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Amended Restrictive Covenants
Russell Shirts Washington County Recorder
04/10/2012 10:58:32 AM Fee \$ 50.00
By SUMMERSET TOWNHOMES HOA

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**AMENDED AND RESTATED DECLARATION OF COVENANTS CONDITIONS AND
RESTRICTIONS OF SUMMERSET II TOWNHOUSE ASSOCIATION
454 South 100 East, Saint George, Utah 84770**

THIS IS A DECLARATION of Covenants, Conditions and Restrictions which establishes a planned unit development known as Summerset II Townhouse Association Phase II. This Declaration was originally made and executed on the 7th day of February, 1983 by Bob R Scott, Trustor. Book 322, pages 311 – 324.

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Summerset II Townhouse Association [hereafter "Declaration"] replaces and supercedes the original Declaration in its entirety, including Phase II and any amendments thereto, originally recorded as "DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF SUMMERSET II TOWNHOUSE ASSOCIATION.

This Declaration and the Map shall be construed as covenants of equitable servitude; shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each owner thereof.

The Properties are located in St. George, Washington County, Utah, and are described in Exhibit "A of this Declaration.

TOGETHER WITH ALL IMPROVEMENTS & APPURTENANCES THEREUNTO BELONGING.

ARTICLE 1 -- DEFINITIONS

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

Section 1.1. Declaration means this instrument, and any amendments.

Section 1.2. Plat or Map means the subdivision plat recorded herewith entitled "Summerset II Townhouse Association"

Section 1.3. Property or Properties means that certain real property hereinafter described, in Exhibit "A" and such additions thereto as may hereafter be subjected to this Declaration.

Section 1.4. Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners, including all improvements other than utility lines now or hereafter constructed or located thereon.

Section 1.5. Limited Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant. Limited Common Area is subject to rights of the Association set forth in this Declaration.

Section 1.6. Lot means a separately numbered and individually described plot of land shown on the plat designated as a lot for private ownership, but specifically excludes the common and limited common areas.

Section 1.7. Living Unit means a single family dwelling, with or without walls or roofs in common with other single family dwelling lots. When the term "Living Unit" is used it includes fee title to the real property lying directly beneath the single family dwelling, within lot boundary lines. This however, is not all the lot in some instances as there may be lot boundary outside the living unit walls. The term "single family dwelling" when used in this Declaration shall mean a group of not more than four [4] persons in a two [2] bedroom living unit or up to six [6] persons in a three [3] bedroom living unit, who are directly related either as spouses or significant other, parent and child, grandparent, grandchild, niece, nephew, or as siblings. In no event shall a single family dwelling exceed six [6] individuals. A medically required, state licensed care giver need not meet the family qualifications stated herein.

Section 1.8. Owner means the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each lot, the group of those parties shall be treated as one "owner."

Section 1.9. Association means Summerset II Townhouse Association, a Utah nonprofit Corporation, its successors and assigns.

Section 1.10. Member means every person or entity who holds membership in the Association. Every member is an owner, and every owner is a member.

Section 1.11. Trustees means the governing body of the Association.

Section 1.12. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary".

Section 1.13. Fines means a punitive monetary amount levied against an Owner and Lot for violations of this Amended and Restated Declaration, the Bylaws, the Rules and Regulations of the Association and applicable Architectural Guidelines. Said Fines shall be collectable as assessments pursuant to Article 4 herein.

Section 1.14. Residence "Residence" shall hereinafter mean and refer to single family Living Unit or other similar single family residential unit constructed upon a Lot for the permanent occupancy of an Owner and his or her family. Note: See Section 1.7 "Living Unit".

ARTICLE 2 -- PROPERTY RIGHTS

Section 2.1. Title to the Common Area The Declarant has conveyed fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common area in good repair and condition at all times and to operate the common area at its own expense in accordance with high standards.

Section 2.2. Owners' Easements of Enjoyment Every owner has a right and easement of use and enjoyment in and to the common area. This easement is appurtenant to and passes with the title to every lot, subject to:

[a] The right of the Association to limit the number of guests of members using the common area.

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

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

[d] The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the common area by the Association.

[e] The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.

[f] The terms and conditions of this Declaration.

[g] The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the common area.

Section 2.3. Limited Common Area A lot owner is entitled to the exclusive use of the limited common area adjacent and appurtenant thereto, if any, and to exclusive use of the parking area, if any, designated with his lot number on the plat. The Association, through its Trustees, may adopt rules and regulations concerning use of the limited common area. Limited common area is subject to the rights of the Association set forth in this Declaration.

Section 2.4. Delegation of Use An owner is deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is non-resident shall have any such delegable right of enjoyment.

Section 2.5. Rules. The Board of Trustees shall have the authority to promulgate rules and regulations and further shall have the authority to levy fines and access penalties for the governance of the Properties, and persons within the Properties. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Trustees.

Section 2.6. Lot. Each lot is owned in fee simple by the owner. However, area within the surveyed lot boundaries but outside the townhome walls even though part of the Lot and owned in fee simple by the owner shall be treated as limited common area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a lot larger than the townhome is to allow flexibility in the original townhome construction. After the initial construction on a lot, subsequent construction, if any, may occupy any portion of the surveyed lot, subject to all other provisions of this Declaration. An owner may construct appurtenant structures and personal landscaping outside the boundaries of the townhome and within the rear area of the surveyed boundaries of the lot, subject to approval of the Architectural Control Committee, as outlined in Article 6 herein.

ARTICLE 3 -- MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership Every owner is a member of the Association. The term "owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from lot ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

Section 3.2. Voting Rights The Association has one class of voting membership: All members are entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

ARTICLE 4 -- FINANCES AND OPERATIONS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. Each subsequent owner of any lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided whether or not a lawsuit for collections is initiated. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Successors in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 4.2. Purpose of Assessments The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and (b) for the improvement and maintenance of properties, services, and facilities devoted to this purpose. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas

which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The Trustees shall conduct a Reserve Fund Analysis as required by Utah State Code, entitled Condominium Ownership Act, 57-8-75. Reserve analysis – Reserve fund. or Community Association Act, 57-8a-211. Reserve analysis – Reserve fund and as may be amended from time to time.

The assessments may provide, at the discretion of the Trustees, for the payment of other charges including, without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges and at the option of the Association, of the Living Units situated upon the properties and of unit and outside walls and roof of living units and street; including, but not limited to, the replacement, and additions thereto, and for the cost of labor, equipment, materials, utilities, property taxes, management, and supervision thereof.

Section 4.3. Maximum Annual Assessment.

[a] The maximum annual assessment may be increased each year by five percent (5%) above the assessment for the previous year, without a vote of the membership.

[b] The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty percent (60%) of the votes of the members, voting in person or by proxy, at a meeting duly called for this purpose.

The actual general assessment need not increase annually. Any year in which the maximum annual assessment [five percent [5%]] was not applied may not be revisited in order to provide an increase to the current or future year's assessments. The Board shall set the actual general annual assessment on an annual basis. Notice shall be given to each owner as provided in Section 4.6 and 11.3. The Board must set the actual general assessment to be an amount at or less than the Maximum Annual Assessment.

Section 4.4. Special Assessments for Capital Improvements In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only. The Board shall have the authority to spend up to Three Thousand Dollars [\$3000.00] for capital improvements without a vote of the membership. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto. Special assessments exceeding the \$3000 limit must have the assent of sixty percent (60%) of the votes of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose

Section 4.5. Additional Assessments In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in

maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise is in the City up to and including the meters, if any, for individual units, and that they are installed and shall be maintained to City specifications.

Section 4.6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting of members called for the purpose of taking any action authorized under Section 4 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.7. Uniform Rate of Assessment: Periodic Assessment: Both annual and special assessments must be fixed at a uniform rate for all lots...Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Trustees determine.

Section 4.8. Date of Commencement of Annual Assessments: Due Dates The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. This notice shall not be a pre-requisite to validity of the assessment.

In the absence of a determination by the Trustees as to the amount of said assessment, the annual assessment shall be an amount equal to 90% of the maximum annual assessment determined as provided above. The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

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

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified lot has been paid. Such certificates, when properly issued, shall be

conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 4.9. Effect of Non-Payment of Assessment - Remedies of the Association Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine appropriate) until paid. In addition, the Trustees may assess a late fee for each delinquent installment which shall not exceed twenty per cent (20%) of the installment.

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

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the lot from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security. Utah Code 57-8a-204 and 205, as may be amended from time to time is hereby incorporated into this Declaration in order to facilitate the collections of assessments.

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

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

Section 4.10. Subordination of the Lien to Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender or insured by the Federal Housing Administration or the Veterans Administration if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a lot or owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

Section 4.11. Books, Records and Audit The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own

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

ARTICLE 5 – INSURANCE

Section 5.1. Casualty Insurance on Insurable Common Area The Trustees shall keep all insurable improvements and fixtures of the common area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the common area shall be written in the name of, and the proceeds thereof shall be payable to, the Association: Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Trustees may elect to obtain and continue in effect, on behalf of all owners, adequate blanket casualty and fire insurance in such form as the Trustees deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the townhomes including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Living Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the owners.

Section 5.2. Replacement or Repair of Property In the event of damage to or destruction of any part of the common area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such lot owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the Living Units, the Association shall repair or replace the same to the extent of the insurance proceeds available.

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

Individual Unit Owner Insurance. Each Unit Owner has the responsibility to maintain a homeowner's policy in addition to the coverage provided by the Association. The Unit Owner is primarily responsible to maintain, repair, replace and insure items that are appurtenant to his Unit. Unit Owners shall be responsible to insure against claims of damage from loss caused by fire, water damage or other hazards that: 1) originate within the unit; 2) are caused by accident or negligence of the Unit Owner, his tenants or guests; or 3) are caused by items that the Unit Owner is responsible to maintain, repair, or replace.

The Unit Owner's responsibility for such loss is limited to the first \$5,000 of each loss. This also applies to rented or unoccupied units. Insurance coverage should include but is not limited to the following:

(a) Anything to the contrary notwithstanding, the insurance coverage of a Unit Owner or resident shall be **PRIMARY** for the first \$5,000 of any covered loss and the insurance of the Association shall be secondary for a loss that: 1) originates within the Unit; 2) is caused by accident or negligence of the Unit Owner, their tenants or guests; or 3) is caused by items that the Unit Owner is responsible to maintain, repair, or replace. All Unit Owners shall have on their personal homeowner's policy (or dwelling fire policy if the Unit is rented to others) a minimum of \$20,000 for COVERAGE "A" (BUILDING) or its equivalent, such as may be individually required by the Unit Owner's insurance company, added to their individual insurance policy.

If a Unit Owner fails to maintain insurance, the Unit Owner will still be responsible for the first \$5,000 on any claim arising from losses that originate within their Unit and/or from items that are their responsibility to maintain, repair, replace, including any improvement which is a permanent part of the Unit and any such amounts spent by the Association is a require of the Owner herein, shall be collectable as an assessments against the Owner and Unit.

In the event a claim is filed on the Association's policy involving a Unit, the Unit Owner is responsible to pay the Association's deductible. If there are multiple parties involved, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. Furthermore, if damage occurs to a Unit that is a result of another Unit Owner's act or negligence, including that of a renter or guest or is caused by items that are the responsibility of the Unit Owner, tenant or guest to maintain, repair or replace, such Unit Owner will be responsible for the deductible.

(b) Should situations occur that are unique or unprecedented, the Board, upon majority vote, shall have authority to override subsection (a) above and submit the claim directly against the "Master Insurance Policy" for primary coverage.

(c) Insurance protection for Personal Property (Contents), Personal Liability, Loss Assessment, Loss of Use, Loss of Rents and other applicable coverage is the sole responsibility of the Unit Owner. This coverage is commonly obtained by purchasing a Homeowners Form 6 (H06) policy for Unit Owners.

Section 5.3. Liability Insurance The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the common areas. Liability

insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

Section 5.4. Fidelity Insurance The Trustees shall obtain and keep current fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. In procuring fidelity insurance the Trustees shall seek a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of [i] three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5.5. Directors and Officers Insurance
The Trustees shall obtain and keep current Directors and Officers Insurance providing indemnification for Trustees in the event they are sued for their actions as a Trustee. Without this protection for their volunteer service they could incur substantial liability.

Section 5.6. Annual review of Policies All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements, of the property which may be damages or destroyed.

ARTICLE 6 -- ARCHITECTURAL CONTROL COMMITTEE

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

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

The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to request made pursuant to this article.

ARTICLE 7 -- EXTERIOR MAINTENANCE

Section 7.1. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair. The Association shall also provide for maintenance and upkeep of any portion of a Lot which lies between the extremities of the Living Unit situated thereon and the boundaries of the Lot. In addition, the Association shall provide for maintenance and repair of the exterior of Living Units [including resurfacing of roofs and repainting, but not including replacement of glass] as may be necessary or desirable to keep them attractive and generally in good condition and repair. In performing its obligations concerning maintenance of Living Units exteriors, the Association shall employ materials of the same kind and quality, and colors the same, as those which were used in the connection with original construction of the item concerned. The Trustees may further provide a list or description of materials and areas to be included in the exterior maintenance responsibilities of the Association through Bylaws or by Rule. The provisions of Article 6 [Architectural Control Committee] shall not apply to any maintenance or repair of Living Unit exteriors which is accomplished by the Association.

Section 7.2. Access at Reasonable Hours For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.

Section 7.3. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a lot outside the walls of the townhome, and the limited common areas adjacent and appurtenant to the townhomes may be altered by Rule of the Association.

ARTICLE 8 -- USE RESTRICTIONS

Section 8.1. General Use Restrictions All of the properties which are subject to this declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the common property. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the properties. After the initial construction on a lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

No part of the Property shall be used for any commercial, manufacturing, mercantile, storing, vending, repairing, painting or reconstructing any vehicles, recreational or otherwise and other such non-residential purposes unless special exception is provided by the Trustees. Garage conversions are explicitly denied unless permission from the Trustees is obtained as well as required building permits and St. George City codes are complied with.

Section 8.2. Signs: Commercial Activity Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties.

Section 8.3. Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners or which shall in any way increase the rate of insurance.

Section 8.4. Animals No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except one dog, and/or one cat or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to lot owners. Any animal or breed which could be perceived to adversely effect the ability of Summerset II Townhouse Association to maintain and /or procure reasonable liability insurance the home owner shall be directed by the Board of Trustees to remove the animal from the community. All pets must be kept in the lots or on a hand-held leash when in the common areas. This provision may be made more restrictive by Rule of the Association.

Section 8.5. Use of Common Area Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

Section 8.6. Parking No motor vehicle which is inoperable shall be allowed within the Properties, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association. The offending vehicle will be towed and the cost assessed to the owner as any other assessment under this declaration. If parking spaces are designated on the plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the lot owner with the corresponding number. If parking areas are not designated on the plat with lot numbers, the Trustees may assign vehicle parking space for each lot. Parking spaces within the Properties shall be used for parking of motor vehicles actually used by the owner or his immediate family or guests for personal use and not for commercial use, and for guest parking. Recreational vehicles, boats, travel trailers and similar property may not be parked within the Properties unless permitted by rule of the Association

Section 8.7. Planting and Gardening No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.

Section 8.8. External Apparatus No lot owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

Section 8.9. Exterior Television or Other Antennas No exterior radio or other antennas, except one television antenna which shall not exceed four feet in height, per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Trustees. Said approval to be in compliance with current Federal Communication Commission {FCC} standards. Satellite dishes are not allowed to be attached to any roof or exterior wall of the units. Satellite dishes are only allowed if secured on a vertical pole at the rear of the unit. The request to attach satellite dishes to these vertical poles must be submitted to the Trustees or the Architectural Committee prior to placement on the lot. Further, access to the common area roofs is not permitted without written permission from the Trustees. Violation of this rule is fineable as shown in the Schedule of Fines.

Section 8.10. Garbage Removal All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 8.11. Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any lot.

Section 8.12. Interior Utilities All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

The Association shall pay for all utility service furnished to each lot except telephone and any other services which are separately billed or metered to individual lots by the utility or other party furnishing such service.

Section 8.13. Leases Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. In the event the Owner fails to remedy the default under their lease agreement, the Association is hereby appointed agent of the Owner and may initiate eviction proceedings against Tenant.

The number of rental units in Summerset II Townhouse Association shall not exceed two [2] units. Those units currently under lease prior to this amendment [1, 4, and 6] shall be granted a grandfather status until the unit is sold or title is otherwise transferred to a new owner of record except for ownership changes through current family trusts or spousal inheritance. As of the date of recording this amendment, any owner that is currently renting or leasing a unit may continue to do so until such time as the unit is sold or title is otherwise transferred as above.

Future rental units shall be approved on a first-come basis. Those wanting to place a unit on the potential rental list will notify the Secretary and/or the property management agent of Summerset II Townhouse Association. As each unit with grandfather status is sold, no further units will be allowed to be leased or rented, except for mitigating or hardship circumstances as follows: the Board of Trustees in its sole discretion, shall be empowered to allow reasonable leasing/renting of units beyond the limitation set forth above, upon written application, to avoid undue hardship to the Owner. By way of illustration and not by limitations, examples of circumstances which would constitute undue hardship are those in which, [a] an Owner is placed in a hospital, nursing home, assisted living facility, or other similar facility, [b] an Owner must relocate his residence and cannot, within ninety [90] days from the date the unit was placed on the market, sell the unit while offering it at a reasonable price no greater than its current appraised market value; [c] the Owner takes leave of absence or temporarily relocates and intends to return to reside in the unit; such absence not to exceed two [2] years; [d] the unit is to be leased to a member of the Owner's immediate family, which shall be deemed to encompass children, grandchildren, grandparents, brothers, sisters, parents and spouses. Owners who have demonstrated that the inability to lease/sell their unit would result in undue hardship and have obtained the requisite approval of the Trustees may lease/rent their units for such duration as the Trustees reasonably determine is necessary to prevent undue hardship. Any lease or rental agreement shall be in writing and must be presented to the Board of Trustees for approval prior to occupancy. All rental or lease agreements must be for a minimum period of twelve [12] months with any renewal also for a minimum period of twelve [12] months. No dormitory type rentals are permitted. No unit shall be rented, leased, or utilized for transient hotel purposes, commercial, or vacation time-share. Further, no Owner shall lease or rent less than his or her entire living unit. The units may not be divided into a smaller rental space than the entire unit space. A renter or lessee may not sublet or allow a third party to occupy the unit. The association must be notified, thru its secretary and/or property management agent, forty eight [48] hours prior to any move-in or move-out. The terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, By-Laws, Board Policy Letters and Rules and Regulations of the Association. Notwithstanding the above, prior to renting or leasing any townhome, the owner shall occupy their townhome for at least twelve [12] consecutive months before it qualifies as a permissible rental townhome. For the purposes of this Declaration "occupy" shall mean that a townhome shall be owned by the same owner[s] for a period of at least twelve [12] consecutive months, whether physically occupied by said owner[s] or not, prior to being made available for the rental or lease.

An Owner of a rental unit may request from the Board of Trustees, relief from the twelve [12] month minimum rental period if a good faith renter may have unforeseen circumstances and may be compelled to vacate the property earlier than the required minimum time frame or, an Owner may be required by direction of the Board of Trustees, to

evict a tenant for good cause without fear of penalty. A copy of the lease and the deposit must be delivered to the Association before the lessee can occupy the townhome being leased. The unit owner shall provide a copy of a St. George City business license as required by code, 4-7-3: LICENSE REQUIRED and as may be amended from time to time.

ARTICLE 9 – AUTHORITY OF TRUSTEES

Section 9.1. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President of the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, for or without cause and a successor may be elected at a special meeting of the Board called for such purpose.

Section 9.2. Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special Board meeting.

Section 9.3. Fines The Board shall have the right to levy fines against Owners and Lots for violation of the provisions of this Declaration, the By-Laws, Supplementary Restrictions, or rules and regulations. The amount of the fines shall be determined by the Board and shall be published in a Schedule of Fines. The Board shall have the right to amend the Schedule of Fines from time to time as it sees fit. Fines shall be considered an assessment against the Lot and shall be collectible as an assessment pursuant to Article 4 herein. In order to provide a uniform enforcement policy the Association hereby adopts the Utah Community Association Act's fine provisions. See Utah Code 57-8a-208. Further, if an Owner is noticed properly of a particular violation and refuses corrective action within a reasonable time period the Association, following duly given notice, has the right to correct the violation itself and charge the cost to the Owner through an individual assessment.

Section 9.4. Notice and Hearing In the event of a claimed violation of the Declaration, By-Laws or administrative rules and regulations as they may be adopted by the Trustees from time to time governing the Association an Owner or Resident shall be entitled to the following:

[a] Notice. Written notice specifying the nature of the alleged violation [providing any other appropriate information] and stating the time, date and place at which the Owner or Resident will have an opportunity to be heard. Notice shall be given at least fifteen [15] days prior to and no longer than thirty [30] days before the date set for the hearing. The notice may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered four [4] business days after it has been deposited with the U.S. Postal Service, regular mail, postage prepaid, addressed to the Owner or Resident at the address given by the member to the Trustees for the purpose of service of notice, or to the address of the Owner's or Resident's Unit if no other address has been provided. The address of an Owner

or Resident for the purposes of notice may be changed from time to time by delivery of written notice to the Trustees.

[b] Costs and Assessments. If the violation, or the failure to correct or remedy a violation, results, The Board of Trustees may levy fines as indicated in Section 9.3.

[c] Final Determination. After the hearing has taken place, the Trustees shall determine whether a violation has occurred and, if so, the Trustees may: [1] levy an Assessment or impose conditions which shall become effective not less than five [5] days after the date of the hearing; [2] take such other action as it may deem appropriate. [3] The voting rights of Owner shall be suspended during any period of delinquency of assessments. The determination of the Trustees shall be final.

ARTICLE 10 – EASEMENTS

Section 10.1. Encroachments Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 10.2. Utilities There is hereby created a blanket easement upon, across, over and under all of the properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties in such a way as to unreasonably encroach upon or limit the use of the common area or limited common area or any structure thereon. In the initial exercise of easement rights under this Section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this Section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document Association shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 10.3. Police, Fire and Ambulance Service An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

Section 10.4. Maintenance by Association An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot or unit to perform the duties of maintenance and repair including those procedures necessary to provide pest and/or vermin control. Upon reasonable notice to the unit owner or lessee that procedures as noted above are necessary, the unit owner or lessee shall provide keys or make other arrangements in order to facilitate such procedures.

Section 10.5. Other Easements The easements provided for in this Article shall in no way affect any other recorded easement.

ARTICLE 11 -- GENERAL PROVISIONS

Section 11.1. Enforcement The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter.

In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed 10% of the amount of the maximum annual assessment against any owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing.

Section 11.2. Severability All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Association and owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 11.3. Duration The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this declaration is recorded, after which time said covenants shall be automatically extended for successive periods of five [5] years.

Section 11.4. Amendment The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than sixty- percent (60%) of the members. Amendments to the Declaration shall be proposed by either a majority of the Trustees or by Owners holding thirty percent [30%] or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Section 11.5. Notices Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 11.6. Gender and Grammar The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 11.7. Waivers No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

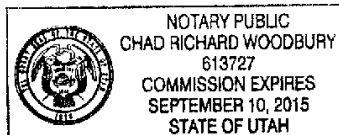
Section 11.8. Topical Headings The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

x Judith G. Slauch
ASSOCIATION PRESIDENT

State of Utah }
County of WASHINGTON } §
Subscribed and sworn to before me on this 10 day of APRIL
DAY MONTH
in the year 2012 by JUDITH SLAUGH
YEAR NAME OF DOCUMENT SIGNER

SEAL

[Signature]
NOTARY PUBLIC



**LEGAL DESCRIPTION OF
Summerset Townhomes Phase II Amended:**

**All lots, limited common areas, and common areas within
Summerset Townhomes Phase II.**