

94-49

**DECLARATION OF CONDOMINIUM  
FOR  
BIRKHILL  
(a Utah Expandable Condominium Project)**

THIS DECLARATION OF CONDOMINIUM for BIRKHILL (the "Declaration"), recorded as "Birkhill Phase 1-Amended Lot B Condominiums," is made and executed by Fireclay at Birkhill, LLC, a Utah limited liability company (the "Declarant") pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, as amended.

**RECITALS**

A. Declarant is the owner of certain real property located in Salt Lake County, Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Land"). Declarant is also the owner of certain additional real property in Salt Lake County, Utah, adjoining the Land, more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (the "Additional Land").

B. Declarant intends to construct one (1) mixed-use building ("Building") on the Land (the "Project") and, as the Project is expanded, seven (7) additional mixed-use or commercial buildings on adjoining real property, that will include, when fully expanded, 223 residential condominium Units and approximately 50,500 square feet of commercial space, and certain Common Areas and Facilities and Limited Common Areas. It is contemplated that the Buildings will have each have four (4) stories without basements; however, plans for future Buildings may change from time to time.

C. The Project is to be known as Birkhill.

D. This Declaration is made and recorded against the Land, to subject the Land and the Additional Land to this Declaration and the provisions of the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated, as amended (the "Act").

E. Recorded simultaneously herewith is a condominium plat of the portion of the Project to be built on the Land as required by the Act.

**ARTICLE I  
DEFINITIONS**

Unless the context expressly indicates otherwise and except as otherwise provided in the governing documents of the Master Association, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

"Act" shall mean the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated, as amended.

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Book - 9643 Pg - 7965-8058  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
HAMLET HOMES  
308 E 4500 S STE 200  
MURRAY UT 84107  
BY: CDC, DEPUTY - WI 94 P.

“Additional Land” shall mean the additional real property described on Exhibit “B” attached hereto that may be added to the Project in accordance with Article XVI below.

“Association” shall mean Birkhill Condominium Association, Inc., a Utah non-profit corporation, organized for the purposes set forth in this Declaration.

“Board of Directors” or “Board” shall mean the Board of Directors appointed to manage the affairs of the Association under the provisions of Article XI below. In addition, the Board shall be deemed to be the “Management Committee” as described in the Condominium Ownership Act of Utah.

“Building” shall mean each of the eight (8) mixed-use, residential or commercial structures containing Residential Units and/or Commercial Units as well as Common Areas and Facilities and Limited Common Areas, as applicable, which are constructed on the Land and Additional Land.

“Building A” shall mean the Building identified as “Building A” on Exhibit “C”, attached hereto and incorporated herein by reference.

“Building B” shall mean the Building identified as “Building B” on Exhibit “C”, attached hereto and incorporated herein by reference.

“Building C” shall mean the Building identified as “Building C” on Exhibit “C”, attached hereto and incorporated herein by reference.

“Building D” shall mean the Building identified as “Building D” on Exhibit “C”, attached hereto and incorporated herein by reference.

“Building E” means the Building identified as “Building E” on Exhibit “C”, attached hereto and incorporated herein by reference.

“Building F” shall mean the Building identified as “Building F” on Exhibit “C”, attached hereto and incorporated herein by reference.

“Building G” shall mean the Building identified as “Building G” on Exhibit “C”, attached hereto and incorporated herein by reference.

“Building J” shall mean the Building identified as “Building J” on Exhibit “C”, attached hereto and incorporated herein by reference

“Bylaws” shall mean the Bylaws of the Association, as attached hereto as Exhibit “D” and incorporated herein by reference, as the same may be amended from time to time.

“Commercial and Residential Limited Common Areas” shall mean the following: elevators (and elevator core) and lobby located within Building G which are available to the

Owners and occupants of Buildings G and Building B as well as the west stairwell located in Building B which serves the Owners and occupants of Building B and Building G.

“Commercial Limited Common Areas” shall mean the east stairwell located in Building G.

“Commercial Unit” shall mean any Unit located in a Building, used for commercial retail or commercial office purposes only.

“Common Areas and Facilities” shall mean all parts of the Land, the Buildings and all other improvements included in the Project other than the Units, as set forth in Article V below.

“Condominium” shall mean a Unit (including both Commercial Units and Residential Units) and the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas and Facilities appurtenant to such Unit, together with all improvements, fixtures, and structures erected thereon or therein, and all rights, ways, easements, privileges and appurtenances thereunto belonging, or in anywise appertaining, including all space in, upon, above or below the foregoing, all, however, subject to easements, agreements, conditions and other matters of public record including without limitation, the following:

(a) Declaration of Covenants, Conditions and Restrictions for Birkhill Community Association, Inc. (“Master Declaration”) recorded or intended to be recorded among the Official Records in the Office of the Recorder of Salt Lake County, Utah prior hereto, and any other declarations or instruments for or affecting the Master Association (as such term is hereinafter defined), which have been previously recorded in the Salt Lake County Recorder’s Office.

“Declarant” shall mean Fireclay at Birkhill, LLC, a Utah limited liability company, or any successor in interest as defined by the Act.

“Declaration” shall mean this Declaration of Condominium, and all amendments, modifications and supplements hereto.

“First Mortgage” shall mean and includes a Mortgage with priority over all other Mortgages.

“Land” shall mean the real property described in Exhibit “A” attached hereto.

“Limited Common Area(s)” shall mean portions of the Common Areas reserved for the use of certain Owners to the exclusion of other Owners, as provided in Article VI below (including Commercial Limited Common Areas, Commercial and Residential Limited Common Areas and Residential Limited Common Areas).

“Limited Common Area Assessments” shall mean and refer to those assessments which may be levied by the board of directors from time to time and collected from those Owners who

have use and access to the Limited Common Areas to reimburse the board for maintenance, operation, repairs and/or replacement of such Limited Common Areas.

“Master Association” shall mean Birkhill Community Association, Inc.

“Member” shall mean an Owner obligated, by virtue of his Ownership, to be a member in the Association and, where the context permits, a representative of the Unit Owners serving on the Board of Directors.

“Mortgage” means any mortgage or deed of trust of (i) the seller of a Unit (including, without limitation, the Declarant to the extent the Declarant holds a Mortgage on one or more Units); (ii) an individual held on a Unit, and (iii) a bank, trust company, savings bank, savings and loan association, mortgage service company, insurance company, credit union, pension fund, real investment trust or like institutional investor or lender.

“Mortgagee” means the holder of any recorded Mortgage, the beneficiary of any recorded deed of trust, or the grantee (including personal representatives, successors and assigns of such grantee) named in any recorded conveyance in the nature of a Mortgage, encumbering one or more Units.

“Owner(s)” or “Unit Owner” shall mean the person or persons, including the Declarant, owning in fee simple, a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Salt Lake County, Utah, and shall be deemed to be a Unit Owner. The term Owner shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or persons purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed of record).

“Plat” shall mean the condominium plats for the Project recorded in the office of the Salt Lake County Recorder.

“Project” shall mean the Land, the planned two hundred twenty three (223) Residential Units and commercial space containing Commercial Units located in several Buildings to be constructed on the Land and all other improvements to the Land as well as any portion of the Additional Land that are submitted to the Act by this Declaration.

“Project Documents” means this Declaration, the Bylaws and any governing documents of the Condominium.

“Residential Limited Common Areas” shall mean (a) all elevators that serve only Residential Units, (b) all terraces, yards, patios and balconies that are Limited Common Areas serving two or more, but fewer than all of the Residential Units; (c) clubrooms and exercise facilities available only to Residential Units; and (d) assigned parking to serve some Residential Units in certain Buildings.

“Residential Unit” shall mean all Units in a Building other than Commercial Units.

“Transition Events” shall mean the events described in Section 11.13.2 below that will cause the Class B Membership to change to Class A Memberships.

“Unit” shall mean a physical portion of the Project designed for separate ownership and occupancy as described in Article IV below.

## **ARTICLE II SUBMISSION OF THE PROJECT TO THE ACT**

2.1 The Declarant, as the owner of the Land, hereby submits the Land, the Buildings and all other improvements now or hereafter made in or upon the Land to the provisions of the Act and the terms, covenants and conditions of this Declaration as an expandable condominium project. Each and all of the provisions of this Declaration are declared and agreed to for the benefit of the Project and in furtherance of a plan for improvement of the Project and division thereof into Condominium Units. Each and all of the provisions of this Declaration shall be deemed to run with the Land and shall be burden and a benefit to the Declarant, and to any person acquiring, leasing or owning an interest in the real property and improvements comprising the Project and to its respective personal representatives, heirs, successors and assigns.

2.2 The Project is hereby divided into a Condominium, each such Condominium consisting of Units and an appurtenant undivided interest in the Common Areas and Facilities and where applicable, an interest in Limited Common Areas.

## **ARTICLE III IMPROVEMENTS**

3.1 Initially, the Project shall contain a portion of one (1) Building containing fourteen (14) Residential Units and up to approximately fifteen thousand (15,000) square feet of commercial space located within eight (8) Commercial Units, subject to Article XVI of this Declaration, under which the Declarant has reserved the option to expand the Project with additional Buildings and Units. The principal materials from which the Buildings will be constructed are concrete footings and foundations; wood framing; steel and concrete; brick/masonry and Exterior Finishing Insulating System (EFIS); sheetrock interiors; and Ethylene Propylene Diene Monomer rubber (EPDM) roof; and such other materials as allowed by current building codes. Each Building will be supplied with telephone, television, electricity, internet access, natural gas, water and sewer service. The Project also consists of Common Areas and Facilities, including, but not limited to, parking, walkways, landscaping and Limited Common Areas.

## **ARTICLE IV DESCRIPTION OF UNITS**

4.1 General Description of Units. Initially, the Building will contain a total of twenty-two (22) Condominium Units, consisting of 14 Residential Units and 8 Commercial Units, defined as Phase 1-B1, as shown on Exhibit E. The Residential Units will vary in

approximate size between 752 square feet and 1,300 square feet, and the decks will have varying sizes. The Commercial Units will vary in approximate size from 1,164 square feet to 2,611 square feet. The Plat and Exhibit "E" attached hereto and incorporated herein by reference contain the Unit Number of each Unit and other descriptive information about each Unit.

4.2 Boundaries of Units. Each Unit shall be bounded by the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, exterior doors and door frames, and trim. The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of its finished surfaces and the exterior surfaces so described. All other portions of the walls, floors or ceilings shall be a part of the Common Areas and Facilities. In addition, each Unit shall include the following: (i) all spaces, nonbearing interior partitions, interior doors and door frames and all other fixtures and improvements within the boundaries of the Unit; (ii) all outlets of utility and communications service lines, including but not limited to power, light, gas, hot and cold water, heating, refrigeration, security, cable television and telephone, within the boundaries of the Unit, but shall not include any part of such lines or ducts themselves; and (iii) all fixtures and appliances found within the boundary lines of the Unit and servicing only that Unit.

## ARTICLE V COMMON AREAS AND FACILITIES

5.1 Except as otherwise provided in this Declaration, the Common Areas and Facilities shall constitute in general all of the parts of the Land, the Buildings and all other improvements included in the Project, except the Units. All Common Areas and Facilities (excluding any Limited Common Areas) shall be for the exclusive use of Owners, their guests and tenants. The common hallways shall be used for ingress and egress only. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following and all repairs and replacements of any of them:

5.1.1 The Land.

5.1.2 All structural parts of the Buildings, including the foundation, columns, girders, beams, supports, exterior and bearing walls, roofs, halls, corridors, elevators, elevator core, stairwells, lobbies, fire escapes, fitness facility, if applicable, entrances and exits of each Building.

5.1.3 The pathways, fences, grounds, landscaping, lawns, shrubs, trees, gardens, parking areas, storage areas and recreational facilities, if any.

5.1.4 Installation of all central services such as power, light, gas, hot and cold water, heating, air conditioning and ventilation, and all ducts, wires, conduits and other accessories used therewith.

5.1.5 All other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common

Areas and Facilities on the Plat or any Supplemental Plat, excepting only things expressly designated in this Declaration as part of Unit or a Limited Common Area.

## **ARTICLE VI LIMITED COMMON AREAS**

6.1 Limited Common Areas are portions of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of other Owners. Unit Owners shall be entitled to the exclusive use and occupancy of the Limited Common Areas directly associated with their specific Units. The Limited Common Areas include those areas designated as such on the Plat, and, whether or not so designated on the Plat. Residential Limited Common Elements shall include those areas described herein. It is contemplated that assigned parking will be located and available to Owners or occupants of Building D and Building E and may be available to other Owners or occupants in the Project, as more particularly set forth in Section 10.8. herein. Commercial Limited Common Elements and Commercial and Residential Limited Common Elements include those areas described above. The right to use the Limited Common Areas shall be appurtenant to and contingent upon ownership of the Unit or Units associated therewith, and even though not specifically mentioned in an instrument of transfer, shall automatically pass to the grantee or transferee of such Unit or Units. Such right of use shall not be revocable, nor may it be voluntarily or involuntarily relinquished, waived or abandoned. Limited Common Areas are reserved for the exclusive use of the Unit or Units to which they are appurtenant to the exclusion of other Units, and there shall pass with a Unit, as appurtenant thereto, the exclusive right to use the Limited Common Areas so appurtenant, provided, however, these Limited Common Areas shall be subject to the easements provided for herein and such other easements as may be established by law. The maintenance, repair, replacement and operation of the Limited Common Areas are set forth herein, however, the costs incurred in connection with the Limited Common Areas are the responsibility of the affected Owners and are defrayed by the imposition of Limited Common Area Assessments; except that the Condominium Association shall be responsible to maintain capital reserves for replacement of assigned parking spaces for those parties entitled to the use thereof unless damage to such parking spaces is caused through negligence attributable caused by such party, in which event the party causing such damage will be liable for the expense of repair.

6.1.1 The Owners of Commercial Units shall have the exclusive rights to inscribe or maintain signage on the exterior of the Buildings, provided such signage shall comply with all applicable provisions of the Master Declaration and any Design Guidelines which are part of the Master Declaration

## **ARTICLE VII OWNERSHIP OF COMMON AREAS AND FACILITIES, ALLOCATION OF VOTING RIGHTS AND COMMON EXPENSES/COMMON PROFITS**

7.1 Each Unit will be entitled to an undivided ownership interest in the Common Areas and Facilities. Each Unit's interest in the Common Areas and Facilities shall be inseparable from the Unit and any conveyance, encumbrance, judicial sale, or other transfer, voluntary or involuntary, of an undivided interest in the Common Areas and Facilities and

Limited Common Areas shall be void unless the Unit to which that interest is allocated is also transferred.

7.2 The undivided interest in the Common Areas and Facilities appurtenant to each Unit in the Project and the proportionate share of the Common Areas and Facilities appurtenant to each Unit shall be calculated as follows: one (1) divided by the then applicable number of Units which may be expanded from time to time under Article XVI hereunder; provided, however, that the undivided interest in the Common Areas and Facilities and proportionate share of the Common Areas and Facilities for each Commercial Unit shall be determined by as follows: one (1) Commercial Unit for each 1,000 square feet of commercial space, rounded up or down to the nearest whole number.

7.3 Except as otherwise provided in this Declaration, the undivided interest appurtenant to each Unit shall have a permanent character, and shall not be altered.

7.4 Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be specifically designated for exclusive use by such Owner.

7.5 The Board of Directors, on behalf of the Association, may enter into leases, management agreements or operating agreements with other parties with respect to the Common Areas and Facilities on such terms as it may elect that are not otherwise inconsistent with the provisions of this Declaration.

7.6 Allocation of Voting Rights. Each Unit Owner shall be entitled to vote in the affairs of the Association and for the purposes of this Declaration, the Bylaws and the Articles of Incorporation, as described in Section 11.13 and the Articles of Incorporation.

7.7 Allocation of Common Expenses/Common Profits. The Common Expenses and any common profits of the Project shall be allocated to the Owner of each constructed and completed Unit according to the allocation of undivided interest of such Unit in the Common Areas and Facilities described in Section 7.2 above.

## **ARTICLE VIII TITLE TO CONDOMINIUM UNITS**

8.1 Manner of Holding Title to Units. Title to a Unit within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Utah.

8.2 Inseparability. Title to a part of a Unit within the Project may not be separated from any other part thereof during the period of ownership, and each Unit, and the undivided interest in the Common Areas and Facilities appurtenant to each, shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit, together with all appurtenant rights created by law or by this Declaration, including the appurtenant membership in the Association.



8.3 Units May Not Be Divided. Title to any part of a Unit may not be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership. Under no circumstances shall interested in a Unit be divided into, leased, sold, conveyed or used as time period of intervals or sold or conveyed to owners or holders for use on a time share basis. No Unit shall be owned by a partnership or corporation or unincorporated association for the purposes of creating a fraction or divided ownership arrangement or facilitating a time share arrangement among three or more unrelated individuals.

8.4 No Partition. The Common Areas and Facilities shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

8.5 Separate Mortgages by Owners. Each Owner shall have the right to encumber his interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas and Facilities or any part thereof, except the undivided interest therein appurtenant to his Unit. Any Mortgage of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and, in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure, by private power of sale, judicial foreclosure, or otherwise.

8.6 Separate Taxation. Each Condominium Unit within the Project, including each Unit and appurtenant undivided interest in the Common Areas and Facilities and in Limited Common Areas, shall be deemed to be a parcel for tax purposes, and shall assessed separately for all taxes, assessments and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas and Facilities shall be apportioned among the Units in proportion to the undivided interests in the Common Areas and Facilities appurtenant to such Units. All such taxes, assessments and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium.

8.7 Mechanics Liens. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of the such labor or furnishing of such services or materials. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Association, and provided for in this Declaration, shall be deemed to be performed or furnished with the express consent of each owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his Unit.

8.8 Description of Condominium Units. Every contract for the sale of Condominium Unit and every other instrument affecting title to Condominium Unit within the Project may

describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Plat. Such description shall be construed to described the Condominium Unit, together with the appurtenant undivided interest in Common Areas and Facilities as well as any applicable Limited Common Areas and to incorporate all the rights incident to ownership of a Condominium Unit within the Project and all of the limitations on such ownership as described in this Declaration.

## **ARTICLE IX EASEMENTS**

9.1 Easements for Maintenance, Cleaning, and Repair. Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair, or replacement of any Common Areas and Facilities or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas and Facilities or to any Unit. In addition, the Association or its agents may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

9.2 Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas and Facilities as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and shall have the right to horizontal, vertical, and lateral support of such Unit, and such rights shall be perpetual and appurtenant to and pass with title to each Condominium.

9.3 Association's Right to Use Common Areas and Facilities. The Association shall have an easement to make such use of the Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas and Facilities (other than Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

9.4 Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas and Facilities for the purpose of completing construction of the Project and making improvements therein as shown on the Plat, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. The duration of this easement shall be ten (10) years from the date of the recording of this Declaration. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage. Further, the Declarant hereby expressly reserves unto itself and hereby grants to any utility company, on, over, under, or in any portion

of any Unit, the right to install, maintain and repair pipes, drains, mains, conduits, lines, meters and other facilities for gas, electric, water, telephone, cable, and other public utilities or quasi-public utilities deemed necessary or advisable to provide adequate service to any Unit now or hereafter laid out or established on the Project and making openings and excavations therein or thereon, provided that same be corrected and the area be restored and left in good condition. The foregoing shall include, without limitation, the right of Declarant to grant perpetual easements affecting any portion of the Project, from time to time, which may be assignable, to Elsinore Communications LLC, or other parties, (and re-assigned thereafter to other parties) for the purpose of the excavation, construction, entrenchment, repair, replacement, operation and maintenance of the telecommunication systems (including cables and associated system facilities, hardware and equipment) for the Project and up to a user access portal for each Unit.

9.5 Sales and Management by Declarant. Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project, and models in any of the Units that it owns, leases or is under contract to purchase or on the Common Areas and Facilities and Facilities of the Project for a period of ten (10) years from the recording of this Declaration. Declarant shall be entitled to utilize, at any one time, up to six (6) Units which it owns or is under contract to purchase and some or all of the Common Areas and Facilities and Facilities as sales offices, management offices, and models anywhere in the Project. Declarant may relocate sales offices, management offices, and models to other Units or Common Areas and Facilities and Facilities at any time.

9.6 Easements for Encroachments. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Areas and Facilities or any part of a Unit shall hereafter encroach on real property now owned by the Declarant outside the boundaries of the Project, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Buildings or any improvements constructed or to be constructed within the Project, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

9.7 Easements Deemed Created. All conveyances of Condominium Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

9.8 Easements for Additional Land. There is hereby reserved unto the Declarant over, upon and through the Additional Land, its agents and any person or entity at any time owning any portion of the Additional Land, a non-exclusive perpetual blanket easement and right of passage on, through, over, under, and across all of the Project for ingress, egress, installation,

replacement, repair, maintenance and use of all utilities, including, but not limited to, water, sewer, drainage, gas, cable television, telephones and electricity, and further including the right to connect to and use any such utilities which may exist or be located upon the Project from time to time. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles and other equipment on the Project, to affix and maintain electrical or telephone wires and conduits, sewer and water drainage lines, on, above, or below any portion of the Project, including any improvements constructed thereon and to have construction vehicles, personnel, equipment and the like exercise the aforesaid right of ingress and egress over the Project. There is further reserved unto the Declarant the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Project in furtherance of the blanket easement created by this Section 9.8. In the exercise of any rights under this Section, there shall be no unreasonable interference with the use of the Project or any Unit or with the Common Areas or Facilities or the Additional Land for the purposes for which each is reasonably intended. Any person or entity exercising any rights hereunder shall be obligated to promptly repair, at their own expense, any damage caused by the exercise of such rights and to restore, to the extent practicable, any damaged real or personal property to the condition of such property prior to the exercise of such rights.

There is also reserved unto the Declarant for the benefit of the Additional Land, and its agents and any person or entity at any time owning any portion of the Additional Land, a non-exclusive perpetual blanket easement and right of passage on, through, over, under and across all of the Project and Common Areas or Facilities for: (i) pedestrian and vehicular ingress and egress to and from any and all portions of the Additional Land and any other real property Declarant may own adjacent to the Project or Additional Land, including the use of the parking areas located within the Project, (ii) parking on any parking areas on the Project, (iii) ingress and egress to and from any and all portions of the Additional Land by construction equipment, construction personnel and the like to facilitate and enable the development and construction of buildings, improvements and related facilities upon the Additional Land, (iv) the construction of any parking areas and roads located within the Condominium, and (v) the conduct of all other development and construction related activities as are deemed necessary or desirable by the Declarant or any person or entity at any time owning any portion of the Additional Land. The Declarant and any person or entity at any time owning any portion of the Additional Land shall have all rights and privileges reasonably necessary to the exercise of the foregoing easement, including, without limitation, a reasonable right of ingress and egress on, over and through the Project and Common Areas or Facilities. In the exercise of any rights under this Section, there shall be no unreasonable interference with the use of the Project or any Unit, or with the Common Areas or Facilities or the Additional Land for the purposes for which each is reasonably intended. Any person or entity exercising any rights under this Section shall be obligated to promptly repair, at their own expense, any damage caused by the exercise of such rights and to restore, to the extent practicable, any damaged real or personal property to the condition of such property prior to the exercise of such rights.

Notwithstanding that Additional Land is not annexed into and made part of the Condominium, unless and until any portion of the Additional Land is annexed into the Condominium, it shall nevertheless be benefited and burdened by all easements provided for

under this Declaration with respect to Units and Common Areas and Facilities to the extent reasonably necessary for the development, use and operation of the Project and the Additional Land. Without limiting the generality of the foregoing, the Declarant shall have all respective easements within the Additional Land as are provided to it with respect to the Project as may be necessary for the development, use and operation of the Project, and the owner, employees, agents, contractors, residents, and designees of the Additional Land shall have all easements within the Project set forth herein as may be reasonably necessary for the development, use and operation of the Additional Land.

All easements, rights and restrictions described herein are easements appurtenant to and running with the Project and shall continue in full force and effect until the termination of this Declaration as it may be amended from time to time.

## **ARTICLE X RESTRICTIONS ON USE AND ARCHITECTURAL REVIEW**

10.1 All present and future Owners, tenants and occupants of Units shall be subject to and shall comply with, the provisions of the Master Declaration (including, without limitation, the Design Guidelines appurtenant thereto), this Declaration, the Condominium Bylaws and any rules and regulations, as they may be amended from time to time, except as otherwise provided in this Declaration. The acceptance of a deed of conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an agreement between such Owner, tenant or occupant and the Association that the provisions of this Declaration, the Condominium Bylaws and the rules and regulations, as they may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having, at any time, any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. A copy of the current Condominium Bylaws of the Condominium is filed herewith, marked as Exhibit "D", and made a part hereof.

10.2 No Commercial Use of Residential Units and Leasing of Residential Units. The Residential Units within the Project shall be used exclusively for residential purposes and such Residential Units shall not be used for business or commercial activity, provided, however, that nothing herein shall be deemed to prevent (a) Declarant or its duly authorized agents from using any Unit, for so long as such Unit is owned or leased by Declarant, as models or property management offices, whether or not relating to the Project, or (b) any Owner or his duly authorized agent from freely renting or leasing his Unit from time to time, provided such rental period is no less than six (6) months and further provided, that all leases are in writing and subject to this Declaration, the Condominium Bylaws and any rules and regulations. Owners shall be required to submit a copy of any lease agreement to the management agent for the Association. Notwithstanding the foregoing, the first floor of certain Buildings may have certain designated live/work Units and such use shall not be a violation of this Section 10.2. Such designation may be made from time to time by Declarant, in its sole discretion and if so made, the commercial use may be conducted within those live/work Units.

10.3 No Noxious, Offensive or Illegal Activity. No noxious, offensive or illegal

activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

10.4 Restrictions on Signs, Satellite Equipment and Window Coverings. In addition to the provisions relating to signage contained in the Master Declaration and Design Guidelines attached thereto, no signs, neon lighting, flags, or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Project without the prior inspection and written approval of the Declarant until the expiration of the Transition Events and thereafter, by the Board of Directors (or architectural committee), except as may be temporarily necessary to caution or warn of danger or as used by the Declarant in connection with the sales, construction or marketing of any Unit. If the Declarant (or Board of Directors) consents to the erection of any such signs or devices, the same shall be promptly removed at the request of the Declarant or Board of Directors, as applicable. Notwithstanding the foregoing, provided signage for Commercial Units complies with the Design Guidelines, approval of the signage shall not be unreasonably denied by the Board of Directors (or architectural committee). All applicable provisions relating to satellite dishes or other satellite equipment contained in the Master Declaration shall control; however, Declarant has the right to place satellite dishes on roofs of each Building serving all Units for satellite television and internet access to each Unit. Window treatments shall be controlled by the applicable provisions contained in the Master Declaration.

10.5 No Alterations. No Owner shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement, or addition in or to his Unit or modification, alteration or improvement of any type to the Common Areas and Facilities or Limited Common Areas. No Owner of a Unit shall install in any windows in the main living area of such Unit any window covering other than the window coverings approved by the Association. No Owner shall install a hot tub on the deck or patio of his Unit. No Owner shall, without the prior written consent of the Association, do any act that would impair the structural soundness or integrity of, or alter the exterior appearance of, the Buildings or the safety of property or impair any easement or hereditament appurtenant to the Project. In any event, no alteration shall be made prior to obtaining approval of the appropriate government jurisdiction.

10.6 No Obstructions. There shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Areas and Facilities, except with the prior written consent of the Association. To comply with all applicable building and safety codes, no storage of any material is allowed under the stairways in any of the buildings.

10.7 Prohibition of Damage and Certain Activities. Except with the prior written consent of the Association, nothing shall be done or kept in any Unit, in the Common Areas and Facilities, or in any other part of the Project which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which would

increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or his guests, lessees, licensees, or invitees.

10.8 Parking. There will be outside parking areas located on the Property and each Unit Owner and their guests shall have the unfettered right to use and occupy any of the parking spaces located in the outside parking areas. Due to the nature of the Project being a mixed-use community, there is no reserved or assigned parking available to Owners or occupants, or their respective guests, lessees, licensees or invitees, other than those areas designated as reserved parking areas in Buildings D and E or elsewhere in the Project. In particular, each Residential Unit will be assigned one (1) covered parking space, except for the hours of 8:30 a.m. to 6 p.m., Monday through Friday, during which hours the parking space may be used by the public or any of the Owners of Commercial Property. Declarant will create a parking matrix, identifying which reserved parking spaces are allocated to which particular Units. The Association shall have the right from time to time to require that vehicles be temporarily removed from any and all outside parking areas for maintenance or snow removal purposes.

10.9 Rules and Regulations. No Owner shall violate the rules and regulations for the use of Units and Common Areas and Facilities as adopted from time to time by the Association. The Association shall adopt, amend, and repeal such rules and regulations as it deems reasonable. The rules and regulations shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Units and Common Areas and Facilities, provided, however, that the rules and regulations shall not be inconsistent with this Declaration. A copy of the rules and regulations, 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 delivery of notices. Upon such delivery, said rules and regulations shall have the same force and effect as if they were set forth in, and were part of, this Declaration. The rules and regulations as adopted, amended or repealed, shall be made available upon request to each Owner at the principal office of the Association, or at such other place as may be designated by the Board. In the event of any conflict between any such rules and regulations and any other provision of this Declaration the provisions of the rules and regulations shall be deemed to be superseded by the provisions of this Declaration, the Articles of Incorporation or the Bylaws to the extent of any such inconsistency. The initial rules and regulations are attached hereto as Exhibit "F". Notwithstanding the foregoing, the Association may not impose any rule, requirement or restriction that would have an adverse affect on the ownership, use or operation of any of the Commercial Units without the consent of the Owner of the affected Commercial Unit.

10.10. Additions, Alterations, Improvements and Decorations.

Except as otherwise provided in this Condominium Declaration or the Master Declaration, no Unit Owner, except the Declarant, shall make (i) any structural addition, alteration or improvement to his Unit or any Limited Common Area which he has the right to use, or (ii) any non-structural addition, alteration, improvement or decoration to or upon the windows and doors enclosing his Unit, or to or upon any Limited Common Area which he has the right to use until a design review application ("Application") is submitted to and approved by the Board (or any architectural committee the Board may establish from time to time). The Application form will be provided by the Board (or any architectural committee) and may change from time to time. The Application shall include detailed plans showing the elevations, materials and colors, lighting and other relevant features of the improvements, as required by the Board (or any architectural committee). The Board (or architectural committee) may also require the submission of such additional information as it deems necessary to consider any Application. The Board (or 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.

Excluding Declarant or any improvements installed by Declarant, no improvements shall be commenced, erected or maintained upon any portion of the Project, nor shall there be any addition to or change in the exterior of any Unit or other improvement, unless plans and specifications therefor have been submitted to and approved by the Board (or architectural committee) in accordance with the procedures set forth in this Declaration. Notwithstanding the foregoing, any tenant improvements relating to Commercial Units shall be not be subject to any required review by the Board (or architectural committee) unless such tenant improvements affect the exterior of a Building.

Notwithstanding the foregoing, the Board (or architectural committee) may deny any request for exterior changes to the Building which it deems inappropriate for any reason at all in its sole and absolute discretion. The Board (or 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. If the Board (or 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 Board (or architectural committee), the Owner requesting said approval may submit a written notice by certified mail, return receipt requested, to the Board (or architectural committee) advising such entity of its failure to act. If the approving entity 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 Section 10.10. by the approving entity. The Board (or 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 Board (or architectural committee), as applicable.

Construction 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 approving entity 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 Declaration. There shall be no material deviations from plans and specifications approved by the approving entity without the prior consent in writing of such entity.

The approval by the Board (or architectural committee) of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval 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 Board (or 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 Board (or 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 Board (or architectural committee) from denying a waiver or variance in other circumstances.

Each Owner is required to obtain architectural approval as set forth in the Master Declaration, provided that such Owner may apply simultaneously for architectural approval from the Condominium Association and Master Association; and further, provided, that all Owners (except Declarant) must obtain approvals from both Associations.

Neither the Board, or any architectural committee, nor any member thereof shall be liable to the 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, or (b) the construction or performance of any work, whether pursuant to approved plans, drawings, and specifications. Any plans and specifications submitted to the Board (or architectural committee) are not approved by such entity for architectural or engineering design, and by approving such plans and specifications neither the Board, any architectural committee, the members thereof, the Association Board nor the Declarant assumes liability thereof or for any defect in any structure constructed from such plans and specifications.

The Application to and the review and approval by the Board (or 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.

The Board (or any architectural committee) may from time to time adopt and promulgate procedures and requirements for the submission of Applications to the approving entity, 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 Section 10.10 shall be subject to modification and amendment from time to time in the sole discretion of the Board (or any architectural committee). Such Application procedures shall not be construed as a waiver of the provisions of this Section 10.10 or any other provision or requirement of this Declaration. Any Application procedures promulgated by the Board (or any architectural committee) shall be subject to the Declarant's prior approval during the Development Period.

Any improvements constructed in violation of this Section 10.10 or in a manner inconsistent with an approved Application shall be deemed to be nonconforming. Upon written request from the Board (or any architectural committee), the defaulting Owner shall, at its own cost and expense, promptly either remove any nonconforming improvement and restore the Unit or Limited Common Element 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 Unit or Limited Common Element or bring the nonconforming improvement into compliance with the approved Application, as applicable, the Board (or any architectural committee) shall have the right to enforce this Section 10.10 and remove the violation and restore the Unit or Limited Common Element to substantially the same condition as previously existed. If the Board (or any architectural committee) undertakes the foregoing self-help remedy, such action shall not be deemed a trespass. Upon demand by the Board (or any architectural committee), the Owner of the Unit (or appurtenant Limited Common Element) shall promptly reimburse all costs incurred in connection with enforcement under this Section 10.10. and such costs shall be collectible in the same manner as assessments and may become a lien upon such Unit, provided the requirements of applicable Utah law have been satisfied.

If the Board (or any architectural committee) fails to take enforcement action within thirty (30) calendar days after receipt of a written demand from the Declarant (or Community Association after expiration of the Development Period) identifying the violator and/or specifying the nature of the violation, then the Declarant (or Community Association, as applicable) may undertake any appropriate enforcement action and the Association shall reimburse the Declarant (or Community Association, as the case may be) for all costs reasonably incurred by the Declarant (or Community Association, as applicable) 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 Section 10.10.

In no event shall the provisions of this Section 10.10 apply to Declarant or any Unit Declarant may own, from time to time.

## ARTICLE XI THE ASSOCIATION

11.1 Board of Directors. The Board of Directors shall be comprised of three (3) to seven (7) members; provided, however, until the expiration of the Transition Events, the Declarant shall have the exclusive and irrevocable right to appoint all of the members of the Board of Directors and their successors or replacements, who need not be Owners. At the first annual Association meeting after the occurrence of the Transition Events, the Members of the Board of Directors shall be elected by the Owners. To provide continuity of management, the two (2) Members who receive the two (2) highest number of votes shall be elected for two (2) year terms, and the rest of the Members who are elected shall receive a one (1) year term; provided, however, there shall be one (1) Member who owns a Commercial Unit if at least one (1) such Member obtains a majority of the votes held by the Commercial Unit Owners and if such person desires to serve on the Board and if so, such Member shall have a term of one (1) year unless such Member would qualify for a two (2) year term based on receiving a higher number of votes. Thereafter, all Members shall be elected for two (2) year terms. The Members of the Board of Directors shall also constitute the Board of Directors of the Association. No decision may be made by the Board without unanimous consent if such decision has a discriminatory effect on the Commercial Units and/or their Owners or occupants.

11.2 Qualification of Board of Directors Members. To qualify, a member of the Board of Directors must be an individual Owner or the representative of Declarant, as provided in Section 11.1 above.

11.3 Vacancies. The Board of Directors may fill any vacancies on the Board from time to time, until the next election meeting.

11.4 Dismissal of Board of Director Members. Any Board of Director member who fails on three (3) successive occasions to attend Board of Directors meetings (whether regular or special) or who has failed to attend at least twenty-five (25%) of all Board of Director meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining members of the Board shall elect a replacement to sit on the Board of Directors until the next election meeting of the Association.

11.5 Removal of Board of Directors Members/Declarant's Rights. Except for Board of Directors members appointed by the Declarant before the expiration of the Transition Events, Board of Directors members may be removed at any time by the affirmative vote of a majority of the Members of the Association, unless such Member is an Owner of a Commercial Unit, in which case removal may not occur unless done so based on grounds of cause. A replacement to

serve the remainder of the removed member's unexpired term shall be elected at the same meeting.

11.6 Term. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Board of Directors until his successor qualifies and is properly elected by the Association.

11.7 No Compensation. Board of Directors members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Board of Directors business and approved by the Board of Directors.

11.8 Board of Directors Officers and Agents. The Board of Directors shall perform its functions through those three (3) members who are elected as officers by the Board of Directors and through such agents or employees as the Board of Directors may appoint. There shall be a President, Vice President and Secretary-Treasurer. Any Board of Directors officer, agent, or employee may at any time be removed, with or without cause (unless such Member is an Owner of a Commercial Unit in which event removal may only be exercised if with cause), by the vote of a majority of the Board of Directors members, provided, however, if a member of the Board of Directors is removed as an officer, he shall continue to be a member of the Board of Directors.

11.9 Board of Directors Meetings. A regular meeting of the Board of Directors shall be held immediately after the adjournment of each annual Owners meeting or at such other time as the members of the Board of Directors may decide. Other regular meetings shall be held at periodic intervals (no longer than monthly) at such time and place as the Board of Directors may determine. No notice need be given of regular Board of Directors meetings. Special Board of Directors meetings shall be held whenever called by the President or by any three (3) members of the Board of Directors. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Board of Directors member at least twenty-four (24) hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all Board of Directors members may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Board of Directors meeting shall consist of a majority of all the members then in office.

11.10 Status and General Authority of Board of Directors. Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Board of Directors' power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its Board of Directors name. The Board of Directors shall have, and is hereby granted, the following authority and powers:

11.10.1 To Enter. The power and authority to enter into or upon any Unit to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the residents.

11.10.2 Grant Easements. The authority, without the vote of consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Buildings, Units and the Common Areas and Facilities for utilities, reads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

11.10.3 Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat which has been approved by the vote or consent necessary to authorize such amendment.

11.10.4 Standing. The power to sue and be sued.

11.10.5 Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

11.10.6 Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Members in the Association.

11.10.7 To Purchase. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Members in the Association.

11.10.8 Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph 11.10.7 above to the Project, so long as it has been approved by at least seventy-five (75%) of the Members in the Association.

11.10.9 Promulgate Rules and Establish An Architectural Committee. The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the Board of Directors in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration. The Board may also appoint three (3) persons to serve as an architectural committee for the Association to perform the approval of plans described in Section 10.10 herein. Until the expiration of the Transition Events, Declarant shall appoint the members of the architectural committee, who need not be Members of the Association and after the Transition Events, all members of the architectural committee shall be Members of the Association.

11.10.10 Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Members of the Association or residents not on the Board of Directors, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic, video or audio reproduction of Board of Directors meetings.

11.10.11 Assignment or Leasing of Common Areas and Facilities. The authority to charge reasonable user fees for Common Areas and Facilities, and to assign or lease available Common Areas and Facilities to Owners as well as to others on an annual basis;

provided, however, the Association may not lease any property that is subject to a conservation easement with the City of Murray.

11.10.12 All Other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions on behalf of the Owners.

11.11 Delegation of Management Responsibilities. The Board of Directors may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, independent contractors, through service contracts, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of more than thirty (30) days and no such contract shall be for a term beyond the expiration of the Transition Events, unless approved by the Owners, as provided in Section 57-8-16.5 of the Utah Condominium Ownership Act, as amended from time to time.

11.12 Owners Meetings. The Association Members shall meet as follows:

11.12.1 Annual Meeting. The annual meeting of the Owners shall be held in December of each year. The place of the meeting shall be at the location specified in the notice of meeting. At least ten (10) but not more than forty-five (45) days before the date of the annual meeting, a written notice thereof shall be personally delivered or mailed postage prepaid to each person who appears as an Owner, at his last known address; provided, however, that notice may also be delivered by electronic delivery if the party providing notice has taken all steps to ensure that the delivery of such notice is fair, reasonable and will be effective. The notice shall state the location, date, time, place, and general purpose of the meeting.

11.12.2 Special Meetings. Special meetings of the Owners may be called by the President, by the Board of Directors, or by any three (3) members of the Board of Directors, or by Unit Owners holding at least twenty five percent (25%) of the undivided ownership interest in the Common Area. At least ten (10) but not more than thirty (30) days before the date set for a special meeting, written notice thereof shall be given in the manner described in the immediately preceding Paragraph.

11.12.3 Waiver of Notice. No notice of any Owners meeting shall be required if a waiver of such notice is signed by all of the Owners. Whenever all of the Owners meet in person or by proxy such meeting may not be challenged on grounds of inadequate notice.

11.12.4 Quorum. The presence of at least fifteen percent (15%) of all votes entitled to be cast shall constitute a quorum for the transaction of business at any Owners meeting.

11.12.4.1 Quorum Not Present. If a quorum is not present at any Owners meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours and no later than thirty (30) days, after the time set for the original meeting.

11.12.4.2 Quorum at Rescheduled Meeting. Those Members present at the rescheduled meeting and entitled to vote shall constitute a quorum at the rescheduled meeting.

11.12.4.3 Percentage Approval Requirement. In any situation in which this Declaration requires the affirmative vote of a certain percentage of the total ownership interest in the Project for authorization or approval of a matter, the affirmative approval of that percentage of all of the Unit Owners, who must either be present at the meeting in person or by proxy, or, in the alternative, who have signed a separate written consent, is required for authorization or approval of the item, regardless of the quorum requirements.

11.13 Classes of Membership and Voting Allocations. The Association shall have two (2) classes of membership-Class A and Class B, described more particularly as follows:

11.13.1 Class A. The Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association to, subject to the following:

11.13.1.1 One Vote. Each Residential Unit shall have one (1) vote and there shall be one (1) vote pertaining to each Commercial Unit equal to 1,000 square feet of commercial space contained in such Commercial Unit, rounded up or down to the nearest whole number.

11.13.1.2 Subject to Assessment. No vote shall be cast or counted for any Unit not subject to assessment except for those Units owned by Declarant.

11.13.1.3 Multiple Owners. When more than one (1) person or entity holds such interest in a Unit, the vote for such Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Unit shall be suspended in the event more than one (1) person or entity seeks to exercise it.

11.13.1.4 Leased Unit. Any Owner of a Unit which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

11.13.2 Class B. The Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Units, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Unit owned or to be developed. The Class B membership shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (which are hereinafter referred to as the "Transition Events"):

11.13.2.1 Units Sold. Four (4) months after the sale (meaning the execution and delivery of a deed to a Unit by Declarant) of Units to which seventy-five percent (75%) of the Common Areas and Facilities pertain in all Phases in the Project; or

11.13.2.2 Six Years. Six (6) years from the date following the first conveyance of a Unit in the Building to a Unit purchaser after effective date of this Declaration; or

11.13.2.3 Election. When, in its sole discretion, Declarant so determines.

11.13.2.4 Change to Class A Member. From and after the happening of the Transition Events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Unit owned. At such time, the Declarant shall call a meeting, in the manner described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

11.14 Lists of Unit Owners and Eligible Mortgagees. The Board of Directors shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him or her; (b) the name of each person or entity who is a Mortgagee, the address of such person or entity, and the Unit which is encumbered by the Mortgage held by such person or entity; and (c) the name of each person or entity who is an Eligible Mortgagee (hereinafter defined), the address of such person or entity, and the Unit which is encumbered by the Mortgage held, insured or guaranteed by such Mortgage. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board of Directors with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. Further, each Unit Owner who conveys his Unit by way of any Mortgage shall give written notice thereof to the Board of Directors, setting forth the name and address of his Mortgagee. The Board of Directors shall maintain all such Mortgage information, and the name and address of any Eligible Mortgagee in a book or other record designated "Mortgage Book". The Board of Directors may for all purposes act and rely on the information concerning Unit ownership in its records or, at its option, the records of the County Recorder. The address of any Owner shall be deemed to be the address of the Unit owned by such person unless the Board of Directors is otherwise advised in writing.

11.15 Capital Improvements and Table. The Board of Directors shall prepare a Table of Capital Improvements, which shall contain a list of foreseeable expenditures for Capital Improvements within the Area of Common Responsibility. The Table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Board of Directors for the replacement of capital assets as they age. Expenditures by the Association for Capital Improvements to the Project shall be subject to and governed by the following:

11.15.1 Board of Directors Discretion/Expenditure Limit. Capital Improvements to the Project which cost ten percent (10%) or less of the Total Annual Operations Budget and do not materially alter the nature of the Project, may be authorized by the Board of Directors alone.

11.15.2 Owner Approval/Expenditure Limit. Any Capital Improvement, the cost of which will exceed such amount, must prior to the commencement of construction, be authorized by at least a majority of the Owners.



11.15.3 Condominium approval/Changing the Nature of the Project. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) of the undivided ownership interest in the Project.

11.16. Operation, Maintenance and Alterations. The Units and Common Areas and Facilities shall be maintained by the Unit Owners and the Association as follows:

11.16.1 Area of Common Responsibility. The Association shall maintain, repair and replace, as needed from time to time, the Common Areas and Facilities, including but not limited to snow removal, trash collection and disposal, the exterior of all Buildings, all roofs, foundations, footings, columns, girders, beams, supports and main walls of any Unit, elevators, hallways, fitness areas, outside parking areas, all common utility services such as power, light, gas, hot and cold water, sewer, heating, refrigeration and air conditioning systems, fences and fixtures; provided, however, gas and electricity will be separately metered to each Unit (or group of Units within a particular Building) and each Owner (or group of Owners) shall pay for those utilities directly to the billing party. Further, although water will be supplied through a master meter, each Residential Unit and Commercial Unit will be responsible for paying the water bill in accordance with such Unit's respective undivided interest described in Section 7.2.

11.16.2 Area of Personal Responsibility. Each Unit Owner shall maintain, repair and replace, as needed in his Unit, individual utilities, including but not limited to all power, gas, telephone, and television lines servicing only his Unit, patios and decks appurtenant to his Unit, windows, doors and any patios, balconies and decks appurtenant to each Unit. If a specific item is not mentioned expressly in the Area of Common Responsibility and it is located in, on, under or above a Unit, then it shall be the responsibility of the Unit Owner, unless otherwise determined in writing by the Board of Directors. Further, if there is a restaurant on the first floor of Building G, then in such event the Owner or occupant, as applicable, shall have one of the containers provided by the Condominium Association designated for its exclusive use and also shall arrange, at its own expense, for trash collection on a daily basis, which collection shall occur between the hours of 8:30 a.m. and 10 p.m. The Owner or occupant of the restaurant area will also be liable to pay any and all utilities serving such area and to have separate meters for such utilities.

11.16.3 Landscaping. The Association shall maintain, repair and replace all landscaping throughout the entire Project, including but not limited to all green space, grass, sod, ground cover, flower beds, plant beds, trees, bushes, shrubs, and sprinkling systems, which Owners or residents shall not modify, change, or alter without the express prior written consent of the Board of Directors. All landscaping in the Project shall be maintained and cared for in a manner consistent with the Master Declaration. Specific guidelines and restrictions on landscaping may be established by the Board of Directors from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed.

11.16.4 Snow & Ice Accumulations. The Association shall remove all ice and snow accumulations from the Common Areas and Facilities, except patios and decks appurtenant to each Unit.

11.16.5 Garbage Storage and Removal. Each Owner shall deposit the garbage, debris and refuse from his Unit into the centrally located trash receptacles or dumpsters throughout the Project, which the Association shall empty, manage and maintain, other than the Owner or occupant of any first floor restaurant in Building G, as provided in Section 11.16.2.

11.16.6 Limited Common Area. While each Unit Owner shall maintain his Limited Common Area in a clean, safe, tidy, attractive and sanitary condition, the Association shall be responsible to replace and repair the Limited Common Area and all improvements constructed or installed thereon, including but not limited to, the fitness facilities, except as provided in Section 11.16.2.

11.16.7 Utilities. The Association shall provide those utility services not separately metered and billed to the individual Owners by the provider.

11.16.8 Standard of Care/General. The Project shall be maintained in a usable, clean, functional, attractive and good condition, consistent with community standards.

11.16.9 Right of Entry. The Board of Directors, its agents, representatives or employees shall have a right to enter upon or into any Unit or Common Area as necessary in order to maintain and operate the Project, and shall not be liable for trespass for such entry or work.

11.16.10 Changes to Areas of Personal or Common Responsibility. The Board of Directors may, in its sole discretion, add items to or subtract items from the areas of personal or common responsibility described above, upon at least thirty (30) days prior written notice to the Unit Owners.

11.16.11 Alterations to the Common Area. Anything to the contrary notwithstanding and until the occurrence of the Transition Events, the Declarant may make changes to the Common Areas and Facilities without the consent of either the Association, Board of Directors or Owners; provided, however, no Owner or resident may make any structural alterations, modifications, changes or improvements to the Common Areas and Facilities, including but not limited to any additions, extensions, enclosures, fencing, decks, patios, walkways, structures or sheds not shown on the approved plans and specifications, without the prior express written consent of the Board of Directors.

11.16.12. Residential Limited Common Areas. The maintenance, repair and replacement of the Residential Limited Common Area shall be performed by the Association but the cost and expense thereof shall be allocated entirely to the Residential Unit Owners that use such Residential Limited Common Areas.

## ARTICLE XII COMMON EXPENSES AND ASSESSMENTS

12.1 Common Expenses. Each Owner, upon receipt of a deed to a Unit or other document of conveyance, shall pay his assessments to the Association subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Declarant shall not be obligated to pay assessments until such time as any

residential structure, building or Unit is substantially completed and a permanent certificate of occupancy has been issued or, in the alternative, the Declarant elects in writing to commence payment, whichever first occurs. Notwithstanding the foregoing, Declarant's obligation to pay assessments shall be determined as follows: In no event during the first six (6) months that Declarant owns any Unit subject to this Declaration, no assessments shall be due from Declarant. Thereafter, Declarant may, at its sole option, pay assessments equal to twenty-five percent (25%) of the regular assessments or other charge made or levied against any other Unit for each Unit owned by Declarant which is subject to this Declaration or Declarant may pay any operating deficit of the Association up to the date of the Transition Events. If Declarant elects to pay the deficit, it shall be entitled to meet the deficit funding obligation by making, or (if such person so agrees in writing) causing any other person to make on its behalf, one or more cash payments or in-kind contributions of goods or services, or any combination thereof to the Association, and the Association shall have the right to enter into written or oral contracts with the Declarant for the contribution of such goods or services for such purpose. Alternatively, Declarant may loan the amount of any deficit to the Association and can require repayment of such sums from the Title Fee (as defined in the Master Declaration) or working capital fund described below.

12.1.1 Purpose of Common Area Expenses. The assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, for the management, operation and Common Areas and for payment those amounts regulating the Community, all as may be more specifically authorized from time to time by the Board of Directors.

12.1.2. Purpose of Limited Common Element Assessments. If a Limited Common Element Assessment is levied herein, it shall be used for the general purpose of operating the Limited Common Areas, promoting the recreation, health, safety welfare, common benefit and enjoyment of the Owners and other persons entitled to use of such Limited Common Areas, including the maintenance, repair, replacement and regulating, all as may be more specifically authorized from time to time by the Board of Directors.

12.1.3 Creation of Assessments. The assessments shall pay for the common expenses of the Association as may be from time to time specifically authorized by the Board of Directors. Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all assessments assessed. At closing, each Owner shall pay two (2) full months assessment as a reserve to be used by the Association for operating expenses. In addition, the prorata portion of the monthly assessment shall be paid at closing.

12.1.4 Budget. At least thirty (30) days prior to the annual meeting of the Association, the Board of Directors shall prepare and deliver to the Owners a proposed budget which:

12.1.5 Itemization. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

12.1.5.1 Basis. Shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses

growing out of or connected with the maintenance and operation of the Common Areas and Facilities and Facilities, which estimates shall include but are not limited to expenses of premiums for all insurance which the Board of Directors is required or permitted to maintain, common lighting and heating, water charges, carpeting, painting, repairs and maintenance of the Common Areas and Facilities and Facilities and replacement of the elements and components thereof that must be replaced on a periodic basis, wages for Board of Directors employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

12.1.5.2 Approval of Budget and Assessments. The proposed budget and the assessments shall become effective unless disapproved at the annual meeting by a vote of at least a majority of the Owners; provided, however, that to the extent the budget increases the assessment by not more than fifteen (15%) from the prior year's assessment, then the Board shall have the right to approve such budget without a vote of the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and assessment schedule, or if the Board of Directors fails for any reason to establish the budget and assessment schedule for the succeeding year, then and until such time as a new budget and new assessment schedule shall have been established, the budget and the assessment schedule in affect for the then current year shall continue for the succeeding year.

12.1.6. Payment of Assessments. The Board of Directors has the sole authority and discretion to determine how and when the annual Assessments are paid, and to amend, modify, change or supplement that schedule from time to time. Initially, the assessments shall be paid monthly.

12.1.7 Personal Obligation of Owners. Each Unit Owner shall pay his assessments and additional charges; provided, however, no holder of a First Mortgages or beneficiary under a first deed of trust (but not the Seller under an executory contract of sale, uniform real estate contract, land sales contract, or other similar instrument), who obtains title of a Unit pursuant to the remedies provided in the Mortgage or deed of trust shall be liable for unpaid assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: the Owner of both the legal and equitable interest in any Unit; the owner of record in the offices of the County Recorder of Salt Lake County, Utah; and both the Buyer and Seller under any executory sales contract, uniform real estate contract, land sales contract, or other similar instrument. Further, the personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law and other than as set forth in Section 15.2.

12.1.8 Equitable Changes. If the aggregate of all of the monthly assessment payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Board of Directors may from time to time effect an equitable change in the amount of said payments provided the Owners are given at least thirty (30) days written notice of any changes.

12.1.9 Dates and Manner of Payments. The dates, method, form, and manner of payment shall be determined by the Board of Directors.

12.1.10 Reserve Accounts. The Board of Directors shall establish and maintain at least one (1) reserve account for Capital Improvements.

12.1.11 Acceleration. Assessments shall be paid in the manner and on dates fixed by the Board of Directors who may, at its option and in its sole discretion, elect to accelerate the entire annual assessment for Owners who have failed to pay their monthly assessment in a timely manner. If, however, the assessment is accelerated and an Owner subsequently files bankruptcy or the Board of Directors otherwise decides acceleration is not in its best interest, the Board of Directors, at its option and in its sole discretion, may elect to decelerate the obligation.

12.1.12 Statement of Assessments Due. Upon written request, the Board of Directors shall furnish to any Owner a statement of assessments due, if any, on his Unit. Failure to provide the certificate within thirty (30) days after a written request, shall be deemed conclusive evidence that all assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

12.1.13 Superiority of Assessments. All Assessments and liens created to secure the obligation to pay assessments are superior to any homestead exemptions to which an Owner may be entitled and each Owner, by accepting a deed to a Unit or other document of conveyance, hereby waives such homestead exemption as to the Association.

12.1.14 Suspension of Right to Vote for Non-Payment. At the discretion of the Board of Directors, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least (10) days.

12.2 Special Assessments. In addition, the Association may levy Special Assessments in any year, subject to the following:

12.2.1 Special Assessment Approval. So long as the Special Assessment does not exceed the sum of Five Hundred and 00/100ths Dollars (\$500.00) per Unit in any one fiscal year (the "Special Assessment Limit"), the Board of Directors may impose the special assessment without any additional approval.

12.2.2 Association Approval. Any Special Assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of votes of the Owners of the Association. The Board of Directors in its discretion may allow any Special Assessment to be paid in installments.

12.3 Limited Common Area Assessments. In addition, the Association may levy Limited Common Area Assessments for the purpose of operating, maintaining, repairing and replacing the Limited Common Areas which are used only by certain Unit Owners to the exclusion of all other Unit Owners.

12.4 Specific Assessments. If a Unit Owner may accept or reject the benefit, then the Board of Directors shall also have the power to specifically assess the Owners in a particular area as follows:

12.4.1 Benefit only to specific Unit. If the expense benefits less than all of the Units, then those Units benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received.

12.4.2 Unequal or Disproportionate Benefit. If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received.

12.4.3 No Waiver. The failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Director's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section.

12.5 Individual Assessments. Individual Assessments may be levied by the Board of Directors against a Unit and its Owner to reimburse the Association for:

12.5.1 Costs and expenses incurred in enforcing the Project Documents.

12.5.2 Costs and expenses associated with the maintenance, repair or replacement of Common Area for which the Unit Owner is responsible.

12.5.3 Any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Declaration.

12.5.4 Attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

12.6 Collection of Assessments. Assessments must be paid in a timely manner and shall be collected as follows:

12.6.1 Time is of the Essence. Time is of the essence and all assessments shall be paid promptly when due.

12.6.2 Delinquent Assessments. Any assessments which are not paid when due are deemed to be delinquent.

12.6.3 Lien. If any Unit Owner fails or refuses to make any payment of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in such property. A notice of lien may be recorded in the Office of the County Recorder of County, but shall only be necessary in order to establish the priority of the lien.

12.6.4 Late Fees and Default Interest Rate. Any assessments delinquent for a period of more than ten (10) days shall incur a late charge of twenty five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of one and one-half percent (1.5%) per monthly shall accrue on all delinquent accounts. The Board of Directors may, in its sole discretion, change the amount of the late fee or default interest rate or waive late assessments and accruing interest, but is not required to do so.

12.6.5 Foreclosure of Lien and/or Collection Action. If any assessments remain unpaid, the Association may, as determined by the Board of Directors, institute suit to collect the amounts due, to foreclose the lien, or both.

12.6.6 Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to obtain a personal judgment against him for unpaid assessments and additional charges, to foreclose the lien securing the debt in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed, or both,

12.6.7 No Waiver. No Owner may waive or otherwise exempt himself from liability for the payment of Assessments, including but not limited to the non-use of Common Areas and Facilities or the abandonment of his Unit.

12.6.8 Duty to Pay Independent. No reduction or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board of Directors to take some action or perform some function required to be taken or performed by the Association or Board of Directors under the Project Documents, or for inconvenience or discomfort arising from them making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

12.6.9 Application of Payments. All payments shall be applied as follows: additional charges, delinquent assessments and current assessments.

12.6.10 Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of assessments may be enforced by sale or foreclosure of the Owner's interest in his Unit by the Board of Directors. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or Mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's assessments, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board of Directors may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

12.6.11 Appointment of Trustee. If the Board of Directors elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

12.6.12 Attorney in Fact. Each Owner, by accepting a deed to a Unit or other document of conveyance, hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Unit, if the Unit is rented and Owner is delinquent in his assessments. Rent due shall be paid directly to the Association, upon written demand, until

such time as the Owner's assessments are current; and the Owner shall credit the tenant or lessee, against rent due, for the amount of money paid to the Association.

12.7 Liability of Board of Directors. The Association shall indemnify every officer and member of the Board of Directors against any and all expenses, including but not limited to attorney's assessments reasonably incurred by or imposed upon any officer or Member of the Board of Directors in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he may be a party by reason of being or having been an officer or Member of the Board of Directors. The officers and Members of the Board of Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and Members of the Board of Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Members of the Board of Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Member of the Board of Directors free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or Member of the Board of Directors, or former officer or Member of the Board of Directors, may be entitled.

12.8 Insurance. The Board of Directors shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, insurance on the Common Areas and Facilities satisfying at least the following requirements:

12.8.1 Property Insurance. Blanket property insurance using the standard "Special" or "All-Risk" building form covering all of the Common Areas and Facilities, (except land, foundation, excavation and other items normally excluded from coverage) including fixtures, to the extent they are part of the Common Areas and Facilities of the Condominium, building service equipment and supplies, and other common personal property belonging to the Association. Loss adjustment shall be based upon replacement cost. The policy shall be in an amount equal to 100% of the current replacement cost of the Condominium, exclusive of land, foundation, excavation and other areas normally excluded from coverage. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard Utah Condominium project casualty policy. This additional coverage may be added by the Board of Directors as it deems necessary in its best judgment and in its sole discretion.

12.8.2 Liability Insurance. Comprehensive general liability insurance covering all Common Areas and Facilities, any commercial space owned and leased by the Association and any public rights of way of the Project, with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first class subdivisions in the county. Notwithstanding the foregoing, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of person and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, liability for property damage, bodily injuries and deaths of person in connection with the operation, maintenance of use of the Common Areas and Facilities, and legal liability arising out of lawsuits related to employment contracts of the Association. Further, if possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.



12.8.3 Director's and Officer's Insurance. Adequate director's and officer's liability insurance as well as liability insurance to cover Declarant and Declarant's representatives which serve as directors, officers and members of any architectural committee of the Association (a.k.a. errors and omissions insurance).

12.8.4 Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Board of Directors to cover all non-compensated officers as well as all directors, and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association, for theft of Association funds, subject to the following:

12.8.4.1 Agents. Furthermore, where the Board of Directors or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required to be maintained by the management agent for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Board of Directors or the Association.

12.8.4.2 Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Board of Director's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Board of Directors, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units, plus reserve funds.

12.8.4.3 Quality of Coverage. The bonds required shall meet the following additional requirements:

(a) they shall name the Board of Directors, the Association, and the Property Manager as obligee;

(b) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms of expression;

(c) the premiums on all bonds required herein for the Board of Directors and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Board of Directors or the Association as part of the Common Expenses; and

(d) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Board of Directors and the Association, to any Insurance Trustee, and to each servicer of loans on behalf of any Mortgagee. FNMA may also require further requirements as to fidelity bonds and in such case those requirements must be met by the Association.

12.8.5 Earthquake and Other Insurance. Earthquake insurance shall not be required unless requested by at least seventy five percent (75%) of the Members of the Association.

Further, flood insurance and workmen's compensation insurance shall be required if applicable, subject to any conditions which FHA and/or VA may impose from time to time.

12.8.6 Miscellaneous Items. The following provisions shall apply to insurance coverage obtained pursuant to 12.8.1 above:

12.8.6.1 The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Birkhill Condominium Association, for the use and benefit of the individual Owners."

12.8.6.2 Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

12.8.6.3 Proceeds. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee, for each Owner and each such Owners' Mortgagee. The Association or Insurance Trustee, if any, shall be required to hold any proceeds of insurance in trust for Owners and their First Mortgage holders, as their interest may appear.

12.8.6.4 Beneficiary. In any policy covering the entire Project, each Owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided ownership interest in the Common Areas and Facilities.

12.8.6.5 Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

12.8.6.6 Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in Salt Lake County and which appropriately names FNMA and FHLMC if such corporations are holder of First Mortgages on Units with the Project. Further, each policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee listed as a scheduled holder of a First Mortgage in the policies.

12.8.6.7 Waiver of Subrogation. A waiver of the right of a subrogation against Owners individually.

12.8.6.8 Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Owners which is not in the control of such Owners collectively.

12.8.6.9 Primary Coverage. The insurance coverage of the Association shall, in the event an Owner also has insurance covering the loss, be primary and the insurance of the Owner shall be secondary.

12.8.6.10 Insurance Trust Agreement. The policy shall recognize any Insurance Trust Agreement.

12.8.6.11 Special Condominium Endorsement. The requirements of subsections 12.8.6.7 thru 12.8.6.10 are generally provided by the insurer in the form of a "Special Condominium Endorsement" or its equivalent.

12.8.6.12 Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other associations in similarly situated first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and; or a replacement cost endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, exclusive of land, foundation, excavation and other areas normally excluded from coverage, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demotion and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

12.8.6.13 Policy Coverage. The insurance policy shall afford, as a minimum, protection against the following:

(a) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;

(b) In the event the Condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location (or such greater amount as deemed prudent based on the nature of the property); and

(c) all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement, where such is available.

12.8.6.14 Restrictions on Policies. No insurance policy obtained pursuant to 12.8.1 shall be maintained where:

(a) Individual Assessments Prohibited. Under the term of the carrier's charter, Bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Board of Directors, the Association, V.A, FHA, FNMA, or their designees.

(b) Payments Contingent. By the terms of the Declaration, Bylaws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or Member; or

(c) Mortgage Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board of Directors, the Association, an Owner, or the borrowers) from collecting insurance proceeds.

12.8.7 Miscellaneous Items. The following provisions shall apply to insurance coverage obtained pursuant to 12.8.2 above:

(a) Such policies must also provide that they may not be cancelled or substantially modified, without at least ten (10) days' prior written notice to the Association and to each holder of a First Mortgage listed as a scheduled holder of a First Mortgage in the policies.

(b) Other conditions which FNMA and FHLMC may require from time to time.

12.8.8 Insurance policies under subsections 12.8.1 and 12.8.2 are also subject to the following provisions:

(a) There may be named as an insured, on behalf of the Association, the Association's authorized representative, including any insurance trustee with whom such Association may enter into any Insurance Trust Agreement or any successor to such insurance trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have the exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

(b) Any loss covered by the policies shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any Insurance Trustee designated for that purpose, or otherwise to the Association, and not to any Mortgagee. The Insurance Trustee or the Association shall hold any insurance proceeds in trust for Owners and lienholders, as their interests may appear. Except as otherwise provided herein, the proceeds shall be disbursed for the repair or restoration of the damaged Common Areas and Facilities and Units, and the Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Areas and Facilities and Units have been completely repaired or restored, or the Condominium regime is terminated.

12.8.9 The following provisions shall apply to all insurance coverage:

12.8.9.1 Quality of Carrier. An "A-" or better general policyholder's rating or a Class XII or better financial performance index rating in Best's Insurance Reports. Such policy shall contain a waiver of subrogation from the Association after all development is complete and any applicable builder warranty has expired.

12.8.9.2 Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the Association.

12.8.9.3 Individual Insurance. Each Owner and resident shall purchase and maintain adequate liability and property insurance on his Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the Project at any particular time.

12.8.9.4 Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Unit, the Owner shall proceed promptly repair or to reconstruct the damaged structure in a manner consistent with the original construction.

12.8.9.5 Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonable the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Unit, and may be enforced by them.

12.8.9.6 Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Board of Directors or Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board of Directors or Association may deem appropriate from time to time.

### **ARTICLE XIII MASTER ASSOCIATION**

#### **13.1 Master Association.**

13.1.1 The Condominium is also part of the Birkhill Community Association, Inc. ("Master Association"), and all of the Units and Common Areas and Facilities are encumbered by and subject to all of the covenants, conditions, restrictions and easements set forth in the Declaration of Covenants, Conditions and Restrictions (the "Master Declaration") for the Master Association. The Master Association is responsible for maintaining those areas more fully described in the Master Declaration.

13.1.2 The Association is a member of the Master Association and is entitled to exercise all of the rights of a member, as provided in the Master Declaration and the articles of incorporation and by-laws of the Master Association. For purposes of the Association's voting under the Master Declaration, the President shall represent and vote on behalf of the Association. The Condominium constitutes a Neighborhood (as defined in the Master Declaration) for purposes of the Master Association.

13.1.3 Each Unit Owner will be subject to pay certain annual, special and working capital assessments and certain fees which may be levied by the Master Association as provided in the Master Declaration. These assessments and fees are in addition to any and all assessments which may be levied by the Board of Directors as provided in this Declaration. In addition, each Owner shall pay his/her/their share of the assessments due to the Master Association to the Condominium Association, which is then obligated to forward such amounts to the Master Association as and when due. As provided in the Master Declaration, the Board of Directors shall include the Condominium's share of the assessments and fees due to the Master Association in each year's budget and each Owner shall pay their share of such budget in accordance with this Declaration.

13.1.4 The Units and the Common Areas and Facilities are bound by and subject to all of the use restrictions contained in the Master Declaration and in the rules and regulations from time to time promulgated by the Master Association. The use restrictions are in addition to those contained in this Declaration or in the Bylaws for the Condominium. Further, all Owners and each Neighborhood shall comply with all applicable provisions of the Master Declaration, including, without limitation, Section 10.5.1. relating to landscaping responsibilities..

13.1.5 In the event of a conflict between the Master Declaration and the provisions of any Condominium Document(s), the provisions of the Master Declaration shall supersede the provisions of the Condominium Documents to the extent of such conflict, unless prohibited by applicable law.

#### **ARTICLE XIV DESTRUCTION, CONDEMNATION, OBSOLESCENCE**

14.1 Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

14.2 Definitions. Each of the following terms shall have the meaning indicated:

14.2.1 "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

14.2.2 "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

14.2.3 "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

14.2.4 "Partial Condemnation" shall mean any other such taken by eminent domain or grant or conveyance in lieu thereof.

14.2.5 "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

14.2.6 "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

14.2.7 "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

14.2.8 "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

14.2.9 "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board of Directors or insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.

14.3 Determination by Board of Directors. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Board of Directors shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five (25%) percent or more of the estimated Restored Value of the Project. In addition, the Board of Directors shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board of Directors may retain and rely upon one or more qualified appraisers or other professionals.

14.4 Restoration of the Project. Restoration of the Project shall be undertaken by the Board of Directors promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven (67%) percent of the Project's undivided ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

14.4.1 Notwithstanding the foregoing, Restoration or repair of the Project (after a Partial Destruction, Partial Condemnation or Partial Obsolescence due to an insurable hazard) in a manner other than that specified in the Project Documents and the original plans and specifications, shall require the approval of at least fifty-one percent (51%) of the Eligible Mortgagees.

14.5 Notices of Destruction or Obsolescence. Within thirty (30) days after the Board of Directors has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

14.6 Excess Insurance. If the insurance proceeds condemnation awards, or payments in lieu of condemnation- actually received by the Board of Directors or Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This

covenant is also for the benefit of the Association and any Mortgagee, and therefore, may also be enforced by them. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

14.7 Inadequate Insurance. In the event the cost of Restoration exceeds Available Fund, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided ownership interest in the Common Areas and Facilities.

14.8 Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a planned unit development) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.

14.9 Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under the Declaration and the Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board of Directors to the Owners in proportion to their respective undivided interest in the Common Areas and Facilities. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

14.10 Authority of Board of Directors to Represent Owners in Condemnation or to Restore or Sell. The Board of Directors, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

14.11 Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

14.12 Restoration Power. The Board of Directors, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as herein above provided.

14.13 Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

## ARTICLE XV MORTGAGEE PROTECTION

15.1 Mortgagee Protection. The lien or claim against a Unit for unpaid assessments levied by the Board of Directors or by the Association pursuant to this Declaration or the Act shall be subordinate to any First Mortgage recorded on or before the date such assessments become due, subject to Section 15.2 below.



15.2 Effects of Voluntary and Involuntary Sale. The lien or claim against a Unit for such unpaid assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer of a Unit by a deed in lieu of foreclosure or pursuant to a foreclosure of a First Mortgage affecting such Unit or the exercise of a power of sale available thereunder, shall extinguish a subordinate lien for assessment which became payable prior to such sale or transfer. Nevertheless, any such unpaid assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any assessments becoming due thereafter.

15.2.1 No amendment to the Project Documents shall affect the rights of the holder of any such Mortgage, or the indebtedness secured thereby, recorded prior to recordation of such amendment, unless the holder thereof, or of the indebtedness secured thereby, shall join in the execution of such amendment.

15.2.2 The Board may, in its sole and absolute discretion, extend the provisions of this Section to the holders of a Mortgage, or the indebtedness secured thereby, not otherwise entitled thereto.

15.3 Books and Records Available for Inspection. The Board of Directors or the Association shall make available to the Owners, lenders, and to holders or insurers of the First Mortgage on any Unit, current copies of the Project Documents, as well as the books, records, and financial statements of the Board of Directors and the Association. The Board of Directors shall also be required to make available to prospective purchasers current copies of the Project Documents and the most recent annual audited financial statement, if the same has been prepared. The term "Available", as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

15.4 Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

15.5 Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board of Directors or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause, penalty or severance charge, upon at least thirty (30) days prior written notice to the other party thereto.

15.6 Eligible Mortgagee Designation. Upon written request to the Board of Directors or the Association by the holder, insurer, or guarantor of a First Mortgage on a Unit (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the property encumbered by the First Mortgage held or insured by such holder, insurer, or guarantor), such holder or insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee", and shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

15.6.1 Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgagee.

15.6.2 Delinquency. Any delinquency in the payment of assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, which delinquency remains uncured for a period of sixty days.

15.6.3 Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board of Directors or the Association.

15.6.4 Consent Required. Any proposed action which would require the consent of specified percentage of Eligible Mortgagees or of all Mortgagees.

15.6.5 Amendments. Any proposed amendment to this Declaration affecting a change in: (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (ii) the interests in the Common Areas and Facilities or Limited Common Areas appertaining to any Unit or the liability for the Common Expenses appertaining thereto; (iii) the number of votes in the Association appertaining to any Unit; or (iv) the purposes to which any Unit or the Common Areas and Facilities are restricted.

15.6.6 Termination. Any proposed termination of the Condominium regime.

15.6.7 Notice to Mortgagees. The Board of Directors shall also give all Mortgagees or guarantor of a Mortgage on any Unit in the Project timely written notice of those matters described in subsections 15.6.1, 15.6.2, 15.6.3 and 15.6.4.

15.6.8 The consent of Eligible Mortgagees may be required for certain actions, as more particularly set forth in this Article XV.

## **ARTICLE XVI EXPANSION OF THE PROJECT**

16.1 Reservation of Option to Expand. Declarant hereby reserves the option to expand the Project to include additional Buildings with Units and Common Areas and Facilities in the Project. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire seven (7) years from the date following the first conveyance of a Unit in the Project to a Unit purchaser after the effective date of this Declaration, unless sooner terminated by Declarant's recorded waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. Such right may be exercised without first obtaining the consent or vote of Unit Owners and shall be limited only as herein specifically provided. Such Units shall be located on any or all portions of the Additional Property.

16.2 Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Salt Lake County, Utah, no later than seven (7) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units,

together with supplemental Plat or Plats containing the same information with respect to the new Units as was required on the Plat with respect to the Phase I Units. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

16.3 Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and Supplemental Plat. The recording in the office of the Salt Lake County Recorder of a Supplemental Plat incident to any expansion shall operate automatically to grant, transfer, and convey to the Owners of Units in the Project as it existed before such expansion the respective undivided interest in the new Common Areas and Facilities added to the Project as a result of such expansion. Such recording shall also operate to vest any then Mortgagee of any Unit in the Project as it existed, interest so acquired by the Owner of the Unit encumbering the new Common Areas and Facilities added to the Project as a result of such expansion.

16.4 Declaration Operative on New Units. The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Plat and Supplemental Declaration in the said Office of the Salt Lake County Recorder.

16.5 Right of Declarant to Adjust Ownership Interest in Common Areas and Facilities. Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas and Facilities set forth in Supplemental or Amended Declaration. The proportionate interest of each Unit Owner in the Common Areas and Facilities after any expansion of the Project shall be an undivided interest of the Project as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas and Facilities in accordance with Supplemental or Amended Declarations recorded pursuant hereto and each deed of a Unit in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish a shifting of the Common Areas and Facilities. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas and Facilities can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas and Facilities may be effected more than seven (7) years following the first conveyance of a Unit in Phase I after the effective date of the Declaration. Accordingly, upon the recording of a Supplemental Declaration and Supplemental Plat incident to any expansion, the revised schedule of undivided interests in the Common Areas and Facilities contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

16.6 Other Provisions Concerning Expansion. If the Project is expanded as hereinbefore contained, then it is further provided that:

16.6.1 All or any part of the Additional Land may be added to the Project without any limitations except that such Additional Land may contain Residential Units and/or Commercial Units up to a maximum of 223 Residential Units and 72 Commercial Units. The maximum number of Units which may be created on the Additional Land is as follows:

- Phase 2: Up to 11 Residential Units and 3 Commercial Units, which will be located in Building B.
- Phase 3: Up to 16 Residential Units and 6 Commercial Units, which will be located in Building B.
- Phase 4: Up to 12 Residential Units and 5 Commercial Units, which will be located in Building A.
- Phase 5: Up to 12 Residential Units and 5 Commercial Units, which will be located in Building A.
- Phase 6: Up to 14 Residential Units, which will be located in Building D.
- Phase 7: Up to 14 Residential Units, which will be located in Building D.
- Phase 8: Up to 14 Residential Units, which located in Building D.
- Phase 9: Up to 14 Residential Units, which located in Building E.
- Phase 10: Up to 14 Residential Units, which located in Building E.
- Phase 11: Up to 14 Residential Units, which will be located in Building E.
- Phase 12: Up to 13 Residential Units, which will be located in Building F.
- Phase 13: Up to 13 Residential Units, which will be located in Building F.
- Phase 14: Up to 12 Residential Units and 5 Commercial Units, which will be located in Building J.
- Phase 15: Up to 12 Residential Units and 5 Commercial Units, which will be located in Building J.
- Phase 16: Up to 12 Residential Units and 5 Commercial Units, which will be located in Building C.
- Phase 17: Up to 12 Residential Units and 5 Commercial Units, which will be located in Building C.
- Phase 18: Up to 25 Commercial Units to be located within Building G.

The land areas for each of the Buildings are as follows:

Building A: 10,048 square feet  
Building B: 17,200 square feet  
Building C: 12,190 square feet  
Building D: 18,700 square feet  
Building E: 17,500 square feet  
Building F: 12,190 square feet  
Building G: 5,296 square feet  
Building J: 10,990 square feet

16.6.2 Portions of the Additional Land may be added to the Project at different times without any limitations.

16.6.3 Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Land through the easement areas as shown on the Plat. The Association of Unit Owners shall not allow anything to be built upon or interfere with said easement areas.

16.6.4 No assurances are made concerning:

16.6.4.1 Whether any structures erected on any portion of the Additional Land will be compatible with structures on the Property originally within the Project in terms of quality of construction, the principal materials to be used and architectural style. Further, no assurances are made relating to the locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

16.6.4.2 Type, kind or nature of improvements which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Units will be comparable to the Phase 1 facilities on a per Unit basis and will be of a similar quality of materials and construction to Phase 1 and will be substantially completed prior to annexation.

16.6.4.3 Whether any Units created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Units will be constructed of an equal or better quality of materials and construction than the Units in Phase 1.

16.6.4.4 Type, size, or maximum number of Limited Common Areas which may be created within any portion of the Additional Land added to the Project.

16.7 Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to:

16.7.1 The submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration;

16.7.2 The creation, construction, or addition to the Project of any additional property;

16.7.3 The carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or

16.7.4 The taking of any particular action with respect to the Additional Land, the Project, or any land.

16.8 Liens. Liens arising in connection with the Declarant's ownership of and construction of improvements upon, the Additional Land to be added must not adversely affect the rights of existing Owners, or the priority of First Mortgages on Units within the existing Land. All taxes and other assessments relating to such Land, covering any period prior to the additional of the Additional Land, must be paid or otherwise satisfactorily provided for by Declarant.

16.9 Power of Attorney. There is hereby reserved unto the Declarant (or such other party as may in writing be designated by the Declarant) an irrevocable power of attorney, coupled with an interest, for the purpose of shifting percentages of the Common Areas and Facilities and voting rights appurtenant to each of the Units in the Project in accordance with the provisions of this Declaration and to execute, acknowledge and deliver such further instruments as may from time to time be required in order to accomplish the purposes of this Article XVI. Each Unit Owner and each Mortgagee of a Unit shall be deemed to have acquiesced in any supplemental amendment to this Declaration and in any Supplemental Plats for the purpose of adding the aforesaid Additional Land and Common Elements to the Condominium, as set forth above, and shall be deemed to have granted unto the Declarant (or such other party as may in writing be designated by the Declarant), an irrevocable power of attorney, coupled with an interest, to effectuate, execute, acknowledge and deliver any such supplemental amendments and each such Unit Owner and Mortgagee shall be deemed to have agreed and covenanted to execute such further assurances and instruments, if any, as may be required by the Declarant and its successors or assigns, to properly accomplish such amendments.

## ARTICLE XVII MISCELLANEOUS PROVISIONS

17.1 Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by the Board of Directors obtaining from Owners who collectively hold the required percentages, with or without a meeting, consents in writing to such transaction, subject to the following conditions:

17.1.1 Ninety-Day Limit All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained; and

17.1.2 Change in Ownership. Any change in Ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

17.2 Amendment of the Declaration and Plat. Amendments to the Declaration and Plat shall be controlled as follows:

17.2.1 Consent of the Owners. The affirmative vote of at least sixty-seven (67%) percent of the votes cast of the Owners shall be required and shall be sufficient to amend the Declaration or the Plat. Any amendment so authorized shall be accomplished through the recording of an instrument executed by the Board of Directors. In such instrument the Board of Directors shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Mortgagees is required for such amendment, that such approval has been obtained; and

17.2.2 Consent of Mortgagee for Material Changes to the Declaration or Bylaws. Except as otherwise provided below, the consent of Mortgagees holding at least fifty-one percent (51%) of the undivided ownership interest in the Common Areas and Facilities, of which at least fifty-one percent (51%) are Eligible Mortgagees, shall be required to add to or amend any Material Change (as such term is defined below) of this Declaration, the Bylaws or the Plat. The term "Material Change" shall include a material amendment to this Declaration, the Bylaws or the Plat which establishes, provides for, governs, or regulates any of the following:

17.2.2.1 voting rights (except in connection with the expansion of the Project pursuant to Article XVI hereof or in connection with the failure to restore a Unit or condemnation of any part of the Project pursuant to Article XIV hereof);

17.2.2.2 assessments, assessment liens, or the priority/subordination of assessment liens;

17.2.2.3 reserves for maintenance, repair, and replacement of the Common Areas and Facilities;

17.2.2.4 insurance or fidelity bonds;

17.2.2.5 rights to use of the Common Areas and Facilities;

17.2.2.6 responsibility for maintenance and repairs;

17.2.2.7 expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; subject to any applicable consent required by Federal Housing Administration ("FHA"), Veterans Administration ("VA") or Federal National Mortgage Association ("FNMA"), from time to time;

17.2.2.8 the boundaries of any Unit;

- 17.2.2.9 the percentages of ownership interest in the Common Areas and Facilities;
- 17.2.2.10 convertibility of a Unit into Common Areas and Facilities or Common Area into a Unit;
- 17.2.2.11 leasing of Units;
- 17.2.2.12 the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Unit;
- 17.2.2.13 express benefits or rights of Eligible Mortgagees; and
- 17.2.2.14 the requirement that the Project be professionally managed rather than self-managed; and further provided, that at least seventy-five percent (75%) of all votes in the Project shall be required to change management of the Project from professional management to self-management.

Any addition or amendment shall not be considered material for purposes of this Section 17.2 if it is for the clarification only or to correct a clerical error.

17.2.3 Termination of the Condominium Regime. Termination of the Condominium regime shall require the approval of at least fifty-one percent (51%) of Mortgagees, which must include the approval of at least sixty-seven percent (67%) of the Eligible Mortgagees, provided, however, that any election to terminate the project after Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence requires the approval of fifty-one percent (51%) of Mortgagees, of which at least fifty-one percent (51%) are Eligible Mortgagees.

17.2.4 Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association.

17.2.5 Except for the Secretary of Veterans Affairs, any Eligible Mortgagee who does not deliver to the Board of Directors or the Association a negative response to the notice of the proposed amendment within sixty (60) days from the date of such mailing shall be deemed to have approved the proposal. Notwithstanding the foregoing, this provisions shall not apply to Eligible Mortgagees to the extent such provision does not comply with FHA/VA requirements from time to time.

17.2.6 Unless otherwise required by FNMA, the foregoing consent requirements shall not be applicable to amendments to this Declaration, the Bylaws and the Plat or the termination of the legal status of the Project as a Utah Condominium Project if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence or to a reallocation of the undivided ownership interest in the Common Areas and Facilities which may occur pursuant to any plan of expansion or phasing development previously approved by FHA and/or VA, to the extend such approval was required by FHA and/or VA.



17.3 Notice and Hearing. In the event the Board of Directors or a Unit Owner claims another Unit Owner or resident has violated the Project Documents, before any sanction, citation, penalty, or Individual Assessment becomes final, the Owner or resident about whom the complaint has been made shall be entitled to the following rights of due process:

17.3.1 The Board of Directors shall give notice to the Unit Owner of the violation and inform the owner that a fine will be imposed if the violation is not cured within the time provided in the Declaration, Bylaws, or Association Rules, which shall be at least forty-eight (48) hours.

17.3.2 A fine assessed under Subsection 17.3 shall: (i) be made only for a violation of a rule or regulation which is specifically listed in the Declaration, Bylaws, or Association Rules as an offense which is subject to a fine; (ii) be in the amount specifically provided for in the Declaration, Bylaws, or Association Rules for that specific type of violation, not to exceed \$500; and (iii) accrue interest and late fees as provided in the Declaration, Bylaws, or Association Rules.

17.3.3 Cumulative fines for a continuing violation may not exceed \$500 per month.

17.3.4 A Unit Owner who is assessed a fine under Section 17.3 may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with the standards provided in the Declaration, Bylaws, or Association Rules. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

17.3.5 A Unit Owner may appeal a fine issued under Section 17.3 by initiating a civil action with one hundred eighty (180) days after: (i) a hearing has been held and a final decision has been rendered by the management committee under Subsection 17.3.4; or, (ii) the time to request an informal hearing under Subsection 17.3.4 has expired without the Unit Owner making such a request.

17.3.6 A fine assessed under Section 17.3 which remains unpaid after the time for appeal under Subsection 17.3.4 has expired becomes a lien against the Unit Owner's Unit in accordance with the same standards as a lien for the nonpayment of Assessments.

17.3.7 The Board of Directors may not assess a fine against a Unit Owner of a Commercial Unit under Section 17.3.

17.4 Limitation on Improvements by Association. Until the occurrence of the Transition Events, neither the Association, Board of Directors nor Unit Owners shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas and Facilities as originally created or constructed by Declarant.

17.5 Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Units or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by

its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

17.6 Working Capital Fund. Working capital fund shall be established by the Declarant to meet unforeseen expenditures or to purchase any additional equipment or services or to repay Declarant for any loan arising from any deficits. The initial working capital fund shall be in an amount equal to two (2) months of estimated common assessments for each Unit. Each Unit's share of the working capital fund shall be collected either at the time the sale of any Unit is closed or when control of the Project is transferred to the Unit Owners, whichever first occurs. Any amounts paid into the working capital fund shall not be considered as advance payments of regular monthly assessments. The working capital fund shall be transferred to the Association for deposition to a segregated fund when control of the Association is transferred to the Unit Owners. The Declarant is prohibited from using the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. When a Unit is sold, however, the Declarant may reimburse itself for monies it has paid the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when the Unit is sold.

17.7 Transfer of Management. Anything to the contrary notwithstanding at any time before the Transition Events, Declarant may at any time relinquish its reserved right to select members of the Board of Directors, and to transfer management of the Project to the Association. If and when Declarant elects to do so, Declarant shall send written notification to each Owner of the effective date of the transfer (the "Transfer or Transition Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the members of their own Board of Directors to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Area expenses of the Board of Directors incurred prior to the Transfer Date to be paid in full on or before such date.

17.8 Certain Provisions Applicable to Declarant. Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Units in the Project, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay assessments, except as herein otherwise provided.

17.8.1 Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.

17.8.2 No amendment may be made to the Declaration without the written consent of Declarant until the occurrence of the Transition Events.

17.9 Completion Obligation. Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:

17.9.1 Units. Each Unit which an Owner has contracted to purchase, the Building within which a Unit is contained or is to be contained, and the appurtenant Limited Common Area shall be substantially constructed, and ready for use or occupancy (as the case may be); and

17.9.2 Common Areas and Facilities. On the Land submitted to the Declaration hereby or by any Supplemental Declaration, all planned amenities, landscaping, green space, sidewalks, parking facilities, fences, outdoor lighting, and utility lines and conduits adjacent to the Unit or Building in which a Unit is located, and necessary for its use shall be substantially completed.

17.10. Elsinore Contract. As more fully set forth in the Master Declaration, 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") and a service provider for television and Internet services. Assessments will be levied by the Master Association and shall include all amounts required under the Elsinore Agreement to pay for high-speed internet service and a basic package television service.

17.11 Interpretation. To the extent Utah law is consistent with this Declaration, such provision shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, -the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both the genders. The invalidity or unenforceability of any portion of the Declaration shall not affect the validity or enforceability of the remainder hereof.

17.12 Enforcement and Right to Recover Attorney's Assessments. The Association, Board of Directors, or any Unit Owner may take action, at law or in equity, to enforce the terms, covenants or conditions of the Project Documents. Should the Association, Board of Directors or a Unit Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all additional charges, including a reasonable attorney's fee, which may arise or accrue.

17.13 Agent for Service of Process. After the occurrence of the Transition Events, the President of the Association shall be the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent shall be Michael M. Brodsky, whose office address is 308 East 4500 South, Suite 200, Murray, Utah 84107.

17.14 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

17.15 Environmental Covenant. The Project is encumbered by that certain Environmental Covenant entered into by and between Declarant and the Utah Department of Environmental Quality recorded or intended to be recorded in the Salt Lake County Recorder's Office. Each Owner shall be subject to all applicable provisions of the Environmental Covenant and in particular, if any Owner performs any excavation of his land, such excavation must be performed subject to the provisions of the Environmental Covenant and any not affect the repository.

17.16 No Hazardous Materials. Each Owner shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in such Owner's Unit, Common Area or Limited Common Area. If any Hazardous Substance is used, stored, generated, or disposed of on or in any Owner's Unit, or if an Owner's Unit becomes contaminated in any manner by such Owner (or its lessee), such Owner shall indemnify and hold harmless all other Owners from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses including, without limitation, a decrease in the value of the non-contaminated Units, damages caused by loss or restriction of usable space, or any damages caused by adverse impact on the marketing of the non-contaminated Units, and any and all sums paid for settlement of claims, attorney's fees, consultant and expert fees.

As used herein the term "Hazardous Substance" shall mean any pollutants, contaminants, chemicals, waste and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical or chemical compound or hazardous substance, material or waste, whether solid, liquid or gas, including any quantity of asbestos in any form, urea, formaldehyde, PCB's, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or byproducts or derivatives, radio-active substance, waste waters, sludges, slag and any other substance, material or waste that is subject to regulation, control or remediation under any Environmental Laws. Notwithstanding the foregoing, Owners shall be permitted to store and use normal quantities of cleaning supplies and chemicals related to their legal and permitted residential uses and permitted commercial business operations at the Project in compliance with all Environmental Laws.

As used herein, "Environmental Laws" shall mean all local, state and federal laws and regulations which regulate or relate to the protection, clean-up and restoration of the environment; the use, treatment, storage, transportation, generation, manufacture, processing, distribution, handling or disposal of, or emission, discharge or other release or threatened release of Hazardous Substance or otherwise dangerous substances, wastes, pollution or materials and shall include the Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Atomic Energy Act, Occupational Safety and Health Act, Toxic Substances Control Act, Clean Air Act, Oil Pollution Act of 1990, Comprehensive Environmental Response Compensation and Liability Act and the Hazardous Materials Transportation Act.

17.17 Dispute Resolution. In the event that any disagreement or dispute shall arise among the Owners, from time to time, relating to any of the terms and provisions of this Declaration or Bylaws, the parties agree to submit such dispute to mediation with a mediator qualified to review real property issues. In the event that the parties cannot agree upon a mediator, each party shall designate a mediator, credentialed by the American Arbitration Association (or similar recognized dispute resolution association), and each of the designated mediators shall pick a mediator to review and mediate any such dispute. The parties agree to utilize the mediation to limit, or resolve, any such dispute prior to instituting arbitration.

To the extent mediation does not resolve any dispute, then the parties shall proceed to arbitration in the manner set forth in the Master Declaration and in accordance with Title 78 B, Chapter 11, Utah Uniform Arbitration Act.

17.18 Estoppel Language. Each Unit Owner and the Association agrees, at any time and from time to time (but shall not be required to any more frequently than twice in any

calendar year for any Unit Owner other than Declarant) upon not less than twenty (20) days' prior request by any Unit Owner or Mortgagee, to execute and deliver to the requesting Unit Owner or Mortgagee, at no cost or expense to the requesting Unit Owner or Mortgagee, a written certificate stating (a) whether this Declaration is in full force and effect; (b) whether, to the best knowledge of the party to whom such request is directed, any uncured default exists on the part of the requesting Unit Owner or Mortgagee hereunder, and if so, specifying the nature of such default; and (c) such other information as the requesting party may reasonably request.

17.19 Declarant's Power of Attorney. The Declarant and its successors and assigns hereby reserve for themselves and their respective successors, transferees and assigns, for a period of seven (7) years from the date the first Unit is conveyed to an individual purchaser, or until it conveys title to the last Unit, whichever occurs first, the right to execute on behalf of all contract purchasers, Unit Owners, Eligible Mortgagees, Mortgagees, and other lienholders or parties claiming a legal or equitable interest in the Project any such agreements, documents, amendments or supplements to this Declaration or the Bylaws which may be so required by the Federal National Mortgage Association, the Federal Housing Administration, the Department of Veterans Affairs, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Project, or institutional lender or title insurance company designated by the Declarant and its successors and assigns, or as may be required to comply with any statute, law, ordinance or regulation.

(i) By acceptance of a deed to any Unit or by the acceptance of any other legal or equitable interest in the Condominium, each and every such contract purchaser, Unit Owner, Eligible Mortgagee, Mortgagee or other lienholder or party having a legal or equitable interest in the Condominium does automatically and irrevocably name, constitute, appoint and confirm the Declarant, and its respective successors, transferees and assigns, as attorney-in-fact for the purpose of executing such agreement, document, amendment, supplement and other instruments necessary to effect the foregoing subject to the limitations set forth herein.

(ii) No such agreement, document, amendment, supplement or other instrument which adversely affects the value or substantially alters the boundaries of a Unit, or changes the proportionate share of the Common Areas and Facilities appurtenant to such Unit, or substantially increases the financial obligations of the Unit Owner, or reserves any additional or special privileges for the Declarant and its respective successors, transferees and assigns not previously reserved, shall be made without the prior written consent of the affected Unit Owner(s) and all holders of any Mortgage(s) encumbering the affected Unit(s). Any such agreement, document, amendment, supplement or instrument which adversely affects the priority or validity of any Mortgage which encumbers any Unit shall not be made without the prior written consent of all Mortgagees thereunder.

(iii) 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 Units and 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, and its successors, transferees and assigns until the initial conveyance and residential occupancy of all of the Units or the expiration of same. Thereafter, said power of attorney shall automatically vest in the Association to be exercised by its Board of Directors.

17.20 Contracts Entered Into By Declarant. Notwithstanding anything to contrary in the Act, the Association shall have the right without penalty, at any time after the Transition Events and upon not more than ninety (90) days' notice to the other party thereto, to terminate any of the following entered into by the Declarant: (1) any management contract, employment contract, lease of recreational or parking areas or facilities or (2) any contract or lease, including franchises and licenses, to which the Declarant is a party.

### ARTICLE XVIII OPTION TO CONVERT

18.1 Option To Convert. It is anticipated that Units in the Project may be further subdivided by Declarant. Accordingly, Declarant (or its assigns) hereby reserves, pursuant to Section 57-8-13.4 of the Condominium Act, the option to convert any Unit(s) it owns ("Convertible Space") by combining or dividing any such Unit(s) it owns in the Project (the "Option to Convert") upon the terms and provisions set forth in this Section without the prior consent of the Owners or the Association. The terms and conditions of the Option to Convert shall be as follows:

(i) The Declarant may convert any portion of any Convertible Space by combining or dividing one or more units into one or more Units or Common Areas and facilities, including, without limitation, Limited Common Areas and facilities. Any such conversion shall be deemed to have occurred at the time of the recordation of the appropriate instruments under the Act.

(ii) Simultaneously with the recording of the supplemental record survey map under the Act, the Declarant shall prepare, execute and record an amendment to the Declaration describing the conversion. The amendment shall assign an identifying number to each Unit formed out of a Convertible Space and shall allocate to each Unit a portion of the undivided interest in the Common Areas and facilities appertaining to that space. The amendment shall describe or delineate the Limited Common Areas and facilities formed out of the convertible space, showing or designating the Unit or Units to which each is assigned and any Common Area created by such conversion.

(iii) Until and unless converted the Convertible Space, shall be treated for all purposes as a Unit; and the Act shall be deemed applicable to any such space, or portion of it, as though the same were a Unit.

18.2 Use Restrictions. The additional Units shall be subject to the same uses as provided in this Declaration.

18.3 Use of Common Areas. Each Owner of a Unit created by Convertible Space shall have an unrestricted right of ingress and egress to and from its Unit over and across all Common Areas of the Property. Each Owner of a Unit created from convertible space shall have the non-exclusive right to use all parking stalls located within the Common Areas of the Property and any Limited Common Areas that may be designated for exclusive use by such Owner.

18.4 Nature of Improvements. All Units and improvements created from Convertible Space shall be generally consistent with the existing Condominium Building and Units within the Project. Declarant reserves the right to create Limited Common Areas and Common Area out of Units it owns without limitation.

18.5 Substantial Completion. All Units and other improvements constructed in the Project shall be substantially completed prior to adding such Units and improvements to the Project.

18.6 Documentation to Convert. In order to add all or any portion of the Convertible Space to the Project, the Declarant (or its assigns) shall:

(i) Record, with regard to the Project or any portion thereof that is being converted in the Project as Units, Common Areas or Limited Common Areas, a Supplemental Condominium Plan ("Supplemental Condominium Plat") showing the location and dimensions of the vertical and horizontal boundaries of each Unit, Common Areas or Limited Common Areas, if any, formed out of the Convertible Land or a portion thereof, and assigning any Limited Common Areas which are to be appurtenant to any such Unit. Each such Supplemental Condominium Plat shall be certified as to its accuracy and compliance with the requirements of the Condominium Act by the engineer or land surveyor who prepared or supervised the preparation of it; and

(ii) Record simultaneously with each Supplemental Condominium Plat an amendment to this Declaration ("Amendment") describing the conversion. Each such Amendment shall assign a Unit number to each Unit, if any, formed and shall reallocate to each Unit, on the basis provided for in this Declaration, votes appurtenant to each Unit, the apportionment of Common Expenses and the percentage of undivided interest in the Common Areas appertaining to all Units following such addition. Except as otherwise provided by the Act, each such Amendment or Supplemental Condominium Plat shall also describe the Limited Common Areas, if any, formed, showing or designating the Unit or Units to which each is assigned.

The ownership interest in the Common Areas for all Units in the Project and the apportionment of Common Expenses shall change at the time Declarant records an Amendment and a Supplemental Condominium Plan reflecting Declarant's exercise of the Option to Convert. It is contemplated that there may be multiple amendments filed by Declarant and such amendments and supplements are hereby expressly authorized. Declarant shall have the right to adjust the resulting ownership interests of all Units in the Common Areas of the Project as may be necessary to assure that the total ownership interests, votes and assessment percentages equal 100% as required by the Condominium Act.

18.7 Title to Units. Each Owner, by execution of a contract or deed or the acceptance of a deed to a Unit in the Project, shall be deemed to have consented to all provisions of this Article XVIII, including the procedure for adjustment of ownership interests in Common Area, votes and assessment percentages. After the filing for record of any amended Exhibit "B" to this Declaration and the Supplemental Condominium Plan reflecting Declarant's exercise of the Option to Convert, or any part thereof, legal and equitable title to each Unit thereby created within the Convertible Space including its appurtenant ownership interest in the Common Areas shall be vested in and held by Declarant (or its assigns) and none of the other Owners shall have any claim or title to or interest in such Unit or the appurtenant undivided ownership interest in the Common Areas.

18.8 Amendment. No provision of this Article XVIII shall be amended without the prior written consent of Declarant or its successor in interest, so long as Declarant or its successor in interest either owns or has the right to acquire or construct any Units in the Project.

EXECUTED the day and year first above written.

WITNESS/ATTEST:

DECLARANT:  
BIRKHILL AT FIRECLAY LLC

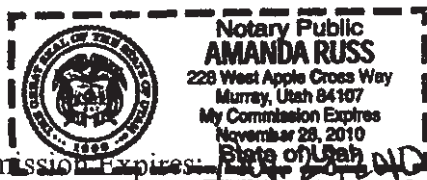
Robbins

[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.

AS WITNESS my hand and seal.



Amanda Russ  
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 9<sup>th</sup> day of Sept, 2008.

WITNESS/ATTEST:

\_\_\_\_\_

U S TITLE COMPANY OF UTAH

Larry Burton (SEAL)

ATTEST:

[Signature]

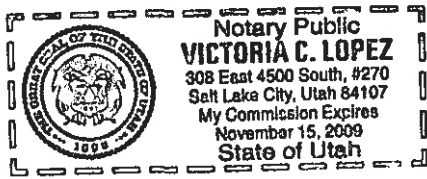
BENEFICIARY:  
WELLS FARGO BANK, N.A.

[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.



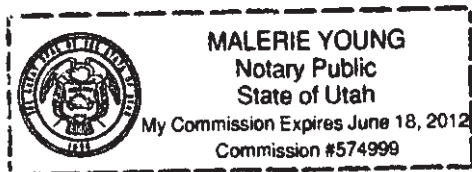
[Signature]  
Notary Public

My commission expires on 11/15/09

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

I HEREBY CERTIFY, that on this 10<sup>th</sup> day of September 2008, before me, the subscriber, a Notary Public of the state aforesaid, personally appeared Mike Dolgarian, who acknowledged himself to be the AUP 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

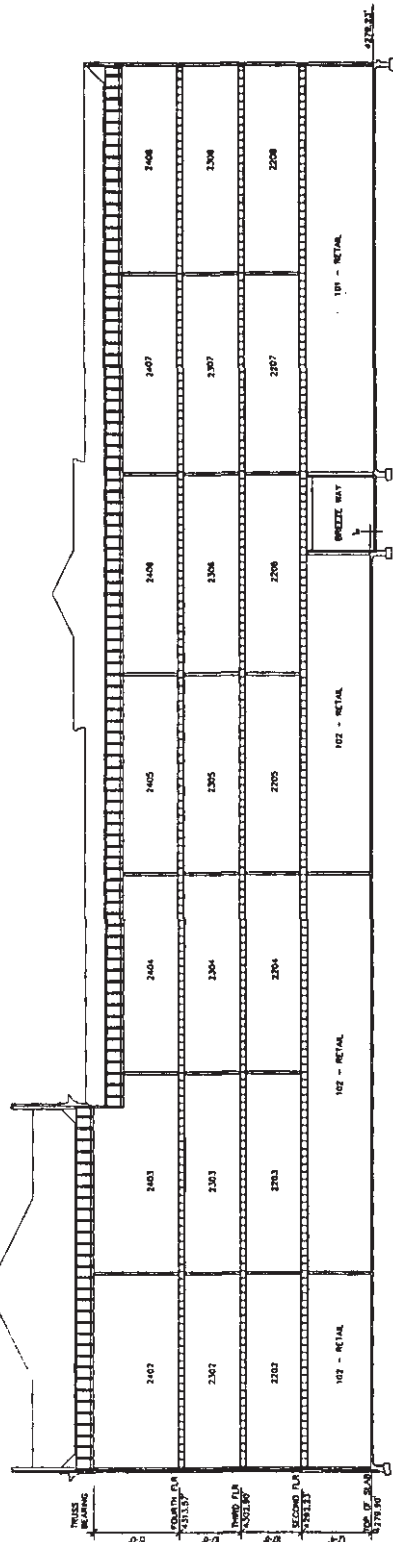
EXHIBIT "A"

(Legal Description of the Land)

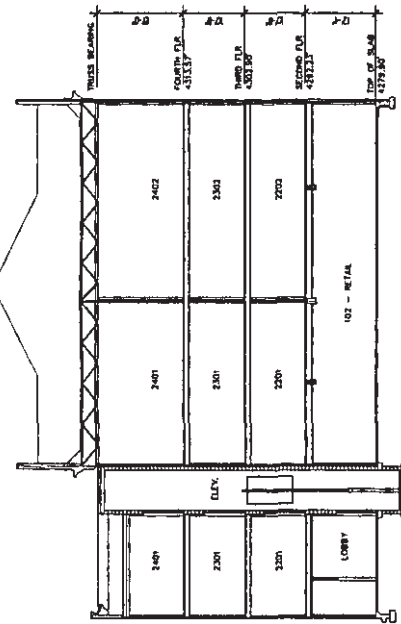
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# BIRK HILL PHASE 1-AMENDED LOT B CONDOMINIUMS BUILDING SECTIONS



SECTION A-A



SECTION B-B



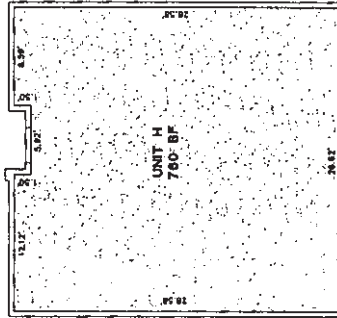
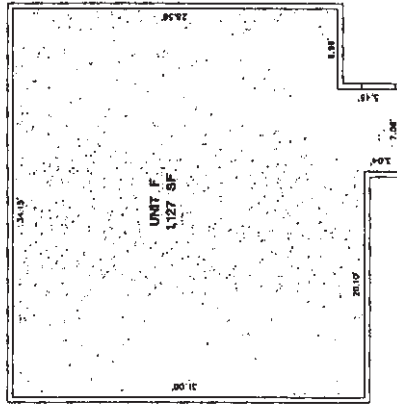
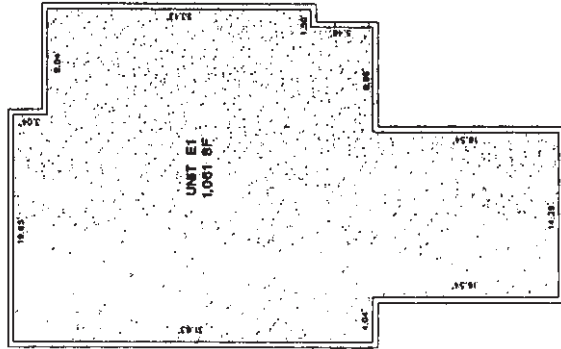
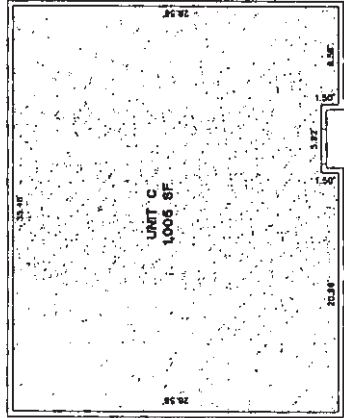
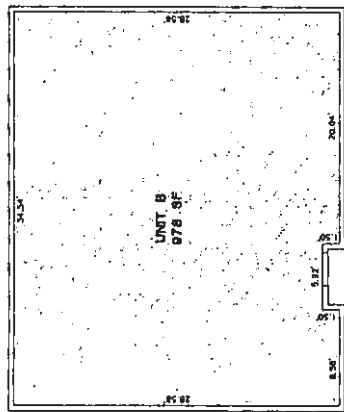
**BIRK HILL PHASE 1-AMENDED LOT B  
CONDOMINIUMS**  
LOCATED IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 3 SOUTH,  
RANGE 10 EAST, COUNTY OF SALT LAKE COUNTY, UTAH

SHEET  
**7 of 7**

RECORDED # \_\_\_\_\_  
STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED AND FILED AT THE  
REQUEST OF \_\_\_\_\_, \_\_\_\_\_  
DATE \_\_\_\_\_ BY \_\_\_\_\_  
FEE \$ \_\_\_\_\_ COUNTY RECORDER \_\_\_\_\_

 <b>Scientific</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 8px;">Project Number</td> <td style="font-size: 8px;">18120187</td> </tr> <tr> <td style="font-size: 8px;">Drawing Date</td> <td style="font-size: 8px;">02/14/20</td> </tr> <tr> <td style="font-size: 8px;">Drawing Scale</td> <td style="font-size: 8px;">AS SHOWN</td> </tr> <tr> <td style="font-size: 8px;">Drawing By</td> <td style="font-size: 8px;">JLH</td> </tr> <tr> <td style="font-size: 8px;">Checked By</td> <td style="font-size: 8px;">JLH</td> </tr> <tr> <td style="font-size: 8px;">Title</td> <td style="font-size: 8px;">CONDOMINIUMS</td> </tr> <tr> <td style="font-size: 8px;">Date</td> <td style="font-size: 8px;">02/14/20</td> </tr> <tr> <td style="font-size: 8px;">Scale</td> <td style="font-size: 8px;">AS SHOWN</td> </tr> </table>	Project Number	18120187	Drawing Date	02/14/20	Drawing Scale	AS SHOWN	Drawing By	JLH	Checked By	JLH	Title	CONDOMINIUMS	Date	02/14/20	Scale	AS SHOWN
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Scale	AS SHOWN																

# BIRK HILL PHASE 1-AMENDED LOT B CONDOMINIUMS BUILDING FLOOR PLANS



**LEGEND**

- RETAIL/OFFICE
- COMMON AREA
- UNITS (RESIDENTIAL)
- LIMITED COMMON (RESIDENTIAL)
- LIMITED COMMON (COMMERCIAL)

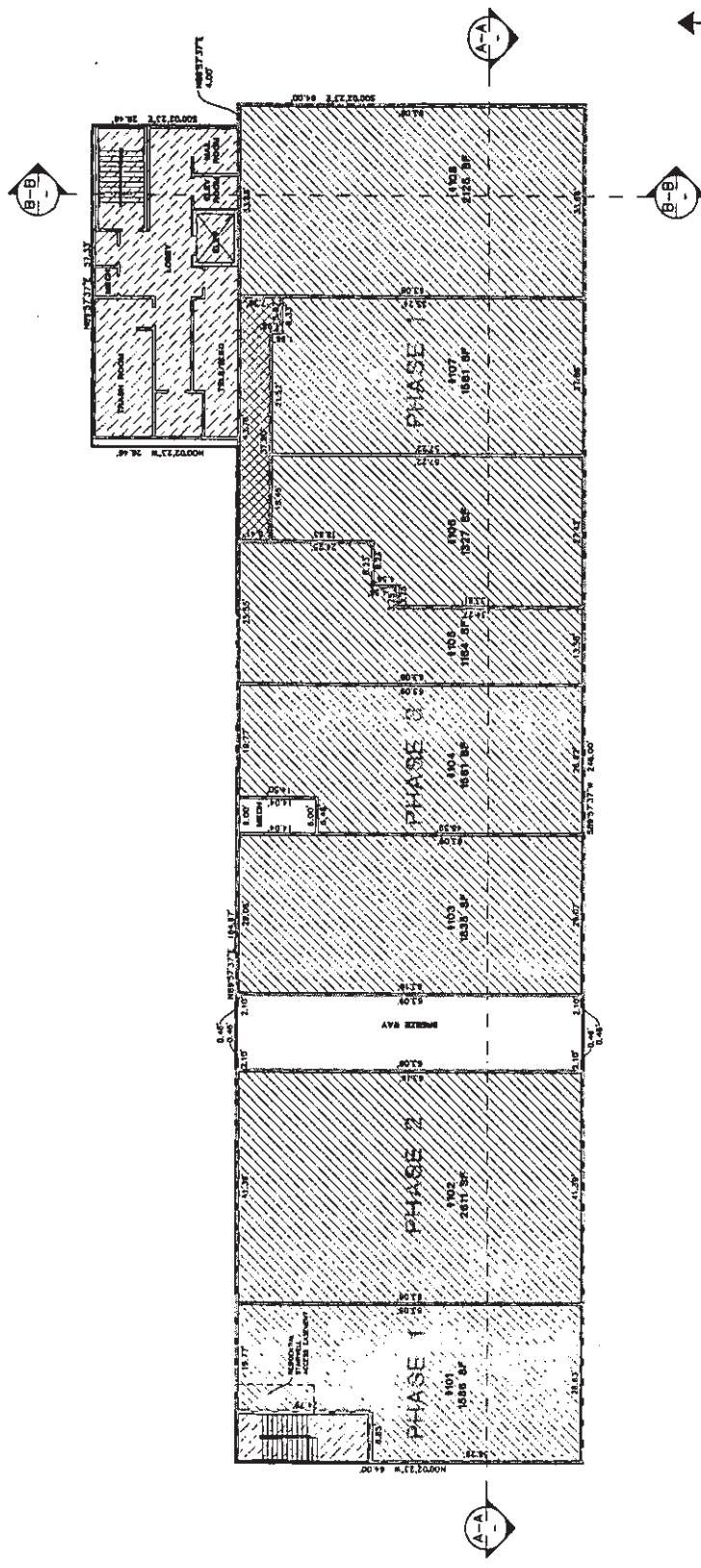


**BIRK HILL PHASE 1-AMENDED LOT B  
CONDOMINIUMS**  
LOCATED IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH,  
RANGE WEST 101, LIGHT BASK, & BIRK HILL  
SUBDIVISION, SOUTHWEST CORNER, T1S, R101W

SHEET  
**6 of 7**

<b>Recorded #</b>		<b>FILED</b>	
<b>STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED AND FILED AT THE</b>		<b>RECORDS DEPARTMENT</b>	
<b>REQUESTED BY</b>		<b>DATE</b>	
<b>BY</b>		<b>TIME</b>	
<b>PREPARED BY</b>		<b>INDEXED BY</b>	
<b>CHECKED BY</b>		<b>FILED</b>	
<b>DATE</b>		<b>COUNTY RECORDER</b>	

# BIRK HILL PHASE 1-AMENDED LOT B CONDOMINIUMS BUILDING B 1ST FLOOR



**LEGEND**

- METAL/PTCZ
- COMMON AREA
- UNITS (RESIDENTIAL)
- LIMITED COMMON (RESIDENTIAL)
- LIMITED COMMON (COMMERCIAL)



**BIRK HILL PHASE 1-AMENDED LOT B  
CONDOMINIUMS**  
 LOCATED IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 2 SOUTH,  
 RANGE 10 EAST, COUNTY OF SALT LAKE, UTAH

**RECORDED #** \_\_\_\_\_  
 STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED AND FILED AT THE  
 REQUEST OF: \_\_\_\_\_  
 DATE: \_\_\_\_\_ TIME: \_\_\_\_\_  
 COUNTY RECORDER

**PROJECT INFORMATION**

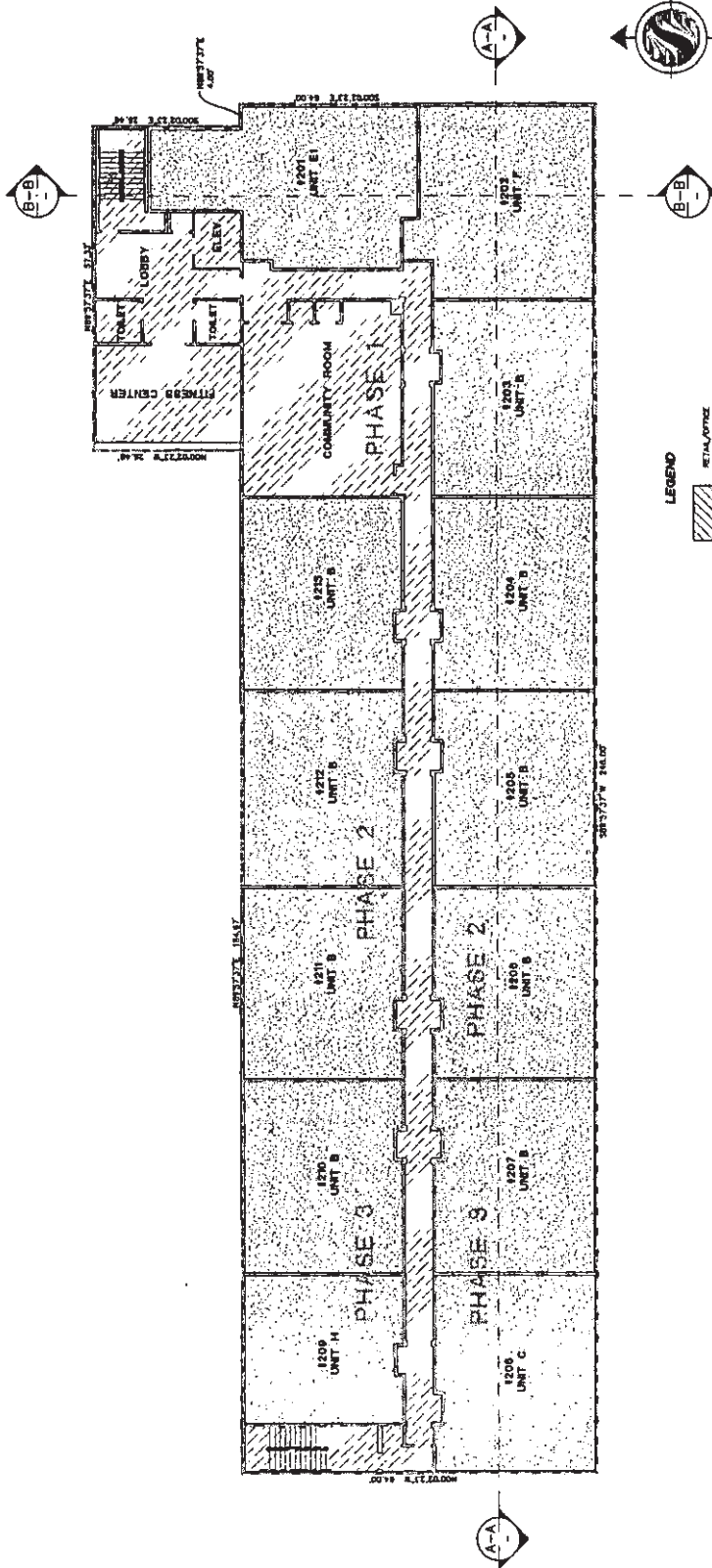
Project Number: 10201817  
 Date: 06/27/08  
 Prepared By: [Signature]  
 Checked By: [Signature]  
 Drawn By: [Signature]  
 Scale: AS SHOWN  
 Date: 06/27/08

**REVISIONS**

No.	Rev.	Description



**BIRKHILL PHASE 1-AMENDED LOT B  
CONDOMINIUMS  
BUILDING 2ND FLOOR**



**LEGEND**

- RETAIL/OFFICE
- COMMON AREA
- UNITS (RESIDENTIAL)
- UNITS COMMON (RESIDENTIAL)
- UNITS COMMON (COMMERCIAL)

GRAPHIC SCALE  
1" = 8'-0" (1/4" = 1'-0")

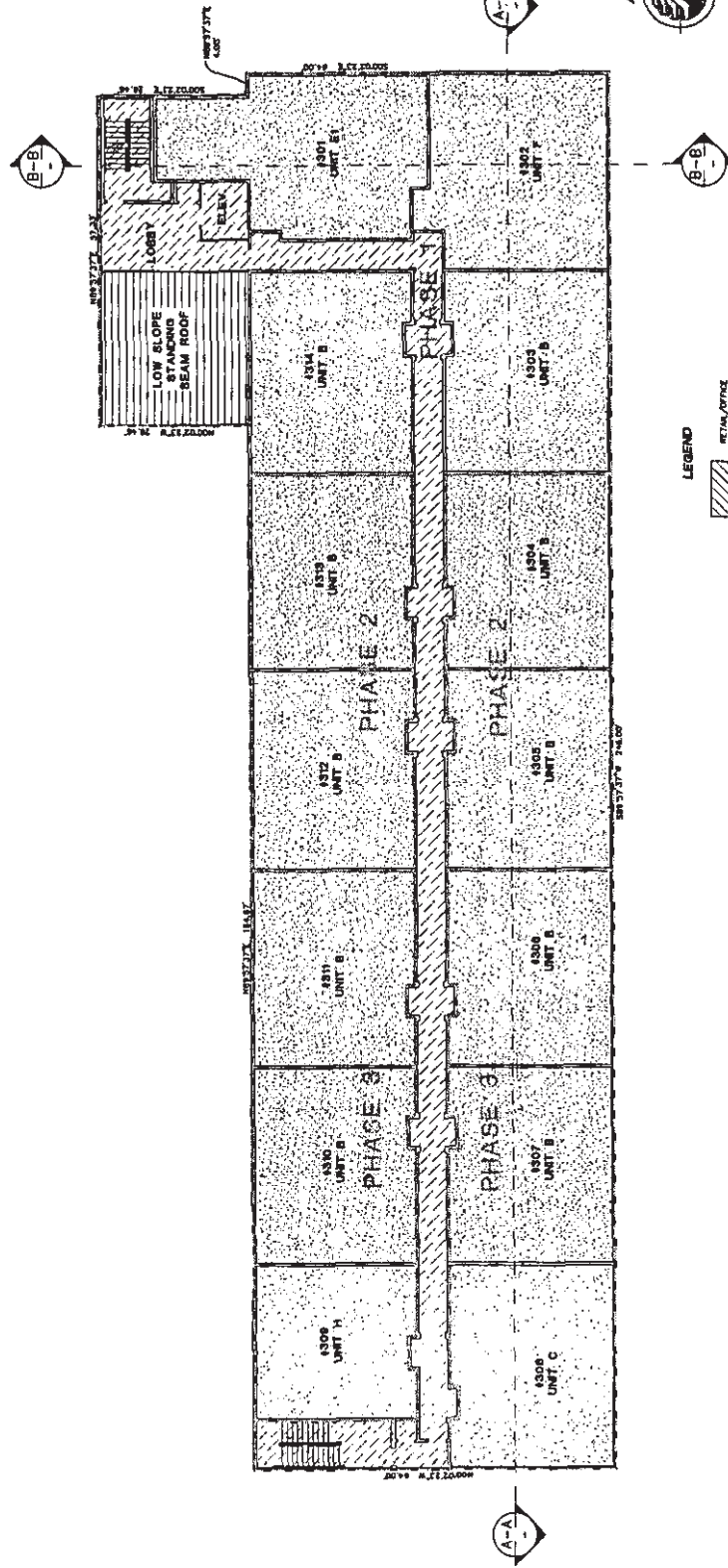
**BIRKHILL PHASE 1-AMENDED LOT B  
CONDOMINIUMS**  
LOCATED IN THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 3 SOUTH,  
RANGE 10E EAST, LAKE COUNTY, ILLINOIS

SHEET  
**3 of 7**

Record Number: <b>18-03897</b>	City: <b>Rockton</b>
Record County No. <b>1801 E 03</b>	County: <b>Rockton</b>
Map No. <b>1801-2-03</b>	Owner By: <b>AM</b>
Drawn By: <b>AM</b>	Checked By: <b>AM</b>
Scale: <b>1/4" = 1'-0"</b>	Date: <b>02/20/03</b>
Project Name: <b>BIRKHILL PHASE 1-AMENDED LOT B CONDOMINIUMS</b>	Revision: <b>1</b>
Drawn By: <b>AM</b>	Checked By: <b>AM</b>
Date: <b>02/20/03</b>	Scale: <b>1/4" = 1'-0"</b>
Project No.:	Sheet No.:
Project Name:	Project No.:
Drawn By:	Checked By:
Date:	Scale:



# BIRK HILL PHASE 1-AMENDED LOT B CONDOMINIUMS BUILDING 3RD FLOOR



- LEGEND**
- RETAIN/W/RE
  - COMMON AREA
  - UNITS (RESIDENTIAL)
  - UNITS COMMON (RESIDENTIAL)
  - UNITS COMMON (COMMERCIAL)

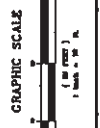
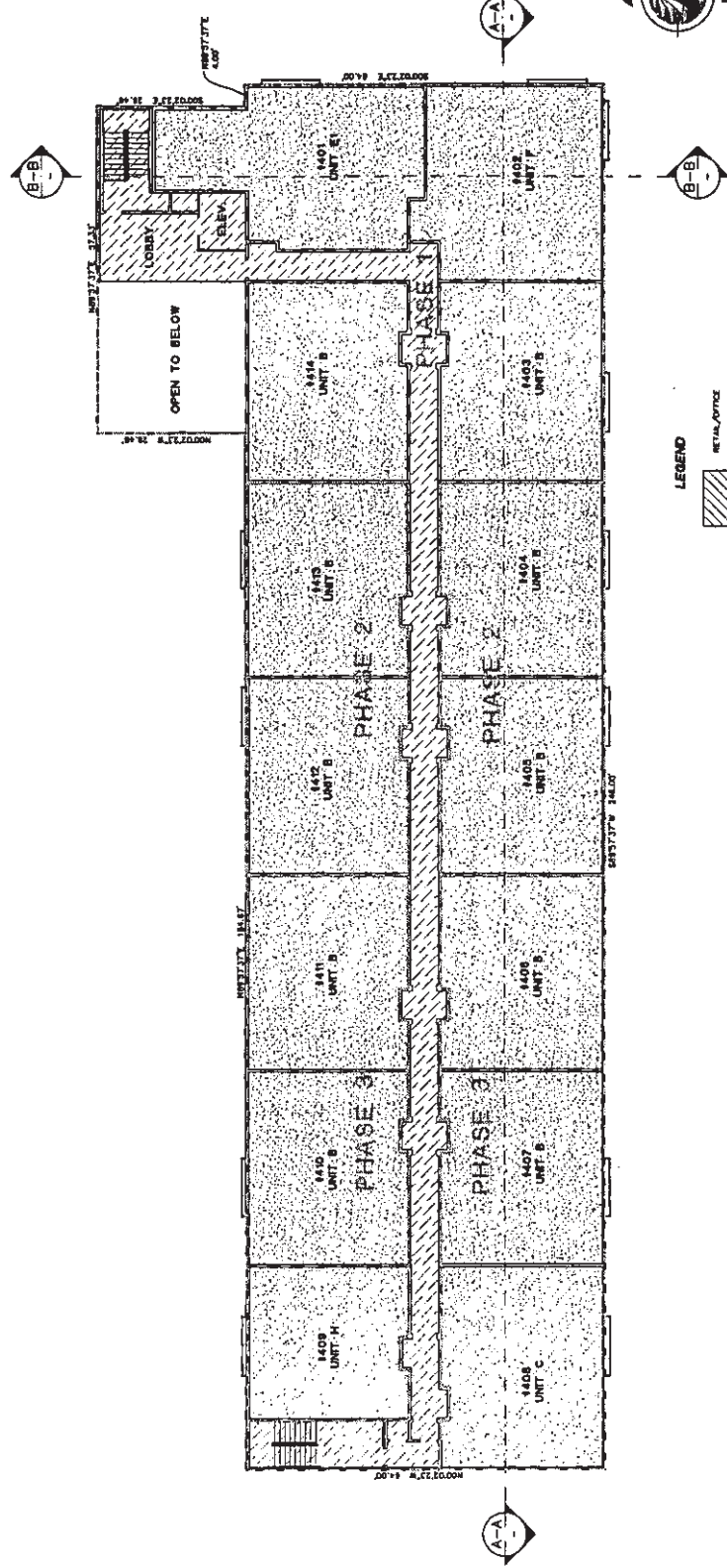
**BIRK HILL PHASE 1-AMENDED LOT B  
CONDOMINIUMS**

LOCATED IN THE SOUTHWEST CORNER OF THE SE 1/4 OF SECTION 2 SOUTH,  
RANGE 1 WEST, T14N, R10E, W. 4TH QUARTER,  
SARASOTA COUNTY, FLORIDA

RECORDED AT \_\_\_\_\_  
STATE OF FLORIDA COUNTY OF SARASOTA DECEMBER 15, 2011  
PAGE 4 OF 7

Project Number	1337-03
Scale	1/8" = 1'-0"
Drawn By	J. L. [Name]
Checked By	[Name]
Date	07/21/11
Sheet	4 of 7
Phase	3
Level	3RD FLOOR
Author	[Name]
Checker	[Name]
Recorder	[Name]
County Recorder	[Name]

# BIRK HILL PHASE 1-AMENDED LOT B CONDOMINIUMS BUILDING 4TH FLOOR



**LEGEND**

- RETAIL/OFFICE
- COMMON AREA
- UNITS (RESIDENTIAL)
- LIMITED COMMON (RESIDENTIAL)
- LIMITED COMMON (COMMERCIAL)

RECORDED 5  
 SHEET 5 OF 7  
**BIRK HILL PHASE 1-AMENDED LOT B  
 CONDOMINIUMS**  
 LOCATED IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 2 SOUTH,  
 RANGE 10 EAST, COUNTY OF KANE, ARIZONA

Prepared By: Checked By: Drawn By: Date:	Project Number: CNA:	Date: 06/27/2008	Scale: AS SHOWN	Revision: 1 2	Date: 06/27/2008
<b>Scientific</b> Surveying & Mapping 1000 N. 2nd St., Suite 100 Phoenix, AZ 85004 Tel: (602) 258-1171 Fax: (602) 258-1172 Email: info@scientific.com					
STATE OF ARIZONA, COUNTY OF KANE, RECORDED AND FILED AT THE REQUEST OF _____ DATE _____ TIME _____ PAGE _____ COUNTY RECORDER					

EXHIBIT "B"

(Legal Description of the Additional Land)

## 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 "C"

(copy of site development plan showing all Buildings)

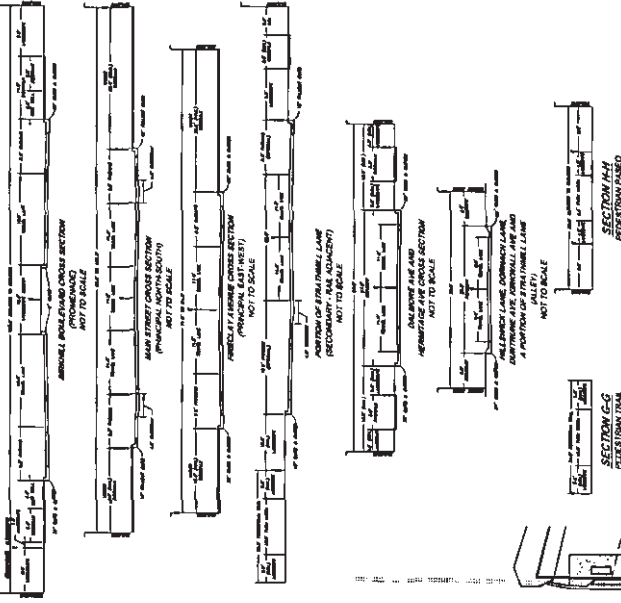


Stantec Consulting Inc.  
 300 West 10th Street, Suite 100  
 Salt Lake City, UT 84119  
 Tel: 801.261.0000  
 Fax: 801.261.1971  
 www.stantec.com

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**HAMLET HOMES**  
 COLLECTIVE OWNERSHIP COMMUNITY DEVELOPMENT



**OVERALL SITEPLAN LEGEND**

TOTAL SITE AREA = 658,869 SQ. FT. OR 15.14 ACRES  
 OPEN SPACE = 238,794 SQ. FT. OR 5.43 ACRES  
 38.9% OF THE TOTAL SITE AREA

**PARKING STATISTICS**

OFF-STREET SURFACE PARKING = 599 STALLS  
 ON-STREET SURFACE PARKING = 100 STALLS  
 STRUCTURE / GARAGE PARKING = 96 STALLS  
 TOWNHOME / GARAGE PARKING = 192 STALLS  
 TOTAL PARKING = 777 STALLS

**BUILDING STATISTICS**

COMMERCIAL SQUARE FOOTAGE = 41,893 SQ. FT. / 1/2 (1/2 RETAIL, 1/2 OFFICE) PARKING STALLS RECD  
 ONE & TWO BEDROOM UNITS = 140 / 249 PARKING STALLS RECD  
 THREE BEDROOM UNITS = 140 / 249 PARKING STALLS RECD  
 TOTAL RESIDENTIAL UNITS = 280 / 498 PARKING STALLS RECD

**PHASE 1 SITEPLAN LEGEND**

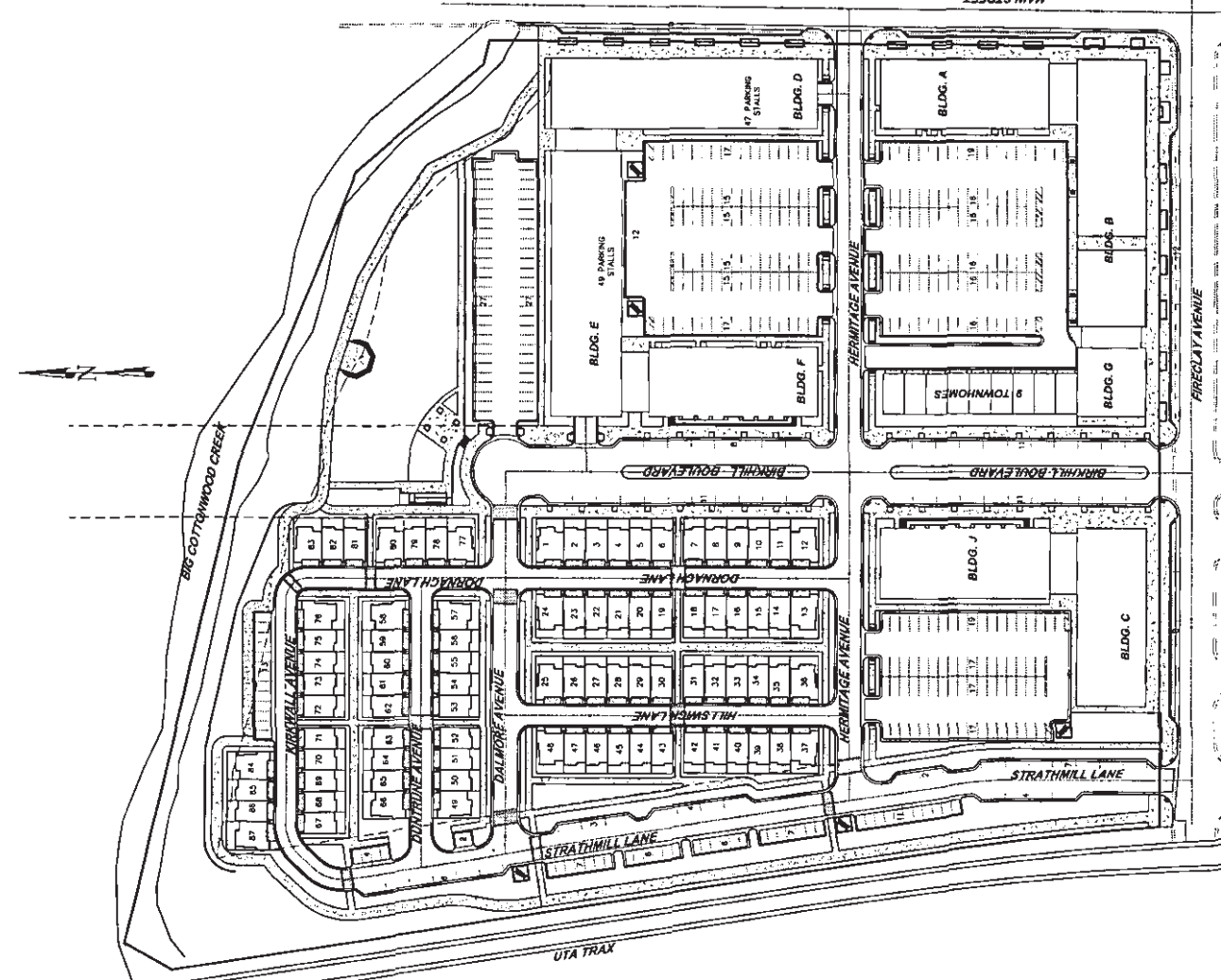
PHASE 1 OPEN SPACE = 92,032 SQ. FT. OR 2.11 ACRES  
 PHASE 1 TOTAL PHASE 1 AREA = 1,119 ACRES

**PARKING STATISTICS**

OFF-STREET SURFACE PARKING = 89 STALLS  
 ON-STREET SURFACE PARKING = 39 STALLS  
 TOWNHOME / GARAGE PARKING = 14 STALLS  
 TEMPORARY SURFACE PARKING = 42 STALLS  
 TOTAL PARKING = 222 STALLS

**BUILDING STATISTICS**

COMMERCIAL SQUARE FOOTAGE = 14,911 SQ. FT. / 1/18 (1/2 RETAIL, 1/2 OFFICE) PARKING STALLS RECD  
 ONE & TWO BEDROOM UNITS = 30 / 109 PARKING STALLS RECD  
 THREE BEDROOM UNITS = 19 / 114 PARKING STALLS RECD  
 TOTAL RESIDENTIAL UNITS = 49 / 223 PARKING STALLS RECD



**EXHIBIT "D"**

**BYLAWS**

## BYLAWS

### BIRKHILL CONDOMINIUM ASSOCIATION, INC.

#### ARTICLE I NAME AND LOCATION

The name of the Corporation is Birkhill Condominium Association, Inc., hereinafter referred to as the "Association" for and in behalf of the recorded Declaration of Condominium for Birkhill recorded in the Recorder's Office in Salt Lake County, Utah, as Entry No. \_\_\_\_\_, Book \_\_\_\_\_, Page \_\_\_\_\_, and such other real property as may be added to Birkhill from time to time. The principal office of the Association shall be located at 308 East 4500 South, Suite 200, Murray, Utah 84107 until the Board of Directors determines that the office should be in another location. Meetings of Members and Directors may be held at such places within the State of Utah as may be designated by the Board of Directors.

#### ARTICLE II DEFINITIONS

Section 1. "Association" shall mean and refer to Birkhill Condominium Association, Inc., its successors and assigns.

Section 2. "Project" shall mean and refer to that certain real property in Salt Lake County, Utah (the "County") described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Unit" shall mean and refer to Unit as defined in Article I of the Declaration.

Section 4. "Owner" shall mean and refer to Owner as defined in Article I of the Declaration.

Section 5. "Declarant" shall mean and refer to Birkhill at Fireclay, LLC, and any successors or assigns thereof to whom it shall expressly (i) convey or otherwise transfer all of its right, title and interest in the Project, or any portion or all thereof, as an entirety, without reservation of any kind; or (ii) transfer, set over or assign all its right, title and interest under the Declaration, or any amendment or modification thereof.

Section 6. "Declaration" shall mean and refer to the Declaration of Condominium applicable to the Project and heretofore recorded in the Salt Lake County Recorder's Office and any additions, amendments or modifications thereto.

Section 7. "Member" or "Members" shall mean and refer to those persons entitled to



Membership in the Association, as provided in the Declaration.

Section 8. Any other terms used herein shall have the meanings given to them in the Declaration.

ARTICLE III  
MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held at in December during the first year following the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held in December of each year thereafter, at a time and place within the State of Utah selected by the Board of Directors of the Association. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President, by the Board of Directors, by any three (3) Members of the Board of Directors or upon written request of the Members who are holding at least twenty five percent (25%) of the undivided ownership interest in the Common Area.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days but not more than thirty (30) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members or of proxies entitled to cast at least fifteen percent (15%) of all votes in the Association entitled to be cast shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, these Bylaws or applicable law. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote at the meeting shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, for a time no earlier than forty-eight (48) hours and no later than thirty (30) days after the time for the original meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit.

ARTICLE IV  
BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed initially by a Board of Directors which shall be comprised of three (3) persons and can thereafter be increased to seven (7) Directors, as provided in the Articles of Incorporation and Declaration; provided, however, until the expiration of the Transition Events, the Declarant shall have the exclusive and irrevocable right to appoint all of the members of the Board of Directors and their successors or replacements, who need not be Owners. At the first annual Association meeting after the occurrence of the Transition Events, the members of the Board of Directors shall be elected by the Owners.

Section 2. Term of Office. From and after the first annual meeting of the Members, the term of office of the Directors shall be staggered. To provide continuity of management, the two (2) Members who receive the two (2) highest number of votes shall be elected for two (2) year terms and the other Members shall be elected for a one (1) year term; provided, however, there shall be one (1) Member who owns a Commercial Unit if at least one (1) such Member desires to serve on the Board and have obtained at least a majority of votes from the Owners of Commercial Units, and if so, such Member shall have a term of one (1) year unless such Member would qualify for a two (2) year term based on receiving a higher number of votes. Thereafter, all Members shall be elected for two (2) year terms. The Members of the Board of Directors shall also constitute the Board of Directors of the Association. No decision may be made by the Board without unanimous consent if such decision has a discriminatory effect on the Commercial Units and/or their Owners or occupants. Further, to the extent there is a vacancy, the Board of Directors may fill such vacancies from time to time, until the next election meeting.

Section 3. Removal. Any Board of Director member who fails on three (3) successive occasions to attend Board of Directors meetings (whether regular or special) or who has failed to attend at least twenty-five (25%) of all Board of Director meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining members of the Board shall elect a replacement to sit on the Board of Directors until the next meeting of the Association. In addition, except for Board of Directors members appointed by the Declarant before the expiration of the Transition Events, Board of Directors members may be removed at any time by the affirmative vote of a majority of the Members of the Association. A replacement to serve the remainder of the removed member's unexpired term shall be elected at the same meeting.

Section 4. Compensation. No Director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties if approved by the Board.

Section 5. Action Taken Without A Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take under Utah law at a closed meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a closed meeting of the Director.

ARTICLE V  
NOMINATION AND ELECTION OF DIRECTORS AFTER  
THE EXPIRATION OF THE TRANSITION EVENTS

Section 1. Nomination. After the expiration of the Transition Event, nomination for election to the Board of Directors shall be made by a Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the President of the Association prior to each 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 of Directors as it shall in its discretion determine, but not less than the number of vacancies. Nominations may be made from among Members of non-Members of the Association.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI  
MEETINGS OF DIRECTORS

Section 1. Regular Meeting. A regular meeting of the Board of Directors shall be held immediately after the adjournment of each annual Owners meeting or at such other time as the members of the Board of Directors may decide. Other regular meetings shall be held at periodic intervals (no longer than monthly) at such time and place as the Board of Directors may determine. No notice need be given of regular Board of Directors meetings

Section 2. Special Meetings. Special Board of Directors meetings shall be held whenever called by the President or by any three (3) members of the Board of Directors. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Board of Directors member at least twenty-four (24) hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all Board of Directors members may not be challenged on grounds of inadequate notice.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction to business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII  
POWERS, RIGHTS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have the power to take the actions described in Section 11.10 of the Declaration.

Section 2. Specific Right of Inspection of The Board of Directors.

Every 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.

Section 3. Duties. It shall be the duty of the Board of Directors to take the following actions, either on their own as a Board of Directors, or through delegation of said duties to the Board of Directors of the Project:

- (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-fourth (1/4) of the Class A Members or of the Class B 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 Unit at least thirty (30) days in advance of each annual assessment period;
  - (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 Units 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 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 other areas shown on the Plat that may be owned by governmental entities who are not maintaining such areas.

ARTICLE VIII  
OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a President, who shall at all times be a member of the Board of Directors, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors, and thereafter at the meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless any officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of 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.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaced.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

8.1 President. The President shall preside at all meetings of the Members and of the Board of Directors and shall see that orders and resolutions of the Board are carried out. The President shall have the authority to sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

8.2 Vice-President. The Vice-President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

8.3 Secretary-Treasurer. The Secretary-Treasurer shall record the votes and keep the minutes of all meetings and proceedings of the Board and the Members; serve notice of meeting of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board. The Secretary-Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all books of account; cause an annual audit of the Association's books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

#### ARTICLE IX INDEMNIFICATION OF OFFICERS AND DIRECTORS

Each officer and Director of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Director or officer of the Association. The foregoing right to indemnification shall be exclusive of any other rights to which the Director or officer or person may be entitled by law or agreement or vote of the Members or otherwise.

#### ARTICLE X BOOKS AND RECORDS

As more fully provided in the Declaration, the books, records and papers of the Association shall at all times, during reasonable hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws 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 XI ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which the assessment is made. In addition, as more fully provided in the Declaration, certain Members may be subject to a Limited Common Areas Assessment. Any assessments or portions thereof which are not paid when due shall be delinquent. If the assessment is not paid within the time frames set forth in the Declaration, the Association may

declare the entire balance of the assessment immediately due and payable. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Unit, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of the Owner's Unit.

ARTICLE XII  
AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of two-thirds (2/3) of a quorum of Members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.


ARTICLE XIII  
MISCELLANEOUS

The fiscal year of the Association shall be determined by the Board in its discretion.

CERTIFICATION

I, THE UNDERSIGNED, do hereby certify that I am the duly elected and acting secretary of Birkhill Condominium Association, Inc., a Utah non-profit corporation, and that the foregoing Bylaws constitute the original Bylaws of said Corporation, as duly adopted by unanimous written consent of the Board of Directors thereof on this 9 day of Sept., 2008.

IN WITNESS WHEREOF, I have hereunto subscribed my name of the Corporation this \_\_\_ day of Sept 9, 2008

  
\_\_\_\_\_  
Secretary-Treasurer

## EXHIBIT "E"

Phase 1-B1		
Unit #	Sq Footage	% ownership
#101	1586	7.69%
#106	1327	6.44%
#107	1581	7.67%
#108	2125	10.31%
#201	1061	4.85%
#202	1127	4.85%
#203	978	4.85%
#204	978	4.85%
#205	978	4.85%
#213	978	4.85%
#301	1061	4.85%
#302	1127	4.85%
#303	978	4.85%
#314	978	4.85%
#401	1061	4.85%
#402	1127	4.85%
#403	978	4.85%
#414	978	4.85%

Phase 1-B2		
Unit #	Sq Footage	% ownership
#102	2611	0.00%
#206	978	0.00%
#211	978	0.00%
#212	978	0.00%
#304	978	0.00%
#305	978	0.00%
#312	978	0.00%
#313	978	0.00%
#404	978	0.00%
#405	978	0.00%
#412	978	0.00%
#413	978	0.00%

Phase 1-B3		
Unit #	Sq Footage	% ownership
#103	1835	0.00%
#104	1561	0.00%
#105	1164	0.00%
#207	978	0.00%
#208	1005	0.00%
#209	760	0.00%
#210	978	0.00%
#306	978	0.00%
#307	978	0.00%
#308	1005	0.00%
#309	760	0.00%
#310	978	0.00%
#311	978	0.00%
#406	978	0.00%
#407	978	0.00%
#408	1005	0.00%
#409	760	0.00%
#410	978	0.00%
#411	978	0.00%



## EXHIBIT "F"

### RULES AND REGULATIONS

The following rules and regulations shall apply to all Units:

1. The Board will retain a passkey to each Unit and will be given a key to all new locks or altered locks by the Owner.
2. Unit Owners and occupants shall make no unreasonable noise that is disturbing to other Unit Owners, and shall not unreasonably interfere with, obstruct or violate the rights, reasonable comforts or convenience of the other Unit Owners.
3. Units and any associated Limited Common Areas shall be kept in a clean, orderly and sanitary condition.
4. No bottles, trash or garbage shall be discarded or temporarily or permanently stored upon any Common Areas or Facilities, except in the disposal facilities provided for such purpose.

In addition, the following rules and regulations shall apply to Residential Units:

1. Residential Unit Owners shall provide rug or carpeting over at least seventy-five percent (75%) of each room and hallway (excluding baths, kitchen and entrance foyer) so that neighbors in below or adjacent Units will not be disturbed. The Board or the managing agent may approve acoustical wooden or other acoustical tiling or floor covering (in lieu of carpeting or rugs) provided that adequate sound and vibration insulation is provided.
2. Patios, terraces, lawns, decks and balconies (collectively, "Terraces") shall be kept neat and clean and shall not be used for storage. All furniture, landscaping and decorations which may be placed on Terraces shall conform to such standards and specifications as the Board may reasonably determine, and shall in any event be normally and customarily used for a residential balcony or terrace area. Outdoor cooking is strictly prohibited on any of the Limited Common Areas of Residential Units except within such areas, if any, as may be designated for such purpose by the Board.

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ARTICLES OF INCORPORATION  
OF  
BIRKHILL CONDOMINIUM 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 Condominium 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 association for the mixed-use condominium in Salt Lake County, Utah, known as "Birkhill"; to own, operate, maintain and manage the Common Areas and Facilities and Limited Common Areas, as those terms are defined in the Declaration of Condominium 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 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  
MEMBERS

The Corporation shall have members in two classes as follows:

Class A. Class A Members shall be all Unit Owners in Birkhill other than the Declarant in the Declaration, Fireclay at Birkhill, LLC, until the Class B membership ceases. Each Owner of a Residential Unit shall have one (1) vote for each Residential Unit owned and each Owner of a

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Date: 09/09/2008  
Receipt Number: 2592967  
Amount Paid: \$44.00

Commercial Unit shall have one (1) vote for each fifteen hundred (1,500) square feet contained within a Commercial Unit; provided, however, in no event shall more than one Class A vote exist with respect to any Unit.

Class B. The Class B Member shall be the Declarant in the Declaration, Fireclay at Birkhill, LLC. The Class B Member shall be entitled to three (3) votes for each Unit in which it holds the interest required for Membership in the Association. The Class B Membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events: (a) Four (4) months after the sale (meaning the execution and delivery of a deed to a Unit by Declarant) of Units to which seventy five percent (75%) of the Common Areas and Facilities pertain in all Phases in the Project; (b) Six (6) years from the date following the first conveyance of a Unit in the Building to a Unit purchaser after the effective date of this Declaration; or (c) When, in its sole discretion, Declarant so determines.

ARTICLE V  
NO STOCK CERTIFICATES

The Corporation shall not issue stock certificates to its members. Member status for Class A members shall be determined by record fee simple ownership to Units in Birkhill in accordance with the terms and conditions of the Declaration. Member status for the Class B member shall also be determined in accordance with the terms and conditions of the Declaration.

ARTICLE VI  
BOARD OF DIRECTORS

The Corporation shall be governed by a Board of Directors consisting of at least three (3) persons and may thereafter be increased to seven (7) members, as more fully provided in the Declaration and Bylaws. The initial members of the Board of Directors of the Corporation shall be as follows:

**Dean Regazzi**  
**Hamlet Development**  
**308 East 4500 South, Ste. 200**  
**Murray, Utah 84107**

**David Irwin**  
**Hamlet Development**  
**308 East 4500 South, Ste. 200**  
**Murray, Utah 84107**

**John Aldous**

Hamlet Development  
308 East 4500 South, Ste. 200  
Murray, Utah 84107

ARTICLE VII  
BYLAWS

The Directors shall adopt Bylaws which are not inconsistent with law or these Articles for the regulation and management of the affairs of the Corporation. The Bylaws 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  
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

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.

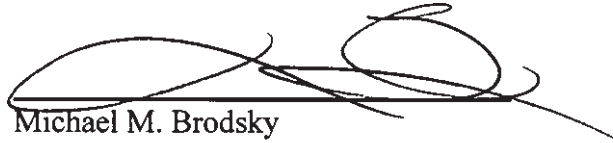
The undersigned incorporator verifies, under penalty of perjury, his signature on this document is his voluntary act and deed, and that the statements contained herein are true and correct.

DATED this 9 day of September, 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.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the printed name.

Michael M. Brodsky  
Registered Agent

## BYLAWS

### BIRKHILL CONDOMINIUM ASSOCIATION, INC.

#### ARTICLE I NAME AND LOCATION

The name of the Corporation is Birkhill Condominium Association, Inc., hereinafter referred to as the "Association" for and in behalf of the recorded Declaration of Condominium for Birkhill recorded in the Recorder's Office in Salt Lake County, Utah, as Entry No. 10523182, Book 9643, Page 7965-8058 and such other real property as may be added to Birkhill from time to time. The principal office of the Association shall be located at 308 East 4500 South, Suite 200, Murray, Utah 84107 until the Board of Directors determines that the office should be in another location. Meetings of Members and Directors may be held at such places within the State of Utah as may be designated by the Board of Directors.

#### ARTICLE II DEFINITIONS

Section 1. "Association" shall mean and refer to Birkhill Condominium Association, Inc., its successors and assigns.

Section 2. "Project" shall mean and refer to that certain real property in Salt Lake County, Utah (the "County") described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Unit" shall mean and refer to Unit as defined in Article I of the Declaration.

Section 4. "Owner" shall mean and refer to Owner as defined in Article I of the Declaration.

Section 5. "Declarant" shall mean and refer to Birkhill at Fireclay, LLC, and any successors or assigns thereof to whom it shall expressly (i) convey or otherwise transfer all of its right, title and interest in the Project, or any portion or all thereof, as an entirety, without reservation of any kind; or (ii) transfer, set over or assign all its right, title and interest under the Declaration, or any amendment or modification thereof.

Section 6. "Declaration" shall mean and refer to the Declaration of Condominium applicable to the Project and heretofore recorded in the Salt Lake County Recorder's Office and any additions, amendments or modifications thereto.

Section 7. "Member" or "Members" shall mean and refer to those persons entitled to

Membership in the Association, as provided in the Declaration.

Section 8. Any other terms used herein shall have the meanings given to them in the Declaration.

ARTICLE III  
MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held at in December during the first year following the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held in December of each year thereafter, at a time and place within the State of Utah selected by the Board of Directors of the Association. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President, by the Board of Directors, by any three (3) Members of the Board of Directors or upon written request of the Members who are holding at least twenty five percent (25%) of the undivided ownership interest in the Common Area.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days but not more than thirty (30) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members or of proxies entitled to cast at least fifteen percent (15%) of all votes in the Association entitled to be cast shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, these Bylaws or applicable law. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote at the meeting shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, for a time no earlier than forty-eight (48) hours and no later than thirty (30) days after the time for the original meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit.



ARTICLE IV  
BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed initially by a Board of Directors which shall be comprised of three (3) persons and can thereafter be increased to seven (7) Directors, as provided in the Articles of Incorporation and Declaration; provided, however, until the expiration of the Transition Events, the Declarant shall have the exclusive and irrevocable right to appoint all of the members of the Board of Directors and their successors or replacements, who need not be Owners. At the first annual Association meeting after the occurrence of the Transition Events, the members of the Board of Directors shall be elected by the Owners.

Section 2. Term of Office. From and after the first annual meeting of the Members, the term of office of the Directors shall be staggered. To provide continuity of management, the two (2) Members who receive the two (2) highest number of votes shall be elected for two (2) year terms and the other Members shall be elected for a one (1) year term; provided, however, there shall be one (1) Member who owns a Commercial Unit if at least one (1) such Member desires to serve on the Board and have obtained at least a majority of votes from the Owners of Commercial Units, and if so, such Member shall have a term of one (1) year unless such Member would qualify for a two (2) year term based on receiving a higher number of votes. Thereafter, all Members shall be elected for two (2) year terms. The Members of the Board of Directors shall also constitute the Board of Directors of the Association. No decision may be made by the Board without unanimous consent if such decision has a discriminatory effect on the Commercial Units and/or their Owners or occupants. Further, to the extent there is a vacancy, the Board of Directors may fill such vacancies from time to time, until the next election meeting.

Section 3. Removal. Any Board of Director member who fails on three (3) successive occasions to attend Board of Directors meetings (whether regular or special) or who has failed to attend at least twenty-five (25%) of all Board of Director meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining members of the Board shall elect a replacement to sit on the Board of Directors until the next meeting of the Association. In addition, except for Board of Directors members appointed by the Declarant before the expiration of the Transition Events, Board of Directors members may be removed at any time by the affirmative vote of a majority of the Members of the Association. A replacement to serve the remainder of the removed member's unexpired term shall be elected at the same meeting.

Section 4. Compensation. No Director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties if approved by the Board.

Section 5. Action Taken Without A Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take under Utah law at a closed meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a closed meeting of the Director.

ARTICLE V  
NOMINATION AND ELECTION OF DIRECTORS AFTER  
THE EXPIRATION OF THE TRANSITION EVENTS

Section 1. Nomination. After the expiration of the Transition Event, nomination for election to the Board of Directors shall be made by a Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the President of the Association prior to each 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 of Directors as it shall in its discretion determine, but not less than the number of vacancies. Nominations may be made from among Members of non-Members of the Association.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI  
MEETINGS OF DIRECTORS

Section 1. Regular Meeting. A regular meeting of the Board of Directors shall be held immediately after the adjournment of each annual Owners meeting or at such other time as the members of the Board of Directors may decide. Other regular meetings shall be held at periodic intervals (no longer than monthly) at such time and place as the Board of Directors may determine. No notice need be given of regular Board of Directors meetings

Section 2. Special Meetings. Special Board of Directors meetings shall be held whenever called by the President or by any three (3) members of the Board of Directors. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Board of Directors member at least twenty-four (24) hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all Board of Directors members may not be challenged on grounds of inadequate notice.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction to business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII  
POWERS, RIGHTS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have the power to take the actions described in Section 11.10 of the Declaration.

Section 2. Specific Right of Inspection of The Board of Directors.

Every 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.

Section 3. Duties. It shall be the duty of the Board of Directors to take the following actions, either on their own as a Board of Directors, or through delegation of said duties to the Board of Directors of the Project:

- (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-fourth (1/4) of the Class A Members or of the Class B 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 Unit at least thirty (30) days in advance of each annual assessment period;
  - (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 Units 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 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 other areas shown on the Plat that may be owned by governmental entities who are not maintaining such areas.

ARTICLE VIII  
OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a President, who shall at all times be a member of the Board of Directors, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors, and thereafter at the meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless any officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of 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.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaced.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

8.1 President. The President shall preside at all meetings of the Members and of the Board of Directors and shall see that orders and resolutions of the Board are carried out. The President shall have the authority to sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

8.2 Vice-President. The Vice-President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

8.3 Secretary-Treasurer. The Secretary-Treasurer shall record the votes and keep the minutes of all meetings and proceedings of the Board and the Members; serve notice of meeting of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board. The Secretary-Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all books of account; cause an annual audit of the Association's books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

#### ARTICLE IX INDEMNIFICATION OF OFFICERS AND DIRECTORS

Each officer and Director of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Director or officer of the Association. The foregoing right to indemnification shall be exclusive of any other rights to which the Director or officer or person may be entitled by law or agreement or vote of the Members or otherwise.

#### ARTICLE X BOOKS AND RECORDS

As more fully provided in the Declaration, the books, records and papers of the Association shall at all times, during reasonable hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws 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 XI ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which the assessment is made. In addition, as more fully provided in the Declaration, certain Members may be subject to a Limited Common Areas Assessment. Any assessments or portions thereof which are not paid when due shall be delinquent. If the assessment is not paid within the time frames set forth in the Declaration, the Association may

declare the entire balance of the assessment immediately due and payable. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Unit, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of the Owner's Unit.

ARTICLE XII  
AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of two-thirds (2/3) of a quorum of Members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.


ARTICLE XIII  
MISCELLANEOUS

The fiscal year of the Association shall be determined by the Board in its discretion.

CERTIFICATION

I, THE UNDERSIGNED, do hereby certify that I am the duly elected and acting secretary of Birkhill Condominium Association, Inc., a Utah non-profit corporation, and that the foregoing Bylaws constitute the original Bylaws of said Corporation, as duly adopted by unanimous written consent of the Board of Directors thereof on this 9 day of Sept., 2008.

IN WITNESS WHEREOF, I have hereunto subscribed my name of the Corporation this \_\_\_ day of Sept 9, 2008

  
\_\_\_\_\_  
Secretary-Treasurer