

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**009477**

**PHEASANT RUN, SECTION X**

This Declaration, made on the date hereinafter set forth by Nicholson Homes, Inc., hereinafter referred to as "Declarant".

**WITNESSETH:**

WHEREAS, the Declarant is the owner of certain property in the County of James City, Virginia, which is more particularly described in Schedule "A" attached. ("Property")

NOW, THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and which shall be binding on all parties having any right; title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**Definitions**

SECTION 1. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 2. "Property" shall mean and refer to that certain real property described on Schedule A attached hereto.

SECTION 3. "Declarant" shall mean and refer to Nicholson Homes, Inc., and its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

SECTION 4. "Committee" shall mean the Pheasant Run Homeowners Committee established in the Declaration recorded in Deed Book 615, Page 253.

SECTION 5. "Common Areas" would mean the private roads situate within the Property and other areas shown and designated as "Green Area" or "Common Area" on the subdivision plat of the Property.

SECTION 6. "Lot" shall mean any numbered plot of land shown upon any recorded subdivision plat containing all or a portion of the Property. This term shall not include any portion of the Common Area.

## ARTICLE II

### Architectural Control

SECTION 1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials 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 Declarant or by an architectural committee composed of three or more representatives appointed by a written document executed by the Declarant. In the event the Declarant, or its designated committee, fails to approve or disapprove such design and location within thirty days after said plans and specifications have been submitted to it, approval will not be required and this paragraph will be deemed to have been complied with fully.

SECTION 2. Furthermore, no living tree with a diameter of six inches or more shall be destroyed by any person without approval of the Declarant or architectural committee. Any construction shall be completed within twelve months of the date of approval.

SECTION 3. Only those general contractors approved by the Declarant shall be permitted to build improvements on any lot.

**ARTICLE III****Use Restrictions**

**SECTION 1.** Each lot shall be used exclusively for residential purposes and no building shall be erected, altered, placed or permitted to remain thereon other than one single-family dwelling with a minimum of one thousand square feet of living space approved pursuant to Article II of this Declaration (hereinafter referred to collectively as "Dwellings" or severally as "Dwelling").

**SECTION 2.** The Declarant reserves for the benefit of itself and its successors and assigns, easements for installation, repair, maintenance and/or replacement of utility and drainage facilities within the areas reserved for and designated "Easement" on the aforementioned plat and where no Easement is so designated, within an area five feet in width along the front, side and rear lines of each lot, as well as the right to use said areas for ingress and egress in connection therewith. The Declarant further reserves the right, before or after the sale of any of the lots, to transfer and assign any of the rights and easements herein described.

**SECTION 3.** There shall be no outdoor airing or drying of any clothing, bed linens, blankets, rugs, etc. on the Property, except at such locations and on such terms and conditions as may be prescribed by the Declarant.

**SECTION 4.** No obnoxious or offensive activity shall be conducted or permitted on the Property, and nothing shall be done thereon which may be or become an annoyance or a nuisance to the neighborhood. No business or profession of any kind or nature shall be carried on or practiced in any dwelling without the express written consent of the Declarant.

**SECTION 5.** No trailer, tent, shack, barn garage, or outbuilding shall be used on the Property at any time as a residence, either temporarily or permanently. Nor shall any boat, boat trailer, school bus, truck with commercial lettering or commercial use, or any truck over three-quarter ton, camper or camping trailer, or other mobile living or recreational vehicle, be stored, parked or kept on the Property

for more than eight hours, except in such area or areas as may be designated by the Declarants and such units shall not be used as living quarters while so stored or parked.

SECTION 6. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property, except that dogs, cats and other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes and provided that they do not become a nuisance to other owners or occupants. No permitted animal shall be allowed outside of a dwelling unless under the Owner's control and in his presence.

SECTION 7. No sign or poster of any kind shall be displayed to the public view on the Property, except contractors' signs during construction period and one professional real estate sign of not more than six square feet, advertising a lot, and any dwelling constructed thereon, for sale or for rent.

SECTION 8. It shall be the Owner's responsibility to keep the area between the boundary line of his lot in the subdivision and the surface of any adjoining road or roads, cleared of all brush, tall grasses, weeds, trash, garbage or other waste. All lots shall be kept clear of trash, garbage or other waste. If the Owner of any lot fails to perform this covenant, then the Declarant, at its sole option, shall have the right to perform any necessary maintenance or clearing and the Owner hereby agrees to reimburse Declarant for its costs.

SECTION 9. No Owner, resident or lessee shall install wiring for electrical or telephone installation, radio or television antennae, machines or air conditioning units, etc., on the exterior of any building or structure or in a way that causes same to protrude through the walls or the roof of any building or structure except as authorized by the Declarant.

SECTION 10. Inoperative or unlicensed cars, trucks, or other vehicles shall not be parked or stored on streets, parking areas or lots.

SECTION 11. The respective Lots shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty days; or (b) any rental

if the occupants are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, the Owners of the respective Lots shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration.

#### ARTICLE IV

##### Maintenance of Common Areas and Other Responsibilities of the Committee

SECTION 1. Committee. The Pheasant Run Homeowners Committee was established by the Declaration recorded on April 27, 1993 in James City County Deed Book 615, Page 253. The Committee shall consist of five persons elected by the Owners of a majority of the Lots. Each Committee member shall serve a term of two years except that two of the members of the initial Committee shall serve a term of one year, such that either two or three Committee members are elected each year. The Committee shall meet monthly to deal with its responsibilities as set out in the Declaration.

SECTION 2. Common Areas. The development of the Property will establish Common Areas for the benefit of all of the Owners. In particular, the roadways situate in the Property and certain green areas are provided for the benefit of the Owners. Every Owner shall have right a nonexclusive and easement of enjoyment in and to the Common Areas within the Property, which shall be appurtenant to and pass with the title to every Lot.

SECTION 3. Committee Responsibilities. The Committee shall:

- a. Maintain the Common Areas within the Property, including the private roads serving Lots within the Property.
- b. Pay any utility bills associated with the Common Area.
- c. Arrange for the maintenance of the lawns or exterior of any buildings situate on the Lots in the Property as further described below.
- d. Exercise architectural control if designated to do so by the Declarant.

**SECTION 4. Assessments.**

a. In order to adequately fund the maintenance of the Common Area and the Lots, the Declarant for each Lot owned within the Property hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or conveyance, is deemed to covenant and agree to pay to the Committee regular assessments or charges and special assessments for capital improvements as hereinafter provided. The regular and special assessments payable to the Committee are separate and distinct from and shall not be commingled with those payable to the Seasons Trace Single Family Association by Owners on account of their membership in that association. The regular and special assessments, together with interest thereon and any costs of collection (including reasonable attorney's fees) shall be a charge on the Lots and shall be a continuing lien upon the Lot against which such assessment is made. Sale or transfer of any Lot shall not affect the assessment lien. Each such assessment, together with interest, cost and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of any Lot at the time when the assessment fell due.

b. The initial regular, annual assessment payable to the Committee shall be \$120.00 for each Lot situate in the Property. This shall not be increased prior to January 1, 1995. Subsequent to January 1, 1995, the regular annual assessment may be increased by no more than five percent per year by the Committee. Liability for all assessments on any Lot shall not commence until the date such Lot is conveyed to an Owner other than the Declarant.

c. In addition to the annual assessments authorized above, the Committee may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements situate within the Common Area in the Property, provided that any such assessment must have the assent of the Owners of two-thirds of the Lots in the Property and provided further that any such special assessment shall be the same for every Lot.

d. The sale or transfer of any Lot shall not affect the assessment lien. However, in the event any person shall acquire title to any Lot by virtue of any foreclosure of any first mortgage or first deed of trust, or any proceedings in lieu thereof, such person so acquiring title shall only be liable and obligated for assessments as shall accrue and become due subsequent to the date of acquisition.

**SECTION 5. Owner Maintenance Responsibility.** Each Owner shall maintain his or her Lot in a neat and orderly fashion. Owners shall:

- a. Not permit grass to grow in excess of six inches in height;
- b. Control and correct any conditions on their Lot which result in erosion or sedimentation;
- c. Remove any dead trees from their Lot, and;
- d. Maintain the exterior appearance of buildings situate on their Lot in the condition established when they are initially completed.

## ARTICLE V

### General Provisions

**SECTION 1. Enforcement.** The Declarant, or any Owner, or the Committee or the Seasons Trace Single Family Association 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. Failure by the Declarants or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**SECTION 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provision which shall remain in full force and effect.

**SECTION 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten years. This Declaration may be

amended during the first twenty year period by an instrument signed by not less than eighty percent of the Owners, and thereafter by an instrument signed by not less than sixty-five percent of the Owners. Any amendments must be recorded.

SECTION 4. Substitution. The Declarant shall have the right at its sole option to assign its powers set forth herein to an association or committee of lot owners by instrument duly recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia.

SECTION 5. Seasons Trace Single Family Association. Each Owner shall be a member of the Seasons Trace Single Family Association (a Virginia Corporation) and shall comply with its by-laws, including payment of any dues properly assessed. Unpaid dues of the Seasons Trace Single Family Association, interest, late charges and collection costs, including reasonable attorney's fees, if any, shall be a lien against the Lot on which they were assessed. Each Owner shall be a member of the Seasons Trace Recreation Association.

WITNESS the following signatures and seals this 31<sup>st</sup> day of May, 1994.

NICHOLSON HOMES, INC.

By

  
Thomas H. Nicholson III, President




STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing Declaration was acknowledged before me by Thomas H. Nicholson III, President of Nicholson Homes, Inc., a Virginia Corporation, this 31<sup>st</sup> day of may, 1994.

Wesley R. [Signature]  
NOTARY PUBLIC  
My commission expires: March 31, 1997



SCHEDULE A

All those certain parcels of land situate in James City County, Virginia, shown on a certain plat entitled, "PLAT OF SEASON'S TRACE, SECTION X, LOTS 25-51, POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated May 12, 1994, and made by G. T. Wilson, Jr., C.L.S., recorded in Plat Book 59, Pages 43 & 44 in the Clerk's Office of the Circuit Court, Williamsburg/James City county, Virginia.

**VIRGINIA: City of Williamsburg and County of James City, to Wit:**

In the Clerk's office of the Circuit Court of the City of Williamsburg and County of James City the 10 day of June, 1994, This DEED was presented with certificate annexed and admitted to record at 10:28 o'clock

Teste: Helene S. Ward, Clerk

by [Signature]  
Deputy Clerk

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