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Gary W. Ott
Recorder, Salt Lake County, UT
US TITLE OF UTAH
BY: eCASH, DEPUTY - EF 11 P.

BIRKHILL COMMUNITY ASSOCIATION, INC.

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

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR BIRKHILL COMMUNITY ASSOCIATION, INC. (the "First Amendment") is made and executed this 20th day of January, 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;

NOW, THEREFORE, THE Declarant hereby declares that the Declaration of Condominium for Birkhill, Article 18.25, be amended as follows:

18.25. Elsinore Contract. The Community Association each Owner and occupant in the Project shall be subject to that certain Agreement between Elsinore Communications, LLC ("Elsinore") and the Association, which refers to that certain MDU Services Agreement ("MDU Agreement") by and between Elsinore Communications, LLC ("Elsinore") a service provider for Internet services. Assessments levied by the Community Association shall include all amounts required under the Elsinore Agreement, which will provide high-speed internet service. The Community Association is obligated to insure that the budget of the Association each year includes the amounts to be paid under the Elsinore Agreement. The sums due under the Elsinore Agreement will be billed by Elsinore and the Community Association is required to pay the amounts due under the bills on a monthly basis, or other periodic installment as determined by Elsinore in its sole and absolute discretion from time to time. The Community Association and each Owner shall also indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses arising under the MDU Agreement due to any act or omission by any Owner and/or the Community Association. The Community Association and each Owner as well as any future Owners recognize the rights Elsinore has under the MDU Agreement and shall not take any action or fail to take any action which may impair Elsinore's rights under the MDU Agreement or otherwise affect Elsinore in connection with the MDU Agreement or the services provided thereunder, and in the event the Community Association

COURTESY RECORDING
THIS DOCUMENT IS BEING RECORDED
SOLELY AS A COURTESY TO THE PARTIES.
U.S. TITLE ASSUMES NO RESPONSIBILITY
FOR THE CONTENTS HEREOF AND MAKES
NO REPRESENTATIONS AS TO THE EFFECT
OR VALIDITY OF THIS DOCUMENT.

and/or any Owner takes any such action or fails to take any action, then the violating party or parties shall be liable to indemnify Elsinore for any and all damages, losses, costs, legal fees or other expense Elsinore may incur in connection therewith. Further, the Community Association and each Owner agree and acknowledge that in the event MDU fails to comply with any term of the MDU Agreement, then in no event may Elsinore be liable to the Community Association or any Owner or occupant of the Project for any claim, loss or any other type of expense. This Article 18.25. may not be amended by any party without the prior written consent of Declarant and Elsinore, which consent may be withheld in the sole and absolute discretion of Declarant and/or Elsinore.

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

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:



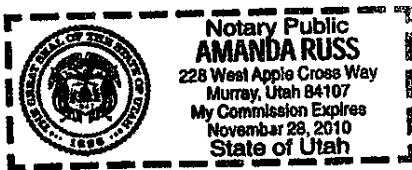
DECLARANT:
BIRKHILL AT FIRECLAY, LLC

 (SEAL)

STATE OF UTAH, COUNTY OF SALT LAKE:

I HEREBY CERTIFY that on this 15th day of January, 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 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.



Amanda Russ
Notary Public

My Commission Expires: Nov. 28, 2010

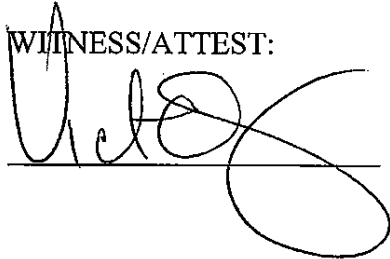
CONSENT AND AGREEMENT OF TRUSTEES AND BENEFICIARY

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.

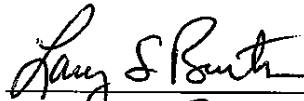
Nothing in the foregoing provisions of this Consent and Agreement of Trustees and Beneficiary shall be deemed in any way to create between the person named in such Declaration as "the Declarant" and any of the undersigned any relationship of partnership or joint venture, or to impose upon any of the 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 20th day of January, 2009.

WITNESS/ATTEST:



U S TITLE COMPANY OF UTAH

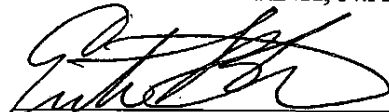

_____(SEAL)
Larry S. Burton

ATTEST:



BENEFICIARY:

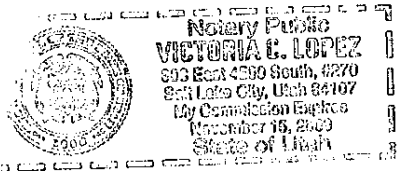
WELLS FARGO BANK, N.A.


_____(SEAL)
~~ERIC BERSON~~
Erik Bengtzen

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

I HEREBY CERTIFY, that on this 20 day of January, 2009, before me, the subscriber, a Notary Public of the state aforesaid, personally appeared Larry S Benton, 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 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.



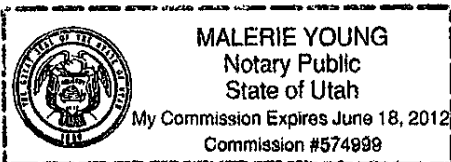
[Signature]
Notary Public

My commission expires on 11/16/09

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

I HEREBY CERTIFY, that on this 20th day of January, 2009, before me, the subscriber, a Notary Public of the state aforesaid, personally appeared Erk Bengtzen, who acknowledged himself to be the VP 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"

Elsinore Communications, LLC
Internet Service Agreement
And Acceptable Use Policy

- attached hereto -

ELSINORE COMMUNICATIONS, LLC
Internet Service Agreement
and Acceptable Use Policy

ACKNOWLEDGEMENT BY CUSTOMER/BUYER:

1. This Internet Service Agreement and Acceptable Use Policy (AUP) provides terms specifically related to Customer's Internet Service. By signing up for Internet Service, Customer agrees to be bound by the terms of this Internet Service Agreement and Acceptable Use Policy, as evidenced by Customer's signature below. All obligations in this Internet Service Agreement that refer to "Customer" also jointly and severally apply to Users. Customer shall make all Users at each Service Location reasonably aware of the restrictions and limitations associated with the Internet Services, and Customer shall be responsible for any breach of any portion of this Internet Service Agreement and Acceptable Use Policy by any User.
2. **Description of Service.** Customer will be provided with access to the Internet via fiber optic cable under that separate contract by and between your Homeowners Association ("Association") and Elsinore Communications, LLC ("Elsinore"). The Internet Service is provided by XMission ("Service Provider") who will make every effort to ensure consistently high upload and download speeds, but makes no warranty regarding the Internet Service.

Each Unit will be provided with:

An Internet connection speed of up to 10 megabits/sec

Each Unit is given 100 gigabytes of total bandwidth (cumulative data transfer, upload and download) usage per month. The monthly bandwidth transfer is monitored and calculated by both UTOPIA and Service Provider. If a Unit uses bandwidth in excess of this amount, then Elsinore may invoice Customer at the then-current per gigabyte overage charges for all usage over 100 gigabytes, and Customer shall promptly pay such charges. Overage charges are \$1.00 per gigabyte. All additional bandwidth shall be sold in units of 1 gigabyte each. Any unused bandwidth shall be automatically forfeited at the end of each month, and no unused bandwidth amounts will roll-over into any subsequent month. No credits will be given for unused bandwidth. Units that consistently exceed the maximum bandwidth transfer rate will be encouraged to upgrade their service to an appropriate level with the Service Provider.

3. Acceptable Use Policies

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

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

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

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

ii. **Newsgroup posting.** The posting of any advertisement or other commercial solicitation to any newsgroup is prohibited. Service Provider reserves the right to determine whether a post constitutes an advertisement or commercial solicitation. The posting of a single article or substantially similar articles to an excessive number of newsgroups or mailing lists, or continued posting of articles that are off-topic is strictly prohibited. A posting will be considered off-topic when it provokes complaints from the regular readers of the newsgroup or is deemed so by Service Provider. A violation of this policy will result in the immediate termination of Customer's account.

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

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

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

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

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

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

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

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

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

e. **Personal Accounts.** All Units covered in this agreement are considered to have a consumer grade Internet access account (as opposed to a business account). Units are not permitted to

use Service Provider's Internet connection to install a web server or other Internet appliance to sell or advertise goods or services. This is only permitted to those who have upgraded their account with the Service Provider to have a business account or a virtual server.

- f. **Resell or Transfer.** The Internet Service is for use only by the owners, residents and guests of the individual Unit and cannot be transferred or sold to a 3rd party or external location outside the registered address of the individual unit.
- g. **Enforcement.** Elsinore reserves the right to take whatever actions it deems appropriate to enforce these policies. Elsinore also reserves the right to change these policies without prior notice at any time. The actions Elsinore takes may include account suspension or termination. Elsinore does not issue any credits for accounts cancelled due to policy violations. Any Internet activity, which references back to Elsinore or the Service Provider or its services in a damaging manner, will result in suspension or termination of account(s). Illegal Internet activity using or referencing to Elsinore or the Service Provider or an account or services provided by Service Provider will result in immediate termination, possible prosecution, and assessment of legal fees accrued. In addition to any other fees and penalties that may be assessed by the Elsinore, as provided herein, Customer shall be held liable for any and all costs incurred by the Elsinore as a result of Customer's violation of any terms and conditions of this Agreement. This includes, but is not limited to, attorneys' fees and costs resulting from Elsinore or Service Provider responses to complaints from and the cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations. Further, Customer shall indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses due to any act or omission by the Customer hereunder.

4. **Responsibility for Security and Filtering**

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

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

requires a static IP address, they are advised to contact the Service Provider and upgrade their account to an appropriate service plan.

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

Agreed and Accepted as of the Date shown below.

"CUTOMER/BUYER(S)"

Name: _____

Lot#: _____

Community: _____

By: _____

Customer/Buyer

Customer/Buyer

Date: _____

**UPON COMPLETION RETURN TO:
Elsinore Communication
308 East 4500 South, Suite 200
Murray, UT 84107**

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.