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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND  
RESTRICTIONS**

**OF**

**SOMERSET PLACE CONDOMINIUM**

FRUIT HEIGHTS  
DAVIS COUNTY, UTAH

SOMERSET PLACE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.  
a Utah Nonprofit Corporation

Table of Contents

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM	1
RECITALS	1
ARTICLE I - DEFINITIONS	3
ARTICLE II - SUBMISSION	7
ARTICLE III - BUILDINGS AND PROPERTY	8
ARTICLE IV - OWNERSHIP	10
ARTICLE V - BOARD OF DIRECTORS	12
ARTICLE VI - OPERATION AND MAINTENANCE	14
ARTICLE VII - ASSESSMENTS	16
ARTICLE VIII - USE OF PROPERTY	21
ARTICLE IX - RENTAL RESTRICTIONS	27
ARTICLE X - INSURANCE	29
ARTICLE XI - CASUALTY DAMAGE OR DESTRUCTION	32
ARTICLE XII - MORTGAGEE RIGHTS	34
ARTICLE XIII - SMOKING PROHIBITION	36
ARTICLE XIV - DISPUTE RESOLUTION AND LIMITATION ON LITIGATION	38
ARTICLE XV - EMINENT DOMAIN	41
ARTICLE XVI - INDEMNIFICATION	42
ARTICLE XVII - AMENDING DOCUMENTS AND VOTING	43
ARTICLE XVIII - MISCELLANEOUS	43
Certification	45
SOMERSET PLACE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.	45
EXHIBIT "A"	45
Legal Description of Units at Somerset Place Condominium	45
EXHIBIT "B" - BYLAWS	48
ARTICLE I - PLAN OF LOT OWNERSHIP AND INCORPORATION	48
ARTICLE II - ASSOCIATION	48
ARTICLE III - BOARD OF DIRECTORS	51
ARTICLE IV - NOMINATION AND ELECTION OF BOARD MEMBERS	54

ARTICLE V - OFFICERS	55
ARTICLE VI - FISCAL YEAR	56
ARTICLE VII - AMENDMENT TO BYLAWS	56
ARTICLE VIII - COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS	57
EXHIBIT "C" – MAINTENANCE CHART	58
EXHIBIT "D" - ASSOCIATIONMAPS	61
EXHIBIT "E" – RECORD RETENTION SCHEDULE	62

## **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SOMERSET PLACE CONDOMINIUM**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Somerset Place Condominium (“Restated Declaration”), is made and executed by and between the Owners of Units in Somerset Place Condominium (“Somerset Place”) on the date shown below after being voted on and approved by the Owners of Units within Somerset Place and Members of the Somerset Place Condominium Homeowners Association, Inc. (“Association”), in accordance with the Associations’ Governing Documents and the provisions of the Utah Condominium Ownership Act (“Act”).

### **RECITALS**

WHEREAS, Somerset Place Condominium was created by the “Declaration of Covenants, Conditions and Restrictions of Somerset Place Condominium,” dated May 12, 1971, together with the “Record of Survey Map of Somerset Place Condominiums,” recorded May 12, 1971, in Book 456, Page 378, Entry No. 350987, of the official records of Davis County, Utah (“Enabling Declaration”); and

WHEREAS, the Enabling Declaration of Somerset was amended by the “Amendment of Declaration of Covenants, Conditions and Restrictions of Somerset Place Condominiums” recorded on March 14, 1983, in Book 934, Page 844, Entry No. 635167, official records of the Recorder of Davis County, State of Utah (“1983 Amendment”); and

WHEREAS the Enabling Declaration and the 1983 Amendment were amended and replaced by the “Amendment II Declaration of Covenants, Conditions and Restrictions [of] Somerset Place Condominium” recorded in the records of Davis County, Utah, on February 22, 1988, in Book 1219, beginning on page 742, as Entry # 0816571; and

WHEREAS, the “Amendment III to Declaration of Covenants, Conditions and Restrictions,” was recorded on June 22, 1989, in Book 1299, Page 597, Entry No. 861874, official records of the Recorder of Davis County, State of Utah; and

WHEREAS, the “Amendment to Declaration of Somerset Place Condominium,” was recorded in the records of Davis County, Utah on October 26, 2009, in book 4888, beginning on page 586, entry number 2489162; and

WHEREAS, the property that is the subject of this Restated Declaration is situated in and upon that certain real property located in Davis County, State of Utah, as specifically described in Exhibit "A", attached hereto and incorporated herein by this reference, including the Common Area that is appurtenant to each Unit as shown on the plat maps for Somerset Place Condominium, as recorded in the office of the County Recorder for Davis County, State of Utah.

There are 70 Units at Somerset Place Condominium; and

WHEREAS, the 1998 Amended Declaration and all amendments subsequent to the Enabling Declaration, including this Restated Declaration, the Association Bylaws and Rules and Regulations, are hereby referred to as the "Governing Documents." The capitalized terms used herein shall have the definitions set forth in Article 1 hereof; and

WHEREAS, not less than two-thirds (2/3) of the Owners representing the undivided ownership interests in the Common Area has consented to and approved of this Restated Declaration.

NOW, THEREFORE, to accomplish the Owners' objectives, this Restated Declaration is hereby adopted. The Governing Documents are hereby restated, replaced and amended by this Restated Declaration. It is the intent of the Owners that this Restated Declaration replace all prior Governing Documents and that this Restated Declaration be the sole set of restrictive covenants governing the Units, the Common Area and the Association. Regardless of any language herein to the contrary, the following are not renounced, rescinded, revoked, replaced or amended: the Plat Maps (as defined herein); the submission and dedication of the real property described in Exhibit "A" to the provisions of the Act and this Restated Declaration; the ratification, approval and incorporation of Somerset Place Condominium Homeowners Association, Inc., as a Utah nonprofit corporation, and the Articles of Incorporation on file with the State of Utah; and, any other provision, paragraph, or section that is required to maintain the legal status of the Project as a Utah condominium which, if repealed, would nullify the legal status of the Project.

It is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Restated Declaration and the covenants, restrictions, limitations, and conditions contained herein, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Association and all Unit Owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

The statements set forth in the above recitals are hereby approved and accepted as accurate and shall constitute part of this Restated Declaration.

## AMENDED AND RESTATED DECLARATION

### ARTICLE I - DEFINITIONS

When used in this Restated Declaration (including in that portion hereof entitled Recitals”), each of the following terms shall have the meaning indicated.

- 1.1 **“Additional Charges”** shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney fees, late charges, accruing interest, service fees, filing and recordation fees, fines, and other expenditures incurred or charged by the Association.
- 1.2 **“Articles of Incorporation”** shall mean and refer to the Articles of Incorporation of the Somerset Place Condominium Homeowners Association, Inc. on file or to be filed with the Utah Department of Commerce or its equivalent.
- 1.3 **“Assessment”** shall mean and refer to any amount imposed upon, assessed or charged a Unit Owner at the Project.
- 1.4 **“Association”** shall mean and refer to the Somerset Place Condominium Homeowners Association, Inc.
- 1.5 **“Board of Directors” or “Board”** shall mean and refer to the Board of Owners elected to manage, operate and control the Project and operate the Association.
- 1.6 **“Business” or “Trade”** are terms which shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part- time, such activity is intended to or does generate a profit, or a license is required therefore.
- 1.7 **“Building”** shall mean and refer to any of the structures constructed in the Project.
- 1.8 **“Bylaws”** shall mean and refer to the Bylaws of the Somerset Place Condominium Homeowners Association, Inc., a copy of which is attached to and incorporated in this Restated Declaration by reference as Exhibit “B”.
- 1.9 **“Capital Improvement”** shall mean and refer to all nonrecurring expenses (as opposed to day-to-day expenses) to add new buildings, structures or assets to the Common Area.
- 1.10 **“Common Areas”** shall mean all land and all portions of the property used or intended for use by one or more than one owner.

- 1.11 **“Common Expense”** shall mean and refer to:
- (a) All sums lawfully assessed against the Owners;
  - (b) Expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities;
  - (c) Expenses allocated by the Association in accordance with the Act and this Restated Declaration;
  - (d) Expenses agreed upon as Common Expenses by the Association; and
  - (e) Expenses agreed upon as Common Expenses by the Governing Documents.
  - (f) The intent of this Restated Declaration is to have all Unit Owners equally share in the cost of maintaining and repairing Common Areas.
- 1.12 **“Community”** shall mean and refer to the Project.
- 1.13 **“Eligible Insurer”** shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Restated Declaration.
- 1.14 **“Eligible Mortgagee”** shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Restated Declaration.
- 1.15 **“Eligible Votes”** shall mean and refer to those votes available to be cast on any issue before the Association or the Board. A vote which is for any reason suspended is not an “eligible vote.” Suspended votes shall mean, Owners who are more than 30 days delinquent with all Assessments, Additional Charges or any other costs owed to the Association.
- 1.16 **“Governing Documents”** shall mean and refer to all amendments subsequent to the Enabling Declaration, including this Restated Declaration, the Association Bylaws and Rules and Regulations.
- 1.17 **“Guest”** shall mean and refer to an invitee, temporary visitor or any person whose presence within the Project is approved by or is at the request of a particular Resident.
- 1.18 **“Improvement”** shall mean and refer to any physical change or addition to the Land to make it more valuable.

- 1.19 **“Land”** shall mean and refer to all of the Real Property subject to this Restated Declaration.
- 1.20 **“Majority”** shall mean and refer to those Eligible Votes of Owners or other groups as the context may indicate totaling more than fifty percent (50%) of the total eligible number.
- 1.21 **“Manager”** shall mean and refer to the person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.
- 1.22 **“Map”** shall mean and refer to the Amended and Restated Record of Survey Map on file in the office of the County Recorder of Davis County, Utah.
- 1.23 **“Member”** shall mean when referring to the Association, each Owner, because he or she is obligated, by virtue of ownership of a condominium Unit to be a member of the Association, and when referring to the Board of Directors, each Owner duly appointed, elected and qualified to serve on that entity.
- 1.24 **“Mortgage”** shall mean and refer exclusively to either a first mortgage or first deed of trust on any Unit, but shall not mean or refer to an executory contract of sale.
- 1.25 **“Mortgagee”** shall mean and refer exclusively to either a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Unit but shall not mean or refer to a seller under an executory contract of sale.
- 1.26 **“Owner”** shall mean and refer to the person who is the Owner of record as shown on the records of the County Recorder of Davis County, Utah, of a fee or an undivided fee interest in a Unit, excluding the following: a purchaser under an unrecorded purchase contract, a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to the purchase, foreclosure or any arrangement or proceeding in lieu thereof.
- 1.27 **“Person”** shall mean and refer to a natural person, corporation, partnership, trust, limited liability company or other legal entity.
- 1.28 **“Project”** shall mean and refer to the Somerset Place Condominium Project.
- 1.29 **“Property”** shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to the Act and this Restated Declaration.
- 1.30 **“Recreational, Oversized or Commercial Vehicle”** shall mean and refer to any recreational, commercial or oversized car, van, truck, vehicle, motor home, tractor, trailer, golf cart, mobile home (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational, oversized or



commercial transportation device of any kind.

- 1.31 **“Resident”** shall mean and refer to any person living, abiding, dwelling, occupying or staying in a Unit at the Project. This includes but is not limited to all lessees, tenants and the family members, agents, representatives, or employees of Owners, tenants or lessees.
- 1.32 **“Restated Declaration”** shall mean and refer to this Amended and Restated Declaration of Condominium of the Somerset Place Condominium Project.
- 1.33 **“Single Family”** shall mean (a) a single person living alone or with the person's children, (b) up to three unrelated persons living together as a single housekeeping unit, or (c) any number of individuals, related by blood, marriage, adoption, or guardianship, living together as a single housekeeping unit and up to two other persons hired for compensation such as nannies or servants.
- 1.34 **“Single Family Residence”** shall mean and refer to both the architectural style of a Unit and the nature of the residential use and activities permitted therein.
- 1.35 **“Unit”** shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a Building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located, shall be deemed to be part of the Unit. Carports are privately owned, but carports are not Units and the area of the carport that is privately owned is the air space beneath the carport the lower ceiling of structure, which structure, including the support beams and poles, is part of the Common Area.

The following are part of a Unit:

- (a) Lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring; and any other material constituting part of the finished surface of a wall, floor, or ceiling.
- (b) Any portion of a wall, floor, or ceiling not listed in subsection (a) is part of

the Common Areas and Facilities.

- (c) If a chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit:
  - (1) Any portion of an item described in this subsection (c) is part of the Common Areas and Facilities if the item serves more than one Unit or any portion of the Common Areas and Facilities.
- (d) Subject to subsection (c), the following within the boundaries of a Unit are part of the Unit:
  - (1) Spaces, interior partitions, and other fixtures and improvements, including but not limited to utility pipes, lines, systems, fixtures and appliances.
- (e) The following, if designated to serve a single Unit but located outside the Unit's boundaries, are part of the Unit:
  - (1) A shutter, an awning, a window box, a doorstep, a stoop, a porch, a balcony, a patio, an exterior door, an exterior window, and any other fixture.

1.36 **“Unit Number”** shall mean and refer to the number, letter or combination thereof designating a particular Unit.

## ARTICLE II - SUBMISSION

2.1 **Submission to the Act.** The Association hereby reaffirms that the Property described above, the Building and other improvements constructed thereon, together with all appurtenances thereto, are subject to the provisions of the Act as a Condominium Project known as SOMERSET PLACE CONDOMINIUM. The Association hereby declares that the Project and every part thereof are held and shall be sold, conveyed, devised, leased, granted encumbered, used, occupied and otherwise affected in any manner, subject to provisions of this Restated Declaration and the Act. Each and all of the provisions hereof are hereby declared to be in furtherance of the general plan and scheme of condominium ownership, and are further declared to be for the benefit of the Project and every part thereof, and for the benefit of each Unit Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land or as an equitable servitude, as the case may be and shall bind all persons hereafter acquiring or owning any interest in the Project, however such interest may be obtained.

2.2 **Covenants Run with the Land.** All of the Property shall be owned, conveyed hypothecated, encumbered, used, occupied and improved subject to this Declaration and the Governing Documents, and the Act. The easements, covenants, conditions, restrictions and charges, described in this Declaration shall run with the Property and shall be binding upon all

parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of the Association and each Owner thereof.

### ARTICLE III - BUILDINGS AND PROPERTY

3.1 **The Building and Facilities.** The Buildings have been constructed as shown in the Map. The Buildings are multi-unit structures containing a total of seventy (70) Single Family residential Units. The Somerset Place Condominium Property consists of twenty (20) buildings. Foundations are cement. Walls are bricked with trim. Windows are double-pane. Buildings are supplied with electricity, water, sewage, and garbage collection service. Each Unit is equipped with individual central heating and air conditioning. Other significant improvements include roadways, carports, parking spaces, driveways, and sidewalks. A clubhouse, mailboxes and pool are provided for common use.

3.2 **Description of Common Areas and Facilities.** The Common Areas and Facilities shall consist of the areas and facilities described in the definitions and in the Record of Survey filed with the Enabling Declaration and constitute in general all parts of the Property except the Units. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following, whether located with the bounds of a Unit or not:

- (a) The land within the Somerset Place Condominium Property;
- (b) All structural parts of the buildings, including, without limitation, foundations, perimeter and bearing walls, joists, beams, supports, ceilings and roofs, and the structural part of the carports;
- (c) Driveways, parking spaces, front porches, front doorsteps, landscaped and planted areas, sidewalks, fences, walls, common storage areas, recreational facilities, exterior lighting (excluding lights controlled from within the unit) and roadways located within the property;
- (d) Any utility pipe or line or system servicing more than a single Unit, and all ducts, wires, conduits, and other accessories used therewith; and
- (e) All repairs and replacements of any of the foregoing.

3.3 **Parking.** As appears more fully in the Map, the Project contains a number of covered parking and uncovered parking stalls. All motor vehicles in the Project shall be subject to the following restrictions:

- (a) The parking rules and regulations as they may be adopted or amended by the Board from time to time;
- (b) The parking areas are not designed for Recreational, Oversized or Commercial motor vehicles which must be parked or stored outside the Project.

- (c) No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, Recreational, Oversized or Commercial vehicle or any other transportation device of any kind may be parked or stationed (except for purposes of loading or unloading, not in excess of 36 hours), in such a manner so as to create an obstacle or potentially dangerous situation, or along any street or road, or in front of the Building or any carport, driveway, walkway or in an unauthorized Common Area.
- (d) Residents may only park their motor vehicles within their carports or in other designated Common Areas. Carports may not be used for storage of personal belongings or for the parking or storage of ATVs or trailers.
- (e) Residents may not park their motor vehicles in “red zones,” “fire lanes,” or unauthorized areas, except for temporary loading and unloading (not in excess of 30 minutes).
- (f) Visitors or Guests shall park their motor vehicles in Common Areas designated for “Guest” or “visitor” parking.
- (g) No Owners or Residents shall repair, perform maintenance work, or restore any vehicle of any kind in, on or about any Unit or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.
- (h) No carport may be altered without prior approval of the Board. The Board shall not approve alterations that would limit the number of motor vehicles which may reasonably be parked therein.
- (i) No motor vehicle shall be parked in such a manner as to inhibit or block access to a Unit, carport, entrance, exit or parking area.
- (j) All parking areas shall be used solely for the parking and storage of motor vehicles used for personal transportation. All vehicles must be registered, licensed and operable.
- (k) Vehicles parked in violation of this Restated Declaration or parking Rules and Regulations adopted by the Board of Directors may, without further notice, be impounded, towed and stored, at the Owner’s sole risk and expense. The Association, Board of Directors and members of the Board shall be indemnified, saved and held harmless from any loss, damage or claim caused by or arising out of the impounding, towing, or storing of a motor vehicle pursuant hereto.

## ARTICLE IV – OWNERSHIP

4.1 **Property Subject to the Declaration and Bylaws.** The real property which is, and shall be, transferred, held, sold, conveyed, used, occupied and improved subject to the Act and to this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Board or Association is all of the real property described on the Plat and on Exhibit A attached hereto, which Declaration and covenants, conditions and restrictions therein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Community or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Community or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of each Owner thereof. To the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control.

4.2 **Nature and Incidents of Condominium Ownership.** The Project is hereby divided into Condominium Units each consisting of a fee simple interest in a Unit and an equal one-seventieth (1/70) undivided fee simple interest in the Common Areas appurtenant to each Unit. Such undivided interest in the Common Areas are hereby declared to be appurtenant to the respective Units.

4.3 **Limit on Ownership.** No person shall, at any one time, own more than ten percent (10%) of all of the Units located within the Association.

4.4 **Vesting of Title.** Title to a Unit may be held or owned by any person or entity and in any manner in which title to any other real property may be hold or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.

4.5 **Partition.** No part of a Unit or the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of condominium ownership prescribed herein, so that each Unit, the undivided interest in the Common Areas appurtenant to such Unit shall always be conveyed, devised, encumbered, and otherwise affected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit or any part thereof shall constitute a gift devise, bequest, transfer, encumbrance, or conveyance respectively, of the entire Unit, together with all appurtenant right created by law or by this Restated Declaration.

4.6 **Common Areas.** The Common Areas shall be owned in common by all the Owners of Units, and no Unit Owner may bring any action for partition thereof. Each Owner shall be entitled to an equal undivided one-seventieth (1/70) interest in the Common Area.

4.7 **Right to Use and Enjoy.** Subject to the limitations contained in this Restated Declaration, each Unit Owner shall have the nonexclusive right to use and enjoy the Common Areas and Facilities.

4.8 **Decoration of Interior-Space.** Each Owner shall have the exclusive right at his sole cost and expense to maintain, repair, paint, repaint, tile, walls, wallpaper, cover, or otherwise

refinish and decorate the interior surfaces of the walls, ceiling, floors, and doors forming the boundaries of his Unit and all walls, ceilings, floors, and doors within such boundaries.

**4.9 Encroachment.** If any part of the Common Area encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to encroachments caused by error in the original construction of the Building or the improvements on the Property, by errors in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

**4.10 Access.** Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right to be exercised by the Board of Directors as their agent to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas or improvements located therein or accessible there from or for making emergency repairs therein necessary to prevent damage to the Common Areas and Facilities or to another Unit or Units. The Board of Directors shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas and Facilities or as a result of emergency repairs within another Unit at the instance of the Board of Directors or of Unit Owners shall be a Common Expense; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then, to the extent not covered by the Association's insurance, such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Unit Owners pursuant hereto shall be collected by the Board of Directors by judgment, lien or foreclosure as set forth below, including attorney fees incurred by the Association. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and each Owner shall have the right to the horizontal and lateral support of a Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

**4.11 Special Rights of Board of Directors.** The Board of Directors shall have a non exclusive easement to make such use of the Common Areas and Facilities as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Restated Declaration, including the right to construct and maintain in the Common Areas maintenance and storage facilities for use by the Board of Directors.

**4.12 Easements.** All conveyances of Units hereafter made shall be deemed to grant and reserve such reciprocal easements as shall give effect to the rights set forth above even though no specific reference to such easements appears in any such conveyance.

4.13 **Description of Units.** The Property contains 20 buildings, each of which contains either two (2) or four (4) residential condominium Units. All Units are independently owned, encumbered, and conveyed.

Every contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown and the Map with the appropriate reference to the Map and to this Restated Declaration, as each shall appear on the records of the County Recorder of Davis County, Utah, in substantially the following fashion:

UNIT NO \_\_\_\_\_ as shown in the Map for SOMERSET PLACE CONDOMINIUM appearing in the records of the County Recorder or Davis County, Utah, in Book 5, at Page 429 of Plats, together with an undivided ownership interest in and to the Common Areas appurtenant thereto.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas and Facilities, and to incorporate all the rights incident to ownership of a Unit and all the limitations of such ownership as described in this Restated Declaration.

## ARTICLE V - BOARD OF DIRECTORS

5.1 **Board of Directors, Rights and Obligations.** The business, property and affairs of the Association shall be managed by the Board of Directors composed of five (5) members, who shall serve two (2) year terms and shall be elected and serve subject to the provisions in the Bylaws, attached hereto as Exhibit "B", and the provisions of this Article V. The terms of the members shall be staggered for continuity.

5.2 **Status and General Authority of Board.** Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its own name. The Board of Directors shall have, and is hereby granted, the following authority and powers.

- (a) **To Enter.** The power and authority to enter into or upon any Unit to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the Residents.
- (b) **Grant Easements.** The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and nonexclusive easements over under across and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the

proper maintenance, operation or regulation of the Project.

- (c) **Execute Documents.** The authority to execute and record, on behalf of all Owners, any amendment to this Restated Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment
- (d) **Standing.** The power to sue and be sued.
- (e) **Enter Into Contracts.** The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
- (f) **Transfer Interests in Real Property.** The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least Sixty-seven percent (67%) of the total eligible Members in the Association.
- (g) **To Purchase.** The power and authority to purchase, otherwise acquire, and accept title to any interest in additional real property, so long as the purchase or acquisition has been approved by at least sixty-seven percent (67%) of the total Members in the Association.
- (h) **To Add Property.** The power and authority to add any real property or interest therein to the Project so long as it has been approved by at least sixty-seven percent (67%) of the total eligible Members in the Association.
- (i) **Promulgate Rules and Fines.** The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures, as may be necessary or desirable to aid the Board in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Restated Declaration and Bylaws. Rule Making, including the imposition of fines, is hereby authorized and shall be done consistent with Utah law. Unpaid fines shall be collected as an unpaid assessment with all rights and remedies available for unpaid assessments.
- (j) **Meetings.** The authority to establish procedures for the presiding over and conducting of Association and Board meeting. This includes but is not limited to the power to decide if the meeting or any part thereof shall be open or closed to Members of the Association or Residents not on the Board, retire to an executive session, regulate record keeping, and regulate, control or prohibit the electronic reproduction (e.g., video, audio, etc.) of Association or Board meetings.



- (k) **Assignment or Leasing of Open Common Area Parking Spaces; User and Move- In/Move-Out Fees; Reinvestment Fees.** The authority to assign or lease overflow or excess parking spaces to Residents, to charge a user fee for the recreational amenities, or to assess a move-in and move-out fee. In addition, a Reinvestment Fee may be charged by the Association at the closing of a unit for the purpose of increasing funds available for the improvements of the Property. All Reinvestment Fees shall be for the purposes allowed by Utah law.
- (l) **All other Acts.** The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions or behalf of the Owners and the Association.

## ARTICLE VI - OPERATION AND MAINTENANCE

6.1 **Operation, Maintenance and Alterations.** Each Unit and the Common Area shall be maintained, repaired and replaced subject to the following sections of this Article VI.

6.2 **Clean & Attractive Condition.** The Units and Common Area shall be maintained in a usable, clean, functional, attractive and good condition, consistent with generally acceptable Community standards.

6.3 **Area of Common Responsibility.** It shall be the responsibility of the Board to maintain, replace or repair the Common Area and facilities on a periodic basis. Costs thereof shall be a Common Expense. The attached Exhibit "C" lists further detailed maintenance responsibilities for both the Board and Unit owners. The Board shall replace and repair carport structures and the storage areas under the carports, excluding the storage shed doors. The Board shall maintain, replace and repair all conduits, ducts, plumbing and wiring, and other facilities for the furnishing of heat, gas, light, power, air conditioning, water and sewer contained in the portions of the Units that service part or parts of the Property other than the Unit which they are contained. All incidental damages caused to a Unit by the maintenance, replacement and repair of the Common Areas and facilities or utility services shall be repaired promptly at the expense of the Association. In the event of a conflict between the provisions of Exhibit "C" and the provisions of other Articles of this Restated Declaration, Exhibit "C" shall control.

6.4 **Area of Personal Responsibility.** It shall be the responsibility of each Owner, at his own cost and expense (except as covered by the Association's insurance), to maintain, repair, paint, repaint, tile, paper or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of (except as covered by the Association's insurance) any plumbing fixtures, water heater, appliance hoses and valves, heating equipment (to include wood, coal, oil or gas burning stoves or fireplaces, chimneys, etc.) air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other

appliances or fixtures that may be in, connected with, or service only his Unit. Each Unit shall be maintained so as not to detract from the appearance of the Property and so as to not affect adversely the value or use of any other Unit. Each Unit Owner shall keep clean and in a sanitary condition his storage areas, patio and carport.

6.5 **Utilities.** Each Owner shall pay for his electricity, power, lights, phone, and any other individual utility services not the express responsibility of the Association. The Association shall pay for all garbage pick-up, sewer charges and water fees.

6.6 **Neglect.** If the Board determines that any Owner has failed or refused to discharge properly his duties under the Area of Personal Responsibility (as defined in Article 6.4 above) or that the need for maintenance, repair, or replacement of the Common Area and Facilities is caused through the willful or negligent act of any Owner, his family, Guests, lessees, or invitees, and it is not covered or paid by the Association's insurance, in whole or in part, then the Association may, but is not obligated to provide such maintenance, repair or replacement, which shall be at the Owner's sole cost and expense, subject to the following:

- (a) **Notice of Intent to Repair.** Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement of repair within ten (10) days.
- (b) **Emergency Situation.** In an emergency, prior notice is not required but written notice of the day, date, time, nature of the repair and the name and title of the person or persons making the repair shall be given to the Owner and/or Resident.
- (c) **Right of Entry.** The Association or its agents or employees shall have a right to entry upon or into any Unit as necessary to perform such work and shall not be liable for trespass for such entry or work.
- (d) **Debt and Lien.** The expenses referred to above are the debt of the Owner at the time the work is performed and is collectible as such. If any Owner fails or refuses to pay said expenses when due, that amount constitutes a lien on the interest of the Owner in the Property and may be collected in the same manner as any other Common Expense.

6.7 **Alterations to the Common Area.** No Owner or Resident may make any structural alterations to the Common Area, the carport or storage area without the prior written consent of the Board. There shall be no capital additions to, or Capital Improvements of the Common Areas requiring an expenditure in excess of Seven Thousand Five Hundred Dollars (\$7,500.00) without the prior approval of Owners holding a Majority of the total votes. However, this

restriction shall not limit the Board's duty to properly maintain, repair or replace the Common Areas as needed.

**6.8 Landscaping and Snow Removal.** All landscaping in the Project shall be maintained and cared for in a manner consistent with the Restated Declaration and in accordance with Community Standards. Specific written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Board from time to time. All landscaping shall be tasteful, so as not to affect adversely the value or use of any other Unit, or to detract from the uniform design and appearance of the Project. The Association shall provide for snow removal from the Common Area. If a parked vehicle prevents or interferes with snow removal from any Common Area, the Owner of the Unit shall be responsible for such snow removal.

**6.9 Services.** The Board of Directors may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Board of Directors or by any person or entity with whom or which it contracts. The Board of Directors may delegate some of its management responsibilities to a professional management company, an experienced on-site manager, independent contractors, or through service contracts; provided, however, and anything to the contrary notwithstanding, the Board may elect to terminate any such contract entered into upon at least thirty (30) days prior written notice and no such contract shall be for a term greater than one (1) year. The Board of Directors may obtain and pay for legal and accounting services, necessary or desirable in connection with the operation of the Project or the enforcement of this Restated Declaration. The Board of Directors may arrange with others to furnish lighting, heating, water, trash collection, snow removal, pool service, grounds maintenance, sewer service, and other common services.

**6.10 Personal Property.** The Board of Directors may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interest in the Common Areas. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto, and such beneficial interest may in no event be reserved for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

**6.11 Implied Powers.** The Board of Directors may exercise any other right or privilege given to it expressly by this Restated Declaration or by law, and every other right or privilege reasonable to be implied from the existence or any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE VII - ASSESSMENTS

7.1 **Covenant to pay Proportionate Share of Common Expenses.** Each Unit Owner by the acceptance of a deed or other document of conveyance to a Unit, whether or not expressed in the deed or document, shall be deemed to covenant and agree with each other to pay to the Association his share of the Common Expenses and any Assessments established by the Board of Directors for the purposes provided in this Restated Declaration. Such Assessments shall be fixed established and collected from time to time in the manner provided hereunder.

7.2 **Basis.** The Common Expenses shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and Facilities or furnishing utility services to the Units, which estimates may include, among other things, expenses of management grounds maintenance, taxes and special assessments levied by governmental authorities; premiums for all insurance which the Board of Directors is required or permitted to maintain pursuant hereto, common utilities, lighting, power, gas, cooling and heating, water charges, trash collection, sewer service charges, repairs and maintenance, wages and benefits for Board of Directors employers, legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Board of Directors for the benefit of the Owners under or by reason of this Restated Declaration. The Common Expense shall be assessed to the Owners at the ratio of an equal 1/70 to the Owner of each of the 70 Units.

7.3 **Apportionment.** Common Expenses shall be equally apportioned among all Units.

7.4 **Payment.** Annual Assessments shall be made on a calendar year basis but may be adjusted by Board vote, during any calendar year if needed, to meet reasonably unforeseen expenses after reasonable written notice of said adjustment has been sent to each Owner. With respect to the projected annual Assessment, Board of Directors shall give written notice to each Owner as to the amount of the annual Assessment with respect to his Unit not less than thirty (30) days prior to the date the amount of the annual Assessment is increased or decreased from the amount assessed during the previous year. Unless otherwise determined by the Board of Directors in its sole discretion, each annual Assessment shall be due and payable in monthly installments on the 1<sup>st</sup> day of each and every month and no separate notices of such monthly installments shall be required. Payments received after the fifteenth (15<sup>th</sup>) day of the month in which they were due shall be assessed a monthly late fee in an amount established by the Board, as determined by a written policy of the Board of Directors and stated in this Article VII.

7.5 **Equitable Changes.** Pursuant to Section 7.4 above, if the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Board may from time to time effect an equitable change in the amount of said payments.

7.6 **Reserve Accounts.** The Board shall establish and maintain a reserve account to

pay for unexpected operating expenses and reserve expenditures. The reserve account shall be funded out of regular Assessments to the degree reasonable and prudent as determined by the Board. The Board shall comply with the provisions of the Utah Condominium Ownership Act ("Act"), as may be amended from time to time, relating to reserves and shall conduct a reserve analysis as provided in the Act for those assets and common areas which have an expected useful life between three (3) and thirty (30) years. The Board and its Members shall be indemnified by the Association for all costs and expenses incurred by the Board or its Members in connection with any claim, complaint or cause of action that the Board did not prudently and reasonably fund the Association's reserve account, as long as the Board was not grossly negligent in establishing a reserve fund.

**7.7 Other Assessments.** In addition to the annual Assessments authorized hereunder, the Board of Directors may levy in any calendar year.

- (a) **Special Assessment.** A special Assessment, payable over such a period as the Board of Directors may determine, for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement or the Project or any part thereof or for any other unanticipated expense incurred or to be incurred as provided in this Restated Declaration. Any amounts assessed pursuant hereto shall be equally assessed to Owners in proportion to their respective undivided interest in the Common Areas.
  
- (b) **Individual Assessments.** An Individual Assessments may be levied by the Board against a Unit and its Owner as a charge or to reimburse the Association for:
  - (1) Additional Charges;
  - (2) Costs incurred in enforcing the Governing Documents;
  - (3) Costs associated with the maintenance, repair or replacement of Common Area for which the Unit Owner is responsible or which does not benefit the membership as a whole;
  - (4) Any other charge, fee, fine, due, expense, or cost designated as an Individual Assessment in the Governing Documents; and
  - (5) Attorney fees, interest, and other charges relating thereto as provided in this Restated Declaration and the other Governing Documents.

Failure of the Board to exercise its authority under this Section 7.7 shall not be grounds for any action against the Association; or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. This paragraph shall not be construed as an independent source of authority for the Board of Directors to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs hereof which shall make specific reference to this paragraph. Notice in writing of the amount of any Assessment and the time for payment thereof

shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

**7.8 Nonpayment of Assessments.** The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by the Board, and shall be delinquent if not paid by the 15<sup>th</sup> of the month or within such other period established by the Board from time to time. The due date of any Special Assessment or other Assessment shall be fixed in the resolution or document authorizing or levying the Assessment.

**7.8.1 Late Charge.** Each delinquent payment shall be subject to a late charge of Twenty-five Dollars (\$25.00) per month, or such other amount as determined by the Board from time to time.

**7.8.2 Acceleration.** If the delinquent installments of any Assessment, including an Annual Assessment, and any charges thereon are not paid in full, the Board, or its authorized agent, may declare all of the unpaid balance of the Assessment to be immediately due and payable upon not less than ten (10) days' written notice to the Owner, and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

**7.8.3 Rent Payments by Tenant to Association.** If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than 60 days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until all amount dues to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association.

**7.8.4 Termination of Common Services and Facility Use.** If an Owner fails or refuses to pay an assessment when due, the Board may, after giving notice and an opportunity to be heard in accordance with the law and the written procedures of the Association, terminate an Owner's right: (1) to receive any service paid as a common expense; and (2) of access and use of recreational facilities. If a hearing is requested, the right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered by the Board.

**7.8.5 Suspension of Right to Vote for Non-Payments.** At the discretion of the Board, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is not in good standing (i.e., delinquent in the payment of his portion of the Common Expenses, any Assessments, etc.) and has failed to cure or make satisfactory arrangements to cure the default. For the purpose of this section, the right to vote may

be denied if an Owner is 30 days or more delinquent in payment of any Assessment. An Owner is 30 days delinquent if he or she fails to pay such Assessment within 30 days of the end of the month during which the Assessment was due.

**7.8.6 Other Remedies.** All membership rights, including the right of a Member to vote shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. The Association shall have each and every remedy for collection of assessments provided in the Act as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

**7.9 Liens.** If any Owner fails or refuses to make any payment of the Common Expenses or an Assessment when due, that amount constitutes a lien on the interest of the Owner in the property, and:

**7.10 Foreclosure.** All liens filed by the Association may be enforced by judicial or non-judicial foreclosure by the Board of Directors in the same manner in which mortgages and trust deeds on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding the costs and expenses of filing the notice of lien and all reasonable attorney fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The lien shall also secure and the Owner shall also be required to pay to the Board of Directors any Assessments against the Unit which shall become due during the period of foreclosure. The Board of Directors shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

**7.11 Appointment of Trustee.** The Association and each Owner hereby appoints the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8, Utah Code Ann., as may be amended from time to time.

**7.12 Release of Lien.** A release of lien shall be executed by the Board of Directors and recorded in the office of the County Recorder of Davis County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

**7.13 Mortgagee or Lien holder Rights.** Any encumbrancer holding a lien on a Unit may but shall not be required to pay any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect

to such lien, including priority.

7.14 **Omissions.** The omission by the Board, before the expiration of any year, to fix the Assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Restated Declaration, or a release of the Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Unit.

7.15 **Remedies.** Suit to recover a money judgment for such personal obligation shall be maintainable by the Board of Directors without foreclosing or waiving the lien securing the same.

7.16 **Statement of Account.** Upon payment of a reasonable fee and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Board of Directors shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit, the amount of the current yearly Assessment and the portion thereof which has theretofore been paid; credit for advanced payments or prepaid items, including, but not limited to an Owner's share of prepaid Insurance premiums and such statement shall be conclusive upon the Board of Directors in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid Assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired as interest subsequent to requesting such statement.

7.17 **Superiority of Assessments.** All Assessments against a Unit and Owner, and all liens created to secure the debt, are superior to any homestead exemptions to which an Owner may be entitled. By accepting a deed or other document of conveyance to a Unit, each Owner expressly agreed to waive or subordinate said exemptions.

7.18 **Audit.** The Board may in its discretion determine to obtain an audit of all books and records pertaining to the project after the close of the calendar year books. Payment for this audit shall be made out of the common funds. At any time an Owner may cause, at his own expense, an audit or inspection to be made of the books and records of the Board or Manager.

## ARTICLE VIII - USE OF PROPERTY

8.1 **Nature and Restriction on Ownership and Use in General.** Each Owner shall have and enjoy the privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned by Persons as any other property right or interest. The Common Areas and Facilities shall only be used in a manner consistent with the residential nature of the Project.



- (a) **Title to the Common Area.** Each Owner shall be entitled to a percentage of undivided ownership interest in and to the Common Areas and Facilities, free and clear of all liens (other than current year's taxes, if any).
- (b) **Mandatory Association.** Each Owner by receiving a deed or other document of conveyance to a Unit shall automatically become a Member of the Association and such membership may not under any circumstances be partitioned from the Unit and any attempt to do so shall be void.
- (c) **Members' Easements and Rights of Way.** Every Member of the Association shall have the right and nonexclusive easement to use and enjoy the Common Area and Facilities, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following restriction:
  - (1) The right of the Association to limit the number of Guests and invitees;
  - (2) The right of the Association to adopt administrative rules and regulations from time to time governing the Project;
  - (3) The right of the Association to suspend the voting privileges;
  - (4) After notice and hearing, the right of the Association to suspend the privilege to use the common facilities and recreational amenities by an Owner or Resident for: (a) any period during which its portion of the Common Expenses or the payment of any time or other Assessment remains delinquent, and (b) a reasonable period, not to exceed thirty (30) days for any infraction of the Governing Documents;
  - (5) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes; and

8.2 **Restrictions and Limitations of Use.** The use of the Units, of whatever kind, is subject to the following guidelines, limitations and restrictions:

- (a) **Parties Bound.** All provisions of the Restated Declaration, Bylaws, Rules and Regulations shall be binding upon all Owners and Residents, their families, and Guests and invitees.
- (b) **Obstructions Prohibited.** There shall be no obstruction of the Common Areas or Facilities by the Owners or Residents, or their Guests and invitees.
- (c) **Nuisance.** It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about the Project. It shall also be the responsibility of each Owner and Resident to abate promptly any nuisance

which may have been created. For purposes of this subsection, the term “nuisance” means at least:

- (1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his Unit or the Common Areas and Facilities;
  - (2) The storage of any item, property or thing that causes any Unit or the Common area or Facilities to appear to be in an unclean or untidy condition or that will be noxious to the senses;
  - (3) The creation or maintenance of any noxious or offensive condition or activity in or about any Unit or the Common Areas and Facilities;
  - (4) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their Guests or invitees, particularly if the police or sheriff must be called to restore order;
  - (5) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their Guests or invitees;
  - (6) Noise or traffic that is disruptive to owners or residents in, on or about any Unit or the Common Area and Facilities, especially after 10:00 p.m. and before 8:00 a.m.; and
  - (7) Tobacco or any other types of smoke, including second-hand smoke shall be deemed a nuisance hereunder.
- (d) **Unsightly Work, Hobbies or Unkempt Condition.** The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.
- (e) **Blinds.** All window blinds must be kept in good and proper repair. No tin foil, sheets, signs or other material may be used to cover windows instead of, or in addition to, normal window blinds.
- (f) **Removing Garbage, Dust & Debris.** All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon.
- (g) **Subdivision of a Unit.** No Unit shall be subdivided or partitioned.

- (h) **Firearms, Incendiary Devices and Graffiti.** The use of firearms and incendiary devices, or the painting or graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semiautomatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.
- (i) **Temporary Structures.** No Owner or occupant shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Board.
- (j) **Energy Conservation Equipment.** No solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior written consent of the Board.
- (k) **Business Use.** No commercial trade or Business may be conducted in or from any Unit unless (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation or residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board. Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this subsection (k).
- (l) **Aerials, Antennas, and Satellite Systems.** No aerials, satellite dishes, or satellite systems shall be erected, maintained or used in, on or about the Common Areas, including but not limited to the exterior of any Building containing a Unit or a carport structure.
- (m) **Window Coverings.** No-aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any residential structure on a Unit. Sun shades and tinted windows are allowed.
- (n) **Windows.** All windows and window panes in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction.
- (o) **Window Openings.** No air conditioning units may be installed in window openings or to any other portion of a Unit or Common Area, and no shades, awning, tarp, fan, or any type of air conditioning or cooling device may be attached to or hung from a window, patio, roof, carport structure, or any other structure within the Project.

- (p) **Sunshades Permitted.** Sunshades, pergolas, sunsetter awnings, or similar types of shade devices may be installed on a patio, but only after an Owner has first received prior written Board approval, which approval may only be granted after an Owner has submitted written plans, pictures and drawings to the Board, and the Board has determined that the device is consistent with and in harmony with the general architectural style of the Buildings within the Project and that the manner in which the device is attached will not materially impact the Association's ability to reasonably maintain the Common Area. The device shall be maintained, replaced and repaired at the sole cost of the Unit Owner. Any additional or increased maintenance expense to the Association resulting from or associated with the construction or attachment of the device to the Common Area shall be the borne solely by the Unit Owner.
- (q) **Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas and facilities; EXCEPT that no more than two (2) household pets may be kept or housed in Units. A "household pet" is defined herein to mean a dog, cat or other normally domesticated pet, the determination of which shall belong to the Board. In no event shall any pet be permitted in any portions of the Common Areas and facilities unless carried or on a leash. Each Owner who keeps a pet in a Unit shall indemnify and hold all other owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the Somerset Place Condominium. If a pet disturbs other owners by barking or biting or in other ways becoming obnoxious, the Board will give notice to the Owner of such pet causing such annoyance to be discontinued and if such annoyance is not discontinued and corrected, the Board may revoke its permission to keep the pet in the Somerset Place Condominium and the pet shall be removed from the property. If any Owner has more than two (2) household pets at the time this Restated Declaration is recorded, that Owner shall be permitted to keep such pets until the additional pets either are sold or die, at which time the Owner shall abide by the two (2) pet limit.
- (r) **Insurance.** Nothing shall be done or kept in, on or about any Unit or in the Common Areas and Facilities which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Board of Directors, but for such activity, would normally pay.
- (s) **Laws.** Nothing shall be done or kept in, on or about any Unit or in the Common Areas and Facilities, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.
- (t) **Damage or Waste.** No damage to, or waste of, the Common Areas and Facilities

shall be committed by any Owner or Resident, their Guests or invitees; and each Owner and Resident shall indemnify, save and hold the Board of Directors and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner or Resident, their Guests or invitees.

(u) **Vehicles in Disrepair.**

(1) No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Community unless such vehicle is within a carport. A vehicle shall be deemed in an extreme state of disrepair when the Board reasonably determines that its presence offends the occupants of the other Lots.

(2) If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board, the Board may have such vehicle removed from the Community (i.e., towed) and assess the Owner the expense of such removal and any storage necessitated thereby.

(v) **Parking of Automobiles and Other Vehicles.**

(1) Parking of boats, trailers, commercial vehicles, commercial trucks, truck campers, motor homes and like vehicles and equipment shall only be allowed in designated parking areas and shall be subject to further rules and regulations promulgated by the Board.

(2) The Board may adopt and amend rules to govern the parking of vehicles within the Community, which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of any rule or of this subsection and the cost of any storage thereof.

(w) **Clothes Lines and Materials.** No clothes lines, clothing racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located on the Community except within a Unit, unless in an area screened from public view. No garments, rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless in an area screened from public view.

(x) **Signs.** Unless written approval is first obtained from the Board, no advertisement or poster of any kind may be posted in or upon the Properties except:

(1) No more than two (2) For Sale or For Rent signs, not exceeding twenty-four (24) inches in height and thirty-six (36) inches long, may be temporarily placed inside the Unit window and/or at the Project's entrance. Signs may be further regulated by Rules of the Board.

## ARTICLE IX - RENTAL RESTRICTIONS

WHEREAS, it is the desire of the Unit owners within the Association to live in a condominium community that is orderly, peaceful and desirable, and that will allow for and protect the comfortable enjoyment of all residents of the Association.

WHEREAS, the Unit Owners of Somerset Place desire to amend the Governing Documents to preserve and enhance the quality of life at Somerset Place by placing reasonable restrictions on the percentage of renters who may occupy Units at Somerset Place; and

WHEREAS, the Unit Owners of Somerset Place desire to preserve and enhance the quality of life at Somerset Place and have purchased their Units at Somerset Place for the purpose of using their Unit as an Owner Occupied Single Family residence; and

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

WHEREAS, the Unit Owners realize that the value of their Units is directly related to the ability to sell their Units, that the ability to sell their Units is directly related to the ability of prospective borrowers to obtain FHA, VA, conventional, and other forms of financing, and that governmental underwriting standards as well as the underwriting standards at financial institutions and secondary mortgage markets restrict the percentage of Non-Owner-occupied Units that can exist in a condominium; and further, when too high a percentage of a Non-Owner-occupied Units exist in a condominium, a buyer will not be able to qualify for favorable and competitive market interest rates and financing terms, thus inhibiting a Unit Owner's ability to sell their Units and depressing the value of all the Units at Somerset Place; And

WHEREAS, as the result of a variety of economic factors beyond the control of the Association and the Owners, permitting a limited percentage of Units to be leased may reduce the financial hardship to Owners who must move or sell their Unit due to circumstances beyond their control, while still protecting the integrity of Somerset Place and permitting Somerset Place to achieve the objectives described above.

NOW THEREFORE, the Unit Owners of Somerset Place hereby agree to the following rental restrictions regarding the Units in Somerset Place.

9.1 **Forty-Five Percent Rental Cap.** Not more than forty-five percent (45%) of the Units within Somerset Place may be leased, which leasing must be consistent with the provisions of this Restated Declaration.

9.2 **Leasing Permitted.** Not more than forty-five percent (45%) of the Units at Somerset Place may be occupied by non-Unit Owners at any one time. If less than forty-five percent

(45%) of the Units at Somerset Place are occupied by non-Unit Owners, an Owner may Lease his or her Unit as set forth below.

9.3 **Verification of Forty-Five Percent Compliance.** All leases, subleases, assignments of leases, and all renewals of such agreements shall be first submitted to the Somerset Place Board who shall determine if less than forty-five percent (45%) of the Units are currently being rented and to verify compliance with the leasing restrictions of this Restated Declaration.

9.4 **List of Rental Units.** Any Unit Owner desiring to Lease his or her Unit or to have his or her Unit Occupied by a Non Unit Owner shall notify the Board in writing of their intent to Lease their Unit. The Board shall maintain a list of those Unit Owners who have notified the Board of intent to Lease their Unit and shall grant permission to Unit Owners to Lease their Unit, which permission shall be granted in the same order the Board receives the written notice of intent to Lease a Unit from the Unit Owners. Permission shall be granted to Lease a Unit only when less than forty-five percent (45%) of the Units at Somerset Place are Occupied by a Non Unit Owner. Renting less than 100% of a Unit is prohibited.

9.5 **Grandfather Clause.** Those Units that are Occupied by non-Unit Owners at the time this Restated Declaration is recorded at the Davis County Recorder's Office may continue to be Occupied by non-Unit Owners until (a) the Unit Owner transfers ownership of the Unit, (b) the Unit Owner occupies the Unit, or (c) an officer, Owner, member, trustee, beneficiary, director, or person holding a similar position of Ownership or control of an entity or trust that holds an Ownership interest in the Unit, transfers the Unit or occupies the Unit. For purposes of the forty-five percent (45%) cap on rentals contained in Articles 9.1 and 9.2 above, those Units Occupied by a non-Unit Owner at the time this Restated Declaration is recorded shall be included in the forty-five percent (45%) that may be rented. If the number of Units occupied by a non-Unit Owner at the time this Restated Declaration is recorded is greater than forty-five percent (45%), no other Units may be rented until the number of Units occupied by non-Unit Owners is less than forty-five percent (45%).

9.6 **Transfer.** For purposes of Article 9.5, a transfer occurs when the owner conveys, sells, or transfers a Unit by deed to another person or if the owner grants a life estate in the Unit.

9.7 **Tracking.** The Board shall create, by rule or resolution, procedures to determine and track the number of rentals and Units in Somerset Place subject to the provisions described in Article 9.5 and shall ensure consistent administration and enforcement of the rental restrictions in this Restated Declaration.

9.8 **Minimum Rental.** Unit Owners may not Rent or Lease their Unit for a period of less than 180 days or allow weekly or overnight rentals. When a Unit qualifies to be Rented, the minimum rental period in the Lease shall be 180 days. The Lease may be renewed at the end of a lease. All Leases must be only to a Single Family. Renting or Leasing less than 100% of the Unit is prohibited.

9.9 **Rent.** As used herein, "Rent" (or any variation of the word) or "Lease" (or any variation

of the word) means a Unit that is owned by an Owner that is Occupied by one or more Non-Owners while no Owner occupies the Unit as the Owner's primary residence. The payment of remuneration to an Owner by a Non-Owner shall not be required to establish that the Non-Owner is Leasing a Unit. Failure of a Non-Owner to pay remuneration of any kind to the Owner shall not be considered when determining if a Unit is a Rental Unit.

9.10 **Non-Owner.** As used herein, "Non-Owner" or "Non Unit Owner" means an individual or entity that is not an Owner as shown on the records of the Davis County Recorder.

9.11 **Occupied.** As used herein, "Occupied" means to reside in the Unit for ten (10) or more days in any thirty (30) day period. A Unit is deemed to be Occupied by a Non-Owner if the Unit is Occupied by an individual(s) other than the Unit Owner and the Owner is not occupying the Unit as the Owner's primary residence.

9.12 **Enforcement.** Any Unit Owner who violates this Restated Declaration shall be subject to a complaint for damages and/or an injunction and order seeking to terminate the Lease in violation of this Restated Declaration. If Somerset Place is required to retain legal counsel to enforce this rental restriction Article, with or without the filing of legal process, the violating Unit Owner shall be liable for all costs and expenses incurred by the Association, including but not limited to attorney fees and court costs incurred by the Board in enforcing this Article, and the Association may file a lien against the violating Owner in the amount of fees and costs incurred.

9.13 **Guest Permitted.** Nothing herein shall prohibit an Owner from permitting a Guest or visitor from residing in his or her Unit, while the Owner is present.

9.14 **Hardship Exceptions.** The Board may, by rule, adopt hardship exceptions to this Article based upon duly adopted rules, however, there is no requirement to do so and any such rule may be repealed.

## ARTICLE X – INSURANCE

### 10.1 Association Insurance.

10.1.1 The Association shall maintain a master insurance policy which includes: (1) blanket property insurance with not less than 100% of the full replacement cost for the physical structures in the condominium project, including common areas and facilities, limited common areas and facilities, and units, and including fixtures and betterments to a unit made by a unit owner, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and (2) liability insurance having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence, including medical payments insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas and facilities.



10.1.2 The master insurance policy shall include coverage for any fixture, improvement, or betterment installed by a unit owner to a unit or to a limited common area, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a unit or to a limited common element.

10.1.3 If, in the exercise of the business judgment rule, the Management Committee determines that a claim is likely not to exceed the policy deductible of the Association: (i) the unit owner's policy is considered the policy for primary coverage to the amount of the policy deductible of the Association; (ii) a unit owner who does not have a policy to cover the Association's insurance deductible is responsible for the loss to the amount of the deductible, as provided below; and (iii) the Association need not tender the claim to the Association's insurer.

10.1.4 The Association shall obtain fidelity coverage covering all Committee members, officers, employees, Managing Agents, and other persons handling or responsible for the funds of, or administered by, the Association, in such amounts as the Management Committee deems appropriate, subject to the requirements in this paragraph. All such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or Managing Agent, as the case may be, at any given time during the term of each bond, but in no event less than three (3) months assessment on all Units, plus reserves. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the Managing Agent, shall be paid by the Association as a common expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association or insurance trustee.

10.1.5 The Association shall obtain such other insurance as the Committee deems necessary from time to time such as workers' compensation insurance and director's and officer's insurance and shall obtain flood insurance if any portion of the Project is deemed to be located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program, in which case the Association shall be required to obtain and pay the premiums upon a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy in an amount deemed appropriate by the Association but not less than an amount equal to eighty percent (80%) of the current replacement costs of all buildings and other insurable property within the Project.

10.1.6 The Association shall use generally acceptable insurance carriers. Specific requirements for qualifications of insurance carriers may be found in the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide.

**10.2 Unit Owner Insurance Responsibility.** For units, the Association's policy is primary but the unit owner is responsible for the deductible as follows:

10.2.1 If a loss occurs that is covered by the Association's policy and by a unit owner's policy, the Association's policy provides primary insurance coverage; and, the unit owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

10.2.2 If a unit or facility appurtenant to a unit, suffers damage as part of a covered loss, the unit owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to unit damage for that unit to the amount of the deductible under the Association's policy. The Association shall provide notice to the unit owners of any change in the amount of the deductible.

10.2.3 The Association's policy does not cover the contents of a unit or a unit owner's personal property. Each unit owner is strongly encouraged to obtain insurance coverage for contents of their unit, as well as for coverage in the event the owner has to pay the Association's deductible as provided above.

**10.3 Obligation of Unit Owner to Repair and Restore.**

10.3.1 In the event that any damage or destruction of the improvements in a Unit or to an adjoining Unit are due to the neglect and/or fault of a particular Owner, the insurance proceeds from the at fault Owner's insurance policy on an improved Unit, unless retained by a Mortgagee of a Unit, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements.

Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the developer or the Management Committee as the case may be; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the Management Committee and obtain its written approval prior to commencing the repair, restoration or replacement.

10.3.2 If any Owner of an improved Unit fails to maintain the insurance required by this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for any costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Unit, and, upon the failure of the Owner to pay such costs within ten (10) days after such Owner's receipt of a written demand therefore from the Association, the Association may establish a lien therefore upon the Owner's Unit in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

**10.4 Power of Attorney**

10.4.1 Notwithstanding any of the foregoing provisions and requirements relating to Association property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement (the "Insurance Trustee") who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. By purchasing a Unit, all Owners appoint the Association or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose.

10.4.2 By purchasing a Unit, all Owners appoint the Association or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority.

#### 10.5 **Miscellaneous Insurance Policy Requirements.**

The Association shall be named as the insured on the master policy. The policies required herein for the Association must provide that they may not be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies. No policies shall require that contributions or assessments may not be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC. Loss payments shall not be contingent upon action by the carrier's board of directors, policyholders, or members.

### **ARTICLE XI - CASUALTY DAMAGE OR DESTRUCTION**

11.1 **Partial or Total Destruction.** The following provisions apply in the event of the partial or total destruction of the Project.

11.2 **Attorney in Fact.** All of the Owners irrevocably constitute and appoint the Board of Directors their true and lawful agent in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed or any other document of conveyance to a Unit shall constitute appointment of the attorney in fact herein provided.

11.3 **Authority.** As attorney in fact, the Board of Directors shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of a Unit Owner which may be necessary or

appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements, as used in the succeeding subparagraphs mean restoring the Project to substantially the same, condition in which it existed prior to damage, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

11.4 **Election of Mortgagees.** In the event any Mortgagees should not agree not to rebuild the Project, then the Board of Directors shall have the option to purchase such mortgage by payment in full of the amount secured thereby if Owners representing at least eighty percent (80%) of the undivided interest in the Common Areas of the Project are in agreement not to rebuild. The Board of Directors shall obtain the funds for such purpose by Special Assessment, in the manner set forth above.

11.4 **Estimates and Bids.** As soon as practicable after an event causing damage to, or destruction of, any part of the Project, the Board of Directors shall obtain two estimates that it deems reliable and complete of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

11.5 **Prompt Repair.** As soon as practicable after receiving these estimates, the Board of Directors shall diligently pursue to completion the repair or reconstruction of the part of the Project damaged or destroyed to the extent of seventy-five percent (75%) or less then the value thereof. The Board of Directors may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications with any other plan and specifications of the Project or may be in accords and specifications the Owners may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the Building shall be substantially the same as prior to damage or destruction. The same easements for encroachments as declared above shall and do hereby apply under the provisions of this section in the event the Project is destroyed or damaged to the extent of more than seventy-five percent (75%) of the value thereof, the Unit Owners shall, at a meeting within one hundred (100) days after such damage or destruction duly called by the Board of Directors for the purpose, determine whether or not said premises should be rebuilt, repaired or disposed of. Unless Owners representing not less than eighty percent (80%) of the undivided interests in the Common Areas agree to the withdrawal of the Project from the provisions of the Act and to its subsequent disposal, the premises shall be repaired, rebuilt or restored to substantially the same condition they were in immediately prior to such destruction or damage.

11.6 **Insurance Proceeds.** The proceeds of any insurance collected shall be available to the Board of Directors for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Board of Directors may levy in advance a special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such Assessment shall be allocated and collected as provided in that Article. Further levies may be made in like manner for

repair or reconstruction.

**11.7 Disbursements of Insurance Funds.** The insurance proceeds held by the Board of Directors and the amounts received from the Assessments provided above constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair or reconstruction shall be made from insurance proceeds if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Unit owners in proportion to the contributions each Owner made pursuant to the Assessments the Board of Directors made under Article 11.7 above.

**11.8 Removal from Act.** If eighty percent (80%) or more of the Owners of the undivided ownership interest in the Project and all holders of first Mortgages on Units agree not to rebuild, as provided herein, the Project may be removed from the provisions of the Act as prescribed therein.

**11.9 Termination of Legal Status of Project.** The termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Property must be agreed to by all of the Unit Owners and by Eligible Mortgagees holding at least sixty-seven percent (67%) of the votes of the mortgaged Units. Approval shall be implied, however, when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a “return receipt” requested.

## ARTICLE XII - MORTGAGEE RIGHTS

**12.1 Mortgagee Protection.** The lien or claim against a Unit for unpaid Common Expenses or any Assessment shall be subordinate to any Mortgage recorded on or before the date such payment or Assessment becomes due, subject to the following:

- (a) **Effects of Voluntary and Involuntary Sale.** The lien or claim against a Unit for such unpaid Common Expenses or Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available there under shall extinguish any debt payable prior to such sale or transfer. Nevertheless, a lien securing any such unpaid Common Expenses or Assessments which is extinguished in accordance with the foreclose of the Mortgage affecting such Unit or the exercise of a power of sale available there under shall extinguish any debt payable prior to such sale or transfer. Nevertheless, a lien securing any such unpaid Common Expenses or Assessments which is extinguished in accordance with the foreclosure or power of sale laws in Utah shall not relieve the purchaser or transferee of such Unit from personal liability for, nor shall it relieve such Unit from a lien securing payment of any Common Expenses or Assessments which become due thereafter.

- (b) **Books and Records Available for Inspection.** The Board or the Association shall make available to the Owners, mortgagees, lenders, holders, insurers, or guarantors of any Mortgage current copies of the Governing Documents as well as the books, Records, and financial statements of the Board and the Association, at cost. The term “Available” as used in the Article, shall mean reasonably available for inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its out of pocket costs, photocopying and service charges incurred in making the inspection and photocopying available.
- (c) **Right to Financial Statement.** The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a copy of the financial statement for the Association and/or Board of Directors for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.
- (d) **Management Contracts.** Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board of Directors or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause upon at least thirty (30) days prior written notice to the other party thereto. No contract shall have an initial term greater than one (1) year.
- (e) **Eligible Mortgage Designation.** Upon written request to the Board or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer, or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder, insurer, or guarantor shall be deemed thereafter to be an “Eligible Mortgagee” or “Eligible Guarantor,” as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:
- (1) **Condemnation Loss or Award.** Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.
  - (2) **Delinquency.** Any delinquency in the payment of Common Area Assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.
  - (3) **Lapse of Insurance.** Any lapse, cancellation, or material modification of any insurance policy of fidelity bond maintained by the Board or the Association.

- (4) **Consent Required.** Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.
- (f) **No Right of First Refusal.** The right of an Owner to sell, transfer, or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

### ARTICLE XIII - SMOKING PROHIBITION

WHEREAS, Somerset Place Condominium Homeowners Association, is responsible for the enforcement of the provisions of this Restated Declaration and the Association's Governing Documents; and

WHEREAS, it is the desire of the Unit owners within Somerset Place Condominium to live in a condominium community that is orderly, peaceful and desirable, and that will allow for and protect the comfortable enjoyment of all residents of Somerset Place Condominium.

WHEREAS, the Unit owners of Somerset Place Condominium desire to (1) preserve and enhance the quality of life at Somerset Place Condominium, (2) prevent disregard for the welfare and consideration of others, (3) prevent nuisances and inconvenience to the residents of Somerset Place Condominium, and (4) restrict and limit the use of tobacco and other smoking products within Somerset Place Condominium; and

WHEREAS, the Utah Legislature enacted legislation in Utah Code Ann. §§78B-6-1101 *et. seq.*, to prevent and restrict the creation of nuisances, including defining tobacco smoke drifting between residential Units as a nuisance, and

WHEREAS, the Utah Legislature amended the Utah Condominium Ownership Act, Utah Code Ann. §§57-8-16, to authorize Unit Owners to amend its Governing Documents to restrict the use of tobacco products in condominiums; and

WHEREAS, the Somerset Place Board of Directors has received numerous complaints about tobacco smoke drifting into Units from the Common Area, between the various levels and Units, and between the walls of Units at Somerset Place Condominium; and

WHEREAS, the Members of the Association desire to take affirmative steps to address the nuisance created by smoking within Somerset Place Condominium and to improve the quality of life for all residents at Somerset Place Condominium.

THEREFORE, the smoking restrictions stated herein are adopted:

13.1 **Prohibited Substances.** No Unit Owner, family member of a Unit Owner, tenant, resident, occupant, Guest, business invitee, visitor or any other person (collectively referred to as "resident") shall smoke cigarettes, cigars, or any other tobacco, smoke generating products or e-cigarette products within 25 feet of the exterior of all buildings

and carports or within the porches, patios, and carports at Somerset Place Condominium. Smoking within a Unit is not prohibited by this Section unless it becomes a nuisance to another Owner. At such time, the Board may require that no smoking in the Unit be permitted if the smoke cannot be contained within offending Unit.

**13.2 Smoking Defined.** The term “smoke,” “smoking” or “tobacco smoke” as used herein includes the inhaling, exhaling, burning, or carrying of any lighted cigarette, cigar or other tobacco product, marijuana, illegal substance, or any other substance or item that emits smoke or a smoke-like substance.

**13.3 Business Invitee Defined.** The term “business invitee” as used herein includes but is not limited to, any contractor, agent, household worker, or other person hired by the Association, a Unit Owner, tenant or Resident to provide a service or product to the Association, Unit Owner, tenant, or resident.

**13.4 Enforcement.** In the event a Unit Owner, resident, occupant, or a Guest occupying a Unit violates the provisions of this Restated Declaration, any Unit Owner or Resident at Somerset Place Condominium may bring an action to enforce this Restated Declaration. The Board of Directors may bring an action to enforce this Restated Declaration, but shall not be required to do so unless it determines it is in the best interest of the Association to bring such an action.

**13.5 Violation by Non-Owners.** In the event any Resident, tenant, occupant, or a Guest occupying or visiting Somerset Place violates the prohibition against smoking at Somerset Place, the Board or any Resident at Somerset Place may notify the owner of the offending Unit and the Unit Owner shall take prompt action to see that all smoking in prohibited areas permanently ceases. If the Resident who violates this provision is not a Unit Owner, the Unit Owner shall be required to evict the tenant at the Unit Owners expense if the tenant violates the provisions of this Restated Declaration after receiving three (3) written warnings. If the Unit Owner fails to permanently cure the smoking violation within fifteen (15) days of receiving notice, the Board of Directors may, on behalf of the offended Unit Owner, file eviction proceeding against the violating Resident based on unlawful detainer resulting from the Resident’s violation of this Restated Declaration, which is deemed to be incorporated into each rental agreement. Both the tenant and the Unit Owner shall be named as defendants in the action and the Board shall be entitled to receive: i) an order requiring the tenant to vacate the premises, ii) damages, and iii) recovery of its costs and attorney fees from the Unit Owner.

**13.6 Attorney Fees.** This non-smoking restriction may be enforced in a court of law by any Resident or by the Association. If any Resident or if the Association is required to hire legal counsel to enforce this non-smoking restriction, the Resident or the Association shall be entitled to recover all attorney fees and costs incurred in connection with such enforcement, whether or not litigation has been commenced. The Association may collect the attorney fees and costs it incurs by any lawful means, including through the use of a special assessment levied against the owner of the Unit or through a lien.

**13.7 Not Exclusive Remedy.** Nothing herein shall be construed to prevent any Resident of Somerset Place from bringing an action hereunder or under the laws of the State of Utah to



seek an injunction or damages against any Resident who creates a nuisance through smoking or using tobacco in a restricted area at Somerset Place, nor shall any provision hereof be construed as authorization from the Board or the Association for a Resident to smoke in the Common Area in such a manner so as to create a nuisance.

13.8 **Disclosure Required.** Any owner who sells his Unit shall specifically disclose to all potential buyers and real estate agents that smoking is restricted within the project as set forth in this Declaration, except within the Units unless it creates a nuisance to other Owner(s). In such an event, smoking in a Unit is prohibited. Any owner who rents or otherwise allows someone other than the owner to reside within or occupy the Unit shall disclose to all persons who reside within his or her Unit that smoking is prohibited within 25 feet of all buildings and carports prior to their residency or occupancy.

13.9 **Rules and Fines.** The Board of Directors shall have the authority and power to enact additional rules and regulations which it deems necessary to enforce this restriction, including a schedule of fines which may be imposed for violation hereof, after proper notice and a hearing.

13.10 **Enforcement.** The Board of Directors shall have all powers necessary to enforce this non-smoking restriction, including the authority to enact rules and regulations which it deems necessary to enforce this restriction, and adopting a schedule of fines for violation of this non-smoking provision.

#### **ARTICLE XIV - DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

14.1 **Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Association, Unit Owners, all persons subject to this Restated Declaration, and any person not otherwise subject to this Restated Declaration who agrees to submit to this Section (collectively the "Bound Parties"), agree to encourage the amicable resolution of disputes between the Bound Parties or involving enforcement of the provisions of this Restated Declaration, the Bylaws and any Rules and Regulations adopted by the Association, and to avoid the emotional and financial cost of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party, including without limitation, claims, grievances or disputes ("Claims") arising out of or relating to the violation, interpretation, application or enforcement of this Restated Declaration, the Bylaws, the Association rules, or the Articles of Incorporation, except those Claims exempted in Section 14.2, shall be subject to the procedures set forth in this Article 14.

14.2 **Exempt Claims.** The limitations in this Article 14 pertaining to exhausting administrative remedies shall not apply to the following Claims ("Exempt Claims"):

- (a) Any lien, claim, action or complaint wherein the Association or the Board alleges against a Unit Owner the nonpayment of Common Expenses, whether by special assessment or any other form of nonpayment of funds owed to the Association, or any other failure to comply with the provisions of Article 7 herein;

and

- (b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article 8.2 (c) (Nuisance) and Article 13 (Smoking); and
- (c) Any suit between Owners seeking redress on the basis of a claim which would constitute a course of action under the laws of the State of Utah in the absence of a claim based on the Restated Declaration, Bylaws, Articles or Rules of the Association, if the amount in controversy exceeds \$5,000.00; and
- (d) Any fines assessed by the Association.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 14.3, but there shall be no obligation to do so.

**14.3 Mandatory Procedures For All Other Claims.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than a Claim exempted from this provision by Section 14.2, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

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

the same to the Claimant, stating plainly and concisely:

- (1) those facts and/or allegations contained in Claimant's Notice with which Respondent agrees and disagrees, and a statement of the facts and allegations related to the grievance as understood and believed by Respondent; and
  - (2) those provisions of the Declaration, the Bylaws, the Rules, the Articles of Incorporation or other authority out of which the Claim arises which Respondent understands applies to and controls the resolution of the Claim; and
  - (3) what Respondent is willing to do or not do to resolve the Claim; and
  - (4) that Respondent wishes to resolve the Claim by mutual agreement with Claimant and is willing to meet in person with Claimant at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.
- (g) **Negotiation.** Each Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any party, accompanied by a copy of the Notice, the Board (if not involved in the dispute as either a Claimant or Respondent) may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the parties and to the welfare of the Community.
- (h) **Meeting.** In the event that the cause of said grievance or complaint is not rectified by the parties within twenty (20) days from the date of the receipt of Respondent's response, within ten (10) days from the date of expiration of said initial twenty (20) day period, a time and place mutually acceptable to the Claimant and the Respondent shall be established for a meeting between the Claimant and the Respondent.
- (i) **Resolution or Litigation.** At such meeting, the Claimant and Respondent shall be entitled, but not required, to be represented by counsel. The parties, and/or counsel for the Claimant and counsel for the Respondent shall attempt to reach an amicable solution to the grievance or complaint. In the event that the parties are not able to reach such a solution within thirty (30) days from the date of the meeting between the Claimant and the Respondent, the Claimant shall then be entitled to proceed to have the matter judicially determined. Any resolution by the parties shall be reduced to writing and signed by each party or the party's legal representative prior to the end of the thirty (30) day period referred to herein.
- (j) **Exhaustion of Remedies Required.** All grievances and complaints of Claimants shall follow procedure outlined and set forth herein prior to the commencement of any litigation relative to said grievances and complaints. However, if a

Respondent fails to provide the written response required within ten (10) days, or if either party refuses to meet in good faith within the time frames set forth herein to discuss resolution of the grievance or complaint, the non-offending party shall be released from the obligation to comply with this Article 14 and may seek judicial relief without the need to wait for additional time periods to expire.

**14.4 Allocation of Costs of Resolving Claims.** Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 14.3, including the fees of its attorney or other representative.

**14.5 Enforcement of Resolution.** If the parties agree to resolve any Claim through negotiation in accordance with Section 14.3 and any party thereafter fails to abide by the terms of such agreement, then any other party may file suit to enforce such agreement without the need to again comply with the procedures set forth in Section 14.3. In such event, the party taking action to enforce the agreement shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement, including without limitation attorney fees and court costs.

## ARTICLE XV - EMINENT DOMAIN

**15.1 Board and Owners Entitled to Notice of Action.** Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and facilities of one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Board and each Unit Owner shall be entitled to notice thereof and the Board shall and, the Unit Owners at their respective expense may, participate in the proceedings incident thereto.

**15.2 Taking of Common Areas and Facilities.** With respect to Common Areas and facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest therein. After such determination, each Unit Owner shall be entitled to a share in the damages in the same proportion as his percentage of undivided interest in the Common Areas and facilities. This provision does not prohibit a Majority of Unit Owners from authorizing the Board to use such damages or awards for replacing or restoring the Common Areas and facilities so taken on the remaining land, or on other acquired land, provided that this Restated Declaration and the Map are duly amended.

**15.3 Taking of Units.** With respect to one or more Units or portions thereof are taken, in whole or in part, the taking shall have the following effects:

- (a) **Partial Taking- Unit made Tenantable** --If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the owner of the Unit. The balance of the award, if any, shall be distributed to the Unit to the extent of

the unpaid balance of its mortgage and the excess, if any, shall be distributed to the Unit Owner. If there is a balance of the award distributed to the Unit Owner or mortgagee, the Unit Owner's percentage of undivided interest in the Common Areas and facilities shall be equitably reduced. This shall be done by reducing such interest in the proportion by which the floor area of the Unit is reduced by the taking, and then re-computing the percentages of undivided interests of all Unit Owners in the Common Areas and facilities.

- (b) **Unit Untenantable.** If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, the award shall be paid to the mortgagee of the Unit to the extent of the unpaid balance of its mortgage and the excess, if any, shall be paid to the Unit Owner. The remaining portion of the Unit shall become a part of the Common Areas and facilities and shall be placed in condition for use by all Unit Owners in the manner approved by the Board. If the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be done only if approved by a Majority of the Unit Owners. The percentages of undivided interests in the Common Areas and facilities appurtenant to the Units that continue as part of the Property shall be equitably adjusted to distribute the ownership of the Common Areas and facilities among the reduced number of Unit Owners.
- (c) **Amendment to Restated Declaration and Map.** Changes in Units, in the Common Areas and facilities, and in the undivided interests in the Common Areas and facilities that are affected by the taking referred to in this Article 15 shall be evidenced by an amendment to this Restated Declaration and the Map.

#### ARTICLE XVI - INDEMNIFICATION

16.1 **Liability of Board of Directors.** The Association shall indemnify each and every officer and Member of the Board of Directors against any and all expenses, including but not limited to attorney fees reasonably incurred by or imposed upon any officer or Member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he may be a party by reason of being or having been an officer or Member of the Board, and to the fullest extent permitted or authorized by the Revised Nonprofit Corporation Act, UCA 16-6a-901 through 910. The officers and Members of the Board shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, gross negligence or bad faith. The officers and Members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association except to the extent that such officers or members of the Board may also be Members of the Association, and the Association shall indemnify and forever hold each such officer and member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board or former officer or member of the Board, may be entitled. The Association shall, as a Common Expense, maintain

adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

## ARTICLE XVII - AMENDING DOCUMENTS AND VOTING

17.1 **Amendment.** The affirmative vote, with or without a meeting, of not less than sixty seven percent (67%) of the undivided ownership interest in the Common Areas and Facilities shall be required and shall be sufficient to amend this Restated Declaration. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association's Board of Directors ("Board"). In such instrument the Board shall certify that the vote required by this Article has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

- (a) **The Amendment Must Be In Writing and Recorded.** All amendments approved by the Unit Owners must be in writing and shall be effective upon recordation in the Office of the County Recorder of Davis County, Utah.
- (b) **Consent in Lieu of Vote.** In any case in which an amendment requires the vote of the Owners for authorization or approval, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such amendment from Owners who collectively hold the required percentages, subject to the following conditions:
  - (1) **Ninety-Day Limit.** All necessary written consents must be obtained prior to the expiration of ninety (90) days from the date the first written consent is obtained; and
  - (2) **Change In Ownership.** Any change in ownership of a Unit which occurs after a written consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose and the written consent of the new Owner must be obtained.

## ARTICLE XVIII - MISCELLANEOUS

18.1 **Security.** The Association is not the guarantor or insurer of the safety of Residents of the Project. The Board of Directors may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. Neither the Association nor the Board of Directors shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and Residents as well as their Guests and invitees acknowledge that neither the Association nor the Board represent or warrant that any security measures undertaken will insure their safety. All Owners and residents as well as their Guests and invitees,

acknowledge and understand that the Association and Board are not insurers of their safety and they hereby expressly assume all risks for loss or damage to their person or property and further acknowledge that the Association and Board have made no representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security measures undertaken or to be undertaken within the Project.

**18.2 Duty of Owner to Pay Taxes on Unit Owned.** It is understood that under the Act each Unit (and its percentage of undivided ownership interest in the Common Areas) in the Project is subject to separate Assessment and taxation of each taxing authority and the special district(s) for all types of taxes and Assessment authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project as such. Accordingly, each Unit Owner will pay and discharge any and all taxes and Assessments which may be assessed against him on his Unit.

**18.3 Service of Process.** The President of the Association is the person to receive service of process in the cases contemplated by the Act and the office of the Registered Agent of the Association is the address listed on the State of Utah Department of Commerce records.

**18.4 Clerical Errors.** Any addition or amendment shall not be considered material for purposes of this section if it is for the clarification only or to correct a clerical error.

**18.5 Enforcement and Right to Recover Attorney Assessments.** Should the Association or Board be required to take action against a Unit Owner or Resident to enforce or construe the Governing Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all of their Additional Charges, including a reasonable attorney fee, from it which may arise or accrue.

**18.6 Number and Gender.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

**18.7 Severability.** If any of the provisions of this Restated Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Restated Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

**18.8 Topical Headings.** The headings appearing at the beginning of the paragraphs of this Restated Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this Restated Declaration or any paragraph or provision hereof.

**18.9 Effective Date.** This Restated Declaration shall take effect upon recording in the office of the County Recorder of Davis County, Utah.





## **EXHIBIT “A”**

### **Legal Description of Units at Somerset Place Condominium**

Units 1 through 70, Somerset Place Condominium, Fruit Heights, Davis County, Utah  
(tax identification numbers 07-093-0001 through 07-093-0070)

## **EXHIBIT "B" - BYLAWS**

## BYLAWS

### FOR

#### SOMERSET PLACE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

The following are adopted as the administrative Bylaws of Somerset Place Condominium Homeowners Association, Inc.

#### ARTICLE I - PLAN OF LOT OWNERSHIP AND INCORPORATION

- 1.1 **Adoptions.** These Bylaws are adopted by the owners of lots in Somerset Place after having first been voted and approved by the Somerset Place lot owners. These Bylaws shall govern the administration of Somerset Place Condominium Homeowners Association, Inc.
- 1.2 **Conflict.** In the event of any conflict, incongruity or inconsistency between the provisions of these Bylaws and the provisions of the Restated Declaration or any amendments thereto, the latter shall in all instances govern and control.
- 1.3 **Definitions.** The words defined in the Restated Declaration shall have the same meaning when used herein unless the context clearly indicates otherwise.
- 1.4 **Office and Registered Agent.** The Registered Agent of the Association shall be the President or Secretary of the Association and the Registered Office of the Association shall be the office of the President or such other place as shall be designated by him.
- 1.5 **Bylaws Applicability.** All present and future Owners, residents, tenants, renters, lessees, and their Guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted at Somerset Place shall be subject to and abide by these Bylaws.

#### ARTICLE II - ASSOCIATION

- 2.1 **Composition.** The Association of Owners is a mandatory association consisting of all Owners at Somerset Place.
- 2.2 **Voting.** Each Owner shall have an equal number of votes.

- 2.3 **One per Household:** Only one owner per household may serve on the board.
- 2.4 **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board from time to time and stated in the notice of meeting.
- 2.5 **Annual Meeting.** Unless otherwise designated by the Board, the annual meeting of the Association shall be held at 7:00 p.m. on the third Tuesday of March of each year, or at such other suitable day, date and time as may be designated by the Board from time to time. When such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.
- 2.6 **Special Meetings.** The President shall call a special meeting (a) if he or she so desires, (b) if a Majority of the members of the Board of Directors direct him to do so, or (c) upon receipt of a petition signed and presented to the Secretary of the Board by at least twenty-five percent (25%) of the Members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.
- 2.7 **Notice of Meeting.** It shall be the duty of the Secretary to hand deliver or mail, by regular U.S. mail postage prepaid, or to send by electronic means as set forth below, a notice of (a) each annual meeting of the Owners not less than ten (10) and not more than thirty (30) days in advance of such meeting; and (b) each special meeting of the Owners at least three (3) days and not more than twenty (20) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his respective lot or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.
- 2.8 **Electronic Notice.** Any notice permitted or required to be delivered by the Board or from the Association to the Owners may be delivered either personally, by U.S. mail, or by electronic means.
- (a) If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Owner at the address given by such person to the Board of Directors for the purpose of service of such notice or to the Lot of such person if no address has been given. Such addresses may be changed by Owner from time to time by notice in writing to the Board of Directors.
- (b) If notice is by electronic means, any notice delivered by the Association to Owners under the provisions of the Restated Declaration or these Bylaws may be sent by electronic means, including but not limited to Facebook, text messages, email, or the Association's website. The Association shall maintain

records of all notices sent to Members by electronic means, including the electronic address to which notice was sent. When a notice is sent electronically, the Association shall first compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of well-known electronic forms) and the Association shall send notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner. A Member may, by written demand, require the Association to provide notice to the lot owner by mail.

- (c) If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Home, or by securely attaching a copy of the notice to the front entry door of the Owner's Home.

2.9 **Voting Requirements.** Each Owner shall have an equal vote for each Unit owned. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid all Assessments due.

2.10 **Proxies.** The votes appertaining to any lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Board before the meeting. Only individual Owners or the legal representative of an Organizational Owner may be proxies.

2.11 **Quorum.** A Majority of the Members of the Association shall constitute a quorum for the adoption of decisions. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than seven (7) days nor more than thirty (30) days after the set time for the original meeting. A notice of such rescheduled meeting shall be required via e-mail, telephone or written communication. The Owners present at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a Majority of the Members of the Association present at the meeting either in person or by proxy, shall

decide any question brought before the meeting; provided, however, if the Restated Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

2.12 **Order of Business.** The order of business at all meetings of the Association shall be as follows:

- (a) roll call;
- (b) proof of notice of meeting;
- (c) reading of minutes of preceding meeting;
- (d) reports of officers;
- (e) report of special Boards, if any;
- (f) election of inspectors of election, if applicable;
- (g) election of Board Members, if applicable;
- (h) unfinished business; and
- (i) new business.

2.13 **Conduct of Meeting.** The President shall, or in his absence the Vice President, preside over all meetings of the Association; the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record of all transactions occurring thereat.

### ARTICLE III - BOARD OF DIRECTORS

3.1 **Powers and Duties.** The affairs and business of the Association shall be managed by the Board of Directors. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Restated Declaration, and may do all such acts and things necessary to operate and maintain the Project. The Board may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Restated Declaration, the Board shall be responsible for at least the following:

- (a) Preparation of an annual budget;
- (b) Determining the annual Assessment of each Owner;
- (c) Managing the Association;
- (d) Maintaining the Common Areas and Facilities;
- (e) Collecting the Assessments;
- (f) Depositing the collections into a federally insured interest bearing account or accounts;
- (g) Adopting and amending rules and regulations;
- (h) Enforcing the Project Documents;
- (i) Opening of bank accounts on behalf of the Association and designating the signatories required therefore;
- (j) Making, or contracting for the making of, repairs, additions, and Improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Restated Declaration and other provisions of

- (k) these Bylaws, after damage or destruction by fire or other casualty;
  - (k) Commencing legal action when necessary;
  - (l) Purchasing and maintaining insurance;
  - (m) Paying the cost of all services rendered to the Project and not billed directly to Owners of individual Lots;
  - (n) Keeping books and records of the Association;
  - (o) Providing common utility services as needed;
  - (p) Paying any amount necessary to discharge any mechanic's or material man's lien or other encumbrance levied against the Common Area or Facilities;
  - (q) Giving notice of alleged violations of the Project Documents and providing the alleged violator the opportunity to be heard;
  - (r) Levying fines, sanctions and citations;
  - (s) Making emergency repairs;
  - (t) Towing or impounding motor vehicles;
  - (u) Evicting Non-Owner residents in material violation of the Project Documents or who have created and failed to abate a nuisance;
  - (v) Assigning parking spaces; and
  - (w) Doing such other things and acts necessary to accomplish the foregoing.
- 3.2 **Composition of Board of Directors.** The Board of Directors shall be composed of five (5) Members of the Association, all of whom must be Unit Owners. Not more than one owner from any one Unit may serve as a Member of the Board at the same time.
- 3.3 **Qualification.** Only individual Owners or officers or agents of organizational Owners other than individuals shall be eligible for Board Membership.
- 3.4 **Election and Term of Office of the Board.** The term of office of membership on the Board shall be two (2) years and each member shall serve on the Board until such time as his successor is duly qualified and elected. Three members shall be elected on even years and two members shall be elected on odd years.
- 3.5 **Initial Organizational Meeting.** The first meeting of the members of the Board shall be immediately following the annual meeting of the Association or at such other time and place designated by the Board.
- 3.6 **Regular Meetings.** Regular meetings of the Board shall be held from time to time and at such time and place as shall be determined by a Majority of the members of the Board, but no less often than monthly.
- 3.7 **Special Meetings.** Special meetings of the Board may be called by the President, Vice President or a Majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. mail postage prepaid, or by telephone or electronic means, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Board shall be valid for any and all purposes.

- 3.8 **Waiver of Notice.** Before or at any meeting of the Board, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any such meeting of the Board shall constitute a waiver of notice. If all the members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
- 3.9 **Quorum.** At all properly noticed meetings of the Board, a Majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the Majority of all the Board members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board. If, at any properly noticed meeting of the Board, there be less than a quorum present, the Majority of those present may adjourn the meeting from time to time but for no longer than seven (7) days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice, but in no event may business be conducted by the Board without the presence of three members of the Board being present.
- 3.10 **Vacancies.** Vacancies in the Board caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the Majority of the remaining members of the Board at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the members of the Association at a special meeting called for that purpose shall be filled by the election and vote of the members of the Association at said meeting.
- 3.11 **Removal of Board Member.** A member may be removed, with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a Majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board Member who misses fifty percent (50%) or more of the Board Meetings in any six month period or who misses three (3) consecutive meetings in any calendar year, shall be automatically removed from the Board.
- 3.12 **Compensation.** Board members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Board business and approved by the Board.
- 3.13 **Conduct of Meetings.** The President shall preside over all meetings of the Board and the Secretary shall keep a Minute Book of the Board recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings, subject to the following:



- (a) **Open Meetings.** A portion of each meeting of the Board shall be open to all members of the Association, but members other than members of the Board may not participate in any discussion or deliberation unless expressly so authorized by a Majority of a quorum of the Board. The Board shall establish procedures, policies, and guidelines for conducting of its meetings, retiring to executive session, and prohibiting photographs and/or any electronic (video or audio) recordation of the meetings, or any part thereof.
- (b) **Executive Session.** The Board may, with approval of a Majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in an open session.
- (c) **Action Without a Formal Meeting.** Any action to be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all members of the Board.
- (d) **Report of Board.** The Board shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

#### **ARTICLE IV - NOMINATION AND ELECTION OF BOARD MEMBERS**

- 4.1 **Nomination Process.** The process for the nomination and election of the Board of Directors shall proceed as set forth herein.
- 4.2 **Nominating Committee.** Nominations for election to the Board shall be made by a Nominating Committee, whose purpose is to seek out and locate qualified individuals as candidates for election to the Association's Board of Directors. The Nominating Committee shall consist of a Chairman, who shall be a member of the existing Board, and three or more additional members of the Association, who may or may not be current members of the Board. The Nominating Committee shall be appointed by the Board not less than 30 days prior to each annual meeting of the Association at which an election will be held. The Nominating Committee shall serve for a term of one year. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of vacant Board seats to be filled. The Nominating Committee may notify members that it is seeking qualified candidates and interview all candidates interested in serving on the Board to determine if, in the Nominating Committee's sole discretion, the potential candidate has the proper demeanor, experience, ability and character to serve the interests of the Association if elected. The Nominating Committee shall submit to the Board those names as candidates which a Majority of the Nominating Committee recommends be placed on the Association ballot. Those nominated as candidates shall have the opportunity to communicate their qualifications to the

members and to solicit votes.

- 4.3 **Nomination Approval.** Anyone nominated as a candidate prior to or at the association's election meeting should have first granted their approval and affirmatively stated that he or she is willing to serve for the term if elected.
- 4.4 **Nominations.** The names of the candidates recommended by the Nominating Committee shall be included in the Notice of the annual meeting sent to members of the Association, and may be included on proxy and absentee ballots sent to members. Write-in candidates are permitted. Nominations may also be received from members of the Association from the floor at the annual meeting of the members.
- 4.5 **Election.** At the annual meeting for the election of new Board members, the Board shall prepare and distribute a ballot to each owner. Owners who do not attend the meeting may vote by proxy ballot, written ballot, or by absentee ballot. Each lot is entitled to vote as provided in the Restated Declaration and these Bylaws. Voting shall not be by secret ballot.

#### ARTICLE V - OFFICERS

- 5.1 **Designation.** The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board. Two or more offices may be held by the same person, except that the President shall not hold any other office.
- 5.2 **Election of Officers.** The officers of the Association shall be elected annually by the members of the Board of Directors at their first meeting after the annual meeting of the Association. Any vacancy in an office shall be filled by the remaining members of the Board of Directors at a regular meeting or special meeting called for such purpose.
- 5.3 **Removal of Officers.** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a Majority of the Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purposes.
- 5.4 **President.** The President shall be the chief executive officer; he shall preside at meetings of the Association and the Board and shall be an ex officio member of all Boards; he shall have general and active management of the business of the Board and shall see that all orders and resolutions of the Board are carried into effect. He shall have all of the general powers and duties, which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.
- 5.5 **Vice President.** The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall

perform such other duties as the Board or the President shall prescribe. If neither the President nor the Vice President is able to act the Board shall appoint a member of the Board to do so on an interim basis.

- 5.6 **Secretary.** The Secretary shall attend all meetings of the Board and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him or her for that purpose and shall perform like duties for Boards when required. He shall give, or cause to be given, notices for all meetings of the Association and the Board and shall perform such other duties as may be prescribed by the Board. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the records of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board including resolutions, as well as all records as indicated on the Record Retention Schedule attached hereto as Exhibit "E".
- 5.7 **Treasurer.** The Treasurer shall have custody of all funds and securities. He shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Board. He shall disburse funds as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

#### ARTICLE VI - FISCAL YEAR

- 6.1 The fiscal year of the Association shall be the calendar year consisting of the twelve month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

#### ARTICLE VII - AMENDMENT TO BYLAWS

- 7.1 **Amendments.** These Bylaws may be modified or amended either (1) by the affirmative vote of a Majority of the members of the Association or (2) pursuant to a written instrument of consent duly executed by a Majority of the members of the Association provided all of the written consents are obtained within a ninety day period.

## ARTICLE VIII - COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

- 8.1 **Compliance.** These Bylaws are set forth in compliance with the requirements of the Restated Declaration.
- 8.2 **Conflict.** These Bylaws are subordinate to and are subject to all provisions of the Restated Declaration, except in those cases where the provisions of the Bylaws are clearly intended to govern (administrative matters). All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as defined in the Restated Declaration.
- 8.3 **Severability.** If any provisions of these Bylaws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.
- 8.4 **Waiver.** No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.
- 8.5 **Captions.** The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.
- 8.6 **Construction.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; the use of any gender shall be deemed to include both masculine and feminine, and the term “shall” is mandatory and “may” permissive.
- 8.7 **Effective.** These Bylaws shall be effective upon recording in the Office of the County Recorder of Davis County.

## **EXHIBIT "C" - MAINTENANCE CHART**

**BUILDING & PROPERTY MAINTENANCE**

The following chart defines the division of responsibility for maintenance and repair of property in the project/subdivision between the Association and Owner.

	<b>EXTERIOR</b>	<b>HOA</b>	<b>OWNER</b>
1	Maintenance, replace, repair of roof and siding (including sheathing).	X	
2	Maintenance, replace and repair of exterior brickwork and chimneys.	X	
3	Maintenance, replace and repair of front steps and sidewalk	X	
4	Maintenance, replace and repair of concrete foundations and entrees.	X	
5	Maintenance, replace and repair of patio, cement on patio and water tap on patio. Any damage caused by a resident's negligence, such as failing to disconnect a hose from a tap, is the liability of a unit owner.		X
6	Maintenance, replace and repair of deck floor support structures.		X
7	Maintenance, replace and repair of original fences.	X	
8	Maintenance, replace and repair of unit owner added or modified fences.		X
9	Maintenance, replace and repair of rain gutters and down spouts.	X	
10	Replacement, maintenance and repair of window wells but not window well covers.	X	
11	Maintenance and repair of decks & balconies and other authorized modifications.		X
12	Replacement, maintenance and repair of doors, hinges, frames, thresholds, locks, doorbells and chimes.		X
13	Replacement, maintenance and repair of carport floors, poles, roof, and shed doors, except those facing patios.	X	
14	Replacement, maintenance and repair of windows, sliding glass doors, screens, screen doors, and frames (in accordance with approved exterior frame color).		X
15	Replacement, maintenance and repair of all yard lights that use electricity from the unit.	X	
16	Replacement, maintenance and repair of all light fixtures attached to the exterior walls of any unit or carport for the benefit of that unit (in accordance with approved lighting style).		X
17	Maintenance of electricity connections from the meters to the unit.	X	
18	Maintenance of water system from the outside entry to the foundation of the unit. This includes the outside faucets and hose bibs that are not located on the patio of the unit.	X	
19	Replacement and repairs to outside water spigots and bibs with the exception of the faucets located on each patio.	X	
20	Replacement, repair and maintenance of phone lines, TV cables, heat pumps, furnaces, and air conditioning units. Owners must obtain permission from the Board if any holes need to be drilled through exterior walls for cable lines.		X

21	Unit owner improvements: windows, awnings, attic vents and similar items.		X
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	<b>INTERIOR</b>	<b>HOA</b>	<b>OWNER</b>
22	All interior painting, decorations and furnishings from the inside of the unfinished walls and ceilings. This includes all appliances such as dishwashers, garbage disposals, ranges, refrigerators, furnaces, exhaust fans, attic vents, air conditioners, water heaters, and intercom, telephone, and computer networks. Water pipes and drainage pipes that serve only one unit are the responsibility of the owner to the point they join a common pipe.		X
23	Maintenance, cleaning and repair of venting, air conditioning units, chimneys and fireplaces.		X
24	Maintenance, repair and replacement of the electrical system from the breaker panel and to all outlets including switches and light fixtures.		X
25	Maintenance, repair and replacement of plumbing fixtures such as sinks, basins, toilets and all interior pipes and valves.		X
26	Repair of cracks or other damage to interior walls, floors or ceilings caused by normal unit settling.		X
27	Repairs of damage resulting from static water or seepage of water from any source.		X
28	Repairs of damage resulting from surface water.		X

	<b>GROUNDS</b>	<b>HOA</b>	<b>OWNER</b>
29	Lawn, flowers, trees and shrubs in the Common Areas.	X	
30	Lawn watering system.	X	
31	Snow removal.	X	
32	Roadways, parking lots, curbs and gutters, sidewalks and front steps.	X	
33	Watering system for Common Areas	X	

	<b>OTHER</b>	<b>HOA</b>	<b>OWNER</b>
34	Maintenance and repair of swimming pool.	X	
35	Garbage collection, included in HOA fees.	X	
36	Maintenance and repair of water system from the city water meter to the exterior wall of each Unit.	X	

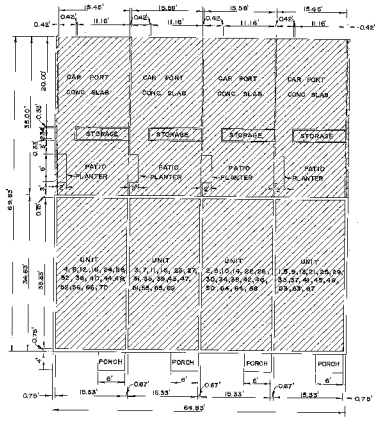
**EXHIBIT "D" - ASSOCIATION MAPS**



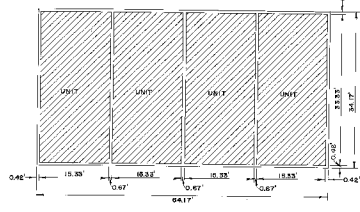


RECORD OF SURVEY MAP OF  
**SOMERSET PLACE CONDOMINIUM**

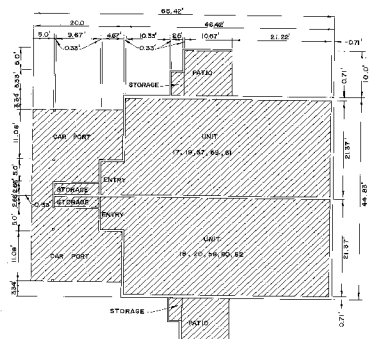
PART OF THE SOUTH WEST QUARTER  
OF SECTION 1, TOWNSHIP 3 NORTH,  
RANGE 1 WEST, SALT LAKE BASE AND  
MERIDIAN



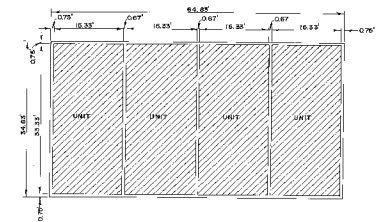
FIRST FLOOR PLAN



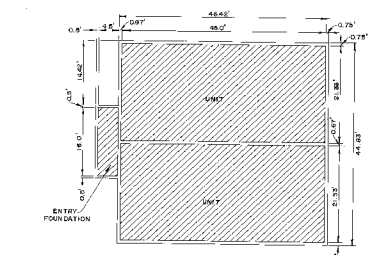
SECOND FLOOR PLAN



FIRST FLOOR PLAN



BASEMENT PLAN



BASEMENT PLAN

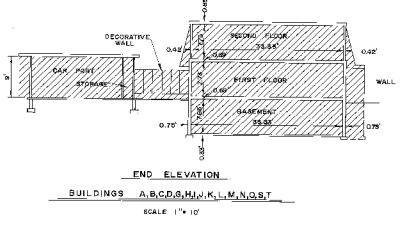
SCHEDULE OF FLOOR ELEVATIONS

BUILDING NO.	FLOOR	BASEMENT ELEV.	FIRST FLOOR ELEV.	SECOND FLOOR ELEV.	THIRD FLOOR ELEV.
A	BASEMENT	67.3	68.0	70.75	74.45
B	BASEMENT	67.3	68.0	70.75	74.45
C	BASEMENT	67.3	68.0	70.75	74.45
D	BASEMENT	67.3	68.0	70.75	74.45
E	BASEMENT	67.3	68.0	70.75	74.45
F	BASEMENT	67.3	68.0	70.75	74.45
G	BASEMENT	67.3	68.0	70.75	74.45
H	BASEMENT	67.3	68.0	70.75	74.45
I	BASEMENT	67.3	68.0	70.75	74.45
J	BASEMENT	67.3	68.0	70.75	74.45
K	BASEMENT	67.3	68.0	70.75	74.45
L	BASEMENT	67.3	68.0	70.75	74.45
M	BASEMENT	67.3	68.0	70.75	74.45
N	BASEMENT	67.3	68.0	70.75	74.45
O	BASEMENT	67.3	68.0	70.75	74.45
P	BASEMENT	67.3	68.0	70.75	74.45
Q	BASEMENT	67.3	68.0	70.75	74.45
R	BASEMENT	67.3	68.0	70.75	74.45

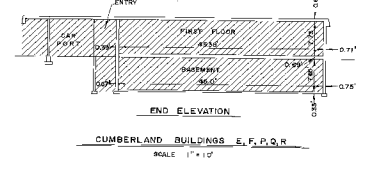
LEGEND  
A TO T BUILDING NUMBERS

NOTES:  
1- ALL INTERIOR DIMENSIONS ARE TO FINISHED SURFACES.  
2- ALL CROSS-HATCHED AREAS ARE TO BE PRIVATE OWNERSHIP.  
3- ALL AREAS NOT CROSS-HATCHED ARE TO BE COMMON OWNERSHIP.  
4- BM ASSUMED ELEVATION 810 FEET EAST OF N.E. CORNER OF DEVELOPMENT ELEVATION 4460.00.

CERTIFICATION  
I CERTIFY THAT THE BUILDING SPECIFICATIONS OF BUILDINGS "A" THROUGH "T" OF SOMERSET PLACE CONDOMINIUM ARE OR WILL BE AS SHOWN ON THIS MAP.  
*Signature of Land*  
REGISTERED LAND SURVEYOR LICENSE NO. 1611



END ELEVATION  
BUILDINGS A,B,C,D,S,H,J,K,L,M,N,Q,S,T  
SCALE 1"=10'



END ELEVATION  
CUMBERLAND BUILDINGS E, F, P, Q, R  
SCALE 1"=10'

SHEET 2  
RECORDED NO. 350234  
DAVIS COUNTY, UTAH  
DATE 02/22/2011 TIME 11:00 AM BOOK 7 PAGE 219  
FILED IN THE CLERK'S OFFICE OF THE CLERK OF THE DISTRICT COURT OF DAVIS COUNTY, UTAH

## **EXHIBIT "E" - RECORD RETENTION SCHEDULE**

**SOMERSET PLACE CONDOMINIUM - RECORD RETENTION SCHEDULE**

This record retention schedule shall serve as a guideline and is not an exclusive list. Some of the records below may not currently exist, but are listed in the event they exist in the future. The Board shall use its best judgment in determining the retention period for any record not mentioned below. The records described below shall be kept for as long as indicated. Once their retention period has expired, the Board may destroy the documents.

Description of Record	Retention Period
Articles of Incorporation	Permanent
Declaration of Covenants, Conditions, and Restrictions (including amendments)	Permanent
Corporate or Association Bylaws	Permanent
Association Plat Maps	Permanent
Resolutions adopted by the board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members (U.C.A §16-6a-1601 (5)(c))	Permanent
Minutes of all meetings of the board of directors	Permanent
Minutes of all annual and special meetings of members	Permanent
Record of all actions taken by the members or board of directors without a meeting	Permanent
A record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the board	Permanent
Record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors	Permanent
Architectural Modifications- Approved and Disapproved	Permanent
Architectural Guidelines (current and past)	Permanent
Association or Community Rules	Current and Past 6 Years
Ownership/Membership Records	Current and Past 6 Years
All written communications to members generally as members	6 years
A list of the names and address of current directors and officers	Current and past 6 Years
A copy of the most recent annual report delivered to the division under Section (U.C.A §16-6a-1607)	Current and Past 4 Years
Financial records and statements, including invoices, tax returns, checks, etc.	5 years