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SECOND AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
PHEASANT RUN ESTATES

This Amendment to Declaration of Covenants, Conditions, and Restrictions of PHEASANT RUN ESTATES is made and executed this 19th day of February, 1992 by, Alan Archibald, Pamela Archibald, Robert W. Prince, Diane L. Prince, F. Arthur Kay, Eunice N. Kay, Larry F. Dahle, Joan Dahle, L.F. Wernli, Gayle Winterrose, And Park Terrace Apartments, A Utah General Partnership.

RECITALS

A. On the 1st day of June, 1987, Declarant caused to be filed for record in the office of the County Recorder of Washington County, Utah, the Declaration of Covenants, Conditions and Restrictions of Pheasant Run Estates, (the "Declaration"), which was recorded as Entry No. 315998 in Book 454, pages 94-117, of the Official Records of Washington County.

B. On the 1st day of November 1989, Declarant and Lot Owners caused to be filed an amendment to the Declaration of Covenants, Conditions, and Restrictions of Pheasant Run Estates. Said amendment was filed for record in the office of the County Recorder of Washington County, Utah and Recorded as Entry No. 0356169, in Book 0539, Page 0656 of the Official Records of Washington, County.

C. The Lot Owners have determined that no provide for the preservation and enhancement of the property value and for maintenance of the Common Areas as set forth in the Declaration requires that said Declaration be amended as hereinafter set forth.

NOW, THEREFORE, for the foregoing purposes, The Lot Owners hereby amend said Declaration as follows:

The Lot Owners of Lots 1 thru 23 PHEASANT RUN ESTATES SUBDIVISION, hereby acknowledge that PHEASANT RUN ESTATES SUBDIVISION was created as a planned unit development with certain Common Areas for the benefit of the Development and the Owners of Lots therein. For the efficient preservation of the values and amenities of PHEASANT RUN ESTATES SUBDIVISION, the Lot Owners have created PHEASANT RUN HOMEOWNERS ASSOCIATION. Said Association possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this declaration.

NOW, THEREFORE, for the foregoing purposes, the Lot Owners declare that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

(1)

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I. DEFINITIONS

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

1. Declaration shall mean and refer to this instrument as the same may hereafter be modified or amended.

2. Plat shall mean and refer to the plat of PHEASANT RUN ESTATES consisting of one (1) page, executed and acknowledged by Declarant, prepared and certified by Bullock Engineering, a registered Utah Land Surveyor, and recorded in the office of the County Recorder of Washington County, Utah, concurrently herewith, also as the same may hereafter be modified or amended.

3. Property shall mean and refer to all of the real property which is covered by the Plat, a description of which is stated in Exhibit "A" of this Declaration.

4. Lot shall mean and refer to any of the separately numbered and individually described plots of land shown on the plat.

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

6. 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.

7. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in a Lot. Notwithstanding any applicable theory relating to a mortgage, deed or trust, or like instrument, the term Owner shall not mean or include a mortgagee 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.

8. Association shall mean and refer to PHEASANT RUN ESTATES HOMEOWNERS ASSOCIATION, INC.

9. Articles and By-Laws shall mean and refer to the Articles of Incorporation and the By-Laws of the Association.

10. Board of Trustees and the Board shall mean and refer to the Board of Trustees of the PHEASANT RUN ESTATES HOMEOWNERS ASSOCIATION, INC.

11. Member shall mean and refer to every person who holds

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membership in the Association.

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

13. Development shall mean and refer to PHEASANT RUN ESTATES DEVELOPMENT.

14. Declarant shall mean and refer to PHEASANT RUN ESTATES DEVELOPMENT, its successors and assigns, or with any successor or assign to whom all or substantially all of its interest in the development of the Property is conveyed.

15. Front Yard Area shall mean and refer to the yard area in front of each Living Unit.

II. DESCRIPTION OF PROPERTY

The property which consists of 23 lots plus the common areas, and which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the real property situated in Washington County, State of Utah, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to , appurtenant to , or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described land or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipeline, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cable, wires, utility lines, and similar facilities.

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

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be appropriate, and to do all things reasonably necessary or proper in connection therewith; (ii) To improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant or as such assignee or successor may reasonably determine to be appropriate; (iii) To change the configuration of Lots that are still in the ownership of the Declarant upon filing an amended Plat, so long as said change or changes does not adversely affect the market value of any lot or lots previously sold by Declarant, and does not alter any Lot line by more than five (5) feet. Any other changes proposed by Declarant shall require the approval of seventy-five percent (75%) of the other Owners. If, pursuant to the foregoing reservations, the above described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire five (5) years after the date in which this Declaration is filed for record in the Office of the County Recorder of Washington County, Utah.

THERE IS HEREBY CREATED an affirmative easement in favor of the Association, its employees and agents, upon, over and across each Lot to the perimeter boundaries of the Development for reasonable ingress, egress, installations, replacement, maintenance, and repair of the estate wall and fence located on the boundaries of the Development as shown on the Plat.

III. MEMBERSHIP AND VOTING RIGHTS

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

2. Voting Rights. Each member of the Association that has a house constructed on their lot shall have four votes, and each member of the Association that has a lot without a house constructed on it shall have one vote, on all matters concerning the Declaration of Covenants, Conditions and Restrictions. Regarding all other matters of business of the Association such as the budget, dues, etc. each Member of the Association has one vote. At the time there is a house constructed on each of the 22 lots within Pheasant Run Estates each member of the Association will have one vote for each lot they own, on all matters requiring a vote.

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

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4. Non-Liability of Board. In discharging its duties and responsibilities, the Board acts on behalf of and as a representative of the Owners, and no member of the Board shall be individually or personally liable for performance or failure of

performance of his duties or responsibilities unless said member fails to act in good faith.

IV. PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and 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 grant the use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot. The Association shall have an easement over, across, under and through the Lots for the maintenance of the Lots, Living Units, and Common Areas.

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:

All of Lot _____, of Pheasant Run Estates, according to the official plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions, all on file in the office of the Washington County Recorder.

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

3. Transfer of Title. Declarant agrees that it shall, on or prior to the first conveyance of a Lot, convey to the Association title to all Common Areas of the Development, and Declarant further agrees that it will discharge all liens and encumbrances on said Common Areas on or before the sale and closing of the last Lot in the Development.

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

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

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

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(c) The right of the County of Washington 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 spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal services; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting for the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. Encroachments. If any portion of a Living Unit or improvement, or any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit, encroaches upon the Common Areas or other Lots, as a result of shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

V. ASSESSMENTS

1. Personal Obligation and Lien. Each owner shall, by acquiring or in any way becoming vested with an 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 assessment by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such liens, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the unit prior to the date any such common expense assessments become due.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of the residents of the Property. The use made by the Association of funds obtained from assessments may include the payment of the cost of: taxes and insurance on the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major

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repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

3. Base for Assessment. Each Living Unit which is certified for occupancy and each unimproved Lot which has been conveyed to the Owner shall be assessed at the same and equal rate.

4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable for 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. Any such special assessment must be assented to by more than fifty percent (50%) of all votes of the members, present in person or represented by proxy, which are entitled to cast votes 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) days but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum required for any action authorized by Section 4 above shall be as follows: at the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 4) at which a quorum shall be one-half of the quorum which is required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6. Equal Rate of Assessments. Both monthly and special assessments shall be fixed at a uniform (equal) rate for all Lots.

7. Monthly Assessment Due Dates. The monthly assessment provided for herein shall commence as to all Lots on the date deed is delivered to the first purchaser of a Lot (or contract of sale) or the date of occupancy agreement, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy, as the case may be. At least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessment the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

8. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount

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of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

9. Effect of Non-Payment -- 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 payments. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of Eighteen Percent (18%) per annum plus late payments service charge equal to Five Percent (5%) of each delinquent amount due and the Association may, in its discretion, bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgement obtained by the Association shall include reasonable attorney's fees, court costs, and each and every expense incurred by the Association in enforcing its rights.

10. Tax Collection from Lot owners by Washington County Authorized. It is recognized that under the Declaration the Association will hold fee title to the Common Areas, which Common Areas shall be conveyed by Declarant to the Association free and clear of all liens or encumbrances, and the Association will be obligated to pay property taxes on said Common Areas to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of this monthly common assessment will be required to pay to the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in the Declaration, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event that the assessor shall separately assess Common areas to the Association, the Board of Trustees may require, in its discretion, a special assessment to pay such taxes, or they may be included in the regular assessment budget.

VI. OPERATION AND MAINTENANCE

1. Operation and Maintenance by Association. The Association, acting through the Board, shall have the sole and exclusive right and duty to manage, operate, control, and repair, replace and restore Association property. 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 connection with the Lots and to keep the Common Areas clean.

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functional, attractive and generally in good condition and repair. The Association shall maintain, repair and restore those improvements located upon the Common Areas including, but not by way of limitation, the following: recreation facilities, security system, grass, trees, shrubs, watering and sprinkling system. In the event that special needs for maintenance or repair of the Common Areas, Lot Yard Areas, or the building exteriors of any Living Unit should be necessitated through willful or negligent act of the Member, his family, guests, or invitees, the cost of such maintenance shall be added to and become a part of assessment to which such Lot is subject.

2. Water, Sewer and Garbage Removal. The Association shall pay for any water or utility service which is not separately billed or metered to individual Lots. Each Lot Owner shall pay for all utility services which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

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

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

(b) A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobiles, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the Development because of negligent acts of the Association or other Owners.

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The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.

(2) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or equivalent rating. Each insurer must be specifically licensed in the State of Utah.

(3) The Association shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners of their Mortgagees.

(5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

(6) Review of Insurance. The Board shall periodically, whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

(7) Lots and Living Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot or Living Unit and acts or events occurring thereon. Accordingly, each Owner shall secure and keep in force at all times fire and extended coverage insurance which shall be equal to or greater than fire and extended coverage and shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the Mortgaged premises are located. The policy shall provide, as a minimum, fire and

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extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated by the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the Mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: (i) compensation equal to the full amount of damage or loss, or (ii) compensation to the first Mortgagee under the Mortgage equal to the full amount of the unpaid principal balance of the Mortgage loan. However, the Board may choose to obtain a master policy of insurance. If the Board elects so to do, such policy shall be in an amount equal to full replacement value of all Living Units and the Lots with a co-insurance clause and each Owner of such Lots shall be designated as additional insured. The cost of such insurance shall be part of the assessment for such Lot. Insurance may be procured by Declarant as a licensed insurance agent for the State of Utah and Declarant shall have a duty to account to the Association for commission earned.

(8) Unacceptable Policies. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contribution or assessments may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (ii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Lot Owner, Mortgagee, or Mortgagee's designee from collecting insurance proceeds.

(9) Flood Insurance. The Development is not located in an area identified by the Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Development should be declared to be in such flood area, by majority vote of the Association, a blanket policy of flood insurance on the Development shall be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Living Units comprising the Development or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in the form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

4. Manager. The Association may carry out through a 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.

5. Terms of Management Agreement. Any agreement for

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professional management of the Development, or any other contract providing for services of the Declarant, sponsor, or builder, may not exceed one (1) year. Any such agreement must provide termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

VII. USE RESTRICTIONS

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

2. Use of Lots and Living Units. Each Lot has been or shall be improved with a Living Unit, each to be used only as a single family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, or as to create a nuisance or interfere with the right of any owner or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

3. Non-Residential Uses. No part of the Property shall be used for any commercial, manufacturing, mercantile, storing, vending (except as may be installed as a convenience by the Declarant or Association), or other such non-residential purposes. The foregoing shall not exclude telephone solicitations or non-obtrusive cottage industry within the Living Unit, so long as such activity takes place solely within said Living Unit, does not bring customers or clients to the Development, or increase traffic within the Development. Declarant, its successors or assigns, may use the Property for a model home site display, and as a sales and construction office during the construction and sales period.

4. Signs. No sign of any kind shall be displayed to the public view or from any Lot or Common Area without the approval of the Association, except (a) such signs as may be used in connections with the development and sale of Lots in the Development; (b) such signs as may be required by legal proceedings or the prohibition of which is precluded by law; or (c) such signs as may be required for traffic control and regulation of Common Areas; (d) on any house or lot to be resold or rented one "For Sale" or "For Rent" sign may be posted on the property provided the sign is no larger than 3 ft. by 3 ft.

5. Quiet Enjoyment. No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his

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respective Living Unit or which shall in any way increase the rate of insurance.

6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time except as may be needed for construction purposes by the Owner. Any temporary structure utilized during construction shall be immediately removed at the completion of construction activities.

7. Boats and Motor Vehicles. No boats, trailers, buses, motor homes, campers or other vehicles shall be parked or stored upon the Common Area or upon a Lot, except within an enclosed garage or behind a completely enclosed wall or fence. Furthermore, no boats, trailers, buses, motor homes, campers or other motor vehicles shall be parked overnight upon any streets within the Development.

8. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other quiet household pets may be kept on the Lots provided that they are not kept, bred or maintained for any commercial purpose or kept in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious, by noise or otherwise, to Lot Owners. All pets must be kept in a fenced yard of the Lot or on a leash in the Common Areas.

9. Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. All clothes lines, refuse containers, wood piles, storage areas, machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots.

10. Mining. No portion of any Lot shall be used in any manner to explore for or remove any water, oil, or other hydrocarbons or minerals of any kind or earth substance of any kind.

11. Safe Conditions. Without limiting any other provisions of this Article, each Owner shall maintain and keep his Lot at all times in a safe, sound, and sanitary conditions and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment of other Owners of their respective Lots or the Common Areas.

12. Clothes Drying. No portion of any Lot shall be used for a drying and hanging area for laundry of any kind.

13. Entrance Gates. Subject to the easements created herein, the Association shall, from time to time, determine who may have access through the entrance gate(s) into the Development. The Declarant reserved the unrestricted right of entry and use of such streets for itself and its successors in interest, as to the Property and for its employees, agents, invitees, licensees, and

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guests. The Association may make reasonable rules relating to the right of entry to the entrance gate(s), but none restricting entry to Owners, their tenants and guests, or to prospective purchasers of Living Units or Lots invited by an Owner. Any entrance gate(s) may be abandoned, or its hours of operation reduced to less than 24 hours per day, at the discretion of the Association.

14. Violation of Law or Insurance. No owner shall permit anything to be done or kept in or upon his Lot or in or upon any Common Area which will result in the cancellation of insurance thereon or which would be in violation of any law.

15. Electronic Antennas. Any television, T.V. Dish, radio or other electronic antenna or devise of any type erected or constructed on any lot shall be located in the rear yard only and fenced so it is not visible from the street.

16. Exception for Declarant. Notwithstanding the restrictions contained in the Article VII, for the five-year period following the date on which the Declaration is filed for record in the office of the County Recorder of Washington County, Utah, Declarant shall have the right to use any Lot or Living Unit owned or leased by it and any part of the Common Areas reasonably necessary or appropriate, in furtherance if any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Declarant, and to conduct business activity incident to the foregoing on the Development.

VIII. SECURITY SYSTEM

1. Operation by Association. The Board shall operate and maintain a security system within the Development which may include a guard gate or gates, security personnel, and an alarm system to which Lots may be connected.

2. Association Easement. The Association is hereby granted the right and easement to enter any Lot (but not the Living Unit thereon unless such authority is specifically given in writing) in answer to an alarm or when circumstances reasonable cause security personnel to believe that a present security risk justifies such entrance.

3. Management of Security System. The Association shall manage and control the security gate(s) and other amenities of the security system and the Board may promulgate reasonable rules and regulations regarding the usage by Owners and their guests of the security gate(s) and the types of alarms and other equipment which may be connected to the system.

4. No Degradation of System. No Owner shall do anything which will degrade the effectiveness of the security system, and each Owner shall exercise the greatest control to not lose any card

key, remote control device, or similar equipment which might be used with the security system.

5. No Warranty of Effectiveness. Neither Declarant nor the Association warrants that PHEASANT RUN ESTATES will be a full security project, nor do they warrant that the security system will prevent criminal activities relative to, or upon, the Development.

6. Security Personnel. The Board may employ security personnel and empower them to enforce the conditions, covenants and restrictions, Association rules, and any other matter essential to the promotion of safety, enjoyment, and use of the Property, provided that said personnel shall act strictly in conformance and subject to federal, state, and local law, statute or ordinance and as authorized hereby.

IX. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three member committee, the function of which is to establish reasonable procedural rules, regulations, restrictions, architectural standards, site data sheets, and design guidelines to be to insure that all exteriors of Living Units and landscaping within the Development is harmonious and compatible with existing surroundings and structures. The Committee need not be composed totally of Owners; it may include outside people as required for management or professional purposes. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

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

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgement to insure that all improvements, construction, landscaping and alterations within the property are compatible as to nature, kind, shape, height, materials, exterior color, surface, texture, and locations of such improvements. Cost of the material used shall be one factor to be considered by the Committee. The Board may formulate general guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the Book of Resolutions and the Architectural Control Committee, or the Board, as the case may be, shall act in accordance with such guidelines and procedures. All Living Units, exclusive of garage, porches, patios, basements, and balconies shall have the following minimum square feet of living space: One level 2,800 square feet, Two levels 3,800 square feet. Each home built must have a garage with

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a minimum capacity of two cars. All walls to be constructed on the perimeter of any Lot shall be of brick, colored block, or stuccoed block and shall be harmonious and compatible with the wall constructed on the East perimeter of the Development. In addition to the house plans and specifications a landscaping plan must be submitted to the Architectural Control Committee for approval. Each lot owner must complete the landscaping on their lot, front, sides and rear within 6 months from the date their home is completed.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within Ten (10) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved any material submitted.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently pursued 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 the temporary use and occupancy of unimproved portions of the Common Areas in the vicinity of the activity.

6. Disclaimer of Liability. Neither the Architectural Committee nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development or manner of development of any of the Property; or (d) any engineering or other defect in approved plans or specifications.

7. Nonwaiver. The approval by the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications.

X. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot Owners in these proceedings, negotiations, settlement, or agreement. All compensations and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are the proceeds of the taking of any portion of the Common Areas shall be disposed of in such manner

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as the Association shall reasonably determine; provided, however, that in the event of a taking in which any Lot is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Lot to such Owner and any first Mortgagee of such Lot, as their interest shall appear, after deducting the proportionate share of said Lot in the cost of debris removal.

XI. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first Mortgagee shall be in effect:

1. Preservation of Regulatory Structure and Insurance. Unless seventy-five percent (75%) of all first Mortgagees and seventy-five percent (75%) of the Lot Owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulation, or enforcement thereof, pertaining to the architectural design of the exterior appearance of Living Units, the exterior maintenance of Living Units under certain conditions provided in Section 2 of Article VI, or the upkeep of the Common Areas of the Property;

(b) to fail to maintain fire or extended coverage on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(c) to use hazard insurance proceeds for losses to the Common Areas for other than repair, replacement, or reconstruction of improvements on the Common Areas.

2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least seventy-five percent (75%) of all first Mortgagees (based on one vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements or utilities and similar or related purposes, as herein elsewhere preserved; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

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Neither this Article XI nor the insurance provision contained in Article VI may be amended without the prior approval of all first Mortgagees.

3. Notice of Matters Affecting Security. The Association shall give written notice to any first Mortgagee of a Lot requesting such notice whenever:

(a) there is any default by the Owner of the Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within thirty (30) days after default occurs; or

(b) 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 excess of, \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(c) there is 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; or

(d) any of the following matters come up for consideration or effectuation by the Association: (i) abandonment or termination of the Planned Unit Development established by this Declaration; or (ii) material amendment of the Declaration or Articles or Bylaws of the Association; or (iii) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

4. Notice of Meetings. The Association shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Books. Any first Mortgagee shall have the right to examine the books, records and audit financial statements of the Association.

6. Right to Pay Taxes and Charges. First Mortgagees may, jointly and singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so

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expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

7. Exemption for any First Right of Refusal. Any first Mortgagee and any purchaser therefrom who obtains title to the Lot pursuant to the remedies provided in the first Mortgage, or by foreclosure of the first Mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale or otherwise shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

8. Rights upon Foreclosure of Mortgage. Each holder of a first Mortgage (or deed of trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale or otherwise will take the Lot free of, and shall not be liable for, any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into the possession of the Lot.

9. Restrictions Without Approval of Mortgagees. Except as to the Association's right to grant easements for utilities and similar or related purposes, the Development's Common Areas may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of the holders of seventy-five percent (75%) of the first Mortgage liens on the Lots.

XII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provision of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or the President of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Chairman or any member of such Committee.

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 interest of the Owners.

3. Amendment. Any amendment to this Declaration shall require the affirmative vote of at least two-thirds of all Lot Owners.

4. Consent in Lieu of Vote. In any case in which this

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

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

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

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose.

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

5. Reserve Fund. The Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

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

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

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

7. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof, and any gender shall include both other genders. The invalidity of enforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

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

9. Effective Date. This Second Amendment to the Declaration shall take effect upon its being filed for record in the office of the County Recorder of Washington County, Utah.

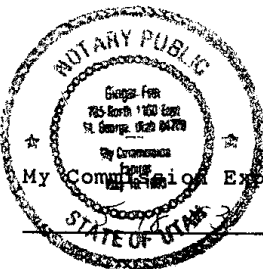
EXECUTED the day and year first above written.

PHEASANT RUN ESTATES
HOMEOWNERS ASSOCIATION.

By *Alan Archibald*
Alan Archibald, President

STATE OF UTAH)
 : ss.
County of Washington)

On the 19th day of February 1997, personally appeared before me Alan Archibald; who being by me duly sworn did say that he is the president of the PHEASANT RUN ESTATES HOMEOWNERS ASSOCIATION. That this amendment to the Declaration was signed by him on behalf of the PHEASANT RUN ESTATES HOMEOWNERS ASSOCIATION and said Alan Archibald acknowledged to me that said Homeowners Association executed the same.



George Felt
Notary Public
Residing in St. George, Utah

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SECOND AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
PHEASANT RUN ESTATES

This Amendment to Declaration of Covenants, Conditions,
and Restrictions of PHEASANT RUN ESTATES is made and executed
this 18th day of February, 1992 by,

Alan Archibald
ALAN ARCHIBALD

Pamela Archibald
PAMELA ARCHIBALD

Robert W. Prince
ROBERT W. PRINCE

Diane L. Prince
DIANE L. PRINCE

F. Arthur Kay
F. ARTHUR KAY

Eunice N. Kay
EUNICE N. KAY

Larry F. Dahle
LARRY F. DAHLE

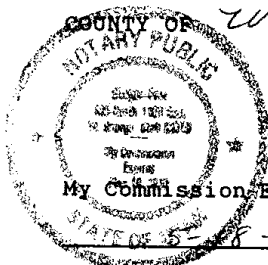
Joan Dahle
JOAN DAHLE

L. F. Wernli
L. F. WERNLI

Gayle Winterrose
GAYLE WINTERROSE

Gayle Winterrose
PARK TERRACE APARTMENTS, Partnership
By GAYLE WINTERROSE, General Partner

STATE OF UTAH



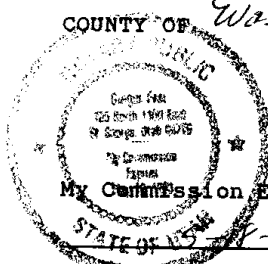
My Commission Expires:

(
: SS.
)

On the 18th day of February A.D. 1992
personally appeared before me ALAN ARCHIBALD
the signer of the within instrument who duly
acknowledged to me that he executed the same.

Benjamin Frei
Notary Public
Residing at St. George, Utah

STATE OF UTAH



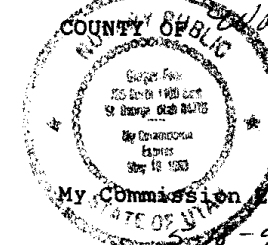
My Commission Expires:

(
: SS.
)

On the 18th day of February A.D. 1992
personally appeared before me PAMELA ARCHIBALD
the signer of the within instrument who duly
acknowledged to me that she executed the same.

Benjamin Frei
Notary Public
Residing at St. George, Utah

STATE OF UTAH



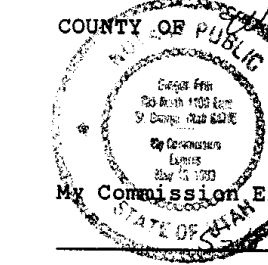
My Commission Expires:

(
: SS.
)

On the 18th day of February A.D. 1992
personally appeared before me ROBERT W. PRINCE
the signer of the within instrument who duly
acknowledged to me that he executed the same.

Benjamin Frei
Notary Public
Residing at St. George, Utah

STATE OF UTAH



My Commission Expires:

(
: SS.
)

On the 18th day of February A.D. 1992
personally appeared before me DIANE L. PRINCE
the signer of the within instrument who duly
acknowledged to me that she executed the same.

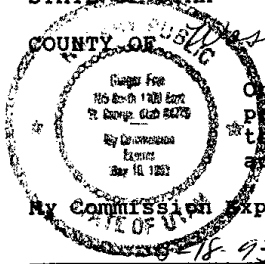
Benjamin Frei
Notary Public
Residing at St. George, Utah

0400535 Bk 0643 Pg 0789

STATE OF UTAH

COUNTY OF Washington

(: SS.



On the 18th day of February A.D. 1992
personally appeared before me F. ARTHUR KAY
the signer of the within instrument who duly
acknowledged to me that he executed the same.

My Commission Expires:

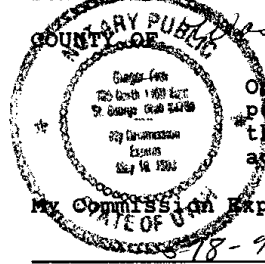
George Frie
Notary Public

Residing at St. George, Utah

STATE OF UTAH

COUNTY OF Washington

(: SS.



On the 18th day of February A.D. 1992
personally appeared before me EUNICE N. KAY
the signer of the within instrument who duly
acknowledged to me that she executed the same.

My Commission Expires:

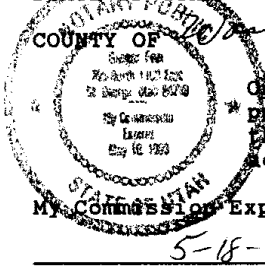
George Frie
Notary Public

Residing at St. George, Utah

STATE OF UTAH

COUNTY OF Washington

(: SS.



On the 18th day of February A.D. 1992
personally appeared before me LARRY F. DAHLE
the signer of the within instrument who duly
acknowledged to me that he executed the same.

My Commission Expires:

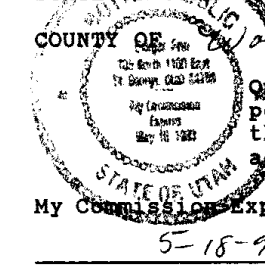
George Frie
Notary Public

Residing at St. George, Utah

STATE OF UTAH

COUNTY OF Washington

(: SS.



On the 18th day of February A.D. 1992
personally appeared before me JOAN DAHLE
the signer of the within instrument who duly
acknowledged to me that she executed the same.

My Commission Expires:

George Frie
Notary Public

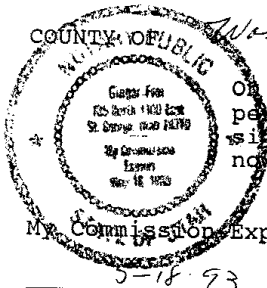
Residing at St. George, Utah

0400535 BK 0643 Pg 0790

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STATE OF UTAH

COUNTY OF Washington

(
: ss.
)



On the 18th day of February A.D. 1992
personally appeared before me L.F. WERNLI the
signer of the within instrument who duly ack-
nowledged to me that he executed the same.

My Commission Expires:

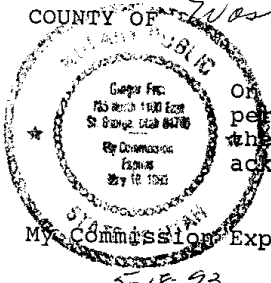
5-18-93

George Frei
Notary Public
Residing at St George Utah

STATE OF UTAH

COUNTY OF Washington

(
: ss.
)



On the 18th day of February A.D. 1992
personally appeared before me GAYLE WINTERROSE
the signer of the within instrument who duly
acknowledged to me that he executed the same.

My Commission Expires:

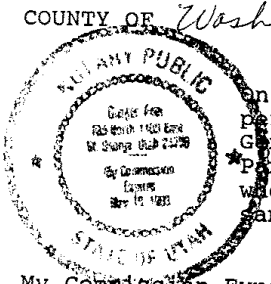
5-18-93

George Frei
Notary Public
Residing at St George, Utah

STATE OF UTAH

COUNTY OF Washington

(
: ss.
)



On the 18th day of February A.D. 1992
personally appeared before me GAYLE WINTERROSE,
General Partner of PARK TERRACE APARTMENTS, a Utah
Partnership the signer of the within instrument
who duly acknowledged to me that he executed the
same in behalf of PARK TERRACE APARTMENTS.

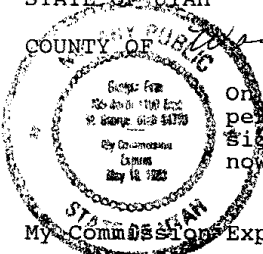
My Commission Expires:

5-18-93

George Frei
Notary Public
Residing at St George Utah

STATE OF UTAH

COUNTY OF Washington



My Commission Expires:

5-18-93

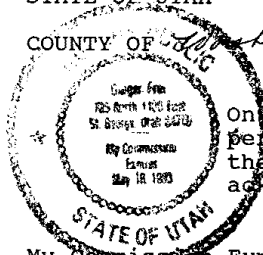
(
: ss.
(

On the 18th day of February A.D. 1992
personally appeared before me L.F. WERNLI the
signer of the within instrument who duly acknowledged to me that he executed the same.

L.F. Wernli
Notary Public
Residing at St George, Utah

STATE OF UTAH

COUNTY OF Washington



My Commission Expires:

5-18-93

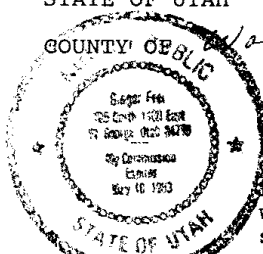
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: ss.
(

On the 18th day of February A.D. 1992
personally appeared before me GAYLE WINTERROSE
the signer of the within instrument who duly
acknowledged to me that he executed the same.

Gayle Winterrose
Notary Public
Residing at St George, Utah

STATE OF UTAH

COUNTY OF Washington



My Commission Expires:

5-18-93

(
: ss.
(

On the 18th day of February A.D. 1992
personally appeared before me GAYLE WINTERROSE,
General Partner of PARK TERRACE APARTMENTS, a Utah
Partnership the signer of the within instrument
who duly acknowledged to me that he executed the
same in behalf of PARK TERRACE APARTMENTS.

Gayle Winterrose
Notary Public
Residing at St George, Utah