

WHEN RECORDED RETURN TO:
Discovery Cove Homeowners Association, c/o
Ivory Homes, Ltd.
Christopher P. Gamvroulas
978 East Woodoak Lane
Salt Lake City, UT 84117
(801) 747-7429

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Gary W. Ott
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 60 P.

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS
FOR
DISCOVERY COVE PUD**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for Discovery Cove PUD (the Declaration), is executed by DISCOVERY COVE HOMEOWNERS ASSOCIATION, of 978 Woodoak Lane, Salt Lake City, UT 84117 (the "Association"), with reference to the following:

RECITALS

- A. The Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for Discovery Cove was recorded in the office of the Salt Lake County Recorder, Utah on October 14, 2009 as Entry No. 10816744 in Book 9770 at Pages 7041-7070 of the official records (the "Declaration").
- B. The Final Plat for Discovery Cove PUD was also recorded by the Declarant.
- C. Discovery Cove PUD originally consisted of 24 Lots.
- D. Discovery Land, LLC was the Declarant (the "Declarant").
- E. The Declarant lost title to some of the real property subject to the Declaration.
- F. Ivory Homes, Ltd. purchased twenty (20) Lots in bulk: Lots 1, 3, 4, 6, 7, 8 9, 10, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23 & 24. These lots shall be referred to herein as the "Ivory Homes Lots".
- G. Lot 18, designated as "Common Area" on the Final Plat, has been deeded to and is now owned by the Association.
- H. Lots 2, 5 & 13 are currently owned by private individuals or trusts not associated with Ivory Homes, Ltd., but subject to the Declaration.

I. This Declaration affects all lots in the Discovery Cove Subdivision, according to the official plat thereof on file in the office of the Salt Lake County Recorder (collectively referred to as the "Property").

J. The Property is subject to the Original Declaration.

K. There are no Class B Members.

L. All of the voting requirements of Article X, Section 10.2 of the Original Declaration have been satisfied.

M. The Owners of the Property and the Association desire to amend and restate the Original Declaration.

N. The Property is an area featuring unique and distinctive terrain;

O. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Association to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.

P. Ivory Homes, Ltd. intends to construct Homes upon the Ivory Home Lots.

Q. Ivory Homes, Ltd. intends to sell to various purchasers the fee title to the individual Ivory Home Lots and a corresponding membership interest in the Association who will own and manage the Common Area.

R. Ivory Homes, Ltd., shall mean and refer to any Ivory Homes affiliated entity, including but not limited to Ivory Homes Ltd., Ivory Development, LLC, or ICO Construction.

S. The Project is to be known as "Discovery Cove" or "Discovery Cove PUD."

T. The Association desires, by filing this Declaration to submit the Property and all improvements now or hereafter constructed thereon to the provisions and protective covenants set forth in the Project Documents.

U. Since the completion of the Homes may be in phases, the completed Project will consist of the original phase and all subsequent phases.

COVENANTS, CONDITIONS, AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Association hereby withdraws, removes and vacates the Original Declaration and hereby makes the following amended and restated declaration in lieu thereof:

I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated. Terms defined in this Declaration shall have the same meaning as set forth therein unless the context clearly requires otherwise.

1.1 The term Accessory Building shall mean and refer to any structure which (1) is not the preliminary structure, (2) contains at least 120 square feet, (3) requires a building permit, (4) is not a shed, shack or other out-building (for which a building permit is not required), and (5) qualifies as such under the totality of the circumstances in the opinion of the Architectural Review Committee.

1.2 The term Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

1.3 The term Architectural Review Committee shall mean the person or persons appointed to review the designs, plans, specifications, homes, architecture, fencing, and landscaping within Project (the "ARC").

1.4 The term Area of Common Responsibility shall mean and refer to the area which the Association is responsible to maintain, repair and replace.

1.5 The term Area of Personal Responsibility shall mean and refer to the area which the Owner is responsible to maintain, repair and replace.

1.6 The term Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Discovery Cove Homeowners Association.

1.7 The term Assessment shall mean and refer to an amount assessed or imposed by the Association.

1.8 The term Association shall mean and refer to the association of Owners of the Property taken or acting as a group in accordance with this Declaration.

1.9 The term Board of Directors shall mean and refer to the governing board or managing committee of the Association.

1.10 The term Builder shall mean the Person who obtains a construction or occupancy permit to build a Home one or more Lots.

1.11 The term Building shall mean and refer to any of the structures constructed in the Property.

1.12 The term Bylaws shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto, marked Exhibit "B," and incorporated herein by this reference.

1.13 The term Capital Improvement or Addition shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.

1.14 The term City shall mean and refer to the City of Murray in Salt Lake County, Utah.

1.15 The term Common Areas and Facilities shall mean and refer to all real property in the Property owned in common by the Owners, including but not limited to the following items:

1.15.1 The real property and interests in real property submitted hereby, including the entirety of the Property and all improvements constructed thereon, excluding the individual Lots.

1.15.2 All Common Areas and Facilities designated as such in the Final Plat;

1.15.3 All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Property and intended for the common use of all Lot Owners, such as telephone, electricity, gas, water, cable television, and sewer;

1.15.4 The Property's outdoor grounds including landscaping, open and green space, entry and monument;

1.15.5 The Subsurface Drain System;

1.15.6 All portions of the Property not specifically included within the individual Lots;

1.15.7 Lot 18; and

1.15.8 All other parts of the Property normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

Provided, however, utility installations such as electricity, gas, water, and sewer may be dedicated to the City or other public utility and, if so, this definition shall not be construed to

allow the Association to exclude the City or other public utility from the ownership and control of the utility systems so dedicated.

1.16 The term Common Expense shall mean and refer to:

1.16.1 All sums lawfully assessed against the Owners;

1.16.2 Expenses allocated by the Association among the Owners;

1.16.3 Expenses agreed upon as common expenses by the Association; and

1.16.4 Expenses declared common expenses by this Declaration.

1.17 The term Community shall mean and refer to the Project or if the context clearly requires the Property.

1.18 The term Community Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Discovery Cove Subdivision, as determined by the Board of Directors from time to time.

1.19 The term County Recorder shall mean and refer to the Salt Lake County Recorder, State of Utah.

1.20 The term Covenant to Share Costs shall mean and refer to any contract, agreement, declaration of easements, licenses and/or covenant to share costs executed by the Association and recorded in the Office of the County Recorder which creates easements for the benefit of the Association subject to such Covenant to Share Costs, and/or which obligates the Association to share the costs of maintaining certain real, personal or mixed property described therein.

1.21 The term Discovery Cove shall collectively and severally refer to Discovery Cove PUD.

1.22 The term Discovery Cove Final Plat shall mean and refer to the recorded Final Plat for Discovery Cove, as it may be amended or supplemented from time to time.

1.23 The term Declarant shall mean and refer to Discovery Land, LLC.

1.24 The term Declaration shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for Discovery Cove PUD.

1.25 The term Dedicated Streets shall mean and refer to those streets and cul-de-sacs within the Project formally dedicated to the City or any other municipal or governmental body politic, entity or agency.

1.26 The term Design Guidelines shall mean and refer to the architectural and design requirements of Ivory Homes.

1.27 The term Developmental Rights shall mean and refer to the right granted hereunder to Ivory Homes, Ltd., its agents, representatives, employees, successors and assigns, to develop and improve the Ivory Home Lots.

1.28 The term Eligible Guarantor shall mean and refer to a governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with the Declaration.

1.29 The term Eligible Insurer shall mean and refer to an insurer of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

1.30 The term Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

1.31 The term Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Board of Directors. A vote which is for any reason suspended is not an "eligible vote".

1.32 The term Final Plat shall mean and refer to the recorded Final Plat for Discovery Cove PUD as approved by the City and on file in the Office of the County Recorder.

1.33 The term Guest shall mean and refer to a family member, guest, visitor, invitee or licensee of an Owner or Unit.

1.34 The term Home shall mean and refer to a home, residence, Home or living unit constructed upon a Lot.

1.35 The term Improvement shall mean and refer to any physical change or addition to the Property to make it more valuable or useful.

1.36 The term Individual Charge shall mean and refer to a charge levied against an Owner, Guest or Permittee for all expenses resulting from the act or omission of such Person, excepting the Owner's failure to pay any Assessment. Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner or his or her Guest or Permittee including:

1.36.1 The cost to repair any damage to any portion of the Property on account of loss or damage caused by such Person; or

1.36.2 The cost to satisfy any expense to any other Owner or Owners or to the Association due to any intentional or negligent act or omission of such Person, or resulting from the breach by such Person of any provisions of the Project Documents;

1.36.3 The Yard Maintenance Assessment; and

1.36.4 Any fine.

While Individual Charges are not Assessments, they are secured by a lien in the same manner as Assessments, as set forth below. The Association also shall have all other remedies, both legal and equitable, described in the Project Documents available against any Owner for nonpayment.

1.37 The term Land shall mean and refer to the Property.

1.38 The term Landscaping shall mean and refer to the grass, trees, shrubs, bushes, flowers, plants, and like improvements located within the Property, as well as the appurtenant sprinkling and irrigation systems.

1.39 The term Lender shall mean and refer to a Mortgagee.

1.39 The term Lot shall mean and refer to a separate physical part of the Property intended for independent use as shown on the Final Plat. Each Lot shall be assigned a separate "parcel" or tax identification number by the appropriate governmental agency.

1.41 The term Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.

1.42 The term Manager shall mean and refer to the professional Person appointed or hired by the Association to manage and operate the Property, and assist in the administration of the Association.

1.42 The term Mortgage shall mean and refer to any mortgage, deed of trust or other security instrument (including the seller's rights under a contract for deed) by which a Lot or any part thereof or interest therein is encumbered. A *First Mortgage* is a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.

1.44 The term Mortgagee shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller's interest (so long as a copy of the contract for deed is given to the Association) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A *First Mortgagee* shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in the Declaration shall also protect the Association as the holder of a First Mortgage of a Lot, or any interest therein.

1.44 The term Office of the County Recorder or County Recorder shall mean and refer to the Office of the County Recorder of Salt Lake County, Utah.

1.45 The term Open Space shall in the event that the City has or shall adopt an ordinance which contains a definition of the term "open space" and which makes such definition applicable to Lot 18, that definition shall be incorporated herein by this reference. In the absence of such a definition, the term "open space" shall mean land on which improvements and activities shall be permitted and prohibited as designated in subsections 1.45.1 and 1.45.2 below, respectively.

1.45.1 Permitted. The following improvements and activities shall be permitted: pasture, unimproved land, open space, landscaping, green space, basketball court, and tot lot.

1.45.2 Prohibited. The following improvements and activities shall be prohibited: temporary or permanent buildings or building-type structures or any kind, impervious surfaces other than those used only for activities permitted by Subsection 2.1 hereof, operation, parking or storage of motorized vehicles of any kind except those used for landscaping maintenance, machinery which is affixed to the property and which can be seen or heard from adjacent property, noxious or offensive activities of any kind, any activity which is or which may become a nuisance, and dumping or storage of refuse, garbage or other waste.

1.46 The term Owner shall mean and refer to a Person who is the owner of a fee or an undivided fee interest in a Lot, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.47 The term Parking Pad shall mean and refer to a cement or concrete, (or other construction material approved in writing by the Architectural Review Committee) parking pad constructed or installed on a Lot for the purpose of parking or storing of a Recreational, Commercial, or Oversized Vehicle.

1.48 The term Parking Pad Fence shall mean and refer to the cinder block, vinyl or wood (or other construction material approved by the ARC in writing) fence surrounding the Parking Pad

1.49 The term Permittee shall mean a Guest, tenant, resident or other non-Owner occupant.

1.50 The term Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

1.51 The term Plans and Specifications shall mean and refer to any and all documents designed to guide or control the construction of an Improvement, or alterations, modifications, changes, additions and the like thereto, including without limitation all documents indicating the size, shape, configuration and/or materials, to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for

utility services, and all other documentation or information relevant to the improvement or proposal in question.

1.52 The term Private Street, Road, Cul-de-sac, Way or Drive shall mean and refer to those streets, roads, cul-de-sacs, ways, drives or turnabouts within the Project not dedicated to the City or any county, state, or other governmental body politic, entity or agency.

1.53 The term Project shall mean and refer to all of the Property, as shown on the Final Plat unless the context clearly requires otherwise.

1.53 The term Project Documents shall mean and refer to this Declaration, Final Plat, Bylaws, Rules and Regulations, and Articles of Incorporation.

1.55 The term Property shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to this Declaration.

1.56 The term Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

1.57 The term Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

1.58 The term Resident shall mean and refer to any person living or staying at the Project. This includes but is not limited to a natural person or persons residing in the Home .

1.59 The term Single Family shall mean and refer to *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.

1.60 The term Single Family Residence shall mean and refer to (a) both the architectural style of a Home and the nature of the residential use permitted; and (b) a single family detached residence in the Project as shown on the Final Plat , which shall include fee title to the Lot on which the Home is located, an undivided interest in the use of the Common Area and Facilities, subject to the Declaration.

1.61 The term Total Votes of the Association shall mean 23, the total number of votes appertaining to all Lots in the Property, excluding Lot 118 which is Common Area owned by the Association.

1.62 The term Use Restrictions shall mean and refer to the rules, regulations and use restrictions described with particularity below, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.

1.63 The term Visible From a Neighboring Property shall mean with respect to any object, that such object is or would be visible to an individual 6' tall, standing at ground level on any portion of the neighboring property.

II. SUBMISSION

The Property, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is hereby resubmitted to the Declaration.

The Property is hereby again made subject to, and shall be governed by the Declaration, and the covenants, conditions and restrictions set forth herein.

The Property is SUBJECT TO the described easements and rights of way.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: This Declaration; all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Final Plats or otherwise existing; an easement for each and every Common Area and Facilities improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Property; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such Common Area and Facilities improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. Description of Improvements. Twenty-four (24) Lots are shown on the Final Plat, numbered 1-24, inclusive. The significant improvements contained in this Project include twenty four (24) Lots, including Lot 18 (Open Space), Common Area (Lot 18), and other

improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the Final Plat.

2. Description and Legal Status of Property. All Lots shall be capable of being privately and independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers. The Final Plat shows the type and location of each Lot and its Lot Number.

3. Membership in the Association. Membership in the Association is mandatory and may not be separated or partitioned from its appurtenant Lot. Each Owner by virtue of his accepting a deed or other document of conveyance to a Lot shall be considered a member of the Association. Any attempt to assign, transfer, pledge, alienate, subdivide or partition a membership in violation of this section shall be voidable by the Association or Association.

4. Voting Allocations. Each Lot shall have one (1) vote, except for Lot 18 which shall not have any voting rights. No vote shall be cast or counted for any Lot not subject to assessment. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

5. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

All of Lot No _____ contained within DISCOVERY COVE PUD, Phase ____, as the same is identified in the Final Plat recorded in Salt Lake County, Utah as Entry No. _____: _____ at Page _____ of the official records of the County Recorder of Salt Lake County, Utah (as said Final Plat may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of Discovery Cove PUD recorded in Salt Lake County, Utah as Entry No. _____ in Book _____ at Page _____ of the official records of the County Recorder of Salt Lake County, Utah (as said Declaration may have heretofore been amended or supplemented), together with an undivided interest in the Association.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of the Project Documents shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

6. Mandatory Association. Each purchaser of a Lot by virtue of his acceptance of a deed or other document of conveyance shall automatically become a member of the Association. Membership in the Association may be separated from the Lot to which it appertains and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association shall automatically accompany the transfer of the Lot to which it relates.

7. Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned as any other property rights by any Person. Unless otherwise expressly stated in this Declaration or on the Final Plat, the Property shall be used only for residential purposes, and the Common Area and Facilities shall only be used in a manner consistent with the residential nature of the Project.

8. Easements and Rights of Way. Association hereby grants and conveys to the Association and each Owner the right and non-exclusive easement to use and enjoy the Common Area. Such rights and easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions: (1) The right of the Association to limit the number of Guests and Permittees; (2) The right of the Association to suspend the voting privilege; and (3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of regulating transportation, maintaining the roadways or providing utilities and other similar or related purposes. Each Owner by virtue of his acceptance of a deed or other document of conveyance shall be entitled to (a) the exclusive ownership and possession of his Lot and (b) an undivided percentage of ownership in the Association.

9. Joint or Common Utility Easements with Neighboring Subdivisions or Developments. The Association for itself and/or its successors in interest (including but not limited to the Association), hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with or to convey to owners or Associations of adjoining subdivisions, projects or developments any and all reasonable and necessary utility easements or rights of way for gas, water, power, sewer, storm drain systems or the like under, over, across or through the Project.

10. Rules and Regulations. The Association, acting through its Board of Directors, shall have the power and authority to adopt administrative or house rules and regulations, which shall be binding upon all Owners and their Permittees.

11. Reasonable Rights to Develop. No rule or action by the Association or Board of Directors shall unreasonably impede Ivory Development LLC's right to build Homes on the Ivory Homes Lots in accordance with this Declaration and the Final Plat.

12. Rules and Rights of Owners. Except as may be specifically set forth below, and subject to City ordinances and the Declaration, whichever is more restrictive, neither the Board of Directors nor the Association may adopt any rule in violation of the following provisions:

12.1 Similar Treatment. Similarly situated Owners shall be treated similarly.

12.2 Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in mixed use residential and commercial neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.

12.3 Household Composition. No rule shall interfere with the freedom of the occupants of Homes to determine the composition of their households, except that the Declaration limits residency in a Home to a single family and the Association shall have the power to limit the total number of occupants permitted in each Home on the basis of the size and facilities of the Home and its fair share use of the Common Area and Facilities.

12.4 Activities Within Lots. No rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Lot, or that create an unreasonable sounds of annoyance.

12.5 Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of financial burdens among various Lots or rights to use the Common Area and Facilities to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Area and Facilities, from adopting generally applicable rules for use of Common Area and Facilities, or from denying use privileges to those who abuse the Common Area and Facilities, violate the Project Documents, or fail to pay Assessments. This provision does not affect the right of the Association to increase or decrease the amount of Assessments.

12.6 Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law. The limitations in this subsection shall apply to rules only; they shall not apply to amendments to this Declaration.

13. Initial Use Restrictions and Nature of the Project. The Lots are subject to the following initial use restrictions which shall govern both the architecture and the activities within the Property:

13.1 Private Residence. No Residential Lot shall be used except for residential purposes and all residents shall be obligated by the following requirements: No temporary structure including trailers, tents, shacks, garages, barns or other outbuildings shall be used on any Lot at any time.

13.2 Business Use. No resident may operate a commercial trade or business in or from his Lot with employees of any kind or with customers who are not residents of the Project, or which create or maintain a nuisance. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Lot. No commercial trade or business may be conducted in or from a Lot unless (a) the business activity conforms to all home occupation and zoning requirements governing the Project; (b) the operator has a city issued business license; (c) the business activity satisfies the Home Occupation Guidelines adopted by

the Architectural Review Committee, as they may be modified from time to time; and (d) the resident has obtained the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

13.3 Storage and Parking of Vehicles. The driving, parking, standing, and storing of motor vehicles in, on or about the Property shall be subject to the parking rules and regulations adopted by the Board of Directors. No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally constructed. Motor vehicles parked in violation of the parking rules and regulations may be immobilized, towed and impounded at the owner's sole risk and expense.

13.4 Garbage and Refuse Disposal. No Lot shall be used as a dumping ground. All trash, garbage, debris, rubbish or other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period on pick-up days. All garbage cans will be rolled to the public street for City pick-up.

13.5 Aerials, Antennas, and Satellite Systems. Satellite dishes, aerials, antenna, or systems may only be installed in accordance with FCC regulations taking into consideration the written guidelines established for the Project. The Board of Directors may bar, in its sole discretion, satellite dishes, aerials, antenna, or systems, including HAM radio antenna, not expressly authorized by FCC regulations.

13.6 Animals and Pets. Large animals, as that term is defined by City Ordinance, are not allowed. No pets, animals, livestock, or poultry of any kind may be commercially bred at the Property. Up to two (2) domestic pets as that term is defined by City Ordinance per Lot are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts or failures to act are considered a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) running loose throughout the Property and not in a cage or on a leash and under the control of a responsible person; (e) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb the sensibilities of a reasonable person or interfering with the right of residents to the peaceful and quiet enjoyment of their property; (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents; and/or (k) violating a City ordinance. The Association may charge a pet deposit and/or pet registration fee.

13.7 Signs. No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or any Lot except for a single sign with a maximum size of 2' x 2' for specific purpose of advertising the sale of a Home; provided, however, this restriction does not apply to and is not binding upon the Association, who may use

whatever signs it deems appropriate to market its Lots. "For Rent" or "For Lease" signs in the Common Area, on a Lot, or showing from a Home are prohibited.

13.8 Zoning. All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Property land use and buildings.

13.9 Nuisances. No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the residents of the Project, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property.

13.10 Temporary Structures. No structure of a temporary nature or character, including but not limited to any trailer, shack, shed, tent, garage, barn or other out-building shall be used on any Lot at any time as a residence.

13.11 Neighborhood Sounds, Sights and Odors. This Property is located by and is subject to the normal, everyday sounds, odors, and all other aspects associated with the nearby residential and commercial areas.

13.12 Owner-Occupied. A Home must be owner-occupied for a period of at least one (1) year after closing. The term "owner-occupied" shall mean a Unit occupied by one of the following:

13.12.1 The vested owner (as shown on the records of the Salt Lake County Recorder);

13.12.2 The vested owner and/or his spouse, children or siblings; or

13.12.3 The shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner (provided, such person holds a beneficial interest in such legal entity of at least 50.0%) and/or his spouse, children or parents.

13.13 Laws. Nothing shall be done or kept in, on or about any Lot or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

13.14 Damage or Waste. Each Owner shall repair any damage he or any other residents, guests, or invitees of his Lot may cause to another Owner, Lot, or Home, and promptly restore the property to its original condition.

13.15 Chimes and Musical Sound Makers. Chimes, dream catchers, bells, tubes or other objects hung vertically outside the Home which ring, strike or otherwise produce musical sounds or harmony heard by other residents are prohibited.

14. Transfer Fee. The Association may charge the purchaser of a Lot a reasonable administrative fee when a Lot is sold.

15. Architectural Review Committee. The Architectural Review Committee (the "ARC") shall have the right, power and authority to resolve all architectural, design and related issues. Until Ivory Homes, Ltd. has sold all of the Ivory Homes Lots, Ivory Homes, or any of its affiliates shall have the sole right and exclusive authority to appoint all members of the ARC. In the event of any conflict, incongruity or inconsistency between a decision of Ivory Homes, Ltd. and the Association or Board of Directors, the former shall in all respects govern and control. Anything to the contrary notwithstanding, so long as Ivory Homes, Ltd. owns an Ivory Homes Lot, the Architectural Review Committee shall have a "Managing Member". The initial Managing Member shall be Christopher P. Gamvroulas who shall serve in this capacity until his successor is appointed by Ivory Homes, Ltd.. The Managing Member is hereby appointed as the sole agent of and attorney-in-fact for the ARC, and is hereby granted the right, power and authority to act unilaterally on its behalf and for its benefit. This office and agency shall expire automatically upon the sale of the last Ivory Homes Lot.

15.1 ARC Powers and Standing. Any instrument executed by the ARC or its legal representative that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

15.1.1 The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners; and

15.1.2 The ARC shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions.

15.2 Landscaping. The Association shall landscape the Common Area. Each Owner shall landscape his Lot. The Association shall have absolute and unilateral control over the landscaping in the front yards, including the design, location, selection, and planting of all trees, shrubs, bushes, sod and plants, and no alterations, modifications or changes of any kind may be made by any Owner or resident at any time without the prior written consent of the Architectural Review Committee, and any such alteration, modification or change made without its prior written consent shall be considered non-conforming. Upon written request of the Architectural Review Committee, any non-conforming landscaping shall be removed and the property shall be restored to its original condition forthwith, at the expense of Owner or resident. For an additional fee, the Association may (although it is not obligated to do so) accept the responsibility for the side and rear yards.

15.3 Snow Accumulations. Each Owner shall remove all snow and ice accumulations from his Lot. The Association may but is not obligated to agree to remove snow and ice accumulations from a Lot for a fee. Any such agreement must be in writing signed by both parties. Each Owner or resident by electing to have the Association remove accumulations

of snow and ice from his Lot hereby: (a) assumes the risk of bodily injury and/or property damage caused by such snow or ice accumulations, including by way of illustration but not limitation a "slip and fall," (b) agrees to obtain insurance coverage for such risk or peril, (c) releases the Association and/or its Manager, Board of Directors, employees, agents and representatives (collectively herein "Association") for any and all liability for any bodily injury, including death, or property damage caused by any act of the Association or failure to act, including negligence, (d) waives any claim against the Association for any and all liability, loss, damage, demand, cost, judgment or award for any bodily injury, including death, or property damage caused by any act of the Association or failure to act, including negligence, and (e) agrees to save, indemnify and hold the Association any and all liability, loss, damage, demand, cost, judgment or award for any bodily injury, including death, or property damage caused by any act of the Association or failure to act, including negligence.

15.4 Easements.

15.4.1 Grant of Easement. The Association hereby reserves to itself and grants to the Association a nonexclusive, perpetual right-of-way and easement over, across and through the Property, together with the right to use, operate, maintain, repair and replace the Common Area and Facilities and Exclusive Common Area and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

15.4.2 Common Use of Easement. Said easement is to be used in common for ingress and egress over the Common Area and Facilities by the Association, Association and Owners, subject to all of the terms, covenants, conditions and restrictions set forth herein.

15.4.3 Private Easement. The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Association, the Association and Owners.

15.4.4 Benefited Expense Regarding Landscaping. A phase or any group of Owners are hereby empowered to and may, with the prior written consent of the Association, elect, at its sole expense and for its benefit, to upgrade its block, area or phase, or any part thereof (the "Benefited Expense"), although such Benefited Expense shall not be considered part of the Common Expenses and shall be considered a separate obligation jointly and severally of the group.

15.4.5 Encroachments. If any part of the Common Area and Facilities encroaches or shall hereafter encroach upon a Lot or Lots, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Area and Facilities, or upon an adjoining Lot or Lots, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities or the Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to

be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

15.4.6 Improvements. Improvements, including Lots, Homes or Common Area and Facilities constructed as subsequent phases of the Project may encroach upon portions of the Common Area and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and the obligation to repair, maintain and operate such improvements is hereby reserved by the Association and granted to the Association and Owners.

15.4.7 Rights of Access. Each Owner shall have the right to ingress and egress over, upon and across the Common Area and Facilities as necessary for access to the Lot or Home he is occupying, and he shall have the right to the horizontal, vertical and lateral support of his Lot or Home.

15.4.8 Association's Easement. The Association hereby reserves to itself and grants and conveys to the Association an exclusive easement to make such use of the Common Area and Facilities as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct the Common Area and Facilities for use by the Owners.

15.4.9 Construction Easements. The Association hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Common Area and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Lots, Homes and Common Area and Facilities. The Owners of Lots and Homes do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Lots, Homes and the Common Area and Facilities until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Association shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners of Lots, Homes and Common Area and Facilities. Association's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

15.4.10 Locations Facilities Easements. The Association hereby reserves to itself a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Association further reserves to itself a right of access to the Locations of Facilities over, across, and through all other Common Area and Facilities in order to access the Locations of Facilities to exercise the rights established herein. Association reserves to itself the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Association may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee or the Association. The Association, on behalf of all Owners, agrees to execute such

further and additional instruments as may be requested by Association documenting the rights hereunder, in form satisfactory to the Association, and any assignee of its rights hereunder.

15.4.11 Entry Monument. The Association hereby reserves to itself (and its affiliates or assignees) a non-exclusive easement to construct, operate, maintain, repair and replace the Entry Monument.

15.4.12 Association's Non-Exclusive Easement. Association reserves for itself and its affiliates and assignees a non-exclusive easement over, through and under the Property for ingress to, egress from, and installation of all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity and cable communication that service the Property or any portion thereof as well as any such lines and systems which service property owned by the Association. Upon installation of such utilities the responsibility to repair, maintain and replace the utilities shall be assumed by the Association or the City or other public or quasi-public entity having jurisdiction over the utility.

15.4.13 Reservation of Rights. All conveyances of Lots or Homes within the Project hereafter made, whether by Association or otherwise, shall be construed to grant and reserve such easements and/or licenses as are provided herein, even though no specific reference to such easements appears in any such conveyance.

15.4.14 Common Area Repairs. All common areas shown on plats are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City to require the homeowners association to assess its members to repair streets, landscaping etc., where needed to repair or replace the public utilities.

15.5 Slope and Drainage Control. No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels.

15.5.1 The slope control area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, excepting those improvements for which a public authority or utility company is expressly responsible.

15.5.2 It shall be the responsibility of the Owner to see that his Lot strictly conforms with the grading and drainage plan established by the Association, City and/or Salt Lake County.

15.6 Procedures for Approval of Plans and Specifications. The ARC shall review and approve plans for all buildings proposed for erection, placement, or alteration within the Project. The City may require that building permit applications show evidence that the architectural control committee has approved each building plan. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all

proposed structures and improvements shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges, by acceptance of a deed or other document of conveyance, that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

15.7 No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

15.8 Variance. The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

15.9 Limitation of Liability. Neither the Association nor the ARC, or any of their employees, agents, representatives or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the Association and the ARC, and their employees, agents, representatives or consultants harmless from any and all loss, damage, or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards or judgments arising out of their review or approval of architectural designs, plans and specifications.

15.10 Professional Architects and Designers. Designs submitted for approval must be prepared by architects or by qualified residential designers of outstanding ability whose previous work must be available for inspection and evaluation as a part of the approval process.

15.11 Contractors. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration may be excluded by the ARC from the Subdivision, subject to the notice and the opportunity to be heard. In the event of sanctions after notice and hearing, neither the ARC or the Association, nor

their employees, agents, representatives or consultants shall be held liable to any person for exercising the rights granted by this Section.

15.12 Enforcement of Architectural Guidelines. Any construction, installation, alteration, or other work done in violation of this Declaration shall be considered to be nonconforming.

15.12.1 Upon written request from the ARC an Owner shall at his own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work.

15.12.2 Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work without being deemed to be a trespasser.

16. Leases. Each Owner agrees, by the acceptance of a deed or other document of conveyance to a Lot, that in order to maintain the value of the purchased property and the subdivision, the leasing and renting of Homes is subject to the following covenants, conditions and restrictions:

16.1 Rental Rules. Renting rules and regulations adopted by the Board of Directors, as they may be amended from time to time.

16.2 Rental Moratorium. No Owner may lease or rent his Home for a period of one (1) year from the date of closing.

16.3 Short Term Rentals. No Owner shall be permitted to lease his Home for short term, transient, hotel, vacation, seasonal or corporate use purposes. For purposes of this section the term "short term" shall be considered to be any rental with an initial term of less than six (6) months. Daily or weekly rentals are expressly prohibited. No Owner may lease individual rooms to separate Persons or less than his entire Home, including by way of illustration but not limitation letting a room to domestic help or a caretaker, without the prior express written consent of the Board of Directors.

16.4 Signage. "For Rent" or "For Lease" signs are prohibited.

16.5 Approvals. The Board of Directors must approve in writing all lease and rental agreements as to form. Any lease or rental agreement not approved or in violation of the Project Documents shall be considered "non-conforming" and, as such, voidable by the Board of Directors.

16.6 Rental Agreements. The Association may also require that Owners use lease forms or addenda, such as the Crime Free Addendum or the Project Addendum, approved

by the Association (or include specific terms in their leases); and the ARC may impose a review or administration fee on the lease or transfer of any Lot.

16.7 Limitation on Number of Rentals. The Association may prohibit or restrict the number of rentals in the Project.

16.8 No Other Restrictions. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to his Home.

17. Building of Homes in the Project. The Homes in the Project shall be completed in accordance with the following minimum standards:

17.1 Compliance with City Laws and Development Standards: The Homes shall be constructed in accordance with all applicable City laws, the approved Development Plan and the approved Preliminary and Final Plats and Site Plans.

17.3 Lots. The Project shall include 22 Lots with the sizes and density shown on the Final Plat.

17.4 Home Size, Design, and Amenities:

17.4.1 All Homes shall meet the requirements established in City Ordinance and the Development Agreement.

17.4.2 Homes shall be consistent with those outlined in the Ivory Homes, Catalogue of Homes as it may be updated from time to time.

17.4.3 All Homes constructed in the Project shall be covered with brick, rock, cultured rock, or other cement based materials on 100% of the exterior vertical surfaces.

17.4.4 Every Home shall have sod sufficient enough to cover the front yard of the Lot.

17.4.5 Owner shall install two trees, minimum 1 ½ inch caliper, in the park strip per residential frontage where there is enough frontage, recognizing that cul-de-sac Lots have limited frontage. However, where corner Lots have two frontages three trees shall be planted in the park strip. Each Owner is responsible to replace any trees that do not survive, regardless of cause. If the Owner fails to replace a tree within a reasonable time, then the Association may replace the tree, without being guilty of a trespass, at the Owner's sole expense and may place a lien against the Owner's property to secure payment.

17.5 Streets and Related Improvements. The Declarant constructed and/or improved and dedicated to City the streets designated for public access indicated on the preliminary plat and as shown on Final Plats. The construction and/or improvement of the streets should have included all curb, gutter, paving, sidewalks, park strips and related utilities. All of the Declarant's construction and improvement should have been in accordance with City-

approved design and construction standards and requirements or as designed, based upon a soils analysis conducted by a certified soils engineer whichever is the greater requirement. The undersigned make no representations or promises regarding the condition of these improvements which were the responsibility of the Declarant. The Association hereby notifies all purchasers of Lots in the Project that they by virtue of accepting a deed or other document of conveyance accept said improvements and construction "as is" and "with all faults".

17.5.3 Designs, Plans and Specifications. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval. Information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction should be submitted if applicable. Designs submitted for approval shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process.

17.5.3.1 Review Considerations Generally. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things.

17.5.3.2 Aesthetics. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

17.5.3.3 Minimum Home Requirements. Subject to the requirements of City ordinance no Home shall be constructed or altered unless it meets the following minimum requirements. In the event of a conflict between the City ordinance and the provisions set forth below, the City ordinance shall in all instances govern and control.

17.5.3.3.1 Only single family residences Homes are allowed on a Residential Lot. Accessory Buildings must be approved by the ARC.

17.5.3.3.2 The height of any Home shall not exceed two stories above ground.

17.5.3.3.3 No slab on grade Homes are permitted.

17.5.3.3.4 Without the prior written consent of the ARC, a basement is required for each Home.

17.5.3.3.5 Without the prior written consent of the ARC, each Home shall have a private garage for not less than two (2) motor vehicles.

17.5.3.3.6 The Home exteriors, in their entirety, must consist of maintenance free stucco and/or masonry, unless another construction material is approved by the ARC in writing.

17.5.3.3.7 No aluminum or vinyl siding is permitted.

17.5.3.3.8 Any detached accessory building must conform in design and materials with the primary residential Home.

17.5.3.3.9 Any and all plans and specifications for an Accessory Building must be submitted, reviewed and approved in writing by the ARC in advance.

17.5.3.3.10 No tin sheds are allowed.

17.5.3.3.11 A solid 6-foot "Trex" fence, approved by the City, has been installed on the perimeter of the property, with the exception of the lots that are adjacent to the city owned park in the north east portion of the project, where a 6-foot black vinyl-coated chain link fence has been built. The perimeter fencing installed by the Declarant must be maintained for consistency and continuity within the Project. No fence or similar structure shall be placed in any side or rear yard in excess of six (6) feet. Matching Trex fencing or vinyl fencing is allowed without additional approval required. Wood, masonry and wrought iron fencing may be allowed with the express prior written consent of the ARC, although approval may be denied. Chain link fencing is strictly prohibited unless expressly authorized. If there is a dispute as to what constitutes the front, side or rear yards, fencing materials, or whether a variance has been granted, the decision of the ARC shall be final, binding and conclusive.

17.5.3.3.12 Swimming pools, cabanas, equipment buildings, outdoor recreational activities, such as athletic courts, tennis courts, basketball courts, a soccer pitch, batting cages, and so forth must be approved prior to construction, in writing, by the ARC.

17.6 Preliminary Architectural Drawings, Plans and Specifications. The ARC may require, as a minimum, the following additional items:

17.6.1 Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.

17.6.2 Floor plans of each floor level to scale.

17.6.3 Elevations to scale of all sides of the Home.

17.6.4 One major section through Home.

17.6.5 A perspective (optional).

17.6.6 Specifications of all outside materials to be used on the exterior of the Home.

17.7 Final Plans and Specifications and Working Drawings. The ARC may also require, as a minimum, the following:

17.7.1 Plot plans to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, retaining walls, with elevations of the existing and finished grade and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

17.7.2 Detailed floor plans.

17.7.3 Detailed elevations, indicating all materials and showing existing and finished grades.

17.7.4 Detailed sections, cross and longitudinal.

17.7.5 Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used with supplements, addenda or riders noting the colors of all materials to be used on the exterior of the Home.

17.8 Landscaping. All Lot landscaping, grading, and drainage is subject to the following covenants, conditions, restrictions and easements, and shall be completed strictly in accordance herewith and so as to comply with and not impair all applicable City Ordinances and flood control requirements.

17.8.1 All Lot landscaping must be completed within six (6) months of closing.

17.8.2 Landscaping shall include by way of illustration but not limitation the planting of a lawn and/or other appropriate ground cover, planting beds and flower beds, appropriate bushes and shrubs, and the planting of trees in accordance herewith.

17.8.3 The Builder will provide the City with a bond for landscaping if required.

17.8.4 In the event that such a bond is provided, it shall be refunded, upon the buyer's completion of the City's landscaping requirements, inspection and approval, to the Owner.

17.8.5 By accepting a deed or other document of conveyance to a Lot, the Owner hereby agrees, acknowledges and consents to install front yard landscaping prior to receiving a final inspection on the Lot.

17.8.6 The Owner is responsible for the initial planting of trees.

17.8.7 Trees, lawns, shrubs, or other plantings placed on a Lot shall be properly nurtured, maintained and replaced by the Owner.

17.8.8 Any weeds or diseased or dead lawn, trees, ground cover, bushes or shrubs shall be removed and replaced.

17.8.9 All replacement trees must also satisfy the requirements of the Street Tree Planting Plan.

17.8.10 The landscaping of a Lot may not adversely affect the value or use of any other property or detract from the original design scheme and appearance of the subdivision.

17.8.11 No concrete, cement or masonry products, pavers, brick, stone, cobblestone, tile, terrazzo, slabs, slate, rocks, pebbles, gravel, permeable pavements and so forth or other artificial or impermeable surfaces (collectively "controlled surfaces") may be installed or constructed as landscaping in the front, side or rear yards of a Lot without the express prior written consent of the ARC.

17.8.12 Front, side or rear yards constructed primarily or substantially of controlled surfaces are prohibited.

17.8.13 Should any Owner fail to comply with the provisions of this paragraph, the Association or the ARC shall have the right to seek an order from a court of proper jurisdiction requiring specific performance to comply with the provisions hereof or to recover damages, or both, and shall also have the authority but not the obligation to complete the landscaping or restore the property to its original condition without being guilty of a trespass, and require the Lot Owner to pay the cost of labor and materials.

17.8.14 The costs and expenses incurred, including a reasonable attorneys fee, whether or not a lawsuit is filed, shall be considered the personal obligation of the Lot Owner and shall constitute a lien on the interest of the Owner in such property, enforceable at law or equity, until payment is made.

17.9 Existing Homes. Home(s) have already been constructed on Lot(s) 2, 5 & 13. If any part of the construction of said Home(s) shall not comply with the minimum standards set forth above, the Association hereby waives the requirement and the violation.

18. Liability of Owners and Residents For Damages. Each Owner or Permittee shall be liable to the Association, or other Owners for damages to person or property in the Property caused by his intentional misconduct, recklessness, carelessness or negligence.

19. Board of Directors. The Association shall be governed, directed and managed by a Board of Directors comprised of at least three (3) and no more than nine (9) natural persons who shall be duly qualified and elected.

20. Status and General Authority of Board of Directors. Any instrument executed by the Board of Directors that recites facts which, if true, would establish the power and authority of the Board of Directors to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs below, constitute a legal entity capable of dealing in its own name or in the name of the Board of Directors.

21. Grant of Power and Authority. The Board of Directors shall have, and is hereby granted, the following rights, authority and powers:

21.1 Access. To enter into or upon any Lot or Unit to make repairs to and to do other work necessary for the proper maintenance and operation of any Common Area and Facilities during reasonable hours and after reasonable notice to the occupants thereof; and (2) for making emergency repairs necessary to prevent damage to the Common Area and Facilities or to another Lot or Unit, provided that a reasonable effort is made to provide notice to the occupants prior to entry.

21.2 Grant Easements. With or without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Area and Facilities for utilities, subsurface drain systems, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

21.3 Execute Documents. To execute and record, on behalf of all Owners, any amendment to the Declaration or Final Plat which has been approved by the vote or consent necessary to authorize such amendment.

21.4 Standing. To sue and be sued.

21.5 Enter Into Contracts. To enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

21.6 Transfer Interests in Real Property. To exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Lots.

21.7 Purchase. To purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Lots.

21.8 Promulgate Rules. To promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Board of Directors in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with this Declaration.

21.9 Meetings. To establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of meetings.

21.10 Delegation of Authority. To delegate its responsibilities, in whole or in part, over the management and control of the Project to the professional manager selected, reserving the right, power and authority, however, to control and oversee the administration of Project

21.11 Interpret and Enforce Project Documents. To interpret and enforce this Declaration, the Bylaws, Rules and Regulations, and Articles of Incorporation.

21.12 Borrow. To borrow funds and pledge assets of the Association, so long as the transaction has been approved in advance by at least seventy five (75%) of the Lots.

21.13 All other Acts. To perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions on behalf of the Owners.

22. Delegation of Management Responsibilities. The Board of Directors may delegate to a Manager responsibilities for management of the Project and/or administration of the Association, in whole or in part. The agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board of Directors shall provide, or be deemed to provide hereby, that either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and no contract may be for an initial term greater than one (1) year. In the event of a conflict over a professional manager, the decision of the Board of Directors of the Association shall in all respects govern and control.

23. Annual Meeting of the Association. The Association shall meet on a periodic basis, at least annually, at a time and place set by the Board of Directors.

24. Lists of Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Board of Directors shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him; (b) the name and address of each resident; (c) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity; and (d) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Lot which is encumbered by the

Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board of Directors with written evidence verifying that the transfer has occurred, that the Deed or other instrument accomplishing the transfer is of record in the Office of the County Recorder, and that the transferee has received a copy of the Declaration and Bylaws then in force. The Board of Directors may for all purposes act and rely on the information concerning ownership in its records or, at its option, the official records of the County Recorder. The address of any Owner shall be deemed to be the address of the Lot owned by such person unless the Board of Directors is otherwise advised in writing. Owners shall provide the Board of Directors with the names and reasonable contact information for all non-Owner occupants upon request.

25. View Impairment. Neither the Builder nor the Association guarantees, promises, warrants, or represents that any view over and across any property, including a view from any Lot or Building, will be preserved without impairment. No provision of this Declaration shall be deemed to create an obligation on the part of the Association or the Builder to landscape, remove plants, trees, bushes, or shrubs, or prune or thin them in order to create or preserve or restore a view. Neither the Association nor the Builder has any obligation to install any protective landscaping, devices, or barriers adjacent to a Lot or Building. Each Owner further acknowledges and agrees that the location, configuration, size and elevation of trees, shrubs, bushes, planting beds, and other landscaping or physical improvements may change or be added to the Project at any time, and that such changes may diminish or obstruct a view and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

26. Capital Improvements. All Common Expenses for Capital Improvements or Additions to the Project shall be governed by and subject to the following conditions, limitations and restrictions:

26.1 Board of Directors Discretionary Expenditure Limit. Any Capital Improvement or Addition to the Project which costs ten percent (10%) or less of the Total Annual Budget for the Project, and does not alter the nature of the Project, may be authorized unilaterally by the Board of Directors (the "Capital Improvement Expenditure Ceiling").

26.2 Expenditure Requiring Consent of Owners. Any Capital Improvement or Addition, the cost of which will exceed the Capital Improvement Expenditure Ceiling, must, prior to the commencement of construction, be authorized in writing by at least a majority of the Owners.

26.3 Improvements Changing the Nature of the Project. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the Owners.

27. The Area of Common Responsibility. The Association shall maintain the Common Area and Facilities.

28. The Area of Personal Responsibility. Each Owner shall maintain his Lot and Home.

29. Standard of Care - Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition, consistent with Community Standards. If a dispute arises between an Owner and the Association as to the condition or maintenance of a Lot or the exterior of a Home, the decision of the Board of Directors shall be final, binding and conclusive.

30. Changes to Maintenance Responsibilities. The Board of Directors may unilaterally add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Owners. For example, and by way of illustration but not limitation, the Owners are obligated to maintain their front, side and rear yards. The Base Assessment, thus, does not include the cost of any yard maintenance. If all or a sufficient number of Owners desire, and the economies of scale in the opinion of the Board of Directors permits, the Association may, although it is not required to, agree to maintain an entire yard, or a portion thereof, for an additional fee (the "Yard Maintenance Assessment").

31. Association's Rights to Change Design and Construction. Ivory Homes, Ltd. may unilaterally make changes to the design and construction of the improvements located in or on the Property without the consent of the Association, Board of Directors or any other Owner.

32. Structural Alterations by Owner. No Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the non-Lot areas of the Project, if any, without the prior written consent of the Board of Directors.

33. Garbage Removal. Garbage service by the City will be limited to service from public streets only.

33.1 Owners shall place their garbage in suitable plastic bags, sacks or containers and deposit them immediately into the designated garbage containers.

33.2 Garbage containers shall be stored so as not to be visible from the street except on garbage pick-up day each week and then for a period of no longer than twenty-four (24) hours.

34. Common Expenses. Each Owner by virtue of his acceptance of a Deed or other document of conveyance to a Lot covenants to and shall pay his share of the Common Expenses, and his Assessments. Time is of the essence.

34.1 Exceptions. Anything to the contrary notwithstanding, (a) the Association shall not be obligated to pay an Assessment on Lot 18 and (b) Ivory Homes, Ltd. shall not be required to pay any Assessments on any Lots owned by it until such time as: (1) the physical structures are substantially completed, certificates of permanent occupancy are issued, and a Lots

is sold or rented; or (b) Ivory Homes, Ltd. elects in writing to pay the Assessment, whichever first occurs.

34.2 Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board of Directors.

34.3 Base Assessments. Each Owner, by acceptance of a deed or other document of conveyance to a Lot, whether or not it shall be so expressed in such document, covenants and agrees to pay to the Association in a timely manner all of his Base Assessments assessed by the Board of Directors.

34.4 Budget. At least thirty (30) days prior to the annual meeting of the Association, the Board of Directors shall prepare and deliver to the Owners a proposed Budget which shall:

34.4.1 Itemization. Set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

34.4.2 Basis. Be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, which estimate shall include but is not limited to expenses of management, irrigation water, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board of Directors is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Board of Directors employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

34.5 Apportionment. The common profits, losses and voting rights of the Project shall be distributed among and the common expenses shall be charged equally and uniformly to the Lot Owners, excluding Lot 18.

34.6 Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the percentage of ownership interest in the Common Areas. Notwithstanding the foregoing, however, if a majority of the Owners present in person or by proxy at a meeting called for this purpose disapprove the proposed budget and Assessments or the Board of

Directors fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

34.7 Payment of Assessments. The Board of Directors shall determine how and when the Assessments are paid.

34.8 Additional Services. The Board of Directors may but is not obligated to add to the Assessment of any particular Lot or Owner additional charges for individual services offered or provided, not a Common Expense or part of the base Assessment.

34.9 Personal Obligation of Owner. Owners are liable to pay all Assessments and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (a) the Owner of both the legal and equitable interest in any Lot; (b) the owner of record in the offices of the County Recorder of Salt Lake County, Utah; and (c) both the Buyer and Seller under any executory sales contract or other similar instrument.

34.10 Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Board of Directors may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.

34.11 Reserve Account. The Board of Directors shall establish and maintain a reserve account or accounts to pay for shortages and major repairs.

34.12 Analysis Report. The Board of Directors shall prepare and update at least annually a written Capital Asset Replacement and Reserve Account Analysis, and make the report available to the Owners at the annual meeting of the Association.

34.13 Acceleration. Assessments shall be paid in the manner and on dates fixed by the Committee who may, at its option and in its sole discretion, elect to accelerate the entire annual Assessment for delinquent Owners. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board of Directors otherwise decides acceleration is not in its best interest, the committee, at its option and in its sole discretion, may elect to decelerate the obligation.

34.14 Statement of Assessments Due. Upon written request, the Board of Directors shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary, shall be deemed conclusive evidence that all Assessments are paid current. The Association may

require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

34.15 Subsidizing the Association. Ivory Homes, Ltd. may but is not required to subsidize the Association until such time as it has sold all of the Ivory Home Lots. Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses and a reasonable contribution to reserves. In no event, however, shall the subsidy exceed the monthly or annual Base Assessments. This obligation may be satisfied in the form of a cash subsidy, loaning the Association funds to continue operating as long as the loan is documented through a Promissory Note or other similar instrument, or by "in kind" contributions of services or materials, or a combination of these. Ivory Homes, Ltd. shall not be subject to Special, Corrective or Individual Assessments.

34.16 Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which insofar as it adversely affects the Association's lien for unpaid Assessments each Owner by accepting a deed or other document of conveyance to a Lot hereby waives.

34.17 Suspension of Right to Vote for Non-Payment. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

35. Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

35.1 Committee Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100th Dollars (\$500.00) per Lot in any one fiscal year (the "Special Assessment Limit"), the Committee may impose the special assessment without any additional approval.

35.2 Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved in writing by a majority of the members of the Association present in person or by proxy at a meeting called for that purpose. The Board of Directors in its sole discretion may allow any special assessment to be paid in installments.

36. Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Board of Directors shall have the power and authority to assess an Owner in a particular area as follows:

36.1 Benefit only To Specific Lot. If the expense benefits less than all of the Lots, then those Lots benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Lots according to the benefit received.

36.2 Unequal or Disproportionate Benefit. If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Lots according to the benefit received.

Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Directors' right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section.

37. Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the 1st day of the month. Payments are late if received after the 10th day of the month in which they were due.

37.1 Delinquent Assessments. Any Assessment not paid when due shall be considered delinquent and a lien securing the obligation shall automatically attach to the Lot, regardless of whether a written notice is recorded.

37.2 Late Fees and Default Interest. The Board of Directors may charge a late fee and default interest. A reasonable late fee in a sum to be determined by the Board of Directors shall be assessed on all late payments. Default interest at the reasonable rate determined by the Board of Directors shall accrue on the outstanding balance of all delinquent accounts until paid.

37.3 Lien. If any Lot Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Board of Directors or its designee, it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing Lot or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

37.4 Foreclosure of Lien and/or Collection Action. If an Assessment, Additional Charge or fine remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien.

37.5 Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

37.6 No Waiver. No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Lot.

37.7 Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or committee under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

37.8 Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by judicial or nonjudicial sale or foreclosure of the Owner's interest therein by the Committee. The judicial or nonjudicial sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board of Directors may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

37.9 Appointment of Trustee. If the Board of Directors elects a nonjudicial foreclosure of the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. The Association shall record a Notice of Appointment of Trustee. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

37.10 Lenders, Foreclosures and Unpaid Assessments. Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorneys fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including reasonable attorneys fees, against the Lot for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

37.11 Assignment of Rents. If the Owner of a Lot who is leasing the Lot or Unit fails to pay any Assessment for a period of more than thirty (30) days after it is due and payable, the Board of Directors may demand that the renter pay to the Association all future rent payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid; provided, however, the Manager or Board of Directors must give the Owner written notice, in accordance with the Declaration, ByLaws or Rules, of its intent to demand full payment from the renter.

37.12 Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments. If an Owner fails or refuses to pay any Assessment when due, the Board of Directors may (a) terminate the Owner's right to receive utility services paid as a common expense; and/or (b) terminate the Owner's right of access to and use of any or all recreational facilities; provided, however, before terminating utility services or right of access and use of recreational facilities, the Manager or Board of Directors shall give written notice to the Owner of its intent and an opportunity to be heard.

38. Liability of Board of Directors. The Association shall indemnify every officer and member of the Board of Directors against any and all expenses, including but not limited to attorneys fees reasonably incurred by or imposed upon any officer or member of the Board of Directors in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he may be a party by reason of being or having been an officer or member of the Board of Directors. The officers and members of the Board of Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board of Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board of Directors may also be Owners), and the Association shall indemnify and forever hold each such officer and member of the Board of Directors free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board of Directors, or former officer or member of the Board of Directors, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers and directors insurance coverage to fund this obligation, if such insurance is reasonably available.

39. Insurance. The Board of Directors may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners.

38.1 Insurance Obligation of the Association. The Association shall obtain the following insurance coverage (collectively, "Master Policy"):

38.1.1 Public Liability. Public liability coverage for any common elements;

38.1.2 Fire and Extended Hazard Coverage. Property, fire and extended hazard coverage for the Common Area and Facilities;

38.1.3 D&O. Directors and officers coverage; and

38.1.4 Fidelity Bond. A fidelity bond.

The Master Policy **DOES NOT** cover a Lot or any contents or personal property located within a Lot or belonging to the Lot Owner or non-Owner occupant or any Owner's personal liability.

38.2 Insurance Obligation of Lot Owner. Each Owner shall purchase and maintain:

38.2.1 Public Liability. Public liability coverage;

38.2.2 Fire and Extended Hazard Coverage. Property, fire and extended hazard coverage for his or her Lot and any improvements thereon.

38.3 Right to Adjust Claims. The Association has the right, power and authority to adjust claims.

38.4 Use of Insurance Proceeds and Repairs. Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

38.5 Primary Coverage. If a claim is covered by a policy purchased by the Association and a policy purchased by an Owner, the insurance coverage of the Owner shall be considered **PRIMARY** and the insurance coverage of the Association shall be considered **SECONDARY** for all purposes.

39. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

39.1 Definitions. Each of the following terms shall have the meaning indicated:

39.1.1 "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

39.1.2 "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

39.1.3 "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

39.1.4 "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

39.1.5 "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

39.1.6 "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

39.1.7 "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

39.1.8 "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

39.1.9 "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board of Directors or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

39.2 Determination by Board of Directors. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Board of Directors shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Board of Directors shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board of Directors may retain and rely upon one or more qualified appraisers or other professionals.

39.3 Restoration of the Project. Restoration of the Project shall be undertaken by the Board of Directors promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-

seven percent (67%) of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Lots which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Area and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

39.4 Notices of Destruction or Obsolescence. Within thirty (30) days after the Board of Directors has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

39.5 Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Board of Directors or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Area and Facilities. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

39.6 Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Board of Directors may elect to make a special assessment in accordance with Article III, Section 21 above to pay for the deficiency.

39.7 Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though the Project will continue as a planned residential development) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Area and Facilities shall be immediately reallocated to the remaining Lots.

39.8 Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Final Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board of Directors to the Owners in proportion to their respective undivided interests in the Common Area and Facilities. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

39.9 Authority of Board of Directors to Represent Owners in Condemnation or to Restore or Sell. The Board of Directors, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Area and Facilities.

39.10 Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

39.11 Restoration Power. The Board of Directors, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Lot therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

39.12 Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

39.13 Termination of Legal Status. Any action to terminate the legal status of the Property after Substantial Destruction or Condemnation occurs shall be agreed to by Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association, by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Lots that are subject to mortgages held by eligible holders, sixty-seven (67%) of all of the Lot and Lot Owners in the Property, and the Association until the expiration of the Class B Member Control Period.

The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Lots. However, implied approval may be assumed when an Eligible Mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

40. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Lots which collectively hold the required percentages, subject to the following conditions:

40.1 Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and

40.2 Change In Ownership. Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

41. Mortgagee Protection. Nothing contained in this Declaration shall impair the lien of a mortgagee in or to any of the real property subject to the Original Declaration or this Declaration. The lien or claim against a Lot for unpaid Assessments assessed pursuant to the Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

41.1 Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available shall extinguish any debt payable prior to six (6) months of the date of such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Assessments becoming due thereafter.

41.2 Books and Records Available for Inspection. The Board of Directors or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, Bylaws, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Board of Directors and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

41.3 Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

41.4 Eligible Mortgagee Designation. Upon written request to the Association or Board of Directors by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

41.4.1 Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

41.4.2 Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

41.4.3 Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board of Directors or the Association.

41.4.4 Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

42. Amendment.

42.1 General. Except as provided elsewhere in this Declaration, including by way of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any Amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the Association. In such instrument an officer or delegate of the Association shall certify that the vote required by this Section for amendment has occurred.

42.2 Initial Association Right to Amend. The Association may amend or terminate this Declaration prior to the closing of a sale of the first Lot after the effective date of this Declaration.

42.3 Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Association if such Amendment is (i) necessary to correct typographical errors or inadvertent omissions; (ii) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (iii) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Lot unless any such Owner shall consent thereto in writing.

42.4 Ivory Homes, Ltd.'s Right to Amend Unilaterally Prior to Sale of All of the Ivory Home Lots. Prior to Ivory Development LLC's sale of all of the Ivory Home Lots, Ivory Homes, Ltd. may unilaterally amend this Declaration for any purpose.

42.5 To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding, the Association and Ivory Homes, Ltd. hereby reserve and are granted the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, or any portion thereof. Any such amendment shall be effected by the recordation by Association and/or Ivory Homes, Ltd. of an Amendment duly signed by the Association and/or Ivory Homes, Ltd., specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be

deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots and all persons having an interest therein. It is the intent of this Declaration to allow Ivory Homes, Ltd. the power to control of the Association and its activities during the anticipated period of completion of the construction of Homes in the subdivision and until all of the Homes have been sold. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Ivory Homes, Ltd., then it shall have the unilateral right to amend this Declaration to restore such control.

42.6 Association's Rights. No provision of this Declaration reserving or granting to Ivory Homes, Ltd. Developmental Rights shall be amended without the prior express written consent of Ivory Homes, Ltd., which consent may be withheld, conditioned or delayed for any reason or for no reason at Ivory Development LLC's sole and exclusive discretion.

42.7 Consent of Eligible Mortgagee. The consent of Eligible Mortgagees holding at least sixty seven percent (67%) of the undivided ownership interest of the Owners in the Project in the Common Area and Facilities and shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided ownership interest of the Owners in the Project in the Common Area and Facilities shall be required to add to or amend any material provision of this Declaration or the Final Plat which establishes, provides for, governs, or regulates any of the following, which are considered as "material":

42.7.1 voting rights;

42.7.2 increases in assessments that raise the previously assessed amount by more than twenty-five (25%) percent, assessment liens, or the priority of assessments liens;

42.7.3 reduction in reserves for maintenance, repair, and replacement of the Common Area and Facilities;

42.7.4 responsibility for maintenance and repairs;

42.7.5 reallocation of interests in the Common Area and Facilities, or rights to their use;

42.7.6 redefinition of any Lot boundaries;

42.7.7 convertibility of Lots into Common Area and Facilities or vice versa;

42.7.8 expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;

42.7.9 hazard or fidelity insurance requirements;

42.7.10 imposition of any restrictions on the leasing of Lots;

42.7.11 imposition of any restrictions on a Owner's right to sell or transfer his Lot;

42.7.12 a decision by the Association to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;

42.7.13 restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the documents;

42.7.14 any provisions that expressly benefit mortgage holders, insurers or guarantors; and

42.7.15 any provisions required by Utah State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA, any other federal, state or local governmental agency or a federally chartered lending institution, which in all respects shall govern and control.

42.8 Material Amendment. Any addition or amendment shall not be considered material for purposes of this Section if it is for the clarification only or to correct a clerical error.

42.9 Notice to Eligible Mortgagee. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Final Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Board of Directors or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Final Plat or the termination of the legal status of the Project as a planned residential development if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

44. Ivory Homes, Ltd.'s Sales Program. Anything to the contrary notwithstanding, for so long as Ivory Homes, Ltd. continues to own any of the Lots, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Ivory Homes, Ltd. from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Ivory Homes, Ltd. in accordance with the Declaration. Until the Ivory Homes, Ltd. has sold all of its Property in the Property, neither the Owners, the Ivory Homes, Ltd. nor the Board of Directors shall interfere with the completion of improvements and sale of all remaining Lots, and Ivory Homes, Ltd. shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Ivory Homes, Ltd.:

44.1 Sales Office and Model Homes. Ivory Homes, Ltd. shall have the right to maintain one (1) or more sales offices and one (1) or more model Home at any one time. Such office and/or models may be one or more of the Lots owned by the Ivory Homes, Ltd., one or more separate structures or facilities placed on the Property for the purpose of aiding Ivory Homes, Ltd.'s sales effort, or any combination of the foregoing;

44.2 Promotional. Ivory Homes, Ltd. shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

44.3 Use of Common Area and Facilities. Ivory Homes, Ltd. shall have the right to use the Common Area and Facilities located in the Project.

44.4 Relocation and Removal. Ivory Homes, Ltd. shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Until 120 days after the date of closing of Ivory Homes, Ltd.'s last Lot in the Project, Ivory Homes, Ltd. shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Ivory Homes, Ltd.'s sales effort.

45. Limitation on Improvements by the Association. Until 120 days after the date of the closing of the sale by Ivory Homes, Ltd. of the last of the Ivory Home, neither the Association nor the Board of Directors shall, without the written consent of Ivory Homes, Ltd., make any improvement to or alteration in any of the Common Area and Facilities, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area and Facilities as originally created or constructed by the Declarant.

46. Ivory Homes, Ltd.'s Rights Assignable. All of the rights of Ivory Homes, Ltd. under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Buildings in the Project title to which is vested in Ivory Homes, Ltd. shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Ivory Homes, Ltd. herein.

47. Combination of Lots. An Owner of two or more adjoining Lots shall have the right upon approval of the Board of Directors, City, and the mortgagees of said Lots, to combine one or more adjoining Lots or portions thereof and to alter or amend the declaration and map to reflect such combination.

47.1 Such amendments may be accomplished by the Owner recording an amendment or amendments to this declaration, together with an amended map or maps containing the same information with respect to the altered Lots as required in the initial declaration and map with respect to the initial Lots. All costs and expenses required in such amendments shall be borne by the Owner desiring such combination.

47.2 All such amendments to the Declaration and Final Plat must be approved by City and attorneys employed by the Board of Directors to ensure the continuing legality of the Declaration and the Final Plat. The cost of such review by the attorneys shall be borne by the person wishing to combine the Lots.

47.3 Any amendments of the Declaration or Final Plat pursuant to this Section shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Common Area and facilities which are appurtenant to the Lots involved in the alterations. The percentage of undivided interest in the Common Area and Facilities and facilities appurtenant to all other Lots shall not be changed. All such amendments must, in all instances, be consented to by the Board of Directors and also all other persons holding interest in the Lots affected. The consent of other Owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the Common Area and Facilities of the other Owners remain unchanged.

48. Alterations to the Common Area and Facilities. Anything to the contrary notwithstanding and until Ivory Homes, Ltd.'s sale of the last of the Ivory Home Lots, Ivory Homes, Ltd. may create and/or make changes to the Common Area and Facilities without the consent of either the Association or the Board of Directors.

49. Transfer of Management. After Ivory Development LLC's sale of the last of the Ivory Home Lots, Ivory Homes, Ltd. shall notify the Owners in writing and the Owners shall call a meeting to elect the Members of the Board of Directors to take office as of the Transfer Date; provided, however, and anything to the contrary notwithstanding Ivory Homes, Ltd. may appoint up to one member of the Board of Directors until the year 2056. The Owners by virtue of the acceptance of a deed or other document of conveyance to a Lot hereby covenant and agree to cooperate with the Ivory Homes, Ltd. in effecting an orderly transition of management. In the event the Owners fail to cooperate, then Ivory Homes, Ltd. may unilaterally appoint three (3) Persons to serve on the initial Board of Directors. In addition, the Association shall cause all obligations for Common Expenses prior to the date of transfer to be paid in full, and shall transfer any Association funds, books and records to the newly elected Board of Directors.

50. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders.

51. Severance. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

52. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association, Ivory Homes, Ltd., all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner and Permittee shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

53. Enforcement and Right to Recover Attorneys Fees.

53.1 General Remedies. Should the Association, Board of Directors or an aggrieved Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fees, which may arise or accrue.

53.2 Additional Remedies. In addition, the Board of Directors may impose the following sanctions after proper notice and the opportunity to be heard:

53.2.1 imposing Individual Charges and fines, which may be secured by a lien against the Owner's interest in the Property;

53.2.2 suspending an Owner's right to vote;

53.2.3 suspending any Person's right to use any of the Swim and Tennis Club and other recreational amenities located in the Common Area and Facilities; provided, however, nothing herein contained shall authorize the Board of Directors to limit ingress or egress to or from a Lot or Home;

53.2.4 exercising self-help or taking action to abate any violation of the Project Documents in a non-emergency situation;

53.2.5 exercising self-help in any emergency situation (specifically including but not limited to the towing of vehicles that are in violation of the parking rules);

53.2.6 requiring an Owner at his sole expense to remove any structure or improvement in the Common Area and Facilities, and upon the failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass;

53.2.7 without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Project Documents; and

53.2.8 levying Individual Charges to cover costs and expenses incurred by the Association to bring an Owner into compliance.

53.3 Fines. Each Owner and resident is responsible for adhering to the Project Documents governing the Project. A breach of these restrictive covenants and rules is subject to enforcement pursuant to the Declaration which may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his Permittees. Fines levied against Permittees are jointly and severally the responsibility of the Owner and Permittee.

54. Agreement to Share Costs. The Association or the Association may enter into a contract or agreement, which includes a Covenant to Share Costs, for the use of facilities or the procurement of services for the benefit of the Association, and the present and future Owners which obligates the Association and such Owners to share the costs of maintaining and/or operating the same.

55. Security. Neither the Association nor the Association, Board of Directors or Manager shall in any way be considered insurers or guarantors of security within the Project. Neither the Association nor the Association, Board of Directors or Manager shall be held liable for any loss or damage, including malfunction, by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners acknowledge that neither the Association nor the Association, Board of Directors nor Manager, or their employees, agents or representatives represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that the gate, fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner for himself and his Permittees acknowledges and understands that the Association, Board of Directors and Manager, and their employees, agents or representatives are not insurers and that each Owner and his Permittees expressly, by accepting a deed or other document of conveyance or taking possession of a Lot or Unit, or entering the Project, assume all risks for loss or damage to persons or property within the Project, including negligence, and further acknowledges that Association, Board of Directors and Manager, and their employees, agents or representatives have made no representations or warranties, nor has any Owner or his Permittees relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to the security of the Project, or any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

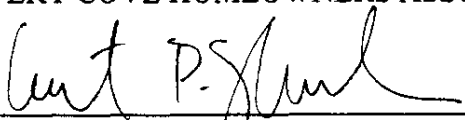
56. Agent for Service of Process. The President of the Association is the person to receive service of process. The initial Registered Agent is Christopher P. Gamvroulas and the initial office of the Registered Agent is 978 Woodoak Lane, Salt Lake City, UT 84117.

57. Term. This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty percent (50.0%) of the Lots determines that this Declaration shall terminate.

58. Effective Date. This Declaration shall take effect upon its being filed for record in the Office of the County Recorder.

EXECUTED the 18 day of February, 2010.


DISCOVERY COVE HOMEOWNERS ASSOCIATION

By: 
Name: Christopher P. Gamvroulas
Title: President

ACKNOWLEDGMENT

STATE OF UTAH)
 ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 18 day ^{February} ~~January~~, 2010 by Christopher P. Gamvroulas, the President of DISCOVERY COVE HOMEOWNERS ASSOCIATION, and said Christopher P. Gamvroulas duly acknowledged to me that said DISCOVERY COVE HOMEOWNERS ASSOCIATION executed the same.


NOTARY PUBLIC
Residing at: SLC, UT
My Commission Expires: 01-30-2012

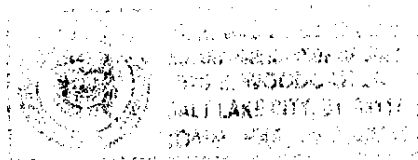


EXHIBIT "A"
LEGAL DESCRIPTION
DISCOVERY COVE PUD

The land referred to in the foregoing document is located in Salt Lake County, Utah and more particularly described as follows:

BEGINNING AT A POINT SOUTH 00°14'30" WEST 982.19 FEET AND SOUTH 89°45'30" EAST 53.00 FEET FROM THE COUNTY MONUMENT IN 900 EAST AND 5800 SOUTH STREET; SAID POINT ALSO BEING SOUTH 89°40'48" EAST 1731.64 FEET, NORTH 00°19'30" EAST 1315.24 FEET, NORTH 00°14'30" EAST 382.02 (381.543 RECORD) FEET, AND SOUTH 89°45'30" EAST 53 FEET FROM THE SOUTHWEST CORNER OF SECTION 17; TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN.

AND RUNNING THENCE NORTH 89°09'20" EAST 549.87 FEET; THENCE SOUTH 02°10'50" WEST 420.68 FEET TO AN EXISTING FENCE; THENCE SOUTH 87°50'25" EAST 71.68 FEET ALONG SAID FENCE; THENCE SOUTH 01°14'44" WEST 134.12 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY OF VINE STREET A 66 FOOT ROAD; THENCE ALONG SAID NORTH LINE OF VINE STREET SOUTH 78°53'13" EAST 218.87 FEET TO THE WEST LINE OF THE BELLE MEADOWS NO. 1 SUBDIVISION, RECORDED AS PLAT #2267911 IN THE OFFICIAL SALT LAKE COUNTY RECORDS; THENCE ALONG SAID LINE NORTH 19°30'41" EAST 340.81 FEET; THENCE ALONG SAID LINE EAST 55.32 FEET TO A POINT ON THE WEST LINE OF THE BELLE MEADOWS NO. 2 SUBDIVISION, RECORDED AS PLAT #2359206 IN THE OFFICIAL SALT LAKE COUNTY RECORDS; THENCE ALONG SAID WEST LINE THE FOLLOWING FOUR COURSES: (1) NORTH 10.00 FEET; (2) NORTH 23°57'00" WEST 89.42 FEET; (3) NORTH 16°37'17" EAST 84.35 FEET; (4) NORTH 38°06'52" WEST 135.73 FEET TO AN EXISTING FENCE; THENCE ALONG SAID FENCE SOUTH 89°43'10" WEST 142.72 FEET; THENCE NORTH 37°1.13 FEET; THENCE NORTH 89°20'14" WEST 237.41 FEET TO A POINT ON AN EXISTING FENCE; THENCE ALONG SAID FENCE THE FOLLOWING FIVE (5) CALLS: (1) SOUTH 51°15'47" WEST 28.29 FEET; (2) SOUTH 19°35'28" WEST 32.34 FEET; (3) SOUTH 25°47'48" WEST 15.56 FEET (4) SOUTH 37°22'20" WEST 80.63 FEET; (5) SOUTH 30°30'33" WEST 39.45 FEET; THENCE NORTH 89°48'15" WEST 400.79 FEET ALONG THE SOUTH LINE, AND SOUTH LINE EXTENDED, OF THE TAHMIA PARK SUBDIVISION, RECORDED AS PLAT # 94-3-77 IN THE OFFICIAL SALT LAKE COUNTY RECORDS, TO A POINT ON THE EAST RIGHT-OF-WAY OF 900 EAST STREET, A 106 FOOT ROAD; THENCE ALONG SAID EAST LINE OF 900 EAST STREET SOUTH 00°14'30" WEST 223.87 FEET TO THE POINT OF BEGINNING.

CONTAINS 9.53 ACRES

EXHIBIT "B"
BYLAWS
OF
DISCOVERY COVE HOMEOWNERS ASSOCIATION

ARTICLE I
NAME AND LOCATION

Section 1 .01 Name and Location. The name of the association is the Discovery Cove Homeowners Association (the "Association"). The principal office of the corporation shall be located at 978 Woodoak Lane, Salt Lake City, UT 84117, but meetings of the Owners and Board of Directors may be held at such places within the State of Utah, as may be designated by Board of Directors.

ARTICLE II
DEFINITIONS

Section 2.01 Definitions. Except as otherwise provided herein or as may be required by context, all terms defined in Paragraph 1 of the Declaration shall have such defined meanings when used in these Bylaws.

ARTICLE III
MEETINGS OF THE ASSOCIATION

Section 3.01 Annual Meeting. The Association shall meet as often as it deems reasonably necessary but not less than annually at a convenient time and place.

Section 3.02 Special Meetings. Special meetings of the Association may be called at any time by the President or by a majority of the Members of the Board of Directors.

Section 3.03 Notice of Meetings. Written notice of each meeting of the Association shall be given to each Owner 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 fifteen (15) days before such meeting to said Owner addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner 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 3.04 Quorum. The Owners present shall constitute a quorum for any action.

Section 3.05 Proxies. At all Association meetings, each Owner 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 expire, if not previously revoked, eleven (11) months after the date it is given by the Owner.

Section 3.06 Action Taken Without a Meeting. The Association shall have the right to take any action in the absence of a meeting which it could take at a meeting. Any action so approved shall have the same effect as though taken at a meeting of the Association.

ARTICLE IV BOARD OF DIRECTORS AND TERM OF OFFICE

Section 4.01 Number. The affairs of the Association shall be managed by a Board of Directors comprised of at least three (3) and no more than nine (9) natural persons, and initially comprised of three (3) individuals. Each Member must be duly qualified and appointed or elected.

Section 4.02 Meetings. The Board of Directors shall meet as often as is necessary and appropriate, but at least every quarter and at a mutually convenient time and place.

Section 4.03 Replacement. If a Member resigns or is otherwise unable or unwilling to serve, then the remaining Members shall appoint a replacement to complete his term of office.

Section 4.04 Term of Office. Each Member on the Board of Directors shall serve a term of at least one (1) year.

Section 4.05 Compensation. No Member shall receive compensation for any service he may render to the Association as a member of the Board of Directors, although he may be reimbursed for his actual expenses incurred in the performance of his duties and may enter into an independent contract to provide other services. A Member may enter into a separate and independent contract with the Association to provide additional services for a fee.

Section 4.06 Action Taken Without a Meeting. The Board of Directors shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Members. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

Section 4.07 Voting. Each Member shall have one vote.

Section 4.08 Managing Member. Anything to the contrary notwithstanding, during the Class B Member Control Period, the Board of Directors hereby assigns and delegates all of its rights, power and authority, as set forth in the Project Documents, to a Managing Member selected or to be selected by the Association, who shall manage the Common Areas and Facilities and administer the Project Documents for and in behalf of the Association. The Association hereby designates Christopher P. Gamvroulas as the initial Managing Member of the Association.

**ARTICLE V
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 5.01 Powers. The Association shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing, the Association may act through its Board of Directors and shall specifically have the powers and duties set out in this Article V, including

Section 5.01.1 Assessments. The power and duty to levy Assessments on the Owners, and to enforce payment of such assessments in accordance with the Declaration.

Section 5.01.2 Association Property. The right to own and/or lease the Association Property and the duty to maintain and manage the Common Areas and Facilities and improvements thereon. In particular the Association shall:

- a. Maintain and repair in an attractive, safe and functional condition the Common Areas and Facilities;
- b. Pay all taxes and assessments levied upon the Common Areas and Facilities and all taxes and assessments payable by the Association;
- c. Obtain any water, sewer, gas and electric services needed for the Common Areas and Facilities; and
- d. Do each and every other thing reasonable and necessary to operate the Common Areas and Facilities and the Association.

**ARTICLE VI
OFFICERS AND THEIR DUTIES**

Section 6.01 Enumeration of Officers. The officers of the Association shall be a president and secretary, plus such other officers as the Board of Directors may from time to time by resolution create. The same individual may not hold the office of president and secretary at the same time. The officers need not be Members of the Board of Directors.

Section 6.02 Election of Officers. The Board of Directors shall elect or appoint officers at the first meeting of the Board of Directors during each calendar year.

Section 6.03 Term. Each officer of the Association shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 6.04 Special Appointments. The Board of Directors 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 of Directors may from time to time determine.

Section 6.05 Resignation and Removal. Any officer may be removed from office with or without cause by a majority vote of the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, 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 6.06 Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6.07 President. The president shall (a) preside at all meetings of the Board of Directors, (b) see that orders and resolutions of the Board of Directors are carried out and (c) sign all contracts.

Section 6.08 Secretary. The secretary shall (a) record the votes and keep the minutes of all meeting end proceedings of the Board of Directors and of the Association, (b) keep the corporate seal of the Association and affix it on all papers requiring said seal, (c) serve notice of meetings of the Board of Directors and of the Association, (d) keep appropriate current record showing the Members of the Association together with their addresses and (e) perform such other duties as may required by the Board of Directors.

ARTICLE VII ARCHITECTURAL REVIEW AND OTHER SUBCOMMITTEES

Section 7.01 Architectural Review Committees. The Architectural Review Committee shall consist of at least one (1) and no more than nine (9) members. The members of the Architectural Review Committee shall be appointed by the Association during the Class B Member Control Period. The initial member of the Architectural Review Committee, who shall serve until his successor is appointed, is Christopher P. Gamvroulas.

Section 7.02 Other Subcommittees. The Board of Directors may appoint such other subcommittees as deemed necessary or appropriate in carrying out its purposes.

**ARTICLE VIII
BOOKS AND RECORDS**

Section 8.01 Books and Records. The books and records shall be kept with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Property, specifying the maintenance, repair and any other expenses incurred. The books and records, including any invoices, receipts, bills, proposals, documents, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices.

Section 8.02 Signatures. The Board of Directors shall determine who must sign all checks, drafts, contracts, and legally binding agreements.

Section 8.03 Bookkeeping. The accounting and financial statements for Association must be kept and prepared by either the property manager or an independent bookkeeper or accountant, who may not be a member of the Board of Directors or an officer of the Association. A monthly profit and loss statement, balance sheet, and check register shall be sent or delivered designee by the bookkeeper or accountant to each Member and Association or their designee. The accountant or bookkeeper shall prepare and file all tax returns for the Association.

Section 8.04 Audit. Either a (a) majority vote of the Members of the Board of Directors or (b) majority vote of all of the Owners is necessary and sufficient to require either a Compilation Report, Reviewed Statement or Audited Statement of the Association.

**ARTICLE IX
AMENDMENTS**

Section 9.01 Amendment to Bylaws. These Bylaws may be amended as follows: (a) unilaterally by Ivory Homes, Ltd. until the sale of the last Ivory Home Lot, (b) the affirmative vote of a majority of the members of the Board of Directors, or (c) the affirmative vote of a majority of the Owners. In the event of a conflict between the decision of Ivory Homes, Ltd. and the Association, Owners or Board of Directors, the former shall in all respects govern and control.

**ARTICLE X
CONFLICT**

Section 10.01 Conflict Between Articles, Bylaws and Declaration. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall in all respects govern and control.

