

DECLARATION OF COVENANTS CONDITIONS  
AND RESTRICTIONS OF

PHEASANT SPRINGS,

A MASTER PLANNED COMMUNITY

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**TABLE OF CONTENTS OF  
DECLARATION OF COVENANTS CONDITIONS  
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ARTICLE I -- DEFINITIONS.....	1
Section 1. Association.....	1
Section 2. Common Area.....	2
Section 3. Declarant.....	2
Section 4. Declaration.....	2
Section 5. Limited Common Area .....	2
Section 6. Lot .....	2
Section 7. Member.....	2
Section 8. Mortgage.....	2
Section 9. Owner.....	2
Section 10. Plat or Map.....	2
Section 11. Property.....	2
Section 12. Residence.....	3
Section 13. Townhomes.....	3
Section 14. Unit.....	3
ARTICLE II -- PROPERTY RIGHTS.....	3
Section 1. Title to the Common Area.....	3
Section 2. Owner's Easements of Enjoyment.....	3
Section 3. Delegation of Use.....	4
Section 4. Rules.....	4
Section 5. Lot.....	4
Section 6. Limited Common Area.....	4
ARTICLE III -- MEMBERSHIP AND VOTING RIGHTS.....	5
Section 1. Membership.....	5
Section 2. Voting Rights.....	5
Section 3. Dissolution.....	6
ARTICLE IV -- FINANCES AND OPERATIONS.....	6
Section 1. Creation of the Lien and Personal Obligation of Assessments.....	6
Section 2. Purpose of Assessments.....	6
Section 3. Maximum Annual Assessment.....	7
Section 4. Special Assessments for Capital Improvements.....	7
Section 5. Additional Assessments.....	7
Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4, 5.....	8
Section 7. Uniform Rate of Assessment.....	8
Section 8. Date of Commencement of Annual Assessments.....	8
Section 9. Effect of Non-Payment of Assessment- Remedies of the Association.....	9
Section 10. Subordination of the Lien to Mortgages.....	10
Section 11. Books, Records and Audit.....	10

ARTICLE V -- INSURANCE.....	10
Section 1.    Casualty Insurance on Insurable Common Area.....	10
Section 2.    Replacement or Repair of Property.....	11
Section 3.    Liability Insurance.....	11
Section 4.    Fidelity Insurance.....	11
Section 5.    Annual Review of Policies.....	12
ARTICLE VI -- ARCHITECTURAL CONTROL COMMITTEE.....	12
ARTICLE VII -- EXTERIOR MAINTENANCE.....	13
Section 1.    Exterior Maintenance by Owner .....	13
Section 2.    Exterior Maintenance by Association.....	13
Section 3.    Access at Reasonable Hours.....	13
Section 4.    Alteration of Certain Maintenance Duties by Rule.....	13
ARTICLE VIII -- USE RESTRICTIONS.....	13
Section 1.    Construction Business and Sales, , , , .....	13
Section 2.    General Use Restrictions.....	14
Section 3.    Signs.....	14
Section 4.    Quiet Enjoyment.....	14
Section 5.    Animals.....	14
Section 6.    Use of Common Area.....	15
Section 7.    Parking.....	15
Section 8.    Planting and Gardening.....	15
Section 9.    External Apparatus.....	15
Section 10.   Exterior Television or Other Antennas.....	16
Section 11.   Garbage Removal.....	16
Section 12.   Oil and Mining Operations.....	16
Section 13.   Interior Utilities.....	16
Section 14.   Leases.....	16
ARTICLE IX -- EASEMENTS.....	16
Section 1.    Encroachments.....	16
Section 2.    Utilities.....	17
Section 3.    Police, Fire, and Ambulance Service.....	17
Section 4.    Maintenance by Association.....	17
Section 5.    Other Easements.....	17
ARTICLE X -- ANNEXATION.....	18
ARTICLE XI -- GENERAL PROVISIONS.....	19
Section 1.    Enforcement.....	19
Section 2.    Severability.....	19
Section 3.    Duration.....	20
Section 4.    Amendment.....	20
Section 5.    Notices.....	20
Section 6.    Gender and Grammar.....	20
Section 7.    Waivers.....	20
Section 8.    Topical Headings.....	20

**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF  
PHEASANT SPRINGS  
A MASTER PLANNED COMMUNITY**

THIS IS A DECLARATION of Covenants, Conditions, and Restrictions which establishes a planned unit development known as Pheasant Springs.

RECITALS

Declarant is the owner of certain real property (the "properties") in St. George, Washington County, Utah, which is more particularly described below.

Declarant will convey the properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth.

It is the desire and intention of Declarant to construct single family homes and sell and convey the same to various purchasers, and to convey common area to an Association in which the home owners will be members.

DECLARATION

Declarant hereby declares that all of the properties described as Units 1 - 15 and Units 98- 103 & 106 in said project, and adjacent common areas more particularly described in Exhibit A attached hereto in St. George, Utah, shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Map recorded concurrently. This is for the purpose of protecting the value and desirability of the properties. This Declaration and the Map shall be construed as covenants of equitable servitude, shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Additional property reflected on the Pheasant Springs tentative map may be annexed into the project and this Declaration depending upon feasibility and development as provided by Article X.

ARTICLE I -- DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1. Association means Pheasant Springs Homeowners Association Inc, a Utah Non-Profit Corporation, its successors and assigns. The Association shall be governed by Directors and Officers.

Section 2. Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 3. Declarant means Great West Development Company, a Nevada Limited Liability Company authorized to do business in the State of Utah, and the Declarant's heirs, successors and assigns.

Section 4. Declaration means this instrument, and any amendments.

Section 5. Limited Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant. Limited Common Area is subject to the rights of the Association set forth in this Declaration.

Section 6. Lot means a separately numbered and individually described plot of land shown on the plat designated for private ownership, but specifically excludes the limited common areas and common areas.

Section 7. Member means every person or entity who holds membership in the Association. Every member is an owner, and every owner is a member.

Section 8. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 9. Owner means the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each lot, the group of those parties shall be treated as one "owner."

Section 10. Plat or Map means the subdivision plat recorded herewith entitled "Pheasant Springs, Phase I", consisting of two sheets, prepared and certified by Terry W. Abplanalp, a Utah Registered Land Surveyor or any replacements thereof, or additions hereto.

Section 11. Property or Properties means that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration.

Section 12. Residence shall have the same meaning as townhomes.

Section 13. Townhomes means a single family dwelling, with or without walls or roofs in common with other single family dwelling lots. "Townhome" includes fee title to the real property lying directly beneath the single family dwelling, within lot boundary lines.

Section 14. Unit shall mean a separately numbered and individually described plot on the numbered Plan upon which a residence will be built and shall have same meaning as "Lot".

## ARTICLE II -- PROPERTY RIGHTS

Section 1. Title to the Common Area The Declarant will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common area in good repair and condition at all times and to operate the common area at its own expense in accordance with high standards.

Section 2. Owner's Easements of Enjoyment Every owner has a right and easement of use and enjoyment in and to the common area. This easement is appurtenant to and passes with the title to every lot, subject to:

(a) The right of the Association to charge reasonable admission, use, service, and other fees for the use of any service or recreational storage, or parking facility situated upon the common area. No fees shall be charged for parking specifically designated on the plat as appurtenant to a lot.

(b) The right of the Association to limit the number of guests or members using the common area.

(c) The right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of the Association to enter into agreements or leases which provide for use of the common areas and facilities by a similar Association in consideration for use of the common area and facilities of the other Association, or for cash consideration;

(e) The right of the Association with the approval of two-thirds (2/3) of each class of owners, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the common area to any private individual, corporate entity, public agency, authority or utility.

(f) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the common area by the Association.

(g) The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.

(h) The terms and conditions of the Declaration.

(i) The right of the Association, through its Directors or Officers, to adopt rules and regulations concerning use of the common area.

Section 3. Declaration of Use An owner is deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is non-resident shall have any such delegable right of enjoyment.

Section 4. Rules The Board of Directors or Officers shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Directors or Officers.

Section 5. Lot Each lot is owned in fee simple by the owner. However, area within the surveyed boundaries but outside the originally constructed residence walls shall be treated as limited common area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a lot larger than the residence is to allow flexibility in the original residence construction. After the initial construction on a lot, subsequent construction, if any, on that lot must nevertheless conform to the location, size, and appearance of the originally constructed residence.

Section 6. Limited Common Area A lot owner is entitled to the exclusive use of the limited common area adjacent and appurtenant thereto, if any, and to exclusive use of the parking

area, adjacent to his lot number on the plat. The Association, through its Directors or Officers, may adopt rules and regulations concerning use of the limited common area. Limited common area is subject to the rights of the Association set forth.

### ARTICLE III -- MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership Every owner is a member of the Association. The term "owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from lot ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

Section 2. Voting Rights The Association has two classes of voting membership:

CLASS A. Class A members are all members with the exception of the Declarant, as defined in the Declaration. Class A members are entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to the meeting, or verbal objection is made at that meeting, by another co-owner of the same lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

CLASS B. The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each lot owned. The Class B membership will cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier:

(a) Upon conveyance of forty four (44) lots unless additional lots are annexed while the Declarant has Class B membership; in which case the Declarant's membership appurtenant to the lots in the annexed area shall be Class B memberships; or



(b) the expiration of seven (7) years from the first lot conveyance to a purchaser; or

(c) the surrender of Class B membership status by the express written action of the Declarant.

Section 3. Dissolution. In the event of the permanent dissolution of the Property Owners Association for whatever reason, any Lot Owner may petition the District Court of the Fifth Judicial District, Washington County, Utah, for the appointment for a Receiver to manage the affairs of the dissolved Property Owners Association and the Common Property in place and instead of the Property Owners Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Property Owners Association and the Common Property.

#### ARTICLE IV -- FINANCES AND OPERATIONS

Section 1. Creation of the Lien and Personal Obligation Assessments The Declarant and each subsequent owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Directors or Officers pursuant to this Declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 2. Purpose of Assessments The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and (b) for the improvement and maintenance of properties, services, and facilities devoted to this purpose. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost

of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common and limited areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Directors or Officers shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Directors or Officers, for the payment of other charges including, without limitation, maintenance, management, utility, cable television, trash collection, sewer charges, water charges and legal fees.

Section 3. Maximum Annual Assessment Until January 1 following recording of this Declaration, the maximum annual assessment shall be ninty five Dollars (\$ 95.00 ) per lot. This amount shall be the basis of calculation for future maximum annual assessments.

(a) From and after the date referred to above the maximum annual assessment shall be increased each year by five percent (5%) above the maximum assessment for the previous year, without a vote of the membership.

(b) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements In addition to the annual assessments the Association may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of common area structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of each class of the members authorized to vote, in person or in proxy, at a meeting duly called for this purpose.

Section 5. Additional Assessments In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption

caused to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing, or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise is in the city up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3, 4, and 5 Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4, or 5 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment: Periodic Assessment Both annual and special assessments must be fixed at a uniform rate for all lots; provided, however, that assessments shall not accrue against the Declarant so long as the Declarant has Class B membership on the condition that the Declarant shall fund any fiscal deficiency in the operations of the Association until the termination of Class B membership. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgages.

Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Directors or Officers determine.

Section 8. Date of Commencement of Annual Assessments: Due Dates Except as provided herein, the annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Directors or Officers as to the amount of said assessment, the first annual assessment shall be an amount equal to ninety percent (90%) of the maximum annual assessment provided above.

At least thirty (30) days prior to the commencement of each new assessment period, the Directors or Officers shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be prerequisite to validity of the assessment.

The assessment due dates shall be established by the Directors or Officers. The Directors or Officers may provide for the payment of annual and special assignments in equal installments throughout the assessment year.

The Directors or Officers shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 9. Effect of Non-Payment of Assessment - Remedies of the Association Any assessment or installment thereof not paid within thirty (30) days after the due date at the rate of eighteen percent (18%) per annum (or such a lesser rate as the Directors or Officers shall determine appropriate) until paid. In addition, the Directors or Officers may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment.

The Directors or Officers may, in the name of the Association, (a) bring an action at law against the owner personally obliged to pay any such delinquent assessment without waiving the lien of the assessment, or (b) may foreclose the lien against the property in accordance with the laws of the state of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the lot from time to time

of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the lot of an owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or by abandonment of his lot.

Section 10. Subordination of the Lien to Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a lot or owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

Section 11. Books, Records and Audit The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records, and financial statements which shall all be available for inspection by lot owners and insurers as well as by holders, insurers, and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A lot owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

#### ARTICLE V -- INSURANCE

Section 1. Casualty Insurance on Insurable Common Area The Directors or Officers shall keep all insurable improvements and fixtures of the common area insured against loss or damage by fire for the full insurance replacement cost thereof, and may

obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and other such hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the common area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

Section 2.     Replacement or Repair of Property In the event of damage to or destruction of any part of the common area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such lot owner.

In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Directors or Officers are empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each owner for this purpose.

Section 3.     Liability Insurance The Directors or Officers shall obtain a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the common areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

Section 4.     Fidelity Insurance The Directors or Officers may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors or Officers, officers, employees, volunteers, management agents or others responsible for handling

funds held and collected for the benefit of the owners or members. On procuring fidelity insurance the Directors or Officers shall seek a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (i) three month's operation expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5. Annual Review of Policies All insurance policies shall be reviewed at least annually by the Directors or Officers in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed.

#### ARTICLE VI -- ARCHITECTURAL CONTROL COMMITTEE

No structure, building, fence, wall or addition, extension or expansion of any of the foregoing shall be commenced, erected, or maintained upon the properties, nor shall any exterior addition or change or alteration to any lot or residence be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Directors of the Association or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Directors. In the event said Directors, or their designated committee, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this article will be deemed to have been made.

Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners, neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of residences and lots, and the maintenance of the common areas, including walls, fences, driveways, lawns and plantings.

The Declarant shall not be required to comply with the provisions in this paragraph in the initial construction of the properties.

#### ARTICLE VII -- EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance by Owner. Each owner shall be responsible for maintenance to the exterior of the residence owned and in the limited common area adjacent and appurtenant to the lot. The Trustees shall, however, in the default of the owner to perform maintenance which is the owner's responsibility, and after a two-thirds (2/3) vote and after ten days written notice (which notice shall not be required in the event of an emergency to life, health, property or safety), provide exterior maintenance upon each residence and lot, and the limited common area adjacent and appurtenant thereto. The cost of such maintenance shall be assessed against the lot, or residence.

Section 2. Exterior Maintenance by Association. The Association shall be responsible for maintenance upon the common area, the limited common area which is not adjacent to any lot, and the area of any lot outside the walls of the residence which is of the same character as surrounding common or limited common area. The cost of such maintenance shall be a common expense.

Section 3. Access at Reasonable Hours For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.

Section 4. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a lot outside the walls of the residence, and the limited common areas adjacent and appurtenant to the residences may be altered by Rule of the Association.

#### ARTICLE VIII -- USE RESTRICTIONS

Section 1. Construction, Business, and Sales Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of lots during the period of construction and sale of said lots and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the



right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 2.       General Use Restrictions All of the properties which are subject to this declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the common property. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the properties. After the initial construction on a lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

Section 3.       Signs: Commercial Activity Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 4.       Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or 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 or which shall in any way increase the rate of insurance.

Section 5.       Animals No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of said lots, except that dogs, cats or other household pets, two or less in number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in annoyance or are obnoxious, by noise, smell or otherwise, to lot owners. All pets must be kept in the lots or on a leash when in the common areas. This provision may be made more restrictive by Rule of the Association.

Section 6. Use of Common Area Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Directors or Officers. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 7. Parking No motor vehicle which is inoperable shall be allowed within the Properties, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense. If parking spaces are designated on the plat with numbers corresponding to lot numbers, each such space is for the exclusive use of the lot owner with the corresponding number. If parking areas are not designated on the plat with lot numbers, the Directors or Officers may assign vehicle parking spaces for each lot. Parking spaces within the Properties shall be used for parking of motor vehicles actually used by the owner or his immediate family or guests for personal use and not for commercial use, and for guest parking. Recreational vehicles, boats, travel trailers and similar property may not be parked within the Properties unless permitted by rule of the Association.

Section 8. Planting and Gardening No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Directors.

Section 9. External Apparatus No lot owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Directors or Officers.

Section 10. Exterior Television or Other Antennas No exterior radio or other antennas, except one television antenna which shall not exceed four feet in height, per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Directors or Officers.

Section 11. Garbage Removal All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 12. Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any lot.

Section 13. Interior Utilities All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

Section 14. Leases Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease.

#### ARTICLE IX -- EASEMENTS

Section 1. Encroachments Each lot and the property included in the common areas shall be subject to an easement for encroachments created by construction, setting and overhangs, as designed or constructed by the Declarant. There shall exist a reciprocal easement for all Lot Owners to use the Common Areas consistent with this Declaration. A valid easement for said encroachments and for the maintenance of same, so long as it

stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, limited to water, sewers, gas, telephone, and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate, and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties except as initially programmed and approved by the Declarant or thereafter approved by the Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without conflicting with the terms hereof. All utilities that are installed in, upon, under or through said property without conflicting with the terms hereof. All utilities that are installed in upon, under or through the common areas of the properties shall be maintained under the direction of the Association.

Section 3. Police, Fire and Ambulance Service An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common area in the performance of their duties.

Section 4. Maintenance by Association An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area and any lot to perform the duties of maintenance and repair.

Section 5. Other Easements The easements provided for in this Article shall in no way affect any other recorded easement.

#### ARTICLE X -- ANNEXATION

Declarant reserves the right, at its sole election, to expand the Properties to include additional property more particularly described on the Pheasant Springs tentative map attached hereto as Exhibit B by unilateral action of Declarant without the consent of owners, for a period of seven (7) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

The property, all or part of which may be included in one or more annexations, is located in Washington County, Utah, and is more particularly described in Exhibit B, the Pheasant Springs tentative map.

Annexation shall occur by the Declarant filing:

1. an additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration upon the filing of a Declaration of Annexation and

2. a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration.

Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings, architecturally compatible to the existing townhomes, similar to the residences already constructed, constructed out of similar materials, with similar lot size. The maximum number of lots to be added shall be 141. The Declarant shall have the sole discretion as to development of the common area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such common areas shall be owned by the Association. There may be a recreational clubhouse and park area added to the community which will become the property of the Association and become part of the common area.

The common area and limited common area in such expansion area shall be deeded by the Declarant of the Association, free and clear of all encumbrances and liens, prior to recordation of the Declaration of Annexation and the Association shall accept the deed to said areas. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of the property and facilities of the Association. If, at the time of the expansion, the Declarant has Class B ownership status, that status shall extend to all lots in the expansion area. Otherwise, owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each lot and lot owner in any expansion area shall be equal to the liability of each lot and lot owner in the original properties.

#### ARTICLE XI -- GENERAL PROVISIONS

Section 1. Enforcement The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Directors or Officers may levy a fine or penalty not to exceed ten percent (10%) of the amount of the maximum annual assessment against any owner who fails to retain from violation of these covenants or a rule of the Association, after three (3) days written notice.

Section 2. Severability All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and owners, their successors, heirs and assigns shall be bound by

each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 3.        Duration    The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten years.

Section 4.        Amendment    The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the owners. Any amendment must be properly recorded in the records of the Washington County, Utah, to become effective.

Notwithstanding the foregoing, the Declarant reserves the right for so long as he shall have Class B membership status, to unilaterally amend the Declaration.

Section 5.        Notices    Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 6.        Gender and Grammar    The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 7.        Waivers    No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 8.        Topical Headings    The topical headings contained in this Declaration are for convenience only and do not define, limit, or construe the contents of the Declaration.

## Exhibit "A" - Legal Description

Beginning at a point North 00°40'10" West 2054.26 feet along the Center Section Line and North 90°00'00" East 643.08 feet from the South 1/4 Corner of Section 26, Township 42 South, Range 16 West of the Salt Lake Base and Meridian, said point being the Southeast Corner of the proposed Woodbridge Subdivision, and thence North 36°09'25" East 613.54 feet along the Easterly Boundary Line of said proposed Woodbridge Subdivision to the Westerly Right-of-Way Line of Indian Hills Drive, said point being on a 2033.00 foot Radius curve concave to the Northeast, the radius point of which bears North 50°06'11" East; thence Southeasterly 115.03 feet along the arc of said curve through a central angle of 03°14'31"; thence South 43°08'20" East 102.61 feet to the Point of Curvature of a 713.31 foot radius curve concave to the Southwest; thence Southeasterly 104.33 feet along the arc of said curve, through a central angle of 08°22'50", to a point from which the radius point bears South 55°14'30" West; thence departing said Right-Of-Way Line, South 57°12'43" West 100.97 feet to a point on the Easterly Line of a 50 foot wide private roadway, said point also being on a 612.86 foot radius curve concave to the Southwest, the radius point of which bears South 54°52'26" West; thence Southeasterly 40.01 feet along the arc of said curve through a central angle of 03°44'25"; thence departing said Easterly Line, South 58°36'51" West 50.00 feet to a point on the Westerly Line of said 50 foot wide private roadway, said point also being on a 562.86 foot radius curve concave to the Southwest, the radius point of which bears South 58°36'51" West; thence Southeasterly 20.83 feet along the arc of said curve through a central angle of 02°07'14"; thence departing said Westerly Line, South 36°09'25" West 12.306 feet; thence South 63°51'49" West 78.84 feet; thence South 26°08'11" East 41.405 feet; thence South 36°09'25" West 12.81 feet; thence South 69°44'47" West 80.025 feet to a point on the Easterly Line of a 50 foot wide private roadway, said point also being on a 381.60 foot radius curve concave to the Southwest, the radius point of which bears South 65°59'24" West; thence Southeasterly 53.33 feet along the arc of said curve through a central angle of 08°00'27"; thence departing said Easterly Line, South 36°09'25" West 112.68 feet; thence South 87°17'31" West 71.906 feet; thence South 06°28'14" West 60.50 feet; thence South 68°34'54" West 44.23 feet; thence North 73°42'03" West 70.65 feet; thence North 68°11'34" West 19.44 feet to a point on the Extension of the Easterly Line of a 50 foot wide private roadway; thence North 16°17'57" East 13.514 feet along said Extension and the Easterly Line; thence departing said Easterly Line North 73°42'03" West 139.99 feet to a angle point on the Easterly Boundary Line of Creekside Homes Amended; and thence following the existing block wall in the following four (4) courses: North 64°29'17" West 14.30 feet; thence North 36°10'30" East, 35.894 feet; thence North 57°33'00" West, 29.84 feet; thence North 36°09'25" East 110.22 feet (110.23 feet, record) to the Point of Beginning.

Contains 4.698 acres.



#### **Exhibit "B" - Pheasant Springs - Total Boundary**

Beginning at a point North 00°40'10" West, 1932.75 feet along the Center Section Line and North 90°00'00" East, 554.00 feet from the South quarter corner of Section 26, Township 42 South, Range 16 West of the Salt Lake Base and Meridian and thence North 36°09'25" East, 762.81 feet to the Westerly Right-of-Way line of Indian Hills Drive, said point being on a 2033.00 foot radius curve concave to the Northeast, the radius point of which bears North 50°06'11" East; thence Southeasterly 115.03 feet along the arc of said curve through a central angle of 03°14'31"; thence South 43°08'20" East, 102.61 feet to the point of curvature of a 713.31 foot radius curve concave to the Southwest; thence Southeasterly 709.32 feet along the arc of said curve through a central angle of 56°58'30"; thence South 13°50'10" West, 656.70 feet to the point of curvature of a 767.00 foot radius curve concave to the Northwest; thence Southwesterly 297.22 feet along the arc of said curve through a central angle of 22°12'10"; thence South 36°02'20" West, 148.69 feet to the point of curvature of a 533.00 foot radius curve concave to the Southeast; thence Southwesterly 34.72 feet along the arc of said curve through a central angle of 03°43'57" to a point from which the radius point bearing South 57°41'37" East; thence South 86°57'00" West, 574.63 feet; thence South 05°20'00" East, 649.10 feet to the South line of said Section 26; thence North 89°46'25" West, 26.27 feet along said South line of Section 26; thence North 08°30'00" West, 47.54 feet; thence North 18°43'00" West, 337.74 feet; thence North 03°25'00" West, 298.14 feet; thence North 17°36'00" West, 147.82 feet; thence North 05°49'00" East, 81.24 feet; thence North 28°57'30" West, 270.47 feet; thence North 25°03'00" West, 141.65 feet to the center section line; thence North 00°40'10" West, 109.89 feet along said center section line; thence South 89°04'56" East, 422.65 feet to the Southeast corner of Creekside Homes Amended; thence following the Boundary line of said Creekside Homes Amended in the following three (3) courses: North 15°39'48" East, 448.01 feet; North 18°20'21" East, 139.70 feet; North 64°29'17" West, 44.59 feet to the Point of Beginning.

Contains 33.926 acres.

#### **Less and Excepting:**

Beginning at a point North 00°40'10" West 2054.26 feet along the Center Section Line and North 90°00'00" East 643.08 feet from the South 1/4 Corner of Section 26, Township 42 South, Range 16 West of the Salt Lake Base and Meridian, said point being the Southeast Corner of the proposed Woodbridge Subdivision, and thence North 36°09'25" East 613.54 feet along the Easterly Boundary Line of said proposed Woodbridge Subdivision to the Westerly Right-of-Way Line of Indian Hills Drive, said point being on a 2033.00 foot Radius curve concave to the Northeast, the radius point of which bears North 50°06'11" East; thence Southeasterly 115.03 feet along the arc of said curve through a central angle of 03°14'31"; thence South 43°08'20" East 102.61 feet to the Point of Curvature of a 713.31 foot radius curve concave to the Southwest; thence Southeasterly 104.33 feet along the arc of said curve, through a central angle of 08°22'50", to a point from which the radius point bears South 55°14'30" West; thence departing said Right-Of-Way Line, South 57°12'43" West 100.97 feet to a point on the Easterly Line of a 50 foot wide private roadway, said point also being on a 612.86 foot radius curve concave to the Southwest, the radius point of which bears South 54°52'26" West; thence Southeasterly 40.01

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feet along the arc of said curve through a central angle of 03°44'25"; thence departing said Easterly Line, South 58°36'51" West 50.00 feet to a point on the Westerly Line of said 50 foot wide private roadway, said point also being on a 562.86 foot radius curve concave to the Southwest, the radius point of which bears South 58°36'51" West; thence Southeasterly 20.83 feet along the arc of said curve through a central angle of 02°07'14"; thence departing said Westerly Line, South 36°09'25" West 12.306 feet; thence South 63°51'49" West 78.84 feet; thence South 26°08'11" East 41.405 feet; thence South 36°09'25" West 12.81 feet; thence South 69°44'47" West 80.025 feet to a point on the Easterly Line of a 50 foot wide private roadway, said point also being on a 381.60 foot radius curve concave to the Southwest, the radius point of which bears South 65°59'24" West; thence Southeasterly 53.33 feet along the arc of said curve through a central angle of 08°00'27"; thence departing said Easterly Line, South 36°09'25" West 112.68 feet; thence South 87°17'31" West 71.906 feet; thence South 06°28'14" West 60.50 feet; thence South 68°34'54" West 44.23 feet; thence North 73°42'03" West 70.65 feet; thence North 68°11'34" West 19.44 feet to a point on the Extension of the Easterly Line of a 50 foot wide private roadway; thence North 16°17'57" East 13.514 feet along said Extension and the Easterly Line; thence departing said Easterly Line North 73°42'03" West 139.99 feet to an angle point on the Easterly Boundary Line of Creekside Homes Amended; and thence following the existing block wall in the following four (4) courses: North 64°29'17" West 14.30 feet; thence North 36°10'30" East, 35.894 feet; thence North 57°33'00" West, 29.84 feet; thence North 36°09'25" East 110.22 feet (110.23 feet, record) to the Point of Beginning.

Contains 4.698 acres.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 23 day of JUNE, 1995.

GREAT WEST DEVELOPMENT COMPANY,  
a Nevada Limited Liability Company

Stewart Shumway  
By: Stewart Shumway  
Its: Manager

STATE OF UTAH )  
 ) SS  
COUNTY OF WASHINGTON)

The foregoing Pheasant Springs Declaration of Covenants, Conditions and Restrictions was acknowledged before me this 23 day of June, 1995, by Stewart Shumway, Manager of Great West Development, a Nevada Limited Liability Company.

Kim M. Lay  
Notary Public

My Commisison Expires:

12-1-97

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