

FILM 1072

25

CONDOMINIUM DECLARATION  
FOR  
SOMERSET CONDOMINIUMS

THIS DECLARATION of covenants, conditions, easements, restrictions, uses, limitations and obligations, hereafter called the "Declaration", is made and executed this 10 day of May, 1979, by SOMERSET, a joint venture, hereinafter called "Declarant" pursuant to the provisions of the Colorado Condominium Ownership Act.

WITNESSETH:

WHEREAS, Declarant is the owner of real property situated in the County of Boulder, State of Colorado, described in Exhibit A, attached hereto; and

WHEREAS, Declarant desires to establish a condominium project under the Condominium Ownership Act of the State of Colorado; and

WHEREAS, by this Declaration a plan is established for the separate ownership of the condominium units and for submitting the above-described property for condominium use;

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land, and shall be a burden and a benefit to Declarant, its successors and assigns, and any persons acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees or assigns.

1. Definitions

A. "Unit" means the air space which is contained within the unfinished perimeter walls, windows, doors, floors and ceilings of each such unit in a building as shown on the condominium map, together with all improvements and fixtures contained therein, but not including any of the structural components or bearing walls of the building within which such air space is located, which shall constitute part of the general common elements. All doors, be they glass or otherwise, which are in the perimeter walls shall be included as part of the unit up to the exterior unfinished surface thereof.

B. "Building" means one of the buildings shown on the map in which units are located.

Recorded 10:20 AM On JUL 11 1979  
347500  
Reception No. .... Charlotte Houston, Boulder County Recorder

53313

FILM1072

26-2

C. "Condominium Unit" means a unit together with an undivided one-thirtieth (1/30th) interest in the general common elements.

D. "Owner" means a person, firm, corporation, partnership, association or other legal entity or any combination thereof who owns one or more condominium units.

E. "General Common Elements" means all of the land and all portions of the property described in Exhibit A, not included in the units. Included therein, but not by way of limitation, are roofs, fences, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, bearing walls, perimeter walls, columns to the interior surface thereof, regardless of location, green areas, gardens, storage sheds, surface streets and surface paving, hot-tubs, roof-deck, trash chutes, elevator, tennis courts and attendant lighting, television antennas and attendant wiring to the outlet, all installations of power, lights, gas, hot and cold water and heating existing for common use, the perimeter walls, floor, ceiling, all bearing walls and surfaces of the parking garage, and all parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use, and parking areas within the parking garage not included as limited common elements.

F. "Limited Common Elements" means those general common elements which are either limited to and reserved for the exclusive use of an owner of a condominium unit or are limited to and reserved for the common use of more than one, but fewer than all of the condominium unit owners, including the roof covered lanais abutting each unit, the parking space or spaces in the parking garage reserved to each unit, the heating and air-conditioning equipment appurtenant to the units wherein same are attached.

G. "Entire Premises" or "Property" means and includes the land, the buildings, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.

H. "Common Expenses" means the expenses for which the unit owners are liable to the Association and includes expenses for maintenance, repair, operation, management and administration of the general common elements and the portions of units to be maintained by the Association; expenses declared common expenses by either the provisions of this Declaration, or the Articles of Incorporation or the By-Laws of Somerset Condominiums Association; all sums lawfully assessed against

FILM 1072

26-3

the general common elements by the Board of Directors of the Association; taxes, special assessments, insurance and utilities for all general common elements. Such common expenses shall be paid in such amounts and at such times as is determined reasonable and necessary by the Association for the best good and convenience of all condominium unit owners.

I. "Association of Unit Owners" or "Association" means Somerset Condominiums Association, a corporation not for profit, the By-Laws of which shall govern the administration of this condominium property.

J. "Map or Condominium Map" means and includes the engineering survey of the land, locating thereon the buildings, improvements, floor and elevation plan and other drawings or diagrammatic plans, including, without limitation, charts or schedules depicting a part of or all of the improvements and land.

2. Development Plan.

This condominium consists of two (2) buildings containing twenty-two (22) together with adjacent lands as more particularly described in this Declaration. These buildings are part of a series of three (3) which may be constructed under a common plan. All of buildings constructed under the common plan may be referred to collectively as Somerset Condominiums.

The Declarant has filed preliminary plans for the development of the land included in this Declaration which plan is subject to change so long as no more than thirty (30) units are included hereunder and Declarant files "as built" plans and drawings with the proper governmental authority.

3. Condominium Map.

The Map shall be filed for record, in whole or in parts or in sections, from time to time as the stages of construction of units, buildings and other improvements are substantially completed. Each section of the Map filed subsequent to the first or initially filed Map shall be termed a supplement to such Map and the numerical sequence of such Map shall be shown thereon. Prior to the conveyance of any condominium unit to a purchaser, a Map shall be filed for record, locating and depicting the unit being conveyed. The first or initially filed map shall show the legal description of all the land and a survey thereof. Declarant hereby reserves, whether such reservation is stated on the Map or not, the right to construct additional units and buildings not designated thereon, and the right to convey such units as they are com-

FILM 1072

26-4

pleted and after supplements thereto are recorded. In addition, the first filed Map and each supplement to such map shall show the following: the location of the buildings and improvements; the elevation plans; the location of the unit within the building, both horizontally and vertically; the thickness of the structural and supporting walls and the thickness of the common walls between or separating the units; the location of the common walls between or separating the units; the location of any structural components or supporting elements of a building located within a unit; and the unit designations and building symbols. In addition to supplements to the Map as above provided, the Map and supplements thereto may also be supplemented by filing charts or schedules depicting horizontal or vertical dimensions. There shall be filed for record as a part of the Map a certificate of a registered professional engineer certifying that the Map substantially depicts the location and the horizontal and vertical measurements of the completed buildings and units and the unit designations and building designations, and that such Map was prepared subsequent to substantial completion thereof. Each supplement shall set forth a like certificate when appropriate. Declarant reserves the right to amend a previously recorded Map from time to time in order to conform such Map to the actual location of any of the constructed buildings or improvements.

In interpreting the Map, the existing physical boundaries of each separate unit and each building and improvements as constructed shall be conclusively presumed to be its boundaries.

Declarant reserves the right to file supplements to the Map, or to any section or part thereof, from time to time.

4. Limited Common Elements.

Those areas reserved for the use of certain unit owners or a certain unit owner to the exclusion of other unit owners are designated as "Limited Common Elements", and shall include, but not by way of limitation, the parking space or spaces in the parking garage which shall be so designated to correspond to the unit to which such space or spaces are appurtenant, together with the attendant storage cabinet, and the heating and air-conditioning equipment serving an individual condominium unit. No reference to such limited common elements need be made in any deed, deed of trust, instrument or conveyance, or other instrument concerning a condominium unit; and any such deed, deed of trust, instrument of conveyance, or other instrument

FILM 1072

26-5

concerning a condominium unit shall be deemed to convey such limited common elements without reference thereto.

The limited common elements shall be maintained and repaired by the owner having the exclusive use thereof, but if an owner fails to maintain a limited common element appurtenant to his unit, the Association may maintain and repair the same and assess the owner for the cost thereof, and said assessment shall be the personal debt of the owner and may be collected in the same manner as is provided herein for the collection of common expenses.

5. Division of Property into Condominium Units.

The property described in Exhibit A is hereby divided into the following fee simple estates; twenty-two (22) separate fee simple estates, each estate consisting of one unit, together with an undivided one-thirtieth (1/30th) interest in the general common elements. It is understood that the interest in the general common elements may be increased as is hereafter provided in Paragraph 31, and the owners agree to accept such increase. At such time as all of the units have been completed and sold, the owners of such condominium units shall share in the common expenses in the same proportion as their interest in the general common elements. Until such time as all of the units have been completed and sold, the owners of the units shall pay such assessments as are lawfully assessed against the respective units by the Board of Directors of the Association.

6. Inseparability of a Condominium Unit.

Each unit and the undivided interest in the general common elements and the limited common elements appurtenant to each unit shall be inseparable and may be conveyed, leased, rented or encumbered only as a condominium unit.

7. No Partition.

There shall be no judicial partition of the entire premises or any part thereof, nor shall Declarant or any person acquiring any interest in the entire premises or any part thereof seek any such judicial partition. Nothing contained herein shall be construed as a limitation of the right of partition of a condominium unit between the owners thereof, but such partition shall not affect any other condominium unit.

8. Description of Condominium Unit.

Every contract, lease, deed, mortgage, deed of trust or other instrument may legally describe the condominium unit by its identifying unit designation and build-

FILM 1072

26-6

ing designation as shown on the map, followed by the words, Somerset Condominiums, with further reference to the Map filed for record and the recorded Declaration.

Every such description shall be deemed good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the unit but also the appurtenant general and limited common elements and every such description shall be deemed to include the entire condominium unit. Each such description shall be construed to include a non-exclusive easement for ingress and egress to and from the unit.

The initial deed conveying a condominium unit may contain reservations, exceptions and exclusions which the Declarant deems to be consistent with and in the best interest of all condominium unit owners and the Association.

9. Ownership and Title.

A condominium unit may be held and owned by more than one person as joint tenants or as tenants in common or in any real property tenancy relationship recognized under the laws of the State of Colorado.

10. Separate Assessment and Taxation.

Declarant shall give written notice to the assessor of the County of Boulder, State of Colorado, of the creation of condominium ownership of this property, as is provided by law, so that each condominium unit shall be deemed a separate parcel and subject to separate assessment and taxation; provided, however, the general common elements shall be assessed to the Association in one tax bill and the Association shall collect the pro rata share of such tax from the unit owners. The tax for the units and limited common elements included therein, shall be taxed and assessed directly to the unit owners.

11. Use of General Common Elements.

Subject to the rights reserved to the Declarant by Paragraph 30 hereof, each owner may use the general common elements with the other condominium unit owners and the limited common elements appurtenant to the individual units in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners, so long as such use is in accordance with the rules and regulations promulgated by the Board of Directors of the Association.

FILM 1072

26-7

12. Use and Occupancy.

Declarant and its employees, representatives, agents and contractors may maintain business and sales offices, construction facilities and yards, model units, and other facilities on the property during the period of construction and until the sale of the units is completed by Declarant.

13. Easement for Encroachments.

If any portion of the general or limited common elements encroaches upon a unit, a valid easement for the encroachment and for the maintenance of same, so long as it stands or as the same may be reconstructed pursuant to the provisions of this Declaration, shall and does exist. If any portion of a unit encroaches upon the general common area or upon an adjoining unit, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For title or other purposes, such encroachment(s) and easement(s) shall not be considered or determined to be encumbrances either on the general common elements or the units.

14. Termination of Mechanics Lien Right.

Subsequent to the completion of the improvements described on the Map, no labor performed or materials furnished and incorporated in a unit with the consent of or at the request of the owner thereof or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the condominium unit of any other owner not expressly consenting to or requesting the same. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the condominium unit of any other owner for construction performed or labor, materials, services, or other products incorporated in the owner's unit at such owner's request. The provisions herein contained are subject to the rights of the Board of Directors of the Association as set forth in Paragraph 16 hereof.

15. Administration and Management.

The administration of the condominium property shall be governed by the Articles of Incorporation and By-Laws of Somerset Condominiums Association. An owner of a condominium unit, upon becoming such an owner, shall be a member of the Association and shall remain a member of the Association for the period of his ownership. A tenant of an owner of a unit shall not be a member of the Association. Declarant shall have the right to designate the persons (whether or not condominium

FILM 1072

26-8

unit owners) who shall be the Board of Directors of said Association. This right shall remain with Declarant until the last condominium unit is completed and sold.

16. Reservation for Access - Maintenance, Repair and Emergencies.

The Association and its designees shall have the irrevocable right to have access to each condominium unit from time to time during reasonable hours as may be necessary for the maintenance, repair and/or replacement of any of the general common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general or limited common elements or to another unit. Damage to the interior or any part of a unit or to a part of the condominium unit resulting from the maintenance, repair, emergency repair, or replacement of any of the general common elements or as a result of emergency repairs within another unit, at the instance of the Association, shall be a common expense; provided, however, that if any such damage is the result of the carelessness or negligence of any owner, then such owner shall be responsible for all of such damage. Restoration of the damaged improvements shall be to substantially the same condition as that in which they existed prior to the damage; provided, however, the materials used in such repair and restoration need not be identical to the materials replaced, but must be of equal quality and substantially the same as the original materials.

17. Owner's Responsibility to Maintain Unit.

For purpose of maintenance, repair, remodeling, and alteration, an owner shall be deemed to own the interior walls and interior floors and ceiling, the material (such as, but not limited to, plaster, gypsum, drywall, panelling, wallpaper, paint, wall coverings, wall and floor tile, flooring and floor covering) making up the finished surface of the perimeter and supporting walls, ceilings and floors within the units and the unit doors and windows, and the limited common elements appurtenant to the unit. The owner shall be deemed to own the heating and air-conditioning equipment (and component part) serving the owner's unit. The owner shall not be deemed to own the lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as utilities) running through his unit which serve one or more other units except as a tenant in common with the other owners. Such interior walls, floors, and ceilings and utilities shall not be disturbed or relocated by an owner without the written consent and approval of the Association. The limited common elements appurtenant to the unit shall not be altered, repainted, or redecorated by the owner of the unit with-



FILM 1072

26-9

out first obtaining the written consent and approval of the Board of Directors of the Association. Such right to repair, alter and remodel shall carry the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials equal in quality. An owner shall maintain and keep in repair the interior of his own unit, including the fixtures therein including, but not limited to, all major kitchen appliances. All fixtures and equipment installed within the unit, and all lines, wires, pipes and conduits or systems within the unit commencing at a point where the utilities enter the unit, and which do not serve another unit, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament.

18. Compliance with Declaration, By-Laws of Association.

Each owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws of the Association and the rules and regulations of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for the expulsion of the unit owner from membership in the Association, shall subject such unit owner to a denial or limitation of his right to use the general common elements, shall be grounds for an action to recover sums due and for damage or injunctive relief, or both, maintainable by the Association on behalf of the owners, or, in a proper case, by an aggrieved owner.

19. Amendment of Declaration.

Except as otherwise provided, this Declaration may be amended in the following manner:

A. Resolution. A resolution for the adoption of a proposed amendment may be proposed by either the Board of Directors of the Association or by not less than twenty-five (25%) percent of the voting members of the Association. Members not present in person may express their approval by proxy executed in the customary corporate manner provided such proxy is delivered to the Secretary of the Association at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

1. Not less than seventy-five (75%) percent of the entire membership of the Board of Directors of the Association and by not less than seventy-five

FILM 1072

26-10

(75%) percent of the voting membership of the Association; or

2. Not less than eighty (80%) percent of the voting membership of the Association; or

3. Until the first election of Directors, by all of the Directors.

B. Proviso. Except as provided herein:

1. No amendment shall either change any unit or the share in the general common elements appurtenant to it, or increase the unit owner's share of the common expenses, unless the record title holder of the unit concerned and all record owners of mortgages or deeds of trust on such unit shall join in the execution of the amendment.

2. No amendment shall either impair or prejudice the rights and priorities of any mortgages or deeds of trust or change the provisions of this Declaration with respect to the holder of any mortgage or deed of trust without the written approval of all of the holders of any recorded mortgage or deed of trust.

C. Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the public records of Boulder County, Colorado.

20. Assessment for Common Expenses.

All owners shall be obligated to pay the estimated assessments imposed by the Board of Directors of the Association to meet the common expenses. Assessments made by the Board of Directors of the Association shall be on an annual basis and shall be payable in advance in twelve (12) equal monthly installments payable on the first day of each month following such annual assessment.

Contributions for such assessments shall be prorated if the ownership of a condominium unit commences on a day other than the first day of a month.

The assessments made for the common expenses shall be based upon the cash requirements deemed to be such aggregate sum as the Association shall from time to time determine is to be paid by all of the owners, including Declarant (so long as any of the condominium units are not sold by Declarant) to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements, which sum may include, among other things,

26-11

**FILM 1072**

expenses of management; taxes and special assessments unless separately assessed; insurance premiums for fire with extended coverage and vandalism and malicious mischief with endorsements attached, issued in the amount of the maximum replacement value of all of the condominium units (including all fixtures, walls, and partitions; decorated and finished surfaces of perimeter walls, floors and ceilings, doors, windows and other elements or materials comprising a part of the units), casualty and public liability and other insurance premiums; landscaping and care of grounds; lighting and heating of common areas; repairs and renovation; trash and garbage collection; wages, water and sewer charges, snow removal, ground maintenance, legal and accounting fees, management fees, expenses and liabilities incurred by the Board of Directors of the Association under or by reason of this Declaration; the payment of any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve for replacements of the general common elements or to cover deficiencies in collection for operating the general elements. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the owners from their obligation to pay.

21. Insurance.

The Board of Directors of the Association shall obtain and maintain at all times insurance of the type and kind herein provided, including such other risks, of a similar or dissimilar nature, as are or shall hereinafter customarily be covered with respect to other condominium buildings, fixtures, equipment and personal property, similar in construction and design, and which are issued by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in a blanket policy form, naming the Association the insured, as an attorney-in-fact (for the condominium unit owners), which policy or policies shall identify the interest of each condominium owner (owner's name, unit designation and building designation) and which policy or policies shall provide a standard, non-contributory mortgagee clause in favor of each first mortgagee, and that it cannot be cancelled by either the insured or the insurance company until after ten (10) days prior written notice is given to each owner and each first mortgagee. The Association shall furnish a certified copy of such blanket policy, the certificate identifying the interest of the mortgagor, to any party in interest upon request.

FILM 1072

26-12

Insurance coverage on the furnishings and other items of personal property belonging to an owner, and casualty and public liability insurance coverage within each unit and the limited common elements appurtenant to each unit, shall be the responsibility of the owner thereof.

The Board of Directors of the Association shall obtain fire and extended coverage, insurance and vandalism and malicious mischief insurance insuring all of the insurable improvements within the condominium property, including property owned by the Association, in and for interests of the Association, all unit owners and their mortgagee as their interest may appear, in an amount equal to the maximum insurance replacement value of the property as determined annually by the Board of Directors of the Association.

22. Lien for Non-Payment of Common Expenses.

Assessments and installments thereon paid on or before five (5) days after the day when the same shall become due shall not bear interest, but all sums not paid on or before five (5) days when due shall be assessed a late charge equal to ten (10%) percent of such installment.

When a member defaults in the payment of any installment due for his share of common expenses, the Association, acting through its Board of Directors, shall have the right to declare the entire annual assessment due and payable, plus any late charges, including interest thereon at the rate of twelve (12%) percent per annum, and such sum shall constitute a lien on said member's condominium unit and all tangible personal property located with the unit, superior and prior to all other liens and encumbrances, except for tax and special assessment liens in favor of any assessing authority and all sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such a lien.

To evidence such lien the Board of Directors of the Association shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the condominium unit and the description of the condominium unit. The notice shall be signed by a member of the Board of Directors of the Association and shall be recorded in the office of the Clerk and Recorder, Boulder County, Colorado. Such lien shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting owner's condominium unit

FILM 1072

26-13

by the Association in like manner as a mortgage on real property upon the recording of a notice of claim thereof. The lien provided for herein shall be in favor of the Association and for the benefit of all the condominium unit owners. In any such foreclosure the owner shall be required to pay the costs, expenses and attorney's fees for filing the notice or claim of lien and all reasonable attorney's fees and costs in connection with such foreclosure. The owner shall be required to pay to the Association the monthly installment for the condominium unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association, acting in behalf of all the unit owners, shall have the power to bid in the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage, encumber, and convey same. Such foreclosure sale shall be subject to the owner's statutory right to redeem as same may exist at the time of such sale.

To secure the sums assessed but unpaid for the share of the common expenses chargeable to any condominium unit, each owner of a condominium unit irrevocably assigns the rents earned on such property to the Association. If said assessments are unpaid for a period of thirty (30) days after the monthly statement is mailed to each owner, the Board of Directors of the Association may take complete charge of the rental of each unit or any unit, and is hereby authorized to collect all the rents therefrom and hold the same for the payment of all assessments imposed by the Board of Directors of the Association.

All assessments levied pursuant to this Declaration, or levied pursuant to the By-Laws of the Association, shall be due and payable within ten (10) days of billing; provided, however, special assessments shall be due and payable within thirty (30) days of billing as hereinafter provided under Paragraph 25 of this Declaration. Any assessment so levied, or any installment thereof, which is not paid on the due date shall be delinquent.

23. Owner's Obligation for Payment of Assessments and Common Expenses.

The amount of the common expenses assessed against such condominium units shall be the personal and individual debt of the owner thereof at the time the assessment was made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same. No owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the general common elements or by abandonment of his unit.

FILM 1072

26-14

The grantee of a condominium unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

24. Mortgaging a Condominium Unit - Priority.

Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a condominium unit may create junior mortgages only for securing a portion of the purchase price of the unit on resale, and then on the following conditions: (1) any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for common expenses, and other obligations created by this Declaration and by the By-Laws of the Association; (2) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvement upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were affected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee on written request of the Association as attorney-in-fact.

25. Damage, Destruction and Obsolescence.

This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its damage, destruction or obsolescence. Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint Somerset Condominiums Association their true and lawful attorney in their name, place and stead for the purpose of dealing with their property upon its damage, destruction or obsolescence as is hereinafter provided. As attorney-in-fact, the Association by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a condominium unit owner which is necessary and appropriate to

FILM 1072

26-15

exercise the powers herein granted. Repair and reconstruction of the improvements as used herein means restoring improvements to substantially the same condition in which they existed prior to the damage, with each unit and the general and limited common elements appurtenant thereto having the same vertical and horizontal boundaries as before. Proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement, as is provided hereinafter, without release or joint payment to lenders or owners.

A. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvements shall promptly be repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvements.

B. If the insurance proceeds are insufficient to repair and reconstruct the improvements and if such damage is not more than sixty (60%) percent of the replacement value of all of the condominium units, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense and made pro rata according to each unit owner's interest in the general common elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Paragraph 22 hereof. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association, as attorney-in-fact, under the provisions hereof. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, in the following manner:

26-16

FILM 1072

1. For payment of the balance of the lien of any first mortgage;
2. For payment of tax and special assessment liens in favor of any assessing entity;
3. For payment of unpaid common expenses;
4. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
5. The balance remaining, if any, shall be paid to the condominium unit owner.

C. If destruction or damage is sustained to more than sixty (60%) percent of the replacement value of all of the condominium units, and if the owners representing an aggregate ownership interest of eighty-five (85%) percent, or more, of the general common elements, do not voluntarily within one hundred (100) days thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Association as attorney-in-fact for all the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. Insurance settlement proceeds shall be divided by the Association according to each condominium unit owner's interest (as such interest appears on the policy or policies of insurance), and such divided proceeds shall be paid into separate accounts, each such account representing one of the condominium units. Each such account shall be in the name of the owner. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each such account, without contribution from one account to another, toward the partial or full payment of the lien or of any first mortgage against the condominium unit represented by such separate account. Thereafter each such account shall be supplemented by the proportionate amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph B of this Paragraph 25.



26-17

FILM 1072

D. The owners representing an aggregate ownership interest of eighty-five (85%) percent, or more, of the general common elements may agree that the condominium units are obsolete and adopt a plan for the renewal and reconstruction, which plan must have the unanimous approval of all first mortgagees of record at the time of adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plan executed by the president and secretary of the Association shall be recorded, and the expense of the renewal and reconstruction shall be payable by all of the owners as common expenses.

E. The owners representing an aggregate ownership interest of eighty-five (85%) percent or more of the general common elements may agree that the condominium units are obsolete and that the same should be sold. Such plan (agreement) must have the unanimous approval of every first mortgagee of record at the time of the adoption of such plan. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The sales proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one condominium unit. Each such account shall be in the name of the Association, and shall be further identified by the unit designation and building designation and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph B of this Paragraph 25.

The power of attorney hereinabove referred to shall also apply to the Association's right to maintain, repair and improve all of the buildings and general and limited common elements.

26. Personal Property for Common Use.

The Association may acquire and hold for the use and benefit of all members of the Association, real and tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall

26-18

FILM 1072

be owned by the members of the Association and their interest therein shall not be transferable, except that the interest of a member who is a condominium unit owner shall be deemed to be transferred upon the transfer of the member's condominium unit. A transfer of a condominium unit shall transfer to the transferee ownership of the transferor's beneficial interest in such real and/or personal property without any reference thereto or execution of a bill of sale. Each owner may use such real and personal property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. Sale of a condominium unit under foreclosure shall thereby entitle the purchaser thereof to the beneficial interest in the real and personal property associated with the foreclosed condominium unit.

27. Registration by Owner of Mailing Address.

Each owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an owner shall be sent by either Registered or Certified Mail, postage prepaid, addressed to the name of the owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by Certified Mail, postage prepaid, to 5895 East Evans Avenue, Denver, Colorado 80222, until such address is changed by a notice of change of address being filed with the Clerk and Recorder of the County of Boulder, State of Colorado.

28. Period of Condominium Ownership.

Separate condominium estates created by this Declaration and the Map shall continue until this Declaration is revoked in the manner as provided in Paragraph 19 of this Declaration or until terminated in the manner and as is provided at subparagraphs C or E of Paragraph 25 of this Declaration.

29. Restrictive Covenants.

A. The property is hereby restricted to residential dwellings for residential uses and uses related to the convenience and enjoyment of such residential use. All buildings or structures erected upon the property shall be of new construction and no buildings or structures shall be moved from other locations onto said premises, and no subsequent buildings, other than buildings shown on the Map shall be built on the property where the builder theretofore programmed and constructed a building.

FILM 1072

26-19

No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuildings shall be used or installed on any portion of the property at any time either temporarily or permanently.

B. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for the Declarant, its agents, employees and contractors to maintain during the period of construction and sale of the condominium units, upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of the condominium units, including, but without limitation, a business office, storage area, construction yards, signs, model units, sales office, construction office, parking areas, and lighting.

C. No animals, livestock or poultry of any kind shall be raised, bred or kept on the property, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and that such keeping is subject to the rules and regulations adopted by the Association.

→ D. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the property, nor shall the property be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any condominium unit or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or on any portion of the property. Provided, further, however, the foregoing covenant shall not apply to the business activities, signs and billboards or construction and maintenance of buildings and improvements, if any, of the Declarant, its agents, contractors and assigns during the construction and sale period, and of the Association, its successors and assigns in furtherance of its powers and purposes as hereinafter set forth, nor shall the foregoing covenant prohibit the posting of signs for the resale of units by the owners thereof.

E. No clothes line shall be erected or placed on the land. All rubbish, trash and debris shall be kept in the places provided for that purpose.

F. No planting or gardening shall be done, and no fence, hedge or wall shall be erected or maintained upon said property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or its designated representative.

FILM 1072

26-20

G. No exterior additions, including any change, addition or alteration of limited common elements, or alterations to any buildings, nor changes in fences, hedges, walls, gates, and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of same shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the property by an architectural committee composed of the Board of Directors of the Association, or by a representative designated by the Board of Directors of such Association.

H. In no event shall any unit be occupied by more than five (5) persons.

30. Declarant's Exceptions, Exclusions and Reservations.

Declarant hereby excepts, excludes and reserves the following from each and every deed and instrument of conveyance executed and delivered by it to a condominium unit owner:

A. So long as Declarant owns any interest in the property described in Exhibit A, or the property described in Exhibit B, it reserves the right to construct and complete the construction of units, buildings, drives, lanes, roads and all other improvements on said property, and in connection therewith, reserves the right to use and excavate the surface and subsurface of the ground for the erection, construction and installation of said improvements and foundations, footings, floorings and basements. Declarant also reserves the right to extend the drives, lanes, and roads located or to be located on the property described in Exhibit A and Exhibit B, attached hereto. In addition, Declarant reserves the right to lease and rent such subsequently constructed condominium units and the right to sell, grant and convey title to purchasers of such subsequently constructed condominium units. Furthermore, Declarant also reserves the right to use and occupy so much of such property as may be necessary for the construction, reconstruction, maintenance and operation of any of said units, buildings, drives, lanes, roads and other improvements, including, but not limited to, the right to locate, install, maintain, and repair all utilities and utility lines necessary for such construction, reconstruction, maintenance and operation. Declarant, in addition, reserves the right to convey to any municipality, water district, sanitary sewer district, or other municipal or quasimunicipal corporation, all sewer lines and mains, and water mains and pipelines constructed or to be constructed on lands located in

FILM 1072

26-21

Somerset Condominiums, Boulder County, Colorado, together with suitable rights-of-way over said lands for the continued maintenance, repair, replacement and operation thereof.

B. The right to grant and convey to others, whether or not they are owners of condominium units in this condominium project, equal rights to a nonexclusive easement for ingress and egress along, over and across all the roads, drives and lanes and all extensions thereof, now or hereafter constructed.

C. The right to appoint the members of the Board of Directors of the Association, be such appointees owners of units or not, until such time as the last unit is completed and the sale thereof is closed, and to then provide for an election of a new Board of Directors of the Association according to its By-Laws.

31. Reservation of Right to Expand Project and Create Easements.

A. Declarant reserves a right to establish easements, reservations, options and exclusions consistent with the condominium ownership of the property described in Exhibit A and described in Exhibit B and for the best interest of all of the condominium unit owners, including the Declarant, in order to serve the entire condominium project.

B. Declarant reserves the right to expand this condominium project to include additional land and to include an additional building; provided, however, that the total number of units in the project, as expanded, shall not exceed thirty (30). Such additional land shall include all of the real property described in Exhibit B, and the building constructed on such property.

C. Such expansion may be accomplished by Declarant filing for record, no later than five (5) years from the date of this Declaration, a supplement to this Condominium Declaration (or supplements as the case may be) containing a legal description of the land to be included in the project together with a supplement to the Condominium Map containing generally such information with respect to the additional land area and new buildings to be constructed thereon as appears on the original Condominium Map. Any Supplemental Condominium Declarations shall also contain a schedule of undivided interests in the general common elements which will be appurtenant to the units contained in the new construction.

D. In the event of such expansion, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the project as so ex-

86-20

FILM 1072

panded. Reference to this Declaration shall mean this Declaration as so supplemented, and reference to the Condominium Map shall mean the original Condominium Map together with all said Supplemental Condominium Maps. All conveyance of condominium units after such expansion shall be effective to transfer rights in the entire project as expanded, whether or not reference is made to any Supplemental Condominium Declaration and Supplemental Condominium Map. The recording in Boulder County, Colorado, real estate records of a Supplemental Condominium Map instant to any expansion shall operate automatically to grant, transfer, and convey to the owners of condominium units in the project as it existed before such expansion, the respective undivided interests appurtenant to such existing condominium units in the new general common elements added to the project as a result of such expansion. Such recording shall also operate to vest in any then mortgagee of any condominium unit in the project as it existed before such expansion, a security interest in the undivided interests so acquired by the owner of the condominium unit encumbering the new general common elements added to the project as a result of such expansion.

E. The new buildings and the site upon which they are located shall be subject to all the terms and conditions of this Declaration and of the Supplemental Condominium Declaration, and the condominium units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon recording of the Supplemental Condominium Map and the Supplemental Condominium Declaration in the Boulder County, Colorado, real estate records.

F. The undivided interests in the general common elements constituting part of any condominium unit is expressed as a fraction, the numerator of which is one and the denominator of which is thirty (30).

If the Declarant decides not to expand the project at any point in time prior to a period of five (5) years from the date of this Declaration, and at that time there is constructed fewer than thirty (30) condominium units, the unconveyed interest in the general common elements shall automatically be transferred to and vested in the owners of condominium units without further conveyance, each owner to receive a fraction of such conveyed interests sufficient to make a total fractional undivided interest of such owner in the general common elements equal to a fraction, the numerator of which shall be one and the denominator of which shall be the total number of condominium units constructed in the project on the date of such transfer. In such

26-23

FILM1072

event, Declarant shall record in the Boulder County, Colorado, real estate records a statement of the total number of condominium units constructed within the five (5) year period and a statement of the total fractional undivided interests attributable to all such condominium units. Recordation of such statement shall be conclusive evidence of the facts stated therein, but shall not be essential to the transfer and conveyance of the theretofore un conveyed interest in the general common elements.

32. Additional Rights of First Mortgagees.

In addition to those rights contained in the security instrument, any first mortgagee shall have the following rights:

A. The right to inspect the Association's books upon giving the Association notice of such desire.

B. The right to receive written notification from the Association of any default by the mortgagor of such unit in the performance of such mortgagor's obligations under the condominium documents which is not cured within thirty (30) days.

33. General.

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

B. The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Colorado, and to all other provisions of law which shall control, except as modified herein.

C. In the event there shall be any conflict between the provisions of this Declaration and any By-Laws or rules or regulations of the Association, the provisions of this Declaration shall be deemed controlling.

D. 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.

SOMERSET, a joint venture

By   
Venturer

26-24

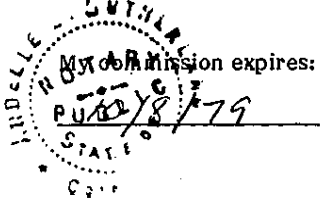
FILM 1072

STATE OF COLORADO

COUNTY OF Boulder )  
 ) ss.

The foregoing instrument was acknowledged before me this 10 day of May, 1979, by Arthur E. Everett, Jr. as one of the Venturers of Somerset, a joint venture.

Arville E. Sutherland  
Notary Public





FILM 1072

26-25

EXHIBIT A

A tract of land located in the SW $\frac{1}{4}$  of Section 9, T. 1 S., R. 70 W. of the 6th P.M., City of Boulder, Boulder County, Colorado, described as follows:

Commencing at the Southwest Corner of said Section 9, thence S89°41'10"E, 755.00 feet along the South line of said Section 9 to the Southeast Corner of "Amended Plat of Mountain Shadows Towndominiums" a Subdivision in the County of Boulder, State of Colorado, according to the recorded plat thereof, also being a point on the East line of Bradley Drive in said Subdivision and the TRUE POINT OF BEGINNING;

Thence continuing S89°41'10"E, 129.00 feet along the South line of said Section 9;

Thence N0°10'E, 148.00 feet;

Thence S89°50'E, 134.68 feet to a point on the Southwesterly right-of-way line of Colorado State Highway No. 93 (Marshall Road);

Thence N16°16'35"W, 37.81 feet along the Southwesterly right-of-way line of said Colorado State Highway No. 93;

Thence N36°00'W, 428.68 feet along the Southwesterly right-of-way line of said Colorado State Highway No. 93 to the East line of said Bradley Drive;

Thence S0°10'E, 530.01 feet along the East line of said Bradley Drive to the TRUE POINT OF BEGINNING.

26-26

FILM 1072

EXHIBIT B

A tract of land located in the SW $\frac{1}{4}$  of Section 9, T. 1 S., R. 70 W. of the 6th P.M., City of Boulder, Boulder County, Colorado, described as follows:

Commencing at the Southwest Corner of said Section 9, thence S89°41'10"E, 755.00 feet along the South line of said Section 9 to the Southeast Corner of "Amended Plat of Mountain Shadows Towndominiums" a Subdivision in the County of Boulder, State of Colorado, according to the recorded plat thereof, also being a point on the East line of Bradley Drive in said Subdivision; thence continuing S89°41'10"E, 129.00 feet along the South line of said Section 9 to the TRUE POINT OF BEGINNING;

Thence N0°10'E, 148.00 feet;

Thence S89°50'E, 134.68 feet to a point on the Southwesterly right-of-way line of Colorado State Highway No. 93 (Marshall Road);

Thence S16°16'35"E, 154.79 feet to a point on the South line of said Section 9, being the Northwest Corner of that tract of land conveyed to the County of Boulder for public road or highway as described in Deed recorded in Book 969 at Page 32 of the records of Boulder County, Colorado;

Thence N89°41'10"W, 178.50 feet along the South line of said Section 9 to the TRUE POINT OF BEGINNING.