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RUSSELL SHIRTS * WASHINGTON CO RECORDER
2003 DEC 08 16:32 PM FEE \$30.00 BY DHE
FOR: JENKINS & JENSEN

Record against the
property described
in Exhibit A hereto

8974494
02/10/2004 10:27 AM 42.00
Book - 8943 Pg - 9085-9095
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
JENKINS JENSEN & BAYLES
1240 E 100 S STE 9
ST GEORGE UT 84790
BY: ZJM, DEPUTY - MA 11 P.

**AMENDMENT TO DECLARATION
(Including Association Bylaws)
OF
THE BROOKLYN**

This Amendment to Declaration of Condominium (including Association Bylaws) of The Brooklyn, an expandable condominium project, Salt Lake City, Utah, recorded in the records of the Salt Lake County Recorder on April 23, 2003, as Entry No. 8623285, in Book 8783, at Pages 3331-3358, is hereby made by written consent of Owners holding more than sixty percent (60%) of the total outstanding votes of the Association pursuant to Section 13.05 of said Declaration.

Section 2.04(c) shall be modified and replaced with the following:

2.04(c) No expansion of the Project shall cause the total aggregate number of units existing in the Project to exceed thirty-six (36) and no more than thirty-six (36) units may be constructed per acre;

Section 2.04(e) shall be modified and replaced with the following:

2.04(e) The Additional Land added to the Project must be subdivided into Condominium Units, Common Areas, and Limited Common Areas designed to be used for purposes similar to those contemplated by the Declaration and shall contain the same type, sizes, and number of Limited Common Areas per unit as are contemplated by this Declaration (however no assurances are made in that regard); provided further, however, that in each succeeding phase of the Project, Buildings and Units shall be substantially identical to, in the architectural style, quality of construction and principal materials used within such phase shall be compatible and in harmony with, that of prior phases;

The following Sections 2.04(h) and 2.04(i) shall be added to Article II:

2.04(h) The improvements on the Additional Land shall be substantially completed before such property is added to the Project;

2.04(i) Any liens arising in connection with the Declarant's ownership of and construction of improvements upon the Additional Land must not adversely affect the rights of existing Unit Owners or the priority of first mortgages in the existing Project. All taxes and other assessments relating to such property, covering any period prior to the addition of the property, must be paid or otherwise satisfactorily provided for by the Declarant. If the Federal National Mortgage Association ("FNMA") holds any mortgage in the existing project at the time

additional property is to be added, FNMA must be furnished with title evidence, in a form satisfactory to it, which discloses any lien, easement or other encumbrance affecting the property to be added or which will affect the existing project after such addition.

The following Section 2.07 shall be added to Article II:

2.07 Availability of Association Documents. The Association shall be required to make available to Unit Owners, lenders and the holders and insurers of the first mortgage on any Unit, current copies of the Declaration, Bylaws, and rules governing the project, and other books, records and financial statements of the Association. The Association shall also be required to make available to prospective purchasers current copies of the Declaration, Bylaws, other rules governing the project, and the most recent annual audited financial statement, if such is prepared. "Available" shall at least mean available for inspection upon request during normal business hours or under other reasonable circumstances. Additionally, upon written request from any of the agencies or corporations which has an interest or prospective interest in the project, the Association shall, at its expense, prepare and furnish within a reasonable time, not more than sixty (60) days, an audited financial statement of the Association for the immediately preceding fiscal year.

The following Section 3.06 shall be added to Article II:

3.06 Size.

Unit Number	Square Footage
1 - 12	1150 each

Section 7.01(b) shall have the following provisions added thereto:

The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association. If FNMA is involved on the Project, it also requires that such bonds provide that the FNMA servicer, on behalf of FNMA, also receive such notice of cancellation or modification.

The following Sections 7.02(h), 7.02(i) and 7.02(j) shall be added to Article VII:

7.02(h) Each Unit Owner and each Unit Owner's mortgagee, if any, shall be beneficiaries of the policy or policies of fire and casualty insurance set forth in Section 7.01(a) on a pro rata basis. Certificates of insurance shall be issued to each Unit Owner and mortgagee upon request. Such policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which

is commonly accepted by private institutional mortgage investors in the area in which the property is located and which appropriately names FNMA and FHLMC if such corporations are holders of first mortgages on Units within the Project. Such policies must also provide that they may not be cancelled or substantially modified, without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage.

7.02(i) Policies of fire and casualty insurance are unacceptable where (i) under the terms of the insurance carrier's charter, bylaws, or policy, contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC, or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

The policies must also provide for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against unit owners individually; that the insurance is not prejudiced by any act or neglect of individual unit owners which is not in the control of such owners collectively; and that the policy is primary in the event the unit owner has other insurance covering the same loss. The requirements stated in this paragraph are generally provided by the insurer in the form of a "special Condominium Endorsement" or its equivalent.

7.02(j) The fire and casualty insurance policy shall afford, as a minimum, protection against the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (2) in the event the condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000.00 per accident per location (or such greater amount as deemed prudent based on the nature of the property);
- (3) all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement, where such is available.

In addition, FNMA requires that such policies include an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement." FHLMC requires the foregoing endorsements only if they are available and are commonly required by prudent institutional mortgage investors in the area in which the condominium is located. FNMA and FHLMC may also require, on an individual case basis, construction code endorsements (such as a

Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the condominium is subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), thereby imposing significant costs in the event of partial destruction of the condominium by an insured hazard.

The following Section 7.04 shall be added to Article VII:

7.04 **Flood Insurance.** Declarant represents that the Project is not currently located in a floodplain and if it is ever determined that the Project lies within any part or portion of a floodplain, the Association shall procure flood insurance for the Project.

Article VIII shall be amended and modified by adding the following paragraphs to supplement the existing paragraphs:

If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply.

(a) All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.

(b) In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to the respective Percentage Interest in the Common Areas, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiations, judicial decree, or otherwise, then in determining such shares, the same standard shall be employed to the extent it is relevant and applicable.

(c) On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in the following paragraph.

(d) In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium

ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: (a) as soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated to taking of or injury to the Common Areas among Owners in proportion to their respective Percentage Interests in the Common Areas, (b) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees and encumbrancers.

(e) In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and as required by the Act and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration as provided.

(f) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in this Article VIII.

Section 9.03 shall be modified and replaced with the following:

9.03 **Notice of Damage.** In the event of condemnation or any substantial damage to or destruction of any Unit or any part of the Common Areas, the mortgagee of any Unit shall be entitled to timely written notice of any such condemnation, damage or destruction. No Owner or other party shall be entitled to priority over such mortgagee with respect to the distribution to such Unit of any insurance proceeds.

The following Section 9.06(f) shall be added to Article IX:

9.06(f) change (i) the boundaries of any Unit or the exclusive easement rights appurtenant thereto; (ii) the interests of the Common or Limited Common Areas and facilities appurtenant to any Unit or the liability for common expenses appurtenant thereto; (iii) the number of votes in the Owners Association

appertaining to any Unit, or (iv) the purposes to which any Unit or the Common Areas are restricted.

The following Section 9.07 shall be added to Article X:

9.07 Notification of Insurance. Any mortgagee is entitled to written notification from the Management Committee of a lapse, cancellation, or material modification of any casualty and liability insurance policies maintained by the Association.

Section 10.04 shall be amended and modified by adding the following additional paragraph:

At any meeting of the Members, the notice of which indicates such purpose, any or all of the Management Committee may be removed, with or without cause, by the affirmative vote of Members holding a majority of the voting interests of all Members; and a successor may be then and there elected to fill the vacancy thus created.

Section 10.07 shall be modified and replaced with the following:

10.07 Right of Delegation to Manager. The Management Committee may carry out any of its functions which are capable of delegation to a manager. The manager so engaged shall be responsible for and manage the Common Areas and shall, to the extent permitted by law and the terms of the manager's agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. The Declarant shall not, however, during the Declarant Control Period, bind the Association either directly or indirectly to (i) any management contract, employment contract or lease of recreational or parking areas or facilities or (ii) any contract or lease, including franchises and licenses to which the Declarant is a party, unless the Association shall have the right of termination of such contract which is exercisable without penalty at any time after transfer of control at the end of the Declarant Control Period and upon giving ninety (90) days advance written notice to the other party.

Section 11.01 shall be modified and replaced with the following:

11.01 Voting. There shall one vote for each Unit as reflected on a recorded Map (initially 12 in number). Upon the annexation of Additional Land into the Project for development of additional Units, the maximum of 36, including any Units owned by Declarant.

The following Section 11.10 shall be added to Article XI:

11.10 Removal of Officers by Members. At any meeting of the Members, the notice of which indicates such purpose, any or all of the Officers may be removed, with or without cause, by the affirmative vote of Members holding a majority of the voting interests of all Members; and a successor may be then and there elected to fill the vacancy thus created.

The following Section 12.16 shall be added to Article XII:

12.16 Working Capital. The Declaration shall fund a working capital reserve fund for the initial months of the project's operation equal to at least two months' of the annual assessment for each existing Unit.

Section 13.03 shall be modified and replaced with the following:

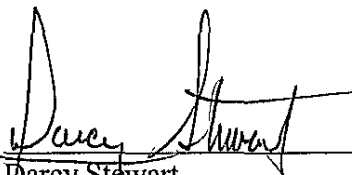
13.03 Amendment. This Declaration may be amended (as opposed to terminated) by an instrument recorded in the Public Records, which is executed either (a) by Owners who collectively hold at least sixty-seven percent (67%) of the total outstanding votes in the Association, or (b) by the Association's President and Secretary who shall certify that the required sixty-seven percent (67%) vote was obtained in a meeting of members, or by written consent, and is so documented in the records of the Association. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

The following Section 13.13 shall be added to Article XIII:

13.13 Right of First Refusal. The right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit in the Project shall not be subject to any right of first refusal or similar restriction in favor of the Association or the Declarant.

Wherefore, the undersigned members of the Management Committee of Brooklyn Owners Association, a Utah Non-profit Corporation, hereby certify that Exhibit B hereto contains the written consent to recording this Amendment to Declaration of more than sixty percent (60%) of the total outstanding votes of the Association pursuant to Section 13.05 of the original Declaration.

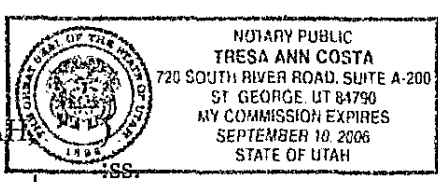
DATED this 2 day of ^{Dec.}~~October~~, 2003.


Darcy Stewart

Tim Stewart
Tim Stewart
Mike Miller
Mike Miller

STATE OF UTAH,)
) :SS.
County of Washington)

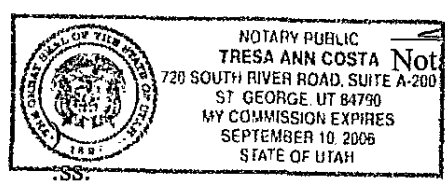
On this 2 day of ~~October~~ ^{December}, in the year 2003, before me Susanna Costa, a notary public, personally appeared Darcy Stewart, proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged that (he/she/they) executed the same. Witness my hand and official seal.



Susanna Ann Costa
Notary Public

STATE OF UTAH,)
) :SS.
County of Washington)

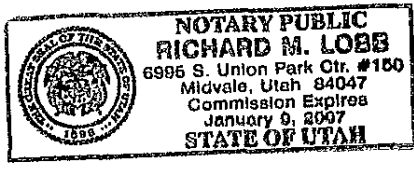
On this 2 day of ~~October~~ ^{December}, in the year 2003, before me Susanna Costa, a notary public, personally appeared Tim Stewart, proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged that (he/she/they) executed the same. Witness my hand and official seal.



Susanna Ann Costa
Notary Public

STATE OF UTAH,)
) :SS.
County of SALT LAKE)

On this 4 day of ~~October~~ ^{NOVEMBER}, in the year 2003, before me Mike Miller, a notary public, personally appeared Mike Miller, proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged that (he/she/they) executed the same. Witness my hand and official seal.



Richard M. Lobb
Notary Public

EXHIBIT A

THE BROOKLYN
An Expandable Condominium Project

Salt Lake City, Utah

Real property located in the Salt Lake City, Salt Lake County, State of Utah described as follows:

Beginning at the North East corner of Lot 8, Block 138, Plat "A", Plat 14 of the Official Survey Plat of Salt Lake City, thence South $00^{\circ}03'38''$ East along the westerly right-of-way line of 300 West Street, 132.00 feet; thence North $89^{\circ}59'01''$ West 132.00 feet; thence North $00^{\circ}03'38''$ East 132.00 feet; thence South $89^{\circ}59'01''$ East 132.00 feet to the point of beginning. Contains 0.40 acres.

Tax Serial Numbers 08-25-453-008 through 08-25-453-020

EXHIBIT B

<u>Unit</u>	<u>Owner</u>	<u>Consent to Amendment to Declaration</u>	
		YES	NO
1.	_____	_____	_____
2.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	<i>[Signature]</i>	<input type="checkbox"/>	_____
10.	_____	_____	_____
11.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	_____
12.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	_____

FROM : HUGHES ASSOCIATES
11/03/2003 01:40 8015674006

PHONE NO. : 4357
THE

EXHIBIT B

Unit	Owner	Consent to Amendment to Declaration	
		YES	NO
1.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.	_____	_____	_____
3.	<i>[Signature]</i>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.	<i>[Signature]</i>	<input type="checkbox"/>	<input type="checkbox"/>
8.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12.	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Lord
567-4006

From John Funk

DOA.3 EXHIBIT B.wpd