

Recorded at request of Bruce Jackson Fee Paid 32.00  
 Date MAR 24 1975 at 2:09 P M MARGUERITE S. BOURNE Recorder Davis County  
 BY [Signature] Deputy Book 563 Page 977

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DECLARATION OF  
 COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
 THE PHEASANTBROOK  
 PLANNED UNIT DEVELOPMENT

(Part I)

THIS DECLARATION is made and executed this 4 day of MARCH, 1975, by PHEASANTBROOK, a Limited Partnership (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the record owner of that certain tract of Property more particularly described in Article II of this Declaration. Declarant desires to create on said Property a residential development with permanent park and landscaped areas, open spaces, and other Common Areas.

B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration and the various Lots and Subdivisions now or hereafter contained within the Entire Tract hereinafter described to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to maintain the exterior of the Living Units, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah, as a nonprofit corporation, THE PHEASANTBROOK HOME OWNERS ASSOCIATION.

D. Declarant anticipates that in the future additional Subdivisions may be created on other Parcels of real property included within the Entire Tract hereinafter described. In such event Declarant desires that there exist the right to subject said additional Parcels to the terms and provisions of this Declaration.

- Abstracted
- Indexed
- Entered
- Platted
- On Margin
- Compared

NOW, THEREFORE, for the foregoing purposes, Declarant makes the following declarations respecting the Parcel described in Article II hereof and the various Lots and Subdivisions now or hereafter contained within the Entire Tract referred to below.

#### I. DEFINITIONS

When used in this Declaration (including that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

2. Entire Tract shall mean and refer to the following-described tract of land situated in Davis County, Utah, together with all appurtenances thereto:

Beginning at the Southeast corner of Lot 4, Block B, Big Creek Plat, Centerville Townsite Survey, City of Centerville; and running thence North along the West line of Main Street 524.07 feet; thence West 831.18 feet; thence South 244.07 feet; thence West 295.92 feet; thence North 759.50 feet to the South line of Chase Lane; thence West along said south line 367.37 feet; thence South 1039.50 feet; thence East 1494.47 feet to the point of beginning. Containing 20.4 acres.

The Parcel described in Article II of this Declaration comprises only a portion of the Entire Tract. A description of the Entire Tract is set forth herein solely for purposes of identification. This Declaration is not intended to create and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any real property or interests in real property other than: (a) The Parcel which in Article II hereof is expressly subjected to the terms of this Declaration; (b) Such Parcels as may hereafter be expressly subjected to the terms hereof; and (c) Such Lots and Subdivisions as may now or hereafter be expressly subjected to the terms hereof.

3. Parcel shall mean and refer to each portion of the Entire Tract which, within seven years after the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah, is separately subjected to the terms of this Declaration with the intention that it shall thereby comprise a portion of the Pheasantbrook Planned Unit Development. The real property described in Article II of this Declaration constitutes a Parcel.

4. Plat shall mean and refer to any subdivision plat, any plat of a planned unit development, or any plat or map similar to any of the foregoing: (a) which covers a portion of the Entire Tract; (b) which describes or creates one or more Lots; (c) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the Subdivision created by the Plat shall comprise a part of the Development; and (d) which is filed for record in the office of the County Recorder of Davis County, Utah, within seven years after the date on which this Declaration is so filed. Recorded concurrently with this Declaration is a subdivision plat of "The Pheasantbrook Planned Unit Development, Part I," and executed and acknowledged by Declarant on                     , 1974, and creating 24 separately numbered Lots. Said subdivision plat constitutes a Plat.

5. Property shall mean and refer to all of the real property which is covered by a Plat, but excluding any Parcel.

6. Lot shall mean and refer to any of the separately numbered and individually described plots of land described on a Plat: (a) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different Lots; and (b) which is intended to be used as the site of one or more Living Units.

7. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence. Each Living Unit includes a one-car garage.

8. Subdivision shall mean and refer to the entire residential development which is created and covered by a Plat.

9. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Davis County, Utah) of a fee or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

10. Common Areas shall mean and refer to that part of the Property which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon.

11. Limited Common Areas shall mean those Common Areas shown in the Plat (by double cross-hatching) as reserved for the use of certain Living Units to the exclusion of the use thereof by other Living Units.

12. The Pheasantbrook Planned Unit Development or the Development shall, at any point in time, mean, refer to, and consist of all Subdivisions then in existence.

13. Association shall mean and refer to Pheasantbrook Home Owners Association, a Utah nonprofit corporation.

14. Member shall mean and refer to every person who holds membership in the Association.

15. Mortgagee shall mean any person named as a mortgagee or beneficiary under or holder of a deed of trust.

## II. PROPERTY DESCRIPTION

The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following-described real property situated in Davis County, State of Utah:

Begin at a point given as the Southeast Corner of Lot 4, Block "B", Big Creek Plat, Centerville Townsite Survey, said Point being South 66.0 feet to the Centerline of Chase Lane and East Parallel to the Section line 913.97 feet to a monument in the centerline of Main Street and South 1069.44 feet along said Centerline and  $S89^{\circ}53'25''$  W 33.00 feet from the North Quarter corner of Section 7, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and running thence North 209.07 feet, thence West 175.00 feet, thence North 315.00 feet, thence West 367.33 feet, thence South 225.00 feet, thence East 173.82 feet, thence South 296.19 feet thence  $N 89^{\circ}30'06''$  E 283.825 feet, thence South 5.35 feet, thence East 84.70 feet to the Point of Beginning.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent they are located outside the Lots included within the above-described tract.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (a) To construct a Living

Unit on each and every Lot and to improve the Common Areas with such facilities (including, but not limited to, roads, recreational facilities, walkways, and various landscaped areas) designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate; (b) To develop and improve, as Declarant may in its sole discretion determine to be appropriate, each and every portion of the Entire Tract. If, pursuant to the foregoing reservations, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire seven years after the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

### III. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have the following-described two classes of voting membership:

Class A. Class A Members shall be all Owners other than the Declarant. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to four (4) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member.

(b) The expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

#### IV. PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.

2. Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ contained within the Pheasantbrook Planned Unit Development (Part I), as the same is identified in the Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ and in the "Declaration of Covenants, Conditions, and Restrictions of the Pheasantbrook Planned Unit Development (Part I)" recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, of the official records of Davis County, Utah. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions, and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

3. Transfer of Title. Declarant agrees: (a) that it shall, on or before six months from the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah, convey to the Association title to the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities); and (b) that it shall, on or before one year from the date on which each additional Parcel is subjected to the terms of this Declaration, convey to the Association a similar title to the Common Areas of such Parcel.

4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to suspend a Member's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(b) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(c) The right of the City of Centerville, the County of Davis, and any other governmental or quasi-governmental body having jurisdiction over the property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer all or 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. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and

the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. Limited Common Areas. The Limited Common Areas of the development include garbage storage areas adjacent to the Living Units and one uncovered parking space for each Lot. Such parking spaces, identified on the Plat with the same number by which the Lot is identified shall be used in connection with such Lot to the exclusion of the use thereof by other Lot Owners except by invitation.

6. Encroachments. If any portion of a Living Unit constructed by Declarant, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed by Declarant, encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

#### V. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. 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; and (b) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself of his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; maintenance and repair of the exteriors of Living Units; establishing and funding a reserve to cover major maintenance or repair of the exteriors of Living Units; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.



3. Maximum Monthly Assessment. As of the date set under Section 7 of this Article each Lot shall be subject to a monthly assessment of not more than \$35.00. From and after July 1, 1975 the maximum monthly assessment may be increased or decreased so long as the change is assented to by more than fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The Board of Directors of the Association may from time to time and in its discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.

4. Special Assessments. From and after the date set under Section 7 of this Article, 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 repair or replacement in connection with the Common Areas or the exteriors of Living Units. Any such special assessment must be assented to by more than fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum required for any action authorized by Section 3 or 4 above shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Sections 3 and 4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty five (45) days following the immediately preceding meeting.

6. Uniform Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform rate for all Lots. Declarant, for each unsold Lot owned by it in the development, shall pay both monthly and special assessments as herein provided for all Lot Owners.

7. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the date deed is delivered to purchaser of a Lot (or contract of sale)

or the date of occupancy under an occupancy agreement, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy, as the case may be. At least 15 days prior to the effective date of any change in amount of the monthly assessment the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

8. Certificate Regarding Payment. Upon the request of any Owner or Prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

9. Effect of Nonpayment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot, provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments become due. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payment. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

10. Tax Collection by Davis County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Davis County. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Davis County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

## VI. OPERATION AND MAINTENANCE

1. Maintenance of Lots. The interior of each Lot and Living Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Lot or Living Unit. The Association shall have no obligation regarding maintenance except as herein elsewhere provided.

2. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair.

3. Exterior Maintenance. (a) In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, exterior fence surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

(b) In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

4. Utilities. The Association shall pay for all utility services furnished to each Lot except telephone and any other services which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

5. Insurance. The Association shall secure and at all times maintain the following insurance coverages:

(a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "The Pheasantbrook Homeowners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear."

(b) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$250,000.00 for any one person injured, \$1,000,000.00 for all persons injured in any one accident, and \$100,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

- (1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.
- (2) All policies shall be written by a company holding a rating of "AA" or better from Best's Insurance Reports.
- (3) The Association shall have the authority to adjust losses.
- (4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.
- (5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent, or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.
- (6) Notwithstanding any provisions to the contrary herein, so long as the Federal National Mortgage Association ("FNMA") or Government National Mortgage Association holds a mortgage or beneficial interest in a trust deed on a Living Unit in the project, or owns a Living Unit, and such Living Units are insured under a blanket or master type casualty insurance policy maintained by the Association, then such policy shall insure the Living Units with fire and extended coverage for the full insurable value, with replacement cost coverage, and agreed value endorsement. Such policy shall also meet all other requirements and contain such other coverage and endorsements as may be required from time to time by FNMA or GNMA. The Association shall also maintain in effect a fidelity bond meeting all FNMA or GNMA requirements.

6. Manager. The Association may carry out through a Property Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association, shall be responsible for managing the Property for the benefit

of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

7. Terms of Agreement. Any agreement for professional management of the project which may be entered into by the Association shall call for a term not exceeding one year, renewable by agreement of the parties for successive one-year periods and shall provide that for cause such management agreement may be terminated by the Association upon not in excess of thirty (30) days written notice.

#### VII. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.

2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. Each Living Unit shall be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

3. Pets. No animals other than household pets shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. Whenever a pet is allowed to leave a Lot it shall be either on a leash or in a cage.

4. No Leasing of Common Areas. None of the Common Areas, recreational facilities, parking space or other amenities contemplated as a part of the development shall be leased to the Owners or to the Association nor shall the same be subject to any other restrictions in favor of the Declarant or any affiliate of such Declarant except as herein expressly provided.

5. Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, for the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Developer.

#### VIII. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Directors of the Association shall appoint a three-member Committee the function of which shall be to insure that all improvements and landscapint within the Property harmonize with exist-

ing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit which is visible from the Common Areas, landscaping, or other improvement of a Lot which is visible from the Common Areas shall be constructed, maintained, or accomplished, and no alteration, repainting, or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupy unimproved portions of the Common Areas in the vicinity of the activity.

6. No Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this Article VIII.

7. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah.

8. Declarant's Obligation. Declarant hereby covenants in favor of each Owner: (a) that all Living Units erected by it and all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another; and (b) that on or before two (2) years from the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah there shall be substantially completed and usable as part of the Common Areas roads, fences, swimming pool and clubhouse, all approximately in the locations shown on the Plat.

## IX. EXPANSION OF DEVELOPMENT

1. Addition of Subdivisions. The Development may be expanded by the recordation of a Plat and related instrument: (a) which is either executed by Declarant or is executed by another party and consented to in writing by Declarant; (b) which refer to and identify this Declaration; and (c) in which there is specifically expressed the intention that the Subdivision created by the Plat shall comprise a part of the Development. From and after the recordation of such a Plat and related instrument the Development shall include the Subdivision involved and thereafter the Property and all Lots contained therein shall be subject to all of the provisions of this Declaration.

2. Limitation. The right to expand the Development through the addition of Subdivisions shall be limited as follows: (a) The Parcel or Property involved must be contained within the Entire Tract; (b) The nature and total number of Lots included in all Subdivisions must be such that the total number of Living Units intended therefor does not exceed 148; and (c) Any instrument adding a Subdivision to the Development must be filed for record in the office of the County Recorder of Davis County, Utah within seven years after the date on which this Declaration is so filed.

3. No Obligation to Develop. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant or any assignee of Declarant any obligation respecting, or to restrict Declarant or any such assignee in any way with regard to: (a) The submission of any portion of the Entire Tract to the provisions of this Declaration; (b) The creation, construction, or addition to the Development of any Subdivision; (c) The carrying out in any particular way or within any particular time of any developmental activities which may be undertaken; or (d) The taking of any particular action with respect to the Entire Tract, the Development, or any Subdivision.

4. Required Method of Development. The improvements to be situated on the Parcel described in Article II hereof consist of a swimming pool, a clubhouse, arterial roads, and such related structures and facilities as Declarant may reasonably deem to be appropriate. Declarant intends and hereby obligates itself: (a) To substantially complete construction of such improvements within two (2) years after the date on which this Declaration is filed for record; (b) To substantially complete or cause to be substantially completed construction of the improvements to be situated on any additional Parcel within two (2) years after the date of recordation of the instrument which adds the Parcel concerned to the Development; (c) To conduct or cause to be conducted development of the Entire Tract in such a manner that the ability to use and enjoy the Development as it exists at any

point in time shall not be dependent upon the inclusion of any additional Subdivision; and (d) To design or cause to be designed any additional Subdivision in such a way that they are architecturally compatible with the Development as it previously existed and to construct the same or cause the same to be constructed in a good and workmanlike manner.

5. Developer's Right to Amend. Until all portions of the Entire Tract are included in the Development, or until the right to enlarge the Development through the addition of Subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable: (a) To more accurately express the intent of any provision of this Declaration in light of then existing circumstances or information; (b) To better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by this Declaration; or (c) To facilitate the practical, technical, administrative, or functional integration of any additional Parcel or Subdivision into the Development.

#### X. PARTY WALLS

1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Living Units upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.



6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

#### XI. MORTGAGE PROTECTION

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

1. Notice of Default. In the event an Owner neglects for a period of 30 days or more to cure any failure on his part to perform any of his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's Lot.

2. Abandonment, Termination, Etc. Unless all of the Mortgagees of the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise:

(a) To abandon or terminate the project or to abandon or terminate the arrangement which was established by the Declarant and the Platt of the project;

(b) To partition or subdivide any Lot or the Common Areas;

(c) To abandon, partition, subdivide, encumber, sell, hypothecate, transfer, or otherwise encumber all or any part of the Common Areas except for the creating of easements and similar purposes consistent with the intended use of the Common Areas; or

(d) To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

3. Notice of Substantial Damage or Destruction. The Association shall notify all institutional holders of any first mortgage lien or equivalent security interest on a Lot in writing in the event that there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be an excess of, \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction.

4. Condemnation or Eminent Domain Proceedings. The Association shall give written notice to all institutional holders of any first mortgage lien or equivalent security interest

of any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same.

5. Hazard Policy to Include Standard Mortgagee Clause. Each hazard policy of the insurance shall include the standard Mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interest of Mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Mortgagee at least 10 days in advance of the effective date of any reduction in or cancellation of the policy.

6. Right of Inspection of Records, Statements, Etc. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice to:

(a) Inspect the books and records of the development during normal business hours;

(b) Receive an annual audited financial statement of the development within 90 days following the end of any fiscal year of the development; and

(c) Receive fifteen days written notice of all meetings of the Association.

7. Rights Upon Foreclosure of Mortgage. Each holder of a first mortgage (or deed of trust) on a Lot who comes into possession of the Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots including the mortgaged Lot.

8. Mortgagees Rights Concerning Amendments. Except as concerns the right of Declarant to amend the Declaration and related documents upon expansion of the project as contained in Article IX of the Declaration, no material amendment to the Declaration, By-Laws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least 75% of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment.

9. No Right of First Refusal. Neither the Association nor the Owners acting as a group, shall enforce, assert, or claim any right of first refusal to purchase a Lot, or any option to buy a Lot in this development.

## XII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as a Member or Owner, at the latest address for such person appearing, in the records of the Association at the time of mailing.

2. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

3. Amendment. Any amendment to this Declaration shall require: (a) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and, so long as the Class B membership exists, (b) the written consent of Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Declarant if the Class B membership then exists). In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

5. Reserve Fund. To the extent the same is reasonably possible and practicable and is not inconsistent with the significant interest of the Lot Owners, the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

6. Lease Provisions. Any Owner may lease his Lot; provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing and must provide, inter alia, that:

(a) The terms of the lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the By-Laws; and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

7. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

8. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the

singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

9. Property Part of Development. The Property shall comprise a part of the Pheasantbrook Planned Unit Development.

10. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Developer, all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration, and failure to comply with any of the foregoing shall be ground for an action by the Association or any agrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

11. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Davis County, Utah.

EXECUTED the day and year first above written.

"Declarant":

PHEASANTBROOK, a Limited Partnershi

By Bruce Jackson  
Bruce Jackson, General Partner

STATE OF UTAH )  
                  : ss.  
COUNTY OF DAVIS)

On this 34<sup>th</sup> day of March, 1975, personally appeared before me BRUCE JACKSON, who being by me duly sworn, did say that he is the General Partner of PHEASANTBROOK, a Limited Partnership, and that the foregoing Declaration of Covenants, Conditions, and Restrictions of the Pheasantbrook Planned Unit Development (Part I) was signed on behalf of said Limited Partnership, and said Bruce Jackson acknowledged to me that he executed the same for and in behalf of said Limited Partnership.

My Commission Expires:

June 28, 1976

[Signature]  
Notary Public  
Residing at Salt Lake City, Utah