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 Gary W. Ott
 Recorder, Salt Lake County, UT
 US TITLE PARK CITY
 BY: eCASH, DEPUTY - EF 57 P.

WHEN RECORDED RETURN TO:
 BIRKHILL TOWNHOME OWNERS' ASSOC.
 ATTN: MICHAEL BRODSKY
 308 EAST 4500 SOUTH, SUITE 200
 MURRAY, UT 84107

BIRKHILL TOWNHOME OWNERS' ASSOCIATION, INC.
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS and RESTRICTIONS FOR BIRKHILL TOWNHOME (the "Declaration") is made this 16 day of February, 2010, by BIRKHILL AT FIRECLAY LLC, a Utah limited liability company ("Declarant").

RECITALS

A. The Declarant is the owner of the land (the "Land") located in Salt Lake County, Utah (the "County"), as shown on the plat entitled, "BIRKHILL PHASE 1 - 2ND AMENDED" to be recorded among the Recorder's Office of Salt Lake County, Utah, as the same may be amended from time to time.

B. It is the intention of the Declarant to develop the Land as a residential community, and to insure therefor a uniform plan and scheme of development, and unto that end the Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens (collectively, the "Covenants"), as set forth herein for the following purposes:

(1) To insure uniformity in the development of the Lots (as hereinafter defined) in the Neighborhood (as hereinafter defined).

(2) To facilitate the sale by the Declarant, its successors and assigns, of the Land in the Neighborhood by reason of its ability to assure such purchasers of uniformity.

(3) To make certain that the Covenants shall apply uniformly to all Lots for the mutual advantage of the Declarant, the Record Owners and any Mortgagee (as such capitalized terms are defined herein) and to all those who may in the future claim title through any of the above.

(4) To provide for the benefit of the Record Owners, the preservation of the value and amenities in the Neighborhood, and the maintenance of certain reserved open spaces and common areas, including but not limited to easements, charges and liens, herein below set forth, and for the creation of an association to be delegated and assigned the powers of maintaining and administering the Common Areas (as hereinafter defined), and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; which association shall be incorporated under the laws of the State of Utah, as a nonprofit corporation, for the purpose of exercising the functions as aforesaid.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT the Declarant does hereby establish and impose upon the Property (as hereinafter defined), the Covenants for the benefit of and to be observed and enforced by the Declarant, its successors and assigns, as well as by all purchasers of Lots, to wit:

ARTICLE I
DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 "Association" shall mean and refer to Birkhill Townhome Owners' Association, Inc.

1.2 "Builder" or "Builders" shall mean a person, persons, entity or entities, other than the Declarant, who shall, in the ordinary course of such person's business, construct a Dwelling (as hereinafter defined) on a Lot and sell or lease it to another person to occupy as such person's residence.

1.3 "Common Areas" shall mean and refer to those areas of land, intended to be devoted to the common use and enjoyment of the Record Owners of the Lots and any other real property or other facilities which the Association owns, intends to own and/or in which the Association acquires a right of use for the benefit of the Association and its members, saving and excepting, however, so much of the Land previously conveyed or to be conveyed to the County. Declarant reserves the right, from time to time, to designate Common Areas by the recording of an amendment to this Declaration.

1.4 "Declarant" shall mean and refer to Birkhill at Fireclay LLC, a Utah limited liability company, and its successors and assigns to who acquire or hold title to any part or all of the Property for purposes of development and are expressly named as successor Declarant in an Assignment of Declarant's Rights executed by Declarant or by a successor Declarant, and recorded in the Recorder's Office in Salt Lake County, Utah, assigning any or all of the rights and duties of Declarant to such successor Declarant, with such successor Declarant accepting and assuming the assignment of such rights and duties; and further, provided, that Declarant may continue to serve as a co-declarant with any party assigned the rights and duties of Declarant. A successor Declarant shall also be deemed to include the beneficiary under any Deed of Trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure or deed in lieu of foreclosure.

1.5 "Development Period" shall mean the time commencing on the date of recordation of this Declaration among the Recorder's Office in Salt Lake County, Utah, and ending on the date the last Lot is conveyed by Declarant or a Builder to a Class A member.

1.6 "Dwelling" shall mean the residential dwelling unit together with any garages and other Structures on the same Lot.

1.7 "Lot" and/or "Lots" shall mean and refer to those portions of the Property that are subdivided parcels of land shown and defined as lots or plots of ground and designated by numerals on the Plat intended for residential use, on which a Dwelling is proposed to be constructed.

1.8 "Master Association" shall mean and refer to Birkhill Community Association, Inc.

1.9 "Mortgage" means any mortgage or deed of trust encumbering any Lot or any or all of the Common Areas, and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office of Salt Lake County, Utah.

1.10 "Mortgagee" means the person secured by a Mortgage.

1.11 "Neighborhood" shall mean and refer to all of the land hereby made subject to this Declaration by an instrument in writing, duly executed and recorded in the Recorder's Office in Salt Lake County, Utah, and any Additional Property (as hereinafter defined) that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office in Salt Lake County, Utah.

1.12 "Plat" shall mean and refer collectively to the plats entitled, "BIRKHILL PHASE 1 - 2ND AMENDED" recorded in the Recorder's Office in Salt Lake County, Utah, as Entry No. 10887046, Book 2010P, Page 28, and any plats recorded in substitution therefor or amendment thereof, plus any plats hereafter recorded in the Recorder's Office in Salt Lake County, Utah of any Additional Property that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed, and recorded in the Recorder's Office in Salt Lake County, Utah.

1.13 "Property" shall mean and refer to all of the real property described in Exhibit "A" attached hereto, and any additional land at such time as it is hereafter expressly made subject to this Declaration by an instrument in writing, duly executed and recorded in the Recorder's Office in Salt Lake County, Utah.

1.14 "Record Owner" or "Owner" shall mean, refer to and include the person, firm, corporation, trustee, or legal entity, or the combination thereof, including contract sellers, holding the fee simple record title to a Lot, as said Lot is now or may from time to time hereafter be created or established, either in his, her, or its own name, as joint tenants, tenants in common, tenants by the entireties, or tenants in copartnership, if the Lot is held in such real property tenancy or partnership relationship. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, hold the record title to any one (1) Lot, whether it is in a real property tenancy, or partnership relationship, or otherwise, all of the same, as a unit, shall be deemed a single Record Owner and shall be or become a single member of the Association by virtue of ownership of such Lot. The term "Record Owner," however, shall not mean, refer to or include any contract purchaser, nor the owner of any redeemable ground rent issuing out of any Lot, nor shall it include any Mortgagee, trustee or other grantee named in any Mortgage, deed of trust or other security instrument covering any lot, designed solely for the purpose of securing performance of an obligation or payment of a debt.

1.15 "Site Management Plan" is a document that specifies activities to be carried out at a site that has been remediated under the Utah Voluntary Cleanup Program. This document provides for maintenance of protective cover, reporting and procedures to be followed in the event designated subsurface protection areas are disturbed.

1.16 "Structure" means any thing or device the placement of which upon the Property (or any part thereof) may affect the appearance of the Property (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered patio, clothesline, radio, television or other antenna or "dish", fence, sign, curbing, paving, wall, roadway, walkway, exterior light, landscape, hedge, trees, shrubbery, planting, signboard or any temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement made to the Property or any part thereof. "Structure" shall also mean (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (ii) any change in the grade of the Property (or any part thereof) of more than six (6) inches from that existing at the time of first ownership by a Record Owner hereunder other than the Declarant.

1.17 "Voluntary Cleanup Program" is a program offered by the Utah Department of Health, Division of Environmental Response and Remediation, that provides a method to remediate past contamination of a site and receive a certification that the site has been remediated in accordance with State standards. All remediation activities at the site are under the jurisdiction of the State and a final certification is placed on the property deed upon completion of the program.

1.18 "Zoning Laws" shall mean the zoning regulations and related plans and maps which are applicable to the Property, all as hereafter amended, supplemented or superseded, including, without limitation, Chapter 17.146 of the Murray City Municipal Code relating to Transit Oriented Development (TOD) District.

ARTICLE II COVENANTS, CONDITIONS AND RESTRICTIONS

2.1 ADMINISTRATION; ARCHITECTURAL REVIEW COMMITTEE. The Architectural Review Committee (the "Architectural Review Committee"), whose members shall be appointed by the Declarant during the Development Period and thereafter by the Board of Directors (sometimes referred to herein as "Board") of the Association, shall have all the rights, powers and duties granted to it pursuant to this Declaration. The Architectural Review Committee shall at all times be comprised of at least three (3) persons but may be increased to five (5) members upon a majority vote of the Board of Directors. At any time, or from time to time, during the Development Period, the initial members of the Architectural Review Committee may be replaced for any reason (including death or resignation) with other individuals selected by the Declarant in its sole discretion. The initial members of the Architectural Review Committee are John Aldous, Dean Regazzi and David Irwin. All questions shall be decided by a majority of the members of the Architectural Review Committee, and such

majority shall be necessary and sufficient to act in each instance and on all matters. The members of the Architectural Review Committee, now or hereafter appointed, shall be entitled to reimbursement for reasonable expenses incurred by them in the performance of any Architectural Review Committee function, but shall otherwise receive no compensation for services rendered unless agreed to by seventy-five percent (75%) of the Owners entitled to vote. The Declarant hereby grants to the Architectural Review Committee, its successors and assigns, the right to establish architectural design criteria for the Neighborhood (the "Design Guidelines") and rules and regulations pertaining to the use of the Lots, which shall be made available to all members. The Design Guidelines for the Neighborhood, as established by the Architectural Review Committee, its successors and assigns, and any rules and regulations pertaining to the use of the Lots, shall be made subject to the Master Declaration (as such term is defined herein).

2.2 ARCHITECTURAL REVIEW.

(a) No Structure (other than construction or development by, for or under contract with Declarant and any Builder if the Builder has obtained prior written approval of Declarant) shall be constructed on any Lot nor shall any addition (including awnings and screens), change, or alteration therein or thereto (including any retreatment by painting or otherwise of any exterior part thereof unless the original color and material are used) (collectively, "Alterations") be made to the exterior of any Structure and/or contour of any Lot, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any Structure until the plans and specifications, showing the nature, kind, shape, dimensions, material, floor plans, color scheme, location, proposed topographical changes, the proposed construction schedule, and a designation of the party or parties to perform the work, have been submitted to and approved in writing by the Architectural Review Committee for the Neighborhood, its successors and assigns, which approval shall require the written approval of the Architectural Committee of the Master Association (the "Master AC") and until all necessary permits and any other governmental or quasi-governmental approvals have been obtained. All requests shall be submitted using the design review application provided by the Master AC. The approval of the Architectural Review Committee of any Structure or Alterations shall in no way be deemed to relieve the Record Owner of any Lot from its obligation to obtain any and all permits and approvals necessary for such Structure or Alterations.

(b) The Architectural Review Committee shall consider applications for approval of plans and specifications upon the basis of conformity with this Declaration, applicable law and the Design Guidelines, if any, and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors: the quality of workmanship; nature and durability of materials; harmony of external design with existing structures; choice of colors; changes in topography, grade elevations and/or drainage; the ability of the party or parties designated by the Record Owner to complete the Structure or Alterations proposed in accordance with this Declaration, including, without limiting the foregoing, factors of public health and safety; the effect of the proposed Structure or Alterations on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties; and the suitability of the proposed Structure or Alterations with the general aesthetic appearance of the surrounding area.

(c) The Architectural Review Committee shall have the right to refuse to approve any such plans or specifications, including grading and location plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations; subject however, to the final determination of the Master AC. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the Architectural Review Committee from time to time shall be submitted to the Architectural Review Committee by registered or certified mail or in person. The Architectural Review Committee shall approve or disapprove any plans within ninety (90) days of receipt thereof. The Architectural Review Committee shall then notify the Master AC of its determination and shall provide the Master AC with the design review application and any plans or specification submitted therewith by the Record Owner for a final ruling. The Architectural Review Committee must provide the Record Owner with notice of the date of submission of the application to the Master AC. The Master AC shall approve or disapprove any request within ninety (90) days of receipt thereof in accordance with the Master Declaration. All approvals must be in writing. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Review Committee and the Master AC to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. The Architectural Review Committee shall have the right to charge a reasonable processing fee for such requests, which shall be retained by the Association and not the Architectural Review Committee.

(d) Construction of Alterations in accordance with plans and specifications approved by the Architectural Review Committee pursuant to the provisions of this Article II shall be commenced within three (3) months following the date of approval and completed within twelve (12) months of commencement of the Alterations, or within such other period as the Architectural Review Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Review Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. After construction, all Structures and Alterations shall be maintained continuously in strict conformity with the plans and specifications so approved and all applicable laws.

(e) If any Structure is altered, erected, placed or maintained on any Lot other than in accordance with approved plans and specifications therefor and applicable law, such action shall be deemed to be a violation of the provisions of this Declaration and, promptly after the Association gives written notice thereof to its Record Owner, such Structure shall be removed or restored to its condition prior to such action, and such use shall cease, so as to terminate such violation. If within thirty (30) days after having been given such notice, such Record Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Lot and take such steps as are reasonably necessary to terminate such violation. Such Record Owner shall be personally liable to the Association for the cost thereof, to the same extent as he is liable for an assessment levied against such Lot, and, upon the failure of the Record Owner to pay such cost within ten (10) days after such Record Owner's receipt of written demand therefor from the Association, the Association may establish

a lien therefor upon such Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

(f) Any member of the Architectural Review Committee, upon the occurrence of a violation of the provisions of this Declaration, and after the Association or the Architectural Review Committee gives written notice thereof to the Record Owner of the applicable Lot, at any reasonable time, may enter upon and inspect any Lot and the exterior of any Structure thereon to ascertain whether the maintenance, construction or alteration of such Structure or Alteration are in accordance with the provisions hereof.

(g) Upon completion of construction of any Structure or Alteration in accordance with the provisions hereof, the Architectural Review Committee, upon request of the applicant shall issue a Certificate of Compliance ("Certificate") identifying such Structure and the Lot on which such Structure is placed, and stating that the Structure has been completed pursuant to the terms hereof. The Certificate shall be retained in the records of the Association. Any Certificate issued pursuant hereto shall be prima facie evidence of the facts therein stated, and as to any title insurer, such Certificate shall be conclusive evidence that all Structures on the Lot noted in the Certificate complies with the provisions hereof.

Consent from the Architectural Review Committee in no way implies that any zoning regulations and the like shall be deemed satisfied. Compliance with any zoning regulations, laws, etc. shall be the sole responsibility of the Owner.

2.3 LAND USE. The Lots, except as hereinafter provided, shall be used for private and residential purposes only and in no event shall any Dwelling be used at any time for any commercial purpose; subject, however, to the Master Declaration and subject to Section 2.3.1 of this Article II.

2.3.1 LIVE-WORK UNITS. It is anticipated that certain portions of the Property will have "Live-Work Units". The Live-Work Units are shown on the Plats, as may be amended from time to time. The Live-Work Units shall not be subject to any use restrictions of this Declaration which would in any manner impede or otherwise be inconsistent with the nature and operation of the Live-Work Units due to their residential and commercial purposes. The provisions of this Section 2.3.1 may not be amended without the written consent of Declarant during the Development Period, and thereafter, by all Owners of the affected Live-Work Units. Further, the Owner of any Live-Work Unit must be in full compliance with any applicable Murray City regulations, Zoning Laws and any other governmental regulations or laws, including obtaining the necessary permits for commercial or retail use.

2.4 SWIMMING POOLS. No swimming pool, hot tub, or similar device shall be constructed or installed on any Lot.

2.5 TEMPORARY STRUCTURES. No Structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently, unless approved in advance by the Architectural Review Committee.

2.6 REAL ESTATE SALES OR CONSTRUCTION OFFICE. Notwithstanding anything contained herein to the contrary, a real estate sales or construction office or a trailer and related signs, may be erected, maintained and operated on any Lot, or in any Structure now or hereafter located thereon, provided such office or trailer, and signs, are used and operated only in connection with the development and/or initial sale of any Lot or Lots, and/or the initial construction of improvements on any Lot now or hereafter laid out or created in the Neighborhood. Nothing herein, however, shall be construed to permit any real estate sales or construction office, trailer, or sign after such initial development, sales, and/or construction is completed. Except as expressly permitted herein above, neither any part of any Lot, nor any improvement now or hereafter erected on any Lot, shall be used for any real estate sales or construction office or trailer, nor shall any sign used in conjunction with such uses be erected.

2.7 CLOTHES LINE. No exterior clothes dryer, outdoor clothes pole or similar equipment shall be erected, installed or maintained on any Lot, nor shall articles of clothing, bedding, or similar items be hung outside.

2.8 TRAFFIC VIEW. No Structure, landscaping, shrubbery or any other obstruction shall be placed on any Lot so as to block the clear view of traffic on any streets, nor shall any planting be done on any corner Lots closer than twenty (20) feet from either street line that will exceed three (3) feet in height (except shade trees which shall be trimmed so that a clear view may be maintained to the height of eight (8) feet).

2.9 PARTY WALLS.

(a) Each wall that is built as a part of the original construction of the Dwellings and placed upon the dividing line between such Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner(s) to call for a larger contribution from the other(s) under any rule of law regarding liability for negligence or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, any Owner who by its negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to each Owner's successors in title.

(f) In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall choose one (1) arbitrator, and such arbitrators shall jointly choose one (1) additional arbitrator, and the decision shall be by the majority of the three (3) arbitrators.

(g) The rules applicable to party walls shall also apply to any party fences.

2.10 DRIVEWAYS. Driveways are permitted on Lots having garages constructed by the Declarant or Builder.

2.11 NEAT APPEARANCE. Except for those items to be maintained by the Association under this Declaration, Owners of Lots shall, at all times, maintain their Lots and all appurtenances thereto in good repair and in a state of neat appearance, including but not limited to, the seeding, watering and mowing of all lawns and yards, keeping all sidewalks, if any, neat, clean and in good repair, and free of ice and snow, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all Structures on the Lot, all in a manner and with such frequency as is consistent with good property management and maintenance. If, in the opinion of the Architectural Review Committee, any Record Owner fails to perform the duties imposed hereunder, the Association, on affirmative action of a majority of the Board of Directors, after fifteen (15) days written notice to such Record Owner to remedy the condition in question, and upon failure of the Record Owner to remedy the condition, shall have the right (but not the obligation), through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot and the improvements or Structures thereon, and the cost thereof shall be a binding, personal obligation of such Record Owner, as an additional assessment on the Lot.

2.12 NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the neighborhood or any adjoining property owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such properly maintained and operated devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Dwelling or upon the exterior of any other Structure constructed upon any Lot. No snowmobiles, go-carts, motorbikes, trail bikes, other loud-engine recreational vehicles or skateboard ramps shall be run or operated upon any Lot or upon any roadways serving the Property, which create an annoyance or nuisance to the Neighborhood.

2.13 LEASE AGREEMENTS. All lease agreements with respect to any Lot or any Structure located thereon shall be in writing and submitted to the Board of Directors of the Association for approval. The minimum term of all lease agreements shall be one (1) year, and shall state that the lease agreement shall be subject to this Declaration, the Association's By-Laws and the Articles of Incorporation of the Association. Additionally, if any lessee becomes a nuisance to the Neighborhood, the lease agreement must specifically assign to the Association, the Owner/Landlord's right to institute legal proceedings to evict the lessee, provided that prior to such proceedings, the Association, by and through its Board of Directors, has afforded the

Owner of the affected Dwelling at least ten (10) days' prior written notice to cure such nuisance. Current copies of any lease must be supplied to the Association. Record Owners who do not reside on their Lot must provide current addresses and phone numbers to the Association. In addition, in no event may more than twenty-five percent (25%) of all Lots, excluding any Lots owned or leased by Declarant, be leased unless the Board of Directors consents in writing.

2.14 SIGNAGE. No sign or billboard of any kind shall be displayed to the public view on any Lot or Common Areas with the following exceptions:

- (a) signs as may be required by legal proceedings, or the prohibition of which is precluded by law;
- (b) signs as may be used by Declarant or Builder or its sales agents in connection with the development of the Property and the sale and marketing of the Lots;
- (c) signs on any Common Areas, which the Declarant deems necessary for the construction of any improvements and identification signs regarding financing and construction;
- (d) signs on any Common Areas as may be required for traffic control and regulation of open areas within the Association;
- (e) identification and directional signs placed by an Owner or the Board of Directors or the Architectural Review Committee within the Neighborhood, subject to approval of the Master AC; and
- (f) signage used in connection with a Live-Work Unit provided such signage is approved by the Architectural Review Committee and meets all applicable laws, including Murray City signage regulations.

All signage must comply with all applicable laws and regulations. Notwithstanding the foregoing, Declarant may place signs on any Common Areas during the Development Period. In addition, Declarant may permit Builders during the Development Period to place such signs on any Common Areas, as provided for herein, for the same purpose as Declarant deems appropriate, provided such signs have been approved by Declarant. Notwithstanding the foregoing, in accordance with the provisions of law, an Owner may display on his Lot not more than one "for sale" or "for lease" sign per Lot so long as such sign shall comply with any reasonable standards promulgated by the Board of Directors or the Architectural Review Committee as to the size, color, shape or other qualifications for permitted signs; provided, however, no Owner of a Lot (other than Declarant or Builder) may display any "for sale" or "for lease" signage on his or her Lot until such time as all Residential Units (as defined in the Master Declaration) have been constructed and occupied and Declarant or Builder is no longer involved with the sales of Residential Units on the Property.

2.15 TRASH AND OTHER MATERIALS. No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot. No burning of trash shall be permitted on any Lot. All Owners shall place trash or other refuse into refuse containers provided by the Association at locates designated for trash deposits. Owners may not place any

trash outside of such refuse containers or in any other location or container, except as designated by the Association. The cost of refuse containers shall be included as an expense item in Annual Assessments.

2.16 NON-INTERFERENCE WITH UTILITIES. No Structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels. No poles and wires for the transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot.

2.17 TREE REMOVAL. No Record Owner shall have the right to remove any of the healthy growing trees over one (1) inch in diameter located on any of the Lots within the Property except upon Architectural Review Committee approval.

2.18 DISTRIBUTION OF WRITTEN MATERIALS. Prior to the time the Owners (excluding the Declarant and any Builder), have a majority of votes in the Association (as determined under the provisions of this Declaration), no Owner may distribute any written information or materials regarding the operation of or matters relating to the operation of the Association in any manner or place which the Board of Directors uses to distribute written information or materials. From and after the date that the Owners (excluding the Declarant and any Builder) have a majority of the votes pursuant to this Declaration, the Board of Directors may regulate the time of distribution.

2.19 MASTER DECLARATION LAND USES, RESTRICTIONS, AND PROHIBITIONS. The Master Declaration may contain additional land uses, restrictions and prohibitions. To the extent applicable, the provisions of the Master Declaration shall be and are hereby incorporated by reference. In the event of a conflict between any land uses, restrictions or prohibitions set forth in this Declaration and the Master Declaration, then the land uses, restrictions or prohibitions of the Master Declaration shall control.

2.20 CONSERVATION EASEMENTS. There are certain portions of the Property affected by the provisions of that certain Conservation Easement and Maintenance Agreement ("Conservation Agreement") by and between Hamlet Development Corporation ("Hamlet") and Murray City, which, among other things, prohibits certain uses and practices on such Property and also addresses easements relating thereto, which Conservation Agreement is recorded or intended to be recorded among the Recorder's Office of Salt Lake County, Utah. Each Owner or occupant of the Property agrees to comply with the Conservation Agreement and shall indemnify Hamlet, Declarant and their respective successors and assigns for all costs, damages and the like in the event of non-compliance with the Conservation Agreement.

2.21 TOD RESTRICTIONS. Any restrictions contained in this Declaration shall be subject to the applicable provisions of Chapter 17.146 of the Murray City Municipal Code relating to Transit Oriented Development (TOD) District and in the event of a conflict, the applicable provisions of TOD shall control.

ARTICLE III

PROPERTY SUBJECT TO THIS DECLARATION:
ANNEXATION AND DEANNEXATION

3.1 PROPERTY. The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in the Neighborhood, and is described on Exhibit "A" attached hereto, all of which real property is referred to herein as the "Property".

3.2 ADDITIONS TO PROPERTY.

(a) The Declarant, its successors and assigns, shall have the right for twenty (20) years from the date hereof to bring within the scheme of this Declaration additional property within the Neighborhood (the "Additional Property"), without the consent of the Class A members of the Association or any other party.

(b) The additions authorized under this subsection shall be made by filing a supplemental declaration of record with respect to the Additional Property which shall extend the scheme of the Declaration to such Additional Property, and which Additional Property shall thereupon become part of the Property. Upon the filing of any supplemental declaration, Record Owners of Additional Property shall be subject to the same obligations and entitled to the same privileges as apply to the Record Owners of the Property. Such supplemental declaration may contain such complementary additions and modifications to the Declaration as may be necessary to reflect the different character, if any, of the Additional Property not inconsistent with the scheme of this Declaration.

3.3 DEANNEXATION.

(a) Provided there are Class B members, the Declarant may deannex any property (excluding, however, any Common Areas conveyed to the Association by the Declarant) from the Property for a period of five (5) years from the date of recordation of this Declaration. Such deannexed property shall no longer be subject to the covenants and restrictions of this Declaration except for any easements, rights, reservations, exemptions, power or privileges reserved to the Declarant pursuant to this Declaration which burden the deannexed property for the benefit of any property which is subject to the Declaration. Such deannexation shall be made by recording a supplementary declaration among the Recorder's Office of Salt Lake County, Utah, withdrawing the effect of the covenants and restrictions of this Declaration from the deannexed property. Such deannexed property may be utilized by the Declarant, or any successor, assign or transferee thereof, for any lawful purpose or use.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

4.1 MEMBERSHIP. Every Record Owner of a Lot that is subject to assessment shall

become and be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

4.2 CLASSES OF MEMBERSHIP.

(a) The Association shall have two (2) classes of voting membership:

(i) Class A member. Except for the Declarant and any Builder, who shall initially be Class B members, the Class A members shall be all Owners holding title to one (1) or more Lots; provided, however, that any Mortgagee or any other person or entity who holds such interest solely as security for performance of an obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to one (1) vote per Lot, for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

(ii) Class B members. The Class B members shall be the Declarant and any Builder. The Class B members shall be entitled to ten (10) votes per Lot for each Lot owned in all proceedings in which actions shall be taken by members of the Association.

If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, holds the record title to any Lot, all of the same, as a unit, and not otherwise, shall be deemed a single member of the Association. The vote of any member comprised of two (2) or more persons, firms, corporation, trustees, or other legal entities, or any other combination thereof, shall be cast in the manner provided for in the Articles of Incorporation and/or By-Laws of the Association, or as the several constituents may determine, but in no event shall all such constituents cast more than one (1) vote per Lot for each Lot owned by them.

4.3 CONVERSION. The Class B membership in the Association shall cease and be converted to Class A membership in the Association, upon the earlier to occur of (i) December 31, 2040; or (ii) at such time as the total number of votes entitled to be cast by Class A members of the Association equals or exceeds the total number of votes entitled to be cast by the Class B members of the Association. If after such conversion Additional Property is made subject to the Declaration, then the Class B members shall be reinstated until December 31, 2042, or such earlier time as the total number of votes entitled to be cast by Class A members again equals or exceeds the total number of votes entitled to be cast by the Class B members. The Declarant and any Builder shall thereafter remain Class A members of the Association as to each and every Lot from time to time subject to the terms and provisions of this Declaration in which the Declarant and any Builder then holds the interest otherwise required for Class A membership.

ARTICLE V

DECLARANT'S RESERVED RIGHTS AND OBLIGATIONS

5.1 UTILITY EASEMENTS. Easements with respect to sanitary sewer and water, cable television, electricity, gas and telephone lines and any other like facilities shall be governed

by the following:

(a) The Owner of any Lot, or the Association, shall have the right, to the extent necessary, to enter upon or have a utility company enter upon any portion of the Property in which utility installations lie, in order to repair, replace and generally maintain said installations.

(b) The right granted in Article 5.1(a) above shall be only to the extent necessary to entitle the Owner or the Association full and reasonable use and enjoyment of the utilities and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area to its prior condition.

(c) A non-exclusive, perpetual, blanket easement over the Property for the installation and maintenance of electric, telephone, cable television, internet, water, gas, drainage, utility, sanitary sewer lines and facilities, pressure sewers and grinder pumps, and the like, is hereby reserved by Declarant and its successors and assigns, together with the right to grant and transfer the same during such time that Declarant or its successors and assigns is the Owner of the Property.

5.2 DEVELOPMENT EASEMENTS.

(a) Easements Reserved to the Declarant.

(i) Easement to Facilitate Development. The Declarant hereby reserves unto itself and its designees a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of improvements on the Property, including without limitation: (i) temporary slope and construction easements; (ii) drainage, erosion control and storm and sanitary sewer easements including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter the Declarant shall restore the affected area as near as practicable to its original condition; (iii) easements for the construction, installation and upkeep of improvements (e.g., buildings, landscaping, street lights, signage, etc.) on the Property or reasonably necessary to serve the Property, and (iv) easements for installation, construction, operation and perpetual maintenance of all telecommunication distribution systems located on the Property or reasonably necessary to serve the Property, including, without limitation, easements in favor of Elsinore Communications LLC or to its assignee pertaining to the telecommunication system on the Property.

(ii) Easement to Facilitate Sales. The Declarant hereby reserve unto itself and its designees the right to: (i) use any Lots owned or leased by the Declarant, and any other Lot with the written consent of the Owner thereof, as models, management offices, customer service offices or sales office parking areas; (ii) place and maintain in any location on the Common Areas and the storm water management area, and on any Lot, street and directional signs, temporary promotional signs, temporary construction and sales offices, plantings, street lights, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features; provided however, that all signs shall comply

with applicable governmental regulations and the Declarant shall obtain the consent of the Owner of any affected Lot or of the Architectural Review Committee if the Owner does not consent; and (iii) relocate or remove all or any of the above from time to time at the Declarant's sole discretion.

(iii) Landscaping Easement. The Declarant hereby reserves unto itself and its successors and assigns, an easement and the right to grant and reserve easements over and through the Property for the purpose of construction, installation, irrigation and maintenance of landscaping features, including without limitation, plants, trees and earth berms and other earth contouring and signs which shall include access as necessary to perform such tasks. The Owner of a Lot burdened by such an easement shall not construct any improvements within the easement without the permission of the Declarant during the Development Period, or the Association, thereafter. Maintenance of these easement areas by the Association shall be a common expense of the Association and shall not be assessed against the Lot burdened by the easement; provided, however, the Declarant or Association, as appropriate, may require the Owner of the Lot to maintain any easement area located on such Owner's Lot.

(iv) Relocation Easements. The Declarant hereby reserves unto itself the right to relocate, change or modify, from time to time, any and all streets, roadways and utility easements which may be located within the Common Areas and to create new streets, roadways and utility easements therein.

(v) Completion Easements and Rights of Declarant and Builder. In addition to the rights of Declarant provided in this Declaration, Declarant further reserves unto itself, for itself and to the Builder and their respective successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property, including any Common Areas which may have previously been conveyed to the Association, for all purposes necessary or appropriate to the full and final completion of construction of the Neighborhood. Specifically, none of the provisions of Article II concerning architectural control or use restrictions shall in any way apply to any aspect of the Declarant's or Builder's development or construction activities and notwithstanding any provisions of this Declaration, none of the Declarant's or Builder's construction activities or any other activities associated with the development, marketing, construction, sales management or administration of the Neighborhood shall be deemed noxious, offensive or a nuisance. The Declarant reserves the right for itself, to each Builder and their respective successors and assigns, to store materials, construction debris and trash during the construction period on the Property without keeping same in containers.

(vi) Grading Easements. Declarant expressly reserves unto itself the right at or after the time of grading of any street or to such other Lot or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of a Dwelling built or to be built on such Lot, but said Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(vii) Common Areas Easements.

a. Utilities. The Declarant hereby expressly reserves unto itself and hereby grants to any utility company, to whom the Declarant may grant, convey, transfer, set over and assign the same, or any part thereof, the right to discharge surface water on and to lay, install, construct, and maintain, on, over, under or in those strips across land designated on the Plat, as "Drainage and Utility Easement", "Sewer Easement", "Drainage and Sewer Easement", "Open Space", "H.O.A. Area" "Common Area", and "Area Reserved for Future Road", or otherwise designated as an easement area, or on, over, under, or in any portion of any Common Areas, pipes, drains, mains, conduits, lines, and other facilities for water, storm sewer, sanitary sewer, gas, internet, electric, telephone, and other public utilities or quasi-public utilities deemed necessary or advisable to provide adequate service to any Lot now or hereafter laid out or established on the Property, or the area in which the same is located, together with the right and privilege of entering upon the Common Areas for such purposes and making openings and excavations therein, provided that same be corrected and the ground be restored and left in good condition.

b. Sediment Control Ponds/Facilities. The Declarant hereby expressly reserves unto itself the right to continue to use and maintain any sediment control ponds or facilities located on any Common Areas.

(xiii) Maintenance Easements. Each Owner hereby grants an easement to the Association and its agents in order for the Association to perform any and all repair and maintenance of Lots which the Association is either required to perform hereunder or elects to perform pursuant to the provisions of this Declaration.

(b) Further Assurances. Any and all conveyances made by the Declarant to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of the Declarant, the Association and each Owner shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

(c) Duration and Assignment of Development Rights. The Declarant may assign its rights under this Section to, or share such rights with, one or more other persons, exclusively, simultaneously or consecutively. The rights and easements reserved by or granted to the Declarant pursuant to this shall continue for so long as the Declarant or its designees are engaged in development or sales, or activities related thereto, anywhere on the Property, unless specifically stated otherwise.

(d) Association Power to Make Dedications and Grant Easements. The Declarant, on behalf of itself and its successors and assigns, hereby also grants to the Association the rights, powers and easements reserved to the Declarant by Article V hereof. These rights, powers and easements may be exercised by the Association, subject to any other provisions herein; provided, however, that the limitations on duration applicable to the Declarant shall not apply to the Association. If the Declarant or any Owner requests the Association to exercise its powers under this Section, the Association's cooperation shall not be unreasonably withheld,

conditioned or delayed.

5.3 EASEMENT FOR UPKEEP. The Declarant hereby reserves unto itself and hereby grants to the Association, the managing agent and any other persons authorized by the Board of Directors, in the exercise and discharge of their respective powers and responsibilities, the right of access over and through any portion of the Property for purposes of upkeep of the Property, including, without limitation, the right to make inspections, correct any condition originating in a Lot or in the Common Areas threatening another Lot or the Common Areas, correct drainage, perform installations or upkeep of utilities, landscaping, retaining walls or other improvements located on the Property for which the Association is responsible for upkeep, or correct any condition which violates this Declaration. The agents, contractors, officers and directors of the Association may also enter any portion of the Property (excluding any improvement) in order to utilize or provide for the upkeep of the areas subject to easements granted in this Article to the Association. Each Owner shall be liable to the Association for the cost of all upkeep performed by the Association and rendered necessary by any act, neglect, carelessness or failure to comply with this Declaration for which such Owner is responsible pursuant to this Declaration, and the costs incurred by the Association shall be assessed against such Owner's Lot in accordance with Article VIII hereof.

5.4 EASEMENT FOR SUPPORT. To the extent that any portion of the Property now or hereafter supports or contributes to the support of any other portion of the Property, the former is hereby burdened with an easement for the lateral and subjacent support of the latter.

5.5 EASEMENT AND EMERGENCY ACCESS. The Declarant, on behalf of itself and its successors and assigns, hereby reserves unto itself and grants an easement to: (1) all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies; and (2) the Association, over and through all Lots, if emergency measures are required in any Lot to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such measures.

5.6 EASEMENT FOR USE OF COMMON AREAS. The Declarant hereby reserves unto itself, for so long as the Declarant is engaged in development or sales, or activities related thereto anywhere on the Property or the Declarant is an Owner and to each Owner and each person lawfully occupying a Lot, a non-exclusive right and easement of use and enjoyment in common with others of the Common Areas, provided, however, that the Declarant shall have the same right and easement of use as the other Owners. Such right and easement of use and enjoyment shall be appurtenant to each Lot, whether or not mentioned in the deed thereto. Any purported conveyance or other transfer of such rights and easements apart from the Lot to which such rights and easements are appurtenant shall be void.

5.7 VEHICLE AND PEDESTRIAN ACCESS. The Declarant hereby reserves unto itself, for so long as Declarant is engaged in development or sales, or activities related thereto anywhere on the Property, and hereby grants to each other Owner and each person lawfully occupying a Lot, a non-exclusive easement over all streets, walks and paths on the Common Areas for the purpose of vehicular or pedestrian access, ingress and egress, as appropriate, to any

portion of the Property to which such person has the right to go, subject to any Rules and Regulations promulgated by the Association pursuant to this Declaration. Any purported conveyance or other transfer of such rights and easements apart from the Lot to which such right and easement are appurtenant shall be void. Notwithstanding anything to the contrary in this Declaration, no Owner's right of pedestrian and vehicular access to and from his or her Lot shall be impaired or denied.

5.8 LIMITATIONS. The rights and easements of enjoyment created hereby shall be subject (in addition to any easements granted or reserved in this Declaration or pursuant to the Articles of Incorporation and By-Laws of the Association) to all rights and powers of the Declarant and the Association when exercised in accordance with the other applicable provisions of such documents, including without limitation the Association's right to regulate the use of the Common Areas, to grant easements across the Common Areas, to dedicate portions of the Common Areas and to mortgage the Common Areas subject to the provisions of this Declaration.

5.9 SALES OFFICE, ETC. Nothing contained in this Declaration shall be construed to in any way limit the right of Declarant and any Builder, to use any Lot owned by Declarant for the purpose of a construction office, sales office, and/or for model and display purposes and for the carrying out of the above activities, and/or storage compound and parking lot for sales, marketing, and construction.

5.10 LOT LINES. The Declarant, for itself, its successors and assigns, reserves the right to alter, amend, and change any Lot lines or subdivision plat prior to transfer of any Lot pursuant to a recorded subdivision plat. In addition, Declarant reserves the right to alter Lot lines between Lots owned by it at any time.

5.11 PLAT CHANGES. No right shall be conferred upon any Owner or Member by the recording of any plat relating to the development of the Property described herein to require the development of said Property in accordance with such plat. Declarant expressly reserves unto itself, the right to make such amendments to any such plat or plats as shall be advisable in their best judgment and as shall be acceptable to public authorities having the right to approval thereof.

ARTICLE VI

COMMON AREAS

6.1 GRANT OF COMMON AREAS. The Association shall take title to those Common Areas intended to be owned by the Association which are part of the Property free and clear of all encumbrances, except this Declaration. Notwithstanding the foregoing, as of the date hereof, there are no Common Areas intended to be owned by the Association, however, this is subject to change from time to time by Declarant and should there be any Common Areas to be owned by the Association, a supplement to this Declaration may be recorded with the sole consent of Declarant and no other party. The Covenants are hereby imposed upon the Common Areas for the benefit of the Declarant, the Association and the Record Owners, and their

respective personal representatives, successors and assigns, to the end and intent that the Association shall have and hold the said Common Areas subject to the reservations set forth in Article V hereof, and to the Covenants herein set forth.

6.2 MEMBER'S RIGHT OF ENJOYMENT. Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment, in common with others, in and to the Common Areas and such non-exclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth. If ingress or egress to any Dwelling is through the Common Areas, any conveyance or encumbrance of such area is subject to such Owner's easement. Except as otherwise permitted by the provisions of this Declaration, the Common Areas shall be retained in its natural state, and no Structure or improvement of any kind shall be erected, placed or maintained thereon. Structures or improvements designed exclusively for Neighborhood use, shelters, benches, chairs or other seating facilities, fences and walls, walkways, playground equipment, game facilities, drainage and utility structures, grading and planting, may be erected, placed and maintained thereon for the use, comfort and enjoyment of the members of the Association, or the establishment, retention or preservation of the natural growth or topography of the area, or for aesthetic reasons. No portion of the Common Areas may be used exclusively by any Record Owner or Owners for personal vegetable gardens, storage facilities or other private uses. Notwithstanding anything to the contrary in this Declaration, no Owner's right of pedestrian and vehicular access to and from his or her Lot shall be impaired or denied.

6.3 NUISANCE. No noxious or offensive activity shall be carried on upon the Common Areas nor shall anything be done thereon which will become an annoyance or nuisance to the Neighborhood.

6.4 MAINTENANCE OBLIGATIONS OF THE ASSOCIATION. The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Areas, together with any items of personal property placed or installed thereon, and any area dedicated to a public or governmental entity if such entity fails to properly maintain such area, as from time to time improved, all at its own cost and expense, and shall levy against each member of the Association a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of the foregoing described areas, which proportionate share shall be determined based on the ratio which the number of Lots owned by the member bears to the total number of Lots then laid out or established on the Property.

In addition to the foregoing, the Association shall perform maintenance, repair and landscaping of the dumpster area; snow removal from the alleys, sidewalks and driveways; maintenance of any water and sewer lines located in the alleys; maintenance of any landscaped areas of the Lots; trash collection and disposal; and water service for irrigation of landscaped areas surrounding the dwelling.

6.5 RESTRICTIONS. The right of each member of the Association to use the Common Areas shall be subject to the following:

(a) any rule or regulation now or hereafter set forth in this Declaration and, further, shall be subject to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Areas;

(b) the right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas in a manner designed to promote the enjoyment and welfare of the members, and in aid thereof to mortgage any of the Common Areas;

(c) the right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosure;

(d) the right of the Association to suspend the voting rights and the rights to use of the Common Areas after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published rules and regulations of the Association or of this Declaration;

(e) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; and further subject to the written consent of the County; provided, however, that no dedication, transfer, mortgage or determination as to the purposes or as to the conditions thereof, shall be effective unless two-thirds (2/3) of the Class A members (excluding the Declarant if the Declarant is a Class A member) of the Association consent to such dedication, transfer, purpose and conditions; and

(f) the right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person; provided, however, that no such license, right-of-way or easement shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Areas.

(g) All of the foregoing shall inure to the benefit of and be enforceable by the Association and the Declarant, or either of them, their respective successors and assigns, against any member of the Association, or any other person, violating or attempting to violate any of the same, either by action at law for damages or suit in equity to enjoin a breach or violation, or enforce performance of any term, condition, provision, rule or regulation. Further, the Association and the Declarant shall each have the right to abate summarily and remove any such breach or violation by any member at the cost and expense of such member.

6.6 DELEGATION OF RIGHT OF USE. Any member of the Association may delegate its rights to the use and enjoyment of the Common Areas to family members who reside permanently with such member and to its tenants, contract-purchasers, invitees and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

6.7 RULES AND REGULATIONS. Each Record Owner shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Areas, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Areas. Further, each Record Owner shall comply with the Covenants imposed by this Declaration on the use and enjoyment of the Common Areas.

ARTICLE VII

ENCROACHMENTS

If any Structure or any part thereof, now or at any time hereafter, encroaches upon an adjoining Lot or any Structure encroaches upon any Common Areas, whether such encroachment is attributable to construction, settlement or shifting of the Structure or any other reason whatsoever beyond the control of the Board of Directors or any Record Owner, the violating Owner shall take any corrective action to remedy such encroachment.

ARTICLE VIII

COVENANT FOR ASSESSMENT

8.1 COVENANT FOR ASSESSMENT. Each Record Owner (other than Declarant and any Builder), by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in such deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association (a) in advance, an annual assessment (the "Annual Assessment") equal to the member's proportionate share of the sum required by the Association, as estimated by the Board of Directors, for Annual Assessments or charges, and (b) Special assessments or charges, for capital improvements ("Special Assessment"), such Annual and Special Assessments and charges to be established and collected as hereinafter provided. Assessments or charges, together with interest at a rate of eighteen percent (18%) per annum (unless such rate of interest is not legally allowable in which event the highest rate permitted by law shall be applicable), and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall be the debt of and the personal obligation of the Record Owner holding title to any Lot at the time when the assessment fell due or was payable. Each such Annual or Special Assessment, together with interest thereon, late charges, attorneys' fees and court costs and other costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and attorney's fees, shall also be the personal obligation of the person(s) who was the owner of such Lo at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless assumed by them.

8.2 USE OF ASSESSMENTS. The assessments and charges levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Neighborhood, and in particular for (a) the improvement and

maintenance, operation, care, services, and facilities related to the use and enjoyment of any Common Areas, including fees paid to the management agent; (b) the payment of taxes on the Common Areas (except to the extent that proportionate shares of such public charges and assessments on the Common Areas may be levied against all Lots laid out on the Property by the tax collecting authority so that the same is payable directly by the Record Owners thereof, in the same manner as real property taxes are assessed or assessable against the Lots); (c) the payment of insurance premiums on the Common Areas; (d) the costs of repair, replacement and additions to the Common Areas and improvements thereon and costs of construction relating thereof; (e) the cost of obtaining, planting and thereafter maintaining street trees throughout the Neighborhood if required by the County or Murray City, whether or not such street trees are located in the Common Areas; (f) the costs of utilities and other services which may be provided by the Association for the Neighborhood as may be approved from time to time by a majority of the members of the Association; (g) the cost of labor, equipment, insurance, materials, management and supervision incurred or expended in performing all of the foregoing; (h) the costs incurred in the Association fulfilling its maintenance obligations under Section 6.4 hereunder; (i) the cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements, (j) any amounts due to the Master Association under the Master Declaration (hereinafter referred to as "Community Assessment"); and (k) the payment of those amounts due under the Elsinore Agreement, as described in Article 12.12. hereof.

8.3 MAXIMUM ANNUAL ASSESSMENT.

(a) Notwithstanding the provisions of Article 8.6 (a) herein, until January 1 of the year immediately following the commencement of Annual Assessments, the maximum Annual Assessments shall be One Thousand Six Hundred Eight Dollars (\$1,608.00) per year.

(b) From and after such date, the maximum Annual Assessment may be increased each year by not more than fifteen percent (15%) of the maximum Annual Assessment for the previous year without a vote of the membership of the Association.

(c) From and after such date the maximum Annual Assessment may be increased above the fifteen percent (15%) limitation specified in the preceding sentence only by a vote of two-thirds (2/3) of each class of members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.

(d) Declarant, Builder and any Lot which Declarant and Builder own shall be exempt from payment of any assessments hereunder, including, without limitation, Annual Assessments and Special Assessments.

(e) The Board of Directors of the Association may fix the Annual Assessment or charges against each Lot at any amount not in excess of the maximum. Subject to the limitations set forth in this Article 8.3, and for the periods therein specified, the Association may change the maximum and the basis of the Assessments fixed by Article 8.3 hereof prospectively for any period provided that any such change shall have the assent of two-thirds (2/3) of each class of members of the Association, voting in person or by proxy, at a meeting duly called for

such purposes.

8.4 SPECIAL ASSESSMENTS. In addition to the Annual Assessments authorized above, the Association may levy in any assessment year, a Special Assessment, applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Areas, including fixtures and personal property related thereto, and/or to meet any other deficit of the Association or any emergency or unforeseen expenses of the Association; provided that such Assessment shall first be approved by two-thirds (2/3) of the votes of each class of the members of the Association, voting in person or by proxy at a meeting duly called for such purpose.

8.5 NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER ARTICLES 8.3 AND 8.4. Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Articles 8.3 and 8.4 shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all of the votes of each class of members entitled to be cast at such a meeting shall be necessary and sufficient to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.6 COMMENCEMENT DATE OF ANNUAL ASSESSMENTS.

(a) The Annual Assessment as to any Lot shall commence on the date that such Lot is conveyed to any person other than the Declarant and Builder; subject, however, to the provisions of Article 8.3 (d). The Annual Assessments shall be due and payable on an annual basis on the first (1st) calendar day of January in each year, unless otherwise resolved by the Board.

(b) The due date of any Special Assessment under Article 8.4 shall be fixed in the resolution authorizing such Special Assessment.

8.7 DUTIES OF THE BOARD OF DIRECTORS.

(a) Commencing with the first fiscal year of the Association, the Board of Directors shall determine the amount of the maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a monthly, quarterly or semi-annual basis rather than on the annual basis herein above provided for. Any member may prepay one or more installments of any maintenance assessment levied by the Association, without premium or penalty.

(b) The Board of Directors shall prepare, or cause the preparation of an annual operating budget for the Association, which shall provide, without limitation, for the

management, operation and maintenance of the Common Areas and shall include any amounts due to the Master Association. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the Annual Assessment against each Lot for each assessment period at least thirty (30) days in advance of the beginning of such period and shall, at that time, prepare a roster of the Lots and the Annual Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Record Owner upon reasonable notice to the Board of Directors. Written notice of the Annual Assessments shall thereupon be sent to all members of the Association. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the Annual Assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period; but the Annual Assessment fixed for the preceding period shall continue until a new Annual Assessment is fixed. No member may exempt itself from liability for Annual Assessments by abandonment of any Lot owned by such member or by the abandonment of such member's right to the use and enjoyment of the Common Areas.

(c) The Association shall, upon demand at any time, furnish to any Record Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge (but no less than thirty-five dollars (\$35.00)) may be levied in advance by the Association for each certificate so delivered.

8.8 ADDITIONAL ASSESSMENTS. Additional assessments may be fixed against any Lot only as provided for in this Declaration. Any such assessments shall be due as provided by the Board of Directors in making any such assessment.

8.9 NONPAYMENT OF ASSESSMENT. Any assessment or portion thereof not paid within ten (10) days after the due date thereof shall be delinquent and shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (unless such rate of interest is not legally allowable in which event the highest rate permitted by law shall be applicable), and shall be subject to a late charge of Fifteen Dollars (\$15.00) per month until paid or ten percent (10%) of the assessment, of the total amount of delinquent assessment or installment, whichever is greater, and the Association shall have the right to declare the entire balance of the assessment and accrued interest thereon to be immediately due and payable. The Association may bring an action or actions at law against the Record Owner personally obligated to pay the same and any judgment rendered in any such action shall include a sum for reasonable attorneys' fees in such an amount that the Court may adjudge against such defaulting Owner. Further, the Association shall give notice to the defaulting Owner, which notice shall state the date of the delinquency, the amount of the delinquency, and the interest and late fees charged for such delinquency and make a demand for payment thereof. If such delinquency, late fees and interest are not paid within ten (10) days after delivery of such notice, the Association may record a notice of lien and proceed to enforce such lien under applicable Utah law. No Record Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of such Record Owner's Lot.

8.10 SUBORDINATION OF LIEN TO MORTGAGE. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money mortgage(s) or deed(s) of trust now or hereafter placed upon the Lot subject to assessment; provided, however, that the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall not extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such future assessment.

8.11 EXEMPT PROPERTY. The Common Areas and all Lots owned by the Association or dedicated to and accepted by a public authority shall be exempt from the assessments created herein.

8.12 RESERVES FOR REPLACEMENTS.

(a) The Association shall establish and maintain a reserve fund for repairs and replacements of the Common Areas by the allocation and payment annually to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(b) The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member of the Association in any such reserves shall be considered an appurtenance of such Record Owner's Lot and shall not be separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

8.13 INITIAL CAPITAL CONTRIBUTION. At settlement for each Lot, the sum equal to two (2) months of the then applicable maximum Annual Assessment shall be collected from each prospective member of the Association (other than the Declarant and Builder) for the purpose establishing and maintaining a contingency fund to fund any operating deficits of the Association from time to time.

8.14 TITLE FEE. As provided in the Master Declaration, for any transfer of title to any Lot from a party other than Declarant or Builder, the grantee shall pay to the Master Association the sum equal to one-quarter (1/4th) of one percent (1%) of the sales price of the Dwelling located upon such Lot, at time of settlement to provide long term funds to Community Association for improvements (but not regular maintenance).

ARTICLE IX

INSURANCE AND CASUALTY LOSSES

9.1 TYPES OF INSURANCE MAINTAINED BY ASSOCIATION. The Board of Directors shall have the authority to and shall obtain the following types of insurance:

(a) insurance on all insurable improvements on the Common Areas against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief in an amount sufficient to cover the full replacement cost of such improvements in the event of damage or destruction;

(b) a public liability insurance policy covering the Association, its officers, directors and managing agents, and which shall also name the Architectural Review Committee members, Declarant and the Master Association (as hereinafter defined) as additional insureds, having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence, (which limit may be increased from time to time by the Board of Directors) including but not limited to liability insurance for the recreational facilities located in the Neighborhood, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;

(c) workers' compensation insurance, if and to the extent required by law; and

(d) fidelity bond or bonds covering all Directors, officers, employees and other persons handling or responsible for the funds of the Association, in such amounts as the Board of Directors deems appropriate.

9.2 PREMIUMS FOR INSURANCE MAINTAINED BY ASSOCIATION. Premiums for all insurance and bonds required to be carried under Article 9.1 hereof or otherwise obtained by the Association on the Common Areas shall be an expense of the Association, and shall be included in the Annual Assessments. Premiums on any fidelity bond maintained by a third party manager shall not be an expense of the Association.

9.3 DAMAGE AND DESTRUCTION OF COMMON AREAS.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Common Areas, the Board of Directors, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to insurable improvements on the Common Areas shall be repaired or reconstructed unless at least seventy-five percent (75%) of the members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.

(c) If, in accordance with subsection (b), the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then

and in that event the damaged Common Areas shall be restored to its natural state and maintained as an undeveloped portion of the Common Areas by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Directors, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

9.4 REPAIR AND RECONSTRUCTION OF COMMON AREAS. If any improvements on the Common Areas are damaged or destroyed, and the proceeds of insurance received by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall, without the necessity of a vote of the members, levy a Special Assessment against all Record Owners in order to cover the deficiency in the manner provided in Article VIII hereof. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine.

ARTICLE X

RIGHTS OF MORTGAGEES

10.1 GENERAL.

(a) Regardless of whether a Mortgagee in possession of a Lot is its Record Owner, (i) such Mortgagee in possession shall have all of the rights under the provisions of this Declaration, the Plat, the Articles of Incorporation, the By-Laws and applicable law, which would otherwise be held by such Record Owner, subject to the operation and effect of anything to the contrary contained in its Mortgage, and (ii) the Association and each other Record Owner or person shall be entitled, in any matter arising under the provisions of this Declaration and involving the exercise of such rights, to deal with such Mortgagee in possession as if it were the Record Owner thereof.

(b) Any Mortgagee in possession of a Lot shall (subject to the operation and effect of the provisions of this Declaration, the Articles of Incorporation, the By-Laws and applicable law) bear all of the obligations under the provisions thereof which are borne by its Record Owner; provided, that nothing in the foregoing provisions of this Section shall be deemed in any way to relieve any Owner of any such obligation, or of any liability to such Mortgagee on account of any failure by such Record Owner to satisfy any of the same.

10.2 INSPECTION; STATEMENT AND NOTICE. A Mortgagee shall, upon delivery of a written request to the Association and payment of a reasonable fee, be entitled to

- (a) inspect the Association's books and records during normal business hours;
- (b) receive an annual financial statement of the Association within ninety (90) days after the end of any fiscal year of the Association;

(c) be given timely written notice of all meetings of the membership, and designate a representative to attend all such meetings;

(d) be given timely written notice of the occurrence of any substantial damage to or destruction of the Common Areas, or if the Common Areas are made the subject of any condemnation or eminent domain proceeding or the acquisition thereof is otherwise sought by any condemning authority; and

(e) be given timely written notice by the Association of failure to pay assessments by the Record Owner of such Mortgagee's Lot which is not cured within thirty (30) days after such default commences, but the failure to give such notice shall not affect the validity of the lien for any assessments levied pursuant to this Declaration.

ARTICLE XI

BIRKHILL COMMUNITY ASSOCIATION, INC. RIGHTS AND OBLIGATIONS

11.1 EASEMENT TO BIRKHILL COMMUNITY ASSOCIATION, INC. The officers, agents, employees and independent contractors of the Master Association shall have a nonexclusive easement to enter upon the Property, or any portion thereof, for the purpose of performing or satisfying the duties and obligations of the Master Association as set forth in the Birkhill Declaration of Covenants, Conditions and Restrictions dated September 9, 2008, made by Birkhill at Fireclay LLC, and recorded among the Recorder's Office of Salt Lake County, Utah, as entry number 10523181, Book 9643, pages 7793-7964 on September 18, 2008, as the same may be amended from time to time (hereinafter referred to as the "Master Declaration"), or as otherwise set forth in any other documents or rules and regulations applicable to the Master Association.

11.2 SUBORDINATION OF ASSESSMENT LIEN. The lien of any assessment imposed upon any Lot pursuant to this Declaration shall be subordinate and inferior to the lien of any assessment imposed upon such Lot pursuant to the Master Declaration.

11.3 MASTER ASSOCIATION ASSESSMENTS. Each Owner of any Lot (except as provided in the Master Declaration), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, does and is hereby deemed to covenant and agree to pay to the Community Assessments (as defined in the Master Declaration) imposed upon such Lots pursuant to the Master Declaration. Said Community Assessments levied by the Master Association may be of several types as described in the Master Declaration, and shall be levied and collected as provided in the Master Declaration.

The Association shall have responsibility for collecting the Community Assessments, which shall be due and payable to the Association on the same date that such assessments are due and payable to the Master Association. The Association shall levy late charges and, upon instructions from the Community Board (as defined in the Master Declaration), may levy interest charges against any Owner who fails to pay such Community Assessments within the time

periods specified under this Declaration. Within thirty (30) business days of payment of the Community Assessments to the Association, the Association shall deliver such Community Assessments to the Master Association. The Community Board shall establish procedures for the payment by the Association to the Master Association of Community Assessments collected by the Association. Any Community Assessments collected by the Association shall be held in trust for the benefit of the Master Association. If the Association fails to pay Community Assessments to the Master Association when due, and in accordance with the provisions of any guidelines established by the Community Board, the Community Board may bring any action, at law or equity, against the Association and all costs of enforcement shall be levied as an enforcement assessment against the Association under the Master Declaration. The Community Board may, upon a vote by a majority of its Directors, elect to terminate the obligation of any Association to collect the Community Assessments, in which event, such Community Assessments shall be paid directly from each Owner to the Master Association, when and as due under the Master Declaration.

With the consent of the Association, which consent shall not be unreasonably withheld, the Master Association may elect to administer, levy, collect, and enforce the assessments provided for under this Declaration provided, however, the Master Association may elect to pre-empt the rights of the Association and may fix, levy, collect and enforce said assessments if the Association fails to levy or collect the Community Assessments, or fails to duly operate and maintain the standards reasonably established for the Association by the Master Association. All funds collected by the Master Association pursuant to this Declaration shall be utilized in the manner and for the purposes specified in this Declaration and in the Master Declaration, the Master Association Bylaws and the rules and regulations of the Community Board and the Architectural Committee for the Master Association.

All Community Assessments shall be payable in the amount specified for the particular type of Community Assessment, and no offset against such amount shall be permitted for any reason, including, without limitation, a claim that the Declarant or the Master Association is not properly exercising its duties or powers as provided for herein or in the Master Declaration.

11.4 WAIVER OF RIGHT TO OBJECT TO ALTERATION IN DEVELOPMENT OF BIRKHILL. The Association and each Owner, or purchaser, tenant or Mortgagee of any Lot waives any rights they may have to object to modifications or changes in final development plans, record plats or subdivision plans for any land which may be developed in Birkhill outside of the Neighborhood. This waiver shall appear in all contracts of sale, leases, or assignments of an Owner's interest in any portion of the Neighborhood, but if such waiver does not appear in any such document, it will not affect the validity of such instrument.

11.5 ENFORCEMENT. Breach of any of the limitations, restrictions, conditions and covenants set forth in this Declaration, or the continuation thereof, may be enjoined, abated or remedied by appropriate legal proceedings by the Master Association, and in such event the Master Association shall be deemed to be a person who may enforce the provisions of this Declaration. The failure of the Master Association to enforce any of said limitations, restrictions, conditions or covenants shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on, nor incurred by, the Master Association as a result of

such failure. The prevailing party in any action at law or in equity instituted by the Master Association to enforce or interpret said limitations, restrictions, conditions or covenants, shall be entitled to all costs incurred in connection therewith, including without limitation, reasonable attorneys' fees.

11.6 SUPREMACY OF THE MASTER ASSOCIATION DECLARATION. In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Declaration, the Association By-Laws or the Association Articles of Incorporation, the Association shall be entitled to exercise any of the rights conferred upon it and be subject to all of the obligations imposed upon it pursuant to the Master Association Declaration, Master Association Bylaws, and any Master Association Rules, as defined in the Master Declaration (hereinafter, collectively referred to as, the "Master Documents"). The Association (including, without limitation, the Architectural Review Committee of the Association) shall also be subject to all superior rights and powers which have been conferred upon the Master Association pursuant to the Master Documents.

(a) Each Owner and each Lot shall be subject to all of the covenants, conditions, restrictions and provisions contained in the Master Documents.

(b) In the event of any conflict between any of the covenants, conditions, restrictions or provisions of this Declaration, the By-Laws or Articles of Incorporation of the Association, with any of the covenants, conditions, restrictions or provisions of the Master Documents, then, in such event, the covenants, conditions, restrictions and provisions of the Master Documents shall govern and prevail.

(c) In the event of any conflict between a term in the Master Association Declaration and this Declaration, the By-Laws or Articles of Incorporation of the Association, then in such event, the Master Association Declaration shall control to the extent necessary to eliminate the conflict.

11.7 DELEGATE SELECTION. The Master Association Declaration provides for representation of the Association to the Master Association by selecting a delegate. The President of the Association, or his or her designee, shall constitute the delegate to the Master Association with the right and obligation to represent and vote on behalf of the Association in accordance with the terms of the Master Association Declaration. The President, at meetings of the Master Association, shall cast the votes of the members of the Association at the direction of the Board of Directors, in the manner provided in the By-Laws of the Association. Notwithstanding the foregoing, if the matter to be decided would require the approval of the members of the Association pursuant to the terms of this Declaration, the Articles of Incorporation and By-Laws of the Association, had such matter arisen hereunder or thereunder, then such matter shall be decided by the appropriate vote of the members of the Association.

ARTICLE XII MISCELLANEOUS

12.1 TERM. This Declaration shall run with the land and shall be binding for a period

of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless and until an instrument has been recorded, by which this Declaration, in whole or in part, is amended, modified or revoked pursuant to the provisions of Article 12.9.

12.2 ENFORCEMENT.

(a) Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain the violation or to recover damages, or both. In acquiring title to any Lot in the Neighborhood, the purchaser or purchasers violating or attempting to violate any covenant, agree to reimburse the Association and/or any Record Owners for all costs and expenses for which it or they may incur as a result of the said violation or attempted violation, including but not limited to, all costs, court costs and attorneys' fees.

In addition in the event any Owner or occupant of a Lot violates the provisions set forth in the governing documents of the Master Association or this Declaration, then the Association, may seek any available legal or equitable remedies, including without limitation, a court order to enjoin any violation and/or order a sale of the Lot which is in violation hereof. In any such event, all attorney's fees and any other costs incurred by the Association in connection with such enforcement shall be recovered by such the Association against the violating Owner and/or occupants.

(b) These Covenants shall inure to the benefit of and be enforceable by the Association or by the Record Owner(s) of any land included in the Neighborhood and their respective legal representatives, successors and assigns, and all persons claiming by, through or under them.

(c) Notwithstanding the foregoing, neither the Association nor any person acting or purporting to act on its behalf shall (a) file or otherwise commence, or prosecute, in any jurisdiction whatsoever, any (i) civil, criminal or administrative proceeding in or with any court or administrative body or officer, or (ii) appeal of or objection to any decision or other action made or taken by any court or administrative body or officer, in any judicial or administrative proceeding, or (b) testify or submit evidence (except where required by law, subpoena or formal order of such court, administrative body or officer), or otherwise take a formal position on any issue under consideration, in any such proceeding or appeal, in all cases until such action is approved in writing by, or by the vote of, both (i) members entitled to cast at least 75 percent of the votes held by all Owners other than the Class B Members, and (ii) (if such action would be taken during the Development Period), the votes of the Class B Members holding at least 75 percent of the votes. Nothing in this subsection shall apply to a civil or administrative proceeding which the Association commences or prosecutes with a court or administrative body or officer (a) to collect an Assessment, or enforce or foreclose a lien securing an Assessment, (b) otherwise to enforce the Association's rights or another person's obligations under the Declaration, By-Laws or Articles of Incorporation on account of a default or otherwise, including the right of the Association to institute legal proceedings to evict any tenant as provided in this Declaration and any lease agreement between an Owner and his or her lessee or (c) any action taken by the

Declarant at any time or action undertaken by the Architectural Review Committee during the Development Period.

12.3 NO WAIVER. The failure or forbearance by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.4 INCORPORATION BY REFERENCE ON RESALE. In the event any Record Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall be deemed to contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration, whether or not the deed actually so states.

12.5 NOTICES. Any notice required to be sent to any member or Record Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage paid, to the last known address of the person who appears as member or Record Owner on the records of the Association at the time of such mailing.

12.6 NO DEDICATION TO PUBLIC USE. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Areas by any public or municipal agency, authority or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Areas.

12.7 SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

12.8 CAPTIONS AND GENDERS. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

12.9 AMENDMENT.

(a) Subject to the provisions of Article 12.9 (c), for so long as there is a Class B membership of the Association, this Declaration may be amended by an instrument in writing, signed and acknowledged by the Declarant and by the President or Vice-President and Secretary or Assistant Secretary of the Association after approval of the amendment at a meeting of the Association duly called for such purpose. The vote (in person or by proxy) or written consent of (i) at least two-thirds (2/3) of the Class A members of the Association, if any, and (ii) the Declarant shall be required to add to, amend, revise or modify this Declaration. Following the lapse of the Class B membership in the Association, as provided in Article IV hereof, this Declaration may be amended by an instrument in writing, signed and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association with the approval, in the manner set forth above, of at least two-thirds (2/3) of the Class A members of

the Association at a meeting of the Association duly called for such purpose.

(b) Except for amendments accomplished by Declarant under the power of attorney described in Section 12.9 (c) below, an amendment or modification shall be effective when executed by the President or Vice-President and Secretary or Assistant Secretary of the Association who shall certify that the amendment or modification has been approved as herein above provided. The amendment shall be recorded in the Recorder's Office of Salt Lake County, Utah. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. For the purpose of recording such instrument, each Record Owner, other than the Declarant, hereby grants to the President or Vice-President and Secretary or Assistant Secretary of the Association an irrevocable power of attorney to act for and on behalf of each and every Record Owner in certifying, executing and recording said instrument. Notwithstanding anything to the contrary contained herein, in no event may any of Declarant's or Builder's rights or privileges under the Articles of Incorporation or By-Laws of the Association or this Declaration be terminated, altered or amended without Declarant's or Builder's prior written consent as long as Declarant or Builder, as applicable, owns any portion of the Property or has any such portion under a contract of sale.

(c) Any amendment to this Declaration shall require the written consent of the Community Board and in no event may this Declaration be amended which would conflict with any provision of the Master Declaration, unless consent in writing by Declarant and the Community Board has been obtained, which consent may be withheld in their respective sole discretion. Furthermore, while there is a Class B membership of the Association, this Declaration may be amended by an instrument in writing, signed and acknowledged by the Declarant and by the President or Vice-President and Secretary or Assistant Secretary of the Association after approval of the amendment at a meeting of the Association duly called for such purpose; provided, however, the Declarant shall have the absolute unilateral right, power and authority to amend, modify, revise or change any of the terms or provisions of this Declaration during the Development Period and in order to accomplish any such amendment, each Owner and lienholder appoints Declarant as his/her power of attorney to execute any such amendment. THIS SPECIAL POWER OF ATTORNEY SHALL BE IRREVOCABLE AND COUPLED WITH AN INTEREST.

12.10. INCREASE IN MONETARY AMOUNTS. Any monetary amounts provided for in this Declaration, or the By-Laws and Articles of Incorporation for the Association shall be increased by the CPI (as such term is defined below) from time to time by Declarant during the Development Period, and thereafter, by the Association; provided, however, that this provision shall not affect any provision of this Declaration, the By-Laws or Articles of Incorporation which prescribe a method or limitation of increases or decreases in the specified amount (i.e., Article 8.3 regarding limitation on increases in Assessments and the like).

For purposes hereof, "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, except that if the Consumer Price Index hereafter uses a different standard reference base or is otherwise revised, an adjustment shall be made therein for purposes of this Declaration, using such conversion factor, formula or table for making such adjustment as is published by

such Bureau, or if such Bureau does not publish the same, as is published by Prentice-Hall, Inc., Bureau of National Affairs, Commerce Clearing House or another nationally recognized publisher of similar statistical information, as selected by the Community Association

12.11. VOLUNTARY CLEANUP PROGRAM. The Property was developed under the Voluntary Cleanup Program under the oversight of the Utah Division of Environmental Quality. Some soils that may contain elevated levels of lead and arsenic have been covered with asphalt, concrete and buildings on the site. Disturbance of these soils is not anticipated unless there is a need to install or repair buried utilities on the site. In the event these soils are disturbed such activity is covered by a Site Management Plan with oversight provided by the Utah Division of Environmental Quality. The Association is responsible for implementing all the stipulated requirements detailed in the Site Management Program for the Property as well as public rights-of-way and neighborhood parks; maintaining all files, reports, correspondence, health and safety reports/records and laboratory analytical reports associated with or required by the Site Management Plan; payment of all fees for periodic reviews and inspections by personnel of the Utah Division of Environmental Response and any remediation as required by the Site Management Plan. In addition, should changes be proposed in the Site Management Plan, it is the responsibility of the Association to coordinate with the Utah Division of Environmental Response and Remediation regarding such changes. In the event the Association and/or Owners fail to comply with any provision of the Voluntary Cleanup Program, or any provision in the Master Declaration regarding this matter, then in such event the Community Association may enforce such obligations of such party/parties and collect all costs as an Enforcement Assessment against the violating party/parties.

12.12. ELSINORE CONTRACT. The Association and each Owner and occupant on the Property shall be subject to the provisions of the Master Declaration pertaining to the Elsinore Contract, as codified in Section 18.25 of the Master Declaration, as the same may be amended from time to time.

12.13. PERPETUITIES. If any of the covenants, conditions, easements, restrictions, or other provisions of this Declaration shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the members of the 108th United States Congress.

12.14. EASEMENT A ASSESSMENT.

(a) 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 the Association" and others who own all or a portion of Building G. The payment due from the owners in the Association will be collected by the 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 - 2ND AMENDED", recorded in the Salt Lake County Recorder's Office. The Association shall act as a collection agent for the Condominium 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 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 Condominium 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 Association by an Easement A Owner, the Association shall deliver such Easement A Assessments which have been collected to the Condominium 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 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 - 2ND 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 – 2ND AMENDED”, recorded in the Salt Lake County Recorder’s Office.

In addition, the terms “Building G”, “Commercial Units”, “Condominium Units”, “Lots”, “Live-Work Units”, “Residential Units” and “Units” as used in this Section 12.14 shall have the meanings ascribed to each such term in the Master Declaration.

[SIGNATURES ON FOLLOWING PAGE]

WITNESS the hand and seal of the Declarant hereto on the day herein above first written.

WITNESS/ATTEST:

DECLARANT:
BIRKHILL AT FIRECLAY LLC

[Signature]

By: *[Signature]* (SEAL)

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 Michael Brubsky the Member of BIRKHILL AT FIRECLAY LLC, the Declarant named in the foregoing Declaration of Protective 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.

[Signature] (SEAL)
Notary Public

My Commission Expires: 6/3/2013

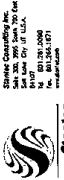


Exhibit "A"

DESCRIPTION OF THE PROPERTY SUBJECTED TO THE DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS

All that land shown as Lots 101-122 on the plats entitled, "BIRKHILL PHASE 1- 2ND AMENDED", recorded among the Recorder's Office of Salt Lake County, Utah, described shown on the "BIRKHILL PHASE 1 - 2ND AMENDED" plat attached hereto.

Exhibit "B" - Future Land



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Hamlet Homes
 308 EAST 4800 SOUTH
 BIRDAVY, UTAH 84107
 BIRDAVY, UTAH
 AIRBORNE, UTAH

OVERALL SITE PLAN

Project No. 2004
 Drawing No. 0001
 Revision 0
 EXHIBIT 1 of 1

Area	Area	Area	Area	Area	Area	Area	Area	Area	Area
1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50
51	52	53	54	55	56	57	58	59	60
61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80
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91	92	93	94	95	96	97	98	99	100

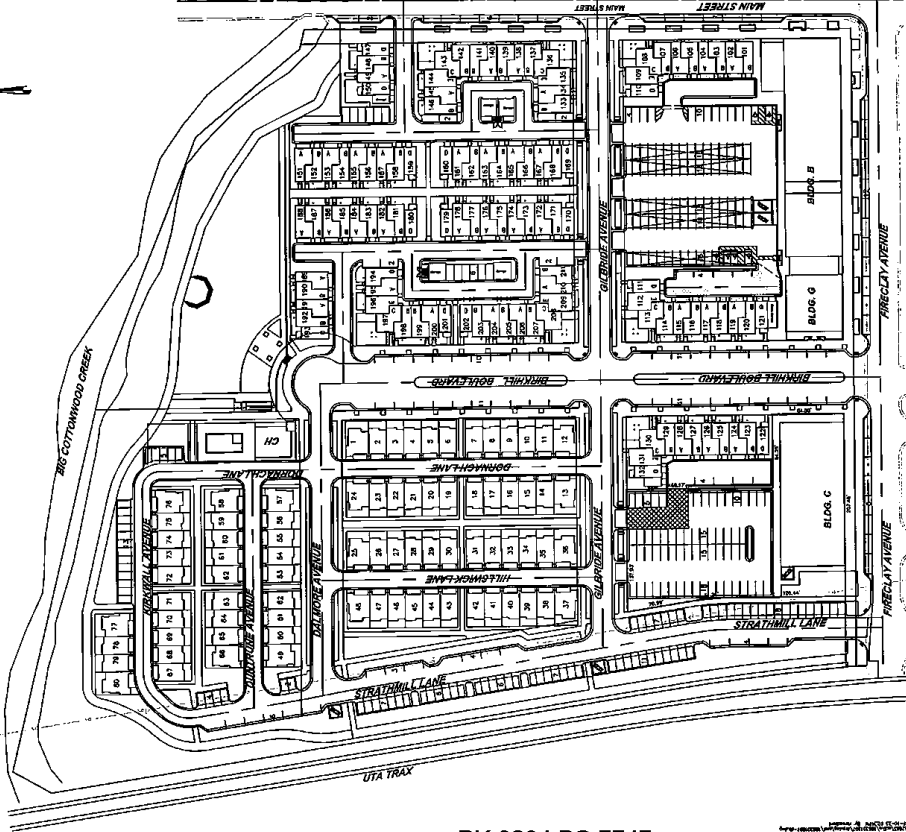
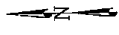


Exhibit "C"

By-Laws

BY-LAWS

BIRKHILL TOWNHOME OWNERS' ASSOCIATION, INC.

**ARTICLE I
NAME AND LOCATION**

The name of the Corporation is BIRKHILL TOWNHOME OWNERS' ASSOCIATION, INC., a Utah corporation, hereinafter referred to as the "Association" for and on behalf of the recorded Declaration of Protective Covenants, Conditions and Restrictions for Birkhill Townhome recorded in the Recorder's Office in Salt Lake County, Utah, as Entry No. 10887046, Book 2010P, Page 28, and such other real property as may be added to Birkhill Townhome 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 Townhome Owners' Association, Inc., its successors and assigns.

Section 2. "Common Areas" shall mean all real property owned, leased or licensed by the Association for the common use, benefit and enjoyment of the Owners.

Section 3. "Declarant" shall mean and refer to Birkhill at Fireclay LLC, a Utah limited liability company, 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 Properties (as such term is hereinafter defined), or any portion or all, 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 4. "Declaration" shall mean the Declaration referred to under Article I of these By-Laws.

Section 5. "Lot" shall mean and refer to any plot of land subject to assessment by the Association, and shown upon any recorded subdivision map or plat of the Properties, with the exception of the Common Areas.

Section 6. "Member" or "Members" shall mean and refer to those persons entitled to membership in the Association, as provided in the Declaration.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple or leasehold title to any Lot which is a part of the Properties, including contract sellers, but excluding ground rent owners and those having such interest

merely as security for the performance of an obligation or payment of a debt.

Section 8. "Properties" 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 9. Any other capitalized 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 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 or by the Board of Directors, or upon a written demand that is signed and dated by Members who are (i) entitled to vote twenty-five percent (25%) of all of the votes of the Class A membership, or (ii) entitled to vote twenty-five percent (25%) of all of the votes of the Class B membership. Notice of any special meeting called pursuant to a written demand as provided above shall be given to Members entitled to vote within thirty (30) days after the date the written demand is delivered to any Director or officer and shall specify the place, day and hour of the meeting and the purpose of the meeting.

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 thirty (30) days but not more than sixty (60) 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 the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, these By-Laws 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 Lot.

ARTICLE IV
BOARD OF DIRECTORS: SELECTION; TERM OF OFFICE

Section 1. Number. The affairs of the Association shall be managed during the Development Period by a Board of Directors initially consisting of three (3) natural persons who need not be members of the Association, and who shall be designated by the Declarant and hold office until the expiration of the Development Period. The names of the initial directors are Michael Brodsky, John Aldous and David Irwin. Commencing with the first annual meeting of the Association, the Board shall consist of an uneven number of not less than three (3) persons, nor more than, five (5) members who shall be elected by the Members of the Association. During the Development Period, the number of directors shall be determined from time to time by a vote of the initial directors named by the Declarant; thereafter, the number of directors shall be determined by a majority vote of the Members at the annual meeting of Members and the number of directors may be changed by a majority vote of the Members at any subsequent annual or special meeting of the Members.

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. At the first annual meeting, the Members shall elect one-third (1/3) of the directors for a term of one (1) year, one-third (1/3) of the directors for a term of two (2) years, and one-third (1/3) of the directors for a term of three (3) years; and at each annual meeting thereafter the Members shall elect one-third (1/3) of the total number of directors for a term of three (3) years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association at a meeting duly called for such purpose. In the event of death, resignation or removal of a director, his or her successors shall be selected by the remaining Members of the Board and shall serve for the unexpired term of his or her predecessor.

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.

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 any directors' meeting by obtaining the written approval of all the directors. Each director, in writing, must (a) vote for the action; or (b) (i) vote against the action or (ii) abstain from voting and waive the right to demand that the action not be taken without a meeting. Any action so approved shall have the same effect as though taken at a regular or special meeting of the directors.

ARTICLE V
NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. After the expiration of the Development Period, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The 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 or 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 Meetings. Regular meetings of the Board of Directors shall be held at least quarterly (except during the Development Period during which regular meetings may be held annually), at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of 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. For purposes of determining a quorum with respect to a particular action, and for purposes of a casting a vote for or against a particular action, a director may be considered to be present at a meeting and to vote if the director has granted a signed written proxy to another director who is present at the meeting and authorizing the other director to cast the vote that is directed to be cast by the written proxy with respect to the particular action that is described with reasonable specificity in the proxy. Notwithstanding the foregoing, directors may not vote or otherwise act by proxy except as provided herein and as permitted by applicable law.

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

Section 1. Powers. The Board of Directors shall have the power to:

(a) adopt and publish rules and regulations governing the use of the Common Areas, including any improvements and amenities located thereon, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of any recreational facilities located on any Common Areas of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations or any provisions of the Declaration or a longer period than sixty (60) days while the infraction remains uncured;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(e) employ a manager, independent contractor, or such other individuals, entities or employees as they deem necessary and to prescribe their duties; and

(f) enter into contracts on behalf of the Association, including but not limited to, the Elsinore Agreement.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(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-third (a) 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 Lot 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 Lots 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 of Directors 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 adequate 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/or as required by law;

(g) cause to be maintained the Common Areas and any other areas shown on the Plat that may be owned by governmental entities who are not maintaining such areas; and

(h) hire a professional management company to manage the Association; provided, however, the Declarant shall retain the professional management company to manage the Association until such time as designated in the Master Declaration.

ARTICLE VIII **OFFICERS AND THEIR DUTIES**

Section 1. Enumeration of Officers. The officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board of Directors 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 officers created pursuant to Section 4 of this Article.

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

(a) 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.

(b) 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 and co-sign all checks and promissory notes.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings 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.

(d) Treasurer. The 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 report 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**

The Association shall indemnify, defend and hold every officer and director of the Association harmless from and against any and all expenses, including counsel fees, reasonably incurred by or imposed upon an officer or director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then

Board of Directors of the Association), to which he may be made a party by reason of being or having been an officer or director of the Association, whether or nor such person is an officer or director at the time such expenses are incurred. The officers and directors of the Association shall not be liable to the Members of the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The officer and directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify, defend and forever hold each such officer and director free and harmless from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director of the Association or former officer or director of the Association may be entitled.

ARTICLE X
COMMITTEES

The Association shall appoint an Architectural Review Committee, as provided in the Declaration; and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint such other committees as deemed appropriate in carrying out its purpose.

ARTICLE XI
BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the By-Laws 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 XII
ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made. Any assessments or portions thereof which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (unless such rate of interest is not legally allowable in which event the highest rate permitted by law shall be applicable), and shall be subject to a late charge of Fifteen Dollars (\$15.00) per month until paid or ten percent (10%) of the Assessment, whichever is greater, and 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 Lot, 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

Areas or abandonment of the Owner's Lot.

**ARTICLE XIII
AMENDMENTS**

Section 1. These By-Laws 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, unless otherwise provided by applicable law. In addition, The Board of Directors may amend these By-Laws at any time to add, change, or delete a provision unless otherwise prohibited by applicable law, or it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of any other class of members.

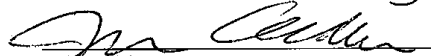
Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and the Articles, the Declaration shall control.


**ARTICLE XIV
MISCELLANEOUS**

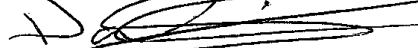
The fiscal year of the Association shall be determined by the Board in its discretion.

These By-Laws shall be subject to the provisions of the Master Declaration and the other documents affecting Birkhill Community Association, Inc. ("Governing Documents"). To the extent there is a conflict between the provisions hereof and the Governing Documents, then the Governing Documents shall control.

IN WITNESS WHEREOF, being all of the directors of Birkhill Townhome Owners' Association, Inc., we have hereunto set our hands this 3rd day of February, 2010.


John Aldous

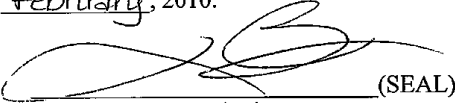

Michael Brodsky


David Irwin

CERTIFICATION

I, THE UNDERSIGNED, do hereby certify that I am the duly elected and acting Secretary of Birkhill Townhome Owners' Association, Inc., and that the foregoing By-Laws constitute the original By-Laws of the said Corporation, as duly adopted by unanimous written consent of the Board of Directors thereof on this 3rd day of February, 2010.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Corporation this 3rd day of February, 2010.



Michael Brodsky, Secretary

(SEAL)

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

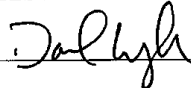


ATTEST:



BENEFICIARY:

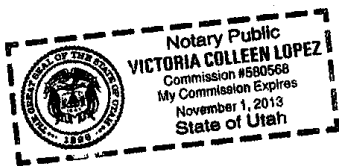
WELLS FARGO BANK, N.A.

By: 

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

I HEREBY CERTIFY, that on this 16th day of February 2010, before me, the subscriber, a Notary Public of the state foresaid, personally appeared Larrys 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 to Trustee and Beneficiary for the purpose containing herein by signing on behalf of the Corporation, in my presence.

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



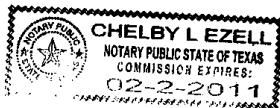
[Signature]
Notary Public

My commission expires on 11/1/13

STATE OF Texas ; COUNTY OF Dallas : TO WIT:

I HEREBY CERTIFY, that on this 8 day of February 2010, before me, the subscriber, a Notary Public of the state foresaid, 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 to Trustee and Beneficiary for the purpose containing herein by signing on behalf of the Corporation, in my presence.

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



[Signature]
Notary Public

My commission expires on 2/2/2011

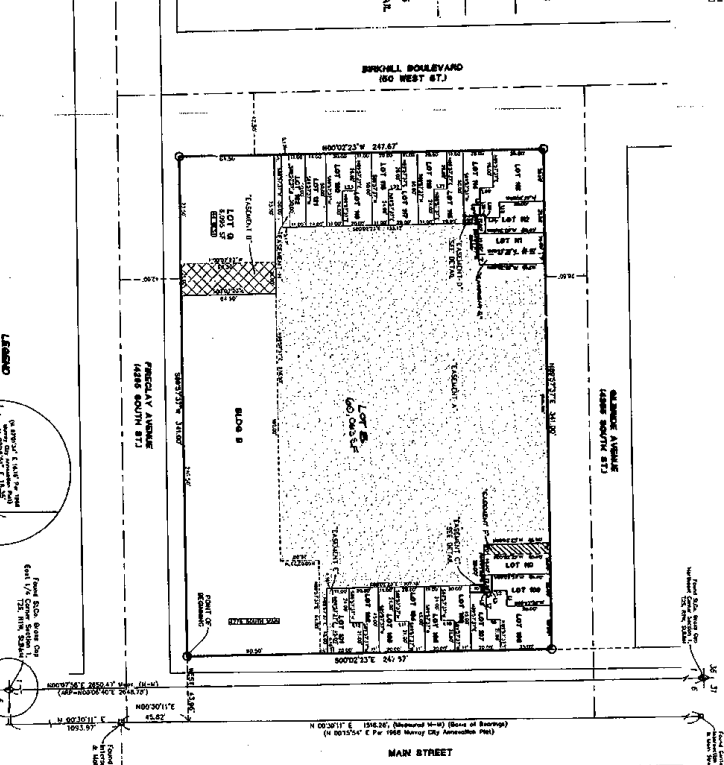
DESCRIPTION OF THE PROPERTY

All that land shown as Lots 101-122 on the plats entitled, "BIRKHILL PHASE 1-2ND AMENDED", recorded among the Recorder's Office of Salt Lake County, Utah, described shown on the "BIRKHILL PHASE 1 - 2ND AMENDED" plat attached hereto.

BIRKHILL PHASE I - 2ND AMENDED

LOCATED IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 10 EAST, SALT LAKE COUNTY, UTAH

LOT	AREA (SQ. FT.)	AREA (ACRES)
LOT 111	10,000	0.2296
LOT 112	10,000	0.2296
LOT 113	10,000	0.2296
LOT 114	10,000	0.2296
LOT 115	10,000	0.2296
LOT 116	10,000	0.2296
LOT 117	10,000	0.2296
LOT 118	10,000	0.2296
LOT 119	10,000	0.2296
LOT 120	10,000	0.2296
LOT 121	10,000	0.2296
LOT 122	10,000	0.2296
LOT 123	10,000	0.2296
LOT 124	10,000	0.2296
LOT 125	10,000	0.2296
LOT 126	10,000	0.2296
LOT 127	10,000	0.2296
LOT 128	10,000	0.2296
LOT 129	10,000	0.2296
LOT 130	10,000	0.2296
LOT 131	10,000	0.2296
LOT 132	10,000	0.2296
LOT 133	10,000	0.2296
LOT 134	10,000	0.2296
LOT 135	10,000	0.2296
LOT 136	10,000	0.2296
LOT 137	10,000	0.2296
LOT 138	10,000	0.2296
LOT 139	10,000	0.2296
LOT 140	10,000	0.2296



LOT	AREA (SQ. FT.)	AREA (ACRES)
LOT 111	10,000	0.2296
LOT 112	10,000	0.2296
LOT 113	10,000	0.2296
LOT 114	10,000	0.2296
LOT 115	10,000	0.2296
LOT 116	10,000	0.2296
LOT 117	10,000	0.2296
LOT 118	10,000	0.2296
LOT 119	10,000	0.2296
LOT 120	10,000	0.2296
LOT 121	10,000	0.2296
LOT 122	10,000	0.2296
LOT 123	10,000	0.2296
LOT 124	10,000	0.2296
LOT 125	10,000	0.2296
LOT 126	10,000	0.2296
LOT 127	10,000	0.2296
LOT 128	10,000	0.2296
LOT 129	10,000	0.2296
LOT 130	10,000	0.2296
LOT 131	10,000	0.2296
LOT 132	10,000	0.2296
LOT 133	10,000	0.2296
LOT 134	10,000	0.2296
LOT 135	10,000	0.2296
LOT 136	10,000	0.2296
LOT 137	10,000	0.2296
LOT 138	10,000	0.2296
LOT 139	10,000	0.2296
LOT 140	10,000	0.2296

DEED
This deed is made this 17th day of December, 2009, by and between the undersigned Grantors, and the undersigned Grantees, for the purposes and consideration hereinafter expressed.

GRANTORS:
[Signatures and names of grantors]

GRANTEES:
[Signatures and names of grantees]

WITNESSES:
[Signatures and names of witnesses]

NOTARY PUBLIC:
[Signature and name of notary public]

RECORDED & INDEXED
[Date and time of recording]

BOOK 217-1-234-107-000-08 **PAGE** 74-72 **BY** [Initials]

AFTER RECORDATION, PLEASE RETURN TO:

BIRKHILL TOWNHOME OWNERS' ASSOCIATION
ATTN: MICHAEL BRODSKY
308 EAST 4500 SOUTH, SUITE 200
MURRAY, UT 84107

BK 9804 PG 7763