

301 thru 341, Birnam Woods 3

06-245 + lots

BIRNAM WOODS HOMEOWNERS ASSOCIATION, INC.

THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("First Amendment), is made this 27 day of October, 2004, by Argyle Acres, L.L.C., a Utah limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Argyle Acres L.L.C. made, executed and caused to be recorded, as Declarant, that certain Declaration of Covenants, Conditions and Restrictions dated August 6, 2003 and recorded among the Davis County Recorder's Office, Entry #1896366, Book 3347, Page 961, pursuant to which the Declarant subjected all that property described in the Declaration (the "Property") and Declarant formed an association known as, "Birnam Woods Homeowners Association, Inc."; and

WHEREAS, Declarant, is the owner of certain property described in Exhibit "A" and Exhibit "B" attached hereto and incorporated herein, and Declarant wishes to add certain property described in Exhibit "C" attached hereto to the Property described in Exhibit "A" and Exhibit "B" subjected to the Declaration.

NOW THEREFORE, the Declarant hereby declares that the Declaration of Covenants, Conditions and Restrictions be amended as follows

1. All that property described in Exhibit "C" attached hereto is added and annexed to the Property subject to the Declaration, and shall be held, sold and conveyed subject to the easements, declarations, covenants and conditions set forth in the Declaration, which are for the purpose of protecting the value and desirability, and enhancing the attractiveness of the Property, and which shall run with the Property and shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of the Property or any part thereof and their respective heirs, personal representatives, successors and assigns, and the Association.

ALSO,

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RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
2004 OCT 29 11:05 AM FEE 64.00 DEP MT
REC'D FOR US TITLE OF UTAH

Declarant, is the owner of certain property described in Exhibit "C" attached hereto and incorporated herein, and Declarant wishes to add the following revision to the Birnam Woods HOA:

Phase III (Lot #308 only) of the Birnam Woods Property (hereinafter referred to as "Property") contains a "Chevron Pipe Line Company Easement" which is subject to a Pipeline Right-of-Way. Lot 308 is crossed by a 16.5 foot wide right-of-way and easement owned by the Chevron Pipe Line Company ("CPL") which has two high pressure pipelines containing petroleum products. The specific location of the pipeline right-of-way is shown on the recorded plat (Birnam Woods Phase III) of the Property. In order to ensure the safety of the residents of the Property (specifically lot 308), the continued safe and uninterrupted operation of the pipelines, and to allow CPL the right to exercise its rights under the right-of-way with minimum interference or problems,

Owner(s) of lot 308 that is adjacent to or crossed by the outer boundary of the pipeline right-of-way shall comply with the following requirements:

- (a) No building, building overhang, foundation, or other structure or physical improvement of any type which, in CPL's opinion, unreasonably impedes or hampers CPL's access to the pipeline may be located or constructed at any time within the pipeline right-of-way;
- (b) The construction of any structure or improvement on any lot or common area burdened by a right-of-way shall be diligently prosecuted by the Owner with due care and in accordance with sound design, engineering and construction practices, and in a manner which will not unreasonably interfere with CPL's rights in the right-of-way;
- (c) No buried utility lines shall be installed across the pipeline right-of-way and no asphalt, concrete, or other hard surface, driveway, or road, or any other major modification of the surface of the pipeline right-of-way shall be constructed without prior notice to and consultation with CPL;
- (d) Landscaping on the pipeline right-of-way shall be limited to grass, sod, and shrubbery having root lengths extending less than twelve (12) inches beneath the surface at all times;
- (e) CPL shall have the right to mark the location of its pipelines at any time for any reason with markers presently or routinely used by CPL in residential area;
- (f) No excavation, digging, grading, or use of heavy machinery may take place on CPL's right-of-way without adequate prior notice to CPL, and at a minimum without prior notice in accordance with provisions of State or local Underground Utility Damage Prevention Laws;
- (g) CPS shall have the right reasonably to access its right-of-way across lots subject to the right-of-way, and Owners shall not restrict CPL's access to the pipeline right-of-way, and any fences crossing the pipeline right-of-way shall contain gates sufficiently wide to allow CPL vehicles and equipment to move along the right-of-way. Fences installed parallel to the pipelines shall not be closer than 8.25 feet to the centerline of the easterly pipeline. Owners shall take proper care when digging post holes near the pipelines by hand excavating within the easement boundaries;
- (h) Owners shall not remove or disturb signs or markers installed by CPL to mark the location of the pipeline right-of-way without the express written consent of CPL; and
- (i) The Owner will at all times give due regard to the need for the continued safe and uninterrupted operation of CPL's pipelines thereon, and will indemnify and hold CPL harmless from all loss, cost, and expense, including attorney fees, arising from the failure by Owner to abide by the terms of this covenant and restriction

As an additional precaution to the foregoing and in furtherance of ensuring the safety of the residents of the Property and the continued safe and uninterrupted operation of the pipeline system, Owner(s) of Lot 308 are recommended to contact CPL and request comments and suggestions prior to the construction or erection of any building, foundation, structure, physical improvement or landscaping, within ten (10) feet of the boundary of the pipeline right-of-way, and to submit plans and specifications showing the property structure or improvement in advance for comment by CPL.

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

WITNESS the hand and seal of Argyle Acres L.L.C. on the day herein above first written.

WITNESS/ATTEST:

ARGYLE ACRES L.L.C.
By: HAMLET HOMES CORPORATION,
Member



A handwritten signature in cursive script, appearing to read "J. Phyllis", written over a horizontal line.

By:  (SEAL)
John Aldous, President

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

EXHIBIT "C"

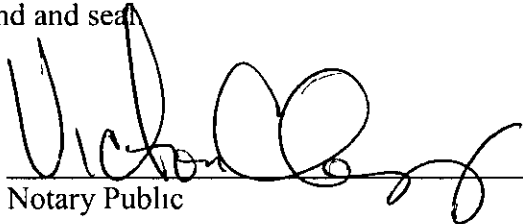
Description of the Property

BEING all those 41 Lots shown and designated as Lot Nos. 301 through and including 341 shown on the Plat entitled, "BIRNAM WOODS SUBDIVISION PHASE III" recorded among the Recorder's Office of Davis County in Plat Book 3627, Entry No. 2018722, Page No. 712 on September 20, 2004.

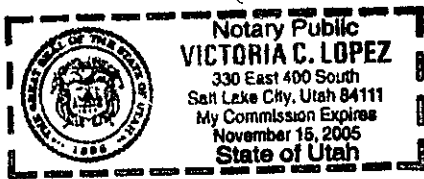
STATE OF UTAH, CITY/COUNTY OF SALT LAKE, TO WIT:

I HEREBY CERTIFY that on this 26 day of October, 2004, 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 Argyle Acres, L.L.C., 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.

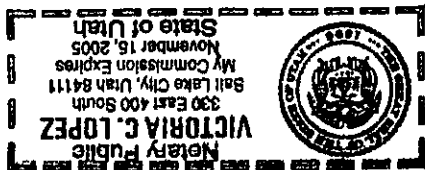
AS WITNESS my hand and seal



Notary Public



My Commission Expires: 11/15/05



CONSENT AND AGREEMENT OF TRUSTEE AND BENEFICIARY

U.S. Title and Guaranty Bank, are, respectively, the Trustee and the Beneficiary under that certain Deed of Trust dated August 6, 2003 Phases I & II being recorded as Entry No. 1896366 in Book 3346 at Pages 961 of the Official Records of Davis County, Utah hereby join in the foregoing Declaration of Covenants, Conditions and Restrictions 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 Exhibit C such to the operation and effect of such Declaration

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, the 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 of its duly authorized representatives, this ____ day of October, 2004.

WITNESS OR ATTEST:

TRUSTEE.
U.S. TITLE COMPANY

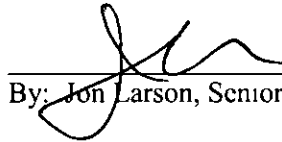


(SEAL)

By: Larry Burton, President

WITNESS OR ATTEST

BENEFICIARY
GUARANTY BANK



(SEAL)

By: Jon Larson, Senior Vice President

STATE OF UTAH
COUNTY OF SALT LAKE

I HEREBY CERTIFY, that on this 27 day of October, 2004, before me, the subscriber, a Notary Public in and for the State of Utah and Salt Lake County aforesaid, personally appeared Larry Burton, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged himself to be the President of U S TITLE COMPANY, a Utah corporation, Trustee, that he has been duly authorized to execute, and has executed, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed

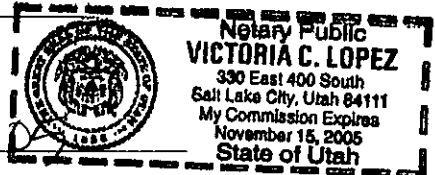
IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

[Handwritten Signature]

Notary Public



My commission expires: 11/15/05



COUNTY OF SALT LAKE

I HEREBY CERTIFY, that on this _____ day of October, 2004, before me, the subscriber, a Notary Public in and for the State of Utah and Salt Lake County aforesaid, personally appeared Jon Larson, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged himself to be the Senior Vice President of GUARANTY BANK, a national banking organization, that he has been duly authorized to execute, and has executed, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

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

Notary Public

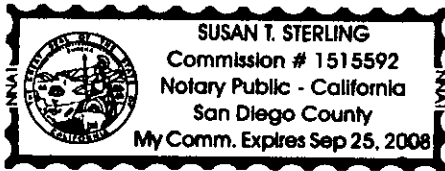
My commission expires. _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

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On October 25, 2004 before me Susan T. Sterling, personally appeared JON M. LARSON, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Susan T. Sterling

Notary Public in and for
the State of California

My Commission Expires:
September 25, 2008