENCE S09°53'13" 0.81 FEET; THENCE SOUTHWESTERLY 52.16 FEET ALONG THE ARC OF A 95.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARS S05°50'36"W 51.51 FEET; THENCE S21°34'26"W 520.07 FEET; THENCE SOUTHWESTERLY 101.57 FEET ALONG THE ARC OF A 124.65 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARS S44°55'00"W 98.78 FEET; THENCE S81°18'54"W 15.49 FEET; THENCE SOUTHWESTERLY 116.77 FEET ALONG THE ARC OF A 120.00 FOOT RADIUS CURVE TO THE LEFT CHORD BEARS S40°23'00"W 112.21 FEET; THENCE SOUTHWESTERLY 8.89 FEET ALONG THE ARC OF A 11.50 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARS S59°49'36"W 8.67 FEET; THENCE S81°58'45"W 15.04 FEET; THENCE S08°01'15" E 50.00 FEET; THENCE SOUTHWESTERLY 14.70 FEET ALONG THE ARC OF A 11.50 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARS S61°24'21"E 13.72 FEET; THENCE SOUTHEASTERLY 151.06 FEET ALONG THE ARC OF A 150.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARS S28°41'22"E 144.76 FEET; THENCE S89°03'45"W 142.09 FEET; THENCE S85°56'39"W 105.23 FEET; THENCE N83°17'05"W 191.40 FEET; THENCE S74°51'43"W 115.91 FEET; THENCE S80°26'30"W 113.50 FEET; THENCE N84°59'19"W 337.91 FEET; THENCE S67°43'56"W 215.10 FEET TO THE POINT OF BEGINNING. CONTAINS 16.89 AND 38 LOTS.

**Parcel 2:**

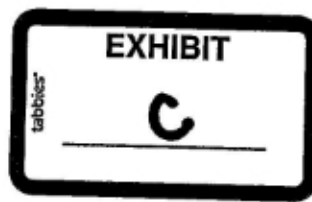
BEGINNING AT A POINT ON THE EASTERLY RIGHT-OF-WAY OF MAHOGANY ROAD, SAID POINT BEING N00°02'53"W 353.86 FEET AND N89°57'07"E 551.56 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 1, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THE FOLLOWING TEN COURSES ALONG SAID EASTERLY RIGHT-OF-WAY LINE: (1) THENCE NORTHWESTERLY 94.26 FEET ALONG THE ARC OF A 150.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARS N39°32'16"W 92.71 FEET; (2) THENCE N57°32'22"W 48.46 FEET; (3) THENCE

NORTHWESTERLY 91.65 FEET ALONG THE ARC OF A 90.00 FOOT RADIUS CURVE TO THE RIGHT CHORD BEARS N28°22'01"W 87.74 FEET; (4) THENCE N00°48'20"E 36.55 FEET; (5) THENCE NORTHEASTERLY 70.64 FEET ALONG THE ARC OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARS N34°31'57"E 66.63 FEET; (6) THENCE N36°04'20"E 17.83 FEET; (7) THENCE NORTHEASTERLY 121.69 FEET ALONG THE ARC OF A 149.35 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARS N44°55'00"E 118.35 FEET; (8) THENCE N21°34'26"E 536.29 FEET; (9) THENCE NORTHEASTERLY 74.13 FEET ALONG THE ARC OF A 135.00 FEET RADIUS CURVE TO THE LEFT, CHORD BEARS N05°50'36"E 73.20 FEET; (10) THENCE N09°53'13"W 250.78 FEET TO THE SOUTHERLY BOUNDARY LINE OF SPRING HOLLOW ESTATES PHASE 2 SUBDIVISION; THENCE N73°28'00"E 25.29 FEET ALONG SAID SOUTHERLY BOUNDARY LINE TO THE EXTENSION OF THE WESTERLY BOUNDARY LINE OF THE U.S. FOREST SERVICE AS RECORDED IN BOOK 3030 AT PAGE 768 IN THE OFFICE OF THE DAVIS COUNTY RECORDER, SAID POINT BEING N10°02'47"W 4.93 FEET FROM A FOUND STANDARD USFS MONUMENT MARKED "AP A"; THENCE S10°02'47"E 260.17 FEET TO "AP B" OF SAID WESTERLY BOUNDARY LINE, SAID POINT BEING S10°04'47"E 88.00 FEET FROM A FOUND STANDARD USFS MONUMENT MARKED WITNESS CORNER TO "AP B"; THENCE S19°36'56"W 347.51 FEET TO A FOUND STANDARD USFS MONUMENT MARKED "AP C"; THENCE S21°36'32"W 141.96 FEET TO A FOUND STANDARD USFS MONUMENT MARKED "AP D"; THENCE S04°12'01"E 330.88 FEET TO A FOUND STANDARD USFS MONUMENT MARKED "AP E"; THENCE S01°51'15"W 268.94 FEET TO A FOUND STANDARD USFS MONUMENT MARKED "AP F"; THENCE S22°29'39"E 238.04 FEET TO A FOUND STANDARD USFS MONUMENT MARKED "AP G", SAID POINT ALSO BEING ON THE SECTION LINE; THENCE S89°10'22"W 20.06 FEET ALONG THE SECTION LINE TO THE EASTERLY BOUNDARY LINE OF DEER RIDGE AT HIDDEN SPRINGS SUBDIVISION; THENCE THE FOLLOWING THREE COURSES ALONG SAID EASTERLY BOUNDARY LINE: (1) THENCE N22°21'43"W 238.21 FEET; (2) THENCE N01°56'01"E 122.33 FEET; (3) THENCE N88°03'59"W 53.11 FEET TO THE POINT OF BEGINNING. CONTAINS 1.885 ACRES AND 4 LOTS.

Tax I.D.'s: 07-257-0001 through 07-257-0045







**AMENDED & RESTATED BYLAWS  
OF  
FRUIT HEIGHTS HIDDEN SPRINGS DEER COVE SUB-  
HOMEOWNERS ASSOCIATION, INC.  
(A Neighborhood Association within Hidden Springs Master Community)**

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The following are the Amended & Restated Bylaws of Fruit Heights Hidden Springs Deer Cove Sub-Homeowners Association, Inc. ("Bylaws"), a Utah nonprofit corporation ("Deer Cove Association"). These Bylaws shall replace any prior bylaws, whether or not recorded, and any amendments thereto, through the date these Bylaws are recorded with the Davis County Recorder. Upon recordation of these Bylaws, they are binding upon the Deer Cove Association and all present and future Owners and/or occupants.

**ARTICLE I  
DEFINITIONS**

**Section 1.1 Definitions.** All terms used but not defined herein shall have the meanings given them under that certain Amended & Restated Supplemental Declaration of Covenants, Condition and Restrictions for Deer Cove Subdivision, a Neighborhood and Sub-Association within Hidden Springs Master Community of even date and recorded in the Official Records of the Davis County Recorder's Office (hereinafter "Deer Cove Declaration"), and as the same may be amended from time to time as therein provided.

**ARTICLE II  
MEETINGS OF OWNERS**

**Section 2.1 Annual Meetings.** An annual meeting of the Owners shall be held no less than once each calendar year at a location and time designated by the Board. The Board may set the date, time and location of the annual meeting in accordance with Section 2.3 below.

**Section 2.2 Special Meetings.** Special meetings of the Owners may be called at the request of the Board, or upon written request of the Owners holding at least fifty-one percent (51%) of the total membership. Notwithstanding, the Board remains the only authorized body to act for and in behalf of the Deer Cove Association.

**Section 2.3 Notice of Meetings.** Unless an Owner requests in writing that all notices be provided to said Owner by U.S. mail, all notices shall be provided via: (1) email, or (2) other approved electronic communication. Notice shall be provided at least ten (10) days but no more than sixty (60) days prior to an Annual or Special Meeting. Said notice is effective upon sending the email or electronic communication or upon depositing the notice in the U.S. mail. Such notice shall specify the location, day and time of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Upon becoming an Owner in the Deer Cove Association or upon the written request by the Deer Cove Association, Owners shall provide a valid email address for purpose of

notification related to the Deer Cove Association unless the Owner has opted out by providing a written request to the Deer Cove Association for notice by U.S. mail.

**2.4 Quorum.** Except as otherwise specifically set forth in the Declaration, at any meeting of Owners, a quorum shall be established by those Owners present, in person or by proxy, at a properly noticed meeting. Notwithstanding, the Management Committee remains the only authorized body to act for and in behalf of the Association. Further, a majority of those Owners present in person or proxy at such meeting may vote to reschedule the meeting based upon low attendance.

**Section 2.5 Proxies.** At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the Owner, and filed with the Board, including electronic delivery as provided for in the proxy form provided by the Deer Cove Association. Any proxy delivered to the Board at the meeting must be provided no later than any point in the meeting announced as the final time to deliver proxies. The notice of meeting and/or the proxy form provided with any notice of meeting may also provide a deadline to return proxies, after which time further proxies will not be received. Every proxy shall be revocable and shall automatically terminate upon conveyance by the Owner of his Lot. If conflicting proxy votes for an Owner or Lot exist, said proxy votes will not be counted.

**Section 2.6 Conduct of Meetings.** The President, or in his/her absence another Board Member, shall preside over all meetings. The Secretary or other authorized person shall keep minutes of all meetings and maintain a record of the minutes including, but not limited to: election of Directors, adopted resolutions, adopted Rules and other matters coming before the Owners.

**Section 2.7 Action Taken Without a Meeting.** Any action that may be taken at any annual or special meeting of Owners may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted.

In addition, the Board may obtain approvals and conduct business through mail or email/electronic ballots. The ballot must set forth each proposed action and provide the option of voting for or against each proposed action with the requisite number of Owners approving the action that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted. The ballot must specify the period during which the Deer Cove Association shall accept written ballots for counting. Following this period, the Deer Cove Association shall provide notice of whether such action was or was not approved.

**Section 2.8 Voting.** Only an Owner that is current on all assessments and charges due and owing shall be deemed in good standing and eligible to vote. With regard to any approval that requires a specified percentage of total membership, the total membership shall be



calculated from the total number of Owners eligible to vote at the time such approval is sought.

The Deer Cove Association shall have one class of voting membership, and there shall only be one vote for each Lot in the Subdivision. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Deer Cove Association, that Person shall be entitled to cast the vote appertaining to that Lot. But if more than one of such Person(s) is present, the vote appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The vote appurtenant to any one Lot may not be divided between Owners of such Lot. If the vote of a majority of the Owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

The Deer Cove Association shall honor the vote of a trustee or successor trustee of any trust that is an Owner and shall honor the vote of an individual that is a holder of a Limited or General Durable Power of Attorney with respect to an Owner who is disabled or unavailable as though such vote were the vote of the Owner.

### **ARTICLE III BOARD, SELECTION AND TERM OF OFFICE**

**Section 3.1 Number & Tenure.** The affairs of the Deer Cove Association shall be managed by a Board of Directors composed of five (5) individuals ("Board"). Directors shall serve for a term of two years; provided, however, that initially the Board shall identify two of the five Directors to serve for a one-year term. Thereafter, all Directors elected shall serve for a two-year term. Any change in the number of Directors may be made only by amendment of these Bylaws. The members of the Board of Directors shall serve until their respective successors are elected, or until their death, resignation or removal.

**Section 3.2 Eligibility.** All members of the Board shall be Owners or an Owners' spouse or legal partner that resides with Owner in the Dwelling. Notwithstanding, only one member of a single household can be a member of the Board at any one time. Members of the Board may also be concurrent Board Members of the Master Association. Notwithstanding, situations could arise between the Deer Cove Association and Master Association, where individual Board Members may need to recuse themselves from certain votes and/or decisions.

**Section 3.3 Resignation & Removal.** A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed from the Board, with or without cause, by a vote of at least (51%) of the Owners of the Deer Cove Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining Directors and shall serve until the next Annual or Special Meeting of Owners to elect a replacement.

**Section 3.4 Compensation.** No Director shall receive compensation for any service he may render to the Deer Cove Association. However, any Director may be reimbursed for his actual and approved expenses incurred in the performance of his duties.

**Section 3.5 Action Taken Without a Meeting.** The Directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

**Section 3.6 No Estoppel or Reliance.** No one may rely upon any authorization (from the Board or otherwise) contrary to the terms and conditions of the Governing Documents regardless of circumstances. No claim of estoppel, waiver or similar equitable claims or defense may be raised by anyone related to any alleged reliance.

**Section 3.7 Records Retention.** The Board may take appropriate action to develop, implement and update procedures for record retention and may do so by adoption of Rules or procedures.

#### **ARTICLE IV NOMINATION AND ELECTION OF DIRECTORS**

**Section 4.1 Nomination.** Nomination for election to the Board of Directors may be made by the Board or by Owners in advance or from the floor at the annual meeting.

**Section 4.2 Election.** The election of Directors may be by written ballot, as determined at the discretion of the Board. The persons receiving the largest number of votes shall be elected. Cumulative voting is not authorized.

#### **ARTICLE V MEETINGS OF THE BOARD**

**Section 5.1 Regular Meetings.** Regular meetings of the Board shall be held at least quarterly, or more frequently as determined by the Board. All notices shall be provided by email or other electronic means. Directors are required to provide an email or electronic address for purposes of notice of board meetings. Notice shall be provided at least five (5) days before a meeting, but no more than thirty (30) days.

Owners, and Owner representatives (if designated in writing) may attend meetings and may be present for all discussion, deliberation, and decisions except when the Board is in executive session. Owners shall comply with all reasonable rules established by the presiding officer for their attendance, including a requirement that they remain silent except when comments are solicited by the Board. The Board may limit Owners' comments and/or questions to a specific period of time within the meeting. The Board shall provide email notice in accordance with the Act to Owners that have requested, in writing, to be notified of Board Meetings and have provided a valid email address.

**Section 5.2 Special Meetings.** When, in the discretion of the President or two members of the Board, circumstances require that a meeting be held sooner than the required five (5) days' notice for a regular meeting, a special meeting may be called by the President or by any three (3) Directors, after not less than twenty-four (24) hours' notice to each Director.

**5.3 Quorum.** A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Management Committee.

**Section 5.4 Conduct of Meetings.** The President, or another Director in his absence, shall preside over all meetings. The Secretary or other authorized person shall keep minutes of all meetings and maintain a record of the minutes including, but not limited to: election of Officers, adopted resolutions, adopted Rules and other non-privileged matters coming before the Directors. The Board shall keep a copy of all approved minutes (subject to any record retention policy) and make them reasonably available to Owners upon their written request. Corrections and/or changes to the minutes shall be made at the next meeting of the Board.

## **ARTICLE VI POWERS AND DUTIES OF THE BOARD**

**Section 6.1 Powers and Duties.** The Board shall have all of the powers and duties necessary for the administration of the affairs of the Deer Cove Association in accordance with the provisions of the Governing Documents and Utah law. The Board may delegate its authority and responsibility to a manager and/or officers.

## **ARTICLE VII OFFICERS AND THEIR DUTIES**

**Section 7.1 Enumeration of Officers.** The officers of the Deer Cove Association shall be a president, vice-president, secretary, treasurer and such other office as designated by the Board, who shall at all times be members of the Board.

**Section 7.2 Election of Officers.** The election of officers shall take place at the first Board meeting following the annual meeting of the Owners. Elected officers shall serve in their office for a period of one (1) year. Notwithstanding, nothing in these Bylaws prevent an officer or directors from being re-elected to their respective positions.

**Section 7.3 Special Appointments.** The Board may elect such other officers as the affairs of the Deer Cove Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. Appointed officers, which do not include the elected or appointed Board of Directors, must be: Owners; may not vote; and may be removed by the Board at any time, with or without cause.

**Section 7.4 Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any Director. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by a majority of the Board of Directors at any time, with or without cause. In the event of death, resignation or removal of an officer, his successor shall be selected by the Board and shall serve for the unexpired term of his predecessor.

**Section 7.5 Multiple Offices.** No person shall simultaneously hold more than one of any of the other offices, except temporarily in the case of special offices created pursuant to Section 7.3 of this Article or the death, resignation or removal of an officer.

**Section 7.6 Duties.** The Board may by resolution adopt and identify the respective duties of the officers. The Board may also utilize a manager to assist in these duties. The Board may also adopt rules and policies governing the signing of checks, approval of invoices, deposit of accounts, limits on spending without Board approval and other policies governing the accounts and funds of the Deer Cove Association.

## **ARTICLE VIII COMMITTEES**

**Section 8.1 Committees.** The Board may appoint such committees as deemed appropriate in carrying out its purposes, including appointment of an Architectural Control Committee. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board. The Board may terminate any committee at any time.

## **ARTICLE IX CONDUCT AT DEER COVE ASSOCIATION MEETINGS**

**Section 9.1 Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Deer Cove Association or Board meeting, work session, or similar event regardless of the location of such event.

## **ARTICLE X INDEMNIFICATION**

**Section 10.1 Indemnification.** No director, officer, or member of a committee shall be personally liable for any obligations of the Deer Cove Association or for any duties or obligations arising out of any acts or conduct of said director, officer, or committee member performed for or on behalf of the Deer Cove Association. The Deer Cove Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a director or officer of the Deer Cove Association, or a member of a duly formed committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a director, officer or committee member of

the Deer Cove Association, or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such director, officer, or committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability. However, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's intentional misconduct. The rights accruing to any person under the foregoing provisions of this section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Deer Cove Association to indemnify or reimburse such person in any proper case.

**Section 9.2 Settlement.** The right of any person to be indemnified shall be subject to the right of the Deer Cove Association by the Board of Directors, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Deer Cove Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## ARTICLE XI WAIVER OF PROCEDURAL IRREGULARITIES

**Section 11.1 Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of asserting persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:

- (a) If the objecting person was in attendance at the meeting – they are waived if the issue upon which the objection was based was perceptible and no objection to the particular procedural issue is made at the meeting; or
- (b) If the objecting person was not in attendance at the meeting but has proper notice of the meeting, they are waived; or
- (c) If the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived; or
- (d) If the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within 30 days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting; or
- (e) For any action, vote, or decision that occurred without a meeting, within 30 days of receiving actual notice of the occurrence of the action, vote, or decision.

**Section 11.2 Requirements for Objections.** All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific and shall include identification of the specific provision of the Governing Documents or other law that is alleged to have been violated and a brief statement of the facts supporting the claimed violation.

**Section 11.3 Irregularities that Cannot Be Waived.** Any irregularity that is the result of fraud or that was done knowingly and intentionally in violation the Governing Documents or Utah law.

**ARTICLE XII  
AMENDMENTS/ ORDER OF PRECEDENCE**


**Section 12.1 Amendment.** Any amendment to these Bylaws shall require the consent of at least fifty-one percent (51%) of the total eligible votes in the Deer Cove Association.

**ARTICLE XIII  
FISCAL YEAR**

**Section 13.1 Fiscal Year.** The fiscal year of the Deer Cove Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation. The foregoing Bylaws are adopted by the undersigned and made effective upon recordation in the Office of the Davis County Recorder, State of Utah.

FRUIT HEIGHTS HIDDEN SPRINGS DEER COVE SUB-HOMEOWNERS  
ASSOCIATION, INC.

By:



Mark Cottrell

Its: Board Member