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2/18/2010 2:06:00 PM \$44.00

Book - 9804 Pg - 7601-7609

Gary W. Ott

Recorder, Salt Lake County, UT

US TITLE PARK CITY

BY: eCASH, DEPUTY - EF 9 P.

WHEN RECORDED RETURN TO:  
BIRKHILL COMMUNITY ASSOCIATION  
ATTN: MICHAEL BRODSKY  
308 EAST 4500 SOUTH, SUITE 200  
MURRAY, UT 84107

BIRKHILL COMMUNITY ASSOCIATION, INC.

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

THIS THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR BIRKHILL COMMUNITY ASSOCIATION, INC. ("Third Amendment") is made and executed this 16 day of February, 2010, by Birkhill at Fireclay, LLC, a Utah limited liability company (the "Declarant"), pursuant to the provisions of Title 57, Chapter 8a, 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

WHEREAS, the Declaration was amended by that certain First Amendment to the Declaration of Covenants, Conditions & Restrictions for Birkhill Community Association, Inc. dated January 20, 2009 and recorded among the Salt Lake County Recorder's Office, Entry 10603096, Book 9676, Pages 4616-4626 and by that certain Second Amendment to the Declaration of Covenants, Conditions & Restrictions for Birkhill Community Association, Inc. dated February 25, 2009 and recorded among the Salt Lake County Recorder's Office, Entry 10645445, Book 9696, Pages 7648-7654; and

WHEREAS, pursuant to Article 17.1.(a) of the Declaration, Declarant reserved the right during the Development Period to modify, amend or change any of the provision of the Declaration as the Declarant may deem necessary or desirable without the consent of the Members, Owners, Community Association or any other party.

WHEREAS, the Development Period has not yet expired and Declarant desires to amend the Declaration as set forth below.

NOW, THEREFORE, the Declarant hereby declares that the Declaration be amended as follows:

1. The Recitals shall form a substantive part of this Third Amendment.
2. Article III, Section 3.2.3. is hereby modified by inserting the amount of Fifty Dollars (\$50.00) for the transfer fee.
3. Article III, Section 3.8.1. (a) is amended by inserting the following language at the end of this Section: "and one (1) vote for each one thousand (1,000) square feet of area

nearest whole number, so that any such commercial Condominium Unit having less than 450 square feet, will have no votes”.

4. A new Article 9.2.7. (i) is hereby added as follows:

The use of Easement A (described below) will be granted to owners of certain Lots, and there will be an assessment referred to herein as “Easement A Assessment”, which will be collected from the “Easement A Owners”, some of which are subject to and included within Birkhill Townhome Owners’ Association, Inc. (“TH Association”) and others who own all or a portion of Building G. The payment due from the owners in the TH Association will be collected by the TH Association and remitted to the Condominium Association as recoupment of a portion of the costs related to Easement A. For the Easement A Owners who own all or any portion of Building G, payment will be made directly to the Condominium Association. The Easement A Owners shall have a non-exclusive and perpetual easement for purposes of pedestrian and vehicular ingress and egress, utilities and parking over, upon and through the area designated as “Easement “A”, on the plat entitled, “BIRKHILL PHASE 1 – 2<sup>ND</sup> AMENDED”, recorded in the Salt Lake County Recorder’s Office. The TH Association shall act as a collection agent for the Association for the purpose of collecting the Easement A Assessment, which is due from each Easement A Owner, except for those Easement A Owners described below.

Except as provided herein, the Easement A Assessment shall be due and payable to the TH Association directly from each Easement A Owner who is responsible for such payment, or in the case of Building G the owners of all or any portion of Building G, on a monthly basis (or other intervals as may be directed by the Condominium Association upon at least 6 months’ prior written notice to the TH Association or the owners of all or any portion of Building G, as applicable, but no more frequently than monthly), and further, provided, that only reasonable and necessary costs may be included in the Easement A Assessment. The Condominium Association may levy reasonable late charges and interest against any Easement A Owner who fails to pay the Easement A Assessment when due, provided that such late charges may not exceed Fifteen Dollars (\$15.00) nor be imposed more than once for each delinquent payment and further, provided, interest may not be greater than eighteen percent (18%) per annum. Within thirty (30) days of payment of the Easement A Assessment to the TH Association by an Easement A Owner, the TH Association shall deliver such Easement A Assessments which have been collected to the Association; provided, that in the event any one (1) or more Easement A Owners fail(s) to pay their share of the Easement A Assessment, then the TH Association shall provide with the monies collected and delivered the information relative to the name and address of

the Easement A Owner who fail to pay their share. The Condominium Association, or the Master Association on behalf of the Condominium Association, may bring an action against any Easement A Owner who fails to pay the Easement A Assessment pursuant to Utah law. The Easement A Assessment due from each Easement A Owner shall be calculated accordingly to the following formula from time to time: the numerator is one (1) and the denominator is the total number of Units and Lots which have certificate of occupancy permits issued by governmental authorities from time to time, and (a) in the case of Residential Units, those which are occupied; or (b) for Commercial Units, the number of Commercial Units equal to the number of votes allocated to the Commercial Units under the provisions of the governing documents of the Condominium Association, excluding those Units used as a sales center or model home by or for Declarant; or (c) in the case of Lots occupied for residential purposes, or for those Lots used as a Live-Work Unit occupied and/or used for residential and/or commercial purposes, excluding however, any Lots used as a sales center or model home by or for Declarant; or (d) for Building G, the number shall be equal to one (1) for each 1,000 square feet of usable space, rounded up or down to the nearest whole number.

For example, if there are:

forty-one (41) Residential Units which are occupied and have certificate of occupancy permits; and

eight (8) Commercial Units that are occupied with certificate of occupancy permits and are allocated a total of eight (8) votes under the governing documents of the Association; and

one (1) Commercial Unit is used as a sales center by or for Declarant; and

four (4) Lots which have certificate of occupancy permits and are occupied for residential purposes; and

10,000 square feet of usable space in Building G; then,

each of the Easement A Owners shall pay  $1/62^{\text{nd}}$  (or 1.61 percent) of the total amount of the Easement A Assessment.

The Condominium Association shall include the expected amount of the Easement A Assessment in each year's budget.

Notwithstanding the foregoing, certain Easement A Owners and Condominium Units or Lots, as applicable, will not be subject to payment of the Easement A Assessments; namely, Declarant and any Condominium Unit or Lot owned or leased by Declarant, from time to

time, shall be exempt from payment of the Easement A Assessment if the Condominium Unit or Lot, as applicable, is used as a sales office or model home by or for Declarant or is not otherwise occupied.

For purposes hereof, the following terms shall have the meanings ascribed to each below:

“Easement A” shall mean and refer to the area depicted as “Easement “A”, on the plat entitled, “BIRKHILL PHASE 1 – 2<sup>ND</sup> AMENDED”, recorded in the Salt Lake County Recorder’s Office.

“Easement A Assessment” shall mean and refer to the costs of maintenance, repair and replacement of the area and improvements located within Easement A, including, without limitation, sprinklers, street lighting, security cameras, parking lots and sidewalks, insurance, lawn care, irrigation water usage, trash collection (including the provision of dumpsters), snow removal and all reserves performed or undertaken by the Condominium Association.

“Easement A Owners” shall mean and refer to those owners of land designated as Lots 101 through and including 122 on the plat entitled, “BIRKHILL PHASE 1 – 2<sup>ND</sup> AMENDED”, recorded in the Salt Lake County Recorder’s Office.

“Building G” shall have the meaning set forth in the Declaration of Condominium for Birkhill (a Utah Expandable Condominium Project) (the “Declaration”) recorded among the Salt Lake County Recorder’s Office, Entry 10523182, Book 9643, Pages 7965 - 8058 on September 18, 2008, as amended from time to time.

In addition, the terms “Commercial Units”, “Lots”, “Live-Work Units” and “Residential Units” as used in this Article 9.2.7. (i) shall have the meanings ascribed to each such term in the Master Declaration.

5. A new Article 2.20.7. is hereby added to the Declaration as follows and all subsequent Sections in Article II are re-numbered in sequential order:

2.20.7. Limited Community Common Area Assessment shall mean a charge against each Member or Owner and his Lot representing the cost incurred by the Community Association for the maintenance, insurance, repair and replacement of any Limited Community Common Area.

6. A new Article 2.41. is hereby added to the Declaration as follows and all subsequent Sections in Article II are re-numbered sequentially order:

2.41. Limited Community Common Area shall mean and refer to any portion of the Community Common Area reserved for the exclusive use of certain Members or Owners, to the exclusion of other Members or Owners. The Limited Community Common Area shall be as designated on any plat for the Community or Neighborhood, as applicable, or may be otherwise designated by the Community Board in writing and maintained among the books and records of the Community Association.

7. A new Article 6.4.6. is hereby added to the Declaration as follows:

6.4.6. Limited Community Common Area Assessment. In addition to the Regular Assessments, the Community Association may levy, in any calendar year, a Limited Community Common Area Assessment, for the cost of maintaining, insuring, repairing and replacing the Limited Community Common Area. Limited Community Common Area Assessments shall be assessed and shall be allocated to Owners who are entitled to the exclusive use of the Limited Community Common Area in the same manner as Regular Assessments.

8. Section 8.3.2. is amended by adding the following provision at the end of such Section: "and Easement A area."

9. Section 18.19 of the Declaration is modified by striking "'CPI' means the New Series Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), Washington-Baltimore CMSA (Nov. 1996=100) published by the Bureau of Labor Statistics of the United States Department of Labor" and replacing the same with "'CPI' means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor from time to time,".


10. Any reference to "Fireclay at Birkhill, LLC" in the Declaration, First Amendment, Second Amendment, By-Laws or Articles, is replaced with "Birkhill at Fireclay, LLC".

11. In all other respects, the Declaration, First Amendment and Second Amendment remain unchanged.

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

WITNESS/ATTEST:

BIRKHILL AT FIRECLAY, LLC  
By: Hamlet Homes Corporation, Member

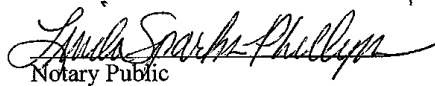
  
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By:  (SEAL)  
John Aldous, President

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

I HEREBY CERTIFY that on this 3rd day of Feb., 2010, 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 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 such entity.

AS WITNESS my hand and seal.

  
Notary Public

My Commission Expires: 6/3/2013



**CONSENT AND AGREEMENT OF TRUSTEE AND BENEFICIARY**

U.S. TITLE OF UTAH, Trustee, and WELLS FARGO BANK, N.A., Beneficiary, under that certain Deed of Trust dated May 23, 2007 and recorded June 8, 2007 in the office of the Recorder of Salt Lake County, Utah in Book 9475, Page 8410; and the Deed of Trust dated May 23, 2007 and recorded June 6, 2007 in the office of the Recorder of Salt Lake County, Utah in Book 9475, Page 9475; Participation and Development Agreement between the Redevelopment Agency of Murray City and Hamlet Development Corporation, recorded December 19, 2007 in Book 9549, Page 8425; Security Agreement by Hamlet Development Corporation recorded in the office of the Recorder of Salt Lake County, Utah in Book 9565, Page 7572; and the Deed of Trust dated January 29, 2008 and recorded February 1, 2008 in the office of the Recorder of Salt Lake County, Utah in Book 9565 Page 7677 as supplemented from time to time (the "Deed of Trust" and "Agreements") hereby join the foregoing Declaration for the express purpose of subordinating all of their respective right, title and interest under such Deed of Trust and Agreements in and to the real property described in the Declaration to the operation and effect thereto.

Nothing in the foregoing provision 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 "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 HEREOF, the said Trustee and Beneficiary have 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 16 day of Feb. 2010.

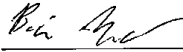
WITNESS/ATTEST;

U.S. TITLE OF UTAH

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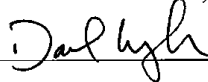
  
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ATTEST:

  
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BENEFICIARY:

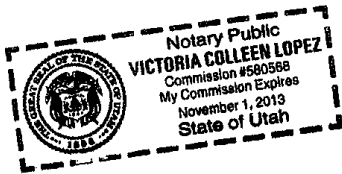
WELLS FARGO BANK, N.A.

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

I HEREBY CERTIFY, that on this 16<sup>th</sup> day of February, 2010, 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 OF UTAH, Trustee, and that he/she, being authorized to do so, executed this Consent and Agreement of Trustee 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 11/1/13

STATE OF Texas : COUNTY OF Dallas : TO WIT:

I HEREBY CERTIFY, that on this 11 day of February, 2010, before me, the subscriber, a Notary Public of the state aforesaid, personally appeared David Lynch, who acknowledged himself to be the Vice President of WELLS FARGO BANK, N.A., Beneficiary, and that he/she, being authorized to do so, executed this Consent and Agreement of Trustee 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 2/2/2011



## DESCRIPTION OF THE PROPERTY

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 66 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 # 21-01-229-004.