

Sunhill Homes, L.C.
a Utah Limited Liability Company
2240 West Sunbrook Drive
St George, Utah 84770

00890166 Bk 1654 Pg 2594
RUSSELL SHIRTS * WASHINGTON CO RECORDER
2004 JUL 15 12:52 PM FEE \$16.00 BY CDH
FOR: SOUTHERN UTAH TITLE CO

**FIRST AMENDMENT TO
THE SECOND AMENDMENT TO AND RESTATEMENT OF THE
MASTER DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS
OF
SUNBROOK COMMUNITIES**

THIS AMENDMENT TO THE SECOND AMENDMENT TO AND RESTATEMENT OF THE MASTER DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF SUNBROOK COMMUNITIES is made and executed this 14 day of July, 2004.

THE SECOND AMENDMENT TO AND RESTATEMENT OF THE MASTER DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF SUNBROOK COMMUNITIES (hereafter "Master Declaration"), was recorded on the 31st day of March, 2003, as Entry No. 00811390, in Book 1533, at pages 2473-2520A in the records of Washington County, and affects the following described property:

See Exhibit A attached hereto and incorporated herein by this reference

Section 14.4 of the Master Declaration provides the Declarant, Sun Hill Homes, L.C., a Utah limited liability company, with the unilateral authority to amend the Master Declaration. Pursuant to its authority, Declarant amends the Master Declaration as follows:

AMENDMENTS

ARTICLE 4 of the Master Declaration is hereby amended to include an additional section, which shall be numbered as SECTION 4.6(a), and which provides as follows:

Section 4.6(a). Commonly Metered Utilities. In addition to the assessments provided for in this Declaration, the Board may assess any Unit connected to a common meter for any utility service an equal share of the cost of such utility service based on the total number of Units connected to the common meter. Such assessment shall be a Neighborhood Assessment.

Pursuant to Utah Code Ann. § 57-8a-204 of the Community Association Act, (1953, as amended), if an Owner fails or refuses to pay a Neighborhood Assessment for commonly metered utilities when due, the Board may, after giving notice and an opportunity to be heard, terminate the Owner's right to receive the utility services. Before terminating utility services, the Board shall give written notice to the Owner informing the Owner that (i) any common utility service will be terminated if payment of the assessment is not received within at least forty-eight (48) hours; (ii) shall state the amount of the assessment due, including any interest or late payment fee; and (iii) shall inform the Owner of his right to request an informal hearing to dispute the assessment by submitting a written request to the Board within fourteen (14) days after the date on which the Owner receives the notice of intent to terminate his utility services. If a hearing is requested, utility services may not be terminated until after the hearing has been conducted and a final decision has been entered. The Board shall establish, by rule, standards and procedures for such a hearing. Upon payment of the assessment due, including any interest or late payment fee, the Board shall immediately take action to reinstate the terminated utility services.

ARTICLE 6, SECTION 6.4 of the Master Declaration is hereby amended in its entirety to provide as follows:

Section 6.4. Approval and Conformity of Plans. The plans and specifications for the construction of improvements shall be submitted to the ACC pursuant to this Declaration and the Design Guidelines. The ACC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Project generally. The ACC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, topography, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plans or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other applicable codes.

No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any structure or improvement or the landscaping, grading or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the ACC and the City of St. George building representative in accordance with the Design Guidelines as to harmonize the external design and location in relation to surrounding structures and topography.

Each Owner of the following lots: Lots 32-56 and 67-68, BELLSERA TOWNHOMES AT SUNBROOK, PHASES 1, 2, and 3: that desires to install fencing at the rear of his Lot, shall use and adhere to the following guidelines: fencing must be of simple wrought iron, four (4) or five (5) feet in height. (An example of such approved fencing shall may be seen surrounding the pool behind the Botticelli model, at Lot 6 of the Bellsera Townhomes at Sunbrook subdivision.) Any such fencing shall be constructed by Declarant or by a licensed contractor in the event Declarant is no longer constructing homes within the community at the time fence installation is desired. Notwithstanding these guidelines, an Owner is not relieved of his obligation to obtain approval of the ACC prior to installation.

ARTICLE 6, SECTION 6.14 of the Master Declaration is hereby amended in its entirety to provide as follows:

Section 6.14. Obligation to Build Within a Set Period of Time. Except where extended by Declarant in writing, every Owner shall have one (1) year, from the date of recording of the deed of conveyance from Declarant to that Owner, to commence construction of a single-family residence on any Lot within the Project. The work of construction and erecting any building or other structure shall be prosecuted diligently from the commencement thereof and the same shall be completed within the one (1) year time frame and in accordance with the requirements herein contained. In the event prior to final approval, the Architectural Control Committee determines that construction cannot be completed within this time frame, it may grant the Owner an additional four (4) months to complete construction. To commence construction, an Owner shall have obtained final approval of the Architectural Control Committee, a building permit from the City of St. George, and shall have started the construction of the foundation and/or cement slab upon which the residential dwelling shall be constructed. In the event the Owner fails to commence construction within the time period set forth in this paragraph, the Owner may apply in writing to the Architectural Control Committee within said one (1) year period for an extension of time to commence construction, setting forth the period of time requested and the reason for said extension. The Architectural Control Committee must act upon said request within thirty (30) days after receipt or the request shall be deemed granted. However, if the Architectural Control Committee does not grant said extension, the Declarant, at its option, may repurchase said Lot by notifying the Owner, in writing, of its intention to repurchase, and tendering to the Owner the amount of the gross sales price received by the Declarant from the first lot purchase of the Lot, less twenty percent (20%) of the gross sales price, less the amount, if any, required to satisfy any taxes, assessments, liens, charges or encumbrances accruing or encumbering said Lot after conveyance of the same to the Owner.

ARTICLE 9, SECTION 9.3 of the Master Declaration is hereby amended in its entirety to provide as follows:

Section 9.3. Signs; Commercial Activity. Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Unit or any portion of the Properties. Nor shall such signs, billboards, objects of unsightly appearance, or nuisances be placed or permitted to remain within any Unit where the same are visible from the streets, roadways, or golf course. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the Properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

ARTICLE 9, SECTION 9.14 of the Master Declaration is hereby amended in its entirety to provide as follows:

Section 9.14. Leases. Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. Any Owner entering into a lease or rental agreement for his Unit must provide a copy of said lease or rental agreement to the Board of the same within thirty (30) days thereafter.

Pursuant to Section 57-8a-205 of the Community Association Act, Utah Code Ann. §§ 57-8a-201 *et seq.* (1953, as amended), if an Owner who is leasing his Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board, upon compliance with this section, may demand that the Owner's tenant pay to the Association all future lease payments due from the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid. The exercise of this section shall be conducted in accordance with the requirements of the Community Association Act, and as follows:

(a) The Board shall provide written notice to the Owner of its intent to demand full payment from the Owner's tenant under this section. The written notice shall: (i) provide notice that full payment of the remaining lease payments will begin with the next monthly or other periodic payment unless the assessment is received within twenty (20) days of the date the notice is sent; (ii) state the amount of the assessment due, including any interest or late payment fee; (iii) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and (iv) provide the requirements and rights described in Section 57-8a-205 of the Community Association Act.

(b) If the Owner fails to pay the assessment due by the date specified in the notice, the Board may deliver written notice to the tenant that demands future lease payments due from the tenant to the Owner be paid directly to the Association. The notice to the tenant shall state: (i) that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the intent of the Board to collect all lease payments due from the tenant; (ii) that until notification by the Association that the assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Owner; and (iii) that payment by the tenant to the Association in compliance with this section and will not constitute a default under the terms of the tenant's lease agreement with the Owner. A copy of this notice shall be mailed to the Owner. The Association may not initiate action against a tenant who makes payments under this section.

(c) All funds paid to the Association pursuant to this section shall be (i) deposited in a separate account and disbursed to the Association until the assessment due, together with any cost of administration, which cost may not exceed \$25, is paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association.

(d) Within five (5) business days after payment in full of the assessment, including any interest or late payment fee, the Board shall notify the tenant in writing that future lease payments are no longer due to the Association. The Board shall mail a copy of this notification to the Owner.

ARTICLE 9 of the Master Declaration is hereby amended to include an additional section, which shall be numbered as SECTION 9.16, and which provides as follows:

Section 9.16. Timeshares Prohibited. No Owner shall offer or sell any interest in his Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

ARTICLE 14, SECTION 14.1 of the Master Declaration is hereby amended in its entirety to provide as follows:

Section 14.1. Enforcement. The Association, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner reasonable attorney fees. The Directors may levy a fine or penalty not to exceed, for each violation, fifty percent (50%) 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. The Directors shall provide five (5) days written notice and opportunity for the Owner to cure the violation prior to levying such fine or penalty. For purposes of this section, any violation that continues for more than thirty (30) days after written notice of the violation is provided constitutes a separate violation. No further notice is required to be given to an Owner for a continuing violation. Any fine or penalty levied by the Directors shall be treated as an assessment recoverable by the Association under and in accordance with Article 4.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has hereunto set its hand this 14 day of July, 2004.

DECLARANT
SUN HILL HOMES, L.C.
Roger G. Stratford
Roger G. Stratford, President

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 14 day of July 2004, before me personally appeared Roger G. Stratford whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the President of Sun Hill Homes, L.C, a Utah limited liability company and that the foregoing document was signed by him on behalf of that Company by proper authority and he acknowledged before me that the Company executed the document and the document was the act of the Company for its stated purpose.

Nahezhdia Neumeier
NOTARY PUBLIC
Address: 3102 Nashua Rd.
My Commission Expires: 03-31-07
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