

BIRKHILL COMMUNITY ASSOCIATION, INC.

**SECOND AMENDMENT TO THE
 DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
 FOR BIRKHILL COMMUNITY ASSOCIATION, INC.**

THIS SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR BIRKHILL COMMUNITY ASSOCIATION, INC. (the "Second Amendment") is made and executed this 25 day of Feb., 2009, 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.

WITNESSETH:

WHEREAS, Declarant made, executed and caused to be recorded that certain Declaration of Covenants, Conditions and Restrictions for Birkhill Community Association (the "Declaration") dated September 9, 2008 and recorded among the Salt Lake County Recorder's Office, Entry 10523181, Book 9643, Pages 7793-7964, pursuant to which the Declarant subjected all that property described in the Declaration (the "Property") and Declarant formed an association known as "Birkhill Community Association, Inc."; and

WHEREAS, pursuant to Article 5 of the Declaration, Declarant wishes to amend the Declaration;

NOWHEREFORE, THE Declarant hereby declares that the Declaration of Covenants, Conditions & Restrictions for Birkhill Community Association, Inc., Article IX "Use Restrictions for Birkhill", Section 9.2.8, be amended as follows:

9.2.8. Animals. No animals, livestock, or poultry of any kind, including pigeons, shall be raised, bred or kept on any Lot, except that dogs, cats or any lawful household pets, may be kept on any Residential property, by the Owner or Tenant of such Residential property who is occupying such Owner's Dwelling during that time, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they are kept so as to avoid becoming a nuisance to other owners or tenants of the neighborhood or to any adjoining property owners and do not roam unattended on the Property. All household pets must be preapproved by the Community Board's Architectural Review Committee. Household pets shall not include miniature pigs, horses or other hybrid livestock or farm animals. Notwithstanding the foregoing, no animals may be kept on any Residential property, which, in the good faith judgment of the Community Board's Architectural Review Committee, or a committee selected by the Community Board for this purpose, result in an unreasonable annoyance or are obnoxious to residents in Birkhill. No pet or other animal shall be permitted on any Community Common Area except as allowed and preapproved by the Community Board's Architectural Review Committee or Community Rules. The Owner of any animal shall not permit such animal to run unrestrained on Community Common Area or the streets, sidewalks or pathway areas of Birkhill, and the Owner of such animal shall maintain full and complete control over such animal. Pets shall be registered, licensed and inoculated as required by law. Owners shall be responsible for the immediate clean up and removal of their pets' waste from any area of Birkhill. Further, no more than two (2) dogs, cats or other household pets may be kept in a Condominium Unit or in a Dwelling located on a Townhouse Lot (a single household pet must weigh 35 pounds or less), and

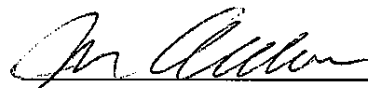
provided the number and weight limitations are in accordance with applicable law. The Community Board shall have the right, after notice and hearing, to remove animals from the property which it finds constitutes a continuing unreasonable nuisance to Owners or Tenants, or which is otherwise not in compliance with the subsection. Further, no animal of any type, other than a seeing-eye dog, may be kept on any Commercial Property.

In all other respects, the Declaration, as amended, remains unchanged.

WITNESS the hand and seal of Birkhill at Fireclay, LLC on the day herein above first written:

WITNESS/ATTEST:

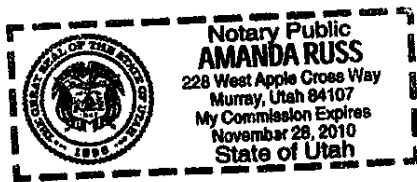
DECLARANT;
BIRKHILL AT FIRECLAY, LLC

 (SEAL)

STATE OF UTAH, COUNTY OF SALT LAKE:

I HEREBY CERTIFY that on this 17th day of February, 2009, before, me, the subscriber, a Notary Public of the State of Utah, personally appeared, John Aldous, known to me or suitably proven, who acknowledged himself to be the President of Hamlet Homes Corporation, Member of Birkhill at Fireclay, LLC, the entity named in the foregoing instrument, 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.


Notary Public

My Commission Expires: NOV 28, 2010

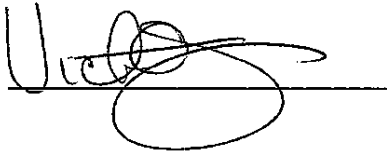
CONSENT AND AGREEMENT OF TRUSTEE AND BENEFICIARY

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 Trustee 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 Trustee and Beneficiary has executed and sealed this Consent and Agreement of Trustee and Beneficiary or caused it to be executed and sealed on its behalf by its duly authorized representatives, this 17 day of February, 2009.

WITNESS/ATTEST:



TRUSTEE:

U.S. TITLE COMPANY OF UTAH



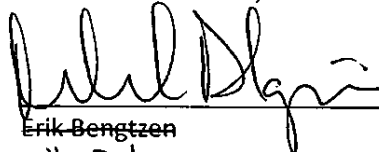
(SEAL)
Larry S. Burton

WITNESS/ATTEST:



BENEFICIARY:

WELLS FARGO BANK, N.A.

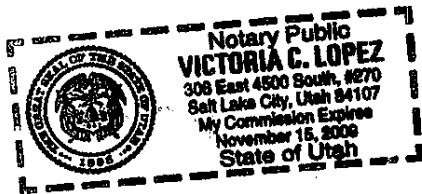


(SEAL)
Erik Bengtzen
Mike Dalgarian

STATE OF UTAH, COUNTY OF SALT LAKE: TO WIT:

I HEREBY CERTIFY, that on this 1th day of February, 2009, before me, the subscriber, a Notary Public of the State of Utah, personally appeared, Larry S. Burton, known to me or suitably proven, who acknowledged himself to be the President of U.S. TITLE OF UTAH, Trustee, and that he, being authorized to do so, executed this Consent and Agreement of Trustee and Beneficiary for the purposes contained therein by signing 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: 11-15-09

STATE OF UTAH, COUNTY OF SALT LAKE: TO WIT:

I HEREBY CERTIFY, that on this 25th day of February, 2009, before me, the subscriber, a Notary Public of the State of Utah, personally appeared, Erik Bengtzen, known to me or suitably proven, who acknowledged himself to be the Vice President of WELLS FARGO BANK, N.A., Beneficiary, and that he, being authorized to do so, executed this Consent and Agreement of Trustee and Beneficiary for the purposes contained therein by signing 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: 3-10-09

EXHIBIT 'B'

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.

Tax ID# 26-3409998

EXHIBIT B

PROPERTY WHICH MAY BE ANNEXED IN THE FUTURE

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

