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Amended and Restated
Declaration
of
Pheasantbrook
Home Owners Association
A PLANNED UNIT DEVELOPMENT

June 2011

TABLE OF CONTENTS

Pheasantbrook Home Owners Association

ARTICLE 1: DEFINITIONS 2

 Association 2

 Bylaws 2

 Common Areas 2

 Entire Tract 2

 Limited Common Areas 2

 Living Unit 2

 Lot 3

 Member 3

 Mortgagee 3

 Owner 2

 Parcel 2

 The Pheasantbrook Planned Unit Development 3

 Plat 3

 Property 3

 PUD 3

 Restated Declaration 3

 Subdivision 4

ARTICLE 2: PROPERTY DESCRIPTION 4

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS 4

 Membership 4

 Voting Rights 4

 Bylaws 4

 Multiple Ownership Interests 4

ARTICLE 4: PROPERTY RIGHTS IN COMMON AREAS 4

 Easement of Enjoyment 4

 Form for Conveyancing 5

 Limitation on Easement 5

 Limited Common 6

ARTICLE 5: ASSESSMENTS 6

 Personal Obligation and Lien 6

 Purpose of Assessments 6

 Maximum Monthly Assessment 6

 Special Assessments 7

 Quorum Requirements 7

 Uniform Rate of Assessment 7

 Monthly Assessment Due Dates 7

 Certificate Regarding Payment 7

 Effect of Nonpayment - Remedies 7

ARTICLE 6: OPERATION AND MAINTENANCE	8
Maintenance of Lots	8
Operation and Maintenance by Association	8
Vinyl Fences	8
Exterior Maintenance	9
Interior Unit Maintenance	10
Utilities	11
Manager	11
Terms of Agreement	11
Management of the Association	11
 ARTICLE 7: INSURANCE	
Fire and Casualty Insurance	11
 ARTICLE 8: USE RESTRICTIONS	13
Use of Common Areas	13
Use of Lots and Living Units	13
Restrictions on Leasing of Common Areas	13
Use of Garages	13
Use of Parking Areas	13
 ARTICLE 9: ARCHITECTURAL CONTROL	14
Architectural Control Committee	14
Submission to Committee	14
Standard	14
Approval Procedure	14
Construction	14
No Liability for Damages	14
Removal of Non-Approved Improvement	14
 ARTICLE 10: PARTY WALLS	15
General Rules of Law to Apply	15
Sharing of Repair and Maintenance	15
Destruction by Fire or Other Casualty	15
Weatherproofing	15
Right to Contribution Runs with Land	15
 ARTICLE 11: MORTGAGE PROTECTION	15
Notice of Default	15
Abandonment, Termination, Etc.	15
Notice of Substantial Damage or Destruction	16
Condemnation or Eminent Domain Proceedings	16
Hazard Policy to Include Standard Mortgagee Clause	16
Right of Inspection of Records, Statements, Etc.	16
Rights Upon Foreclosure of Mortgage	16
Eligible Mortgagees Rights Concerning Amendments	17
No Right of First Refusal	17

Eligible Mortgagee 17

ARTICLE 12: RENTER RESTRICTIONS 17

ARTICLE 13: PETS 19

ARTICLE 14: ATTORNEY FEES 20

ARTICLE 15: NUISANCE AND ILLEGAL ACTIVITIES 20

ARTICLE 16: SMOKING PROHIBITED IN OR NEAR ALL COMMON AREAS 21

ARTICLE 17: DISPUTE RESOLUTION AND LIMITATION ON LITIGATION 21

ARTICLE 18: RESERVE ANALYSIS 24

ARTICLE 19: MISCELLANEOUS 25

 Notices 25

 Rules and Regulations 25

 Amendment 25

 Consent in Lieu of Vote 26

 Interpretation 26

 Property Part of Development 26

 Covenants to Run with Land 26

 Effective Date 27

LEGAL DESCRIPTION A

MAINTENANCE CHART B

BYLAWS C

PET OWNERSHIP AGREEMENT AND COMMUNITY RULES D

LIST OF UNITS OCCUPIED BY A NON UNIT OWNER E

Amended and Restated
Declaration
of
Pheasantbrook
Home Owners Association
A PLANNED UNIT DEVELOPMENT

THIS Amended and Restated Declaration of Pheasantbrook Home Owners Association (hereinafter called the "Restated Declaration"), is made by the Pheasantbrook Home Owners Association, a Utah nonprofit corporation, located in Centerville, Utah, (hereinafter called the "Association" or "Pheasantbrook").

RECITALS

WHEREAS, Pheasantbrook was created by the Declaration of Covenants, Conditions and Restrictions for Pheasantbrook dated March 24, 1975, and recorded in the Recorders office of Davis County, Utah, and there have been various amendments thereto (all of which documents recorded prior to this Amended and Restated Declaration are collectively referred to as prior CC&Rs); and

WHEREAS, Pheasantbrook Home Owners desire to amend the prior CC&Rs to update and modify provisions in the prior CC&Rs; and

WHEREAS, the Home Owners of Pheasantbrook desire to (1) preserve and enhance the quality of life at Pheasantbrook, (2) prevent disregard for the welfare and consideration of others, (3) prevent nuisances and inconvenience to the residents of Pheasantbrook, (4) clarify the responsibility of the Board of Directors and the Lot Owners relative to maintenance of Units and Common Area, (5) enforce the rules of the association more consistently, fairly and economically, and (6) to generally update, amend and restate the Pheasantbrook CC&Rs;

NOW THEREFORE, the Home Owners of Pheasantbrook hereby amend, replace and restate all prior CC&Rs for Pheasantbrook recorded against the real property located in Davis County, Utah, known as Pheasantbrook and more fully described on Exhibit "A" attached hereto. If there is any conflict between this Restated Declaration and prior CC&Rs, this Restated Declaration shall control.

The Pheasantbrook Declaration and prior CC&Rs are hereby amended and restated as follows:

Amendments

ARTICLE 1

DEFINITIONS

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

- 1.1 **Association** shall mean and refer to Pheasantbrook Home Owners Association, A Utah nonprofit corporation.
- 1.2 **Bylaws** shall mean the bylaws of the Pheasantbrook Home Owners Association, a Utah nonprofit corporation, a copy of which are attached hereto as Exhibit "C" and incorporated herein.
- 1.3 **Common Areas** shall mean and refer to that part of the Property which is not included within the Lots, including without limiting the generality of the foregoing, all streets, parking areas, open spaces, and other undesignated areas shown on the Plat Map as Common Areas, together with all equipment, facilities, and other personal property and real property improvements located thereon and/or owned by the Association for the use and benefit of all Owners, all playgrounds, trees, bushes and other landscaping, and all other personal property and real property improvements hereafter purchased in accordance with this Restated Declaration with monies as a common expense. The Common Areas shall be managed and controlled by the Association for the common use and enjoyment of the Owners as more fully described in this Restated Declaration.
- 1.4 **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 20.0 acres.
- 1.5 **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.
- 1.6 **Living Unit** or **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, except for Leisure home Units which have a two-car

garage.

- 1.7 **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.
- 1.8 **Member** shall mean and refer to every person who holds membership in the Association.
- 1.9 **Mortgagee** shall mean any person named as a mortgagee or beneficiary under or holder of a deed of trust.
- 1.10 **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. An Owner shall not include someone who purchases a Lot under an unrecorded contract since Pheasantbrook has no way of knowing who an Owner is unless the transfer of an ownership interest is recorded at the Davis County Recorders Office.
- 1.11 **Parcel** shall mean and refer to each portion of the Entire Tract which is subjected to the terms of this Restated Declaration with the intention that it shall thereby comprise a portion of the Pheasantbrook Planned Unit Development
- 1.12 **The Pheasantbrook Planned Unit Development or the Development** shall, at any point in time, mean, refer to, and consist of all phases of the Pheasantbrook Subdivision in existence as of the date this Restated Declaration is recorded.
- 1.13 **Plat or Plat Map** 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, or any plat map recorded in the Davis County Recorder's Office which describes or creates any Common Area and one or more Lots.
- 1.14 **Property** shall mean and refer to all of the real property which is covered by a Plat, but not excluding any Parcel.
- 1.15 **PUD** shall mean a "Planned Unit Development" subject to the provisions of the Utah Community Association Act, U.C.A. 57-8a-101 et al. Pheasantbrook is a PUD.
- 1.16 **Restated Declaration** shall mean and refer to this Amended and Restated Declaration of

Covenants, Conditions and Restrictions.

- 1.17 **Subdivision** shall mean and refer to the entire residential Development which is created and covered by a Plat.

ARTICLE 2

PROPERTY DESCRIPTION

- 2.1 The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Restated Declaration /consists of the real property defined in Section 1.4 above as the Entire Tract, located in Davis County, State of Utah, and known as Pheasantbrook, a planned unit development. The Units that are subject to the provisions of this Restated Declaration are more fully described on Exhibit "A" attached hereto, and include the Pheasantbrook Common Area which is appurtenant to each Unit.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS

- 3.1 **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.
- 3.2 **Voting Rights** Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held.
- 3.3 **Bylaws** The Bylaws attached hereto as Exhibit "C" shall govern the affairs of the Association as set forth therein and shall be binding on all Lot Owners and upon the Association.
- 3.4 **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, by proxy, or by absentee ballot, 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.

ARTICLE 4

PROPERTY RIGHTS IN COMMON AREAS

- 4.1 **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.

- 4.2 **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, 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" 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 form, 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 Restated Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

- 4.3 **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 Restated 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 and 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;
- 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 a two-thirds (2/3) vote of Members at a meeting duly called for such 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;

E. The right of the Association to convert, modify or change the Common Areas or a Common Area amenity (including but not limited to the clubhouse, swimming pool or tennis courts) to any use as determined by a vote of the Members of the Association at a meeting, wherein proper notice has been given as set forth in the Pheasantbrook Bylaws, and wherein two-thirds ($\frac{2}{3}$) of the Unit Owners in attendance, in person or by proxy, at such meeting vote to approve of the change in use. When approval of a change in the use of the Common Area or a Common Area amenity has been approved as set forth herein, the Board shall not be required to record an amendment to the declaration with the Davis County Recorders Office.

4.4 **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. Living Units with two car garages do not have an uncovered parking space as Limited Common Areas. 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.

ARTICLE 5

ASSESSMENTS

5.1 **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 or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot.

5.2 **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, 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 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 Restated Declaration or its Articles of Incorporation.

5.3 **Maximum Monthly Assessment** Except as set forth in Article 18 hereof, 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 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.

- 5.4 **Special Assessments** 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. Except as set forth in Article 18 hereof, 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.
- 5.5 **Quorum Requirements** The quorum required for any action authorized by Section 5.3 or 5.4 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, another meeting may be called (subject to the notice requirements set forth in Sections 5.3 and 5.4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. If a quorum is not present at the second meeting, another meeting may be called (subject to the notice requirements set forth in Sections 5.3 and 5.4) at which a quorum shall be made up of all those in attendance at the meeting. No such subsequent meeting shall be held more than forty five (45) days following the immediately preceding meeting.
- 5.6 **Uniform Rate of Assessment** Both monthly and special assessments shall be fixed at a uniform rate for all Lots.
- 5.7 **Monthly Assessment Due Dates** The monthly assessments provided for herein shall commence as to all Lots on the date a deed is delivered to a purchaser of a Lot (or contract of sale). 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.
- 5.8 **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.
- 5.9 **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 also pass to the Owner's successors in title whenever the successor in title receives title in a voluntary conveyance and not by virtue of a foreclosure. If the assessment is not paid within ten days after the due date, the assessment shall have added thereto a late fee as established by the Board and set forth in the Bylaws. If the assessment is not paid within ninety days after the due date, simple interest at a rate of 12% per annum will be accrued against the balance owing until the assessment is paid in full. The Association may bring an action either against the delinquent Owner who is personally liable, against the successor in title, and/or it may foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorney fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

ARTICLE 6

OPERATION AND MAINTENANCE

- 6.1 **Maintenance of Lots** Consistent with the division of duties set forth in Exhibit "B", the interior of each Lot and the 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. For purposes of this Restated Declaration, the phrase "interior of each Lot and Living Unit" includes the fenced in patio area within each Lot and the garage.
- 6.2 **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 the Common Areas clean, functional, attractive, and generally in good condition and repair.
- 6.3 **Vinyl Fences** An existing wood fence enclosing a Unit's patio shall be replaced by a vinyl fence prior to such time as the existing wood fence becomes dilapidated (defined below).
- A. The purchase and installation of a new vinyl fence to replace an existing wood fence will be on a shared cost basis wherein the Association and the Unit Owner shall each pay one-half the cost of labor and material to install a new vinyl fence. Thereafter the Unit Owner shall pay to maintain, repair and replace the vinyl fence, except to the extent repair or replacement of a vinyl fence is covered by the Association's insurance (the Unit Owner to pay all insurance deductibles).
- B. As a wood fence approaches a state of dilapidation, the Board shall notify a Unit Owner the amount the Unit Owner must pay to the Association as the Unit Owner's one-half share for the new vinyl fence (the "Vinyl Fence Fee"), Should a Unit Owner not pay to the Association the Vinyl Fence Fee within six months from the date the Association

provides written notice to a Unit Owner that their fence is becoming dilapidated, then the Vinyl Fence Fee shall constitute a lien against the Unit Owner's Unit and be an assessment collectible as a common expense from that Unit Owner.

- C. When a Unit Owner would like their existing wood fence replaced, a Unit Owner shall provide written notice to the Board informing the Board of the Unit Owner's desire to replace their wood fence. The Board shall inform the Unit Owner of the amount of the Vinyl Fence Fee that must be paid to the Association by the Unit Owner. The Unit Owner shall pay to the Association the Vinyl Fence Fee prior to the time the Association has any work performed to install the new vinyl fence and replace the wood fence.
- D. Priority in the allocation of Association funds to pay for the installation of a new vinyl fence will be given first, to wooden fences which are dilapidated; second, to fences that are in need of replacement due to their unsightly appearance; and third, to Owners who would like a vinyl fence for any other reason. The Board may limit the number of vinyl fences that may be installed each year based on the Association's financial needs and resources.
- E. As used herein the term "dilapidated" shall mean a fence that: (a) is in a state of disrepair, ruin or decay, (b) is a safety hazard, (c) constitutes a nuisance or an eyesore, or (d) is in a condition wherein the cost to repair the fence relative to the cost of replacing the fence would not be economically feasible as determined by the sole discretion of the Board.

6.4 Exterior Maintenance

- A. In addition to maintenance of the Common areas, the Association shall insure, maintain, repair, and landscape the Lots and Living Units and the Common Areas according to the Maintenance Chart attached hereto as Exhibit "B". Consistent with the provisions of Exhibit "B", the Association shall provide exterior maintenance on each lot as follows: paint, maintain and repair exterior walls and surfaces; replacement and care of roofs, chimneys, gutters, downspouts, trees, shrubs, grass, brickwork (with the exception of driveways or sidewalks, walks and other exterior brick or concrete improvements). Such exterior maintenance shall not include glass surfaces or Limited Common Areas. Should any provision of this 6.4 of this Restated Declaration be in conflict with or contrary to Exhibit "B", Exhibit "B" shall control. Nothing herein shall require the Association to replace, repair or construct a Living Unit that is damaged or destroyed and for which the Association's insurance policy does not provide coverage (e.g., property settling, earthquake damage). Each Unit Owner shall provide condominium type insurance coverage for their Living Unit and any additional type coverage as determined by the Unit Owner.
- B. In the event that the need for maintenance or repair to the exterior of the Living Unit and other improvements on the Lot is caused through the willful or negligent acts of its Owner, including but not limited to failure by a Unit Owner to timely complete construction of an improvement as authorized pursuant to paragraph 9.5 herein, or is

due to the willful or negligent acts of the family, guests, or invitees of the Owner of the Unit, to the extent not covered by the Association's insurance, the cost of such exterior maintenance or repair, including the cost of the Association's insurance deductible, shall be added to and become part of the assessment to which such Living Unit is subject.

6.5 Interior Unit Maintenance.

- A. Each Owner shall, at his sole expense, have the right and the duty to keep the interior of his Unit and its equipment, appliances, and appurtenances in good order, condition and repair and shall do all redecorating and painting at any time necessary to maintain the good appearance and condition of his Unit. Each Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water and sewer lines serving only the Owner's Unit, gas lines serving only the Owner's Unit, water heaters, furnaces, lighting fixtures, refrigerators, dishwashers, disposals, ranges, fans, heating and air conditioning equipment, or other equipment, electrical fixtures or appliances which are in his Unit and service his Unit. If a water, sewer, gas or other utility line serves more than one Unit, the Owner is responsible for any repair and maintenance costs associated with such utility line from the point the utility line no longer provides service to two Units.
- B. Without limiting the generality of the foregoing, each Owner shall have the right and the duty, at his sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile, and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim, and the perimeter walls of the Unit and the surfaces of the bearing walls located within his Unit and shall not permit or commit waste of his Unit or the Common Areas. Each Owner shall have the right to substitute new finished surfaces for the finished surfaces then existing on said ceilings, floors and walls. Each Owner and his agent has the right to maintain, repair, paint, finish, alter, substitute, add or remove any fixtures attached to said ceilings, floors or walls. This section shall not be construed as permitting an interference with or damage to the structural integrity of the building or interference with the use and enjoyment of the Common Areas or of the other Units or any of them, nor shall it be construed to limit the powers or obligations of the Board hereunder.
- C. Inasmuch as the design and intent of this Restated Declaration is to place responsibility for maintenance and repair of the Living Unit on the Owner thereof, in the event the need for maintenance or repair of the exterior or the interior of the Living Unit is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, to the extent not covered by the Association's insurance, the cost of such maintenance or repairs, including the cost of the Association's insurance deductible, shall be added to and become a part of the assessment to which such lot is subject.
- D. Attached hereto as Exhibit "B" and incorporated herein by this reference, is an Association Maintenance Chart, which indicates those areas within the Association which shall be maintained, repaired and replaced by the Association and which shall be maintained, repaired and replaced by the Lot Owners. Notwithstanding any other

provisions contained in this Restated Declaration, the provisions of the Maintenance Chart shall control.

- 6.6 **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.
- 6.7 **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.
- 6.8 **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.
- 6.9 **Management of the Association.** The Association is managed by the Pheasantbrook Home Owners Association, a Utah nonprofit corporation. All members of the Association are members of Pheasantbrook Home Owners Association.

ARTICLE 7

INSURANCE

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

- 7.1 **Fire and Casualty Insurance.** A policy or policies of fire and casualty insurance on the Common Areas, Living Units and buildings at Pheasantbrook in such amounts as shall provide for replacement thereof in the event of damage or destruction thereto. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection to the Common Areas and to the improvements, Living Units and buildings on the Lots. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice. The Association shall not be responsible for nor purchase insurance coverage on the contents of the Living Units. Each Owner is required to obtain insurance (renters or condominium unit type owners coverage) for their own protection and benefit and as a requirement of any loan they may have on their Unit, which Owner's insurance is for the purpose of insuring the contents, appliances and interior portions of the Unit against fire damage, water damage, water pipe damage, theft and

vandalism, plus those additional types of losses normally covered by renters or condominium insurance that are not covered under the Association's fire and casualty policy. Each Owner shall provide a copy of this provision to their insurance agent to make sure they obtain adequate and complete insurance coverage.

- 7.2 A policy or policies insuring the Owners, the Association, and its directors, officers, and agents, in connection with the use or operation of the Common Areas which may arise among themselves, to the public, and to any Limits of liability under such insurance shall be not less than one million dollars (\$1,000,000) for any one person injured, two million dollars (\$2,000,000) for all persons injured in any one accident, and five hundred thousand dollars (\$500,000) 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.
- 7.3 The following additional provisions shall apply with respect to insurance:
- A. 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.
 - B. The Association shall have the authority to adjust losses.
 - C. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.
 - D. 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 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.
 - E. 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.

- F. All policies shall be written by a company holding a rating of "A" ("excellent") or better from A.M. Best Company.

ARTICLE 8

USE RESTRICTIONS

- 8.1 **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 to any portion of the Common Areas, except as provided in 8.3 below.
- 8.2 **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 could result in an increase in the cost of any insurance covering the Common Areas.
- 8.3 **Restrictions on Leasing of Common Areas** None of the Common Areas, recreational facilities, parking space or other amenities shall be leased or rented to a non Owner. The Association may charge a reasonable fee to Owners for use of recreational common areas such as, but not limited to, the clubhouse, tennis courts, swimming pool and RV storage area, provided such fee and the amount thereof shall be established by a majority vote of at least 51% of those Owners in attendance at the Association's annual meeting or at a special meeting of the Association called for the purpose of voting to establish a fee schedule for the use of recreational common areas. Any fee collected pursuant to this paragraph shall be placed in a separate account, one such account for each separate recreational common area, and the funds therein shall be used for the upkeep and repair of the amenity for which the fee was charged.
- 8.4 **Use of Garages** No Owner of Lot or Living Unit, nor any renter, lessee, or occupant of Lot or Living Unit, shall cause or permit the use, renovation, reconstruction, outfitting, making over or furnishing of a garage or any portion of a garage located in the Development into a kitchen, dining room, bedroom, family room, recreation room, dining room, study, den, bathroom or other similar or dissimilar areas intended for the day to day occupancy by those occupying those portions of the Living Unit originally designed for human occupancy. It is the express intention of this provision that the garage portion of a Living Unit be continued to be used as a garage for the Parking of vehicles as originally designed. The Association shall be entitled to obtain injunctive relief to terminate any conversion in progress in violation hereof, prohibit any use of such area in violation of this provision, or to compel an Owner of a Living Unit to restore said garage to such a condition as shall permit its use for parking of vehicles.
- 8.5 **Use of Parking Areas** The Association shall have the authority to make rules and regulations regarding parking in the Development and to designate no-parking areas within

the Development, for the purpose of promoting the health and safety of residents of the Development. The Association shall have the authority to enforce such rules and regulations, including, without limitation, the authority to have vehicles towed or impounded at the expense of the owner of such vehicles, and to levy and collect fines.

ARTICLE 9

ARCHITECTURAL CONTROL

- 9.1 **Architectural Control Committee** The Board of Directors of the Association shall appoint a three-member Architectural Control Committee of Owners the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.
- 9.2 **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.
- 9.3 **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.
- 9.4 **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.
- 9.5 **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.
- 9.6 **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 89.
- 9.7 **Removal of Non-Approved Improvement** Should any Owner or resident cause any improvement to be made without first complying with the procedures set forth herein and obtaining permission from the Committee, the Board may require the improvement to be removed at the Owner's sole cost and expense.

ARTICLE 10

PARTY WALLS

- 10.1 **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 the law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- 10.2 **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.
- 10.3 **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 other under any rule of law regarding liability for negligent or willful acts or omissions.
- 10.4 **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.
- 10.5 **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.

ARTICLE 11

MORTGAGE PROTECTION

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

- 11.1 **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 Restated Declaration, the Association shall give written notice of such fact to the Eligible Mortgagee of any first mortgage covering such Owner's Lot.
- 11.2 **Abandonment, Termination, Etc.** Unless all of the Eligible 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;

- 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.
- 11.3 **Notice of Substantial Damage or Destruction** The Association shall notify all institutional Eligible Mortgagee 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.
- 11.4 **Condemnation or Eminent Domain Proceedings** The Association shall give written notice to all institutional Eligible Mortgagees 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.
- 11.5 **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.
- 11.6 **Right of Inspection of Records, Statements, Etc.** Any Eligible 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 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.
- 11.7 **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.

- 11.8 **Eligible Mortgagees Rights Concerning Amendments** No material amendment to this Restated Declaration, Bylaws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least 75% of the Eligible Mortgagees (based on one vote for each Eligible Mortgagee) of the individual Lots have given their prior written approval to such amendment.
- 11.9 **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.
- 11.10 **Eligible Mortgagee** The term "Eligible Mortgagee" as used herein shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has provided an address, in writing, to the Association, and requested notice in writing of certain matters from the Association in accordance with this Restated Declaration.

ARTICLE 12

RENTER RESTRICTIONS

WHEREAS, Pheasantbrook Unit Owners desire to amend the Governing Documents to place reasonable restrictions on the number of renters who may occupy Units at Pheasantbrook; and

WHEREAS, the Unit Owners of Pheasantbrook Association desire to preserve and enhance the quality of life at Pheasantbrook and have purchased their Units at Pheasantbrook for the purpose of using their Unit as an Owner occupied single family residence; and

WHEREAS, the Unit Owners have purchased a Unit in a PUD because they understand the PUD living concept was developed to create a real property interest wherein individuals could own their own real property and enjoy the benefits and stability that accompany ownership of real property, both individually and as a neighborhood, as well as the security that comes to a high density PUD community by having residents who are Owners and are committed to the long-term welfare and good of the community:

- 12.1 The leasing of Units at Pheasantbrook HOA is prohibited unless the leasing is consistent with this Restated Declaration.
- 12.2 Not more than fifteen percent (15%) of the Units at Pheasantbrook HOA may be occupied by non Unit Owners at any one time. For purposes of computing the fifteen percent (15%) limit, the rentals permitted pursuant to the exceptions set forth in paragraphs 12.5 and 12.6 shall not be counted.
- 12.3 All leases, subleases, assignments of leases, and all renewals of such agreements shall be first submitted to the Pheasantbrook HOA Board who shall determine compliance with this

Restated Declaration.

- 12.4 Any Unit Owner desiring to lease his or her Unit or to have his or her Unit occupied by a non Unit Owner shall notify the Board in writing of their intent to lease their Unit. The Board shall maintain a list of those Unit Owners who have notified the Board of an intent to lease their Unit and shall grant permission to Unit Owners to lease their Unit, which permission shall be granted in the same order the Board receives the written notice of intent to lease a Unit from the Unit Owners. No permission shall be granted to lease a Unit until less than fifteen percent (15%) of the Units at Pheasantbrook HOA are occupied by a non Unit Owner.
- 12.5 The restrictions contained herein shall not apply if a Unit Owner moves from a Unit and desires to lease the Unit during their absence, and the owner moves (a) due to temporary humanitarian, religious or charitable activity or service, and (b) leases the Unit with the intent to return to occupy the Unit when the humanitarian, religious or charitable service has concluded.
- 12.6 The restrictions herein shall not apply (a) if a Unit Owner is a member of the military and is required to move from the Unit during a period of military deployment and desires to lease the Unit during the period of deployment; (b) if a parent or child leases their Unit to a family member (parent, child or siblings); (c) if an employer relocates a Unit Owner for a period of less than two years; or (d) to a Unit owned by a trust or other entity created for estate planning purposes, if the trust or other estate planning entity was created for the estate of the current resident of the Unit or the parent, child, or sibling of the current resident of the Unit.
- 12.7 Those Units that are occupied by non Unit Owners at the time this Restated Declaration is recorded at the Davis County Records office may continue to be occupied by non Unit Owners until the Unit Owner transfers the Unit or occupies the Unit; or an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, transfers the Unit or occupies the Unit. As of the date this Restated Declaration was adopted, the Units listed on the attached Exhibit "F" were occupied by a non Unit Owner.
- 12.8 For purposes of Section 12.7, a transfer occurs when one or more of the following occur: (a) the conveyance, sale, or other transfer of a Unit by deed; (b) the granting of a life estate in the Unit; or (c) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.
- 12.9 The Board shall create, by rule or resolution, procedures to determine and track the number of rentals and Units in the Pheasantbrook HOA subject to the provisions described in Section 12.5 through 12.8 above, and shall ensure consistent administration and enforcement of the rental restrictions in this Restated Declaration.
- 12.10 Any lease agreement between a Lot Owner and 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 this Restated Declaration, Articles of Incorporation of the Association and the Bylaws; and
 - B. Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.
- 12.11 Any Unit Owner who violates this Restated Declaration shall be subject to a complaint for damages and/or an injunction and order seeking to terminate the lease in violation of this Restated Declaration. If the Pheasantbrook HOA is required to retain legal counsel to enforce this Restated Declaration, with or without the filing of legal process, the violating Unit Owner shall be liable for all attorney fees and court costs incurred by the Board in enforcing this Restated Declaration.

ARTICLE 13

PETS

- 13.1 No more than a total of two cats or dogs, in any combination, per Living Unit, may be allowed at Pheasantbrook. Cats and dogs shall be permitted only upon the written approval of the Board when a Unit Owner or resident agrees to abide by the provisions set forth in the Pet Ownership Agreement, attached hereto as Exhibit "D". Under no circumstances may a dog be present on the Common Areas unless the dog is on a leash or held by a person. No leash shall be longer than 15 feet in length.
- 13.2 Any breed of dog found on the Pheasantbrook Dog Limitation List, a copy of which is attached hereto as Exhibit "E", shall be prohibited from residing at Pheasantbrook.
- 13.3 Under no circumstances may a pet reside at Pheasantbrook or shall the Board approve any application to bring a dog, cat or pet to Pheasantbrook unless the agreements contained in the Pheasantbrook Pet Ownership Agreement are first made in writing by the resident making the application.
- 13.4 The Board shall have authority to order the removal of any dog, cat or pet, if, at any time, the resident possessing the animal fails to live up to the representations made in the Pet Ownership Agreement, if the animal causes or creates a nuisance or disturbance, or if the animal demonstrates any type of threatening or aggressive behavior toward humans or other animals.
- 13.5 No animals, livestock or poultry will be allowed, raised, bred or kept in any Living Unit (with the exception of small birds and small, quiet children's pets, e.g. hamsters) or in the general or limited common areas and facilities unless they receive written approval from the Board before being brought to Pheasantbrook. The Board has the right to refuse any application to bring an animal into Pheasantbrook if it determines the animal could be a nuisance or could potentially damage the common area.

ARTICLE 14

ATTORNEY FEES

- 14.1 **Attorney Fees Incurred as the Result of Enforcing Rules.** In any legal action brought by the Board against any Unit Owner, tenant, lessee or lessor as a result of a violation of any provision of this Restated Declaration or the Association Bylaws, or if the Board retains legal counsel or incurs attorney fees associated with or as a result of retaining legal counsel as a result of any such violation, then the Board shall collect any and all attorney fees from the Unit owner, tenant, lessee, or lessor, jointly and severally, whether or not they seek judicial process, and shall be entitled to an award of attorney fees in any action or judicial proceeding. A Unit Owner shall be jointly liable for attorney fees, costs, or damages, in any action brought against a tenant renting or leasing a Living Unit from a Unit Owner as a result of any violation by the Unit Owner's tenant. Attorney fees and costs assessed shall constitute a lien against the Unit Owner's Unit in the same manner as common expenses constitute liens against Living Units and may be recorded as such.

ARTICLE 15

NUISANCE AND ILLEGAL ACTIVITIES

- 15.1 Utah law prohibits a person from being a nuisance or creating a condition that is a nuisance. A nuisance is defined broadly in the Utah Code: "A nuisance is anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property" U.C.A. §78B-6-1101(1). A nuisance may include illegal activities such as drug houses, drug dealing, criminal activity, gambling, group criminal activity, prostitution, illegal weapons possession, party houses, tobacco smoke that drifts from one Unit to another, persistent or untimely noise, or any other activity that is not reasonable in the particular locality and under the circumstances of the case.
- 15.2 Any nuisance at Pheasantbrook which affects the residents negatively, is a violation of this Restated Declaration, Bylaws and Rules, and decreases the quality of life for all residents. Any activity at Pheasantbrook that creates a nuisance is prohibited. The residents at Pheasantbrook should not ignore or tolerate a condition creating a nuisance. The Board may, in its sole discretion, enforce this Article 15 through fines or through legal action, if necessary, including eviction, as provided in Title 78B, Chapter 6, of Utah Code Annotated.
- 15.3 Pursuant to Utah law, any resident of Pheasantbrook may seek a legal remedy for a nuisance: "An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance" U.C.A. 78B-6-1101(6).

ARTICLE 16

SMOKING PROHIBITED IN OR NEAR ALL COMMON AREAS

- 16.1 Smoking of tobacco products of any kind is prohibited in and around the clubhouse and pool areas.
- 16.2 Smoking is prohibited in all common area that is within twenty-five (25) feet of any building at Pheasantbrook.
- 16.3 Smoking is prohibited in any area within Pheasantbrook wherein smoke may drift onto another resident's lot or into another Unit.
- 16.4 The Board of Directors shall have the authority and power to enact rules and regulations which it deems necessary to enforce this restriction, including a schedule of fines which may be imposed for violation hereof, after proper notice and a hearing.
- 16.5 If any of the provisions of this section or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the section and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

ARTICLE 17

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

- 17.1 **Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Association, all Unit Owners, all persons subject to this Restated Declaration, and any person not otherwise subject to this Restated Declaration who agrees to submit to this Section (collectively the "Bound Parties"), agree to encourage the amicable resolution of disputes between the Bound Parties or involving enforcement of the provisions of this Restated Declaration, the Bylaws and any Rules and Regulations adopted by the Association, and to avoid the emotional and financial cost of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party, including without limitation, claims, grievances or disputes ("Claims") arising out of or relating to the violation, interpretation, application or enforcement of this Restated Declaration, the Bylaws, the Association Rules, or the Articles of Incorporation, except those Claims exempted in Section 17.2, shall be subject to the procedures set forth in this Article 17.
- 17.2 **Exempt Claims.** The limitations in this Article 17 pertaining to exhausting administrative remedies shall not apply to the following Claims ("Exempt Claims"):
 - A. Any lien, claim, action or complaint wherein the Association or the Board alleges against a Unit Owner the nonpayment of common expenses, whether by special assessment or any other form of nonpayment of funds owed to the Association, or any

other failure to comply with the provisions of Article 5 herein; and

- B. Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article 9 (Architectural Control), Article 12 (Renter Restrictions), Article 13 (Pets), Article 15 (Nuisance & Illegal Activities), and Article 16 (Smoking Prohibited); and
- C. Any suit between Owners seeking redress on the basis of a claim which would constitute a course of action under the law of the State of Utah in the absence of a claim based on this Restated Declaration, Bylaws, Articles or Rules of the Association, if the amount in controversy exceeds \$5,000.00; and
- D. Any fines assessed by the Association.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 17.3, but there shall be no obligation to do so.

17.3 Mandatory Procedures For All Other Claims. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than a Claim exempted from this provision by Section 17.2, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

- A. **Notice.** In the event that any Claimant shall have a grievance against any Respondent, said Claimant shall set forth said grievance or complaint in writing (the "Notice") and shall deliver the same to the Respondent, stating plainly and concisely:
 - (i) the nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim and the provisions of this Restated Declaration, the Bylaws, the Rules, the Articles of Incorporation or other authority out of which the Claim arises; and
 - (ii) the basis of the Claim (i.e., the provisions of this Restated Declaration, Bylaws, Rules or Articles triggered by the Claim); and
 - (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and
 - (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.
- B. **Response.** Within ten (10) days of receiving the Notice from Claimant, the Respondent shall set forth a response in writing (the "Response") and shall deliver the same to the Claimant, stating plainly and concisely:

- (i) those facts and/or allegations contained in Claimant's Notice with which Respondent agrees and disagrees, and a statement of the facts and allegations related to the grievance as understood and believed by Respondent; and
 - (ii) those provisions of this Restated Declaration, the Bylaws, the Rules, the Articles of Incorporation or other authority out of which the Claim arises which Respondent understands applies to and controls the resolution of the Claim; and
 - (iii) what Respondent is willing to do or not do to resolve the Claim; and
 - (iv) that Respondent wishes to resolve the Claim by mutual agreement with Claimant and is willing to meet in person with Claimant at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.
- C. **Negotiation.** Each Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any party, accompanied by a copy of the Notice, the Board (if not involved in the dispute as either a Claimant or Respondent) may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the parties and to the welfare of the community.
- D. **Meeting.** In the event that the cause of said grievance or complaint is not rectified by the parties within twenty (20) days from the date of the receipt of Respondent's response, within ten (10) days from the date of expiration of said initial twenty (20) day period, a time and place mutually acceptable to the Claimant and the Respondent shall be established for a meeting between the Claimant and the Respondent.
- E. **Resolution or Litigation.** At such meeting, the Claimant and Respondent shall be entitled, but not required, to be represented by counsel. The parties, and/or counsel for the Claimant and counsel for the Respondent shall attempt to reach an amicable solution to the grievance or complaint. In the event that the parties are not able to reach such a solution within thirty (30) days from the date of the meeting between the Claimant and the Respondent, the Claimant shall then be entitled to proceed to have the matter judicially determined. Any resolution by the parties shall be reduced to writing and signed by each party or the party's legal representative prior to the end of the thirty (30) day period referred to herein.
- F. **Exhaustion of Remedies Required.** All grievances and complaints of Claimants shall follow procedure outlined and set forth herein prior to the commencement of any litigation relative to said grievances and complaints. However, if a Respondent fails to provide the written response required within ten (10) days, or if either party refuses to meet in good faith within the time frames set forth herein to discuss resolution of the grievance or complaint, the non-offending party shall be released from the obligation to comply with this Article 17 and may seek judicial relief without the need to wait for

additional time periods to expire.

- 17.4 **Allocation of Costs of Resolving Claims.** Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 17.3, including the fees of its attorney or other representative.
- 17.5 **Enforcement of Resolution.** If the parties agree to resolve any Claim through negotiation in accordance with Section 17.3 and any party thereafter fails to abide by the terms of such agreement, then any ther party may file suit to enforce such agreement without the need to again comply with the procedures set forth in Section 17.3. In such event, the party taking action to enforce the agreement shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement, including without limitation attorney fees and court costs.

ARTICLE 18

RESERVE ANALYSIS

- 18.1 **Reserve Analysis Required.** The Board shall cause a reserve analysis to be conducted no less frequently than every five years. The Board's initial reserve analysis must be prepared prior to June 30, 2012. The Board shall thereafter review and, if necessary, update a previously conducted reserve analysis no less frequently than every two years. 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.
- 18.2 **Restricted Use of Reserve Funds.** The Board may not use money in a reserve fund:
- A. for daily maintenance expenses, unless a majority of the owners vote to approve the use of reserve fund money for that purpose; or
 - B. for any purpose other than the purpose for which the reserve fund was established, unless a majority of the owners vote to approve the use of reserve fund money for another purpose.
- 18.3 **Creation of Reserve Fund.** Based on the results of the reserve analysis, the Board shall create a reserve fund into which the Board shall cause to be deposited those common area assessments collected from owners for the purpose of funding the reserve fund.
- 18.4 **Vote of Owners.** The Board shall annually, either at the annual meeting of owners or at a special meeting of owners:
- A. Present the reserve study to the owners;
 - B. Provide an opportunity for unit owners to discuss the need for the reserves; and
 - C. Vote on whether to fund the reserve fund and, if so, how to fund it and in what amount.

D. Once a quorum is present at a meeting, the reserve fund shall be funded according to the amount approved by a majority of those present. The Board shall keep minutes of each such meeting held under this section 18.4 and indicate in the minutes any decision relating to funding the reserve fund. In the event a quorum is not present at the annual or special meeting of owners for which unit owners have been notified that a vote to fund the reserve fund will be taken, thereby preventing a vote to fund the reserve fund as required, the Board shall, at its next regular Board meeting, vote to set the amount of the monthly reserve fund assessment, which amount shall continue until the next meeting of unit owners held for the purpose of voting to determine whether to fund the reserve fund.

18.5 **Assessment for Reserve Fund.** The Board shall cause an assessment to be made against all owners, which assessment shall be collected on the same terms and conditions as other common expenses, in an amount sufficient to fund the reserve fund according to the vote of the unit owners. The Board shall maintain a reserve fund separate from other funds of the Association. This subsection may not be construed to limit a Board from prudently investing money placed in a reserve fund account.

18.6 **Definition.** As used herein, "reserve analysis" means an analysis to determine:

A. the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas and facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the association of unit owners; and

B. the appropriate amount of any reserve fund.

ARTICLE 19

MISCELLANEOUS

19.1 **Notices** Any notice required or permitted to be given to any Owner or Member under the provisions of this Restated 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.

19.2 **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.

19.3 **Amendment** Any amendment to this Restated Declaration shall require the affirmative vote of at least two-thirds (2/3) of those Members present, in person or represented by proxy, at a meeting duly called for such purpose. 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 membership shall constitute a quorum. If a quorum is not present at the first meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 19.3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. If a quorum is not present at the second meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 19.3) at which a quorum shall be made up of all those present at the 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. In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

- 19.4 **Consent in Lieu of Vote** In any case in which this Restated Declaration requires for authorization or approval of a transaction or amendment, 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 or amendment from Members entitled to cast at least the stated percentage of all membership votes outstanding. The following additional provisions shall govern any application of this Section 19.4:
- 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 19.4 shall be determined as of the date on which the last consent is signed.
 - C. 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.
- 19.5 **Interpretation** The captions which precede the Articles and Sections of this Restated 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 Restated Declaration shall not affect the validity or enforce-ability of the remainder hereof.
- 19.6 **Property Part of Development** The Property shall comprise a part of the Pheasantbrook Planned Unit Development.
- 19.7 **Covenants to Run with Land** This Restated 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

EXHIBIT "A"

LEGAL DESCRIPTION

PHEASANTBROOK PUD, CENTERVILLE CITY, DAVIS COUNTY, UTAH

PART 1, UNITS 1 THROUGH 24, (Land Serial Numbers: 02-037-0001 through 02-037-0024) ✓

PART 2, UNITS 41 THROUGH 48, (Land Serial Numbers: 02-037-0041 through 02-037-0048) ✓

PART 3, UNITS 25 THROUGH 40; 49 THROUGH 52 (Land Serial Numbers: 02-038-0025 through 02-038-0040; 02-038-0049 through 02-038-0052) ✓

PART 4, UNITS 53 THROUGH 64, (Land Serial Numbers: 02-038-0053 through 02-038-0064) ✓

PART 5, UNITS 65 THROUGH 72, (Land Serial Numbers: 02-034-0065 through 02-034-0072) ✓

PART 6, UNITS 73 THROUGH 92, (Land Serial Numbers: 02-034-0073 through 02-034-0092) ✓

PART 7, UNITS 93 THROUGH 124, (Land Serial Numbers: 02-035-0093 through 02-035-0124) ✓

PART 8, UNITS 125 THROUGH 144, (Land Serial Numbers: 02-036-0125 through 02-036-0144) ✓

Including the following common areas: 02-034-0093; 02-035-0125; 02-036-0145; 02-037-0049; 02-037-00050;

Exhibit "B"
MAINTENANCE CHART

The following chart shows the division of responsibility for maintenance and repair of property between the Pheasantbrook Home Owners' Association and the Unit Owners.

	EXTERIOR	HOA	OWNER
1	Maintenance of, repair, paint and replace roof and siding.	X	
2	Maintenance of, replace and repair of exterior brickwork and chimneys.	X	
3	Maintenance of, replace and repair of front steps and sidewalk	X	
4	Maintenance of, replace and repair of concrete foundations.		X
5	Maintenance of, replace and repair of patio and deck floor support structures.		X
6	Maintenance of and repair original fences.	X	
7	Paint interior of fences.		X
8	Replacement of original fences with vinyl fence (50% each by Association and Owner)	X	X
9	Maintenance of, replace and repair of rain gutters and down spouts.	X	
10	Maintenance of, replace and repair of Unit Owner added or modified fences.		X
11	Maintenance of, replace and repair patios, decks & balconies and other authorized modifications.		X
12	Replacement, maintenance and repair of doors, hinges, frames, thresholds, locks, doorbells and chimes.		X
13	Replacement, maintenance and repair of garage floors and doors.		X
14	Replacement, maintenance and repair of windows, sliding glass doors, screens and frames.		X
15	Replacement, maintenance and repair of all yard lights that use electricity from the Unit.		X
16	Replacement, maintenance and repair of all lights attached to the exterior walls.	X	
17	Maintenance of gas and electricity connections from the meters to the Unit.		X
18	Maintenance of water system beginning at the outside entry (as pipes enter the foundation) throughout the Unit. This includes the outside faucets and hose bibs. Any failure or damage caused by failure of this portion of the water system is the liability of Unit Owner.		X
19	Replacement and repairs to outside water spigots and bibs		X
20	Replacement, repair and maintenance of phone lines, TV cables, air conditioning, heat pumps		X
21	Unit owner improvements: skylights, solar panels, windows, awnings, attic vents and similar items		X

	INTERIOR	HOA	OWNER
22	All interior painting, decorations and furnishings from the inside of the unfinished walls and ceilings. This includes all appliances such as dishwashers, garbage disposals, ranges, refrigerators, furnaces, exhaust fans, attic vents, air conditioners, water heaters, and intercom, telephone, and computer networks.		X
23	Maintenance , cleaning and repair of venting, chimneys and fireplaces.		X
24	Maintenance, repair and replacement of the electrical system from the city electric meter to the breaker panel and to all outlets including switches and light fixtures.		X
25	Maintenance, repair and replacement of plumbing fixtures such as sinks, basins, toilets and all interior pipes and valves		X
26	Repair of cracks or other damage to interior walls, floors or ceilings caused by normal Unit settling.		X
27	Repairs of damage resulting from static water or seepage of water from any underground source, except water and sprinkler system failures.		X
28	Repairs of damage resulting from surface water.		X
29	Repairs of damage resulting from sprinkler system failures.	X	

	GROUNDS	HOA	OWNER
30	Lawn, flowers, trees and shrubs in the common areas.	X	
31	Lawn, flowers, trees and shrubs in limited common areas.	X	
32	Lawn watering system.	X	
33	Snow removal: (front porch & steps, sidewalks to front door)	X	
34	Snow removal. (Roadways, parking areas, sidewalks)	X	
35	Roadways, parking lots, curbs and gutters, sidewalks and steps.	X	
36	Watering system for limited common areas (with approval of the Grounds Committee)	X	

	OTHER	HOA	OWNER
37	Maintenance and repair of swimming pool and tennis courts	X	
38	Garbage collection.	X	
39	Maintenance and repair of water system from the city water meter to the entrance to the exterior wall of each Unit.	X	

EXHIBIT "C"

PHEASANTBROOK HOME OWNERS ASSOCIATION

BYLAWS

**BYLAWS
OF
PHEASANTBROOK HOME OWNERS ASSOCIATION
PERTAINING TO THE
RESTATED DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS
OF THE
PHEASANTBROOK PLANNED UNIT DEVELOPMENT**

I. NAME AND LOCATION

1. Name The name of the corporation is Pheasantbrook Home Owners Association, hereinafter referred to as the "Association".
2. Principal Office The principal office of the Association shall be located at Centerville, Utah but meetings of the members and directors may be held at such places with in the county of Davis, State of Utah, as may be designated by the Board of Directors.

II. DEFINITIONS

When used in these Bylaws the following terms shall have the meaning indicated:

1. Articles shall mean and refer to the Articles of Incorporation of Pheasantbrook Home Owners Association.
2. Association shall mean and refer to Pheasantbrook Home Owners Association, a Utah-nonprofit corporation which is organized by the filing of the Articles.
3. Member shall mean and refer to every person who holds membership in the Association.
4. Property shall mean and refer to the tract of real property situated in Davis County, State of Utah, and particularly described in the Amended Restated Declaration recorded herewith.
5. Declaration or Restated Declaration shall mean and refer to the following instruments as the case may be: the "Declaration of Covenants, Conditions, and Restrictions of Pheasantbrook Planned Unit Development (Part I)," executed and acknowledged by Declarant on the 24th day of March, 1975, and filed to record in the office of the County Recorder of Davis County, Utah, concurrently with the filing of the plat of said development and to the subsequent additions thereto of Parts II, III, IV and V, as consolidated Development (Part V), executed and acknowledged by Declarant on the 23rd day of March, 1977 and filed for record as Entry number 457046 in Book 641,

at Page 248, (Part VI) dated July 22, 1977 and recorded July 22, 1977 as Entry No. 468041 in Book 660, beginning at Page 138, (Part VII) dated January 22, 1978 and recorded February 22, 1978 as Entry No. 487258 in Book 692, beginning at Page 561 and (Part VIII) dated January 5, 1979 and recorded January 17, 1979 as Entry No. 520581 in Book 749, beginning at Page 488; the Restated Declaration recorded herewith; and all of the official records of Pheasantbrook recorded in the office of the County Recorder of Davis County, Utah.

6. Lot shall mean and refer to any of the 144 separately numbered and individually described parcels of land shown on the recorded Plat.

7. 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.

8. 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 the Lot concerned which are used in conjunction with such residence.

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 fee 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 mortgage or a beneficiary or 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.

III. MEETING OF MEMBERS

1. Annual Meeting The annual meeting of the Members shall be held on the second Tuesday of November of each year. The time of the meeting shall be 7:00 p.m. The purpose of the annual meeting shall be the election of the directors, approval of annual budget and the transaction of such other business as may come before the Members. If the election of directors is not filled on the day designated herein for the annual meeting, the Board of Directors shall cause such election to be held at a special meeting of the Members as soon thereafter as is convenient.

2. Special Meetings A special meeting of the Members for any purposes may be called by the President, by the Board of Directors, or upon written request of the Members who are entitled to vote of one-fourth (1/4) of all of the votes of the membership.

3. Place of Meeting The Board of Directors may designate any place within Davis County, Utah as the place for any annual meeting or for any special meeting called by the Board. If no designation is made, the place of meeting shall be the Association Clubhouse at 21 West Pheasantbrook Drive, Centerville, Utah.

4. Notice of Meetings Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, or if there is a proposal to increase the maximum monthly assessment or a proposal for a special assessment to be considered at the annual meeting, the purpose

or purposes for which the meeting is called, shall be given to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. Such notice shall be deemed to have been properly furnished if mailed postage prepaid within the required time period to the person who appears as a Member, at the latest address for such person appearing in the records of the Association at the time of mailing.

5. Quorum Except as otherwise provided in the Articles, in this Restated Declaration, or bylaws, those Members present in person or by proxy shall constitute a quorum at any meeting of the Members.

6. Proxies and Absentee Ballots At any meeting of the Members a Member may vote by proxy or by an absentee ballot executed in writing by the Member or by his duly authorized attorney-in-fact. All proxies and absentee ballots shall be filed with the secretary of the Association before or at the time of the meeting. Unless otherwise provided therein no proxy shall be valid after eleven months from the date of its execution.

7. No Cumulative Voting and Plurality Election At each election for directors Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. A plurality shall be sufficient for the election of a candidate.

8. Necessary Vote Except as concerns the election of directors and except with respect to those proposals which under the Articles, under the Restated Declaration, or by law require a greater proportion for adoption, the affirmative vote of a majority of all those members present in person or represented by proxy shall be sufficient for the adoption of any matter voted on by the Members.

IV. BOARD OF DIRECTORS

1. Number, Tenure and Qualifications The affairs of the Association shall be managed by a Board of Directors composed of five (5) individuals, each of whom shall be owners of a Lot within the Development. Each Director shall hold office for a term of three (3) years. At each annual meeting one (1) or two (2) Directors shall be elected depending on the number of Directors whose terms expire as of that year. Any change in the number of Directors may be made only by amendment of the Articles of Incorporation and these Bylaws. Each Director shall hold office until his term expires and until his successor has been duly elected and qualifies.

2. Compensation The Board may provide by resolution that the Directors shall be paid their expenses, if any, of attendance at each meeting of the Board. Directors shall not be paid any salary or other compensation for their services as Directors and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their status as Directors.

3. Action Taken Without a Meeting The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so taken shall have the same effect as through taken at a meeting of the Directors.

V. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

1. Powers The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common areas, and personal conduct of the members and their guests thereon, and establish penalties for the infractions thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a Member during a period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed Ninety (90) days for infractions of published rules and regulations;

(c) exercise for the Association all powers, duties, authority vested in or delegated to the Association by the Restated Declaration, the Articles of Incorporation, these Bylaws or laws of the State of Utah, and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Restated Declaration or Laws of the State of Utah;

(d) declare the office of a Member of the Board of Directors to be vacant in the event such member shall be absent from three consecutive regular meetings of the Board of Directors; and

(e) employ managers, independent contractors, or such other employees as they deem necessary, and to prescribe their duties.

(f) assess fines against those who violate the Restated Declaration, Bylaws and Association Rules, as more fully set forth in Community Rules adopted by the Board.

(g) collect fees from unit owners for copies of keys to the swimming pool, recreational parking area, and clubhouse, according to a policy and fee schedule adopted by the Board.

(h) collect reasonable user fees from Unit Owners who park trailers, recreational vehicles, or otherwise use the RV parking area, according to a policy and fee schedule adopted by the Board. Failure of a Unit Owner to pay the user fees shall entitle the Board to have the vehicle towed from the RV Parking area or to record a lien against the Unit Owner's unit in the same manner as provided in the event of non-payment of monthly Association fees.

(i) establish a policy for the landscaping of the common area immediately adjacent to the Lots, including those situations wherein a Unit Owner may be allowed to plant and otherwise care for portions of the common area.

2. Duties It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its actions~~acts~~ and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth of the Members who are entitled to vote;

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Restated Declaration, to:

- (1) fix the amount of the monthly assessment against each Lot and to send written notice of such assessment to every Owner subject hereto as provided in the Restated Declaration;
- (2) file a lien against any Lot for which assessments are not paid within thirty days after due date and bring an action at law against the owner personally obligated to pay the same or to foreclose the lien, within such period of time as would appear prudent in the discretion of the Board.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the exterior of the Living Units and the Common Areas to be maintained.

VI. NOMINATION AND ELECTION OF DIRECTORS

1. Nomination Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made only from among Owners and Members of the Association.

2. Election Elections to the Board of Directors shall be made by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporations and these Bylaws.

VII. MEETING OF DIRECTORS

1. Regular Meetings A regular meeting of the Board of Directors shall be held without notice other than this section immediately after, and at the same place as, the annual meeting of the Members. The Board of Directors may provide by resolution the time and any place within the State of Utah for the holding of additional regular meetings without notice other than such resolution.

2. Special Meetings Special meetings of the Board of Directors may be called by or at the

requests of the president or any two directors. The person or persons calling a special meeting of the Board may fix any place within the State of Utah as the place for holding such meeting.

3. Notice Written or printed notice stating the place, day, and hour of any special meeting of the Board shall be given to all Directors a least three days prior to the meeting date. Such notice shall be deemed to have been properly furnished if mailed postage prepaid at least three business days before the meeting date to each Director at his address. Attendance of a Director at any meeting shall constitute a waiver of notice of such meeting unless the Director attends for the express purpose of objecting to the transaction of any business because the meeting is not properly called or convened. Neither the business to be transacted at nor the purpose of any meeting need be specified in the notice thereof.

4. Quorum A majority of the Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Directors at a meeting at which a quorum is present shall constitute the act of the Board of Directors unless the act of a greater number is required by law.

5. Vacancies Any vacancy on the Board may be filled by the affirmative vote of a majority of the remaining Directors, even though such remaining Directors constitute less than a quorum. A Director thus selected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

VIII. COMMITTEES

1. Architectural Control Committee The Board of Directors shall appoint a three-member committee the function of which is to enforce and administer the provisions of Article 9 of the Restated Declaration (relating to control of improvements and landscaping within the property). The committee need not be composed of Members. Members of the committee shall hold office at the pleasure of the Board. If such a committee is not appointed, the Board itself shall perform the duties required of the committee.

2. Other Committees The Board of Directors shall appoint and specify the duties of such additional committees, as necessary, including, but not limited to a Long Range Planning Committee and a Finance Committee.

3. Manner of Acting The act, concurrence, or determination of a majority of committee members, whether such act, concurrence, or determination occurs at a meeting, without a meeting, at the same time, or at different times, shall constitute the act or determination of the committee.

4. Compensation The Board of Directors may, but need not, provided by resolution that members of committees be paid specified and reasonable compensation for their services as committee members.

5. 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 Article 9 of the Restated Declaration.

IX. OFFICERS

1. Number and Qualifications The Officers of the Association shall be a President, a Vice-President, a Secretary, a Treasurer, and a Member-at-large each of whom shall be an owner of a Lot in the Development. Any two (2) or more officers, other than the office of President and Secretary, may be held by the same person.

2. Tenure The Officers of the Association shall be elected by the Board of Directors at the first meeting of the Board held after the annual meeting of the Members. If election of Officers does not occur at such meeting it shall be held as soon thereafter as is convenient. Each Officer shall hold office for a period on one year, until his successor has been duly elected and qualifies or until he is removed. Any Officer may be removed by the Board whenever in its judgment the best interests of the Association would be served thereby.

3. Vacancies A vacancy in office resulting from death, resignation, removal, or any other cause shall be filled by the Board of Directors for the unexpired position of the term of the person previously in office.

4. President The President shall be the principal executive Officer of the Association, and subject to the control of the Board of Directors, shall exercise general supervision and control over all of the property and affairs of the Association. The President shall, when present, preside at all meetings of the Members and of the Board of Directors. If the President is not present then the Vice-President shall preside. Except in cases where the signing and execution thereof is expressly delegated by the Board of Directors or by these Articles to some other Officer or agent of the Association or where required by law to be otherwise signed or executed, the President, together with the Secretary or any other Officer of the Association authorized by the Board of Directors may sign any deeds, mortgages, contracts, or other instruments which the Board of Directors has properly authorized to be executed. The President shall, in general, perform all duties incident to the office of President and such other duties as may from time to time be prescribed by the Board of Directors.

5. Vice-President In the absence of the President or in the event of his death, inability, or refusal to act, the Vice-President shall perform all of the duties of the President. When so acting he shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice-President shall perform such duties as may from time to time be assigned to him by the President or by the Board of Directors.

6. Secretary The Secretary shall keep minutes of meetings of the Members and of the Board of Directors in one or more books provided for that purpose, shall see that all notices are given in accordance with the provisions of these Bylaws, the Articles of Incorporation, the Restated Declaration, and law, shall maintain a membership list, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may from time to time be assigned to him by the President or by the Board of Directors.

7. Treasurer If required by the Board of Directors the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board shall determine. The Treasurer shall have the custody of and shall be responsible for all funds of the Association, shall receive and give receipts for money due and payable to the Association, shall deposit all such money in the name of the Association in such banks, trust companies, or other

depositories as are selected by the Board, shall perform all accounting, financial record-keeping, and similar services which may be necessary or desirable in connection with the Association's affairs, and, in general, perform all duties incidents to the office of Treasurer and such other duties as may from time to time be assigned to him/her by the President or by the Board of Directors. Such duties of the Treasurer as the Board may deem appropriate may be delegated, by the Board, to a manager, independent contractor, or such other employee as the Board may appoint under the authority of Paragraph V,1. (E) of these Bylaws.

8. Compensation Officers shall not be paid any salary or other compensation for their services as such and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their services as Officers.

9. Liability of Officers and Directors No Officer, or Director, shall be personally liable for any action taken by him/her in good faith in the performance of his/her duties on behalf of the Association.

X. ASSESSMENTS

1. As more fully provided in the Restated Declaration, each Member is obligated to pay to the Association monthly and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made. Any assessment which is not paid when due shall be delinquent. If the assessment is not paid within ten days after the due date, the assessment shall be charged a late fee of as established by the Board of not more than fifty dollars (\$50.00) for every month the assessment is not paid. If the assessment is not paid within ninety days after the due date, simple interest at a rate of 12% per annum will be accrued until the assessment is paid in full, beginning thirty days after the due date, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs, and reasonable attorney fees of any such action shall be added to the amount of such assessment. No Owner may waive or escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot. Nothing herein shall prevent the Association from filing a lien or bringing legal action against a delinquent Owner when an Owner is more than thirty (30) days delinquent.

XI. AMENDMENTS

1. These Bylaws may be amended, at a regular or a special meeting of the members of the Association, by a vote of the majority of a quorum of members present. Notice and quorum requirements for amendments of these Bylaws shall be the same as those for special assessments.

2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Restated Declaration and these Bylaws, the Restated Declaration shall control.

XII. MISCELLANEOUS


1. Fiscal Year The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year.


2. Right of Entry The Board of Directors and its duly authorized agents shall have the right of entry to any and all units, in case of an emergency originating in or threatening such unit or any other part of the project, whether the owner or occupant thereof is present at the time or not. The Board of Directors and its duly authorized agents shall also have the right to enter any and all of said units at all reasonable times as required for the purpose of making necessary repairs upon the common areas and facilities of the projects.

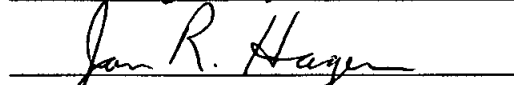
3. Responsibilities of Owners each Unit Owner shall promptly perform or cause to be performed all maintenance and repair work within a unit owned by him/her which, if omitted, will adversely affect the building in which such unit is located in its entirety, or any part of the project, and shall be liable in damages for any failure on his/her part so to do. Each member shall also reimburse the Association for the value of any repairs or replacements to the common areas and facilities made necessary through the negligence or fault of such unit owner or such owner's tenants.

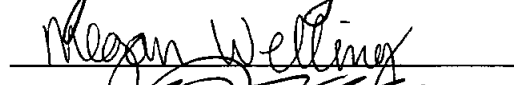
4. Nuisance No Unit owner shall cause, permit or suffer any nuisance to be created or carried on in any unit of which he/she is the owner or occupant.

IN WITNESS WHEREOF, we, being all the Directors of the Pheasantbrook Home Owners Association, have hereunto set our hands this 8 day of June, 2011.












Exhibit "D"

Pheasantbrook Home Owners Association

Pet Ownership Agreement

Name(s): _____ Date: _____

Unit Address: _____

The above named Unit Owner(s) agree to abide by the Pheasantbrook Restated Declaration, Bylaws and Rules and Regulations relating to pets and to honor the following provisions while maintaining a pet at Pheasantbrook, and certifies the pet described below was residing at Pheasantbrook on October 1, 2010.

1. The pet will not disturb the other residents of Pheasantbrook by creating an unacceptable level of noise, by creating offensive odors, by threatening other residents, or by being a nuisance.
2. The pet will not defecate on, do damage to, or in any way disturb, Pheasantbrook common areas.
3. The pet will remain inside the resident's unit at all times it is at Pheasantbrook unless it is on a leash and in the presence of the resident or agent of a resident.
4. The pet will not be permitted to freely roam in the common areas of Pheasantbrook.
5. The resident will provide a litter box for the pet inside the unit where the pet resides. The contents of a used liter box shall be placed in the garbage after first being placed in a tightly secured plastic bag. A pet owner shall immediately remove any animal feces should a pet defecate in the common area and properly dispose of all animal feces.
6. Whenever the pet is on the common areas of Pheasantbrook it shall be either carried by the resident or be on a leash no longer than 15 feet in length.
7. The resident agrees that the Board reserves the right to require removal of any pet if it receives complaints about the pet and the Board determines, in its sole discretion, that the complaints are valid, or if there is a violation of this Agreement.
8. The resident agrees that it will pay liquidated damages of \$15.00 per day for each day the pet remains in a unit after its removal has been required by the Board.
9. The pet shall be licensed with the City or County licensing authority and wear a collar tag with the licensed attached whenever it is outside the Unit.
10. The patio is not to be used as a dog run and in so circumstances is an animal to be left on the patio when the resident is not at home.

Signed by: _____
Unit Owner/Pet Owner
Unit Owner/Pet Owner

Description of Pet (type, breed, size, color): _____

Approved by Board (signed): _____ Date: _____

Exhibit "E"

Pheasantbrook Dog Limitation List

The following dog breeds are prohibited at all times from Pheasantbrook:

- Akita
- Alaskan Malamutes
- American Bull Dog
- American Pit Bull Terrier
- American Staffordshire Terrier
- Belgian Malinois
- Boerboels
- Boxer
- Bull Terrier
- Bullmastiffs
- Cane Corso
- Chow Chow
- Doberman Pincher
- Dogo Argentino
- English Mastiffs
- Fila Brasileiro (also Known as the Fila, Brazilian Mastiff)
- German Shepherd
- Great Danes
- Irish Wolf Hounds
- Malamutes
- Mastiffs
- Pit Bulls
- Presa Canario
- Presa Mallorquin (also known as the Ca De Bou)
- Rhodesian Ridgebacks
- Rottweiler
- Schipperkes
- Scottish Deerhounds
- Shar Pei's
- Siberian Huskies
- Staffordshire Bull Terrier
- Tosa Inu
- Wolf Hybrids

EXHIBIT "F"

LIST OF UNITS OCCUPIED BY A NON UNIT OWNER AS OF
THE DATE THE RESTATED DECLARATION WAS RECORDED:

1. 249 W Pheasantbrook Dr.
2. 260 W. Meadow Lane
3. 132 W. Pheasantbrook. Cr.
4. 272 W Meadow Lane
5. 144 W. Pheasantbrook Cr.
6. 852 N. Brookside Lane
7. 281 W. Pheasantbrook Dr.
8. 229 W. Park Lane
9. 190 W. Pebblewood Lane
10. 266 W Meadow Lane
11. 812 N Pheasantbrook Cir
12. 98 W Brookside Lane
13. 81 W. Pheasantbrook Cr
14. 993 N. Brookfield Lane
15. 833 N Lakeside Lane
16. 34 W Creekside Lane
17. 845 N Pheasantbrook Cir
18. 77 W Pheasantbrook Cir
19. 806 Pheasantbrook Cir
20. 138 Pheasantbrook Cir