

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BIRKHILL COMMUNITY ASSOCIATION, INC.**

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BIRKHILL ("Declaration") is made this 9 day of Sept, 2008, by BIRKHILL AT FIRECLAY LLC, a Utah limited liability company having an address at 308 E 4500 S # 200, Utah (referred to as "Declarant").
Murray, UT 84107

RECITALS

A. Declarant is the record owner of the real property situated in Salt Lake County, Utah, which is more particularly shown on Exhibit "A" attached hereto and incorporated herein ("Property").

B. Declarant desires to establish covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the management of the Property and for the use and occupancy thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life therein.

C. Birkhill (as such term is hereinafter defined) will consist of residential and commercial areas. Declarant may, but shall not be required to, annex additional property to Birkhill ("Community").

D. Declarant may add all or any of the real property described in Exhibit "B" attached hereto and incorporated herein to the Property already subject to this Declaration by Annexation (as hereinafter defined), and said additional property so annexed with thereupon be subject to this Declaration, become a part of and included within the definition of the Property, and be developed as a part of Birkhill.

E. Birkhill Community Association, Inc., a nonprofit, non-stock corporation, has been incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions set forth herein.

F. Declarant will hereafter hold and convey title to all of the Property subject to certain protective covenants, conditions and restrictions hereinafter set forth.

**ARTICLE I
DECLARATION**

1.1. Declarant hereby covenants, agrees and declares that all of the Property is, and shall be, held, conveyed, encumbered, hypothecated, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, easements, liens and charges which are hereby declared and agreed to be in furtherance of a general plan for the subdivision, improvement, protection, maintenance and sale of all of the Property and all of

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RECORDER, SALT LAKE COUNTY, UTAH

HANLEY HOMES
308 E 4500 S STE 200
MURRAY UT 84107
BY: CDC, DEPUTY - WI 172 P.

which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property and every part thereof. All of the limitations, covenants, conditions, restrictions, easements, liens and charges are equitable servitude and shall run with the land and shall be binding upon and inure to the benefit of all parties having or acquired any right, title or interest, in the Property or any part thereof, and shall be binding on and inure to the benefit of each successor in interest of such parties. Declarant hereby declares that all of the Property described in Exhibit "A" shall be subject to this Declaration and shall constitute the initial increment of land subject to this Declaration. Declarant declares that, pursuant to Article XV hereof entitled "Annexation of Real Property", all or any portion of the real property described on Exhibit "B" may be annexed and become subject to this Declaration and, upon such Annexation, such annexed property shall be subject to the limitation, restrictions, easements, covenants, conditions, liens and charges of this Declaration.

ARTICLE II DEFINITIONS

Unless this context expressly indicates otherwise, the following terms used in this Declaration are defined as set forth below.

2.1. Annexable Property shall mean any or all of the real property described on Exhibit "B" which may be made subject to this Declaration by Annexation pursuant to the provisions set forth in Article XV hereof.

2.2. Annexation shall mean the process by which the additional real property described in Exhibit "B" attached hereto may be made subject to this Declaration as set forth in Article XV.

2.3. Architectural Committee shall mean and refer to the committee provided for in Article VII hereof entitled "Architectural Control."

2.4. Architectural Specifications shall mean and refer to the rules and standards promulgated by the Community Board (as such term is defined below) for implementation by the Architectural Committee.

2.5. Assignment of Declarant's Rights shall mean and refer to the assignment agreement executed and recorded by Declarant in order to assign Declarant's rights to a successor Declarant pursuant to the provisions of Section 2.33. of this Declaration.

2.6. Birkhill shall mean and refer to all of the Property and Improvements situated thereon which is, from time to time, subject to this Declaration.

2.7. Birkhill Funds shall mean and refer collectively to all of the funds established by the Community Association for the deposit of Community Assessments.

2.8. Birkhill Voting Power, or "voting power", or "total voting power", shall each mean and refer to the total number of votes allocated to all Members of classes A and B entitled

to vote from time to time as set forth in the Section of Article III entitled "Classes of Voting Membership/Delegate Vote Entitlement."

2.9. Builder or Builders shall mean a person, persons, entity or entities who acquire or acquires a portion of the Property (or a portion of the Annexable Property which is annexed as provided in the Article XV hereof) for development as a Neighborhood, or Commercial Property, or any other person, persons, entity or entities identified by Declarant as a Builder in a supplementary declaration.

2.10. Capital Improvement Fund shall mean and refer to the fund, which may be established from time to time by the Community Association for the deposit of any Capital Improvement Assessments.

2.11. Commercial Assessments shall mean assessments determined pursuant to any Commercial Declaration.

2.12. Commercial Board shall mean the governing body of a Commercial Property Owners Association as established pursuant to the Commercial Declaration and the articles of incorporation and bylaws for any Commercial Property Owners Association.

2.13. Commercial Common Area shall mean the area within the boundaries of a Commercial Property owned by the Commercial Property Owners Association, or collectively by the Owners of Lots within the Commercial Property in common, and/or areas which may not be owned by any of the foregoing but used for the benefit of the Commercial Property and/or its Owners and/or areas restricted to use primarily by such Owners, their lessees and invitees.

2.14. Commercial Declaration shall mean the covenants, conditions and restrictions recorded with respect to any portion of the Commercial Property, including the declarations providing for annexation of increments, if any, to a particular Commercial Property.

2.15. Commercial Property shall mean and refer to any real property used for commercial purposes, which is subject to this Declaration and is developed or to be developed for commercial uses.

2.16. Commercial Property Owners shall mean and refer to the Owners of any portion of the Commercial Property, other than any Commercial Common Area.

2.17. Commercial Property Owners Association means any organization formed from time to time for the purpose of maintaining and operating any Commercial Common Area.

2.18. Common Expenses shall mean and refer to the actual and estimated costs and expenses approved by the Community Board and incurred or to be incurred by the Community Association, the Community Board or the Architectural Committee, including, but not limited to, the following:

2.18.1. maintenance, management, operation, repair and replacement of any

Community Common Area and all other areas within Birkhill which are maintained by the Community Association;

2.18.2. due but unpaid Community Assessments;

2.18.3. maintenance by the Community Association of areas within the public right-of-way of public streets in the vicinity of the Property as provided in this Declaration or pursuant to agreements with Salt Lake County;

2.18.4. costs of management and administration of the Community Association, including, but not limited to, compensation paid by the Community Association to managers, accountants, attorneys, architects, consultants and employees;

2.18.5. the costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their Lots to the extent such services are incurred by the Community Association;

2.18.6. the costs of fire, casualty, liability, worker's compensation and other insurance covering any Community Common Area;

2.18.7. the costs of any other insurance obtained by the Community Association pursuant to the provisions of this Declaration;

2.18.8. reasonable reserves as deemed appropriate by the Community Board;

2.18.9. the costs of bonding of the members of the Community Board;

2.18.10. taxes paid by the Community Association;

2.18.11. amounts paid by the Community Association for the discharge of any lien or encumbrance levied against any Community Common Area or portions thereof;

2.18.12. costs incurred by the Architectural Committee or other committees of the Community Association; and

2.18.13. the costs of any other item items designated by or in accordance with other expenses incurred by the Community Association for any reason whatsoever in connection with the operation and/or maintenance of any Community Common Area, or in furtherance of the purposes of the discharge of any obligations imposed on the Community Association by this Declaration, the Community Articles or Community Bylaws.

2.19. Community Articles shall mean and refer to the Articles of Incorporation of the Community Association, as the same may from time to time be duly amended.

2.20. Community Assessments shall mean and refer collectively or individually, as required by the context, to all or any of the assessments levied by the Community Association

pursuant to Article VI hereof entitled "Funds and Assessments" and shall include, without limitation, the Community Assessments defined below.

2.20.1. Regular Assessment. The terms "Regular Assessment" or "Regular Assessments" shall mean the amount, which is to be paid by each Owner to the Community Association for Common Expenses.

2.20.2. Special Assessment shall mean an assessment levied by the Community Board if the Community Board determines that the Regular Assessments will be inadequate pursuant to the provisions of Subsection 6.4.2 of this Declaration.

2.20.3. Capital Improvement Assessment shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Community Association for installation or construction of any capital improvements for any Community Common Area which the Community Association may from time to time authorize pursuant to the provisions of Subsection 6.4.3 or this Declaration.

2.20.4. Enforcement Assessment shall mean a charge assessed against any Owner and his Lot to reimburse the Community Association for costs incurred in bringing the Owner and his Lot into compliance with the provisions of this Declaration pursuant to Subsection 6.4.4 of this Declaration.

2.20.5. Single Benefit Assessment shall mean a charge against each Owner and his Lot for any cost or expense, which will benefit less than all of the Owners within Birkhill as described in Subsection 6.4.5 of this Declaration.

2.20.6. Reconstruction Assessment shall mean a charge against each Owner and his Lot representing a portion of the cost to the Community Association for reconstruction of any portion or portions of any Community Common Area pursuant to the provisions of Article XIII hereof entitled "Destruction of Improvements."

2.21. Community Association shall mean and refer to the Birkhill Community Association, Inc., a corporation incorporated under the laws of the State of Utah, or any successor entity charged with the duties, obligations and powers of said Community Association.

2.22. Community Board shall mean and refer to the Board of Directors of the Community Association.

2.23. Community By-laws shall mean and refer to the Bylaws of the Community Association, as the same may from time to time be amended.

2.24. Community Common Area shall mean and refer to all real property and the Improvements situated thereon, including, without limitation, Entrance Areas, Open Space Areas, any private storm drains and private storm water management facilities, private streets (if any), street lights, signage, retaining walls (regardless of whether located on the Property or off-site), sidewalks (if not maintained by the City of Murray, County or a Neighborhood Association

or Commercial Property Owners Association), walking, jogging and bicycle paths, any clubhouse or swimming pools and parks available to Members and private utilities, owned, leased or licensed from time to time by the Community Association for the common use of the Members. Further, Community Common Area can also consist of parks and trails which may be subject to conservation easements with the City of Murray and in such event, such parks and trails will be the sole responsibility of the City of Murray regarding their maintenance and further, the use of the parks and trails will be available to the public, which are more particularly described in that certain Conservation Easement and Maintenance Agreement entered into with Murray City and recorded or intended to be recorded in the Official Records, substantially in the form attached hereto and incorporated herein by reference as Exhibit "C" ("Conservation Easement"). Any Community Common Area may from time to time include an interest held by lease, license or easement as well as estates in fee simple, which is intended to include, among other things, the Entrance Areas, walking and biking pathways and gazebo areas. Any Community Common Area which is intended to be owned in fee simple by the Community Association shall be conveyed to the Community Association by Declarant in fee by deed to the Community Association free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), assessments, any non-monetary title exceptions of record and the covenants, conditions, reservations and restrictions contained in this Declaration. Declarant may, from time to time, convey fee simple title to any Community Common Area to entities, other than the Community Association, provided that such Community Common Areas shall be available for use by all Owners and occupants of the Property and further, provided, that such Community Common Area shall be the sole responsibility of the Community Association to maintain, repair and replace, irrespective of ownership (excluding those areas covered by the Conservation Easement) and further, provided that no such conveyance impedes pedestrian or vehicular access for any Owner or occupant.

2.25. Community Directors shall mean the members of the Community Board elected pursuant to the provisions of Article IV hereof entitled "Organization of Community Association."

2.26. Community Association Rules shall mean and refer to the rules and regulations adopted by the Community Board for the governance of Birkhill.

2.27. Condominium shall mean all Units and Condominium Common Elements for which a separate condominium association, other than the Community Association, is formed to govern and control the operation of the Condominium Association (as defined herein) under the Utah Condominium Act.

2.28. Condominium Association shall mean the governing body of a Condominium, which is created pursuant to the Condominium Declaration, By-Laws and the Articles of Incorporation.

2.29. Condominium Board shall mean the governing body of a Condominium Association as established pursuant to the Condominium Declaration, By-Laws and the Articles of Incorporation of the Condominium Association.

2.30. Condominium Common Elements shall mean the area within the boundaries of a Condominium subjected to a Condominium regime.

2.31. Condominium Declaration and By-Laws shall mean the covenants, conditions and restrictions recorded with respect to the Condominium, including the declarations providing for annexation of increments, if any, to the Condominium.

2.32. Condominium Unit or Unit shall mean any condominium unit within Birkhill established pursuant to the Utah Condominium Act or any similar statute hereinafter enacted. Unless otherwise stated herein, "Commercial Unit" shall refer to a Lot or Unit which is used for commercial/retail purposes and "Residential Unit" shall mean a Lot or Unit that is occupied for residential purposes. The terms "Condominium Unit" or "Unit", except as otherwise provided herein, shall refer to both Commercial Units and Residential Units.

2.33. Declarant shall mean Birkhill at Fireclay LLC, and its successors and assigns who acquire or hold title to any part or all of the Property for purposes of development and are expressly named as successor Declarant in an Assignment of Declarant's Rights executed by Declarant or by a successor Declarant, and recorded in the Official Records (defined below), assigning any or all of the rights and duties of Declarant to such successor Declarant, with such successor Declarant accepting and assuming the assignment of such rights and duties; and further, provided, that Declarant may continue to serve as a co-declarant with any party assigned the rights and duties of Declarant. A successor Declarant shall also be deemed to include the beneficiary under any Deed of Trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure or deed in lieu of foreclosure.

2.34. Delegate shall mean and refer to a person appointed in the manner provided in Article III entitled "Membership in the Community Association."

2.35. Delegate District shall mean and refer to a particular portion of the Property created in the manner described in the Section entitled "Delegate Districts" of Article III entitled "Membership in the Community Association."

2.36. Development Period means the period commencing on the date this Declaration is recorded in Official Records and expiring on the date which is thirty (30) years therefrom, unless Declarant, in its sole discretion, determines that the Development Period will terminate earlier and evidences such determination by the recording of an instrument in Official Records expressly providing for the termination of the Development Period as of the date of such instrument.

2.37. Dwelling shall mean (a) the residential dwelling unit together with any garages and other Structures on the same Lot and (b) in the case of a Condominium, all elements of a "unit" conveyed to an Owner, as "unit" as defined in the Condominium Declaration and plat recorded for said Condominium pursuant to the Utah Condominium Act.

2.38. First Mortgage shall mean and refer to a first mortgage or deed of trust which

encumbers any one (1) or more Lots, or other parcels of real property in Birkhill and has priority over any other mortgage or deed of trust encumbering such Lot or other parcels, and shall include any First Mortgage or deed of trust securing an obligation of Declarant, Builder, or an Owner, and encumbering all or any part of the Property.

2.39. Improvement shall mean and refer to all Structures and appurtenances thereto of every type and kind, including but not limited to, residences, and other buildings, outbuildings, walkways, pedestrian and bicycle trails, utility installation, swimming pools, garages, carports, roads, driveways, parking areas, fences, electronic fences, shields or barriers of any kind (whether visible or invisible), screening walls, retaining walls, awnings, patio and balconies, stairs, decks, landscaping, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, plantings, planted trees and shrubs, antennae, poles, signs, solar or wind powered energy systems or equipment, heater and air conditioning and heating fixtures or equipment; the demolition or destruction by voluntary action of any Structure or appurtenance thereto of every type and kind; the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and any change or alteration of any previously approved Improvement including any change of exterior appearance, color or texture.

2.40. Institutional Mortgagee shall mean and refer to a Mortgagee which is a bank, savings bank or savings and loan association, credit union or established mortgage company, or other such entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution specified by the Community Board in a recorded instrument, who is the Mortgagee of a Mortgage or beneficiary of a Deed of Trust encumbering a Lot.

2.41. Lot shall mean and refer to any and all of the following which are subject to this Declaration: (a) any improved or unimproved residential or Commercial Property or parcel shown on any recorded final subdivision map or any recorded parcel map to the extent such lots or parcels are part of the Property, (b) any Condominium Unit in Birkhill; or (c) any Townhouse Lot. The term "Lot" shall not include any Community Common Area, Neighborhood Common Area or any Commercial Common Area, unless otherwise provided. The term "Townhouse Lot" as used herein shall mean and refer to land which is improved with a townhouse-style dwelling.

2.42. Maintenance and Operation Fund shall mean and refer to the fund, which shall be established by the Community Association for the deposit of Regular Assessments.

2.43. Master Management Documents shall mean and refer to the Community Articles, Community Bylaws, Community Association Rules and this Declaration, and any amendments to any of the foregoing.

2.44. Member or Members shall mean and refer to every person or entity who qualifies for membership pursuant to Article III of this Declaration entitled "Membership in the Community Association," including Declarant, as long as Declarant has any voting rights under this Declaration.

2.45. Mortgage means a recorded mortgage or deed of trust encumbering any Property and any other security interest therein existing under another security document (including but not limited to a financing statement, security agreement or other security document used under applicable Utah law). Mortgagee shall mean and refer to the mortgagee or beneficiary under any Mortgage. A "First Mortgage" shall refer to a Mortgagee whose First Mortgage has priority over any other Mortgage, if any, encumbering a specific Lot.

2.46. Neighborhood shall mean all land, improved or unimproved, and Neighborhood Common Area, if any, of a separate subdivision or development within Birkhill for which a separate residential or mixed-use commercial and residential condominium or homeowner's association (other than the Community Association), is formed to govern and control the operation of the Neighborhood Association and maintenance of the Neighborhood, which is encumbered by a Neighborhood Declaration. Neighborhoods may be established by the Declarant in increments compatible with construction and marketing requirements.

2.47. Neighborhood Assessments shall mean assessments determined pursuant to any Neighborhood Declaration, which are levied exclusively on Lots contained in a particular Neighborhood.

2.48. Neighborhood Association shall mean the governing entity of a Neighborhood, which is created pursuant to the Neighborhood Declaration and the articles of incorporation and bylaws therefor.

2.49. Neighborhood Board shall mean the governing board of a Neighborhood Association as established pursuant to the Neighborhood Declaration and the articles of incorporation and bylaws for the Neighborhood Association.

2.50. Neighborhood Common Area shall mean the area within the boundaries of a Neighborhood owned by the Neighborhood Association, or collectively by the Owners of Lots within the Neighborhood in common, and/or areas which may not be owned by any of the foregoing but used for the benefit of the Neighborhood and/or its Owners and/or areas restricted to use primarily by such Owners, their lessees and invitees.

2.51. Neighborhood Declaration shall mean the covenants, conditions and restrictions recorded with respect to each Neighborhood, including the declarations providing for annexation of increments, if any, to a particular Neighborhood.

2.52. Official Records shall mean and refer to the Official Records recorded in the Office of the Recorder of Salt Lake County, Utah.

2.53. Open Space Areas shall mean and refer to any areas labeled "Open Space Area" on any subdivision plat for Birkhill, which are to be maintained by the Community Association as Open Space Areas, and/or any areas designated as "Open Space Areas" in a Supplementary Declaration.

2.54. Owner shall mean and refer to one or more persons or entities who are alone or

collectively the record owner of a fee simple title to a Lot, including Declarant and Builders unless the context provides otherwise. Owner shall mean an owner of any Condominium Unit within Birkhill established pursuant to the Utah Condominium Act or any similar statute hereinafter enacted. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, hold the record title to any one Lot, whether in a real property tenancy, partnership relationship, or otherwise, all of same, as a unit, and not otherwise, shall be deemed a single record owner and shall be or become a single Member of the Community Association by virtue of ownership of such Lot. The term "Owner," however, shall not include any contract purchaser, nor the owner of any redeemable ground rent issuing out of any lot, nor shall it include any Mortgagee, trustee or other grantee named in any Mortgage, deed of trust or other security instrument covering any lot, designed solely for the purpose of securing performance of an obligation or payment of a debt.

2.55. Property shall mean and refer to all the real property described on Exhibit "A" attached hereto and, subsequent to the Annexation thereof pursuant to this Declaration, any real property that shall become subject to this Declaration. In the event of the de-annexation of any Property previously subject to this Declaration, the term "Property" shall not be deemed to include any such de-annexed land.

2.56. Reserve Fund shall mean and refer to the fund, which may be established from time to time by the Community Association for the deposit of any reserve Community Assessments.

2.57. Residential Property shall mean and refer to any Lots on which Dwellings are to be constructed. Residential Property shall not include Commercial Property, Community Common Area or Neighborhood Common Area.

2.58. Site Management Plan (SMP) — The SMP is a document that specifies activities to be carried out at a site that has been remediated under the Utah Voluntary Cleanup Program. This document provides for maintenance of protective cover, reporting and procedures to be followed in the event designated subsurface protection areas are disturbed.

2.59. Structure shall mean and refer to anything erected, constructed, placed or installed on any portion of a Lot, other than a Dwelling or Commercial Unit.

2.60. Supplementary Declarations shall mean those certain declarations of covenants, conditions and restrictions, or similar instruments, annexing any portion of the Annexable Property and extending the plan of this Declaration to such Annexable Property as provided in the Article XV hereof entitled "Annexation of Real Property."

2.61. Voluntary Cleanup Program (VCP) — The VCP is a program offered by the Utah Department of Health, Division of Environmental Response and Remediation, that provides a method to remediate past contamination of a site and receive a certification that the site has been remediated in accordance with State standards. All remediation activities at the site are under the jurisdiction of the State and a final certification is placed on the property deed upon completion of the program.

2.62. Zoning Laws shall mean (a) the zoning regulations and related plans and maps which are applicable to the Property, all as hereafter amended, supplemented or superseded, including, without limitation, Chapter 17.146 of the Murray City Municipal Code relating to Transit Oriented Development (TOD) District.

ARTICLE III
MEMBERSHIP IN THE COMMUNITY ASSOCIATION

3.1. Purpose and Organization. The Community Association is a nonprofit, non-stock membership corporation formed under the laws of the State of Utah to operate and maintain Birkhill for the benefit of the Owners. The Community Association is charged with the duties and is given the powers set forth in this Article III and its affairs shall be governed by the Community Articles, the Community Bylaws, and this Declaration. If the Community Association as a corporate entity is dissolved, a nonprofit unincorporated association shall forthwith and without further action or notice be formed to succeed to all of the rights and duties of said Community Association hereunder. The affairs of such unincorporated association shall be governed by the Community Bylaws and this Declaration as if they were created for the purpose of governing the affairs of an unincorporated association.

3.2. Membership.

3.2.1. Qualifications. Members of the Community Association shall be (i) Declarant (irrespective of whether Declarant is the Owner of a Lot), until the date Declarant or any Builder no longer owns any property subject to this Declaration or any Annexable Property, (ii) each Neighborhood Association or Commercial Property Owners Association; and (iii) any Owner of Commercial Property not included within a Commercial Property Owners Association, if any. A Neighborhood Association or Commercial Property Owners Association and each Owner of Commercial Property not included within a Commercial Property Owners Association shall become a Member of the Community Association when any portion of such property, as identified by Declarant in this Declaration as land being subjected or in a Supplementary Declaration, is annexed into the Community Association. Membership in the Community Association shall be subject to this Declaration, the Community Articles, the Community Bylaws, and the Community Association Rules.

3.2.2. Transfer of Membership. All memberships in the Community Association held by Commercial Property Owners who are not part of a Community Property Owners Association, if any, shall be appurtenant to the Lot owned by each such Owner and shall not be transferred, pledged or alienated, in any way, except upon the transfer of title to such Owner's Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Community Association.

3.2.3. Declaration of Right of Use. Declarant, as Owner, shall have the right to delegate, in accordance with the Community Bylaws, such Owner's rights in the Community Association to a lessee or tenant of his entire Lot. An Owner who has sold his Lot to a contract

purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Community Association. Such delegation shall be in writing and shall be delivered to the Community Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until legal title to the Lot is transferred. If an Owner fails or refuses to transfer the membership registered in his name to the purchaser of such Lot upon transfer of legal title thereto, the Community Board shall have the right to record the transfer upon the books of the Community Association. The Community Association may levy against new Owners in the amount of a transfer fee of \$_____ and the amount of the actual costs incurred by the Community Association to change its records in order to reimburse the Community Association for the costs of transferring the memberships on the records of the Community Association.

3.3. Delegate Districts. Each Neighborhood Association and Commercial Property Owners Association shall constitute a Delegate District.

3.4. Delegates.

3.4.1. Delegates for Neighborhoods and Commercial Property Owners Association. The president of each Neighborhood Association or Commercial Property Owners Association, as applicable, shall be the Delegate of such Delegate District during his or her term of office as President; but each such president shall be entitled to designate a member of the Neighborhood Board or Commercial Board to act as Delegate during his or her term of office as President. The appointee to fill any vacancy in the office of president of any Neighborhood Association or Commercial Property Owners Association shall automatically become the appointed Delegate of such Delegate District.

3.4.2. Delegates for Declarant's Votes. Declarant shall have the right to appoint its own Delegate to cast the votes allocated to Declarant pursuant to this Declaration. Only Declarant's Delegate shall have the right to cast Declarant's votes.

In addition, for purposes of this Declaration, the term "Delegate" where used herein, shall also mean and refer to an Owner of Commercial Property which is not part of a Commercial Property Owners Association.

3.5. Suspension of Voting Rights. The Community Board shall have the authority to suspend the voting rights to be cast by a Delegate on behalf of any Owner for any period during which the payment of any Community Assessment, against such Owner remains delinquent, it being understood that any suspension for nonpayment of any Community Assessments shall not constitute a waiver or discharge of the Owner's obligation to pay the Community Assessments provided for herein.

3.6. Direction of Delegates. Except for votes allocated to the Declarant, the manner in which a Delegate for a Neighborhood Association or Commercial Property Owners Association, as the case may be, casts the votes allocated to the Neighborhood Association or Commercial Property Owners Association on a particular issue shall be determined by the Board of Directors or other governing body for the Neighborhood Association or Commercial Property Owners

Association. The manner in which any delegate for Commercial Property not located within a Commercial Property Owners Association shall cast his or her votes shall be determined by the respective Owners within the Delegate District of such Delegate. The votes attributed to Declarant or a Builder for any properties subject to the Declaration shall be cast in the manner determined by Declarant.

3.7. Delegate Qualifications. Delegates must be (a) an authorized agent or employee of Declarant, or (b) an Owner. If the Member is a corporation, partnership, or other such entity, the authorized agent of such corporation, partnership or other entity shall be eligible for appointment as a Delegate.

3.8. Classes of Voting Membership/Delegate Vote Entitlement. The Community Association shall have two (2) classes of voting membership, which are described below.

3.8.1. Class A Membership. Class A Members shall initially be each Neighborhood Association or Commercial Property Owners Association and any Owner of Commercial Property not included within a Commercial Property Owners Association, if any, as well Declarant after conversion described in Section 3.8.1. Each Delegate will be entitled to cast the votes allocated below:

(a) Delegates for any Neighborhood Association shall be entitled to cast one (1) vote for each Dwelling within such Neighborhood Association.

(b) Each Delegate for a Commercial Property Owners Association (or in the case where no Delegate applies, each Owner of Commercial Property) for which a use and occupancy permit is issued shall be entitled to cast one (1) vote for every one thousand (1,000) square feet of gross building area built on such Commercial Property as measured from outside exterior walls.

Declarant during the Development Period (or the Association after the Development Period) shall be entitled, by a supplement, to designate or change the number of votes held by the Owner of a Commercial Property, provided that if Declarant is not the Owner of the affected land, then the record Owner and lienholder(s) must join therein for it to be effective. In such event, such Owner shall hold the number of votes designated in the supplement to this Declaration from time to time.

3.8.2. Class B Membership. The Class B Member shall be the Declarant, who shall be entitled to thirty (30) votes for each Lot owned by Declarant (or, in the case of Commercial Property, one (1) vote for each one thousand (1,000) square feet of gross building area built on such Commercial Property as measured from outside exterior walls owned by Declarant). The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs later:

(a) The twentieth (20th) anniversary of the recordation of the Declaration in the Official Records;

(b) January 1, 2040;

(c) Until such time as Declarant no longer owns any interest in Birkhill, or

(d) At such time as Declarant determines that it no longer desires to retain Class B Membership; provided, however, the Class B Member, in its sole discretion, may relinquish its Class B Membership any at time from and after the date of this Declaration by an instrument in writing recorded among the Official Records;

In addition to the foregoing, Declarant shall at all times during the Development Period retain a minimum of one thousand (1,000) votes.

3.9. Allocation of Delegate Votes. All voting rights shall be subject to this Declaration. Whenever the selection of a Community Director or a matter which the Declaration, Community Articles, Community Bylaws or Utah corporation laws requires to be approved by the vote of Delegates representing a majority or other specified percentage of the Total Voting Power of the Community Association (i.e., excluding a mere majority of a quorum of Delegates as defined in the Bylaws) ("Specified Action") is presented to the Delegates for approval, written notice of the substance of the Specified Action shall be given to the Delegates at least forty-five (45) days prior to the date on which the Specified Action shall be discussed at a meeting of the Delegates. During the forty-five (45) day period prior to the meeting, the Delegates shall, if required, submit the Specified Action to a vote of the Members within their respective Delegate Districts.

3.10. Voting Authority. It will be conclusively assumed for all purposes of Community Association business that each Delegate will cast votes in accordance with the provisions of the Section of this Article entitled "Direction of Delegates". All actions lawfully taken by the Community Association in accordance with the voting procedures established herein, and in the Community Bylaws, shall be deemed to be binding upon all Members, Owners and their respective successors and assigns.

3.11. Continuing Approval of Declarant. Notwithstanding the foregoing, and without limiting Declarant's unilateral rights provided elsewhere in this Declaration or the Community Bylaws, even after the termination of Class B membership, and until such time as (a) one hundred percent (100%) of the Birkhill Voting Power resides in the Class A Members, other than Declarant and Builders or (b) until January 1, 2080, whichever occurs last, the approval of Declarant shall be required before the Community Association may take any permitted action with respect to the following:

3.11.1. Reduction in the level of, or change in allocation of responsibility for (a) maintenance of and repairs to all or part of any Community Common Area subject to this Declaration or (b) any other maintenance obligations of the Community Association set forth in Article X of this Declaration entitled, "Installation, Repair and Maintenance";

3.11.2. Conveyance by the Community Association of all or any part of any

Community Common Area;

3.11.3. Annexation to the Community Association of any of the real property described in Exhibit "B";

3.11.4. Alteration in the method of fixing and collecting Community Assessments;

3.11.5. Modification, enforcement and review procedures of the Architectural Specifications set forth in Article VII of this Declaration;

3.11.6. Reduction or modification of any easement rights reserved to Declarant pursuant to the provisions of Section 14.3 of this Declaration;

3.11.7. Alteration in the method of enforcing the provisions of the Declaration; and

3.11.8. Amendments to this Declaration or the Community Bylaws, which would diminish, or otherwise affect Declarant's right of approval regarding the actions enumerated above.

3.12. Commencement of Voting Rights. An Owner's vote, except for Declarant's, shall not be attributed to the Delegate voting on behalf of that Owner until Community Assessments have been levied upon such Owner's Lot as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the Community Bylaws.

ARTICLE IV ORGANIZATION OF COMMUNITY ASSOCIATION

4.1. Community Association and Community Board. Except for those acts which are expressly reserved to the vote of the membership of Birkhill in this Declaration, any duty, obligation or authority vested or required to be performed and any power or privilege which may be exercised by the Community Association pursuant to this Declaration shall be performed or exercised only by the Community Board or its authorized delegates, agents and servants, and any power, duty, obligation or authority vested or conferred on the Community Board by this Declaration shall be deemed a power, duty, obligation or authority of the Community Association. The Community Board shall conduct its affairs as provided for in the Community Bylaws. The Community Board may delegate its powers and duties to such committees, officers, or professional managers as may be permitted under this Declaration and as the Community Board deems appropriate. All acts of the Members of the Community Association shall be made by the vote of the Delegates as provided in the Community Bylaws.

4.2. Meetings of Community Association. The first regular meeting of the Delegates shall be held no later than one (1) year from the date hereof. Thereafter, regular annual meetings and special meetings of the Community Association and of its Community Board shall be called, held and conducted in the manner provided in the Community Bylaws.

4.3. Number of Community Directors and Selection by Declarant. The Community Board shall be comprised of three (3) to seven (7) members; provided, however, that initially during the Development Period, the Community Board shall consist of three (3) or more Community Directors, all of whom shall be selected solely by Declarant; and further provided that Declarant, in its sole discretion may decide not to exercise its right to appoint any one (1) or more Community Directors before the end of the Development Period and if such a decision is made by Declarant, successor Community Directors shall be elected under Section 5.3. of the Bylaws. Subsequent to the Development Period, the number of directors shall be determined by a simple majority vote of the Delegates at the annual meeting of Delegates and the number of directors may be changed by a simple majority vote of the Delegates at any subsequent annual or special meeting of the Delegates.

4.4. Community Directors Selected by Community Association. Subsequent to the Development Period or earlier if Declarant decides not to exercise its right to select any one (1) or more Community Directors as provided in Section 4.3. above, Community Directors shall be nominated and elected under the provisions of Article V of the Bylaws.

4.5. Liability of Community Directors. No Community Director shall be personally liable to any of the Members or Owners, or to any other person or entity, including, but not limited to, Declarant, Builders, Commercial Property Owners or any Neighborhood Association or Commercial Property Owners Association, for any error or omission of the Community Association, the Community Board representatives, its agents and employees or the Architectural Committee, provided that such Community Director has, upon the basis of such information as may be possessed by him, acted in good faith.

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

5.1. Scope of Powers and Duties of Community Association. The Community Association shall have all of the powers of a corporation organized under the laws of the State of Utah operating for the benefit of the Owners, subject only to the limitations expressly set forth in the Community Articles, Community Bylaws and this Declaration and as provided in the Utah Community Association Act. The Community Association shall have the power to do any and all acts which are authorized, required or permitted under this Declaration and to undertake any and all acts which may be reasonable and necessary for, or incidental to the exercise of any express powers granted the Community Association for the peace, health, comfort, safety or general welfare of Birkhill. Except as expressly provided herein, the powers and duties of the Community Association shall be exclusively performed by the Community Association. As more fully provided in this Declaration, the Community Association may supersede the actions of decisions of any Neighborhood Association or Commercial Property Owners Association in matters regarding the maintenance and overall operation of any such Neighborhood or Commercial Property.

5.2. General Powers of the Association. In addition to the duties and powers enumerated elsewhere in this Declaration or in the Community Articles or Community Bylaws,

and without limiting the generality thereof, the Community Association shall have the powers and authority set forth below, which, unless expressly provided otherwise, may be undertaken by the Community Board; or such committees, entities, persons or companies expressly designated by the Community Board to exercise such powers or authority:

5.2.1. Performance of Duties. to undertake all of the express duties required under Section 5.3 below to be done by the Community Association.

5.2.2. Enforcement. to enforce the provisions of this Declaration, the Community Articles and the Community Bylaws by appropriate means and carry out the obligations of the Community Association hereunder, including, without limitation, the expenditure of funds of the Community Association, the employment of legal counsel and experts the commencement of legal and/or equitable actions, the promulgation and enforcement of the Community Association Rules, and the establishment of fines or penalties as provided for in this Declaration. In addition, the Community Association shall have the right, but not the obligation, to enforce any provision in the governing documents for any Commercial Property Owners Association or Neighborhood Association, provided, however, the Community Association shall first provide a fifteen (15) day written notice to cure any such failure to enforce any provision in the governing documents and further, provided, the opportunity to cure shall not apply in case of an emergency, as determined in the sole discretion of the Community Board. Any costs of the Community Association relating to enforcement may be collected by the imposition of the Enforcement Assessment described in Article 6.4.4.

5.2.3. Easements and Rights of Way. to grant and convey easements, licenses for use, and rights of way, to any third party where necessary in, on, over and through any Community Common Area for this benefit of the Owners.

5.2.4. Mergers. to the extent permitted by law, to participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Community Association.

5.2.5. Dedication. to dedicate in fee simple or in any lesser estate or grant easements over any of its real property to any governmental body or agency, public authority, private or public utility company, or other service companies, for public use or in connection with providing services to Birkhill.

5.2.6. Delegation of Powers. to delegate its powers under this Declaration, the Community Bylaws or Community Articles to committees, officers, or employees as expressly authorized by the Community Articles, Community Bylaws and this Declaration.

5.2.7. Management. subject to the provisions of Section 5.4 of this Declaration, to employ a manager or other person and contract with independent contractors or managing agents who have professional experience in the management of condominium developments, planned unit developments or master associations, to perform any services required for the maintenance, protection, operation and preservation of Birkhill.

5.2.8. Legal and Accounting. to obtain legal and accounting services as may be required by the Community Board for operation of the Community Association or enforcement of this Declaration.

5.2.9. Right of Entry. in accordance with the provisions of this Declaration, to enter upon any Lot, Community Common Area, Neighborhood Common Area, Commercial Common Area without liability to any Owner or other party, for the purpose of enforcing any of the provisions of this Declaration, or for the purpose of maintaining and repairing the Dwellings, Commercial Units, landscaping or other Improvements located on any Lot, Community Common Area, Neighborhood Common Area or any Commercial Common Area, or for the purpose of maintaining any slopes located thereon; provided, however, that such entry shall occur (a) at a reasonable hour and (b) after reasonable notice has been given to the Owner of such Lot. If there is an emergency, the agents and representatives of the Community Board may enter such Lot immediately and without notice for the sole purpose of taking such action as is necessary under the circumstances. Any damage caused by an entry upon any Lot, Community Common Area, Neighborhood Common Area or Commercial Common Area pursuant to the provisions of this Subsection shall be repaired by the Community Association.

5.2.10. Acquire Real Property. to acquire and hold real property by lease or purchase for offices or other Community Common Area that may be necessary or convenient for the management of any Community Common Area, the administration of the affairs of the Community Association or for the benefit of the Members and Owners.

5.2.11. Other Property. to acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise under the provisions of Section 5.4.3. hereunder. No such personal property of a value greater than twenty-five percent (25%) of the budgeted gross expenses of the Community Association shall be acquired by the Community Association without written approval of the Members representing at least fifty-one (51%) of the Birkhill Voting Power except in the ordinary course of business.

5.2.12. Resolution of Disputes. to negotiate with, bring all actions at law or equity, and enter into settlement agreements with Declarant concerning any matter involving liability of or alleged liability of Declarant to the Community Association, any Neighborhood Association or Commercial Property Owners Association or any Birkhill Member related to the construction or operation of any Community Common Area and each Member and Owner, hereby vests in and irrevocably delegates to the Community Board or its duly authorized representative, the right and power to so act.

5.2.13. Capital Accounts. to establish and maintain a working capital and contingency fund in an amount to be determined by the Community Board.

5.2.14. Borrow Money. to borrow money as needed for the administration of the Community Association and its functions, and to pledge real property and personal property assets of the Community Association as security for such loan. Pursuant to the provisions of the Section of Article VIII entitled "Borrow Money", the Community Association may not

encumber any Community Common Area unless the vote of a majority of the Birkhill Voting Power has been obtained.

5.2.15. Review of Neighborhood Operations. the right, but not the obligation, to review periodically the operation of any Neighborhood Association or Commercial Property Owners Associations within Birkhill and the maintenance and repair of the property within such Neighborhoods. As provided in the Article IX of this Declaration entitled "Use Restrictions for Birkhill" the Community Association may take such steps as the Community Board deems appropriate to assure that the operation of any Neighborhoods within Birkhill substantially complies with the standards established for Birkhill.

5.2.16. Enforcement of Restrictions and Rules. in the event of a breach of any provision of this Declaration (other than nonpayment of assessments), or any of the Community Association Rules by any Owner, the Owner's family, guests, employees, invitees, licensees, or tenants, the Community Board, for and on behalf of all other Owners, shall have the right (but not the obligation) to enforce the obligations of each Owner to obey and comply with this Declaration and such Community Association Rules in any manner provided by law or in equity, including, but not limited to, appropriate hiring of legal counsel, the pursuing of legal action, or suspension of the Owner's right to use any Community Common Area facilities (excluding, however, any rights-of-way or any other type of pedestrian or vehicular access); provided, however, such suspension may not be for a period in excess of sixty (60) days, after notice and hearing as herein provided, for each infraction. In addition to the other remedies herein set forth, the Community Board, by majority vote, may levy a fine against such Owner, after appropriate notice and hearing as herein provided, in a reasonable amount for each such violation. Prior to reaching a decision to impose any penalty provided herein for breach of any rules enacted hereunder or any covenants, conditions or restrictions contained in this Declaration, the Community Board shall send written notice to the Owner specifying the nature of the infraction and provide an opportunity to the Owner for a hearing before the Community Board regarding such infraction and the penalty to be imposed. Said notice shall be given at least fifteen (15) days prior to said hearing. If the Community Board determines that said infraction has occurred, it may impose a penalty to become effective not less than five (5) five days after said hearing. Any such determination of said Community Board shall be final. If legal counsel is retained or legal action is instituted by the Community Board pursuant to this Section, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs, expert fees, litigation expenses and reasonable attorneys' fees. The Community Board may establish a hearing committee and delegate thereto all of the power, authority and responsibility for holding any hearings and determinations required in this Section. Notwithstanding anything to the contrary herein contained, neither the Community Board nor the Community Association members shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use of his individually owned Lot, including access thereto over and across any Community Common Area, on account of such Owner's failure to comply with the provisions of this Declaration, the Community Bylaws or any Community Association Rules adopted by the Community Board or the Community Association relating to the operation of any Community Common Area, except when such loss or forfeiture is the result of a judgment of a court or a decision arising out of arbitration, or on account of foreclosure sale for failure to the Owner to pay an assessment levied under that Section in Article VI entitled "Single Benefit

Assessment”.

5.2.17. Enter Into Maintenance. to enter into maintenance agreements with Declarant for the repair and maintenance for any Community Common Area, and for the undertaking by Declarant for any other maintenance responsibilities of the Community Association pursuant to the provisions of this Declaration.

5.2.18. Enter Into Maintenance Agreements with Governmental Entities. to enter into maintenance agreements with Salt Lake County and other governmental entities for the repair and maintenance of any Community Common Area.

5.3. Duties of the Community Association. The Community Association shall have the duty and obligation to perform the acts and functions stated in this provision subject to and in accordance with the Community Articles, Community Bylaws and this Declaration:

5.3.1. Community Standards. The Community Association shall establish and maintain overall quality standards for Birkhill compatible with Declarant’s development of Birkhill. The inherent powers and duties emanating therefrom may be delegated by the Community Board to the Architectural Committee.

5.3.2. Community Common Area. The Community Association shall accept any Community Common Area and Improvements situated thereon conveyed by the Declarant and shall maintain, operate, and otherwise manage all of the facilities situated on any Community Common Area, and all personal property acquired by the Community Association in accordance with the terms and provisions of this Declaration. The Community Board shall periodically review the nature and scope of the operations of the Community Association to assure such operations are in satisfactory compliance with the requirements of the Master Management Documents.

5.3.3. Taxes. The Community Association shall pay any real and personal property taxes and assessments and other charges assessed against any Community Common Area unless the same are separately assessed to the Owners.

5.3.4. Community Assessments. The Community Association shall establish, determine, levy, collect, and enforce all Community Assessments and cause to be prepared all budgets and financial statements.

5.3.5. Utility Services. The Community Association shall obtain utility services necessary or desirable, for the benefit of any Community Common Area, including, but not limited to, water, gas, electricity, telephone, refuse collection, sewage disposal and other services.

5.3.6. Architectural Control. The Community Association shall have the duty to maintain architectural control over the Property, promulgate Architectural Specifications and appoint the Architectural Committee in connection therewith in accordance with the provisions of the Article VII of this Declaration.

5.3.7. Association Rules. The Community Association shall adopt, amend, and repeal such rules and regulations as it deems reasonable. The Community Association Rules shall govern such matters in furtherance of the purposes of the Community Association, including, without limitation, the use of any Community Common Area, provided, however, that the Community Association Rules may not discriminate among Owners, except to reflect the different nature of the rights of Commercial Property Owners and shall not be inconsistent with this Declaration, the Community Articles or Community Bylaws. A copy of the Community Association Rules, as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this Declaration for the delivering of notices. Upon such delivery, said Community Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Community Association Rules as adopted, amended or repealed, shall be available at the principal office of the Community Association to each Owner and Institutional Mortgagee upon request or at such other place as may be designated by the Community Board. In the event of any conflict between any such Community Association Rules and any other provision of this Declaration, the Community Articles or the Community Bylaws, the provisions of the Community Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Community Articles or the Community Bylaws to the extent of any such inconsistency.

5.3.8. Common Area Maintenance. Except for any special maintenance districts which may be established pursuant to the provisions of Article VIII entitled "Established Special Assessment Districts", the Community Association shall maintain, repair, replace, paint and landscape any Community Common Area and other property and interests owned by the Community Association in accordance with the provisions of this Declaration, and acquire, maintain and replace such furnishings and equipment as the Community Board shall determine proper.

5.3.9. Insurance and Fidelity Bonds. The Community Association shall contract for and maintain insurance and fidelity bonds in accordance with the requirements set forth in the Article XI hereof entitled "Insurance."

5.3.10. Liens and Charges. The Community Association shall pay any amount necessary to discharge any lien or encumbrance upon any Community Common Area, or any other property or interest of the Community Association. Where one or more Owners are jointly responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Community Association by reason of said lien or liens shall be specially assessed to said Owner(s).

5.3.11. Reserves. The Community Association shall establish and maintain a working capital and contingency fund pursuant to the Section of Article VI of this Declaration entitled "Community Association Funds".

5.4. Limitations. The Community Board shall be prohibited from taking any of the actions set forth below, except with the vote or written consent of a majority of the Birkhill Voting Power, excluding the voting power held or controlled by the Declarant and the Builder.

5.4.1. Contracts. The Community Board shall not enter into a contract with an entity other than Declarant wherein the contracting person or entity will furnish goods or services for any Community Common Area or the Community Association for a term longer than one (1) year with the following exceptions:

(a) a management contract, the terms of which comply with requirements of the Federal Housing Administration or Veterans Administration to the extent there are any loans guaranteed by such agencies location within the Property; or

(b) prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policies permit short rate cancellation by the insured.

Notwithstanding the foregoing, the Community Board may enter into professional management contracts with companies that the Community Board shall determine for terms in excess of one (1) year.

5.4.2. Capital Improvements. Except as provided in the Section of Article VI entitled "Capital Improvement Assessments", the Community Association shall not incur aggregate expenditures for capital improvements to any Community Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Community Association for that fiscal year.

5.4.3. Sale of Property. The Community Association shall not sell, during any fiscal year, property of the Community Association having an aggregate fair market value greater than twenty-five percent (25%) of the budgeted gross expenses of the Community Association for that fiscal year, unless the prior approval of seventy-five percent (75%) of the Birkhill Voting Power has been obtained.

5.4.4. Compensation The Community Association shall not pay compensation to Community Directors or officers of the Community Association for services performed in the conduct of the Community Association's business; provided, however, that the Community Board may cause a Community Director or officer or a member of the Architectural Committee to be reimbursed for expenses incurred in carrying on the business of the Community Association and may compensate Directors or officers not in the employ of Declarant or a Builder with the prior approval of seventy-five percent (75%) of the Birkhill Voting Power.

ARTICLE VI FUNDS AND ASSESSMENTS

6.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner (other than Declarant), by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Community Association all Community Assessments. Such Community Assessments shall be fixed, established and collected from time to time as hereinafter provided. Such Community Assessments, together

with interest, late charges and costs and reasonable attorneys' fees, shall be the debt of and personal obligation of the Owner of such Lot at the time when the Community Assessment fell due. Each such Community Assessment, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall also, upon furnishing a notice of delinquent assessment in accordance with the provisions of the Section of this Article entitled "Foreclosure of Lien" be a lien upon the Lot against which each such Community Assessment is made.

6.2. Community Association Funds. The Community Association shall establish and maintain a Maintenance and Operation Fund into which the Community Board shall deposit Regular Assessments. The Community Association shall also establish and maintain such other funds (including a Reserve Fund and Capital Improvement Fund) as the Community Board deems appropriate for deposit and disbursement of other assessments as the Community Board may from time to time establish. All of said funds are generally referred to herein as the Birkhill Funds. The Community Board shall establish and collect all Community Assessments and, where necessary, enforce the liens as provided for in this Article.

6.3. Purpose of Community Assessments. The Community Assessments shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members and Owners of Birkhill, and enhancing the quality of life in Birkhill and the value of the Property as well as maintaining and improving any Community Common Area, but may not be used in connection with any legal action against Declarant. Further, the Community Association will collect those payments due to Elsinore, as more fully described in Section 18.25. hereunder.

6.4. Nature of Community Assessments. The Community Board shall establish the following Community Assessments, each of which shall be used only for the purposes specified in this Article:

6.4.1. Regular Assessments. A Regular Assessment shall be an annual assessment for Common Expenses fixed and levied by the Community Board based upon the estimated costs of operation of the Community Association in accordance with the budgets prepared pursuant to the provisions of this Article entitled "Community Association Accounts" and the accomplishment of its purposes, performance of its duties and the exercise of its power that benefit the entire Birkhill. The amount and time of payment of Regular Assessments shall be determined as provided for below. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual Regular Assessment shall be Forty-Eight Dollars (\$48.00) per year, except for any Commercial-Property for which the annual Regular Assessment shall be One Dollar and ninety-two Cents (\$1.92) per square foot of gross building area as measured from outside exterior walls of the Commercial Property. Increases in Regular Assessments shall be subject to the limitations set forth in Section 6.5. below. Notwithstanding the foregoing, no type of Assessment shall be levied against any Lot used for model home purposes by Declarant or an entity controlled by Declarant; provided, however, this exemption shall not apply to any model home on a Lot owned by a third party.

6.4.2. Special Assessments. Special Assessments may be levied at any time

during any fiscal year to replace capital improvements or for any purpose that will maintain the health and safety of the Owners and occupants within Birkhill. Special Assessments shall be allocated in the same manner as Regular Assessments. Increases in Special Assessments shall be subject to the limitations set forth in Section 6.5 below.

6.4.3. Capital Improvement Assessments. In addition to the Regular Assessments, the Community Association may levy, in an calendar year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement (other than due to destruction) of a described capital improvement including the necessary fixtures and personal property related thereto, upon any Community Common Area to the extent the cost is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "Destruction of Improvements". Capital Improvement Assessments shall be assessed and shall be allocated to Owners in the same manner as Regular Assessments. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Community Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Community Association and shall be deemed a contribution to the capital account of the Community Association by the Members. Increases in Capital Improvements Assessments shall be subject to the limitations set forth in Section 6.5 below. Notwithstanding the foregoing, Capital Improvement Assessments shall not commence until fifty-one percent (51%) of Lots are conveyed to Owners, excluding Declarant and any Builder.

6.4.4. Enforcement Assessments. The Community Association may levy an Enforcement Assessment against any Owner, Neighborhood Association or Commercial Property Owners Association who or which causes damage to any Community Common Area, or for bringing an Owner of his Lot into compliance with the provisions of this Declaration, the Community Articles, Community Bylaws, the Community Association Rules or any other charge designated an Enforcement Assessment in this Declaration, the Community Articles, Community Bylaws or Community Association Rules, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. If the Community Association undertakes to provide materials or services, which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Community Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Master Management Documents. If, after notice and a hearing as required by the Section of Article V entitled "Enforcement of Restrictions and Rules", the Owner fails to cure or continues such violation, the Community Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of a Community Assessment. A hearing committee may be established by the Community Board to administer the foregoing.

6.4.5. Single Benefit Assessment. The Community Board may establish a Single Benefit Assessment for reconstruction, capital improvements, extraordinary maintenance, or any other cost or expense not otherwise provided for in this Declaration, which will benefit less than all of the Owners. Except as provided in the Section of Article X entitled "Maintenance Obligations of the Neighborhood Associations", such a Single Benefit Assessment may be

imposed only by a vote of seventy-five percent (75%) of the Owners of the Lots benefited by the Single Benefit Assessment. Each Single Benefit Assessment shall be segregated in the Birkhill Funds solely to the Lots, which will derive a benefit from the assessment. If the Community Association obtains income directly related to an item, which has been assessed as a Single Benefit Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Assessment. Whenever the Community Association performs any service or accomplishes any item or repair or maintenance which is the duty of a Neighborhood Association or Commercial Property Owners Association or an Owner to accomplish, but which has not been accomplished by the Neighborhood Association, Commercial Property Owners Association or Owner, or whenever the Community Association determines to preempt the performance of a Neighborhood Association, Commercial Property Owners Association or specific Owner if a given act of maintenance or repair, the Community Association shall specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Community Association, to the Owner for whom such work was done, or the Neighborhood Association or Commercial Property Owners Association for which such work was done, as the case may be, and shall include such additional cost as a Single Benefit Assessment for such Owners, Neighborhood Association or Commercial Property Owners Association. Any Single Benefit Assessment charged to a Neighborhood or Commercial Property Owners Association shall be allocated among the Owners in that Neighborhood or Commercial Property Owners Association in the same manner as the Neighborhood or Commercial Property Owners Association regular assessments are allocated in the Neighborhood Declaration.

6.4.6. Reconstruction Assessments. Reconstruction Assessments may be levied by the Community Board under the conditions and in the manner specified in the Article hereof entitled "Destruction of Improvements."

6.5. Limitation on Assessments. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, other than Declarant, a Builder or Commercial Property Owner, Regular Assessments may not, except in the case of an Emergency (as hereinafter defined), be increased more than twenty-five percent (25%) of the Regular Assessment for the immediately preceding fiscal year, and Special Assessments may not, except in the case of an Emergency, be increased more than ten percent (10%) of the budgeted gross expenses of the Community Association for such fiscal year, and Capital Improvement Assessments may not, except in the case of an Emergency, be increased more than five percent (5%) of the budgeted gross expenses of the Community Association without, in each case, the consent of fifty-one percent (51%) of the Owners; in each case constituting a quorum and casting through their Delegates a majority of the votes at a meeting or election of the Community Association conducted in accordance with the provisions of any successor statute. For the purpose of this Section, a quorum shall mean more than fifty percent (50%) of the Owners of the Community Association and an Emergency shall mean any one of the following:

6.5.1. an extraordinary expense required by an order of a court;

6.5.2. an extraordinary expense necessary to repair or maintain Birkhill or any part of it which is the responsibility of the Community Association to maintain where a threat to personal safety on the Property is discovered; or

6.5.3. an extraordinary expense necessary to repair or maintain Birkhill or any part of it for which the Community Association is responsible that could not have been reasonably foreseen by the Community Board in preparing and distributing the Budget required under the Section of this Article entitled "Community Association Accounts"; provided, however, that prior to the imposition or collection of a Regular Assessment under this Subsection, the Community Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members entitled to vote thereon with the notice of Regular Assessment. For the purpose of calculating where an increase to Regular Assessments exceeds twenty-five percent (25%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Lot by the Community Association as a Regular Assessment.

6.6. Monetary Charge. Notwithstanding Subsection 6.4.4 above, a monetary charge imposed by the Community Association pursuant to the provisions of the Section of Article V entitled "Enforcement of Restrictions and Rules", as a disciplinary measure for failure of an Owner to comply with a non-monetary provision of the Master Management Documents (i.e., other than failure to pay any of the Community Assessments), or as a means of reimbursing the Community Association for costs incurred by the Community Association for which the Owner was allegedly responsible or in bringing the Owner and the Owner's Lot into compliance therewith, shall become a lien against such Owners' Lot enforceable by sale as provided in the Section of this Article entitled "Foreclosure of Lien".

6.7. Allocation of Community Assessments to Lots. The Community Assessments shall be allocated to each Lot for which assessments have commenced as set forth below.

6.7.1. Allocation of Community Assessments. Community Assessments shall be allocated in a uniform manner among the Lots within Birkhill based on the formulas for voting purposes set forth in Section 3.8 of Article III entitled "Classes of Voting Membership/Delegate Vote Entitlement"; provided, however, that any obligations of Declarant to pay Community Assessments shall be determined in accordance with the provisions of Section 6.7.2. below:

6.7.2. Exemptions. For purposes of this Section 6.7.2, "Exempt Property" means:

- (a) All Community Common Area;
- (b) All Neighborhood Common Area or Commercial Common Area (with the exception of any lien enforcement action against an Owner's interest in such areas under Section 6.13. hereunder);
- (c) All common elements of a Condominium (with the exception of any lien enforcement action against an Owner's interest in the common elements under Section 6.13. hereunder);

(d) All parts of Birkhill then owned by the City of Murray, or another governmental or quasi-governmental entity having jurisdiction over any of Birkhill, or any such entity, utility company, gas, fuel oil or other energy distributor, telecommunication company or other person or party which provides a utility service, or to the extent of any easement or other interest therein held by such authority;

(e) All public roads or other parts of Birkhill which, at the time in question, are exempt by law from taxation;

(f) All other Property while owned by Declarant and Builder;

(g) All real property not part of Birkhill; and

(h) Any Lot on which a Dwelling or Commercial Unit is being constructed, provided however, that this exemption shall only apply for a period of twelve (12) months from issuance of building permit on any Dwelling or eighteen (18) months from issuance of building permit on any Commercial Unit.

As provided above, Declarant and Builder shall be exempt from any liability to pay any assessments hereunder, including, without limitation, Community Assessments or Neighborhood Assessments. In addition, no type of assessment, including Community Assessment, Commercial Assessment or Neighborhood Assessment, shall be applicable to Exempt Property.

6.7.3. Other Community Assessments. Special Assessments, Reconstruction Assessments, and Capital Improvement Assessments shall be allocated in the same manner as Regular Assessments. Enforcement Assessments and Single Benefit Assessments shall be levied directly to the individual Lots in a manner consistent with provisions of Subsection 6.4.4 and 6.4.5 of this Declaration.

6.8. Levy of Community Assessments. Community Assessments shall be levied and shall commence according to the procedures set forth below:

6.8.1. Commencement of Regular Assessments. Except for Commercial Property, and subject to Article 6.7.2, annual Regular Assessments shall commence as to each Lot on the date legal title to such Lot is transferred by Declarant or Builder to another party and for commercial Lots, on the date each such Lot is occupied for commercial purposes. As to any land which is hereafter annexed into Birkhill pursuant to a Supplementary Declaration, Regular Assessments shall commence as to all of the real property described in a Supplementary Declaration upon the date of settlement of any Lot by Declarant or Builder annexed described in such Supplementary Declaration to an Owner other than Declarant or Builder. Notwithstanding the foregoing, and unless otherwise provided in the Supplementary Declaration, annual Regular Assessments shall commence as to the Commercial Property on the first day of the first month following the Annexation of such Property to this Declaration.

6.8.2. Annual Levy of Regular Assessment. The Community Board shall fix the

amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each annual Community Assessment period and written notice shall be sent to every Owner subject thereto at least thirty (30) days prior to its effective date. Unless expressly provided otherwise by the Community Board, each Regular Assessment shall be payable in advance, in equal installments as determined by the Community Board from time to time. If any excess of Community Assessments is collected over actual Common Expenses incurred by the Community Association, such excess may, at the election of the Community Board, be placed in a Reserve Fund, which may be used to offset the future expenses of the Community Association in any manner designated by the Community Board.

6.8.3. Levy of Other Community Assessments. All other Community Assessments shall be fixed at such times and in such amounts as the Community Board deems appropriate, and the Owners shall be given reasonable notice thereof. The due dates for such other Community Assessments shall be established by the Community Board.

6.8.4. Initial Capital Contribution. To insure adequate funds to meet the initial operating expenses of the Association, each Owner other than Declarant and Builder shall pay to the Community Association an amount equal to two (2) months of the amount of the then annual Regular Assessment for that Lot as determined by the Community Board. For any transfer of title to any Dwellings or Commercial Units from a party other than Declarant or Builder, the grantee shall pay to the Neighborhood Association the sum equal to one-quarter of one percent of the sales price of the Dwelling or Commercial Unit, as applicable, at time of settlement (hereinafter referred to as "Title Fee"). In addition to the foregoing, during the Development Period, Declarant has the right, but not the obligation, to make loans from time to time to the Community Association if Declarant deems the same to be appropriate, in its sole and absolute discretion, to enable the Community Association to pay all debts and maintain sufficient cash flow. If any such loans are made, repayment will be made to the Declarant, on such terms as Declarant may require, from time to time, and be paid from either the Initial Capital Contribution or the Title Fee, as determined in the sole discretion of the Community Board. The amounts set forth herein are not to be considered in lieu of annual Regular Assessments or any other Community Assessments levied by the Community Association.

6.8.5. Certificate of Payment. The Community Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Community Association setting forth where the Community Assessments on a specified Lot have been paid. Such certificate, if signed by an officer of the Community Association, shall be conclusive evidence of payment of any Community Assessment therein stated to have been paid.

6.9. Collection of Assessments. Each Neighborhood Association and Commercial Property Owners Association shall have responsibility for collecting Community Assessments on behalf of the Community Association. Such Community Assessments shall be due and payable to the Neighborhood Association or Commercial Property Owners Association, as the case may be, on the same day that such assessments would be due and payable to the Community Association. A Neighborhood Association and Commercial Property Owners Association shall levy late charges and upon instructions from the Community Board, interest charges against any Owner who fails to pay such Community Assessments within the time periods specified in the

Section of this Article entitled "Late Charges". Within ten (10) business days of payment of the Community Assessments to the Neighborhood Association or Commercial Property Owners Association, as applicable, the Neighborhood Association or Commercial Property Owners Association, as the case may be, shall deliver such Community Assessments to the Community Association, provided, that the Neighborhood Association or Commercial Property Owners Association shall deliver all such Assessments to the Community Association irrespective of whether the full amount has been received by the Neighborhood Association or Commercial Property Owners Association, as applicable, for transmittal to the Community Association, and further, provided, that the Neighborhood Association or Commercial Property Owners Association, as the case may be, shall take all reasonable efforts to collect the amounts due and upon receipt of same, shall promptly transmit such amounts to the Community Association. The Community Board shall establish procedures for the payment by the Neighborhood Association and Commercial Property Owners Association to the Community Association of Community Assessments collected by the Neighborhood Association or Commercial Property Owners Association. Any Community Assessments collected by the Neighborhood Association or Commercial Property Owners Association shall be held in trust for the benefit of the Community Association. If the Neighborhood Association or Commercial Property Owners Association fails to pay Community Assessments to the Community Board when due, and in accordance with the provisions of any guidelines established by the Community Board, the Community Board may bring an action against the Neighborhood Association or Commercial Property Owners Association and/or delinquent Owner including, but not limited to, an action pursuant to applicable law and all costs of enforcement shall be levied as an Enforcement Assessment against the Neighborhood Association or Commercial Property Owners Association and/or delinquent Owner. The Community Board may, upon a vote by a majority of the Community Directors, elect to terminate the obligation of any Neighborhood Association or Commercial Property Owners Association to collect the Community Assessments.

For any Owner of Commercial Property not included within a Commercial Property Owners Association, such Owner shall remit the amount of assessments due to the Community Association directly to the Community Association as and when due.

6.10. No Offsets. All Community Assessments shall be payable in the amount specified by the particular Community Assessment, and no offset against such amount shall be permitted for any reason, including, without limitation, a claim that the Declarant or the Community Association is not properly exercising its duties or powers as provided for in the Declaration or that an Owner is not satisfied with the scope or quality of any services or amenities.

6.11. Community Assessment Rolls. The Community Association may maintain and revise annually, an assessment roll for Birkhill, reflecting the name and address of each Owner, and other data necessary to levy the Community Assessments. If a Neighborhood Association or Commercial Property Owners Association has been established, each Neighborhood Board or board of directors for any Commercial Property Owners Association shall supply the Community Association with the Neighborhood Assessment or Commercial Property Owners Association rolls and all amendments or revisions thereto on a regular basis or, upon request from the Community Association.

6.12. Transfer of Property. After transfer or sale of a Lot in Birkhill, the selling Owner or Owners shall not be liable for any Community Assessment levied on the Lot after the date of such transfer of ownership. However, the selling Owner shall remain personally responsible for all Community Assessments and charges levied on the Lot prior to any such transfer unless the personal obligation is expressly assumed by the transferee, and such assumption is accepted in writing by the Community Association.

6.13. Effect of Non-Payment of Assessments - Remedies of Community Association.

6.13.1. Late Charges. Community Assessments which are not paid when due shall be delinquent on said due date ("Delinquency Date"). If any such Community Assessment is not paid within ten (10) days after the Delinquency Date or such earlier date as may be established by the Community Board upon prior notice to the Members, a late charge equal to Twenty-Five Dollars (\$25.00) or one-tenth (1/10th) of the total amount of delinquent Community Assessment or installment, whichever is greater (provided that the late charge may not be imposed more than once for the same delinquent payment), interest charge of eighteen percent (18%) per annum and reasonable costs of collection, including attorneys' fees, shall be levied by the Community Board provided, however, that upon any amendments to Utah law or statute regulating the amount of the late charge, the late charge shall be adjusted to comply with the provisions of any such statute or law. In the event of a default or defaults in payment of any Community Assessment and in addition to any other remedies provided herein or by law, the Community Association may enforce each such obligation set forth below.

6.13.2. Action Against Owner. Notwithstanding the provisions of Section 6.9., the Community Association may bring a suit or suits at law to enforce such Community Assessment obligation. Any judgment rendered in any such action shall include a sum for reasonable attorneys' fees in such amount that the Court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Community Association by any authorized officer thereof to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

6.13.3. Foreclosure of Lien. Within thirty (30) days after the delinquency of any Community Assessment, the Community Association shall furnish a notice of delinquent assessment to the defaulting Owner, which notice shall state the date of the delinquency, the amount of the delinquency, and the interest and late fees charged for such delinquency, and make a demand for payment thereof. If such delinquency, late fees and interest are not paid within ten (10) days after delivery of such notice, of the Community Association may proceed to collect the same under applicable Utah law.

6.13.4. Cure of Default. Upon the timely curing of any default for which a Notice of Lien was recorded by the Community Association, officers of the Community Association, officers of the Community Association or a managing agent appointed by the Community Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a reasonable fee, to be determined by the Community Association, to cover the cost of preparing and filing or recording such release together with a

payment of such other costs, interest or fees as shall have been incurred.

6.13.5. Non-Exclusive Remedy. The Community Assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution of all other rights and remedies which the Community Association and its assigns may have hereunder and by law, including a suit to recover a monetary judgment for unpaid Community Assessment as above provided.

6.13.6. Delegation of Authority. Each Owner, with the exception of the Administrator of Veteran Affairs, an Officer of the United States, hereby vests in and irrevocably delegates to the Community Board or its duly authorized representatives the right and power to bring all actions at law or equity, and lien foreclosures, whether judicially or by power of sale, or otherwise, against any Member or Owner for the collection of delinquent Community Assessments in accordance herewith, and hereby expressly waives any objection to the enforcement in accordance with this Declaration of the obligation to pay Community Assessments as set forth in this Declaration.

6.14. Neighborhood Assessment or Commercial Property Owners Association Assessment. With consent of any Neighborhood Association or Commercial Property Owners Association, which shall not be unreasonably withheld, the Community Association is empowered to, but shall not have the duty, to collect, enforce and otherwise administer the Neighborhood Assessments of any and all Neighborhoods or Commercial Assessments established within Birkhill such that Community Assessments and Neighborhood Assessments or Commercial Assessments, as applicable, may be collected contemporaneously. The Community Board shall disburse funds collected on behalf of any such Neighborhood Association or Commercial Property Owners Association as promptly as possible. The Community Board may not charge for any such collection other than any actual additional costs for such collection that are charged to the Community Association. If any Neighborhood Association or Commercial Property Owners Association fails to levy or collect Neighborhood Assessments or fails to duly operate and maintain the Neighborhood or land relating to the Commercial Property Owners Association to the standards established for Birkhill, the Community Association may elect to preempt the rights of the Neighborhood Association or Commercial Property Owners Association without the consent of the Neighborhood Association or Commercial Property Owners Association and may fix, levy, collect and enforce said Neighborhood Assessments or Commercial Assessments and arrange for such operation and maintenance provided that fifteen (15) days prior written notice of such election is given to the Neighborhood Association or Commercial Property Owners Association. Such preemption regarding Neighborhood Assessments or assessments of the Commercial Property Owners Association and maintenance shall require a vote of at least two-thirds (2/3rds) of the Community Board. Any Neighborhood Assessments or Commercial Assessments collected under such preemption by the Community Association shall be used solely for the purposes stated in the governing documents of the Neighborhood or Commercial Property Owners Association, as applicable. The Community Board may retain the funds collected pursuant to this provision and directly disburse such funds to assure that it is being properly operated and maintained. A Neighborhood Association or Commercial Property Owners Association may not levy or collect any Neighborhood Assessments or Commercial Assessments, as the case may be, during the period in which the

Community Association has preempted its rights to so levy or collect Neighborhood Assessments or Commercial Assessments, as applicable. The preemption shall expire at the end of the fiscal year of the Neighborhood Association or Commercial Property Owners Association in which the preemption occurred. The Community Association may include in any such preempted Neighborhood's Assessment or Commercial Assessments a reasonable amount for reimbursement of direct costs of administration and collection of such preempted Neighborhood Assessment or Commercial Assessments.

6.15. Subordination of the Lien to Mortgages. The lien of the Community Assessments and Neighborhood Assessments or Commercial Assessments provided for herein shall be subordinate to the lien of any First Mortgage recorded prior to the lien of the Community Association. The sale or transfer of any Lot shall not affect any Community Assessment lien or Neighborhood Assessment lien or Commercial Property Owners Association lien. The lien for unpaid Community Assessments shall be prior to any lien for an unpaid Neighborhood Assessment or Commercial Assessment unless the Neighborhood Association or Commercial Property Owners Association elects to pay the Community Assessment lien and thereafter include any amounts paid by the Neighborhood Association or Commercial Property Owners Association to the Community Association in its Neighborhood Association lien or Commercial Property Owners Association lien, as the case may be. Nothing in this Section shall be construed to release any Owner from his personal obligation to pay for any Community Assessment or Neighborhood Assessment or Commercial Assessment levied pursuant to this Declaration or any governing documents for each Neighborhood Association or Commercial Property Owners Association Restrictions (as described in Section 9.1. of this Declaration), if applicable.

6.16. Community Association Accounts.

6.16.1. Operating Statements. The Community Board shall prepare or cause to be prepared and distribute to each Neighborhood Association, and each Owner, copies of the budgets, balance sheets, operating statement and other information described below.

(a) Budget. The Community Board shall prepare a pro-forma operating statement ("Budget"), for each fiscal year, which Budget shall be distributed to each Owner not less than thirty (30) days prior to the beginning of each fiscal year. The Budget shall contain the following information:

- (i) estimated revenue and expenses on an accrual or cash basis;
- (ii) the amount of the total cash reserves of the Community Association currently available for replacement or major repair of common facilities and for contingencies;
- (iii) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of any Community Common Area for which the Community Association is responsible; and

The Budget shall include reserves for major repairs and

replacement for each operational facility and Improvement located on any Community Common Area. The Budget for the initial fiscal year shall be prorated for the balance of the year remaining. The Community Board shall assess the total operating expenses determined by the Budget to all assessable Owners as a Regular Assessment, allocated as specified in the Section of this Article entitled "Allocation of Community Assessments".

(b) Annual Report. An annual report shall be distributed within one hundred twenty (120) days after the close of each fiscal year which annual report shall consist of the following: (i) a balance sheet as of the end of the fiscal year; (ii) an operating (income) statement for the fiscal year, (iii) a statement of changes in financial position for the fiscal year and (iv) any information required to be reported under any successor statute or law. The annual report shall be prepared by an independent accountant for any fiscal year in which the gross income to the Community Association exceeds Fifty Thousand Dollars (\$50,000.00). If the report is not prepared by an independent accountant, it shall be accompanied by a certificate of an authorized officer of the Community Association that the statements were prepared without audit from the books and records of the Community Association.

(c) Operating Statement. A balance sheet prepared as of an accounting date ("Accounting Date") which shall be the last day of the month closest in time to six (6) months from the first sale of a Lot to an Owner other than Declarant or Builders, and an operating statement which has been prepared for the period from the date of the first sale of a Lot to an Owner other than Declarant or a Builder to the Accounting Date shall be distributed within sixty (60) days after said Accounting Date. Said operating statement for the first six (6) months accounting period may include a schedule of assessments received or receivable, itemized by Lot number and by name of the person or entity assessed.

6.16.2. Review of Accounts. The Community Board shall, not less frequently than on an annual basis, perform the following:

(a) cause a current reconciliation of the Community Association's operating accounts and reserve accounts to be made and review the same;

(b) review the current year's actual reserve revenues and expenses compared to the current year's Budget;

(c) review the most current account statements prepared by the financial institution where the Community Association has its Maintenance and Operation Fund and Reserve Fund; and

(d) review an income and expense statement for the Community Association's Maintenance and Operation Fund and Reserve Fund.

6.16.3. Audit. Any Builder, Neighborhood Association or Commercial Property Owners Association or Mortgagee may, upon written request, at any reasonable time, and at the sole cost and expense paid in advance by the party requesting an audit or inspection, cause an audit or inspection to be made of the books and records of the Community Association,

provided, however, that not more than a total of one (1) such audits may be performed in any fiscal year. The Community Board shall obtain such other audits as required by the Community Bylaws.

6.16.4. Notice to Mortgagees. Copies of each such balance sheet, operating statement and annual report for the Community Association shall be mailed to any Mortgagee who has requested in writing that such copies be sent to it.

6.17. Inspection of Association Books and Records.

6.17.1. Availability of Association Books and Records. Any membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, Owners, the Community Board and committees of the Community Board of the Association, shall be made available for inspection and copying by any Member or Owner or the Member's or Owner's duly appointed representative, or any Mortgagee, during normal business hours and for a purpose reasonable related to his or her interest as a Member, at the office of the Community Association or at such other place within Birkhill as the Community Board prescribes.

6.17.2. Community Board Rules Regarding Inspection of Records. The Community Board shall establish by resolution reasonable rules with respect to:

(a) notice to be given to the custodian of the records of the Community Association by the Member, Owner, representative or Mortgagee desiring to make an inspection:

(b) hours and days of the week when an inspection may be made;

(c) payment of the cost of reproducing copies of documents requested by a Member, Owner, or by a representative or Mortgagee; and

(d) cost of personnel to accomplish inspection and copying of the foregoing.

6.17.3. Director's Rights. Every director of the Community Association shall have the absolute right during normal business hours time to inspect all books, records and documents of the Community Association and the physical properties owned or controlled by the Community Association. The right of inspection by a director includes the right to make one (1) set of extracts and copies of documents annually at not charge to the director.

ARTICLE VII
ARCHITECTURAL CONTROL

7.1. Scope. Except as otherwise provided in this Declaration, there shall be no excavation, construction, building, landscaping, development or other Improvements situated within Birkhill without compliance with this Article. The provisions of this Article shall preempt and supersede any inconsistent provision of any rules or restrictions of any

Neighborhood Association or Commercial Property Owners Association to the extent that any Neighborhood Declaration or Neighborhood Rules and Regulations are in conflict with the provisions of this Declaration; provided, however, that the provisions of the Zoning Laws are incorporated herein by reference, and this Declaration shall be subject to the operation and effect of the Zoning Laws.

7.2. Exemptions. The following exemptions shall apply as provided in Section 7.3. below.

7.3. Declarant Exemption. Any building, Structure, Improvement, grading, fence, wall or landscaping erected or installed by the Declarant anywhere in Birkhill or any personal property or fixture which is annexed thereto shall not be subject to the provisions of this Article VII.

7.3.1. Builder Exemption. A Builder shall be exempt from the provisions of this Article VII only if the Improvements or Structure proposed to be constructed by said Builder have been approved in writing by Declarant.

7.3.2. Commercial Property Owners Exemption. Commercial Property Owners shall be exempt from the provisions of this Article VII as to any specific Improvements or Structures or construction or building standards, which have been approved in writing by Declarant or in a Supplementary Declaration and excluding those tenant improvements unless such improvements affect the exterior of any building on the Property.

7.4. Appointment of Architectural Committee. There shall be one (1) Architectural Committee for the construction of all Improvements in Birkhill and its members shall be appointed and the Architectural Committee shall be operated by the Birkhill Community Association, Inc. Upon the annexation of an Annexable Property within Birkhill, the Annexed Property shall be subject to the provisions of this Article. The Architectural Committee shall consist of three (3) or more persons who shall initially be appointed by the Declarant. Initially, the members of the Architectural Committee for Birkhill shall be John Aldous, Dean Regazzi and David Irwin. The members serving as the Architectural Committee appointed by the Declarant need not be Members of the Community Association or an Owner. The Declarant shall retain the sole right to appoint, augment or replace the entity or members of the Architectural Committee until the expiration of the Development Period; provided that Declarant may, at its sole option, transfer this right to appoint the Architectural Committee to the Community Board by written notice thereof prior to the end of the Development Period. Thereafter, the right to appoint, augment or replace the entity or members of the Architectural Committee shall automatically be transferred to the Community Board or, if Declarant so decides, such rights may be transferred to the board of directors of Neighborhoods; provided, however, that so long as Declarant owns any of the real property subject to this Declaration then at least one member of the Architectural Committee may, at Declarant's election, be appointed by Declarant. Declarant shall be exclusively entitled to appoint any party or persons to exercise all rights and powers of the Architectural Committee under this Declaration for the Property until the end of the Development Period and at such time such rights and powers will be expressly assigned in writing by the Declarant. Each Owner of a Lot shall be deemed to covenant and agree that neither initial construction of Improvements nor any exterior addition,

change or alteration to existing Improvements shall be commenced within the Owner's Unit until such construction, addition, change or alteration is approved in accordance with this Article VII. As the developer and initial owner of the Property, the Declarant has a significant and substantial interest in ensuring that all Improvements are consistent with the overall Community plan and that the Improvements do not have an adverse impact upon the Declarant's ongoing ability to market, sell, and/or lease all or any portion of the Property. Accordingly, in its exercise of the rights and powers of the Architectural Committee, it shall have the right to approve or disapprove any plans and specifications for Improvements in its sole and absolute discretion. Additionally, the Declarant shall have authority to modify the plan of development for the Community and to change, add to, eliminate or otherwise modify the design, views, size, and location of the Neighborhoods and Property in the Community. Until termination of the Development Period, Declarant may, in its sole discretion, revoke any prior assignment of all or part of the rights and powers under this Article VII that the Declarant may have assigned to the Architectural Committee or other designee. Upon such time that the Declarant may revoke any previously assigned rights and powers under this Article VII, Declarant shall automatically have the authority to exercise such rights and powers.

Each applicant acknowledges that the composition of the Architectural Committee will change from time to time and that decisions regarding aesthetic matters and interpretation and application of the Architectural Specifications applicable to the applicant's Lot may vary from time to time. In addition, each applicant acknowledges that it may not always be possible to identify objectionable features of proposed Improvements until the Improvements are completed, in which case it may be unreasonable to require changes to Improvements previously approved; however, the Architectural Committee may refuse to approve similar Improvements in the future. Approval of Improvements for any particular applicant or Lot shall not be deemed a waiver of the right to withhold approval as to any similar Improvements subsequently submitted for approval.

7.5. Resignations. Any member or alternate member of the Architectural Committee may at any time resign from the Architectural Committee upon written notice delivered to the Declarant or to the Community Board, whichever then has the right to appoint members.

7.6. Vacancies. Vacancies on an Architectural Committee, however caused, shall be filled by the Declarant or the Community Board, whichever then has the power to appoint members.

7.7. Duties. It shall be the duty of the Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof, to administer any Architectural Specifications promulgated by the Community Board, to perform other duties delegated to it by the Community Association, to ensure that any Improvements constructed within Birkhill conform to plans approved by the Architectural Committee, and to carry out all other duties imposed upon it by this Declaration. The Architectural Committee may establish reasonable rules for the submission of plans and specifications including, without limitation, the number of sets of plans to be submitted; and may assess a fee in connection with review of plans. The Architectural Committee, in its own name or on behalf of the Community Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and

unapproved construction of Improvements within Birkhill or any portion thereof. Notwithstanding the foregoing, the Architectural Committee may delegate its plan review responsibilities to one or more members of the Architectural Committee. Any such delegation must be made in writing and filed with the Community Board. Upon such delegation, the approval or disapproval of plans and specifications by such person shall be equivalent to approval or disapproval by the entire Architectural Committee. Unless any such rules regarding submission of plans are complied with, such plans and specifications shall be deemed not submitted.

7.8. Address. The address of the Architectural Committee shall be the principal office of the Community Association or any other place as may be designated by the Community Board pursuant to the Community Bylaws. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Specifications, if any, shall be kept.

7.9. Effect of Architectural Committee. The establishment of an Architectural Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter, modify or otherwise have control over the Owners' respective Lot(s) and the Dwellings, Commercial Units and other Improvements situated thereon, as may otherwise be specified in this Declaration, the Community Bylaws or any Community Association Rules.

7.10. Meetings. The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. Unless otherwise provided for herein, the vote or written consent of a majority of the members of an Architectural Committee shall constitute an act by such Architectural Committee unless the unanimous decision of its members is otherwise required by this Declaration. The members of the Architectural Committee shall be entitled to reimbursement for reasonable expenses incurred by them in the performance of any Architectural Committee function, but shall otherwise receive no compensation for services rendered unless agreed to by seventy-five percent (75%) or more of the Birkhill Voting Powers.

7.11. Approval and Conformity of Plans.

7.11.1 No Improvement of any kind shall be commenced, erected or maintained upon the Property until a design review application ("Application") is submitted to and approved by the Architectural Committee. The Application form will be provided by the Architectural Committee and may change from time to time. The Application shall include detailed plans showing the site layout, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation, and other relevant features of the Improvements, as required by the Architectural Committee and any Architectural Specifications applicable to the applicant's Lot. The Architectural Committee may also require the submission of such additional information as it deems necessary to consider any Application. The Architectural Committee may consider, but shall not be restricted to consideration of, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, compliance with the general intent of applicable

Architectural Specifications and architectural merit. In many instances, decisions will be based solely on aesthetic considerations and each applicant acknowledges that determinations as to such matters may be highly subjective and opinions may vary as to the desirability and/or attractiveness of particular Improvements.

7.11.2 Limitation on Improvements. No Improvements shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change in the exterior of any Dwelling, Commercial Unit, Structure or other Improvement, unless plans and specifications therefor have been submitted to and approved by the appropriate Architectural Committee in accordance with the procedures set forth in this Declaration. Repainting of the exterior of Dwelling or Commercial Unit, the color of which has been previously approved by the Architectural Committee, shall not require another approval of the Architectural Committee.

7.11.3 Time Limitations. The Architectural Specifications may set forth time limitations for the completion of any Improvements for which approval is required pursuant to the Architectural Specifications.

7.11.4 Limitations; Criteria and Review Fees. The Architectural Specifications may include such other limitations and restrictions as the Community Board in its reasonable discretion shall adopt including, without limitation, regulations of the following: construction, reconstruction, exterior addition, change or alteration to or the maintenance of any building, Structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of any Dwelling, Commercial Unit, Structure or other Improvements of any kind. The Architectural Committee may consider, but shall not be restricted to consideration of, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, compliance with the general intent of applicable Architectural Specifications and architectural merit. In many instances, decisions will be based solely on aesthetic considerations and each applicant acknowledges that determinations as to such matters may be highly subjective and opinions may vary as to the desirability and/or attractiveness of particular Improvements. The Architectural Committee may (i) establish and charge reasonable fees for review of Applications hereunder; (ii) retain architects, engineers or other design professionals as reasonably necessary to assist in its review of Applications; and (iii) require reimbursement by the applicant of fees charged by any architect, engineers or other design professionals.

7.11.5 Time Period for Review of Plans and Specifications. If the Architectural Committee fails to approve or disapprove such plans and specifications within ninety (90) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by such Architectural Committee, the Owner requesting said approval may submit a written notice by certified mail, return receipt requested, to the Architectural Committee advising the Architectural Committee of its failure to act. If the Architectural Committee fails to approve or disapprove any such plans and specifications within thirty (30) days after the receipt of said notice from such Owner, said plans shall be deemed approved. In addition, until the termination of the Development Period, Declarant may, in its sole discretion, veto any decision made pursuant to this Article VII by the Architectural Committee. The Architectural Committee shall

provide Declarant written notice of each Application it approves within three (3) business days after such approval. Declarant shall have ten (10) calendar days after receipt of such notice to veto the approved Application by written notice to the applicant and/or to the Architectural Committee, as applicable.

Construction of Improvements in accordance with the approved application shall be completed within twelve (12) months following approval of the Application, or within such greater or lesser periods as the Architectural Committee may specify in its approval. In the event construction is not completed within the period aforesaid, then approval of the plans and specifications shall be conclusively deemed withdrawn and the applicant must re-submit an Application and otherwise comply with the requirements of this Article VII. There shall be no material deviations from plans and specifications approved by the Architectural Committee without the prior consent in writing of the Architectural Committee.

7.12. Appeal. If plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Community Board. The written request must be received by the Community Board not more than ten (10) days following the final decision of the Architectural Committee. The Community Board shall submit such request to the Architectural Committee for review, whose written recommendations will be submitted to the Community Board. Within forty-five (45) days following receipt of the request for appeal, the Community Board shall render its written decision in its discretion and shall be final. The failure of the Community Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

7.13. Waivers and Variances. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval. In addition, the Architectural Committee in its sole discretion may, but shall not be required to, authorize waivers or variances from compliance with any Architectural Specifications or for nonconforming Improvements when circumstances such as topography, natural obstructions, aesthetic or environmental considerations, architectural merit, or other reasonable considerations warrant such a waiver or variance. Such waivers and variances shall be granted only if and when the Architectural Committee determines that some or all of the foregoing circumstances warrant a waiver or variance. No applicant shall have any right to demand or obtain a waiver or variance. Except for a waiver or variance authorized by the Declarant, no waiver or variance may (i) be effective unless in writing, (ii) be contrary to this Declaration, or (iii) be inconsistent with the goals or objectives of the Declarant. In no event shall any waiver or variance estop the Architectural Committee from denying a waiver or variance in other circumstances.

7.14. Estoppel Certificate. Within forty-five (45) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Community Association of a reasonable fee, the Architectural Committee shall provide an estoppel

certificate, executed by any two (2) of its members, certifying (with respect to any Lot of said Owner) that as of the date thereof either; (a) all Improvements made and other work done upon or within said Lot comply with the provisions of this Article VII, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in said Lot through him, shall be entitled to rely on said certificate with respect to the matter therein set forth, such matters being conclusive as between the Community Association, Declarant and all Owners and such persons deriving any interest through them.

7.15. Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Community Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval or any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether pursuant to approved plans, drawings, and specifications, (c) the development of any property within Birkhill, or (d) the execution and filing of an estoppel certificate pursuant to Section 7.14 above, whether or not the facts therein are correct, provided that such member has acted in good faith on the basis of such information as may be possessed by him. Any plans and specifications submitted to the Architectural Committee are not approved by the Architectural Committee for architectural or engineering design, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Community Association, the Community Board nor the Declarant assumes liability thereof or for any defect in any Structure constructed from such plans and specifications. Without in any way limiting the generality of the foregoing, the Architectural Committee, or any member thereof, may, but is not required to consult with or hear the views of any Member of the Community Association with respect to any plans, drawings, specifications or any other proposal submitted to the Architectural Committee.

7.16. Governmental Requirements. The Application to and the review and approval by the Architectural Committee of any proposals, plans or other submittals shall in on way be deemed to be in satisfaction of or in compliance with any Zoning Laws, building permit process or any other governmental requirements, the responsibility for which shall be solely with the respective Owner.

7.17. Architectural Specifications. Declarant may, from time to time during the Development Period, and in its absolute discretion, adopt and establish Architectural Specifications for the Property and/or for each Neighborhood, and/or Commercial Property within the Property. Any Architectural Specifications for a particular Neighborhood shall be made a part of and recorded with a declaration for any Neighborhood and/or Commercial Property, as applicable. The Architectural Specifications may be established to provide guidance to Owners, Builders and contractors regarding matters deemed to be of relevance or importance to the Architectural Committee in considering Applications for architectural approval. Such Architectural Specifications shall not be the exclusive basis for decisions hereunder and compliance with the Architectural Specifications shall not guarantee approval of an Application. Architectural Specifications may contain general provisions applicable to all Lots, as well as specific provisions, which vary from one Lot, depending upon the location,

type of construction or use, and unique characteristics of the Lots. Any Architectural Specifications adopted pursuant to this Article VII shall be subject to modification and amendment from time to time in the sole discretion of Declarant during the Development Period and thereafter, by the Architectural Committee. Modifications and amendments to Architectural Specifications shall not apply to or require modifications to or removal of Improvements previously approved once such Improvements have commenced. However, modifications or amendments to Architectural Specifications may prohibit an exact replacement of a previously approved Improvement. Any subsequent removal or alteration of any previously approved Improvements shall be subject to the Architectural Specifications in existence at the time of such subsequent removal or alteration. There shall be no limitation on the scope of modifications or amendments to any Architectural Specifications. All modifications and amendments to Architectural Specifications shall be published in Association newsletters, electronic bulletin boards, by e-mail, community website or by other means calculated to give reasonable notice to the Owners covered by such Architectural Specifications; provided, however, that the failure of any Owner to actually receive any Architectural Specifications or modification or amendment to any Architectural Specifications shall not affect the validity or enforceability against such Owner of any such Architectural Specifications or modification or amendment thereto. The Architectural Committee shall make copies of Architectural Specifications available to Owners, builders and contractors and may charge a reasonable fee to cover the costs of providing the Architectural Specifications. A copy of the initial Architectural Specifications applicable to the entire Property is attached hereto as Exhibit "D".

The Architectural Committee may from time to time adopt and promulgate procedures and requirements for the submission of Applications to the Architectural Committee, including, without limitation, requirements regarding the number of copies, the content, scale and detail of the plans and specifications to be included with such Applications, and the identification of any required supporting materials; provided, however, that such application procedures shall not contravene any specific requirement established by this Declaration. Any Application procedures adopted pursuant to this Article VII shall be subject to modification and amendment from time to time in the sole discretion of the Architectural Committee. Such Application procedures shall not be construed as a waiver of the provisions of this Article VII or any other provision or requirement of this Declaration. Any Architectural Specifications or Application procedures promulgated by the Architectural Committee shall be subject to the Declarant's prior approval during the Development Period.

7.18. Enforcement. Any Improvements constructed in material violation of this Article VII or in a manner inconsistent with an approved Application shall be deemed to be nonconforming. Upon written request from the Architectural Committee, the defaulting Owner shall, at its own cost and expense, promptly either remove any nonconforming Improvement and restore the Lot to substantially the same condition that existed prior to the installation of the nonconforming Improvement or bring the nonconforming Improvement into compliance with the approved Application, as applicable. If an Owner fails to remove any nonconforming Improvement and restore its Lot or bring the nonconforming Improvement into compliance with the approved Application, as applicable, the Architectural Committee shall have the right to enforce this Article VII and remove the violation and restore the Lot to substantially the same condition as previously existed. If the Architectural Committee undertakes the foregoing self-

help remedy, such action shall not be deemed a trespass. Upon demand by the Architectural Committee, the Owner of the Lot shall promptly reimburse all costs incurred in connection with enforcement under this Section 7.18 and such costs shall be collectible in the same manner as Assessments and may become a lien upon such Lot, provided the requirements of applicable Utah law have been satisfied. The Architectural Committee may preclude any contractor, subcontractor, agent, employee or other invitee of any Owner who fails to comply with the terms and provisions of this Article VII and the applicable Architectural Specifications from continuing any further activities on the Lot or any other portion of the Property.

Upon assignment or termination of any or all of the rights of the Declarant under this Article VII, if the Architectural Committee fails to take enforcement action within thirty (30) calendar days after receipt of a written demand from the Declarant identifying the violator and/or specifying the nature of the violation, then the Declarant may undertake any appropriate enforcement action and the Association shall reimburse the Declarant for all costs reasonably incurred by the Declarant in taking such enforcement action with respect to such violation.

Neither the Architectural Committee, nor any of its members, officers, directors, employees, agents, or representatives shall be held liable to any Owner or any other person or entity for exercising the rights granted by this Article VII.

ARTICLE VIII PROPERTY RIGHTS; COMMUNITY COMMON AREA

8.1. Ownership of Common Area. Any Community Common Area shall be owned or held by lease, license or easement by the Community Association. Notwithstanding the foregoing, Declarant, and its agents and employees, shall have the right to enter any Community Common Area to complete the construction of any landscaping or other Improvements to be installed on the Neighborhood Common Area or Commercial Common Area by the Declarant or Community Association. Exterior Common Area located in Neighborhood Common Area or Commercial Common Area, such as paths sidewalks and fields, but not including (i) limited common areas which are designated for the use and benefit of less than all of the members of the Neighborhood Association or Commercial Property Owners Association, or (ii) recreational amenities which are owned by the Neighborhood Association or Commercial Property Owners Association such as swimming pools, may be used by Members subject to reasonable rules which may be adopted by the Neighborhood Association or Commercial Property Owners Association and are subject to approval by the Community Board. Also, notwithstanding the foregoing, if any of Declarant's subcontractors are contractually obligated to maintain the landscaping and/or other Improvements on any Community Common Area, such maintenance shall not be assumed by the Community Association until the termination of such contractual obligation. Neither such construction nor such maintenance shall in any way postpone the commencement of Community Assessments pursuant to this Article or entitle a Member to claim any offset or reduction in the amount of such Community Assessments.

8.2. Permitted Uses of Community Common Area. Any Community Common Area

shall be used by the Owners, their families, tenants, agents, guests, patrons or invitees for the common interest and benefit of Birkhill.

8.3. Owners' Right to Use Community Common Area. Every Owner shall have a nonexclusive easement for use in and to any Community Common Area and such right shall be appurtenant to and shall pass with the title to each portion of the Property, subject to the following:

8.3.1. Limits on Users of Community Common Area. Except as provided herein, the right of the Community Association to limit the use of portions of any Community Common Area solely to those Owners who own Lots, and to limit or permit usage thereof by non-Members as the Community Association deems appropriate. The Community Association may limit the number of guests, invitees, tenants, patrons or agents of Owners using any Community Common Area, other than as set forth herein.

8.3.2. Establish Rules. The right of the Community Association to establish reasonable rules and regulations pertaining to the use of any Community Common Area.

8.3.3. Restrict Use of Community Common Area. The right of the Community Association to limit and restrict the use of any Community Common Area and portions thereof during specific times or on specific dates, and to prohibit all use and access to portions of any Community Common Area as deemed necessary by the Community Board for health, safety, welfare, privacy or security purposes.

8.3.4. Suspend Right to Use Community Common Area. The right of the Community Association to suspend the right to use the facilities located on any Community Common Area by an Owner for any period during which any Community Assessment against such Owner's Lot remains unpaid or delinquent or for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Community Association, the Community Bylaws or this Declaration; provided, however, that any suspension of such right to use the facilities located on any Community Common Area, except for failure to pay Community Assessments, shall be made only by the Community Association or duly appointed committee thereof, after notice and hearing given and held in accordance with the Community Bylaws. In addition, the right of an Owner to use Community Common Area which provides pedestrian or vehicular access to his or her Unit shall not be suspended hereunder.

8.3.5. Dedication. The right of the Community Association to dedicate or transfer all or any part of any Community Common Area to any public agency, authority or utility or other entity, which dedication or transfer shall be subject to the provisions of this Declaration and such other conditions as the Community Association deems proper.

8.3.6. Levy Charges. The rights of the Community Association to levy a charge for the use of any Community Common Area (except the streets, sidewalks, and other routes for ingress or egress).

8.3.7. Easements. The rights of Owners, as provided in the Article entitled "Easements", to exclusive easements appurtenant to the various Lots for encroachments on any

Community Common Area for Improvements originally constructed by Declarant and/or Builders.

8.3.8. Establish Special Assessment District. The right of the Community Association to establish, in cooperation with Murray City, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Community Association, together with the right of the Community Association to convey, lease or otherwise transfer, subject to the provisions of this Declaration, all or any portion of any Community Common Area to said district.

8.3.9. Establish Open Space Easements. The right of the Community Association to establish such open space easements as are deemed necessary by the Community Association over portions of any Community Common Area.

8.3.10. Borrow Money. The right of the Community Association, in accordance with the Community Articles and Community Bylaws, to borrow money for the purpose of improving, replacing, restoring or expanding any Community Common Area or adding new Community Common Area; to mortgage said property, provided that the prior affirmative vote or written approval of majority of each class of Members has been obtained to mortgage said property; and provided further that the rights of such Mortgagees shall be subordinated to the rights of the Members. In the event of a default upon any such Mortgage of any Community Common Area, the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued use of the Members and, if necessary, to open the use of any Community Common Area to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Community Association and all rights of the Members hereunder shall be fully restored.

8.3.11. Use by Public. The right of the Community Association to allow use of any Community Common Area by members of the public, pursuant to any requirements imposed by Salt Lake County or Murray City.

8.3.12. Sections 8.3.1. through and including 8.3.9. above shall not apply to those areas of the Community Common Area which may be subject to conservation easements with the City of Murray.

8.4. Alteration of Improvements on Community Common Area. Other than work performed by Declarant in connection with development of any Community Common Area, no work which in any way alters any portion of any Community Common Area from its natural or existing state after the date such Community Common Area was conveyed by Declarant or Builders to the Community Association shall be made or done except by the Community Association or its agent. The Community Association shall reconstruct, replace or refinish any Improvement or portion thereof situated within any Community Common Area. Such work shall be in accordance with original design, finish or standard of construction of such Improvement when such Community Common Area was conveyed by Declarant or Builder to the Community Association and which was approved by Murray City, or, in a different manner, if approved by

Murray City or other government agency having jurisdiction thereof. Additionally, the Community Association shall maintain and landscape any Community Common Area, except for any assessment districts created pursuant to the provisions of 8.3.8., in accordance with the provisions of the Article hereof entitled, "Repair and Maintenance" and as the Community Association deems necessary for the health, welfare and safety of the Owners and guests subject to the jurisdiction of the Community Association.

8.5. Delegation of Use. Any Owner may delegate his right of use of any Community Common Area to the members of his family or his tenants who reside on his Lot, or to his guests, subject to rules and regulations adopted by the Board and any applicable provisions of the Community Bylaws.

8.6. Waiver of Use. No Owner may exempt himself from liability for Community Assessments duly levied by the Community Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use of any Community Common Area, or the abandonment of his Lot.

8.7. Non-Severability. In no event shall an Owner sell or otherwise sever or separate the interest the Owner may have in any Community Common Area, Neighborhood Common Area or Commercial Common Area from his ownership interest in a Lot.

ARTICLE IX USE RESTRICTIONS FOR BIRKHILL

9.1. Neighborhood or Commercial Property Owners Association Restrictions. Each Neighborhood or Commercial Property Owners Association within Birkhill shall have a Neighborhood Declaration or Commercial Declaration, which shall specify the procedures for operation and management of the Neighborhood or Commercial Property and establish the uses permitted and prohibited on or about the Lots within the Neighborhood or Commercial Property and the Neighborhood Common Area or Commercial Common Area (collectively, the "Restrictions"). Each Neighborhood Association and Commercial Property Owners Association shall be managed by a professional management company which shall be determined by the Neighborhood Board or Commercial Board, as applicable, from time to time; provided, however, Declarant shall retain the professional management company to manage the Community Association, as well as each Neighborhood Association and Commercial Property Owners Association until such time as Declarant is no longer selling any of the Property and/or leasing any portion of the land subjected to this Declaration. There shall be no amendment of the provisions in any such Neighborhood Declaration or Commercial Declaration, except with written consent of the Community Board. The Restrictions shall be established and recorded in the Official Records by the Declarant and Builder of the Neighborhood or Commercial Property prior to the settlement and/or transfer of legal title to the first Lot or portion of area located within the Neighborhood or Commercial Property to any Owner other than Builder. Declarant (and Builder if Builder owns any one (1) or more Lots in the Neighborhood or Commercial Property) and any Mortgagee shall execute the Neighborhood Declaration or Commercial Declaration. In addition, as provided in Article VII herein, the Declarant, may (but shall not be obligated to) adopt and establish Architectural Specifications for each Neighborhood or

Commercial Property, and if so, such Architectural Specifications shall be a part of the Restrictions. The Community Association is expressly made a third (3rd) party beneficiary to each Neighborhood Declaration and Commercial Declaration. The Community Association shall have the right to enforce any provisions of any Neighborhood Declaration or Commercial Declaration, to the extent that the Community Association deems it necessary to protect the overall interest in Birkhill. The Community Association shall not, however, in any event, be considered as having a duty or obligation to enforce any particular provisions of any particular Neighborhood Declaration or Commercial Declaration.

9.2. Permitted Uses and Limitations. The following use restrictions shall apply in Birkhill, except as set forth herein.

9.2.1. Residential Use. All Lots, except Common Area Lots, Neighborhood Common Area and Commercial Property and except as set forth herein, shall be used for no purpose other than residential purposes.

It is anticipated that certain portions of the Property will have "Live-Work Units" and specifically, some of the Live-Work Units may be located within mixed-use buildings containing residential, retail and/or commercial uses or may be located elsewhere on the Property. The Live-Work Units are shown on the Plats as may be amended from time to time. The Live-Work Units shall not be subject to any use restrictions of this Declaration which would in any manner impede or otherwise be inconsistent with the nature and operation of the Live-Work Units due to their residential and commercial purposes. The provisions of this Section 9.2.1. may not be amended without the written consent of Declarant during the Development Period, and thereafter, by all Owners of the affected Live-Work Units. Further, the Owner of any Live-Work Unit must be in full compliance with any applicable Murray City regulations, Zoning Laws and any other governmental regulations or laws, including obtaining the necessary permits for commercial or retail use.

9.2.2. No Commercial Use. Except as otherwise permitted in this Declaration, no Residential Property shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes, excluding, however, such activities by Declarant which are in connection with the development, sales, marketing or related matters for the Property.

9.2.3. Rental of Dwelling or Commercial Unit. An Owner shall be entitled to rent the Dwelling or Commercial Unit situated on the Owner's Lot, subject to the restrictions contained in this Declaration, including, but not limited to, Subsection 9.2.1. Any rental or leasing agreement shall be in writing, shall be made only to natural persons who actually reside in the Dwelling or occupy the Commercial Unit, shall provide that the lease or rental is subject to this Declaration, the Community Bylaws, Community Articles and the Community Association Rules and shall provide that any failure to comply with any provisions of this Declaration, the Community Bylaws, Community Articles or Community Association Rules shall be a default under the terms of the rental or lease agreement. No Owner may lease such Owner's Lot or Improvements thereon for hotel, motel or transient purposes. Any lease which is either for a period of fewer than six (6) months or pursuant to which the lessor provides any services

normally associated with a hotel, shall be deemed to be for transient or hotel purposes. Any Owner who shall lease his or her Dwelling or Commercial Unit shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Community Articles, Community Bylaws and the Community Association Rules; provided, however, the obligation of the foregoing sentence shall not apply to the Declarant. Further, in the event of any tenant becomes a source of nuisance to the Community, then the governing Neighborhood Association or Commercial Property Owners Association and/or Commercial Property Owners shall have the right, but not the obligation, to institute legal proceedings to evict the tenant, provided that prior to such proceedings, the Community Association, by and through the Community Board, has afforded the Owner of the affected Dwelling at least ten (10) days' prior written notice to cure such nuisance.

9.2.4. Signs. No sign or billboard of any kind shall be displayed to the public view on any Lot, Community Common Area, Neighborhood Common Area or Commercial Common Area with the following exceptions:

(a) signs as may be required by legal proceedings, or the prohibition of which is precluded by law;

(b) signs as may be used by Declarant or Builder or its sales agents in connection with the development of Birkhill and the sale and marketing of the Lots;

(c) signs on any Community Common Area, which the Declarant deems necessary for the construction of any Improvements and identification signs regarding financing and construction;

(d) signs on any Community Common Area as may be required for traffic control and regulation of open areas within Birkhill;

(e) identification signs on any Community Common Area as may be deemed appropriate by the Community Board to designate facilities within Birkhill;

(f) identification and directional signs placed by an Owner or Neighborhood Association within the Neighborhood, subject to approval of the Architectural Committee; and

(g) any business located in Birkhill may have a reasonable and customary signage subject to approval of the Architectural Committee.

All signage shall comply with all applicable laws and regulations. Notwithstanding the foregoing, Declarant may place signs on any Community Common Area during the Development Period. In addition, Declarant may permit Builders during the Development Period to place such signs on any Community Common Area, as provided for herein, for the same purpose as Declarant deems appropriate, provided such signs have been approved by Declarant. Notwithstanding the foregoing, in accordance with the provisions of law, a Commercial Unit Owner may display on his Lot not more than one "for sale" or "for

lease” sign per Lot so long as such sign shall comply with any reasonable standards promulgated by the Community Board or Architectural Committee as to the size, color, shape or other qualifications for permitted signs; no Residential Unit Owner (other than Declarant or Builder) may display any “for sale” or “for lease” signage on his or her residential Lot.

9.2.5. Nuisance; Hazards and Waste. No noxious or unreasonably offensive trades or activities shall be carried on upon any Lot, Community Common Area, Neighborhood Common Area or Commercial Common Area which may be, or may become a nuisance, disturbance or unreasonable embarrassment to Birkhill, or which shall unreasonably interfere with the use of each of the Owners of his Lot, or which shall, in anyway, increase the rate of insurance, or which constitutes a violation of any law, ordinance or regulation, now or hereafter in effect, imposed by any governmental entity having jurisdiction over the Property. No hazardous, toxic or contaminated material which is regulated by any federal, state or local agency shall be stored, place or used on the Property. Within ten (10) days of receipt of written notice from the Community Association specifying any item, which creates such an insurance hazard or constitutes such waste, the Owner shall cause such item to be removed at such Owner’s sole cost and expense. If such item is not timely removed, the Community Association may enter upon such Lot or Neighborhood Common Area, remove or cause to be removed such item and assess the Owner or Neighborhood Association the amount of all costs and expense therefore as an Enforcement Assessment. Notwithstanding the foregoing, any Lot used for commercial purposes that is operated for its intended purposes and is in compliance with any applicable law as well as the provisions of this Declaration and Condominium Declaration and By-Laws shall not be deemed to be a noxious or offensive trade or activity under this Section 9.2.5.

9.2.6. Temporary Structures. No trailer, mobile home, tent, shack or other outbuildings shall be kept upon any residential Lot, any Community Common Area, Neighborhood Common Area or Commercial Common Area or in any street within Birkhill, except in connection with work, sales and marketing or Lots or Birkhill or construction diligently pursued.

9.2.7. Vehicles.

(a) As used herein,

(i) “Vehicle” means a Commercial Vehicle, Motor Vehicle, Recreational Vehicle, automobile, Large Truck, other truck or van (in each case, as defined by the Utah law or by common usage and practice), trailer, motorcycle, bicycle, mo-ped, or other powered or unpowered vehicle.

(ii) “Commercial Vehicle” means any (1) automobile, truck or van used or designed principally for commercial, business or industrial use, or (2) taxicab or other Vehicle displaying a commercial logo, message or identification.

(iii) “Inoperable Vehicle” means any Commercial, Recreational or other Vehicle which is a junk Vehicle, or is inoperable, or lacks current, valid registration

plates, or would not pass applicable state vehicular inspection criteria, or is not being maintained in a first-class condition.

(iv) "Large Truck" means any truck or van (in each case, as defined by the Utah Motor Vehicle Administration or by common usage and practice), or self-propelled farm or construction vehicle, which is more than 24 feet long, or has a capacity exceeding three-quarters ton.

(v) "Motor Vehicle" means a vehicle required by law to be registered with the Utah Motor Vehicle Administration or another governmental authority or entity, or propelled by a motor.

(vi) "Recreational Vehicle" means any (1) boat, boat trailer, camp truck, camp trailer, golf cart, house trailer, personal watercraft, snowmobile, recreational bus or similar vehicle, motor home, camper van or all-terrain vehicle, or dirt bike, or (2) other powered or unpowered vehicle designed primarily for use for sports or recreational purposes.

(b) No Vehicle shall be parked or stored in Birkhill other than in accordance with the provisions hereof.

(c) No Recreational Vehicle or Inoperable Vehicle shall be permitted to be stored in any location in Birkhill.

(d) Commercial Property Owners (or tenants) may park Commercial Vehicles or Large Trucks in any designated parking lots/areas overnight provided such Commercial Vehicles or Large Trucks are of a size which permits such Commercial Vehicle or Large Truck, as applicable, to fit within a single parking space; provided, however, Declarant does not anticipate any designated areas within the Property described in Exhibit "A" attached hereto, but such areas may exist within the land described in Exhibit "B", attached hereto. Owners or tenants of any Residential Property (other than Declarant or a Builder) may not park their Commercial Vehicles in the parking lots/areas overnight. Owners or tenants of Residential Property may park their non-Commercial Vehicles in any parking lots/areas at any time, and may park their non-Commercial Vehicles in on-street parking which may be available provided a parking permit is first obtained from the Community Association for use between the hours of 6 p.m. and 8 a.m. the following day, 7 days a week. Unless otherwise permitted herein, no Commercial Vehicles are allowable.

(e) Anything to the contrary notwithstanding herein and in addition to the provisions of 9.2.7. (d), nothing herein shall prohibit the parking of Commercial Vehicles on a parking area or driveway on any Residential Unit while providing maintenance, repair or installation services on, or making a delivery to or from, such Residential Unit.

(f) No automobile or other Vehicle shall be constructed, restored or repaired on any portion of a Lot or Any Community Common Area at a location visible from outside a garage or other building thereon, other than minor repairs such as oil, filter, battery, belt, wiper, light and tire changes, or emergency repairs which cannot reasonably be performed

elsewhere, in each case if performed (1) on a Vehicle owned by an Owner of, and customarily kept on, such Lot or Any Community Common Area, (2) using all appropriate environmental safeguards, and (3) in a continuous and timely manner.

(g) No person shall operate a Vehicle in Birkhill other than in a safe and quiet manner and with due consideration for the rights of all Owners and occupants, or without holding a valid driver's license.

(h) Nothing in this Declaration shall prohibit or restrict the Declarant or Builder during the Development Period from operating, parking, maintaining or otherwise using a Vehicle anywhere in Birkhill.

9.2.8. Animals. No animals, livestock, or poultry of any kind, including pigeons, shall be raised, bred or kept on any Lot, except that dogs, cats or any lawful household pets, may be kept on any Residential Property only by the Owner of such Residential Property who is occupying such Owner's Dwelling during that time, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they are kept so as to avoid becoming a nuisance to other Owners or occupants of the neighborhood or to any adjoining property owners, and do not roam unattended on the Property. Household pets shall not include miniature pigs, horses or other hybrid livestock or farm animals. Notwithstanding the foregoing, no animals may be kept on any Residential Property, which, in the good faith judgment of the Community Board, or a committee selected by the Community Board for this purpose, result in an unreasonable annoyance or are obnoxious to residents in Birkhill. No pet or other animal shall be permitted on any Community Common Area except as allowed by the Community Board or Community Rules. The Owner of any animal shall not permit such animal to run unrestrained on Community Common Area or the streets, sidewalks or pathway areas of Birkhill and the Owner of such animal shall maintain full and complete control over such animal. Pets shall be registered, licensed and inoculated as required by law. Owners shall be responsible for the immediate clean up and removal of their pets' waste from any area of Birkhill. Further, no more than two (2) dogs, cats or other household pets may be kept in a Condominium Unit (and each household pet must weigh 45 pounds or less) and a maximum of three (3) such pets may be kept in a Dwelling (located on a Townhouse Lot) if each pet weighs no more than 75 pounds and provided the number and weight limitations are in accordance with applicable law. The Community Board shall have the right, after notice and hearing, to remove animals from the Property which it finds constitutes a continuing unreasonable nuisance to Owners or which is otherwise not in compliance with the subsection. Further, no animal of any type, other than a seeing-eye dog, may be kept on any Commercial Property.

9.2.9. Unightly Items. All weeds, rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. All refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining streets, Lots, alleys or Community Common Area nearest such portion of the Lot from a height of six (6) feet or less and shall comply with any restrictions or standards promulgated by the Community Board or the Architectural Committee.

9.2.10. Antennae.

For any Townhouse Lot, no radio aerial, antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be placed or kept on a Townhouse Lot outside of a Townhouse Lot, except on the following terms:

(a) An Owner may install, maintain and use on its Townhouse Lot one (or, if approved, more than one) Small Antenna (as hereinafter defined) at such locations, and screened from view from adjacent Townhouse Lots in such a manner and using such trees, landscaping or other screening material, as are approved by the Architectural Committee, in accordance with this Declaration. Notwithstanding the foregoing terms of this subsection, (i) if the requirement that a Small Antenna be installed at a particular location on a Townhouse Lot would impair such Small Antenna's installation, maintenance or use, then it may be installed, maintained and used at another approved location on such Townhouse Lot where such installation, maintenance or use would not be impaired; (ii) if and to the extent that the requirement that such Small Antenna be screened would result in any such impairment, such approval shall be on terms not requiring such screening; and (iii) if the prohibition against installing, maintaining and using more than one (1) Small Antenna on a Townhouse Lot would result in any such impairment, then such Owner may install on such Townhouse Lot additional Small Antenna as are needed to prevent such impairment (but such installation shall otherwise be made in accordance with this subsection).

(b) In determining whether to grant any approval pursuant to this Section, neither Declarant nor the Architectural Committee shall withhold such approval, or grant it subject to any condition, if and to the extent that doing so would result in an impairment.

(c) As used herein, (i) "impair" has the meaning given it in 47 Code of Federal Regulations Part 1, section 1.4000, as hereafter amended; and (ii) "Small Antenna" means any antenna (and accompanying mast, if any) of a type, the impairment of the installation, maintenance or use of which is the subject of such regulation. Such antennae are currently defined thereunder as, generally, being one (1) meter or less in diameter or diagonal measurement and designed to receive certain types of broadcast or other distribution services or programming.

(d) Notwithstanding any provisions to the contrary in this Declaration, it is the Declarant's intention that to the extent permitted by applicable law, any antennae as described herein shall be placed in the least visible areas in order to be non-visible from all other Owners and from sight of any visible roadway.

(e) The restrictions contained in this Section 9.2.10. shall also apply to any Condominium Unit located on Commercial Property; provided, however, Declarant has the right to waive such restrictions on a case-by-case basis.

Inasmuch as Declarant shall provide a centralized dish system for the distribution of television and internet, for any Condominium Unit used for residential use, no radio aerial, antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be placed or kept on or about the Unit (including on any patio or balcony of

such Unit).

9.2.11. Drainage. All drainage of water from any Lot or Neighborhood Common Area or Commercial Common Area and the Improvements thereon shall drain or flow set forth below.

(a) Any such water may drain or flow into adjacent streets or alleys and shall not be allowed to drain or flow upon, across, or under adjoining Lots, or Community Common Area unless an easement for such purpose is granted.

(b) All slopes or terraces on any Lot or Neighborhood Common Area or Commercial Common Area shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property.

9.2.12 No Obstructions. There shall be no obstruction of any Community or Neighborhood Common Area or Commercial Common Area, except as permitted herein or as provided by the Community Association Rules. Nothing shall be placed or stored in any Community Common Area, except as allowed by the express permission of the Community Board.

9.2.13. Rubbish. No portion of the Property shall be used or maintained as a dumping ground for rubbish. No oil or other refuse shall be allowed to enter storm drains. Further, there shall be no burning of any trash and no accumulation or storage of litter, new or used building materials or trash of any kind on the Property, except that: (i) building materials may be stored on any Lot in connection with any construction, reconstruction or repair work being done on any Lot, Community Common Area, Neighborhood Common Area or Commercial Common Area, provided Declarant's consent has been obtained in writing in advance, and (ii) in such case, trash is kept in containers.

9.2.14. Compliance with Laws, Etc. No Owner shall permit anything to be done or kept in a Lot that violates any laws, ordinances, statutes, rules or regulations of any county, state or federal body.

9.2.15. Fires. There shall be no exterior fires on any Community Common Area, Neighborhood Common Area, Commercial Common Area or on Lots, except barbecue fires contained within the receptacles provided by the Community Association or Neighborhood Association.

9.2.16. No Subdivision of Lots. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof. No easement or other interest in a Lot shall be given without the prior written approval of the Architectural Committee. The restriction set forth in this Subsection shall not apply to any Commercial Property or to any land owned by Declarant.

9.2.17. Business Activities. No portion of any Commercial Property may be used for any of the following uses:

- (a) second hand or surplus store;
- (b) central laundry or dry cleaning plan or laundromat;
- (c) any type of "adult" bookstore, any establishment featuring so-called "adult" entertainment or any establishment selling or exhibiting pornographic materials;
- (d) "head shop" or any establishment displaying or selling drug paraphernalia;
- (e) tattoo studio or massage parlor except that this prohibition shall not extend to massage services provided by any health club or day spa;
- (f) sports game or off-track betting facility or club;
- (g) auto parts store or gas or fueling station;
- (h) automobile, truck, recreational vehicle or other vehicle or boat sales, leasing, display or repair;
- (i) mortuary, crematorium, funeral home or similar facility;
- (j) dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters);
- (k) fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; and
- (l) any use which causes any unreasonable objectionable or unpleasant odors to emanate from Commercial Property.

9.3. Commercial Property Supplemental Use Restrictions. Prior to the conveyance or occupancy of Commercial Property, Declarant may in its sole discretion establish Supplemental Restrictions pertaining to the nature and requirements for the use of the Commercial Property, which shall be compatible with the general plan of Declarant for Birkhill. The Community Association shall not interfere with the rights of such Commercial Property Owners to duly carry out their commercial enterprises in accordance with such Supplemental Restrictions.

9.4. Easements. There are hereby established easements over, under and through each Lot and any Community Common Area and Neighborhood Common Area, which easements are described in Article XIV hereof entitled "Easements."

9.5. Conservation Easements. There are certain portions of the Property affected by the provisions of that certain Conservation Easement and Maintenance Agreement ("Conservation Agreement") by and between Hamlet Development Corporation ("Hamlet") and Murray City, which, among other things, prohibits certain uses and practices on such Property

and also addresses easements relating thereto, which Conservation Agreement is recorded or intended to be recorded among the Official Records. Each Owner or occupant of the Property, the Community Association as well as each Neighborhood Association and Commercial Property Owners Association agree to comply with the Conservation Agreement and shall indemnify Hamlet, Declarant and their respective successors and assigns for all costs, damages and the like in the event of non-compliance with the Conservation Agreement.

9.6. TOD Restrictions. Any restrictions contained in this Declaration shall be subject to the applicable provisions of Chapter 17.146 of the Murray City Municipal Code relating to Transit Oriented Development (TOD) District and in the event of a conflict, the applicable provisions of TOD shall control.

ARTICLE X INSTALLATION, REPAIR AND MAINTENANCE

10.1. Repair and Maintenance by Community Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, and except for any districts created pursuant to the to the provisions of the Section of Article VIII entitled "Establish Special Assessment District", the Community Association shall, to the extent applicable, accomplish the following upon the Lots, Community Common Area, Neighborhood Common Area or Commercial Common Area or other land within Birkhill in such manner and at such times as the Community Board shall prescribe.

10.1.1. Walkways. The Community Association shall maintain all private walkways, bicycle paths, trails or other pedestrian paths located in any Community Common Area.

10.1.2. Community Common Area Improvements. The Community Association shall maintain, repair, restore, replace and make necessary Improvements to any Community Common Area.

10.1.3. Drainage. The Community Association shall maintain all drainage facilities and easements located on any Community Common Area in accordance with the requirements of Salt Lake County including the storm drainage system, main storm water management pond and the two underground storm water management facilities.

10.1.4. Utility Easements. The Community Association shall cause the appropriate public utility company to maintain any utility easements located on any Community Common Area.

10.1.5. Designated Areas. The Community Association shall maintain all Open Space Areas.

10.1.6. Paved Surfaces. The Community Association shall maintain all of the paved surfaces including roads, alleys and parking lots, located within any Community Common Area.

10.1.8. Facilities. The Community Association shall maintain any facilities located on any Community Common Area including, without limitation, any clubhouse and swimming pools.

10.1.9. Private Water and Sewer Infrastructure. The Community Association will maintain any private water and sewer infrastructure.

10.1.10. Other Maintenance Obligations. The Community Association shall maintain all other areas, facilities equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of at least two-thirds (2/3) of the Birkhill Voting Power.

10.2. Maintenance Obligations of the Neighborhood Associations. For the purposes of this Declaration, a Neighborhood Association shall be deemed responsible for the maintenance of the Neighborhood. The members of a Neighborhood Association shall not amend any such declaration to terminate or modify the maintenance responsibilities of such Neighborhood Association without the prior written approval of the Community Board. If a Neighborhood Association does not perform its maintenance responsibilities in compliance with the Architectural Specifications and in accordance with the requirements of this Declaration, the Community Association may perform such maintenance itself and levy on the members of such Neighborhood Association a Single Benefit Assessment therefor and notwithstanding the provisions of the Section of Article VI entitled "Single Benefit Assessment", the vote of the Owners in such Neighborhood Association shall not be required.

10.3. Maintenance Obligations of Commercial Property Owners Associations. The Commercial Property Owners Association shall maintain all portions of the Commercial Property in a first-class condition of maintenance and repair consistent with the maintenance and care for the balance of Birkhill. The Community Association shall maintain, repair, restore, replace and make necessary Improvements to those portions of the Commercial Property that the Commercial Property Owners Associations fail to maintain. The affected Commercial Property Owners Association(s) shall reimburse the Community Association for all the costs, if any, that the Community Association incurs in performing its duties hereunder within ten (10) days after receipt of a written request therefor. If any such amount is not paid to the Community Association when due, the Community Association may levy on Enforcement Assessment against the Commercial Property Owners Association in question. The Commercial Property Owners Association shall maintain, manage, operate, control, repair, restore and replace all of the common area portions of the Commercial Property in a condition that (a) is at least, in the Community Board's reasonable judgment, substantially equal to or better than the condition that any Community Common Area and the Neighborhood Common Area (if applicable) is to be maintained by the Community Association as provided herein and (b) satisfies all County requirements.

10.4. Repair and Maintenance by Owner. Except for the obligations of the Community Association to repair and maintain as may be provided in this Declaration, and except for the maintenance obligations of the Neighborhood Association or Commercial Property Owners

Associations with respect to Lots, Neighborhood Common Area or Commercial Common Area within the Neighborhood, every Owner of Commercial Property or Residential Property (which is not part of a Condominium regime) shall maintain, repair and replace the exterior of the Owner's Dwelling or commercial building or other Structures on such Owner's land in first-class condition of maintenance and repair as reasonably determined by the Community Board and in accordance with all requirements of Salt Lake County. Further, all holiday decorations, including outdoor lights, must be removed within fourteen (14) days after the end of the holiday being celebrated from Residential Lots. In addition, any Owner of a commercial building which is not part of a condominium regime shall maintain any parking lot appurtenant to such building.

10.5. Standards for Maintenance and Repair.

10.5.1. Landscaping. All landscaping is to be installed by Declarant or Builder and shall be maintained by the applicable Neighborhood Association.

10.5.2. Window Coverings. All windows within any Dwelling or other Structure shall be covered with shades, drapes, shutters, blinds or other window coverings with a white or neutral lining (or in another uniform and neutral color determined by the Neighborhood Association or Commercial Property Owners Association) within thirty (30) days after the sale of the Dwelling or Structure; provided, however, the fourth (4th) floor of any Dwelling need not have any window treatments if approved by the Architectural Committee.

10.6.3. Right of Community Association to Maintain and Install. If any Owner fails to maintain the property in accordance with the requirements of this Article, and, if applicable, the Neighborhood Association or Commercial Property Owners Association fails to perform its duty of enforcing the maintenance obligations of an Owner, the Community Association may cause such maintenance and installation to be accomplished as hereinafter set forth.

(a) Upon a finding by the Community Board of deficiency in such maintenance or installation, the Community Board may give notice of deficiency to the responsible Owner, which shall briefly describe the deficiency and set a date for hearing before the Community Board or a committee selected by the Community Board for such purposes. The Community Board may delegate its power under this Subsection to a duly appointed committee of the Community Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

(c) Such hearing shall be conducted pursuant to such reasonable rules and procedures as the Community Board shall adopt and shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Community Board, or any such committee, renders a decision against the responsible Owners, it shall further set a date by which the deficiency is to be corrected by the responsible Owner. A decision of such committee may be appealed to the Community Board, but a decision of the Community Board shall be final.

(d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Community Board, or any such committee, the Community Board or such committee after approval by a majority of either, any enter upon the Lot and cause such maintenance or installation to be accomplished.

(e) If the Community Board, or such committee, elects to cause such maintenance or installation to be accomplished, the following shall apply:

(i) The responsible Owner shall have no more than then ten (10) days following the receipt of written notice of such election from the Community Board, or such committee to select a day or days upon which such maintenance or installation work shall be accomplished;

(ii) The date which said Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(iii) If said Owner does not select such day or days within said ten (10) day period, the Community Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of the said ten (10) day period; and

(iv) Unless the Owner and the Community Board otherwise agree, such maintenance or installation shall take place only during daylight hours, Monday through Friday, excluding holidays.

(f) If the Community Association pays for all or any portion of such maintenance, repair or installation, the cost thereof shall be charge to the Owner of the Lot, and, if not paid in a timely manner, shall be a Single Benefit Assessment.

ARTICLE XI INSURANCE

11.1. Types. The Community Association, to the extent available, may obtain (except as may be provided in Sections 11.1.2. and 11.1.4.) and continue in effect, in its own name, the types of insurance set forth below:

11.1.1. Public Liability Insurance. A policy of comprehensive public liability insurance covering any Community Common Area with limits of not less than One Million Dollars (\$1,000,000) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile and liability for property of others, and such other risks as shall customarily be covered with respect to similar communities and shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Community

Association or other Owners. In addition, the Community Association may carry a public liability insurance policy covering the Community Association, its officers, directors and managing agents, having at least a One Million Dollars (\$1,000,000.00) limit per total claim that arises from the same occurrence, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation.

11.1.2. Casualty Insurance. If the Community Association owns any land or facilities, then it shall obtain a “master” or “blanket” policy of fire and casualty insurance with extended coverage for the full replacement value (i.e. one hundred percent (100%)) of current “replacement cost” exclusive of land, foundation, excavation and other items normally excluded from coverage of any Community Common Area (including all building service equipment and the like), without deduction for depreciation, with an “agreed amount endorsement” or its equivalent, a “demolition endorsement” or its equivalent, and, if necessary an “increased cost of construction endorsement” or “contingent liability from operation of building laws endorsements” and clauses waiving subrogation against Members and the Community Association and persons upon the Property with the permission of a Member, such insurance to afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar development.

11.1.3. Fidelity Bonds. Fidelity coverage against dishonest acts on the part of Community Directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Community Association, and such fidelity bonds shall (a) name the Community Association as obligee, (b) shall be written in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Community Association or a management agent at any given time during the term of the fidelity bond; provided, however, that the bond shall not be less than a sum equal to three (3) months aggregate Regular Assessments on all Lots plus Reserve Funds, (c) shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of “employee” or similar expression, and (d) shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to Mortgagees.

11.1.4. Other Insurance. The Community Association shall carry, at its sole expense, a “Legal Expense Indemnity Endorsement”, or its equivalent, affording protection for the officers and directors and members of the Architectural Committee of the Association, for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment or cause of action to which any such officer or director or member of the Architectural Committee, including, without limitation, any employee or other agent of Declarant which serves in such capacity, shall have been made a party by reason of his or her services as such, and any other policies of insurance, including director and officer liability insurance and insurance for other risks of a similar or dissimilar nature and fidelity insurance as required hereunder.

11.2. Required Provisions. All such property and liability insurance shall be subject to the following provisions and limitations:

11.2.1. Named Insured. The named insured under any such policies shall be the Community Association as a trustee for the Members or their authorized representative, including any trustee with which such Community Association may enter into any insurance trust agreement, or any successor trustee, each of which shall be herein elsewhere referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under said policies. If required by Declarant, the Community Association shall name Declarant as additional insured. Further, the insurance described herein may include other appropriate parties, such as the directors and officers of the Association.

11.2.2. Contribution. In no event shall the insurance coverage obtained and maintained pursuant to the requirement of this Article be brought into contribution with other insurance purchased by the Neighborhood Association or Commercial Property Owners Association, Owners, or their Mortgagees.

11.3. Neighborhood Association or Commercial Property Owners Association. Each policy of public liability insurance and casualty insurance maintained by Neighborhood Association or Commercial Property Owners Association shall name Declarant and the Community Association as an additional insured.

11.4. Waiver by Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Community Association, the Community Board, the Declarant, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

11.5. Other Insurance; Annual Review. The Community Association shall purchase, if available, officers' and directors liability and errors and omission insurance and may purchase such other insurance as it may deem necessary, including but not limited to, plate-glass insurance and worker's compensation. The Community Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for any Community Common Area in light of increased construction costs, inflation, practice in the area in which Birkhill is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interest of the Community Association. If the Community Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same. If the Community Board determines, in its reasonable and good faith judgment, that increased, decreased or additional insurance is required, it shall take appropriate action.

11.6. Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Community Association and any other insurance deemed necessary by the Community Association shall be a Common Expense to be included in the Regular Assessments levied by the Community Association. Insurance proceeds shall be used by the Community Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in the Article hereof entitled "Destruction of Improvements." Any two (2) Community Directors may sign a loss claim form and release form

in connection with the settlement of a loss claim, and such signatures shall be binding on the Community Association and the Members and Owners.

11.7. Abandonment of Replacement Cost Insurance. Unless unavailable at reasonable costs in the insurance market or unless at least two-third (2/3) of the Institutional Mortgagees (based on one (1) vote for each First Mortgage) have given their prior written approval, the Community Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis, if available, subject to reasonable deductible amounts and co-insurance provisions which may be approved by the Community Board.

11.8. Requirements of Federal Agencies. Notwithstanding the foregoing provisions of this Article, the Community Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements by the Federal Housing Administration, the Veterans Administration and/or the Department of Housing and Urban Development (the "Federal Agencies"), so long as it insures or guarantees a Mortgage on a Lot, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

ARTICLE XII EMINENT DOMAIN

12.1. Condemnation. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of any Community Common Area or any action is brought to condemn all or any portion of any Community Common Area, or a sale of all or part thereof is made in lieu of condemnation, the Members hereby appoint the Community Board and such persons as the Community Board may delegate to represent all of the Owners in connection with the taking. The Community Board shall act, in its sole discretion, with respect to any awards being made in connection with the taking and shall be entitled to condemnation action. Any awards received on account of the taking shall be paid to the Community Association, and used, held or distributed as reasonably deemed appropriate by the Community Board subject to the provisions hereof.

12.2. Total Taking. If the taking is of the entire Community Common Area, the amount payable shall be paid to the Community Board as trustee for distribution to the Owners, subject to the rights of Mortgagees holding Mortgages covering the properties and all unpaid Community Assessments of each Owner, together with any interest charges attributable thereof. Said proceeds shall be distributed to the Owners and their respective Mortgagees according to the relative values of the respective properties in Birkhill determined by an independent appraisal made by a qualified MAI real estate appraiser selected by the Community Board. The rights of an Owner and the Mortgagee of the Owner's Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

12.3. Minor Taking. If the award is for the acquisition of only part of any Community

Common Area and is less than ten percent (10%) of the value of all Community Common Area, the entire amount thereof shall be payable to the Community Board and such amount, together with any interest earned thereon, shall be held by the Community Association for the construction of capital improvements on other portions of any Community Common Area or for general operating expenses of the Community Association.

12.4. Major Taking. If the award is for the acquisition of only part of any Community Common Area, but is in excess of ten percent (10%) of the value of all Community Common Area, the Community Board, in its sole discretion, may retain all or any part thereof in the general funds of the Community Association for the purpose of construction alternative facilities for those so taken, or may distribute all or any part thereof to the Owners, as their interests appear, subject however, to any unpaid assessments and rights of Mortgagees, in the manner set forth above.

ARTICLE XIII DESTRUCTION OF IMPROVEMENTS

13.1. Restoration of Improvements. In the event of partial or total destruction of Improvements upon any Community Common Area, it shall be the duty of the Community Association to restore and repair the same to its former condition as promptly as practical, as hereinafter set forth. Notwithstanding the foregoing, in the event of destruction, the Community Association shall have the right to restore the damaged Improvements with Improvements which are different but equal in value to the former Improvements provided that the Community Association shall have obtained the prior consent of a majority of the Birkhill Voting Power.

13.1.1. Insurance Proceeds Adequate. If the cost of repairing or rebuilding any Community Common Area does not exceed the amount of insurance proceeds initially offered or paid by the insurance carrier by more than ten percent (10%) of the cost of reconstruction, then the following shall apply.

(a) All insurance proceeds shall be paid to a commercial bank or trust company designated by the Community Board to be held for the benefit of the Community Association and the Owners and their Mortgagees, as their interests shall appear.

(b) The Community Board shall levy a Reconstruction Assessment against the Owners in the same manner as provided in the Article hereof entitled "Funds and Assessments" equal to the difference between the cost of repairing or rebuilding and the amount of available insurance proceeds, which sums shall be payable into the fund held by the insurance trustee. The Community Board may advance the amount of the Reconstruction Assessment to the insurance trustee from Community Association general funds or reserves.

(c) When the amount held by the insurance trustee is sufficient to pay the costs of repair and reconstruction, the Community Board shall thereupon contract for the repair or reconstruction of the Improvements, paying the cost of such work from the amount held by the insurance trustee, said repair or reconstruction to be for the purpose of returning the Improvement substantially to their appearance and condition immediately prior to the casualty.

(d) The Community Association may rebuild such damaged or destroyed common facilities in a different manner, or in a different location on any Community Common Area, provided that such Community Board action shall require consent of at least eighty percent (80%) of the Community Board. If the Community Board cannot reach an eighty percent (80%) decision, any such change shall require the vote or written assent of the Members representing at least fifty-one percent (51%) of the Birkhill Voting Power (and the written consent of fifty-one percent (51%) of the Mortgagees if required for any loans guaranteed by FNMA, FHA, VA, FHLMC, GNMA, any governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Community Association). If such changed plans require additional capital so as to necessitate a Capital Improvement Assessment, the written assent of the Members representing at least fifty-one percent (51%) of the Birkhill Voting Power must be obtained if so required by the Article VI hereof entitled "Funds and Assessments."

13.1.2. Insurance Proceeds Inadequate. If the cost of such repairing or rebuilding exceeds the amount of available insurance by more than ten percent (10%) of the cost of reconstruction, then all insurance proceeds shall be deposited as provided in Subsection 14.1.1 above and the Community Board shall require a determination by written assent or vote of the Members representing at least a majority of the Birkhill Voting Power as to whether a Reconstruction Assessment equal to the difference between available insurance proceeds and the cost of such repairing or rebuilding shall be levied. Such majority vote must include at least a two-thirds (2/3) majority of the Class A Members. If the Members determine not to levy such assessment, then the Community Board shall use the insurance proceeds available to make such restoration or repair as soon as reasonably possible or to clear the site at the damaged premises, and landscape the site for a Birkhill park and the costs thereof shall be paid for with the insurance proceeds. Any deficiency may be raised by a Reconstruction Assessment in an amount determined by the Community Board. In the event any excess insurance proceeds remain, the Community Board, in its sole discretion, may retain such sums in the general funds of the Community Association or distribute pro-rata all or a portion thereof to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Community Association. The rights of the Owner and the Mortgagee of his Lot as to such pro-rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

13.1.3. Neighborhood Common Area or Commercial Common Area and Lots. In the event of partial or total damage or destruction of Neighborhood Common Area or Commercial Common Area or any Lot within Birkhill the responsible Neighborhood Association or Commercial Property Owners Association or Owner shall either:

(a) diligently commence to rebuild the same, if the insurance proceeds and other funds available to the Neighborhood Association or Commercial Property Owners Association or Owner are sufficient to pay the cost of such rebuilding. Upon reconstruction, the Improvements shall be rebuilt substantially in accordance with the original plans and specifications therefor provided, however, that the exterior appearance thereof shall substantially resemble the appearance in form and color prior to such damage and destruction. Notwithstanding the foregoing, however, the Owner of such damaged Improvements may

reconstruct or repair the same in accordance with new or changed plans or specifications with the prior written approval of the Architectural Committee. The Neighborhood Declaration shall provide procedures and standards for repair or reconstruction of damaged or destroyed Property including special reconstruction assessments for repair of Neighborhood Common Area or Commercial Common Area so damaged or destroyed; or

(b) if there are not sufficient funds to rebuild, clear and level the Neighborhood Common Area or Commercial Common Area or Lot, remove all wreckage, foundations, slabs, debris and remains of the building or buildings therefrom and leave the same in a level, clean and landscaped condition.

ARTICLE XIV EASEMENTS

14.1. Amendment to Eliminate Easement. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant herein without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Article shall likewise require the prior written approval of Declarant.

14.2. Owners' Easements and Encroachments. An Owner's right to use his or her Lot, and any Community Common Area and the Neighborhood Common Area or Commercial Common Area shall be subject to the easements and encroachments described below.

14.2.1. Utility Easements. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Property, the Owners of any Lot served by said connections, lines or facilities shall have the right, and there is hereby reserved to Declarant, together with the right to grant and transfer the same to the Community Association and/or Owners, an easement to the full extent necessary therefor, to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof are located to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

14.2.2. Utility Connections. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone or cable television lines, or drainage facilities are installed within Birkhill, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections shall be entitled to the full use of such portions of said connections which service the Owner's Lot.

14.3. Easements Reserved to Declarant. There are hereby reserved to Declarant, together with the right to grant and transfer the same, as well as to any other mentioned, the easements set forth below:

14.3.1. Utilities. Easements on, over, under, through and across the Property for the purpose of constructing, erecting, operating and maintaining facilities and Improvements, including without limitation, easements for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, and drainage facilities, roads, park areas, parkways and walkways as may be shown on any approved final development plan or recorded subdivision plat of the Property or as are required by Salt Lake County.

14.3.2. Cable Television. The right to place on, under or across the Property, transmission lines and other facilities, including a fiber optic distribution system to provide cable television and internet access/services and thereafter to own the Property to service, maintain, repair, reconstruct and replace said lines or facilities.

14.3.3. Construction and Sales. Easements over any Community Common Area as the same may from time to time exist, for a reasonable period of time in light of Declarant's development of the Property, for construction, display and exhibit purposes which are reasonably necessary for the erection and sale or lease of Lots within Birkhill; provided, however, that such use shall be only for a period of twenty years (20) from the date of this Declaration.

14.3.4. Public Bicycle and Pedestrian Trails. An easement for public ingress and egress over the public bicycle and pedestrian trails located in any Community Common Area or in such areas shown on any approved final development plan or recorded subdivision plat.

14.3.5. Repair and Maintenance. An easement over the Lots for the purpose of performing its repair and maintenance obligations under this Declaration.

14.3.6. Open Space Easement. A nonexclusive open space easement over portions of any Community Common Area as deemed necessary by the Community Association.

14.3.7. Association Easements. To Declarant and the Community Association or their duly authorized agents and representatives, such rights of entry as are necessary to perform the duties and obligations of the Community Association as are set forth in this Declaration, or in the Community Bylaws, Community Articles, Community Association Rules or the Architectural Specifications.

14.3.8. Easements to Declarant for Adjoining Property. An easement over, upon, through and across any Community Common Area, for the purpose of reasonable ingress to and egress from, over and across Birkhill to the Annexable Property until all of such property is annexed to Birkhill pursuant to the recording of a Supplementary Declaration in accordance with the provisions of this Declaration.

14.3.9. Neighborhood Association or Commercial Property Owners Association Easement. A nonexclusive easement over any Community Common Area, together with the right to grant and transfer the same to the appropriate Neighborhood Association or Commercial Property Owners Association, for the purpose of fulfilling said Neighborhood Association or Commercial Property Owners Association's maintenance or other responsibilities.

14.3.10. Maintenance of Trees. Declarant shall have the right to enter onto any Lot within the Property even though said Lot has been transferred to an Owner to maintain, replace and/or plant trees in accordance with the subdivision plat for the Property. This right shall continue for six (6) years after the subdivision has been dedicated to the County. However, Declarant shall not be responsible for any other trees on any Lot within the Property except for those in accordance with the subdivision plat for the Property filed with the County, nor shall it be liable for any damages incurred in maintaining, replacing or planting of the trees.

14.4. Nature of Easements. Any easements reserved to Declarant herein, when transferred to an Owner or the Neighborhood Association or Commercial Property Owners Association in the same instrument conveying a Lot or Community Common Area to such Owner or the Neighborhood Association or Commercial Property Owners Association, as the case may be, shall be appurtenant to such Owner's interest in said Lot or the Neighborhood Association or Commercial Property Owners Association's interest in any Community Common Area, as applicable. Use of easements or work in easement areas shall be done in manner which reasonably limits adverse impacts on adjacent land owners and disturbance of land shall be restored by party causing disturbance.

14.5. Transfer of Easements. As to the easements reserved to Declarant, together with the right to grant and transfer the same to Owners and/or Community Association, Declarant shall convey said easements to the Owners in the same instrument conveying the interest required by an Owner by specific description or by reference in said instrument. If such description is not contained in said instrument, such easements shall nevertheless be deemed conveyed to each Owner by such instrument.

ARTICLE XV ANNEXATION OF REAL PROPERTY

15.1. Annexation. Declarant may annex any of the Annexable Property described in Exhibit "B" by any of the methods set forth hereinafter in this Article. Declarant intends to develop the Annexable Property on a phased basis. However, Declarant may elect not to develop all or any part of such real property, to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Although Declarant shall have the right (but not the obligation) to annex the Annexable Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such Annexable Property. Moreover, Declarant reserves the right to subject any of the Annexable Property which is not subject to the provisions of this Declaration to one or more separate declarations of covenants, conditions and restrictions and to subject such property to the jurisdiction and power of the Community Association or to another nonprofit mutual benefit corporation or other entity with powers and obligations similar to the Community Association.

15.2. Annexation Without Approval. During the Development Period, all or any part of the Annexable Property may be annexed to and become subject to the Declaration and subject to the jurisdiction of the Community Association by Declarant without the approval, assent or vote of the Community Association or its Members or Owners.

15.2.1. Annexation Pursuant to Approval. Upon the expiration of the Declarant's power to annex the Annexable Property in accordance with the provisions of Section 15.2, or if any person desires to subject property other than the property described on Exhibit "B" to this Declaration and to the jurisdiction of the Community Association, then such property may be annexed, if the vote or written assent of two-thirds (2/3) of the Total Voting Power residing in Members of the Community Association other than Declarant and Builders is obtained. The recordation of a Supplementary Declaration shall constitute and effectuate the Annexation of the real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Community Association; and thereafter said annexed real property shall be part of the Property and subject to all of the terms and provisions of this Declaration. If the vote or written assent of a certain percentage of Members is required to annex any property as provided for above, then the recordation of a Supplementary Declaration certified to by the President or Vice-President and Secretary or Assistant Secretary shall constitute and effectuate the Annexation of said real property and for the purpose of recording any such instrument, and each Owner hereby grants to the President or the Vice-President and Secretary or Assistant Secretary of the Community Association an irrevocable power of attorney for and on behalf of each and every Owner in certifying, executing and recording said instrument.

15.2.2. Covenants Running With the Land. Declarant may transfer all or any portion of the Annexable Property to a Builder under a deed wherein Declarant reserves the right to annex such property and subject it to this Declaration. The restriction on the Property described in Exhibit "B" wherein it may be made subject to this Declaration upon the recordation of a Supplementary Declaration is hereby declared to be an equitable servitude upon the Annexable Property in favor of the Property subject to this Declaration and any other real property owned by Declarant in the vicinity of the Property and shall run with the land and be binding on and inure to the benefit of all parties having or acquiring any right, title or interest, in such real property.

15.3. Supplementary Declarations. Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration or any merger or consolidation revoke, modify or add to the covenants established by this Declaration, discriminate between some Owners of such Property and other Owners of any other Property within Birkhill except as provided herein, change the general common plan created by this Declaration, or affect the provisions hereof or thereof as covenants running with the land or equitable servitudes. The express desired intention of Declarant is to establish a cohesive plan of such covenants and servitudes to be uniformly applicable to Birkhill, including those portions added thereto by annexation.

15.4. Rights and Obligations of Owners. After the required annexation procedures are fulfilled, all Owners in Birkhill shall be entitled to the use of any Community Common Area in such annexed property, subject to the provisions of this Declaration, and Owners of such

annexed property shall thereupon be subject to this Declaration. After each annexation, the Condominium Associations shall be assessed in accordance with the provisions set forth in the Section of Article VI entitled "Allocation of Community Association to Lots" with the annexed property being assessed for a proportionate share of the total Birkhill Common Expenses on the same basis as the other property in Birkhill. Community Assessments for the year that such property is annexed shall be prorated on the basis of a three hundred and sixty (360) day year.

15.5. De-Annexation. Declarant may delete all or any portion of the annexed land from the coverage of this Declaration and rescind any Supplementary Declaration, provided Declarant is the sole beneficial Owner of all of the real property described in the Supplementary Declaration to be rescinded. Such deletion shall be effective upon the recordation of a "Notice of Deletion of Territory," signed by Declarant.

ARTICLE XVI MORTGAGEE RIGHTS

16.1. Special Mortgagee Provisions. It is anticipated that part or all of the Lots in Birkhill may be financed for the Owners through Federal Agencies. The interest of the Community Association and each of the Members is and shall be subject to and subordinate to the rules, regulations and requirements of such Federal Agencies purchasing or insuring Mortgages in Birkhill. As the requirements of such Federal Agencies are subject to change, if necessary, Declarant shall execute and cause to be recorded a Supplemental Declaration, incorporating such additional covenants, conditions and restrictions as are required by such Federal Agencies, affecting the properties. Notwithstanding prior acquisition of title to any portion of property in Birkhill by the Community Association, any Neighborhood Association or Commercial Property Owners Association, or any Owner, such supplemental covenants, conditions and restrictions shall be binding upon all Members, the Community Association, and all Neighborhood Associations or Commercial Property Owners Associations. Declarant may execute as many such Supplemental Declarations as are required to comply with such Federal Agency's requirements from time to time throughout the course of sale of the Lots. Declarant may bind the Community Association and all Owners by written consent with such Federal Agencies.

16.2. Conflict. Notwithstanding any contrary provision contained elsewhere in this Declaration or in the Community Bylaws, Community Articles or Community Association Rules, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

16.3. Payment of Taxes and Insurance. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Community Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of First Mortgagees shall be governed by the provisions of their Mortgages. First Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of policy, for any Community Common Area and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Community Association. Entitlement to such

reimbursement shall be reflected in an agreement in favor of any First Mortgagee, which requests the same to be executed by the Community Association. Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Community Common Area or Improvements thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Community Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Community Association and, on demand, the Community Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

16.4. Termination of Contract and Agreements. Any contract or lease, including any contract providing for the services of Declarant, entered into by the Community Association while Declarant controls the Community Association shall be for a term not to exceed three (3) years and shall provide that the Community Association has the right to terminate such contract or lease with cause open thirty (30) days written notice, and without cause and without penalty or the payment of a termination fee at any time after the transfer of control of the Community Association from Declarant upon not more than ninety (90) days notice to the other party. For purposes of this Section, the term "control" shall mean the right of Declarant to exercise unilateral control over the Community Association, the Community Board, or the Owners in any manner other than by Declarant's exercise of votes allocated to Declarant on the same basis as votes are allocated to other Owners.

16.5. Notice to Mortgage Holders. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Community Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Community Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Property (herein any Mortgagee delivering such notice shall be referred to as an "Eligible Holder"). Such notice shall state which Lot or Lots are encumbered by such Mortgage, and whether such Mortgagee is a First Mortgagee. Whenever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of the Eligible Holders. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Community Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Community Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Community Association levied by the Community Association hereunder shall not be affected by the failure to deliver a notice to the Community Board. Any notice or request delivered to the Community Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged. An Eligible Holder is entitled to timely written notice of:

16.5.1. Any condemnation loss or casualty loss which affects either a material portion of the Property or the Lot on which the Eligible Holder holds a First Mortgage;

16.5.2. Any delinquency in the payment of assessments or charges owed by the Owner of a Lot which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within ninety (90) days after its due date;

16.5.3. Any lapse, cancellation or material modification of insurance policy or fidelity bond maintained by the Community Association;

16.5.4. Any proposal to take any action which requires the consent of a specified percentage of Eligible Holders; or

16.5.5. Any default by an Owner-Mortgagor of a Lot in the performance of his obligations under this Declaration or Community Bylaws, which is not cured within ninety (90) days.

16.6. Inspection of Books and Records. Upon written request, any Owner, First Mortgagee or Institutional Mortgagees shall be entitled to inspect the books, records and financial statements of the Community Association and this Declaration, the Community Bylaws, the Community Articles and the Community Association Rules and any amendments thereto during normal business hours and subject to payment of cost for personnel and the like.

16.7. Voting Rights of Mortgagees. For purposes of this Section, a Mortgagee shall be entitled to the number of votes which a particular Owner has hereunder for each Lot encumbered by a First Mortgage held by the Mortgagee.

16.8. Actions Requiring Mortgagee Votes. Neither the Community Association nor any Owner shall do any of the following, unless at least sixty-seven percent (67%) of the Eligible Holders have given their prior written approval;

16.8.1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any property or Improvements owned, directly or indirectly, by the Community Association for the benefit of the Lots and Owners. (The granting of easements or dedication of land for public utilities, roads or for other public purposes consistent with the intended use of the property by the Community Association and Owners shall not be deemed a transfer within the meaning of this Subsection);

16.8.2. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of party walls, fences or driveways, or the upkeep of lawns, plantings or other landscaping within Birkhill;

16.8.3. By act or omission change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

16.8.4. Fail to maintain fire and extended coverage insurance on insurable portions of any Community Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; or

16.8.5. Use hazard insurance proceeds for losses to any property or Improvements owned by the Community Association other than for the repair, replacement or reconstruction of the property and Improvements.

16.9. Votes for Termination of Neighborhood. Any election to terminate the legal status of the Property as a planned unit development shall require:

16.9.1. The approval of at least fifty-one percent (51%) of the Eligible Holders if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the Property; or

16.9.2. The approval of sixty-seven percent (67%) of the Birkhill Voting Power and of sixty-seven percent (67%) of the Eligible Holders, if subsection 16.9.1. above is inapplicable.

16.10. Condemnation or Destruction. In the event a portion of the Property is either condemned or destroyed or damaged by a hazard that is insured against restoration or repair, it shall be performed substantially in accordance with the provisions of this Declaration and the original plans and specifications for the Property, unless fifty-one percent (51%) of the Eligible Holders approve the taking of other action by the Community Association.

16.11. Mortgagee Protection. A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any Mortgage made in good faith and for value as to any Lot within the Property; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustee's sale or otherwise.

16.12. Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of Institutional First Mortgagees of Lots pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of units or common area. Any provision to the contrary in this Declaration or in the Community Bylaws or other documents relating to the Property is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the Mortgagees, as their interests may appear.

16.13. Non-Curable Breach. Any Mortgagee who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

16.14. Loan to Facilitate. Any Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed in lieu of foreclosure shall be deemed to be a

loan made in good faith and for value and entitled to all of the rights and protections of this Article.

16.15. Appearance at Meetings. Because of its financial interest in the Property, any Mortgagee may appear (but cannot vote except under the circumstances set forth herein) at meetings of the Members and the Community Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

16.16. Right to Furnish Information. Any Mortgagee can furnish information to the Community Board concerning the status of any Mortgage.

16.17. Inapplicability of Right of First Refusal to Mortgagee. No right of first refusal or similar restriction of right of an Owner to sell, transfer or otherwise convey the Owner's Lot shall be granted to the Community Association without the written consent of any Mortgagee of the Lot. Any right of first refusal or option to purchase a unit that may be granted to the Community Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Lot, whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of the unit pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed in lieu for foreclosure.

ARTICLE XVII AMENDMENT AND TERM OF DECLARATION

17.1. Duration and Amendment. All covenants, conditions and restrictions set forth in this Declaration shall run with and bind the land and shall be perpetual unless expressly stated otherwise in this Declaration. Further, any amendment must be in writing and recorded in the Official Records and shall be subject to the following conditions:

(a) The Declarant shall have the right during the Development Period, without the consent of the Members, Owners, or the Community Association or any other party, to modify, amend or change any of the provisions of this Declaration as the Declarant may deem necessary or desirable. Further, the Declarant hereby reserves for itself, its successors and transferees, during the Development Period the right to execute on behalf of all contract purchasers, Owners, Eligible Mortgage Holders, mortgagees, and other lienholders or parties claiming a legal or equitable interest in any Lot or Community Common Area, any such agreements, documents, amendments or supplements to this Declaration, the Articles of Incorporation and By-Laws of the Community Association which may be required by FNMA, FHA, VA, FHLMC, GNMA, any governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Community Association, any public or private utility company designated by the Declarant, any institutional lender or title insurance company designated by the Declarant, or as may be required to comply with the federal Fair Housing Act, to comply with applicable Utah law.

(i) By acceptance of a deed to any Lot, or by the acceptance of any other legal or equitable interest in the Lots or Community Common Area, each and every such contract purchaser, Owner, Eligible Mortgage Holder, mortgagee or other lienholder or party having a legal or equitable interest in any Lot or Community Common Area, does automatically and irrevocably name, constitute, appoint and confirm the Declarant, its successors, transferees and assigns, as its attorney-in-fact for the purpose of executing such agreement, document, amendment, supplement and any other instrument(s) necessary to effect the foregoing, subject to the limitations set forth herein. THIS SPECIAL POWER OF ATTORNEY SHALL BE IRREVOCABLE AND COUPLED WITH AN INTEREST AS SET FORTH IN THIS ARTICLE XVII.

(ii) The Power of Attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Lots and Community Common Area and shall be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said Power of Attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said Power of Attorney. Said Power of Attorney shall be vested in the Declarant, its successors, transferees and assigns until the initial conveyance of all Lots and Community Common Area planned to be subjected to this Declaration.

(iii) No amendment to this Declaration, the By-Laws or the Articles of Incorporation may remove, revoke or modify any right, reservation or privilege of the Declarant or Builder without the prior written consent of the Declarant, Builder or any respective successor or assignee.

(b) After the Development Period, the amendments, modification, or additions to this Declaration shall require the vote, in person or by proxy, or the written consent, of at least sixty-seven percent (67%) of the Class A votes and at least sixty-seven percent (67%) of the Class B votes, if any.

17.2. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Community Association or any Member, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for a successive period of ten (10) years, unless an instrument, signed by a majority of the Birkhill Voting Power has been recorded, at least one (1) year prior to the end of any such period agreeing to change said covenants, conditions and restrictions in whole or in part. After said initial term, this Declaration may be terminated by the written assent of seventy-five percent (75%) of all of the Birkhill Voting Power.

ARTICLE XVIII
MISCELLANEOUS

18.1. Enforcement.

18.1.1. Rights of Enforcement. The Community Association or any Owner shall have a right to action against any Owner, and any Owner shall have a right of action against the Community Association, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning Community Association liens. The Community Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Community Articles or Community Bylaws and any amendments thereto. The Community Association shall have the exclusive right to the enforcement of provisions relating to architectural control and Community Association Rules, unless the Community Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement.

18.1.2. Disputes Between Community Association and Declarant. Any controversy, dispute, or claim whatsoever between the Community Association and Declarant or arising out of or concerning the interpretation, performance or breach of any of the provisions of this Declaration shall be determined, at the request of either party, by an arbitrator who shall be a retired judge of the Salt Lake County District Court. If the parties cannot agree upon an arbitrator, then each party shall select one (1) arbitrator and the arbitrators selected by each party shall select a third arbitrator.

18.1.3. Disputes Between Community Association and Owners. Any controversy, dispute, or claim whatsoever between the Community Association and any Owner other than Declarant arising out of or concerning the interpretation, performance or breach of any of the provisions of this Declaration, including, without limitation, the validity, scope and enforceability of this arbitration provision, shall be settled, at the request of either party, by arbitration conducted in the Salt Lake County in accordance with the then existing rules for commercial arbitration of the American Arbitration Association, and judgment upon any award rendered by the arbitrator may be entered by any State or Federal Court having jurisdiction thereof. Such matters shall be submitted to one (1) arbitrator who shall be a retired judge of the District Court or District Court for Salt Lake County. If the parties cannot agree upon an arbitrator, then each party shall select one (1) arbitrator and the arbitrators selected by each party shall select a third arbitrator.

18.1.4. Revocation of Dispute Resolution Procedures. Either or both of the two preceding subsections may be terminated, and shall be of no further effect concerning controversies, disputes, or claims which arise after such termination, if within ninety (90) days after a majority of the members of the Community Board have been elected for the first time by

Members other than Declarant, such termination is approved by (a) a majority of the Community Board, and (b) a majority vote of the Members other than Declarant. Notwithstanding any provision hereof to the contrary, an amendment to this Declaration covering such termination may be recorded in the Official Records of Salt Lake County without the approval of any other persons, including, without limitation, the Declarant or Eligible Mortgage Holders, if such amendment is recorded with a certificate of the President and Secretary attached thereto certifying that the approval of the Community Board and of the Members other than Declarant required by this subsection has been obtained within the time period specified herein.

18.1.5. Vote Requirements. Notwithstanding the foregoing, neither the Community Association nor any person acting or purporting to act on its behalf shall (a) file or otherwise commence, or prosecute, in any jurisdiction whatsoever, any (i) civil, criminal or administrative proceeding in or with any court or administrative body or officer, or (ii) appeal of or objection to any decision or other action made or taken by any court or administrative body or officer, in any judicial or administrative proceeding, or (b) testify or submit evidence (except where required by law, subpoena or formal order of such court, administrative body or officer), or otherwise take a formal position on any issue under consideration, in any such proceeding or appeal, in all cases until such action is approved in writing by, or by the vote of, both Members entitled to cast at least seventy-five percent (75%) of the votes held by all Owners other than Declarant, and at least seventy-five percent (75%) of the votes of Class B Member. Nothing in this subsection shall apply to a civil or administrative proceeding which the Association commences or prosecutes with a court or administrative body or officer (a) to collect an Assessment, or enforce or foreclose a lien securing an Assessment, (b) otherwise to enforce the Association's rights or another person's obligations under the Declaration, Community Bylaws or Community Articles on account of a default or otherwise or (c) any action taken by the Declarant at any time or action undertaken by the Architectural Committee during the Development Period.

18.2. Equitable Servitudes. The provisions of this Declaration shall be deemed covenants, conditions and restrictions and equitable servitudes running with the land, which may be enforced by any Owner, a Neighborhood Board, the Community Board, or Declarant, unless enforcement is specifically limited herein to a particular person or group, and which shall be liberally construed to effectuate the purpose of Declarant creating a uniform plan for the development and operation of Birkhill. In the event of a default in the performance of any of the provisions of this Declaration, the Community Articles, and Community Bylaws or the failure of any Owner to comply with this Declaration, the Community Articles, or Community Bylaws, such default or failure may be resolved by all appropriate legal proceedings including but not limited to by injunction and suit for monetary damages.

18.3. Severability. If any phrase, clause, sentence, paragraph, section, article or other portion of this Declaration shall become illegal, null or void or against public policy, or any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in full force and effect.

18.4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community

or tract and for the maintenance of Birkhill. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions or interpretation or construction.

18.5. Number and Gender. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

18.6. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, any may be exercised by the Community Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

18.7. No Waiver. Failure by the Community Association or by any Member to enforce any provision of the Master Management Documents in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other such provision.

18.8. Cumulative Remedies. All rights, options and remedies of Declarant, the Community Association, the Owners, Delegates or Mortgagees under this Declaration are cumulative, and no one of them shall be exclusive of any other. Declarant, the Community Association, the Owners, Delegates and the Mortgagees shall have the right to pursue any one or all of the such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

18.9. Attorneys' Fees. Notwithstanding any other provision contained herein to the contrary, if action is instituted to enforce any of the provisions contained in this Declaration by the Community Association or Declarant against an Owner, it shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Community Association or Declarant, as applicable, is the prevailing party in such action, the amount of such attorneys' fees and costs shall be an Enforcement Assessment with respect to the Lot(s) and its Owner involved in the action.

18.10. Exhibits and Schedules. All exhibits and schedules attached hereto are hereby incorporated into this Declaration.

18.11. Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

18.11.1. Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Community Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice deposited in the mail within Utah shall be deemed

delivered on the second mail delivery day after such deposit.

18.11.2. Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Community Association by such Mortgagee or such contractor for purposes of notice or, if no such address is furnished, to any office of the Mortgagee in Utah.

18.12. Declarant Exemption. Until the expiration of the Development Period, Declarant shall not be subject to the provisions of Article VII entitled "Architectural Control" or the provisions of Article IX entitled "Use Restrictions For Birkhill". Except as may be otherwise provided in this Declaration, Declarant nor any Lot which Declarant owns shall at any time be subject to assessments of any type whatsoever, including, without limitation, Community Assessments or Neighborhood Assessments.

18.13. Conflicts Between Master Management Documents. In the event of a conflict between any provisions of any of the Master Management Documents with the provisions of another Master Management Document, the provisions of the Controlling Document named below in the first column shall be deemed to supersede the provisions of the Subordinate Document or Documents named below in the second column to the extent of any such conflict.

CONTROLLING DOCUMENTS

SUBORDINATE DOCUMENTS

(a) Declaration	Community Articles, Community Bylaws, Architectural Specifications, and Community Association Rules
(b) Community Articles	Community Bylaws, Architectural Specifications and Community Association Rules
(c) Community Bylaws	Architectural Specifications and Community Association Rules

18.14. Conflicts Between Master Management Documents and Neighborhood Association or Commercial Property Owners Association Documents. In the event of any conflict between the Master Management Documents and any provisions of the articles, bylaws, Neighborhood Declaration, Architectural Specifications and rules and regulations of a Neighborhood Association or Commercial Property Owners Association, the Master Management Documents shall be deemed to supersede such Neighborhood Association or Commercial Property Owners Association documents to the extent of such conflict.

18.15. Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use and occupancy of the Property and each and every Lot and portion thereof. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of

these provisions with public laws, ordinances and regulations applicable thereto.

18.16. Non-liability of Officials. To the fullest extent permitted by law, neither the Community Board, the Architectural Committee and other committees of the Community Association or any member of such Community Board or committee shall be liable to any Member of the Community Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Community Board, committees or persons reasonably believed to be the scope of their duties.

18.17. Documents to be Provided to Prospective Purchasers.

18.17.1. By Owner. Each Owner shall provide the information to a prospective purchaser required by applicable Utah law before transferring title to his Lot or executing a real property sales contract.

18.17.2. By Community Association. Upon written request, the Community Association shall, within ten (10) days after the mailing or delivery of the request, provide an Owner with a copy of the items that such Owner is required to provide to his prospective purchaser as provided by Utah law. The Community Association may charge a fee for this service, provided, however, that such fee shall not exceed the Community Association's reasonable cost to prepare and reproduce the requested items.

18.18. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures herein set forth.

18.19. Increase in Monetary Amounts. Any monetary amounts provided in the Master Management Documents shall be increased by the CPI (as such term is defined below) from time to time by Declarant during the Development Period, and thereafter, by the Community Association; provided, however, that this provision shall not affect any provision of the Master Management Documents which prescribe a method or limitation of increases or decreases in the specified amount (i.e., Section 6.5. regarding limitation on Assessments and the like).

For purposes hereof, "CPI" means the New Series Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), Washington-Baltimore CMSA (Nov. 1996=100) published by the Bureau of Labor Statistics of the United States Department of Labor, except that if the Consumer Price Index hereafter uses a different standard reference base or is otherwise revised, an adjustment shall be made therein for purposes of this Declaration, using such conversion factor, formula or table for making such adjustment as is published by such Bureau, or if such Bureau does not publish the same, as is published by Prentice-Hall, Inc., Bureau of National Affairs, Commerce Clearing House or another nationally recognized publisher of similar statistical information, as selected by the Community Association.

18.20. Governing Law. This Declaration shall be governed by and construed under the laws of the State of Utah.

18.21. Declarant Development. As long as Declarant has an interest in developing the Property, the Association shall not use its financial resources, directly or indirectly, to defray the costs of opposing any development activities. Notwithstanding any language in this Declaration to the contrary, each Owner, each Member and the Master Association acknowledge and agree, by acceptance of a deed to any portion of the Property, that in no event shall any Owner, Member and/or the Master Association, have the right, directly or indirectly, to challenge, appeal, contest, participate in, protest or object to any zoning, plan or plat approvals, building permits, hearings or any other permits, special exceptions, variances or governmental approvals (collectively, "Approvals") in accordance with any plans sought by of the Declarant in connection with the Property, including by way of example and not limitation, development, redevelopment or expansion of the Property. Further, Declarant, its successors and assigns, shall have the absolute unilateral right, power and authority to modify, revise, amend, or change any Approvals, including, without limitation, any site development plan, partial final development plan, final development plan, record plat or any other governmental development or building approval for the Property (all of which shall be deemed within the meaning of "Approvals") to the extent same are desired by Declarant, its successors and assigns for the benefit of the Property. By acquiring title to a Lot, each Owner, Member and the Master Association expressly (i) consents and approves of any such modification, revisions, amendment, or change (or other Approvals), and this provision shall serve as the Owner's consent, which may be required under applicable Salt Lake County law, (ii) consents indicating its concurrence with the modified, revised, amended, or changed plan (or other Approvals) and declares that no public hearing is necessary, and (iii) grants and conveys to Declarant, its successors and assigns power of attorney, which shall be coupled with an interest, to consent and approve on behalf of each Owner and its respective successors and assigns any such modifications, revision, amendment or change (or other Approvals).

18.22. Voluntary Cleanup Program. The Property (and in particular, the land described in Exhibit "A" but not the property described in Exhibit "B") was developed under the Voluntary Cleanup Program under the oversight of the Utah Division of Environmental Quality. Some soils that may contain elevated levels of lead and arsenic have been covered with asphalt, concrete and buildings on the site. Disturbance of these soils is not anticipated unless there is a need to install or repair buried utilities on the site. In the event these soils are disturbed such activity is covered by a Site Management Plan with oversight provided by the Utah Division of Environmental Quality. The Community Association is responsible for implementing all the stipulated requirements detailed in the Site Management Program for the Property as well as public rights-of-way and neighborhood parks; maintaining all files, reports, correspondence, health and safety reports/records and laboratory analytical reports associated with or required by the Site Management Plan; payment of all fees for periodic reviews and inspections by personnel of the Utah Division of Environmental Response and any remediation as required by the Site Management Plan. In addition, should changes be proposed in the Site Management Plan, it is the responsibility of the Community Association to coordinate with the Utah Division of Environmental Response and Remediation regarding such changes. Further, the Community Association and the Owners located within Birkhill shall fully comply with all requirements of

the Voluntary Cleanup Program to insure that no violation occurs hereunder; provide all monitoring (as described in Section 10.2. hereunder) and otherwise comply with the Site Management Plan. In the event any Neighborhood and/or its Owners fail to comply with any provision of the Voluntary Cleanup Program, Section 10.2. of this Declaration or any other provision herein, then in such event the Association may enforce such obligations of such party/parties and collect all costs as an Enforcement Assessment against the violating party/parties.

18.23. Perpetuities. If any of the covenants, conditions, easements, restrictions, or other provisions of this Declaration shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the members of the 108th United States Congress.

18.24. Environmental Covenant. Attached hereto as Exhibit "F" is a copy of the Environmental Covenant which applies to the Property and is binding on the Community Association, each Neighborhood Association and all Owners and occupants of Birkhill recorded or intended to be recorded in the Official Records. The Environmental Covenant shall be deemed to be a part of this Declaration and this Section 18.24. may not be amended or altered in any fashion without the approval of those parties described in Section 12 of the Environmental Covenant. As provided above, the Community Association shall be responsible for overseeing compliance with the Environmental Covenant. Among other things, the Environmental Covenant requires Owners to verify that any excavation is performed in accordance with the provisions of the Environmental Covenant. Also, each instrument conveying any interest in the Property or any portion of the Property must contain a notice of the activity and use limitations set forth in the Environmental Covenants and provide the recorded location of the Environment Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED AUGUST 12, 2008, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON AUGUST 12, 2008, IN ENTRY NUMBER 10497519, BOOK 9634, PAGES 2139-2164. THE ENVIRONMENTAL COVENANT CONTAINS THE ACTIVITY AND USE LIMITATIONS SET FORTH IN PARAGRAPHS 5 A., B., C., D., E. AND F., ALL OF WHICH ARE DEEMED TO BE PART OF THIS NOTICE.

18.25. Elsinore Contract. The Community Association each Owner and occupant in the Project shall be subject to that certain Agreement between Elsinore Communications, LLC ("Elsinore") and the Association, which refers to that certain MDU Services Agreement ("MDU Agreement") by and between Elsinore Communications, LLC ("Elsinore") a service provider for television and internet services. Assessments levied by the Community Association shall include all amounts required under the Elsinore Agreement, which will provide high-speed internet service and a basic package television service. The Community Association is obligated to insure that the budget of the Association each year includes the amounts to be paid under the Elsinore Agreement. The sums due under the Elsinore Agreement will be billed by Elsinore and the Community Association is required to pay the amounts due under the bills on a monthly

basis, or other periodic installment as determined by Elsinore in its sole and absolute discretion from time to time. The Community Association and each Owner shall also indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses arising under the MDU Agreement due to any act or omission by any Owner and/or the Community Association. The Community Association and each Owner as well as any future Owners recognize the rights Elsinore has under the MDU Agreement and shall not take any action or fail to take any action which may impair Elsinore's rights under the MDU Agreement or otherwise affect Elsinore in connection with the MDU Agreement or the services provided thereunder, and in the event the Community Association and/or any Owner takes any such action or fails to take any action, then the violating party or parties shall be liable to indemnify Elsinore for any and all damages, losses, costs, legal fees or other expense Elsinore may incur in connection therewith. Further, the Community Association and each Owner agree and acknowledge that in the event MDU fails to comply with any term of the MDU Agreement, then in no event may Elsinore be liable to the Community Association or any Owner or occupant of the Project for any claim, loss or any other type of expense. This Article 18.25. may not be amended by any party without the prior written consent of Declarant and Elsinore, which consent may be withheld in the sole and absolute discretion of Declarant and/or Elsinore.

Each Owner is obligated to inform the Community Association in writing no later than ten (10) business days following the Owner signing any contract of sale of the Unit and such notice shall contain the buyer's or buyers' name as well as the date of settlement. Further, each Owner shall include in any contract of sale the acknowledgement and attachments contained in Exhibit "G", attached hereto, executed by all buyers under the contract of sale. The signed notice shall be forwarded to Elsinore Communications LLC at 308 East 4500 South, Suite 200, Murray, Utah 84107 or such other address as Elsinore may provide to the Community Association from time to time, within the ten (10) days provided herein. The Community Association shall be responsible for enforcing the Owner's obligations under this Article 18.25. In the event any Owner fails to comply with this Article 18.25 and/or the Community Association fails to enforce the obligations of the Owner described herein, then the Owner and the Community Association shall be liable to Elsinore for any costs, damages, legal fees and the like which Elsinore may incur as a result thereof. No amendment to this Article 18.25 may be made without the prior written consent of Elsinore, which consent may be withheld in its sole discretion.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has executed this instrument as of the day and year first hereinabove written.

WITNESS/ATTEST:

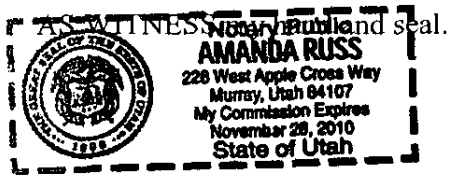
DECLARANT:
BIRKHILL AT FIRECLAY LLC

[Signature]

[Signature] (SEAL)

STATE OF Utah, COUNTY OF Salt Lake :

I HEREBY CERTIFY that on this 9 day of Sept, 2008 before, me, the subscriber, a Notary Public of the State of Utah, personally appeared, Michael Bradsky the Member of BIRKHILL AT FIRECLAY LLC, the Declarant named in the foregoing Declaration of Covenants, Conditions and Restrictions, and who, being authorized to do so, in my presence, signed and sealed the same and acknowledged the same to be the act and deed of the Declarant.



[Signature]
Notary Public

My Commission Expires: Nov. 28, 2010

CONSENT AND AGREEMENT OF TRUSTEES AND BENEFICIARY

U S TITLE COMPANY OF UTAH, Trustee, and WELLS FARGO BANK, N.A., Beneficiary, under those certain Deeds of Trust dated May 23, 2007 and recorded in the office of the Recorder of Salt Lake County, Utah in Book 9475, pages 8410 et seq.; the Deed of Trust dated January 29, 2008, and recorded in the office of the Recorder of Salt Lake County, Utah, in Book 9565, pages 7677 et seq. and that certain Security Agreement recorded in the office of the Recorder of Salt Lake County, Utah, in Book 9565, pages 7572 et seq., as the same may be supplemented from time to time (collectively, the "Deed of Trust"), hereby join in the foregoing Declaration for the express purpose of subordinating all of their respective right, title and interest under such Deed of Trust in and to the real property described in the Declaration to the operation and effect thereto.

Nothing in the foregoing provisions of this Consent and Agreement of Trustees and Beneficiary shall be deemed in any way to create between the person named in such Declaration as "the Declarant" and any of the undersigned any relationship of partnership or joint venture, or to impose upon any of the undersigned any liability, duty or obligation whatsoever.

IN WITNESS WHEREOF, each of the said Trustees and Beneficiary has executed and sealed this Consent and Agreement of Trustees and Beneficiary or caused it to be executed and sealed on its behalf by its duly authorized representatives, this 9th day of sept, 2008.

WITNESS/ATTEST:

U S TITLE COMPANY OF UTAH

Laz Butler

_____(SEAL)

ATTEST:

[Signature]

BENEFICIARY:
WELLS FARGO BANK, N.A.

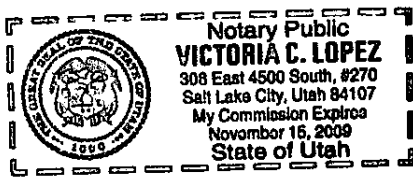
[Signature]

_____(SEAL)

STATE OF Utah : COUNTY OF Salt Lake : TO WIT:

I HEREBY CERTIFY, that on this 9th day of Sept, 2008, before me, the subscriber, a Notary Public of the state aforesaid, personally appeared Larry Burton, who acknowledged himself to be the President of U S TITLE COMPANY OF UTAH, Trustee, and that he/she, being authorized to do so, executed this Consent and Agreement of Trustees and Beneficiary for the purposes contained therein by signing the on behalf of the Corporation, in my presence.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



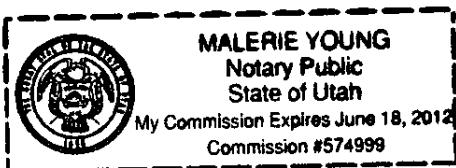
[Signature]
Notary Public

My commission expires on 11/15/09

STATE OF Utah : COUNTY OF Salt Lake : TO WIT:

I HEREBY CERTIFY, that on this 10th day of September 2008, before me, the subscriber, a Notary Public of the state aforesaid, personally appeared Mike Dugan, who acknowledged himself to be the AVP of WELLS FARGO BANK, N.A., Beneficiary, and that he/she, being authorized to do so, executed this Consent and Agreement of Trustees and Beneficiary for the purposes contained therein by signing the on behalf of the Corporation, in my presence.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



[Signature]
Notary Public

My commission expires on June 18, 2012

EXHIBIT A

INITIAL INCREMENT OF REAL PROPERTY SUBJECT TO THIS DECLARATION

ALL THAT LAND located in Salt Lake County, Utah, which is described as follows:

COMPOSITE DESCRIPTION

A Parcel of land located in the Northeast Quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, bounded on the North by the 1968 annexation boundary in Big Cottonwood Creek; on the East by Main Street; on the South by the Road Dedication Plat of Fireclay Avenue as recorded in Book 99-11P at Page 310 of the Salt Lake County records; and on the West by the Utah Transit Authority (UTA) Light Rail Corridor, formerly Union Pacific Land Resources Corporation (UPRR), more particularly described as follows:

BEGINNING at the intersection of the 1968 Murray City Annexation Boundary in Big Cottonwood Creek recorded December 31, 1968 in Book GG at Page 18 of the Salt Lake County records and a line 33.00 feet perpendicularly distant westerly of the Main Street monument line, said point being North 87°15'51" East 16.28 feet (North 87°01'34" East 16.16 feet per 1968 Murray City Annexation Plat), North 00°30'11" East 1741.07 feet (North 00°15'54" East 1741.07 feet by record) along said Main Street monument line, and North 76°01'54" West 33.93 feet (North 76°16'11" West 33.93 feet by record) along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek from the East Quarter Corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearings being North 00°30'11" East 1518.10 feet from the found centerline monument marking the intersection of Fireclay Avenue and Main Street to the found centerline monument marking the intersection of Central Avenue and Main Street), and running thence along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek the following five courses: North 76°01'54" West 23.32 feet (North 76°16'11" West by record), North 39°46'13" West 154.80 feet (North 40°00'30" West by record), North 68°12'37" West 290.80 feet (North 68°26'54" West by record), North 76°43'06" West 457.00 feet (North 76°57'23" West by record), and South 29°27'50" West 50.40 feet (South 29°13'33" West by record) to the easterly right-of-way line of the UTA Light Rail Transit Corridor, formerly Union Pacific Land Resources Corporation (UPRR) as shown on the 1996 Existing Union Pacific Railroad Track Alignment Survey filed as Survey S97-09-0651 in the Salt Lake County Surveyors Office; thence along said easterly right-of-way line the following two courses: South 08°47'37" East 709.28 (South 09°02'48" East by record) and Southerly 216.19 feet along a 2,897.82 foot radius curve to the right through a central angle of 04°16'28" and a long chord of South 06°39'23" East 216.13 feet to a point on the north line of the Road Dedication Plat Fireclay Avenue as recorded in Book 99-11P at Page 310 of said records; thence along said north line North 89°57'37" East 722.30 feet (North 89°42'43" East 722.44 feet per Road Dedication Plat Fireclay Avenue) to the west line of Main Street; thence along said west line North 00°30'11" East 621.48 feet to the POINT OF BEGINNING.

Containing 658,857 square feet or 15.125 acres.

EXHIBIT B

PROPERTY WHICH MAY BE ANNEXED IN THE FUTURE

The expansion area is known as the Murray Fireclay Project Area as shown below.

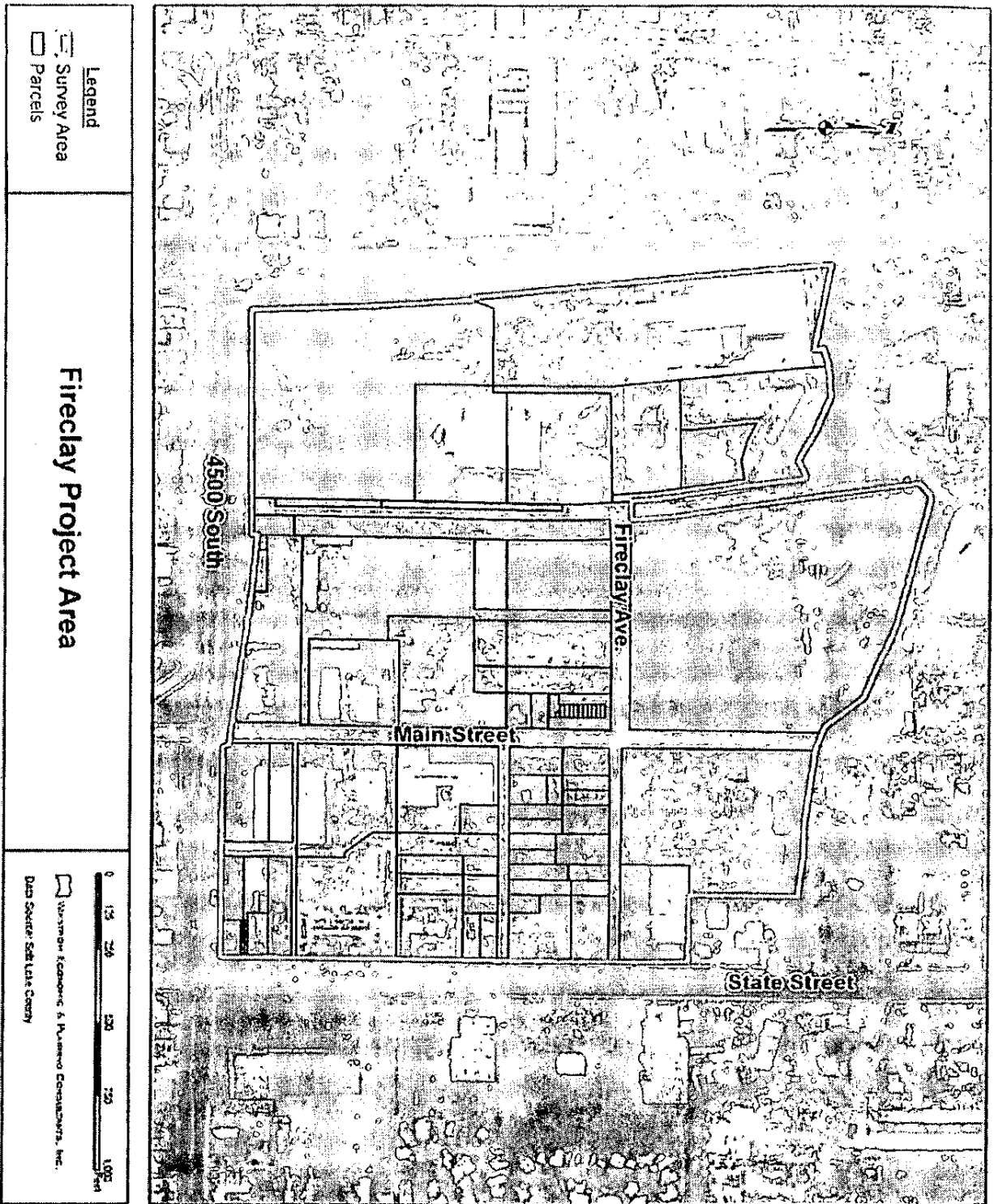


EXHIBIT C

CONSERVATION EASEMENT AND MAINTENANCE AGREEMENT

(Attached)

Exhibit F to First Amendment to Participation and Development Agreement

WHEN RECORDED, MAIL TO:

Murray City Recorder
Murray City
5025 So. State Street
Murray, Utah 84107

**CONSERVATION EASEMENT
AND
MAINTENANCE AGREEMENT**

THIS CONSERVATION EASEMENT AND MAINTENANCE AGREEMENT is made this _____ day of _____, 20__, by Hamlet Development Corporation, a Utah corporation (the "Grantor"), and MURRAY CITY, a municipal corporation and body politic of the State of Utah (the "Grantee"), whose mailing address is 5025 So. State Street, Murray, Utah 84107.

RECITALS

1) Grantor owns certain real property located in Salt Lake County, Utah (the "Property") sometimes referred to as the Park Property and Trail Facilities in ¶ 2.3. of that certain Participation and Development Agreement between Grantor and the Redevelopment Agency of Murray City, as amended, to which a form of this instrument is attached (the "Participation Agreement"). A legal description of the Property is attached hereto as Exhibit "A" and is by this reference made a part hereof. The parcels comprising the Property shall be referred to as the Park Plan Parcel, the West Open Space Easement Parcel and the Open Space Easement East of Main Street Parcel.

2) When the Park Property and Trail Facilities are completed by Grantor, the Property will possess scenic, open space, recreational and educational values (collectively, "conservation values") of significant importance to the Grantor, Grantee, the people of Murray City, and the people of the State of Utah.

3) Grantor intends that the conservation values of the Property be preserved and maintained by the application of maintenance and land use patterns that perpetuate and do not significantly impair or interfere with those values.

4) Grantor further intends, by the recording of this Easement, to preserve and protect the conservation values of the Property in perpetuity.

NOW, THEREFORE, in consideration of the covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following is hereby established, acknowledged and agreed:

GRANT OF EASEMENT

IN CONSIDERATION of the above and the covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of Utah and in particular Utah Code Ann. § 57-18-1, et seq. (1985), with the intention of making an irrevocable easement in perpetuity, Grantor hereby grants to Grantee and establishes a conservation easement, as hereinafter defined, (the "Easement") over and across all the Property to preserve and protect the natural, ecological, water, wildlife, habitat, open space, scenic, aesthetic, plant life and wetland values present on the Property, and shall bind Grantor and Grantee and their respective successors in ownership and/or use of the Property forever. The Easement shall be perpetual and shall not be subject to any mortgage, lien, or other encumbrance other than encumbrances of sight or record existing at the time this instrument is signed or encumbrances or rights excepted herein.

Further, Grantor and Grantee acknowledge and agree that:

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in its open space condition as a public park and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. The use of the Property shall be limited to such activities which are consistent with the purpose of this Easement.

2. Rights and duties of the Grantee. To accomplish the purpose of this Easement, the following rights and duties are conveyed to the Grantee:

a. To preserve and protect the conservation interest and values of the Property.

b. To enter upon the Property to maintain the same as provided hereinafter and to inspect and enforce the rights herein granted in a manner and at any time that will not unreasonably interfere with the proper uses being made of the Property at the time of such entry; and

c. To enjoin any activity on or use of the Property that is inconsistent with the purpose of this Easement or which may be reasonably expected to have a significant adverse impact on the conservation interests associated with the Property, and to enforce the restoration of such areas or features of the Property that may be damaged by any such inconsistent activity or use.

3. Permitted Uses and Practices. The following uses and practices, though not an exhaustive recital of consistent uses and practices, are consistent with the Easement, provided that each such use or practice is effected in a manner that is not inconsistent with the purpose of the Easement as specified in paragraph 1 and that each such use or practice shall neither significantly impair the public's view of and over the Property nor, in general, result in significant injury to or the destruction of a significant conservation interest:

- a. To plant and maintain trees, bushes and grasses and to protect, preserve and enhance the aesthetic, park-like and conservation values of the Property;
- b. To control predatory or problem animals by the use of selective control measures and techniques;
- c. To remove such weeds that the Grantee reasonably determines to be hazardous to the uses and practices herein reserved;
- d. To build, maintain and repair facilities, fences and systems reasonably appropriate for maintenance and protection purposes, for the protection of vegetation planted in accordance with subparagraph (a) of this paragraph, or for the separation of areas on which buildings are located;
- e. To use the Property for educational purposes consistent with the purpose of the Easement;
- f. To use the Property for park, athletic, community art purposes and other recreational activities consistent with the purpose of the Easement; and
- g. To conduct all other activities reasonably consistent with and/or related to the conservation values and use of the Easement stated above.

4. Prohibited Uses and Practices. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited

- a. Division, subdivision or de facto subdivision (through long-term leasing or otherwise) of any parcel of the Property into more than one (1) separately owned parcel of real property;
- b. Construction or location of any structure or other improvement except for trails, picnic and recreational areas, community art sculptures and pieces, and other improvements for recreational uses as approved by Grantee, which are reasonably appropriate to a use permitted under this Easement;
- c. The use of motorized vehicles, including snowmobiles, all terrain vehicles and other recreational vehicles, except as may be necessary to maintain the Property and to maintain utility lines running through the Property;
- d. Hunting or trapping for any purpose other than predatory, scientific research or problem animal control;
- e. Drilling, exploration for and extraction of oil and gas, coring, mining,

excavation, depositing or extraction of sand, gravel, soil, rocks and/or without limitation, any mineral or similar materials for any site on the Property;

f. Dumping, depositing, discharging, releasing or abandoning any solid or hazardous wastes, hazardous substances or material, pollutant or debris, ashes, trash, garbage or junk in, on or under the Property or into the surface or groundwater on or under the Property;

g. Manipulation or alteration of natural watercourses or riparian communities;

h. Burning of any material;

i. Establishment or maintenance of any agricultural, grazing, livestock or industrial use not expressly permitted;

j. Advertising of any kind or nature on the Property, including but not limited to, the placement or maintenance of signs, billboards or any other outdoor advertising of any kind or nature except for sign relating to the use or limitations on use applicable to the Property, directional and regulatory signs relating the Property, and signs of an informational or educational nature relating to the Property, the conservation values and purposes of this Easement; and

k. All other uses and practices inconsistent with and significantly detrimental to the stated objectives and purpose of the Easement.

5. Environmental Cleanup. The Property has been subject to environmental cleanup in accordance with the Voluntary Cleanup Program ("VCP") of Title 19, Chapter 8 of the Utah Code, pursuant to which a Certificate of Completion (the "VCP Certificate") has been issued and recorded in the real property records of Salt Lake County, Utah, by the Executive Director of the Utah Department of Environmental Quality or the Executive Director's representative. The VCP Certificate is an encumbrance pursuant to which this Easement is subject. The Grantee agrees to monitor and manage any contamination remaining on the Property after the issuance of the VCP Certificate in accordance with the provisions of the VCP Certificate, including any Site Management Plan required by the VCP Certificate. Attached hereto as Exhibit "B" is a copy of the VCP Certificate and related Site Management Plan which are incorporated herein by this reference. Grantor, either through the Birkhill Community Association, the master community association for the property to be developed within the First Phase Concept Plan as provided in the Participation Agreement, or any other means will undertake and comply with the periodic monitoring and reporting requirements of any VCP applicable to the Property.

6. Enforcement of Easement.

a. Grantor shall notify the Grantee in writing before exercising any

right reserved to Grantor, expressly or impliedly, with respect to the Property, the exercise of which may have a significant adverse impact on the conservation interests associated with the Property. The notice shall inform the Grantee of all aspects of the proposed activity including, but not limited to, the nature, siting, magnitude, and anticipated effect of the proposed activity or use with respect to the purpose of the Easement. Such notice shall be sent as provided below.

b. The Grantee shall have sixty (60) days from the mailing of such notice to review the proposed activity and notify the other of any objections thereto. Such objection, if any, shall be based upon the Grantee's opinion that the proposed activity is inconsistent with this instrument, and shall inform the Grantor of the manner, if any, in which the proposed activity can be modified to be consistent with the terms thereof. The Grantee shall have the right to prevent any proposed activity which is incompatible with the purpose of intent of this instrument or with the authorized uses or prohibitions specified herein.

c. Any violation of the Easement by the Grantor under this Section 6 shall be subject to termination through injunctive proceedings with the imposition of temporary restraining order or through any other legal means, it being recognized that monetary damages and/or other non-injunctive relief would not adequately remedy the violation of the covenants and restrictions of the Easement. In addition, the Grantee shall have the right to enforce the restoration of the portions of the Property affected by activities in violation of the Easement to the condition which existed prior to any damage or disturbance.

d. Failure by the Grantee to exercise its rights under this instrument in the event of any breach by the Grantor or its successors or assigns shall not be deemed or construed to be a waiver of the Grantee's rights hereunder as to that breach or any subsequent breach.

7. Maintenance Activities. Grantee hereby acknowledges that the Grantor has fulfilled its obligations under the Participation Agreement with regard to the development of the Property in accordance with the (a) Park Plan attached hereto as Exhibit "C" and (b) the trails and landscaped open space for the West Open Space Easement Parcel and the Open Space Easement East of Main Street Parcel and agrees to accept possession of the Park Plan Parcel, the West Open Space Easement Parcel and the Open Space Easement East of Main Street Parcel and all their respective improvements as the development of each parcel is completed and to conduct the following activities at its expense:

a. Maintenance and operation of the Property and all park facilities and improvements constructed by Grantor pursuant to the Participation Agreement, together with any subsequent facilities or improvements added thereafter by Grantee consistent with the terms hereof.

b. Construction and maintenance of trails and recreational facilities over portions of the Property as approved by Grantee.

c. Grantee shall indemnify and hold Grantor harmless of and from activities or actions of Grantee or public users of the Property which may or do cause damage to persons or property or otherwise violate the terms of this Easement; however, under no circumstances shall Grantee's obligations under this paragraph or this Easement be construed to obligate Grantee to conduct, fund or participate in any environmental clean-up or remediation obligations under the VCP program or otherwise, other than to address environmental cleanup or remediation obligations caused by Grantee's failure to comply with the terms of this Easement.

8. Transfer of Easement. If the Grantee determines that it no longer is able to enforce its rights under this instrument or that it no longer desires to enforce the rights, or desires to assign enforcement rights, the Grantee shall be entitled to convey in whole or in part all its rights under this instrument, at no expense to Grantor, and deliver a copy of this instrument to an appropriate organization approved by the Mayor and Council of Murray City. The Grantee is hereby expressly prohibited, however, from subsequently transferring the Easement, whether or not for consideration, unless the Grantee, as a condition of the subsequent transfer, requires that the conservation purposes which the Easement is intended to advance continue to be carried out and any transferee of the Easement also agrees to comply with all the terms of the Easement.

9. Termination of Easement. The Grantee shall not voluntarily or willingly allow the termination of any of the restrictions of this instrument, and if any or all of the restrictions of the Easement are nevertheless terminated by a judicial or other governmental proceeding, any and all compensation received by the Grantee as a result of the termination shall be used by the Grantee in a manner consistent with the conservation purposes of the Easement.

10. Subsequent Transfers. The Grantee shall incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property.

11. Notices. Any notice, demand, request, consent, approval, or communication shall be in writing and served personally or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the following:

Public Services Director
Murray City
4545 South 500 West
Murray, Utah 84107

President
Hamlet Development Corporation
308 East 4500 So.

Murray, Utah 84107

or to such other address as parties hereto from time to time shall designate by written notice to the other.

12. Recordation. Grantee shall record this instrument in timely fashion in its official records of Salt Lake County, Utah and may re-record it at any time as may be required to preserve its rights in this Easement.

13. General Provisions.

a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Utah.

b. Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Easement to effect the purpose of this Easement and the policy and purpose of Utah Code § 57-18-1, et seq. (1985) and related provisions.

c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Successors. The covenants, terms conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Grantee, subsequent owners of the Property, and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

e. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

IN WITNESS WHEREOF, Grantor has executed this instrument on the day and year first above written.

GRANTOR:

HAMLET DEVELOPMENT CORPORATION

By _____

Its _____

GRANTEE:

MURRAY CITY, UTAH

By _____

Its _____

ATTEST:

City Recorder

STATE OF UTAH)
): ss.
COUNTY OF SALT LAKE)

On the _____ day of _____, 20__, personally appeared before me the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

Notary Public
Residing at:

EXHIBIT "A"

EXHIBIT D

DESIGN GUIDELINES

(Attached)

Design Review Guidelines

Birkhill at Fireclay

Architectural Review Committee

(ARC)

Date: February 6, 2008

BACKGROUND

Birchill at Fireclay is the first phase of Murray City's new mixed-use, transit-oriented development (TOD) in the Fireclay District. It covers nearly thirty percent of the 97-acre redevelopment centered on the Fireclay TRAX Station. The design of the development is based on "new-urbanism" principals that promote walkable, accessible and convenient neighborhoods. The character of the architecture is that of traditional low-rise buildings incorporating classical design elements and extensive use of masonry to give the streetscape the character of an established urban town center.

To maintain the highest standard of design within the community, Birchill at Fireclay, LLC has agreed to establish an Architectural Review Committee (ARC) to review the plans and specifications for any proposed improvements prior to the development of the property. The agreement includes the obligation to adopt rules and regulations for the form and content of plans to be submitted to the ARC as well as the adoption of standards, guidelines, and criteria for appropriate architecture, landscaping, details, and treatments. Once adopted by the ARC, the proposed rules and regulations shall be made available to the Community and potential developers.

The Architectural Review Committee (ARC) shall review submitted proposals in accordance with the following design review guidelines:

SITE DESIGN GUIDELINES

I. Site Design

A. General

1. A written design concept statement shall be submitted as part of the design review application which identifies the significant site features and supports the reasoning behind the proposed plan concept.
2. The site plan, building design, and landscaping shall achieve high quality standards that will both enhance and compliment the character of the initial Phase 1 development.
3. Significant site features and significant views shall be incorporated as best as possible into the new development.
4. The design, where appropriate, should include focal point amenities within proposed developed areas. Proposed focal points shall take the form of parks, greens, plazas, courtyards, landscaping, and similar amenities. Such amenities shall occur at a scale appropriate to their size, nature, and location within the proposed development.

B. Transitional Areas

1. Where proposed uses are dissimilar from adjacent land uses, the design shall carefully address these transition areas to mitigate any undesirable impacts. Proposed mitigation techniques may take the form of transitional landscaping, fencing, signage, hardscaping, lighting, etc.
2. Unattractive elements such as storage areas, trash enclosures, generators and similar features should be sited in areas which are generally not visible from the street and are to be screened from view.

C. Grading

1. Abrupt, engineered, and unnatural grading design solutions shall be minimized. Proposed grading shall blend with the contours of adjacent properties.
2. The height and length of retaining walls shall be minimized and screened with appropriate landscaping. Retaining walls shall incorporate design elements and materials of other architectural or natural features of the project.
3. Balancing the cut and fill is highly encouraged when it does not result in further damage to the natural topography.

D. Engineering/Drainage

1. In general, performance criteria for ARC design review shall be consistent with Murray City requirements for Final Grading Plan approval.
2. Earth berms and lawn areas should not exceed 2:1. Commercial slopes exceeding 3:1 must demonstrate an effective landscape and/or maintenance program to ensure the steeper slopes will be erosion resistant and will contribute a positive aesthetic for the project.

3. Where storm water features are required, they shall be designed to mimic underlying and adjacent land patterns as best as possible. Highly engineered geometric pond shapes should be minimized.
- E. Pedestrian and Vehicular Circulation
1. Circulation patterns shall be intuitive and simple.
 2. Likely pedestrian routes should be considered in the early design phase to eliminate short cut routes through private and landscaped areas.
 3. Circulation systems shall be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic.
- F. Open Space
1. The proposed open space should reinforce the organizational structure of the plan.
 2. Common areas should be clearly defined with landscaping, signage, lighting, and physical amenities.
 3. Pedestrian links to the TRAX Station should be obvious and consistent with the overall plan.
 4. A variety of open spaces should be included throughout the project. The variety should differentially support walking, biking, sitting, small gatherings, large gatherings, views, preservation, plantings, lighting, signage, furnishings, kiosks, gazebos, park structures, focal points, etc.
- G. Setbacks, Building Coverage, Bulk Regulations
1. Building setbacks, building coverage limitations, and other bulk regulations limiting proposed development shall meet the requirements of the Murray City Zoning Regulations or approved as variances for same through the development approval process.

II. Landscape Design

A. General

1. Landscaped areas shall be balanced throughout the site.
2. Focal points and amenity areas shall be appropriately landscaped to provide visual impact, direction in circulation patterns, emphasis at vehicular and pedestrian entrances, and ample shade for proposed sitting areas.

B. Parking Lot Landscaping

1. Proposed landscaping shall permit adequate horizontal and vertical sign distance for motorists and pedestrians.
2. Landscaping shall be provided adjacent to and within parking areas to screen vehicles from view and to minimize the expansive appearance of large parking areas.
3. Shrubs and trees shall be installed at appropriate locations to prevent damage from vehicles.

C. Landscape Design Standards

1. Proposed landscaping shall categorically meet and/or exceed the planting requirements of Murray City. It is expected that proposed amenity areas, entrances, focal points, etc., will exceed the more general planting

requirements of Murray City with detailed bed plantings and supplemental landscape features.

III. Parking Design

1. Large parking lots should be softened and buffered with attractive landscaping.
2. Pedestrian pathways shall be separated from auto circulation routes.
3. Bicycle parking spaces shall be provided within commercial development in convenient and secure locations.

IV. Fencing and Screening Design

A. Design Standards

1. Fencing should be designed as an integrated part of the site (i.e., continuation of an architectural wall, extension of a landscape feature area or proposed site wall or feature, etc.).
2. The design of fencing, walls, trash enclosures, and similar site elements shall be compatible with the architecture of the main buildings and should use similar materials.
3. Rooftop mechanical and electrical equipment, microwave antennae, or building elements to screen such equipment shall be designed as an integral part of the building architecture.
4. Exterior trash and storage areas, service yards, loading docks, ramps, wood service poles, electric and gas meters, fire sprinkler valves, irrigation backflow prevention devices, transformers, etc., shall be screened from view in a manner that is compatible with the building and site design. Screening materials shall be substantial and durable, and the screening shall be well-designed. Generally, all such elements should be located to the rear of the site and/or away from the major street and pedestrian ways.

B. Trash Enclosures

1. Trash enclosures shall be constructed of sturdy, durable, opaque materials (with trash receptacles screened from view) which are designed to be compatible with the project architecture.
2. Areas for collecting and loading recyclable materials are encouraged and shall be adjacent to the solid waste collection areas.

V. Exterior Lighting Design

1. Exterior lighting shall be architecturally integrated with the building style, material and colors.
2. Exterior lighting of the building and site shall be designed so that light is not directed off the site and the light source is shielded from direct offsite viewing.
3. Fixture mounting height should be appropriate for the project and in compliance with Murray City standards. The mounting height of fixtures in smaller parking lots or service areas should generally not exceed 16 feet (20 feet height for large parking areas), with lower mounting heights

encouraged, particularly where adjacent to residential areas or other sensitive land uses.

4. Raised light pole bases shall be attractively designed and well-detailed to be compatible with the overall project. The use of "sonotube" type concrete pole bases will not be permitted.
5. The placement of light poles within raised curb planter areas is encouraged.
6. The use of vandal resistant lighting is encouraged for lighting monument signs.

ARCHITECTURAL DESIGN GUIDELINES

I. General Architectural Guidelines

1. Building designs should express a consistent architectural theme throughout the project.
2. Architectural design shall be compatible with the developing character of the project. Design compatibility includes complementary building style, scale, form, color and materials.
3. Exterior building design and detail on all elevations shall be coordinated with regard to color, types of materials, number of materials, architectural form, and detailing to achieve harmony and continuity of design.
4. Buildings shall be sited to provide functional, livable outdoor spaces, and public spaces which enhance the use of the building.
5. Exterior materials shall be durable and of high quality.
6. The visibility of rooftop equipment should be minimized by grouping all plumbing vents, ducts and rooftop mechanical equipment away from the public view.
7. Code required elements, such as parapet walls and screen walls, shall be treated as an integral part of the architecture and these elements shall not visually weaken the design.
8. All vents, gutters, downspouts, flashing, electrical conduits, etc., shall be painted to match the color of the adjacent surface, unless being used expressly as a trim or accent element.
9. Soffits and other architectural elements visible to the public, but not detailed on the plans, shall be finished in a material compatible with other exterior materials.
10. Accessory structures and service areas should be unobtrusive and/or screened from public view.

II. Commercial Architecture

A. General

1. Commercial buildings should be compatible in scale, mass, and form with adjacent structures and the pattern of the surrounding area.
2. Rear and side façades, if visible from public streets or neighboring properties, should be carefully designed with similar/compatible detailing

to the principal façade of the building. All elevations of the building will be evaluated in the design review.

3. The incorporation of defined outdoor spaces into the buildings is encouraged. Outdoor spaces which are encouraged include courtyards, patios, plazas, covered walkways (arcades and colonnades), passages, gardens, trellised areas, etc.
4. Long or continuous wall planes should be avoided especially where buildings should exhibit more detail appropriate for close range pedestrian viewing.

B. Building Equipment and Service

1. Access for service vehicles, trash collection, and storage areas should be located on lesser traveled routes, if available/practical.
2. Building equipment shall be located, designed and/or screened to minimize visual impact on public streets, large surface parking fields, and neighboring properties.
3. Trash containers and outdoor storage areas shall be screened from public streets, pedestrian areas, and neighboring properties. Trash containers should be designed for compatibility with the architectural character of the development.
4. Utility meters should be located in screened areas.

C. Office

1. Proposed office structures shall relate to each other as a group and shall be architecturally compatible with adjacent retail/other commercial use structures.
2. Proposed office buildings are encouraged to provide private amenity areas for employee use with an emphasis on prime view orientation to the unique mountain view setting. Proposed employee amenity areas should link to the site-wide amenity pedestrian system.
3. Pedestrian entrance locations should receive a distinctive architectural treatment to visually orient users.
4. Proposed office structures shall receive an appropriately scaled and detailed ground level façade that works with proposed building setbacks and the amount of pedestrian area between the building and the street/parking edge.

D. Retail

1. Blank walls at the street level are not appropriate. Visually interesting activities at the sidewalk edge are encouraged to engage pedestrian interest.
2. Frontage design and signage locations shall be coordinated with streetscape landscaping and street trees.
3. Building frontages should be active with large, non-reflective and minimally tinted window openings at ground level.
4. Frequent street-facing pedestrian entrances shall be provided.
5. Pedestrian open spaces such as covered walkways, courtyards and plazas are encouraged.

6. Attractive passageways between buildings and blocks should be incorporated where appropriate.
7. Outdoor seating and dining areas facing the street are strongly encouraged.
8. Building forms and elevations should be detailed and articulated to create interesting roof lines and strong patterns of shade and shadow.
9. Large structures should be designed to reduce their perceived height and bulk by dividing the building mass into smaller-scale components.
10. A wide sidewalk space with street trees planted in a rhythmic pattern shall be provided by Birkhill at Fireclay, LLC facing Fireclay Avenue, Main Street and Birkhill Boulevard in coordination with the building design and view corridors.
11. The rear of proposed buildings shall be enhanced, where appropriate, to minimize the view of unarticulated building façades toward public view or adjacent to dissimilar land uses.

E. Restaurant Guidelines

1. Where drive-through elements are appropriate, they should demonstrate architectural compatibility and integration with the main structure of the building. Site circulation should allow for adequate length of queuing lanes when a drive-through is proposed.
2. The proposed site design should accommodate a logical and safe vehicle and pedestrian circulation pattern through the site.
3. Freestanding restaurant buildings should be designed and detailed consistently on all sides, including the rear and side elevations.
4. Outdoor seating areas, play equipment, and perimeter fencing should be reviewed for compatible and attractive design that is integrated with the main building architecture.
5. Excessive illumination of the signage, building or site should be avoided.
6. All rooftop mechanical equipment, including antennas, should be screened visually and acoustically. Such screening shall be integral to the architectural design of the building.

SIGN DESIGN GUIDELINES

I. Sign Overview

1. All signs shall be architecturally integrated with their surroundings in terms of size, shape, color, texture, and lighting so that they are complimentary to the overall design of the building and site design.
2. Signs shall convey their message clearly and legibly, shall be vandal and weather resistant, and, if illuminated, shall not be overly bright for their surroundings.
3. New building design should provide logical sign areas, allowing flexibility for new users as the building is re-tenanted over time.
4. Signs must comply with Murray City guidelines and ordinances.

II. Sign Placement

1. Signs shall be proportionate to the dimensions of their location.

2. Wall-mounted signs shall be framed to create a clearly defined edge with shadowed or pinned-off relief.
3. Repetitious signage information on the same building frontage shall be avoided, regardless of that allowed in the zoning code.

III. Sign Lighting

1. Arrange any external spot or flood lighting so that the light source is screened from direct view by passersby.
2. Halo-lit or back-lit letters are encouraged for both office and retail use. Such signs convey a subtle and attractive appearance and are very legible under moderate ambient lighting conditions. Face illuminated letters may be appropriate for retail use.
3. Illumination of individual letter signs by shining light upon them is discouraged for both skyline signs and signs placed high on building walls.
4. Where individual letter signs face nearby residential areas, a low level of brightness shall be maintained. This can be achieved using halo-lit/back-lit letters.

EXHIBIT E

(Intentionally Omitted)

EXHIBIT F

ENVIRONMENTAL COVENANT

(attached)

This document has been recorded electronically.
Please see the attached copy to view the County
Recorder's stamp as it now appears in the public
record.

Date: 8/12/08 Entry: 10497519

Submitted by: US Title of Utah

When Recorded Return To:
Birkhill at Fireclay LLC
308 East 4500 South, Suite 200
Murray, UT 84107

With Copy To:
Utah Department of Environmental Quality
Division of Environmental Response and Remediation 168 North 1950 West
P.O. Box 144840
Salt Lake City, Utah 84114-4840

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Birkhill at Fireclay LLC (the "Owner") and the Utah Department of Environmental Quality, ("DEQ") pursuant to the Uniform Environmental Covenants Act, Utah Code Ann. §§ 57-25-101 et seq. for the purpose of subjecting the Property described in paragraph 2, below, to the activity and use limitations set forth herein.

Background Information

The Birkhill at Fireclay property ("Property") is composed of approximately 15.125 acres on the northwest corner of Fireclay Avenue and Main Street in Murray, Utah. The Property is bound to the south by Fireclay Avenue, to the north by Big Cottonwood Creek, to the west by the Utah Transit Authority's (UTA's) TRAX light-rail line, and to the east by Main Street. The legal description of the Property is included as **Exhibit A**.

The Property was historically used for industrial purposes dating back to the 1870s. Industrial uses of the property included the former Morgan-Hanauer Smelter, portions of the Fireclay Battery battery-cracking site, an asphalt batch plant, a slurry seal operation (i.e., asphalt patch and sealant), equipment storage and maintenance, and pallet manufacturing.

Environmental Response Project

In December of 2005, Hamlet Development and Gibbons Realty Company entered into an agreement with Utah's Voluntary Cleanup Program to address impacts at the Property associated with the historical industrial uses. The Property has been assigned the VCP Site ID C045 and was designated as the "Former Morgan-Hanauer Smelter."

Copies of all reports relating to investigations, risk assessments, and site remediation have been submitted to the DEQ's Voluntary Cleanup Program and are available to the public at the Agency address listed on Page 1 of this document.

Description of Contamination at the Property

Contaminants of Concern identified at the Property include lead, arsenic, and petroleum hydrocarbons (primarily long-chained aliphatic hydrocarbons and alkylated polycyclic aromatic hydrocarbon compounds). Lead and arsenic were detected at concentrations exceeding the Cleanup Standards established for the Property in on-site soils and in sediment within the Big Cottonwood Creek channel adjoining the Property.

A Petroleum Hydrocarbon Risk Assessment was performed to evaluate the current and future risks to human health and the environment from the specific petroleum hydrocarbon compounds detected at the Property. The risk assessment developed Site-Specific Cleanup Levels (SSCLs) for the petroleum hydrocarbon compounds at the Property. Some of the petroleum hydrocarbon concentrations detected at the Property exceed the SSCLs for the groundwater ingestion pathway (i.e., drinking impacted groundwater that underlies the Property) and the vapor intrusion to indoor spaces pathway (i.e., inhalation of vapors that could enter buildings constructed above impacted soils or groundwater). The locations of petroleum impacts detected at the site are shown on **Plate 1 and Figure 2: Petroleum Impacted Areas**, both attached hereto.

The remedy at the Property included consolidation of lead and arsenic-impacted soils, and sediments from Big Cottonwood Creek, into five on-site sub-grade repositories. Two of the repositories are located beneath the large parking lots associated with the eastern buildings, two of the repositories are located along the western property boundary, and one of the repositories is located beneath the green space on the northern boundary of the property (see **Figure 1: Site Map**).

A geotextile fabric marker barrier was placed on top of the impacted soils in each of the repositories to act as an identifier if excavation activities are ever performed in the repository areas. Non-impacted soils were placed on top of the marker barriers to bring the site to the grade required by construction at the site. Additional engineering controls (i.e., drainage layers and a clay liner) were placed above the northern repository beneath the green space to prevent infiltration of water from landscape irrigation or from storm water retention in the green space. The petroleum-impacted soils and groundwater were left in place because the only potential pathways of exposure for petroleum hydrocarbons are from groundwater ingestion and vapors

infiltrating into on-site structures, and the activity and use limitations outlined in this Environmental Covenant will be used to prevent exposures. Following the remedy, there are no current pathways of exposure for petroleum, lead and arsenic-impacted soils.

Now therefore, the Owner and DEQ agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq.
2. Property. This Environmental Covenant concerns an approximately 15.125 acre tract of land in Salt Lake County, Utah, and more particularly described in **Exhibit A** attached hereto and hereby incorporated by reference herein ("Property").
3. Owner. Birkhill at Fireclay LLC, which is located at 308 East 4500 South, Suite 200, Murray, Utah, is the owner of the Property. Consistent with numbered paragraph 6 herein, the obligations of the Owner are imposed on assigns and successors in interest, including any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees (all of whom are hereinafter referred to as "Transferee"). The term "Owner" or "Owners" includes the term "Transferee" or "Transferees" unless this instrument clearly indicates otherwise.
4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.
5. Activity and Use Limitations. As part of the voluntary actions completed under the DEQ's Voluntary Cleanup Program, the Owner hereby imposes and agrees to comply with the Site Management Plan on file with the Division of Environmental Response and Remediation at the DEQ in connection with the Voluntary Cleanup Program Agreement for the former Morgan Hanauer site VCP # C045 which includes the following activity and use limitations.

A. Groundwater Limitations

To prevent ingestion of petroleum-impacted groundwater, the Owner shall not allow groundwater underlying the Property to be used for any purpose, potable or otherwise, except for investigation, monitoring, or remediation of the groundwater. If it is observed that groundwater is being used, the Owner will immediately prevent additional use and require that the well be immediately abandoned by a Utah-licensed well driller following applicable well abandonment regulations. Any use of groundwater at the site should be reported to DEQ as set forth in paragraph 19 herein.

B. Disturbance Limitations

Lead and arsenic-impacted soils were placed in repositories at the site and were capped as part of the remedy to prevent human contact with the impacted soils. The caps consist of a geotextile fabric marker barrier placed directly on top of the impacted soils, then a minimum of 1 foot of non-impacted soils for areas that were covered by hardscaping (e.g., parking lots, roadways, buildings, etc.) or 2 feet of non-impacted soils for landscaped areas. In the northern repository beneath the overflow pond, additional cap materials (i.e., drainage layers and a clay liner) were used to prevent infiltration of water from landscape irrigation or from storm water retention in the green space. The landscaping and hardscaping act as engineered barriers and provide additional protection from potential human exposures to impacted soils.

The Owner shall prevent human contact with the impacted soils and shall prevent the cap and the engineered barriers (i.e., landscaping and hardscape materials) from being breached. If the Owner needs to breach the cap and the engineered barriers, the Owner shall first develop and submit to DEQ for review and comment a plan to properly characterize, handle and dispose of any potentially impacted soils that may be encountered. The Owner shall follow the plan. The Owner shall inspect the engineered barriers (i.e., landscaping and hardscape materials) on a regular basis following the Site Inspection and Verification of Controls (Site Management Plan Section 4.0). At a minimum, inspections must be performed annually. The Owner must report any accidental breaches of the engineered barriers to the DEQ and the Owner must take measures to immediately repair or replace any damage to the barriers.

C. Vapor Intrusion Prevention Requirements

Owner shall prevent vapor intrusion. Owner will install a Soil Vapor Mitigation System in the Townhomes overlaying or directly adjacent to the area of petroleum impacts. Townhomes numbered 1 through 4, 21 through 24, 53 through 57, 76, and 81 through 83, as set forth in Figure 2: Petroleum Impacted Areas, attached hereto, or any unit identified in a later subdivision plat and located in the same location as any of such above-numbered Townhomes, will all be constructed with the Soil Vapor Mitigation System (Figure 2). The system design will follow EPA's Guide, "Building Radon Out, A Step-by-Step Guide on How to Build Radon Resistant Homes, U.S. Environmental Protection Agency, EPA 402 K-01002, April 2001" or any updated revisions to the document. The engineering plans for the soil vapor mitigation design will be submitted by Owner to the DEQ for review and comment prior to installation of the system. After installation, as-built plans and documentation demonstrating that the Soil Vapor Mitigation System was properly installed and functioning will be submitted to DEQ. The soil vapor mitigation system will consist of a vapor barrier beneath the foundation, passive venting of soil gas, and proper

caulking and sealing of the foundations. The purpose of these controls is to prevent the potential migration of petroleum hydrocarbon vapors into occupied space, either by blocking them or providing a preferential route of migration to the atmosphere. Because the system will be constructed of a vapor barrier and a passive venting system, minimal maintenance and inspection will be needed. Owner will follow maintenance and inspection and repair procedures for the system as proposed in the DEQ reviewed engineering plans for the soil vapor mitigation system. In the event that the soil vapor mitigation system is damaged or otherwise ceases to function properly, Owner shall repair or replace such system.

Utility corridors in the area of petroleum impacts will be constructed to prevent the creation of preferential vapor migration pathways, and engineering plans for the corridors will be submitted to DEQ for review and comment before such corridors are constructed.

D. Landscaping Limitations

Owner will be responsible for planting and maintaining small trees, shrubs, and turf grass. Individual townhome owners can plant shallow-rooted flowers and vegetables. The Owner will not allow planting of deep-rooted (i.e., roots that could extend greater than 1.5 foot below the ground surface) trees or shrubs in areas with the geotextile fabric marker barrier, as the roots could disturb or compromise the barrier. Landscape will be inspected annually as part of the Site Inspection and Verification of Controls. Owner will inspect landscaping of their areas of control to ensure that deep-rooted plants have not been planted and that turf areas and planting areas have sufficient cover materials to prevent erosion of clean soils, potentially exposing barrier fabric.

If inspections identify the presence of deep-rooted trees or shrubs, the Owner shall take immediate action to have the trees or shrubs removed and inspect and, if necessary, restore the integrity of the barrier fabric.

E. Utility Repair and Installation Limitations

All planned utility corridors have been excavated to a depth of 1 foot below the utilities, a geofabric textile marker has been installed, and the excavation has been backfilled with non-impacted soil. All work in the utility areas that does not disturb the geofabric marker will be in un-impacted soil, and no special safety plans or procedures are necessary. Utility work in areas not currently planned for utility installation could potentially encounter impacted soil. The Owner will prevent any utility work from being conducted in areas not currently planned for utilities unless arrangements are made to properly handle the soil generated and to ensure the safety of workers in potentially impacted soil (see 5F). In the event of utility work in areas that intersect petroleum impact areas, all utility corridors in such areas shall follow the special procedures set forth above in paragraph 5.C for vapor control including the maintenance

and repair of existing vapor migration controls impacted by the utility work. The Owner is responsible to coordinate with any utility companies that need to excavate on site to ensure that the proper notification of DEQ is made and documented, that the handling of potentially impacted soil and the replacement of the engineered barriers is completed following the Site Management Plan, that proper Health and Safety Plans are prepared and followed, and that dust is controlled during excavation activities.

F. Worker Health and Safety Requirements

The Owner is responsible to inform any workers conducting work in the subsurface soils of the potential soil impacts and verify that they have a Health and Safety Plan to address the potential impacts. Level "D" personal protective equipment is required for all personnel performing work that disturbs the caps at the site. Level "D" protection should include, but is not limited to, coveralls, gloves, steel-toed shoes, safety glasses, dust mask, and hardhat. If lead-impacted soils are known or suspected, all employees working in the area must also have OSHA's lead in construction training (29 CFR 1926.62).

The Owner will stop any excavation activities that do not follow a proper Health and Safety plan.

6. **Running with the Land.** This Environmental Covenant shall be binding upon the Owner so long as the Owner holds title to the Property or any portion thereof or has obligations to DEQ under the VCP Agreement. All assigns and successors in interest, including any Transferee, shall be bound and the Environmental Covenant shall run with the land, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth herein.

7. **Compliance Enforcement.** Compliance with this Environmental Covenant may be enforced pursuant to Utah Code Ann. § 57-25-111. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any noncompliance. Nothing in this Environmental Covenant shall restrict the DEQ from exercising any authority under applicable law. Pursuant to Utah Code Ann. § 19-8-113, if the Property or any portion thereof is put to a use that does not comply with this Environmental Covenant, the Certificate of Completion issued for the Property by the DEQ under Utah Code Ann. §§ 19-8-111 is void on and after the date of the commencement of the noncomplying use.

8. **Rights of Access.** Owner hereby grants to the DEQ, its agents, contractors, and employees and Holder, the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. **Compliance Reporting.** Owner or any Transferee shall submit to the DEQ on an annual basis written documentation verifying that the activity and use

limitations remain in place and are being complied with. Reporting requirements are outlined in the Site Management Plan.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON _____, 200_, IN [DOCUMENT_____, or BOOK_____, PAGE_____,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:
[Insert the language that describes the activity and use. limitations exactly as it appears in the Environmental Covenant.]

Owner shall notify the DEQ and Holder within thirty (30) business days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Property; subject to the interests or encumbrances identified in Exhibit B attached hereto and incorporated by reference herein;
- B. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- C. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and
- D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which the Owner is a party or by which Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a

Transferee; Holder; and the DEQ, pursuant to Utah Code Ann. § 57-25-110 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the DEQ and the Owner or Transferee; and other "Holders," if any; of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee as appropriate shall file such instrument for recording with the Salt Lake County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to DEQ.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

15. Recordation. Within thirty (30) business days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Salt Lake County Recorder.

17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ; the [City] of Murray; any "Holder," any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by the DEQ.

18. Reimbursement of DEQ Oversight. The Owner shall reimburse DEQ in full for all activities contemplated in this Environmental Covenant which require review, inspection, involvement, or otherwise incur costs for DEQ in accordance with the terms and conditions of the Voluntary Cleanup Program Agreement for the former Morgan Hanauer site VCP # C045, executed on March 14, 2006 and on file with the Division of Response and Remediation at the DEQ .

19. Notice. Unless otherwise notified in writing by or on behalf of the current owner or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

Project Manager (VCP site C045)
Division of Environmental Response and Remediation DEQ
P.O. Box 144840
Salt Lake City, Utah 84114-4840

Owner and Holder
Birkhill at Fireclay LLC
308 East 4500 South, Suite 200
Murray, UT 84107

20. Governmental Immunity. In executing this covenant, the State does not waive governmental immunity afforded by law. Owner, for itself and its successors, assigns and Transferees, hereby fully and irrevocably releases and covenants not to sue the State of Utah, its agencies, successors, departments, agents, and employees ("State") from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to sections 57-25-109 and 57-25-110 of the Utah Code Ann. or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah (the "Act"), UCA Section 63G-7-101 et seq, or (ii) individual liability for actions not covered by the Act as indicated in Sections 63G-7-202 and -902 of the Act, as determined in a court of law

The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Birkhill at Fireclay LLC


By: Michael Brodsky

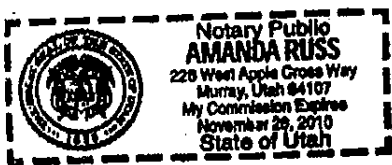
Its Manager


Date

State of Utah)
)
County of Salt Lake) ss:

Before me, a notary public, in and for said county and state, personally appeared Michael Brodsky a duly authorized representative of Birkhill at Fireclay LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Birkhill at Fireclay LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 1st day of August, 2008.



Amanda Russ
Notary Public

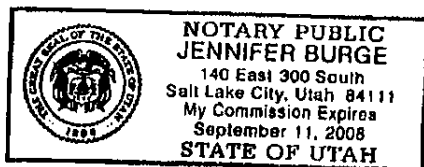
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

By: Brad T Johnson
Name: Brad T Johnson
Title: Director, Division of Environmental Response and Remediation,
Utah Department of Environmental Quality

STATE OF UTAH)
) : ss.
County of Salt Lake)

Before me, a notary public, in and for said county and state, personally appeared Brad T Johnson, an authorized representative of the Utah Department of Environmental Quality, who acknowledged to me that he did execute the foregoing instrument this 12 day of August, 2008.



Jennifer Burge
Notary Public
My Commission expires: 9-11-08

Legal Description of the Property

PARK PLAN PARCEL

BEGINNING at a point on the west right-of-way line of Main Street, said point being North $00^{\circ}30'11''$ East 615.17 feet (North $00^{\circ}15'54''$ East by record) along Main Street monument line and West 49.35 feet from the Northeast Quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence $S89^{\circ}57'37''W$ 82.50 feet; thence $N00^{\circ}02'23''W$ 41.29 feet; thence $N26^{\circ}14'10''W$ 19.73 feet; thence $S89^{\circ}57'37''W$ 245.32 feet; thence Northwestery 82.51 feet along the arc of a 57.50 foot radius curve to the left, chord bears $N76^{\circ}22'25''W$ 75.61 feet; thence $N00^{\circ}02'23''W$ 204.41 feet; thence $S76^{\circ}43'06''E$ 36.18 feet; thence $S68^{\circ}12'37''E$ 290.80 feet; thence $S39^{\circ}46'13''E$ 154.80 feet; thence $S76^{\circ}01'54''E$ 6.08 feet; thence $S00^{\circ}02'23''E$ 44.28 feet to the POINT OF BEGINNING
Containing 58,885 SF or 1.352 acres

Exhibit A

**Composite Description
(Prepared October 31, 2005 by Stantec Inc.)**

A Parcel of land located in the Northeast Quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, bounded on the North by the 1968 annexation boundary in Big Cottonwood Creek; on the East by Main Street; on the South by the Road Dedication Plat of Fireclay Avenue as recorded in Book 99-11P at Page 310 of the Salt Lake County records; and on the West by the Utah Transit Authority (UTA) Light Rail Corridor, formerly Union Pacific Land Resources Corporation (UPRR), more particularly described as follows:

BEGINNING at the intersection of the 1968 Murray City Annexation Boundary in Big Cottonwood Creek recorded December 31, 1968 in Book GG at Page 18 of the Salt Lake County records and a line 33.00 feet perpendicularly distant westerly of the Main Street monument line, said point being North 87°15'51" East 16.28 feet (North 87°01'34" East 16.16 feet per 1968 Murray City Annexation Plat), North 00°30'11" East 1741.07 feet (North 00°15'54" East 1741.07 feet by record) along said Main Street monument line, and North 76°01'54" East 33.93 feet (North 76°16'11" West 33.93 feet by record) along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek from the East Quarter Corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearings being North 00°30'11" East 1518.10 feet from the found centerline monument marking the intersection of Fireclay Avenue and Main Street to the found centerline monument marking the intersection of Central Avenue and Main Street), and running thence along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek the following five courses: North 76°01'54" West 23.32 feet (North 76°16'11" West by record), North 39°46'13" West 154.80 feet (North 40°00'30" West by record), North 68°12'37" West 290.80 feet (North 68°26'54" West by record), North 76°43'06" West 457.00 feet (North 76°57'23" West by record), and South 29°27'50" West 50.40 feet (South 29°13'33" West by record) to the easterly right-of-way line of the UTA Light Rail Transit Corridor, formerly Union Pacific Land Resources Corporation (UPRR) as shown on the 1996 Existing Union Pacific Railroad Track Alignment Survey filed as Survey S97-09-0651 in the Salt Lake County Surveyors Office; thence along said easterly right-of-way line the following two courses: South 08°47'37" East 709.28 (South 09°02'48" East by record) and Southerly 216.19 feet along a 2,897.82 foot radius curve to the right through a central angle of 04°16'28" and a long chord of South 06°39'23" East 216.13 feet to a point on the north line of the Road Dedication Plat Fireclay Avenue as recorded in Book 99-11 P at Page 310 of said records; thence along said north line North 89°57'37" East 722.30 feet (North 89°42'43" East 722.44 feet per Road Dedication Plat Fireclay Avenue) to the west line of Main Street; thence along said west line North 00°30'11" East 621.48 feet to the POINT OF BEGINNING.

Containing 658,857 square feet or 15.125 acres.

EXHIBIT "A" CONTINUED

WEST OPEN SPACE EASEMENT PARCEL

West Open Space Easement

A parcel of land located in the Northeast Quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah described as follows: BEGINNING at a point on the west right-of-way line of Main Street, said point being North 00°30'11" East 992.85 feet (North 00°15'54" East by record) along Main Street monument line and West 872.42 feet from the Centerline Monument at Fireclay Avenue and Main street; said point also being North 00°07'58" East 2087.51 feet along the section line and West 842.60 feet from the East Quarter Corner Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence S76°43'08"E 420.82 feet; thence S00°02'23"E 41.94 feet; thence S89°57'37"W 83.85 feet; thence westerly 7.90 feet along the arc of a 31.00 foot radius curve to the left, chord bears N82°44'07"W 7.88 feet; thence S89°57'37"W 7.90 feet; thence northwesterly 4.71 feet along the arc of a 3.00 foot radius curve to the right, chord bears N45°02'23"W 4.24 feet; thence N00°02'23"W 15.50 feet; thence S89°57'37"W 112.00 feet; thence N00°02'23"W 42.17 feet; thence S89°57'37"W 126.00 feet; thence S00°02'23"E 81.13 feet; thence S42°46'30"W 11.41 feet; thence southerly 45.90 feet along the arc of a 51.00 foot radius curve to the left, chord bears S16°59'26"W 44.37 feet; thence S08°47'37"E 2.00 feet; thence southerly 2.36 feet along the arc of a 3.00 foot radius curve to the right, chord bears S13°42'23"W 2.30 feet; thence S36°12'23"W 9.36 feet; thence S08°47'37"E 132.00 feet; thence S53°47'37"E 8.30 feet; thence southeasterly 2.38 feet along the arc of a 3.00 foot radius curve to the right, chord bears S31°02'26"E 2.32 feet; thence S08°17'15"E 28.18 feet; thence southwestery 4.69 feet along the arc of a 3.00 foot radius curve to the right, chord bears S36°27'34"W 4.22 feet; thence S81°12'23"W 13.00 feet; thence S08°47'37"E 390.00 feet; thence N81°12'23"E 13.00 feet; thence southeasterly 4.71 feet along the arc of a 3.00 foot radius curve to the right, chord bears S53°47'37"E 4.24 feet; thence southerly 7.33 feet along the arc of a 286.50 foot radius curve to the right, chord bears S08°03'39"E 7.33 feet; thence southerly 2.42 feet along the arc of a 3.00 foot radius curve to the right, chord bears S15°49'33"W 2.36 feet; thence S38°58'45"W 8.56 feet; thence southerly 27.47 feet along the arc of a 279.50 foot radius curve to the right, chord bears S02°51'19"E 27.46 feet; thence S00°02'23"E 60.53 feet; thence S45°02'23"E 8.66 feet; thence southeasterly 2.36 feet along the arc of a 3.00 foot radius curve to the right, chord bears S22°32'23"E 2.30 feet; thence S00°02'23"E 66.67 feet; thence southerly 3.03 feet along the arc of a 15.00 foot radius curve to the right, chord bears S05°45'12"W 3.03 feet; thence S89°57'37"W 29.69 feet; thence northerly 216.19 feet along the arc of a 2897.82 foot radius curve to the left, chord bears N06°39'24"W 216.13 feet; thence N08°47'37"W 709.28 feet; thence N29°27'50"E 50.40 feet to the Point of Beginning.

Contains 59,360 SF or 1.363 acres

EXHIBIT "A" CONTINUED

OPEN SPACE EASEMENT EAST OF MAIN STREET PARCEL

Open Space Easement East of Main Street

A parcel of land located in the Northeast Quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah described as follows: BEGINNING at a point on the west right-of-way line of Main Street, said point being North 00°30'11" East 638.98 feet (North 00°15'54" East by record) along Main Street monument line and East 33.00 feet from the Centerline Monument at Fireclay Avenue and Main street; said point also being North 00°07'58" East 1733.64 feet along the section line and East 60.52 feet from the East Quarter Corner Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence S76°01'54"E 154.13 feet; thence S88°08'34"E 346.32 feet; thence S00°19'47"W 77.65 feet; thence S89°57'37"W 385.33 feet; thence N00°02'23"W 25.00 feet; thence S89°57'37"W 110.81 feet; thence N00°30'11"E 101.42 feet to the Point of Beginning.

Contains 42,260 SF or 0.970 acres

EXHIBIT "B"

Voluntary Cleanup Program Certificate of Completion and Site Management Plan

When recorded return to:
Utah Department of Environmental Quality
Division of Environmental Response and Remediation
Attention: Voluntary Program Coordinator
168 North 1950 West
Salt Lake City, Utah 84116

**RE: Former Morgan Hanauer Smelter Voluntary Cleanup Site (VCP# C045)
4200 South Main Street, Murray, Utah**

CERTIFICATE OF COMPLETION

1. Compliance with Terms of Voluntary Cleanup Program

The Executive Director of the Utah Department of Environmental Quality, through his undersigned designee below, has determined that Hamlet Development and Gibbons Realty Company, hereinafter collectively referred to as "Applicant," have completed a Utah Department of Environmental Quality ("UDEQ") supervised voluntary cleanup of the real property described in Attachment A (the "Property"), in accordance with sections 19-8-108 and 19-8-110 of the Utah Code Annotated and the Voluntary Cleanup Agreement entered into on March 14, 2006. The Applicant is granted this Certificate of Completion ("COC") pursuant to section 19-8-111 and subject to the conditions set forth in section three below. Figures depicting the Property are located in Attachment B.

2. Acknowledgment of Protection From Liability

This COC acknowledges protection from liability provided by section 19-8-113 of the Utah Code Annotated to an applicant who is not responsible for the contamination under the provisions listed in subsection 19-8-113(1)(b) at the time the applicant applies to enter into a Voluntary Cleanup Agreement, and to future owners who acquire the Property covered by this COC, and to lenders who make loans secured by the Property covered by the COC.

As set forth in section 19-8-113, this release of liability is not available to an owner or lender who was originally responsible for a release or contamination, or to an owner or lender who changes the land use from the use specified in the COC if the changed use or uses may reasonably be expected to result in increased risks to human health or the environment, or to an owner or lender who causes further releases on the Property. Also, there is no release from liability if the COC is obtained by fraud, misrepresentation, or the knowing failure to disclose material information. Finally, protection from liability is limited to contamination identified in the documents related to the investigation and cleanup of the Property.

3. Specified Land Use for Certificate of Completion

This COC is issued based on the Applicant's representation that the Property will be used for mixed commercial and residential uses, consistent with the residential exposure scenario described in the Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation, Parts A and B. The residential scenario is defined as exposure to adults to incidental ingestion and dermal contact to hazardous constituents for a duration of 30 years at a frequency of 350 days per year.

In addition, this COC is issued based upon compliance with the COC, as well as compliance with an Environmental Covenant (EC), dated August 12, 2008 and recorded in the records of the Salt Lake County Recorder as Entry No. 10497519 in Book 9634 at Page 2136, and the Site Management Plan (SMP), dated July 21, 2008. The COC, EC, and SMP, among other things, require:

- a. The Property shall be used in a manner that is consistent with the land use described in section three above;
- b. Non-use of the groundwater located beneath the Property via wells, pits, sumps or other means;
- c. Compliance with the Environmental Covenant recorded with the Salt Lake County Recorder on August 12, 2008 in Book 9634 on pages 2136-2164.
- d. The Site Management Plan is implemented as proposed;
- e. Reports are submitted to UDEQ as described in the SMP;
- f. Continued reimbursement to UDEQ for its oversight of activities under the EC and SMP;
- g. Continued consent to access by UDEQ to monitor compliance with the EC and SMP;

4. Unavailability of Release of Liability

Use of the Property that is not consistent with section three including failure to comply with the EC or SMP described in section three shall constitute a change in land use expected to result in increased risks to human health/the environment making the release of liability in section two unavailable.

5. Availability of Records

All documents discussed in this COC are on file and may be reviewed at the UDEQ/ Division of Environmental Response and Remediation office located at 168 North 1950 West, Salt Lake City, Utah.

6. Final Signature for Former Morgan Hanauer Smelter Certificate of Completion

Dated this 21st day of AUGUST 2008.



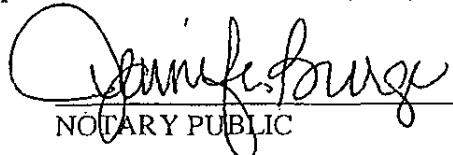
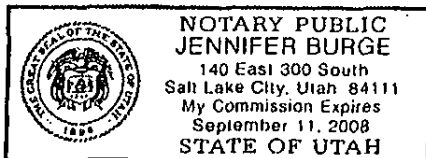
Brad T Johnson, Director
Division of Environmental Response and Remediation
And Authorized Representative of the
Executive Director of the Utah
Department of Environmental Quality

STATE OF UTAH _____)

:ss.

COUNTY OF Salt Lake)

On this 21 day of August, 2008, personally appeared before me, Brad T Johnson
who duly acknowledged that he/she signed the above Certification of Completion as an authorized
representative of the Executive Director of the Utah Department of Environmental Quality.



NOTARY PUBLIC

Residing At: SLC

My Commission Expires 9-11-08

ATTACHMENT A

**Former Morgan Hanauer Smelter
Legal Property Description**

**Former Morgan Hanauer Smelter
4200 South Main Street
Murray, Utah**

Legal Property Description:

The Former Morgan Hanauer Smelter site consists of the following-described real property situated in Salt Lake County, State of Utah:

BEGINNING at the intersection of the 1968 Murray City Annexation Boundary in Big Cottonwood Creek recorded December 31, 1968 in Book GG at Page 18 of the Salt Lake County records and a line 33.00 feet perpendicularly distant westerly of the Main Street monument line, said point being North 87°15'51" East 16.28 feet (North 87°01'34" East 16.16 feet per 1968 Murray City Annexation Plat), North 00°30'11" East 1741.07 feet (00°15'54" East 1741.07 feet by record) along said Main Street monument line, and North 76°01'54" East 33.93 feet (North 76°16'11" West 33.93 feet by record) along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek from the East Quarter Corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearings being North 00°30'11" East 1518.10 feet from the found centerline monument marking the intersection of Fireclay Avenue and Main Street to the found centerline monument marking the intersection of Central Avenue and Main Street), and running thence along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek the following five courses: North 76°01'54" West 23.32 feet (North 76°16'11" West by record), North 39°46'13" West 154.80 feet (North 40°00'30" West by record), North 68°12'37" West 290.80 feet (North 68°26'54" West by record), North 76°43'06" West 457 feet (North 76°57'23" West by record) and South 29°27'50" West 50.40 feet (South 29°13'33" West by record) to the easterly right-of-way line of the UTA Light Rail Transit Corridor, formerly Union Pacific Land Resources Corporation (UPRR) as shown on the 1996 Existing Union Pacific Railroad Track Alignment Survey filed as Survey S97-09-0651 in the Salt Lake County Surveyors Office; thence along said easterly right-of-way line the following two courses: South 08°47'37" East 709.28 (South 09°02'48" East by record) and Southerly 216.19 feet along a 2897.82 foot radius curve to the right through a central angle of 04°16'28" and along a chord of South 06°39'23" East 216.13 feet to a point on the north line of the Road Dedication Plat Fireclay Avenue as recorded in Book 99-11P at Page 310 of said records; thence along said north line North 89°57'37" East 722.30 feet (North 89°42'43" East 722.44 feet per Road Dedication Plat Fireclay Avenue) to the west line of Main Street; thence along said west line North 00°30'11" East 621.48 feet to the POINT OF BEGINNING.

Containing 658,857 square feet or 15.125 acres.

Property Tax Identification Numbers: 21-01-229-004-0000, 21-01-229-005-0000

ATTACHMENT B

**Former Morgan Hanauer Smelter
Site Map**

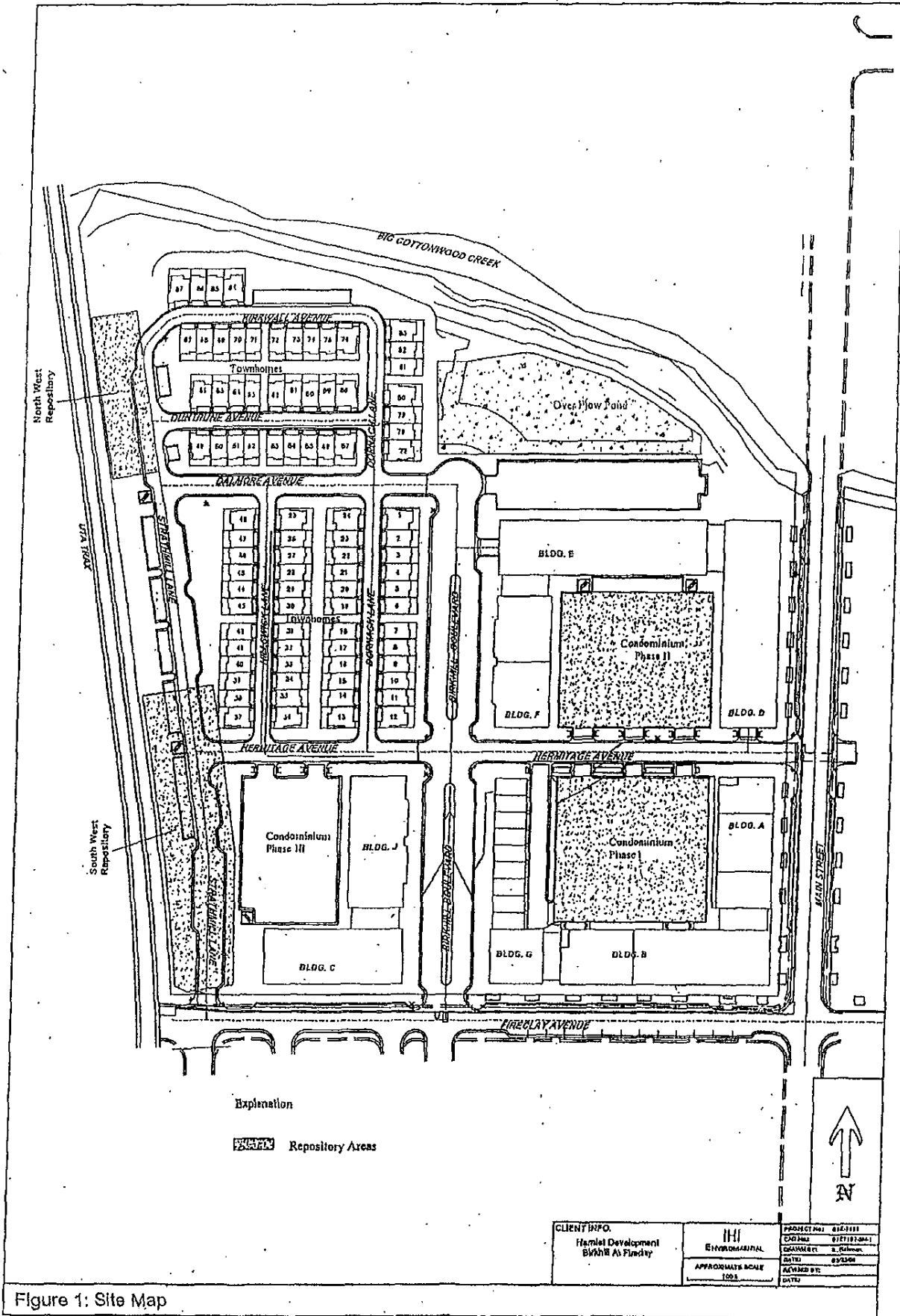


Figure 1: Site Map

CLIENT INFO. Hemel Development Byrnie A. Finckey	 ENVIRONMENTAL	PROJECT NO. 0163111
		DRAWING NO. 017117-04-1
APPROXIMATE SCALE 1"=50'		CHECKED BY: S. Robinson DATE: 03/13/08 APPROVED BY: DATE:

EXHIBIT "C"

[See plan for park entitled:

"Birkhill at Fireclay - Park
Murray, Utah
Site/Landscape Development"

Dated: November 16, 2007- 10:06 am]

Exhibit B (Title Report)

SCHEDULE A

Order Number: SL17131B

Effective Date: July 8, 2008 @ 9:33 a.m.

Amendment 3

1.	Policy or Policies to be Issued:	Amount	Premium
(a)	ALTA Owner's Policy: Proposed Insured:	\$	\$0.00
(b)	ALTA Loan Policy Proposed Insured:	\$	\$0.00
	Endorsements:		\$0.00

2. The estate or interest in the land described or referred to in this Commitment and covered herein is fee simple and title thereto is at the effective date hereof vested in:

BIRKHILL AT FIRECLAY, LLC

3. The land referred to in this Commitment is described as follows:

See Attached Exhibit "A"

Said property is located in SALT LAKE County, State of Utah also known as:

APPROX 4200 SOUTH MAIN STREET
MURRAY, UT. 84107

Parcel Identification Number: 21-01-229-004-0000 and 21-01-229-007-thru 018-0000


Authorized Countersignature

US Title
Underwriter First American Title

EXHIBIT "A"

PARCEL No. 1.

A Parcel of land located in the Northeast Quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, bounded on the North by the 1968 annexation boundary in Big Cottonwood Creek; on the East by Main Street; on the South by the Road Dedication Plat of Fireclay Avenue as recorded in Book 99-11P at Page 310 of the Salt Lake County records; and on the West by the Utah Transit Authority (UTA) Light Rail Corridor, formerly Union Pacific Land Resources Corporation (UPRR), more particularly described as follows:

BEGINNING at the intersection of the 1968 Murray City Annexation Boundary in Big Cottonwood Creek recorded December 31, 1968 in Book GG at Page 18 of the Salt Lake County records and a line 33.00 feet perpendicularly distant westerly of the Main Street monument line, said point being North 87°15'51" East 16.28 feet (North 87°01'34" East 16.16 feet per 1968 Murray City Annexation Plat), North 00°30'11" East 1741.07 feet (North 00°15'54" East 1741.07 feet by record) along said Main Street monument line, and North 76°01'54" West 33.93 feet (North 76°16'11" West 33.93 feet by record) along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek from the East Quarter Corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearings being North 00°30'11" East 1518.10 feet from the found centerline monument marking the intersection of Fireclay Avenue and Main Street to the found centerline monument marking the intersection of Central Avenue and Main Street), and running thence along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek the following five courses: North 76°01'54" West 23.32 feet (North 76°16'11" West by record), North 39°46'13" West 154.80 feet (North 40°00'30" West by record), North 68°12'37" West 290.80 feet (North 68°26'54" West by record), North 76°43'06" West 457.00 feet (North 76°57'23" West by record), and South 29°27'50" West 50.40 feet (South 29°13'33" West by record) to the easterly right-of-way line of the UTA Light Rail Transit Corridor, formerly Union Pacific Land Resources Corporation (UPRR) as shown on the 1996 Existing Union Pacific Railroad Track Alignment Survey filed as Survey S97-09-0651 in the Salt Lake County Surveyors Office; thence along said easterly right-of-way line the following two courses: South 08°47'37" East 709.28 (South 09°02'48" East by record) and Southerly 216.19 feet along a 2,897.82 foot radius curve to the right through a central angle of 04°16'28" and a long chord of South 06°39'23" East 216.13 feet to a point on the north line of the Road Dedication Plat Fireclay Avenue as recorded in Book 99-11P at Page 310 of said records; thence along said north line North 89°57'37" East 722.30 feet (North 89°42'43" East 722.44 feet per Road Dedication Plat Fireclay Avenue) to the west line of Main Street; thence along said west line North 00°30'11" East 621.48 feet to the POINT OF BEGINNING.

PARCEL No. 2

LOTS A,B,G and 101 through 109, BIRKHILL PHASE No. 1- AMENDED; according to the official plat thereof, on file and of record in the County Recorder's Office.

Situated in SALT LAKE County

Parcel Identification Number: 21-01-229-004-0000 and 21-01-229-007-thru 018-0000

SCHEDULE B - SECTION 1
Requirements

The following are the requirements to be complied with:

- (1) Pay the Agreed amounts for the interest in the land and/or the mortgage to be insured.
- (2) Pay us the premiums, fees and charges for the policy.
- (3) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (4) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (5) After we have received the information requested in these requirements, together with any other information about the transaction, we will have the right to add requirements to this Schedule B-1 or special exceptions to Schedule B-2.
6. Additional requirements may be added when more is learned about the contemplated transaction.

SCHEDULE B - Section 2
Exceptions

Any Policy we insure will have the following exceptions unless they are taken care of to our satisfaction.

Part I:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary line, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. Unpatented mining claim: reservations or exceptions in patents or in acts authorizing the issuance thereof: water rights, claims, or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment

8. General property taxes for year 2008 are now a lien, not yet due. Tax ID No. 21-01-229-004-0000 and 21-01-229-007 thru 018-0000.
9. 2007 general property taxes were paid in the amount of \$15,362.73. Tax ID No. 21-01-229-003-0000.

(Continued)

SCHEDULE B - Section 2
(Exceptions continued)

10. Any charge upon the land by reason of its inclusion in Murray City and Cottonwood Improvement District.

There are no assessments currently a lien upon the property.

11. The "MURRAY CITY Ordinance No. 05-32 ("Adopting an Ordinance Designating the FIRECLAY PROJECT AREA PLAN AS THE OFFICIAL REDEVELOPMENT PLAN FOR THE FIRECLAY PROJECT AREA.") executed by the Murray City Municipal Council recorded December 2, 2005 as Entry No. 9570584 in Book 9225 at Page 2597 of Official Records.

12. The "MURRAY CITY Ordinance No. 05-06 ("Adopting an Ordinance Approving an Amendment to the CENTRAL BUSINESS DISTRICT NEIGHBORHOOD DEVELOPMENT PLAN ADOPTED IN 1977, AMENDED IN 1982 AND 1999, TO DELETE A PORTION OF THE PROJECT AREA") executed by the Redevelopment Agency of Murray City recorded December 2, 2005 as Entry No. 9570586 in Book 9225 at Page 2613 of Official Records, and Re-recorded December 7, 2005 as Entry No. 9574402 in Book 9227 at Page 63 of Official Records, to correct the legal description.

13. Reservations contained within that certain Special Warranty Deed, by and between UNION PACIFIC LAND RESOURCES CORPORATION, as Grantor, and GIBBONS REALTY COMPANY, as Grantee, recorded December 27, 1978, as Entry No 3216075, in Book 4791, at Page 1246, and re-recorded on May 21, 1979, as Entry No. 3282400, in Book 4865, at Page 1344, of Official Records, which recites in part as follows:

"EXCEPTING from this grant and reserving unto the GRANTOR, its successors and assigns forever, all mineral and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to the GRANTOR, its successors or assigns, but without entering upon or using the surface of the lands hereby conveyed and in such manner as not to damage the surface of said lands, or to interfere with the use thereof by the GRANTEE, its successors and assigns.

AND ALSO EXCEPTING from this grant and reserving unto the GRANTOR, its successors and assigns forever, an easement for view along and upon a thirty-seven (37) foot wide strip on the west side of, the property herein conveyed abutting on the west line of said property running north and south and extending two hundred (200) feet to the north from the north line of Fireclay Avenue and GRANTEE, by acceptance of this conveyance, agrees, for itself, its successors and assigns, as a covenant running with the land, not to erect any buildings on said strip of land, nor shall GRANTEE, or its successors and assigns, erect any structures, or permit any trees or shrubbery to grow, above a height of six (6) feet on said strip of land."

(Continued)

SCHEDULE B - Section 2
(Exceptions continued)

14. Subject to all easements, notes, building set-backs, conditions, restrictions, and stipulation as set forth on the recorded plat.
15. Easement, in favor of Mill Creek Power Company, recorded November 15, 1910, as Entry No. 273068, in Book 7Y, at Page 200, of Official Records.
16. Pole Line Easement, in favor of UTAH POWER & LIGHT COMPANY, for a perpetual easement and right of way for the erection, and continued maintenance, repair, alteration and replacement of the electric transmission, distribution and telephone circuits, poles, guys, stubs, cross-arms, and other attachments thereon, or affixed thereto, for the support of said circuits to be erected and maintained upon, over, under and across a portion of the subject property. Said Easement was recorded December 15, 1949, as Entry No. 1181648, in Book 728, at Page 67, of Official Records.
17. Pole Line Easement, in favor of UTAH POWER & LIGHT COMPANY, for a perpetual easement and right of way for the erection, and continued maintenance, repair, alteration and replacement of the electric transmission, distribution and telephone circuits, poles, guys, stubs, cross-arms, and other attachments thereon, or affixed thereto, for the support of said circuits to be erected and maintained upon, over, under and across a portion of the subject property. Said Easement was recorded May 14, 1957, as Entry No. 1538697, in Book 1413, at Page 3, of Official Records.
18. Pole Line Easement, in favor of UTAH POWER & LIGHT COMPANY, for a perpetual easement and right of way for the erection, and continued maintenance, repair, alteration and replacement of the electric transmission, distribution and telephone circuits, poles, guys, stubs, cross-arms, and other attachments thereon, or affixed thereto, for the support of said circuits to be erected and maintained upon, over, under and across a portion of the subject property. Said Easement was recorded February 13, 1959, as Entry No. 1636792, in Book 1587, at Page 87, of Official Records.
19. Pole Line Easement, in favor of UTAH POWER & LIGHT COMPANY, for a perpetual easement and right of way for the erection, and continued maintenance, repair, alteration and replacement of the electric transmission, distribution and telephone circuits, poles, guys, stubs, cross-arms, and other attachments thereon, or affixed thereto, for the support of said circuits to be erected and maintained upon, over, under and across a portion of the subject property. Said Easement was recorded March 12, 1964, as Entry No. 1985289, in Book 2165, at Page 189, of Official Records.

(Continued)

SCHEDULE B - Section 2
(Exceptions continued)

20. Right of Way Easement: For Pole(s), Guy(s), Anchor(s), in favor of PACIFICORP, an Oregon corporation, granting an easement for a right of way for the construction, maintenance, repair, replacement and removal of pole(s), anchor(s), guy(s) and appurtenances thereto on, over or under the surface of the property, recorded October 27, 1998, as Entry No. 7131353, in Book 8138, at Page 0142, of Official Records.

(NOTE: The exact location of said easement is not described)

21. A Right-of-way and Easement Grant, to lay, maintain, operate, repair, inspect, protect, remove and replace gas transmission pipelines and related facilities, and incidental purposes, as granted to Questar Gas Company, a Corporation of the State of Utah, and made subject to the terms and conditions contained in the document recorded July 8, 2008 as Entry No. 10473067 in Book 9624 at Page 8055 of Official Records.

22. Excepting any portion of the land within the natural bed of Big Cottonwood Creek below the ordinary high water mark where it was located prior to any artificial or avulsive changes in the location of the shoreline.

23. Participation and Development Agreement by and between Redevelopment Agency of Murray City and Hamlet Development Corporation, and the terms and conditions contained in the document dated December 4, 2007, recorded December 19, 2007 as Entry No. 10303655 in Book 9549 at Page 8425 of Official Records.

24. Subject to the following matters disclosed on that certain survey prepared by STANTEC CONSULTING INC., having been certified under the date of November 18, 2005, as Job No. 18683203000, by Matt W. Clark, a Registered Land Surveyor holding License No. 323716. Said matters include, but are not limited to, the following: Fence Line Discrepancies, Utility Poles and Overhead Lines.

(The following exception affects Parcel No. 1 only)

25. A Deed of Trust by and between SCOTT'S LAND, LLC, A UTAH LIMITED LIABILITY COMPANY as Trustor in favor of FIRST AMERICAN TITLE INSURANCE COMPANY as Trustee and Wells Fargo Bank, National Association as Beneficiary, to secure an original indebtedness of \$1,872,000.00 and any other amounts or obligations secured thereby, dated May 23, 2007 and recorded June 8, 2007 as Entry No. 10126986 in Book 9475 at Page 8410 of Official Records.

A document recorded February 1, 2008 as Entry No. 10338471 in Book 9565 at Page 7713 of Official Records provides that the Deed of Trust or the obligation secured thereby has been modified.

(Continued)

SCHEDULE B - Section 2
(Exceptions continued)

A document entitled "Assumption and Second Modification Agreement" recorded February 1, 2008 as Entry No. 10338470 in Book 9565 at Page 7708 of Official Records provides that the Deed of Trust or the obligation secured thereby has been modified.

NOTE: Document also serves as an Assumption Agreement wherein the obligation of the above Deed of Trust with Scott's Land, LLC as original trustor is now assumed by Birkhill at Fireclay, LLC.

(The following two (2) exceptions affect Parcel No. 2 only)

26. A Construction Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing by and between Birkhill at Fireclay, LLC, a Utah Limited Liability Company as Trustor in favor of FIRST AMERICAN TITLE INSURANCE COMPANY as Trustee and Wells Fargo Bank, National Association as Beneficiary, to secure an original indebtedness of \$678,000.00 and any other amounts or obligations secured thereby, dated May 23, 2007 and recorded June 6, 2007 as Entry No. 10126988 in Book 9475 at Page 8442 of Official Records.

ADDITIONAL ADVANCE AND CONSOLIDATION AGREEMENT, wherein said document provides for a modification of the above Deed of Trust to advance an additional \$2,273,500.00, Instrument recorded July 26, 2007 as Entry No. 10175168 in Book 9495 at Page 9561 of Official records.

A document recorded February 1, 2008 as Entry No. 10338449 in Book 9565 at Page 7563 of Official Records provides that the Deed of Trust or the obligation secured thereby has been modified.

27. A Deed of Trust by and between Birkhill at Fireclay, LLC as Trustor in favor of First American Title Insurance Company as Trustee and Wells Fargo Bank, National Association as Beneficiary, to secure an original indebtedness of \$8,566,300.00 and any other amounts or obligations secured thereby, dated January 29, 2008 and recorded February 1, 2008 as Entry No. 10338468 in Book 9565 at Page 7677 of Official Records.

28. SECURITY AGREEMENT RE: TIF AGREEMENT, by and between Hamlet Development Corporation, a Utah Corporation and Wells Fargo Bank, N.A., and the terms and conditions contained in Instrument recorded February 1, 2008 as Entry No. 10338450 in Book 9565 at Page 7572 of Official Records.

* * * * *

(Continued)

Order Number: SL17131B

SCHEDULE B - Section 2
(Exceptions continued)

NOTE: The name of Blfkhll at Fireclay, LLC have been checked for Judgments and Tax Liens, etc., in the appropriate offices and if any were found would appear as Exceptions to title under Schedule B, Section 2 herein.

ESCROW/CLOSING INQUIRIES should be directed to your Escrow Officer: Becky Phillips at (435)615-1148 at 1760 Prospector Avenue, Park City, Utah 84060.

Title inquiries should be directed to Scott Nance at (801)208-1196.

NOTE: The Policy(ies) to be issued as a result of this Commitment may contain an Arbitration Clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included; contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

**The First American Corporation
US Title of Utah**

Privacy Policy

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

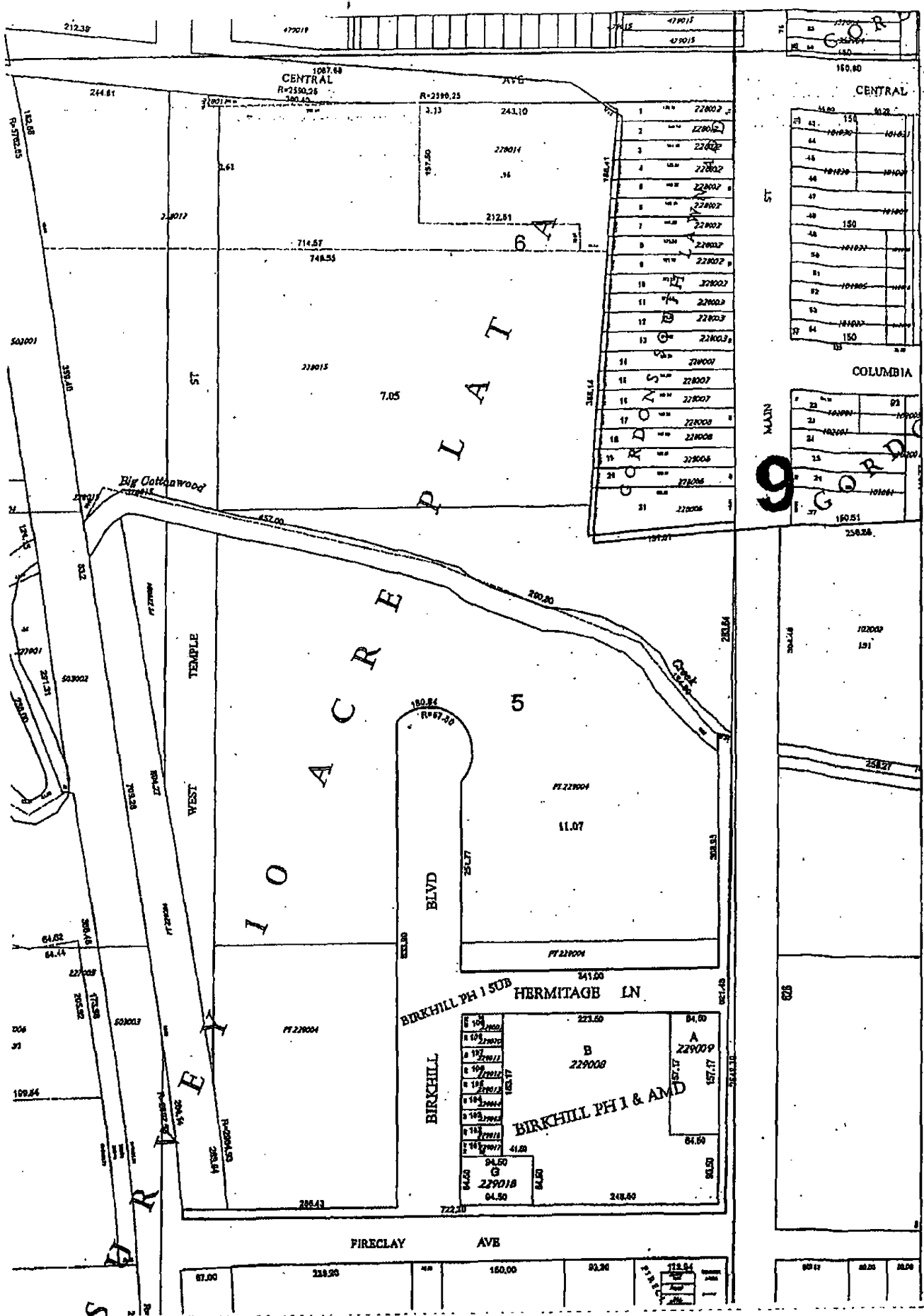
Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with the Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

2001 The First American Corporation* All Rights Reserved

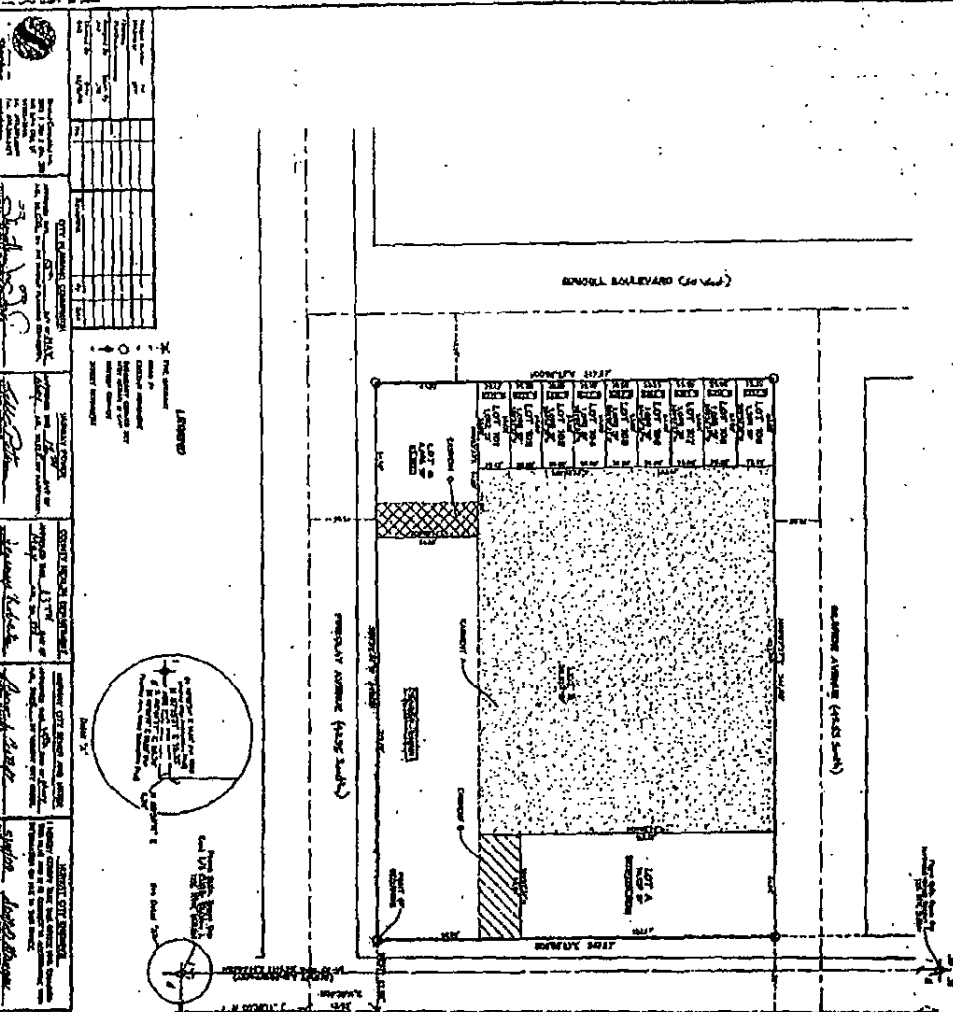
CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company, at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of this Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring liability and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance of \$2,000,000.00 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitrator rules at <http://www/ata.org/>.



BRICKHILL PHASE 1 - AMENDED

LOCATED IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE COUNTY, UTAH



BRIMLEY STREET

BRIMLEY AVENUE (44th South)

BONNELL BOULEVARD (60th South)

CHANGING SCALES

1" = 100'

Legend:

- Shaded areas: [Diagonal lines] [Stippled] [Cross-hatched]
- Other symbols: [Circle with cross], [Circle with dot]

BRICKHILL PHASE 1 - AMENDED

BRIMLEY STREET

BRICKHILL PHASE 1 - AMENDED

BRIMLEY STREET

BRIMLEY AVENUE (44th South)

BONNELL BOULEVARD (60th South)

CHANGING SCALES

1" = 100'

BRICKHILL PHASE 1 - AMENDED

BRIMLEY STREET

BRIMLEY AVENUE (44th South)

BONNELL BOULEVARD (60th South)

CHANGING SCALES

1" = 100'

~~10473067~~

WHEN RECORDED MAIL TO:
Questar Gas Company
P.O. Box 45360, Right-of-way
Salt Lake City, UT 84145-0360
3575birk.le; RW01

~~10473067
07/08/2008 09:33 AM \$20.00
Book 9624 Pg - 8055-8057
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
QUESTAR GAS COMPANY
PO BOX 45360
SLC UT 84145-0360
BY: ZJM, DEPUTY - WI 3 P.~~

Space above for County Recorder's use
PARCEL I.D.# 21-01-229-006

RIGHT-OF-WAY AND EASEMENT GRANT
UT 22953

BIRKHILL AT FIRECLAY, L.L.C., A Utah Limited Liability Company

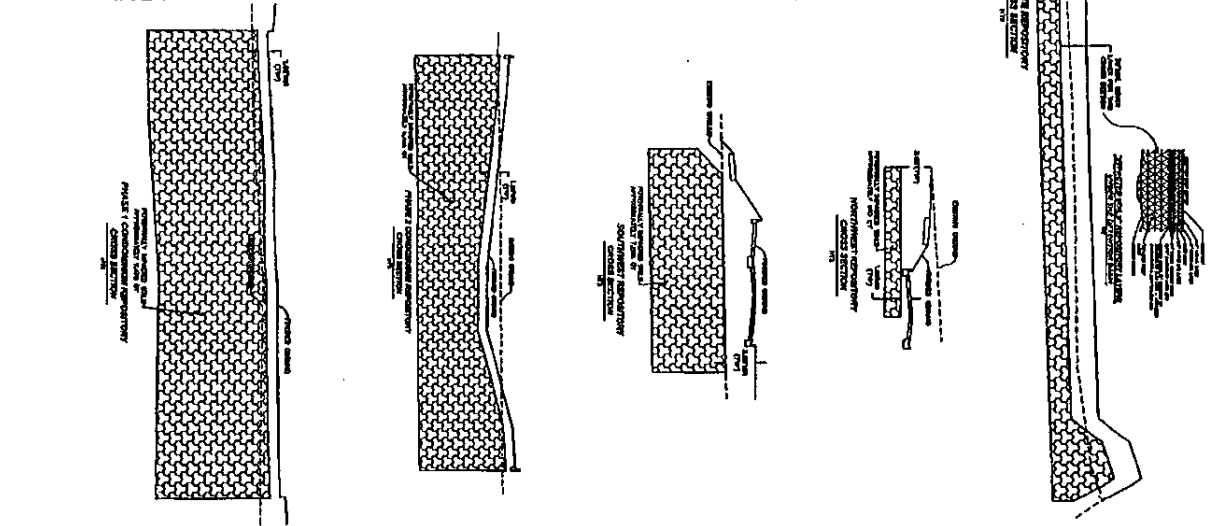
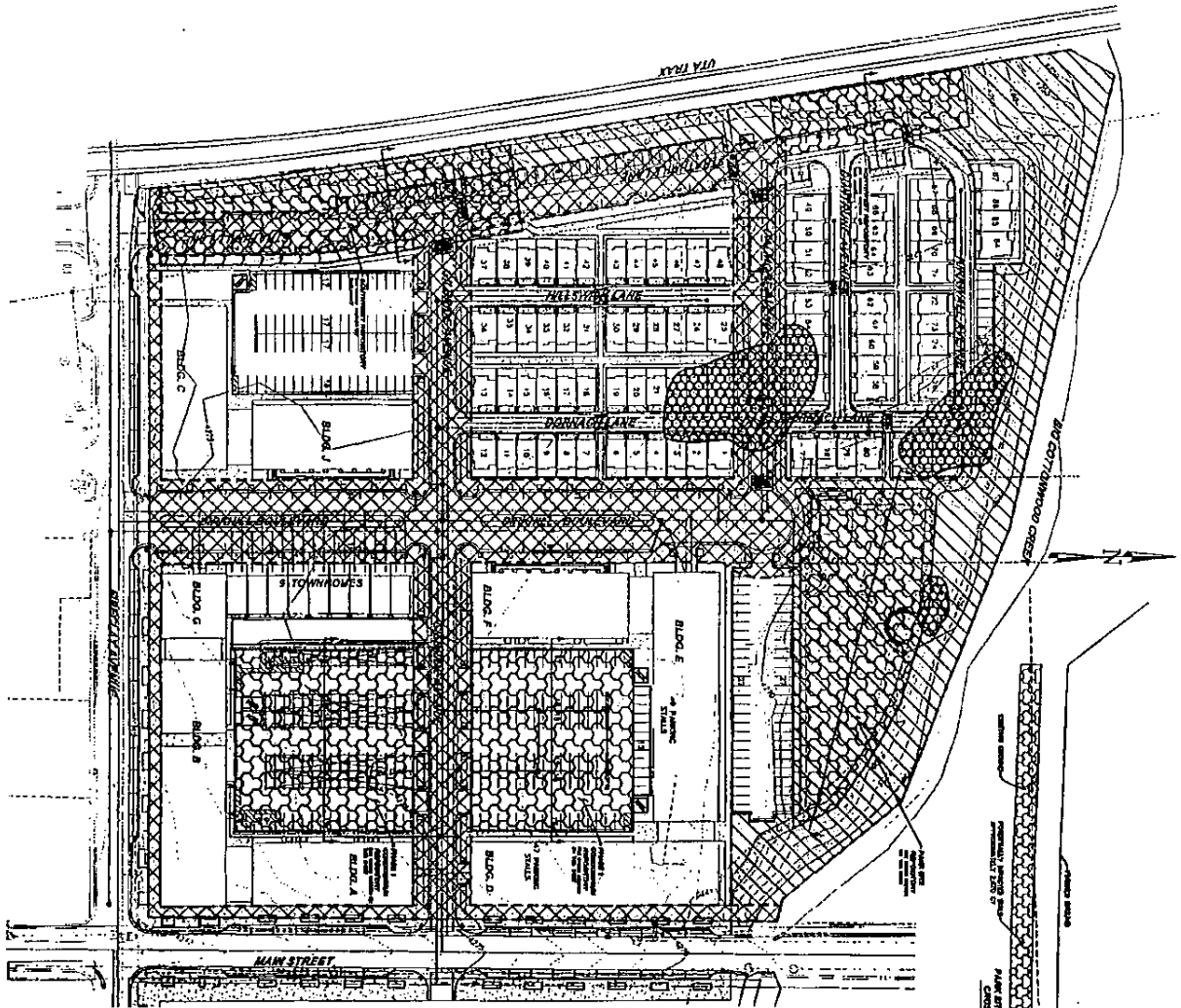
"Grantor", does hereby convey and warrant to QUESTAR GAS COMPANY, a corporation of the State of Utah, "Grantee", its successors and assigns, for the sum of ONE DOLLAR (\$1.00) in hand paid and other good and valuable consideration, receipt of which is hereby acknowledged, a right-of-way and easement (referred to in this Grant as the "Easement") to lay, maintain, operate, repair, inspect, protect, remove and replace pipelines, valves, valve boxes and other gas transmission and distribution facilities (referred to in this Grant collectively as "Facilities") as follows: Nine feet on each side of the centerlines shown on the attached plat, designated Exhibit "A", and by reference made a part of this Grant, which centerlines are within that certain development known as Birkhill Phase 1 Subdivision, in the vicinity of 4300 S. Main Street, which development is more particularly described as:

Land of Grantor located in the Northeast Quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian;

Lot 1, Birkhill Phase 1 Subdivision; according to the official plat on file with the Salt Lake County Recorder, State of Utah.

TO HAVE AND TO HOLD the same unto its successors and assigns, so long as Grantee shall require with the right of ingress and egress to and from the Easement to maintain, operate, repair, inspect, protect, remove and replace the Facilities. During temporary periods, Grantee may use such portion of the property along and adjacent to the Easement as may be reasonably necessary in connection with construction, maintenance, repair, removal or replacement of the Facilities. Grantor(s) shall have the right to use the surface of the Easement except for the purposes for which this Easement is granted provided such use does not interfere with the Facilities or any other rights granted to Grantee by this Grant.

~~BK 9624 PG 8055~~



IMPACTED SOILS REPORTORY PLAN

LEGEND

- REPORTORY AREAS
- REPORTORY AREAS WITH SLOPE > 10%
- REPORTORY AREAS WITH SLOPE > 15%
- REPORTORY AREAS WITH SLOPE > 20%
- REPORTORY AREAS WITH SLOPE > 25%
- REPORTORY AREAS WITH SLOPE > 30%
- REPORTORY AREAS WITH SLOPE > 35%
- REPORTORY AREAS WITH SLOPE > 40%
- REPORTORY AREAS WITH SLOPE > 45%
- REPORTORY AREAS WITH SLOPE > 50%
- REPORTORY AREAS WITH SLOPE > 55%
- REPORTORY AREAS WITH SLOPE > 60%
- REPORTORY AREAS WITH SLOPE > 65%
- REPORTORY AREAS WITH SLOPE > 70%
- REPORTORY AREAS WITH SLOPE > 75%
- REPORTORY AREAS WITH SLOPE > 80%
- REPORTORY AREAS WITH SLOPE > 85%
- REPORTORY AREAS WITH SLOPE > 90%
- REPORTORY AREAS WITH SLOPE > 95%
- REPORTORY AREAS WITH SLOPE > 100%

SCIENTIFIC

HAMILFT HOMES

2015 EAST 25TH AVENUE
DENVER, CO 80215
TEL: 303.733.1111
WWW.HAMILFTHOMES.COM

PLATE NO. 1 1 1 0

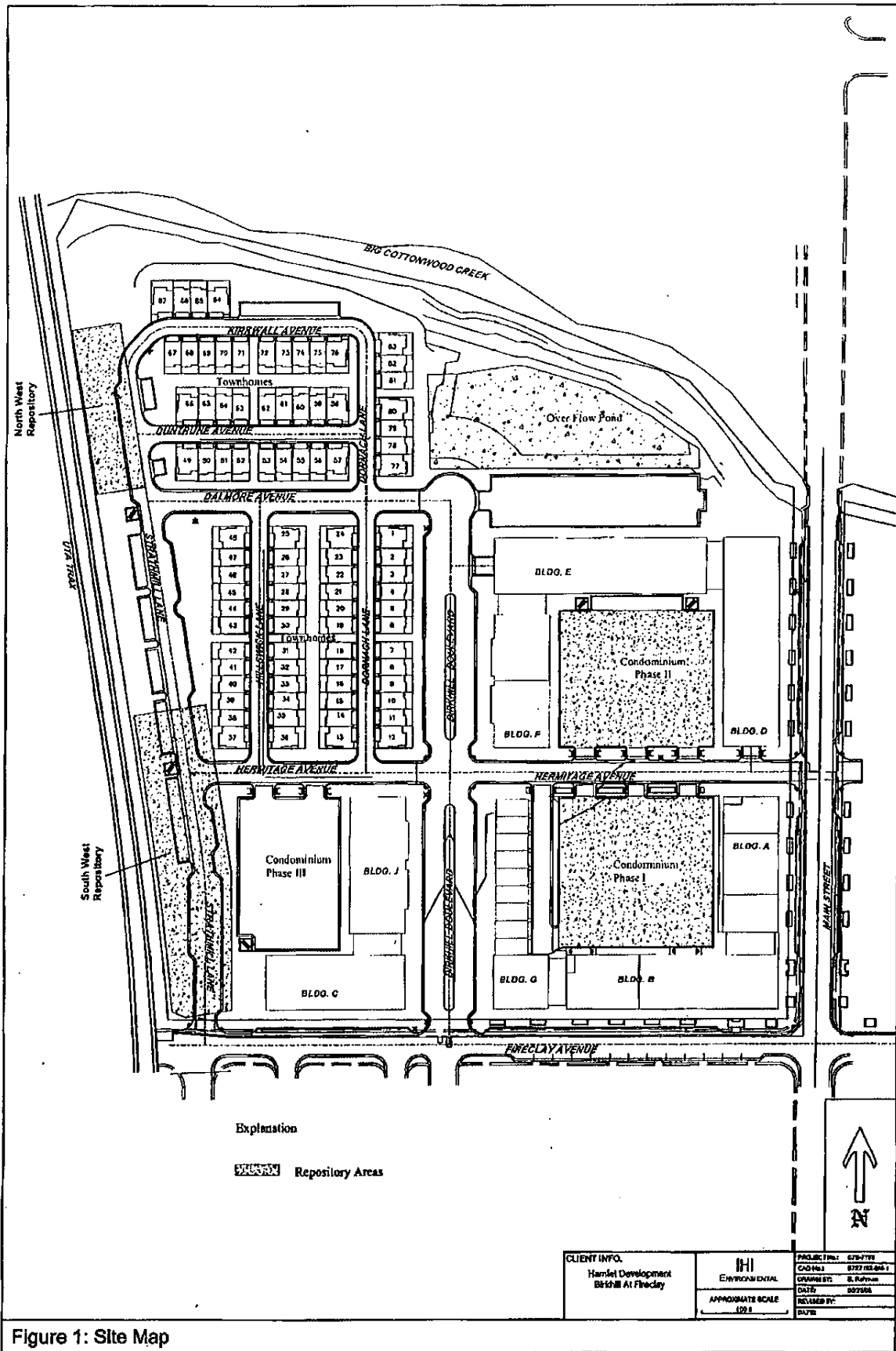


Figure 1: Site Map

CLIENT INFO. Hamlet Development 8100 At Freckley		PROJECT No: 079-1793 CAD No: 1 DRAWN BY: S. Pappas DATE: 09/2008 REVISION BY: DATE:
		APPROXIMATE SCALE 1:250

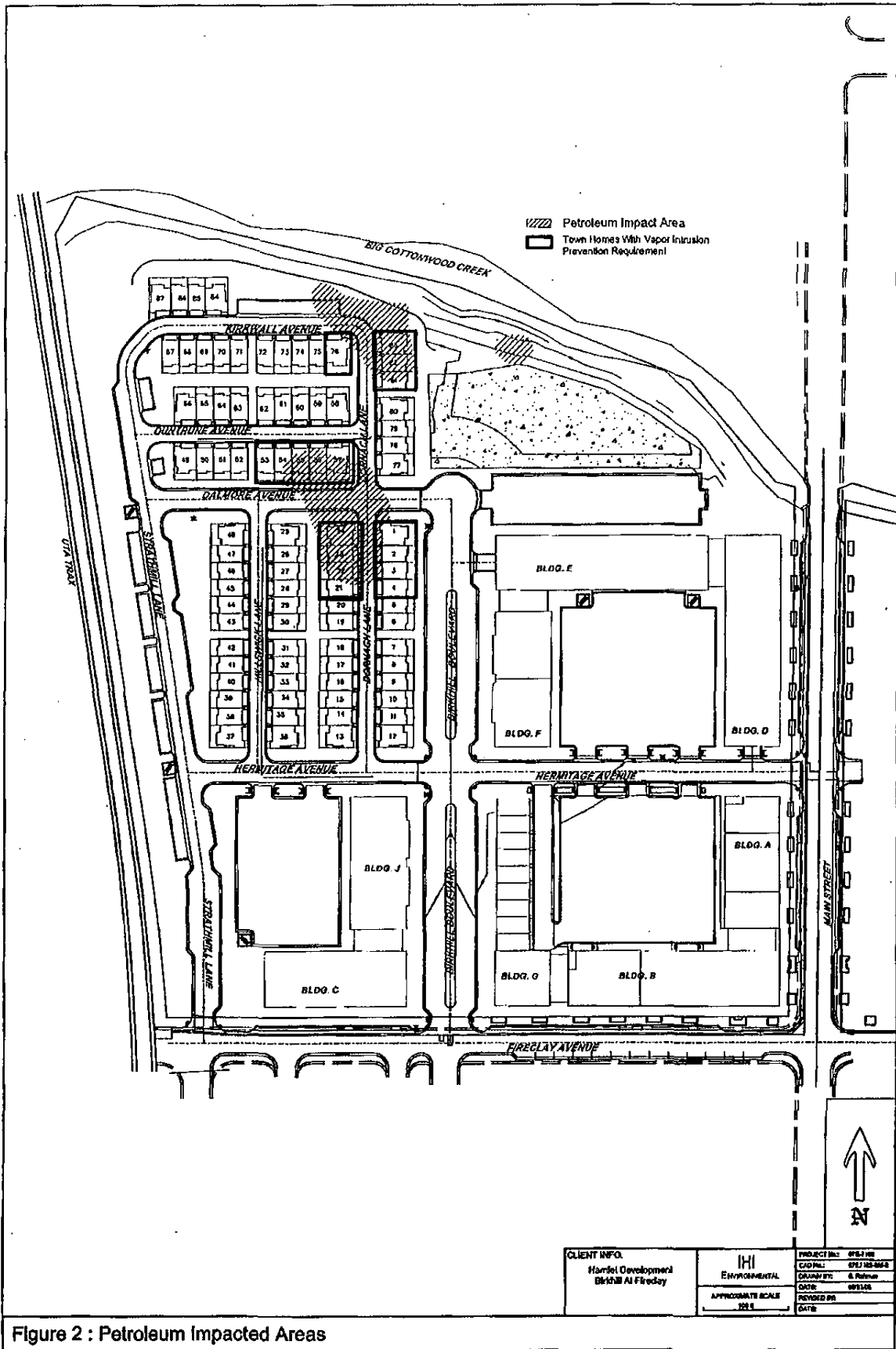


Figure 2 : Petroleum Impacted Areas

EXHIBIT G

ACKNOWLEDGMENT TO CONTRACT OF SALE

(attached)

**Internet Service Agreement
BIRKHILL AT FIRECLAY**

ACKNOWLEDGEMENT BY CUSTOMER/BUYER:

1. This Internet Service Agreement provides terms specifically related to Customer's Internet Service. By signing up for Internet Service, Customer agrees to be bound by the terms of this Internet Service Agreement, as evidenced by Customer's signature below. All obligations in this Internet Service Agreement that refer to "Customer" also jointly and severally apply to Users. Customer shall make all Users at each Service Location reasonably aware of the restrictions and limitations associated with the Internet Services, and Customer shall be responsible for any breach of any portion of this Internet Service Agreement by any User.

2. **Description of Service.** Customer will be provided with access to the Internet via fiber optic cable under that separate contract by and between Birkhill Community Association, Inc. ("Association") and Elsinore Communications, LLC ("Elsinore"). The Service Provider will make every effort to ensure consistently high upload and download speeds, but makes no warranty regarding the Internet Service.

Each Unit will be provided with:

An Internet connection speed of up to 10 megabits/sec

100 gigabytes of total bandwidth usage per month. If a Unit uses bandwidth in excess of this amount, then Service Provider may invoice Customer at the then-current per gigabyte overage charges for all usage over 100 gigabytes, and Customer shall promptly pay such charges. Overage charges are \$1.00 per gigabyte. All additional bandwidth shall be sold in units of 1 gigabyte each. Any unused bandwidth shall be automatically forfeited at the end of each month, and no unused bandwidth amounts will roll-over into any subsequent month. No credits will be given for unused bandwidth.

3. **Acceptable Use Policies**

a. **CUSTOMER AGREES TO USE THE SERVICE ONLY FOR LAWFUL PURPOSES.**

b. Unacceptable uses include, but are not limited to:

i. **Spam.** Customer may not utilize the Internet Service for the purpose of sending direct mailings, solicitations, bulk mail, spam, or any other high volume e-mailing function. Customer will not send e-mail to persons who are not personally known to Customer, or who did not personally request e-mail from Customer. Customers whose activities result in the Service Provider domain name being banned from an e-mail server due to spamming may be assessed fees associated with the cost of lifting the ban. Any violation of this policy may result in the immediate termination of Customer's account, at the sole discretion of Service Provider. If Customer violates this spamming policy, it will be assessed the following fines and fees, which Customer hereby agree to pay:

- (1) First offense: \$100
- (2) Second offense: \$500
- (3) Third offense: \$500 and automatic termination of Customer's account.

ii. **Newsgroup posting.** The posting of any advertisement or other commercial solicitation to any newsgroup is prohibited. Service Provider reserves the right to determine whether a post constitutes an advertisement or commercial solicitation. The posting of a single article or substantially similar articles to an excessive number of newsgroups or mailing lists, or continued posting of articles that are off-topic is strictly prohibited. A posting will be considered off-topic

when it provokes complaints from the regular readers of the newsgroup or is deemed so by Service Provider. A violation of this policy will result in the immediate termination of Customer's account.

iii. **Obscenity.** Customers may not utilize the Internet Service to send or receive obscene materials.

iv. **Impersonation.** Customers may not utilize the Internet Service to impersonate another person.

v. **Defamation.** Customers may not utilize the Internet Service to defame, harm, harass, or libel another person.

vi. **Trade secrets.** Customers may not utilize the Internet Service to send or receive trade secrets in violation of applicable state or federal law.

vii. **Malicious software or code.** Customers may not utilize the Internet Service to send or intentionally receive any viruses, spyware, worms, Trojan horses or any other malicious computer software or code designed to damage or make use of any third party's property.

viii. **Intellectual property.** Customers may not utilize the Internet Service infringe on any party's intellectual property rights. Customers may not engage in the illegal or unauthorized transfer of intellectual property, including but not limited to music, written works, movies, software, videogames, instructions, data, and code.

ix. **Unauthorized access to computers.** Customers may not utilize the Internet Service for the purpose of hacking or other conduct related to unauthorized access of computers, servers or systems.

c. **Bandwidth limits and fluctuations.** Service Provider may, when necessary to control network congestion, impose reasonable bandwidth limits on Customer's use of the Service in order to ensure equitable access for other Customers. Service Provider will use commercially reasonable efforts to provide the bandwidth speed described in this Attachment, but Customer acknowledges that bandwidth speeds may fluctuate from time to time throughout the day and that Customer may not receive the designated speeds at all times during the day. At Service Providers's discretion, Service Provider may restrict or limit upload speeds.

d. **Minors.** Customer will be fully responsible for monitoring minors' access to the Service, and will take appropriate steps to ensure that minors do not have access to harmful content. Customer acknowledges that Service Provider does not monitor minors' access to the Service and is not responsible for minors' access to inappropriate or harmful content.

e. **Personal Accounts.** Customers that have paid for a personal account (as opposed to a business account) are not permitted to use Service Provider's Internet connection to sell or advertise goods or services. This is only permitted to those who have purchased a business account or a virtual server.

f. **Enforcement.** Service Provider reserves the right to take whatever actions it deems appropriate to enforce these policies. Service Provider also reserves the right to change these policies without prior notice at any time. The actions Service Provider takes may include account suspension or termination. Service Provider does not issue any credits for accounts cancelled due to policy violations. Any Internet activity, which references back to Service Provider or its services in a damaging manner, will result in suspension or termination of account(s). Illegal Internet activity using or referencing to Service Provider or an account or services provided by Service Provider

will result in immediate termination, possible prosecution, and assessment of legal fees accrued. In addition to any other fees and penalties that may be assessed by the Service Provider, as provided herein, Customer shall be held liable for any and all costs incurred by the Service Provider as a result of Customer's violation of any terms and conditions of this Agreement. This includes, but is not limited to, attorneys' fees and costs resulting from Service Provider responses to complaints from and the cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations. Service Provider's current hourly rate for responses to complaints and cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations is listed at are listed at the applicable website. Further, Customer shall indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses due to any act or omission by the Customer hereunder

4. Responsibility for Security and Filtering

- a. **Security and viruses.** Customer acknowledges that by connecting to the Internet, Customer's and its User's computer system and files are vulnerable to access by unauthorized third parties (including hackers). Customer is solely responsible for installing, implementing and using computer security precautions such as closing unnecessary ports and using firewall technology. CUSTOMER AND ITS USERS ARE STRONGLY ENCOURAGED TO INSTALL AND ROUTINELY UPDATE FIREWALL AND ANTIVIRUS SOFTWARE. In the event that Customer is found to be spreading a virus, whether intentionally or unintentionally, Service Provider may suspend Customer's account until such time as Service Provider believes that Customer has effectively remedied the situation.
- b. **Wireless connections.** Customer acknowledges that using wireless networking connectivity may present certain security risks. Customer is solely responsible for implementing and using wireless security measures, including but not limited to enabling encryption technology (e.g., Wired Equivalent Privacy (WEP) or Wi-Fi Protected Access (WPA)) on the relevant equipment, including the access point.
- c. **Disclaimer of liability.** Customer acknowledges and agrees that Service Provider has no liability for any unauthorized access of any Customer computer or system by any third party, and that Customer is solely liable for any damages arising from such unauthorized access. Service Provider is not providing any security advice or consulting services to Customer and is not responsible for installing or maintaining any security systems on behalf of Customer.

5. IP Addressing. Service Provider uses static and dynamic IP Addresses for Customers. Assignment of an IP address to Customer creates no ownership rights in Customer of the IP address. Service Provider retains all rights to any IP addresses it assigns to Customer.

6. Ownership of Content. Except for content on the Service Provider website, Service Provider does not own, license, or have any rights in content that Customer may upload or download, nor in e-mails that Customer may send or receive, nor in any content that Customer may upload to the server space provided by Service Provider under this Agreement. The content of all uploads, downloads, and e-mails associated with Customer's use of the Internet Service is solely the property and responsibility of Customer.

(Signature Page Follows)

Agreed and Accepted as of the Date shown below.

“CUTOMER/BUYER(S)”

Name: _____

Lot#: _____ Birkhill at Fireclay

By: _____
Customer/Buyer

Customer/Buyer

Date: _____

**UPON COMPLETION RETURN TO:
Elsinore Communicatlon
308 East 4500 South, Suite 200
Murray, UT 84107**

**Television Service Agreement
BIRKHILL AT FIRECLAY**

ACKNOWLEDGEMENT BY CUSTOMER/BUYER:

1. This Television Service Agreement provides terms specifically related to Customer's Television Service. By signing up for Television Service, Customer agrees to be bound by the terms of this Television Service Agreement as evidenced by Customer's signature below. All obligations in this Television Service Agreement that refer to "Customer" also jointly and severally apply to Users. Customer shall make all Users at each Service Location reasonably aware of the restrictions and limitations associated with the Television Services, and Customer shall be responsible for any breach of any portion of this Television Service Agreement by any User.

2. **Description of Service.** Customer will be provided with television Programming. A complete list of the Programming channels, services and equipment provided under this Television Service Agreement can be found at the applicable provider website. Provider may update this list, add and delete programs from time to time. Provider does not warrant the provision of any particular Programming in conjunction with this agreement. In the event the Customer desires to upgrade the Television Service, it must do so by separate contract with and payment to Provider.

3. **Private Viewing.** CUSTOMER AGREES TO USE (AND REQUIRE THAT ITS USERS USE) THE TELEVISION SERVICE FOR PRIVATE VIEWING ONLY. Customer will not provide public transmissions or retransmissions of any Programming without the written consent of the party holding a license to the transmitted or retransmitted content. Customer will not transmit or retransmit Programming in a commercial establishment without the written consent of the party holding a license to the transmitted or retransmitted content.

4. **Unauthorized Devices.** Customer agrees not to attach any unauthorized devices to the Service that are designed to unlock, descramble, unencrypt, find, or otherwise manipulate the Programming that Provider offers.

5. **Audit Rights.** Provider reserves the right to audit Customer's use of the Television Service to determine whether Customer has engaged in any unauthorized uses. Customer consents to Provider's access to and manipulation of Customer's equipment or software for the purpose of such audit.

6. **Compliance.** Customer agrees to comply with all relevant laws, rules and regulations related to the Television Services, and will not engage in any practice nor use any tools or techniques (including television piracy tools) in violation of any law, rule or regulation. Should Customer engage in any illegal activity associated with the Television Services, then at Provider's option it may cancel this Television Service Agreement immediately and without notice. Further, Customer shall indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses arising due to any act or omission by the Customer hereunder.

Agreed and Accepted as of the Date shown below.

"CUSTOMER/BUYER(S)"

Name: _____

Lot#: _____ Birkhill at Fireclay

By: _____

Customer/Buyer

Customer/Buyer

Date: _____

**UPON COMPLETION RETURN TO:
Elsinore Communication
308 East 4500 South, Suite 200
Murray, UT 84107**

BY-LAWS

of

BIRKHILL COMMUNITY ASSOCIATION, INC.

ARTICLE I
NAME AND LOCATION

The name of the Association (as such term is hereinafter defined) is BIRKHILL COMMUNITY ASSOCIATION, INC. (hereinafter referred to as the "Association"). The Association is organized under the Utah Corporate law as a nonprofit membership corporation. The principal office of the Association shall be located at c/o Hamlet Development Corporation, 308 East 4500 South, Ste. 200 Murray, Utah 84107. The Community Board (also referred to as "Board") is hereby granted full power and authority to change the principal office from one location to another within Salt Lake County.

ARTICLE II
DEFINITIONS

2.1. Declaration. The "Declaration" shall mean, collectively, the Declaration of Covenants, Conditions and Restrictions of Birkhill Community Association, Inc. recorded or intended to be recorded in the Official Records of Salt Lake County, Utah and any amendments or supplements recorded or to be recorded pursuant thereto.

2.2. Other Definitions. Each and every definition set forth in the Declaration shall have the same meaning herein as therein, and each and every such definition is incorporated by reference and made a part of these By-Laws as if once again fully written and set forth at length herein.

ARTICLE III
MEMBERS

The qualifications for membership, the classes of membership and the voting rights of Members through Delegates shall be as set forth in the Declaration, all of which provisions are hereby incorporated by reference as if set forth in full herein. The provisions of these By-Laws, which are binding upon all Members, are not exclusive, as Members shall also be subject to the terms and provisions of the Articles, the Declaration and the Association Rules, if any.

ARTICLE IV
MEETINGS OF DELEGATES

4.1. Appointment of Delegates. Delegates shall execute all of the authority of Members in the Association and shall be appointed as set forth in the Declaration.

4.2. Place of Meetings. All meetings of Delegates shall be held at the principal office of the Association, or at such other place in Salt Lake County, in reasonable proximity to the Property, as may be fixed from time to time by resolution of the Board.

4.3. Annual Meetings. The first annual meeting shall be held as described in the Declaration and each subsequent regular annual meeting of the Delegates shall be held in the same month of each year thereafter on a day and at an hour to be established by the Board.

4.4. Special Meetings. It shall be the duty of the President to call a special meeting of the Delegates, either in his or her discretion or as directed by resolution of a majority of a quorum of the Board, or upon a petition being presented to the Secretary signed by Delegates representing at least five percent (5%) of the voting power of the Association. The notice of any special meeting shall be given within sixty (60) days after adoption of such resolution or receipt of such petition and shall state the time and place of such meeting and the purpose thereof. The special meeting shall be held not less than thirty (30) days nor more than ninety (90) days after adoption or receipt of such petition. No business shall be transacted at a special meeting except as stated in the notice. Each First Mortgagee may designate a representative to attend all special meetings of the Delegates. The special meetings of the Delegates shall be open to attendance by all Members and by Mortgagee representatives to the extent of the permissible capacity of the meeting room.

4.5. Notice of Meetings. It shall be the duty of the Secretary to send a notice of each annual or special meeting by first-class mail, at least thirty (30) but not more than ninety (90) days prior to such meeting, stating the purpose thereof as well as the day, hour and place where it is to be held, to each Delegate and Declarant and to each Eligible Holder. The notice may set forth time limits for speakers and nominating procedures for the meeting. The notice of any meeting at which the Community Directors are to be elected shall include the names of all those who are nominees at the time the notice is given to the Delegates. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served forty-eight (48) hours after such notice has been deposited in a regular depository of the United States mail. Such notice shall be posted in a conspicuous place within the Property, and such notice shall be deemed served upon any Delegate upon posting if no address has been furnished the Secretary.

4.6. Quorum. The presence at the meeting of Delegates or proxies or any combination thereof entitled to cast at least twenty-five percent (25%) of the voting power shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration or these By-Laws. If any meeting cannot be held because a quorum is not present, the Delegates representing a majority of the votes present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days, nor more than thirty (30) days, from the time the original meeting was called. If the time and place of the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Delegates in the manner prescribed for regular meetings. At the subsequent meeting, the presence of Delegates, either in person or by

proxy or any combination thereof, entitled to cast twenty five percent (25%) of the voting power shall constitute a quorum.

4.7. Approval of the Delegates. Except where a greater portion of the voting power is required by the Articles, the Declaration, these By-Laws, or Utah Corporate law, a majority of the votes represented by a Delegate and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum), shall constitute approval of the Delegates present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Delegates to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the total voting power required to constitute a quorum.

4.8. Action by Written Ballot. Any action, which may be taken by the vote of the Delegates at a regular or special meeting, except the election of Community Directors, may be taken without a meeting by written ballot. Approval of an action by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Solicitations for action by ballot shall: (i) be sent to each Delegate entitled to vote on the action at the address contained in the records of the Association for notice to the Delegates; (ii) set forth the proposed action; (iii) indicate the number of responses needed to meet the quorum requirements; (iv) state the percentage of approvals necessary to pass the measure submitted; (v) specify a reasonable time by which the ballot must be returned to the Association in order to be counted, and; (vi) afford an opportunity to specify a choice between approval and disapproval of each matter or group of related matters to be acted upon by ballot.

4.9. Parliamentary Procedure. The President of the Association, or another person elected at a meeting, shall preside over meetings of Delegates. All questions of parliamentary procedure shall be decided by the presiding officer.

4.10. Consent of Absentees. The transactions of any meeting of the Delegates, either annual or special, however called or noticed, shall be as valid as though had a meeting duly held after regular call and notice, if a quorum is present, and if, either before or after the meeting, each of the Delegates not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

4.11. Minutes, Presumption of Notice. Minutes or a similar record of the proceedings of meeting of Delegates, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

ARTICLE V
COMMUNITY DIRECTORS

5.1. Delegates for Neighborhoods and Commercial Property Owners Association. The president of each Neighborhood Association or Commercial Property Owners Association, as applicable, shall be the Delegate of such Delegate District during his or her term of office as President; but each such president shall be entitled to designate a member of the Neighborhood Board or Commercial Board to act as Delegate during his or her term of office as President. The appointee to fill any vacancy in the office of president of any Neighborhood Association or Commercial Property Owners Association shall automatically become the appointed Delegate of such Delegate District.

5.2. Delegates for Declarant's Votes. Declarant shall have the right to appoint its own Delegate to cast the votes allocated to Declarant and the Builders pursuant to this Declaration. Only Declarant's Delegate shall have the right to cast Declarant's votes.

5.3. Nomination of Community Directors. After the end of the Development Period, or earlier if Declarant decides, nomination for election to the Board shall be made by a nominating committee. Nominations may also be made by written nomination signed by a Class A Member, or by a Class B Member in accordance with the provisions of these By-Laws, and presented to the Secretary of the Association at least thirty (30) days before the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Community Director, and two or more Delegates. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Delegates, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members.

5.4. Election and Term of Office. Subject to the provisions of the Declaration, the Community Directors shall be elected at each annual meeting of Delegates. The term of office of the Community Directors shall be two (2) years and elections shall be held on a staggered basis as provided for below. At the first annual meeting, the Delegates shall elect each of the Community Directors. The two (2) Community Directors who receive the highest number of votes shall serve for a term of two (2) years and the remaining Community Directors shall initially serve for a term of one (1) year and thereafter shall serve for a term of two (2) years. Successor Community Directors shall be elected at the next annual meeting corresponding with the expiration of the terms and if any such annual meeting is not held, or if Community Directors are not elected thereat, the Community Directors may be elected at any special meeting of Delegates held for that purpose.

Notwithstanding the foregoing, if the number of Community Directors of the Board is increased to seven (7) then, commencing with the first election after the number of Community

Directors is increased from three (3) to seven (7) Community Directors, the term of office for the two (2) Community Directors who receive the highest number of votes shall be two (2) years and the term of the remaining Community Directors shall initially be one (1) year and thereafter shall be two (2) years. Successor Community Directors shall be elected at the next annual meeting corresponding with the expiration of their terms. All Community Directors shall hold office until their respective successors are elected.

Election to the Board shall be by secret written ballot. At such election, the Delegates or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

This Section 5.4. is expressly made subject to Article IV of the Declaration.

5.5. Removal of Community Directors. Subject to the provisions hereof, at any special meeting of the Delegates of which notice has been properly given as provided in these By-Laws, the entire Board or any individual director may be removed from office as hereinafter set forth, provided that the same notice of said special meeting has also been given to said entire Board or any individual Community Director whose removal is to be considered at said special meeting. The entire Board or any individual Community Director may be removed from office by a majority of the affirmative votes cast in the voting on any motion or resolution for removal. However, unless the entire Board is removed subject to the provisions of Section 5.2 hereof, an individual Community Director shall be removed prior to the expiration of his term of office if the number of votes cast against the motion or resolution for his removal would be sufficient to elect the Community Directors if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Community Directors authorized at the time of the most recent election of the Community Directors were then being elected. Upon any such motion or resolution for removal, every Delegate may cumulate his vote or votes, as the case may be, in the same manner as provided for the election of the Community Directors may be elected at the same meeting.

5.6. Vacancies. After the Development Period, vacancies on the Board may be filled by a vote of a majority of the Community Directors, though less than a quorum, and each Community Director so elected shall hold office until his successor is elected at an annual meeting of Delegates, or at a special meeting called for that purpose. A vacancy or vacancies shall be deemed to exist in case of the death, resignation or removal of any Community Director. If the Delegates shall increase the authorized number of Community Directors but shall fail to elect the additional Community Directors as provided for at the meeting at which such increase is authorized, or at an adjournment thereof, or in case the Delegates, fail to at any time elect the full number of the authorized Community Directors, a vacancy or Community Directors and may elect the additional Community Directors at the meeting at which an amendment of the By-Laws is voted authorizing an increase in the number of Community Directors.

5.7. Resignation. If any Community Director tenders his resignation to the Board, the

Board shall have the power to elect a successor to take office at such time as the resignation shall become effective. No reduction of the number of Community Directors shall have the effect of removing any Community Director from office prior to the expiration of his term of office.

5.8. Organizational Meeting of the Community Directors. Immediately following each annual meeting of the Delegates, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

5.9. Other Regular Meetings. Other regular meetings of the Board may be held without notice at such place and day and hour as may be fixed from time to time by resolution of the Board; provided, however, should said day fall upon a legal holiday, then the meeting which otherwise would be held on said day shall be held at the same time on the next day hereafter ensuing which is not a legal holiday. Notice of all such regular meeting shall be posted at a prominent place or places within the Neighborhood Common Area. Notice of the time and place of any such meeting shall be communicated to the Board not less than four (4) days prior to the meeting; provided, however, that notice of a meeting need not be given to any member of the Board who has signed a waiver of notice or a written consent to a holding of the meeting.

5.10. Special Meetings Notice. Special meetings of the Board may be called at any time by the President or if he is unable or refuses to act, by any Vice President, or by any two (2) Community Directors, after not less than ten (10) days prior notice to each Community Director which notice shall specify the time and place of the meeting and the nature of all special business to be considered. The notice shall be posted in the manner prescribed for notice of regular meetings not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, that notice of a meeting need not be given to any member of the Board who has signed a waiver of notice or a written consent to a holding of the meeting.

5.11. Waiver of Notice. The transaction of any business at any meeting of the Board, however, called and noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the Community Directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waiver, consents or approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

5.12. Quorum of Community Directors. A majority of the number of Community Directors as fixed by the Board shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision made or done by a majority of the Community Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board.

5.13. Adjournment. A quorum of the Community Directors may adjourn any Board meeting to adjourn at a stated day and hour; provided, however, that in the absence of a quorum, a

majority of the Community Directors present at any Board meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

5.14. Conduct of Meetings. Except as may be otherwise required by law, all meetings of the Board shall be open and all Members of the Association shall be given reasonable notice of all regularly scheduled open meetings.

5.15. Consent of Board Obviating Necessity of Meeting. Notwithstanding anything to the contrary contained in these By-Laws, any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such Community Directors.

5.16. Fees and Compensation. No Community Director or officer shall receive any salary for his services as such officer or Community Director; provided, however, any Community Director may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties. Nothing herein contained shall be construed to preclude any Community Director or officer from serving the Association as agent, counsel or in any capacity other than as such Community Director or officer, and receiving compensation therefor.

5.17. Presiding Officer. The members of the Board shall elect one of their number to act as Chairperson. The Chairperson shall preside at all meetings of the Board.

5.18. Records. The Board shall cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the Delegates at annual meetings of Delegates or at any special meeting where such statement is requested in writing by one-fourth (1/4th) of the Delegates entitled to vote thereat.

5.19. Powers. Except for those acts which are expressly reserved to the vote of the membership of Birkhill in the Declaration, any duty, obligation or authority vested or required to be performed and any power or privilege which may be exercised by the Community Association pursuant to the Declaration, these By-Laws or the Articles of Incorporation, shall be performed or exercised only by the Community Board or its authorized delegates, agents and servants, and any power, duty, obligation or authority vested or conferred on the Community Board by the Declaration, By-Laws or Articles of Incorporation shall be deemed a power, duty, obligation or authority of the Community Association. The Community Board shall conduct its affairs as provided for in these By-Laws. The Community Board may delegate its powers and duties to such committees, officers, or professional managers as may be permitted under the Declaration and as the Community Board deems appropriate. All acts of the Members of the Community Association shall be made by the vote of the Delegates as provided in these By-Laws. In addition, the Community Board shall have the power to:

(a) adopt and publish rules and regulations governing the use of the Neighborhood Common Area, including any improvements and amenities located thereon, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of any recreational facilities located on any Neighborhood Common Area of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations or any provisions of the Declaration;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles or the Declaration;

(d) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and

(e) employ a manager, independent contractor, or such other individuals, entities or employees as they deem necessary and to prescribe their duties.

Every Community Director of the Association will have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The foregoing right of inspection includes a right to make extracts and copies of documents.

5.20 Duties. It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such a statement is requested in writing by one-third (a) of the Members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period and written notice shall be sent to every Owner at least thirty (30) days prior to its effective date;

(2) send written notice of each assessment to every Owner subject thereto

at least thirty (30) days in advance of each annual assessment period;

(3) foreclose the lien against any Lots for which assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner personally obligated to pay the same;

(d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded as it may deem appropriate; and

(g) cause to be maintained the Neighborhood Common Area and any other areas shown on the Plat that may be owned by governmental entities who are not maintaining such areas.

ARTICLE VI OFFICERS

6.1. Officers. The officers shall be a President, Vice President, a Secretary and a Treasurer, which officers shall be elected by and hold office at the pleasure of the Board. The President and the Vice President shall be members of the Board. Any of the other officers may, but need not, be a member of the Board. Any two or more of such offices, except those of President and Secretary, may be held by the same person.

6.2. Election. The officers of the Association, except such officers as may be appointed in accordance with Section 6.3 or 6.5, shall be chosen annually by the Board, and each shall hold his office until he shall resign or shall be removed or otherwise be disqualified to serve or until his successor shall be elected and qualified.

6.3. Subordinate Officers. The Board may appoint such officers as the business of the Association may require each of whom shall hold office for such period, have such authority and perform such duties as are provided in these By-Laws or as the Board may from time to time determine.

6.4. Removal and Resignation. Any officer may be removed, either with or without cause, by the vote of a majority of all the Community Directors then in office at any regular or special meeting of the Board at which a quorum is present. Any officer may resign at any time by giving written notice to the Board or to the President or to the Secretary of the Association. Subject to the

provisions of this Section, any such resignations shall take effect as of the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause may be filled by appointment of the Board.

6.6. President. The President shall be the chief executive of the Association and shall, subject to the control of the Board and the provisions of the Declaration have general supervision, direction and control of the business and officers of the Association. The President may, but need not, be the Chairperson of the Board. The President shall be an ex-officio member of all standing committees, if any, and shall have the general powers and duties of management usually vested in the office of the President of a corporation, and shall have such other powers and duties as may be prescribed by the Board or these By-Laws. Without limiting the generality of the foregoing, the President shall sign all leases, mortgages, deeds of trust and other written instruments and shall cosign all checks and promissory notes of the Association.

6.7. Vice President. In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the office of President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for such person by the Board of these By-Laws.

6.8. Secretary. The Secretary shall keep, or cause to be kept a book of minutes at the principal office or such other place as the Board may order, of all meetings of Community Directors and Delegates, with the time and place of the holding of same, whether regular or special and if special, how authorized, the notice thereof given, the names of those present or represented at Delegates' meetings and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office, a register showing the information required by the Board. The Secretary shall give, or cause to be given, notice of all meetings of the Delegates and of the Board required by these By-Laws or by law to be given, and the Secretary shall keep the seal of the Association in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or by these By-Laws.

6.9. Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association. The books of account shall, at all reasonable times, be open to inspection by any Community Director or by any Delegate. The Treasurer shall deposit all monies and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board.

The Treasurer shall disburse the funds of the Association as may be ordered by the Board, shall render to the President and Community Directors, whenever they request it, an account of all his transactions as Treasurer and of the financial condition of the Association, shall cosign all checks

and promissory notes of the Association and shall have such other powers and perform such other duties as may be prescribed by the Board or these By-Laws. Withdrawal of funds from the Reserve Fund shall require the signatures of either two members of the Board or one member of the Association who is not also a member of the Board.

ARTICLE VII AMENDMENTS

7.1. Prior to Termination of Class B Votes. During the Development Period, these By-Laws may be amended only with the vote or written consent of Declarant and of Delegates entitled to cast at least fifty-one percent (51%) of the voting power residing in Members other than Declarant and Builder.

7.2. Subsequent to Termination of Development Period. Subsequent to termination of the Development Period, these By-Laws may be amended only with the vote or written consent of Delegates entitled to cast at least fifty-one percent (51%) of the voting power and of Delegates other than the Declarant entitled to cast at least fifty-one percent (51%) of the voting power held by Members other than the Declarant and Builders. Notwithstanding anything to the contrary set forth in this Article VII, the percentage of the Birkhill Voting Power or of members other than the Declarant and Builders necessary to amend a specific clause or provisions in these By-Laws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

ARTICLE VIII COMMITTEES

The Association shall appoint an Architectural Committee, as provided in the Declaration; and a Nominating Committee, as provided in these By-Laws. In addition, the Board shall appoint such other committees as deemed appropriate in carrying out its purpose.

ARTICLE IX BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE X INDEMNIFICATION OF OFFICERS AND COMMUNITY DIRECTORS

The Association shall indemnify, defend and hold every officer and Community Director of the Association harmless from and against any and all expenses, including counsel fees, reasonably

incurred by or imposed upon an officer or Community Director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of the Association), to which he may be made a party by reason of being or having been an officer or Community Director of the Association, whether or not such person is an officer or Community Director at the time such expenses are incurred. The officers and Community Directors of the Association shall not be liable to the Members of the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The officer and Community Directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify, defend and forever hold each such officer and Community Director free and harmless from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Community Director of the Association or former officer or Community Director of the Association may be entitled.

ARTICLE XI GENERAL PROVISIONS

11.1. Checks, Drafts, etc. All checks, drafts, or other order for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by the President and Treasurer and in such manner, as from time to time, shall be determined by resolution of the Board.

11.2. Neighborhood Contracts, etc.; How Executed. The Board, except as otherwise provided in these By-Laws, may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument permitted under the Declaration or these By-Laws in the name and on behalf of the Neighborhood Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent, or employee shall have any power of authority to bind the Neighborhood Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.


11.3. Singular Includes Plural. Wherever the context of these By-Laws requires same, the singular shall include the plural and the masculine shall include the feminine.

11.4. Fiscal Year. Unless otherwise selected by the Board, the fiscal year of the Neighborhood Association shall begin on the first day of January and end on the 31st day of December of every year, except that the fiscal year shall begin on the date of incorporation.

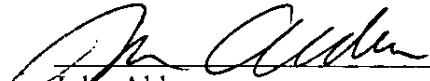
11.5. Conflicts. In the case of any conflict between the Declaration and the Articles and/or these By-Laws, the Declaration shall control, followed by the Articles and then these By-Laws.

11.6. Absentee Ballots. The Board may make such provisions as it may consider necessary or desirable for absentee ballots.


IN WITNESS WHEREOF, we, being all of the Community Directors of Birkhill Community Association, Inc., have hereunto set our hands this 9 day of Sept., 2008.



Dean Regazzi




John Aldous



David Irwin

CERTIFICATE OF SECRETARY

The undersigned, Secretary of Birkhill Community Association, Inc., a Utah nonprofit corporation does hereby certify that the foregoing By-Laws were duly adopted by the Board of said Association on Sept 9, 2008, and that they now constitute said Birkhill Community Association, Inc. By-Laws.



, Secretary

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Utah Div. Of Corp. & Comm. Code

ARTICLES OF INCORPORATION
OF

BIRKHILL COMMUNITY ASSOCIATION, INC.

The undersigned, a natural person of the age of 21 years or more, acting as incorporator of a Corporation under the Utah Revised Nonprofit Corporation Act (the "Act"), adopts the following Articles of Incorporation for such Corporation.

ARTICLE I
NAME OF CORPORATION

The name of the Corporation is Birkhill Community Association, Inc.

ARTICLE II
DURATION OF CORPORATION

The Corporation is to have perpetual existence.

ARTICLE III
CORPORATE PURPOSE

The general purposes and objects for which the Corporation is organized are:

To serve as the homeowners association for the residential community in Salt Lake County, Utah known as Birkhill; to own, operate, maintain and manage any Community Common Area as such term is defined in the Declaration of Protective Covenants, Conditions and Restrictions for Birkhill (the "Declaration") recorded in the Office of the Salt Lake County Recorder, as the same may be amended from time to time; and otherwise transact business with all types of real, personal, tangible and intangible property, and to do any business and take any action which it is lawful for a nonprofit corporation organized as a homeowners association to do. The Corporation is organized as a nonprofit corporation with all of the power and authority set forth in the Act and in the Declaration as the same may be amended from time to time.

ARTICLE IV
MEMBERSHIP

4.1. Members of the Community Association shall be (i) Declarant (irrespective of whether Declarant is the Owner of a Lot), until the date Declarant or any Builder no longer owns any

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Date: 09/09/2008
Receipt Number: 2592967
Amount Paid: \$44.00

property subject to this Declaration or any Annexable Property, and (ii) each Neighborhood Association or Commercial Property Owners Association. A Neighborhood Association or Commercial Property Owners Association and each Owner of Commercial Property not included within a Commercial Property Owners Association shall become a Member of the Community Association when any portion of such property, as identified by Declarant in the Declaration as land being subjected or in a Supplementary Declaration, is annexed into the Community Association. Membership in the Community Association shall be subject to the Declaration, the Community Articles, these By-Laws, and any Community Association Rules.

Class A. Class A members shall be all Owners, with the exception of the Declarant. Class A members who own Residential Units shall be entitled to one (1) vote for each Residential Unit in which they hold the interest required for membership. Owners of Commercial Units shall be entitled to the number of votes described in Article 4.2. of the Declaration. When more than one person holds such interest in any Unit, all such persons or entities shall be members. The vote for such a Unit shall be exercised as the multiple Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. In the event the multiple Owners cannot agree on how to cast their vote, no vote will be accepted for that Unit although the Owners may be counted for the purpose of establishing a quorum. When one of multiple Owners is present at the meeting, that person shall be deemed to be acting with the authority of all of the Owners of that Unit unless written objection to the contrary has been received.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to four (4) votes for each Residential Unit in which it holds the interest required for membership by Article 4.2. of the Declaration and for Commercial Units, four (4) times the number of votes allocated for each such Commercial Unit under Article 4.2. of the Declaration owned by Declarant. Class B membership shall cease to exist on the expiration of the Development Period.

ARTICLE V
NO STOCK CERTIFICATES

The Corporation shall not issue stock certificates to its members.

ARTICLE VI
BOARD OF DIRECTORS

The Corporation shall be governed by a Board of Directors consisting of at least three (3) persons and thereafter is increased to five (5) members, as provided in the Declaration. The initial members of the Board of Directors of the Corporation shall be as follows:

Dean Regazzi
Hamlet Development Corporation
308 East 4500 South, Ste. 200
Murray, Utah 84107

John Aldous
Hamlet Development Corporation
308 East 4500 South, Ste. 200
Murray, Utah 84107

David Irwin
Hamlet Development Corporation
308 East 4500 South, Ste. 200
Murray, Utah 84107

ARTICLE VII
BY-LAWS

The Directors shall adopt By-Laws which are not inconsistent with law or these Articles for the regulation and management of the affairs of the Corporation. The By-Laws may be amended from time to time or repealed pursuant to law.

ARTICLE VIII
REGISTERED OFFICE

The address of the Corporation's initial registered office is:

308 East 4500 South
Suite 200
Murray, Utah 84107

ARTICLE IX
REGISTERED AGENT

The initial registered agent for the Corporation shall be:

Michael M. Brodsky
308 East 4500 South
Suite 200
Murray, Utah 84107

ARTICLE X

ARTICLE X
INCORPORATOR

The name and address of the incorporator of the Corporation is:

Michael M. Brodsky
308 East 4500 South
Suite 200
Murray, Utah 84107

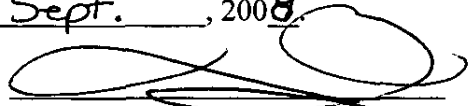
ARTICLE XII - OFFICERS' AND DIRECTORS' CONTRACTS

No contract or other transaction between this Corporation and one or more of its Directors or any other corporation, firm association or entity in which one or more of its Directors are trustees, directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest, or because such Director or Directors are present at the meeting of the Board of Directors, or a committee thereof, which authorizes, approved or ratifies such contract or transaction, or because his or their votes are counted for such purpose. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies such contract or transaction.

Unless otherwise indicated herein, all capitalized terms shall have the meanings provided in the Declaration.

The undersigned incorporator verifies, under penalty of perjury, his signature on this document is his voluntary act and deed, and that the statements contained herein are true and correct.

DATED this 9th day of Sept., 2008.


Michael M. Brodsky, Incorporator

ACKNOWLEDGEMENT AND CONSENT OF REGISTERED AGENT

The undersigned acknowledges appointment as registered agent on behalf of the Corporation named in the foregoing Articles of Incorporation and agrees to assume and discharge the duties thereof.


Michael M. Brodsky
Registered Agent