

After recording, return to:  
Ivory Development, LLC  
978 Woodoak Lane  
Salt Lake City, UT 84117

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Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
HOLLADAY PEAKS SUBDIVISION  
IN  
HOLLADAY CITY, UTAH**

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Holladay Peaks Subdivision is executed by Ivory Development, LLC, at Utah limited liability company located at 978 East Woodoak Lane, Salt Lake City, UT 84117.

**RECITALS**

- A. Ivory Development, LLC ("Declarant") is the owner and developer of certain real property in Holladay City, Utah, more particularly described in Exhibit "A."
- B. The Property is or will be developed as a residential subdivision comprised of detached single-family homes. The Project does not include any common areas, private roadways, or community association (as defined in the Utah Community Association Act, Utah Code § 57-8a-101 *et seq.*).
- C. The Declarant establishes this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HOLLADAY PEAKS SUBDIVISION , effective as of the date this instrument is recorded with the Office of Recorder for Salt Lake County, Utah, to establish certain covenants, conditions and restrictions for the development and maintenance of the Project in order to facilitate development of the Project in accordance with the Declarant's design scheme and to maintain and protect the Project's value and attractiveness.
- D. The Terms and Conditions established herein are for the mutual benefit and burden of the Declarant, Owners, Occupants, Lenders and all others acquiring any interest in the Project and/or the Property.
- E. The Terms and Conditions set forth herein constitute equitable servitudes which shall run with the land and shall govern the development and use of the Property and shall be binding upon and inure to the benefit of the Declarant, any and all future Owners of any portion of the Property, their heirs, successors, and assigns, and any other Person that now or hereafter has any legal, equitable, or beneficial interest in any portion of the Property. By taking title to a Unit, an Owner joins in and accepts the intent, purpose, and objectives of this Declaration and agrees to be bound by it and acknowledges the benefits received from its existence and the Declarant's development of the Project and accepts the burdens that accompany these benefits.

F. Capitalized terms in this Declaration are defined in Article 1 herein or in other sections of this Declaration.

**NOW, THEREFORE**, for the reasons recited above and subject to the Terms and Conditions set forth below, this Declaration is adopted by the Declarant, pursuant to the rights and authority described above.

## **ARTICLE 1 DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 "Accessory Structure" shall mean and refer to any detached, subordinate building or structure incidental to the Home and located on the same Lot occupied by the Home and shall include any shed, shack, detached garage, or other outbuilding that is one hundred twenty (120) square feet or larger.
- 1.2 "Builder" shall mean and refer to Ivory Homes, Ltd.
- 1.3 "City" shall mean and refer to the city of Holladay City located in Salt Lake County, Utah.
- 1.4 "Community-Wide Standards" shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Project or, at a minimum, the standards initially established by the Declarant and/or described in this Declaration. The Community-Wide Standards may or may not be set forth in writing.
- 1.5 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Holladay Peaks Subdivision.
- 1.6 "Governing Documents" shall mean and refer to this Declaration, the Plat, and any other recorded instrument by which the Declarant may exercise power with regard to the development of the Project or otherwise affect the Project.
- 1.7 "Home" shall mean and refer to a residence or dwelling constructed on a Lot intended for Single-Family occupancy and is included within the definition of Unit below.
- 1.8 "Lender" shall mean and refer to a holder of a mortgage or deed of trust on a Unit.
- 1.9 "Lot" shall mean and refer to an individual building lot created on the Plat on which a detached Single-Family dwelling is or will be constructed and is included within the definition of Unit below. More than one Lot is referred to herein as "Lots."
- 1.10 "Occupant" shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Unit within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.
- 1.11 "Owner" shall mean and refer to the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Office of Recorder for Salt Lake County, Utah. "Owners" shall mean and refer to more than one Owner. The term "Owner" shall not include a mortgagee or a trustee for or beneficiary of a deed of trust. The term "Owner" also shall not include the Declarant.

1.12 "Person" shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity.

1.13 "Plat" shall mean and refer to the record of survey map or maps for Holladay Peaks Subdivision recorded with the Office of Recorder for Salt Lake County, Utah and all valid recorded amendments and supplements thereto.

1.14 "Project" shall mean and refer to the Holladay Peaks Subdivision development project and all structures and improvements thereon including the Units and Subdivision Improvements.

1.15 "Property" shall mean and refer to the real property legally described in Exhibit A and all easements and rights appurtenant thereto.

1.16 "Single-Family" shall mean and refer to a single family as the term is defined by City ordinance. In the absence of definition by City ordinance, Single-Family shall mean and refer to any one of the following: (a) an individual; (b) two (2) or more individuals related to each other by blood, marriage, adoption or guardianship; (c) a group of not more than three (3) unrelated persons who maintain a common household (distinguishable from a group occupying a boarding house, club, fraternity, or hotel).

1.17 "Subdivision Improvements" shall mean and refer to all subdivision improvements to be installed outside of the boundaries of Units or within easements as identified on the Plat that are necessary to provide public road access and utility service to the Units, and including other construction work required to comply with any conditions of the City or other governmental agencies to the approval of the Subdivision or any Plat thereof.

1.18 "Terms and Conditions" shall mean and refer to any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.

1.19 "Unit" shall mean and refer to a subdivided Unit within the Subdivision depicted as a separately identified parcel on the Plat, which may be independently owned and conveyed and is zoned or otherwise intended for development, use and occupancy as a detached Single-Family residence. The term "Unit" includes the Lot as well as to any structures or other improvements on the Unit. The term "Unit" does not include any property or improvements dedicated to the City or the public.

## **ARTICLE 2** **THE PROJECT**

2.1 **Binding Effect of Governing Documents.** The Declarant hereby declares that the Property is part of the Project and that the Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, and each Owner, including his/her/their heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, such Owner and/or Occupant consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents

2.2 Nature of the Project. The Project is an expandable residential development comprised of eight (8) Units and other Subdivision Improvements. The Project is not a cooperative or a community association and is not a condominium.

2.3 Project Name. The Project is named "Holladay Peaks Subdivision."

2.4 Expansion of Project. The Project may be expanded or contracted by the Declarant. Additional land, whether or not directly adjacent to the Project, may be developed and made part of the Project and made subject to this Declaration by recording of a Supplement to Declaration or similar instrument, together with a plat map for the subject property.

### **ARTICLE 3 DESCRIPTION OF THE UNITS**

3.1 The Unit.

(a) Subject to further specification herein and/or on the Plat, each Unit generally consists of the Lot, the Home constructed thereon, if any, and all structures on or within the boundary of the Lot.

(b) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water and sewer lines, and any other fixtures, component, system or other improvement lying inside the designated vertical boundaries of the Lot, shall be part of the Unit. Additionally, any mechanical equipment, systems, or other improvement located outside of the boundaries of the Lot, but designated and designed to serve only that Unit, shall be considered part of the Unit.

3.2 Unit Number. The distinct Unit number that identifies the Lot on the Plat may or may not be consistent with the mailing address of the Unit.

3.3 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project.

### **ARTICLE 4 EASEMENTS**

4.1 Utility Easements. Utility Easements and rights-of-way over, under, across and through the Project for the installation and maintenance of electrical lines, telephone lines, cable television lines, broadband, fiber optics, culinary water lines, irrigation lines, gas lines, sewer lines, storm drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Declarant to be helpful in serving the Project, Units, or Unit Owners in the Project are hereby reserved to the Declarant, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the ownership rights and/or quiet enjoyment of the Units by the Owners or Occupants. The Declarant shall have the power to grant and convey, for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over or under the Project, including the Units, for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, sewers, storm water drains and pipes, water

systems, irrigation systems, heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Declarant as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Declarant; provided, however, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Unit.

4.2 **Construction Easement.** A temporary construction easement is hereby reserved to the Declarant and the Builder and their respective assigns, over, under, across, and through the Project for all purposes reasonably necessary for the construction of Subdivision Improvements and initial construction and landscaping of the Units. Owners and Occupants, by accepting any instrument creating an interest in a Unit or in the Property, acknowledge that there will be construction activities, traffic, noise, odors, vibrations, and other activities which temporarily may disrupt an Owner or Occupants' quiet enjoyment of a Unit until construction of the entire Project is completed and waive any right to object to such construction; provided, however, that Declarant and the Builder shall use commercially reasonable efforts to minimize the adverse impact of construction on the Owners and Occupants.

4.3 **Easements for Encroachments.** If any portion of any Subdivision Improvement encroaches upon any Unit, or if any Unit encroaches upon any other Unit as a result of the manner in which the Subdivision Improvements are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Declarant, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

4.4 **No View Easement.** There are no view easements or view rights appurtenant to the Project or to any Unit. Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project.

## ARTICLE 5

### MINIMUM STANDARDS AND REQUIREMENTS

5.1 **Approval Required for Construction and Landscaping.** To protect the integrity of Declarant's design scheme for the Project, construction of a Home and/or construction of other improvements shall require the prior, written approval of Declarant. No Home exterior may be modified or altered without the Declarant or ARC approval. All landscaping on a Lot shall be pursuant to a Lot-landscape plan approved by Declarant.

5.2 **Declarant-appointed ARC.** Declarant, in its discretion, may appoint and authorize an Architectural Review Committee ("ARC") to review construction and landscaping and subsequent remodeling, expansion, or other modification or alteration of Unit exteriors.

5.3 **Minimum Requirements.** Each Home must meet the following minimum requirements for the Project:

- (a) The Home is a detached Single-Family dwelling.
- (b) The Home shall not exceed two (2) stories.
- (c) Homes shall not exceed Holladay City height ordinances.
- (d) Basements and slab on grade Homes are permitted within the Project.
- (e) Minimum of fifteen hundred (1500) square feet on main level on a Two-Story Home. Minimum of eighteen hundred (1800) square feet on main level of a Rambler.
- (f) A Unit's garage shall accommodate parking for at least two (2) automobiles.
- (g) Exterior materials for a Home shall consist of maintenance-free stucco, masonry, or hardi board. Except for soffit and fascia, aluminum and vinyl siding are prohibited within the Project.
- (h) Diversity in Home plans and exterior colors is required within the Project. An Owner shall not be permitted to construct a Home that is the same or is substantially the same as any Home on any immediately adjacent Lot or on the Lot directly across the street. Similarly, exterior Home colors that are the same or substantially similar to any Home on an immediately adjacent Lot or on the Lot directly across the street shall not be permitted.

5.4 **Preliminary Plans.** The Declarant or the ARC may require, as a minimum, the following:

- (a) Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.
- (b) Floor plans of each floor level to scale.
- (c) Elevations to scale of all sides of the Home.
- (d) One major section through Home.
- (e) A perspective.
- (f) Specifications of all outside materials to be used on the exterior of the Home.

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

- (a) Plot plans to scale showing the entire site, the Home, garages, walks, drives, fence, carriage lights, and retaining walls with elevations of the existing and finished grade and contours including those at the outside corners of the structures and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.
- (b) Detailed floor plans.
- (c) Detailed elevations, indicating all materials and showing existing and finished grades.
- (d) Detailed sections, cross and longitudinal.
- (e) Specifications of all front, side, and rear yard landscaping materials.

5.6 Allowed plans. Notwithstanding anything to the contrary in Sections 5.4 and 5.5 above, and subject to the minimum requirements in Section 5.3, the initial construction of a Home by the Builder from plans in the Ivory Homes Catalogue that can comply with City set-back requirements on a Lot and height restrictions with exterior materials selected from the Ivory Homes Design Center, shall not require prior written approval from the Declarant or ARC; provided, however, that any and all deviation from an Ivory Homes Catalogue plan, including, without limitation, design, square footage, or construction materials, shall require approval by the Declarant or ARC. Approval by the Builder's sales personnel, design staff, or construction personnel is insufficient for purposes of this Section 5.6.

5.6 Landscaping Requirements. Unless otherwise provided by written agreement between the Declarant or Builder and Owner, the Owner shall be responsible to landscape the Lot and adjacent parkstrip, pursuant to a Declarant approved Lot-landscape plan. Landscaping shall include, by way of illustration but not limitation, sod and other appropriate ground cover, planting beds, bushes, shrubs, trees and an irrigation system, consistent with City ordinance. Any grading or alteration to existing drainage channels must be approved by Declarant. Landscaping of front, side and rear yard shall be installed within nine (9) months of closing on the initial sale of the Unit. Each Owner shall be responsible for installation of street trees in park strip consistent with City ordinance.

5.7 Landscape Restrictions. Front yards and park strips (*i.e.*, the area on the Lot between the street and the front plane of the Home) comprised primarily or substantially of Hardscape are prohibited without express Declarant approval. For purposes of this Section, "Hardscape" shall mean and refer to concrete, masonry products, pavers, brick, stone, cobblestone, tile, terrazzo, artificial turf, slabs, slate, rock, pebbles, gravel, wood, woodchips, bark, decking, and artificial wood-like product. Front yards and park strips that are not sodded must include fifty percent (50%) coverage by drip-irrigated plant material. No parking pad and/or approach may be installed without prior written approval of Declarant. Gravel or other loose material in parking pads and approaches is prohibited. Any material changes or modification to previously approved landscape shall require prior written consent of the Declarant.

5.8 **Maintenance.** Each Owner shall be responsible to maintain his/her/their Unit's exterior, including landscaping and other improvements to the Owner's Lot in neat and tidy condition consistent with the Community-Wide Standards. Lawn, trees, shrubs and other plantings on a Lot shall be properly nurtured and maintained, at the Owner's sole expense. Diseased, dying, or dead trees, shrubs, or other plantings shall promptly be replaced by the Owner, at the Owner's sole expense. Yards must be kept free of weeds. Each Owner shall be responsible for the maintenance and upkeep of any landscaped park strip area adjacent to the Owner's Lot, if any. Each Owner shall be responsible for snow removal for his/her/their Unit.

5.9 **Slope and Drainage Control.** No grading, construction, or landscaping, and no structure, plants, or other material shall be permitted or allowed to remain which may damage, interfere, or alter drainage channels or obstruct or retard the flow of water through such drainage channels or create erosion or sliding problems, or interfere with any utility easement or right of way. Each Owner shall be responsible to landscape and maintain his/her/their Lot in a manner consistent with existing land drain system and drainage pattern existing on the Lot at the time of the initial sale so as not to interfere with or impair the land drain system in the Project or the existing drainage pattern on any other Lot.

5.10 **Fencing.** Except for fencing installed by the Declarant or Builder in conjunction with development of the Project, all fencing shall require prior Declarant or ARC approval.

(a) **Allowed Fencing/Wall Materials:** Fences and walls permitted by this Section 5.10 shall be made of high quality durable materials requiring minimum maintenance.

(f) **Prohibited Fence/Wall Materials.** The following materials are prohibited: (i) white vinyl fencing; (ii) materials not typically used or manufactured for fencing such as metal roofing panels, corrugated or sheet metal, tarps, or plywood; (iii) solid or private composite materials or similar hollow-wall panels or product; and (iv) chain link.

5.11 **Accessory Structure.** No Accessory Structure shall be permitted without the prior written approval of the Declarant. No Accessory structure shall exceed twenty (20) feet in height. An Accessory Structure's building footprint must be smaller than the building footprint of the Home. No Accessory Structure may occupy more than forty percent (40%) of the rear yard. The style, colors and materials for an Accessory Structure must be substantially similar to the colors and materials of the Home. Accessory Structure must comport with applicable City setback requirements and all other applicable City ordinance.

5.12 **Variance.** Notwithstanding anything to the contrary in this Article 5, the Declarant may authorize variances from compliance with the minimum standards and requirements when topography, natural obstructions, environmental considerations, esthetics, or hardship require, but only with the prior approval of the City. For purposes of this Section 5.12, neither an inability to obtain City or other governmental approval or a building permit nor financing restrictions or limitations shall be considered as a hardship meriting a variance.

5.13 **Enforcement of Architectural Requirements and Standards.** Any construction, alteration, landscaping, or other improvements and any work done in violation of the Terms and Conditions in this Article 5 shall be deemed nonconforming. Upon written notice from the Declarant or ARC, an Owner, at his/her/its sole cost and expense, shall remove such non-conforming construction, alteration, landscaping, improvement or other work and shall restore the Unit to substantially the same condition that existed prior to the conforming work. Should an Owner fail to remove and restore as required hereunder, the Declarant shall have the right to enter onto the Lot and remove the violation and restore the Unit to substantially the same condition as existed prior to the nonconforming construction, alteration, landscaping, improvement or other work without being deemed as a trespasser.

5.14 **Contractors.** Any contractor, subcontractor, employee, agent or invitee of an Owner who fails to comply with the Terms and Conditions herein may be excluded from the Project by Declarant.

## **ARTICLE 6** **USE RESTRICTIONS**

The Property is subject to the following initial use restrictions which shall govern construction and activities within the Project.

6.1 **Nuisance.** No noxious or offensive activity shall be carried on, in or about the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any property or liability insurance for or decrease the value of the Units. Without limiting the foregoing, any violation of any provision of this Declaration or any activity within the Project which constitutes a violation of any applicable law, ordinance, or governmental regulation shall be deemed a nuisance.

6.2 **Parking.** Except for "customary parking" and "temporary parking," as permitted by this Section 6.2, no vehicles of any type (including, without limitation, automobiles, trucks, motorcycles, vans, recreational vehicles, boats and trailers) shall be parked, stored, or located within any portion of the Project, except on concrete parking pads, behind fencing, and behind the front plane of the Home constructed on the Lot. For purposes of this Section, "customary parking" shall mean the parking of operable automobiles, motorcycles, noncommercial trucks, and vans within the Unit's garage or driveway. Customary parking shall not apply to any type of recreational, oversized, or commercial vehicle or any trailer. "Temporary parking" shall mean parking on public roadways of operable vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants.

6.3 **Outside Speakers and Amplifiers.** No radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.

6.4 **Repairs.** No repairs of any vehicle, detached equipment, machinery, or fixtures shall be made in the Project except within a Units garage.

6.5 **Unsightly Items.** All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or

thereon. Trash and garbage shall be properly and promptly disposed. Trash and recycling containers and machinery and equipment not a part of the Units, shall be stored out of sight.

- 6.6 **Shooting and Hunting.** Shooting of any type of firearm or bow is strictly prohibited within the Project. Hunting, including bow-hunting, anywhere within the Project is prohibited.
- 6.7 **Animals.** Animals generally kept in households such as dogs, cats, birds, fish, hamsters, and ferrets may be kept in the Project consistent with City ordinance. Notwithstanding the foregoing, no animal may be kept within a Unit which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. Owners and Occupants are responsible to clean up after their animals.
- 6.8 **Aerials, Antennas, and Satellite Systems.** All exterior aerials, antenna and satellite dishes must be installed and positioned to be as unobtrusive as possible and may not be placed anywhere on the front plane of the Home, subject, however, to Federal Communication Commission guidelines, rules and regulations, and other applicable law.
- 6.9 **Temporary Structures.** Except as provided in Article 9 below, no structure or building of a temporary character, including a tent, trailer or shack, shall be placed upon the Project or any Lot.
- 6.10 **Signs.** Except as provided in Article 9 below, 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 Unit. "For Rent" or "For Lease" signs visible anywhere on a Unit are strictly prohibited.
- 6.11 **Residential Occupancy.** Use of a Unit is limited to Single-Family residential occupancy. No trade or business may be conducted in or from any Unit unless:
  - (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Unit;
  - (b) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
  - (c) the business activity does not involve solicitation of Occupants or Owners of the Project;
  - (d) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers or other individuals coming into the Project who do not reside in the Project, as determined by the Declarant, in its sole discretion;
  - (e) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Project;

- (f) during the period of Declarant Control, the business activity is disclosed to and approved by the Declarant before business is commenced and a description of the business activity is provided, together with a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project; and
- (g) the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted.

## **ARTICLE 7** **LEASING AND NON-OWNER OCCUPANCY**

- 7.1 **Non-Owner Occupancy.** Leasing and non-owner occupancy of a Unit shall be governed by this Article 7.
- 7.2 **Definitions.** For the purpose of this Article 7, the following definitions shall apply:
  - (a) “Non-Owner Occupied Unit” means:
    - (i) For a Unit owned in whole or in part by a natural Person or Persons, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner’s primary residence; or
    - (ii) For a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.
  - (b) “Family Member” means:
    - (i) the parent, sibling, or child of an Owner and that Owner’s spouse and/or children, or
    - (ii) in the case of a Unit owned by a trust or other entity created for estate planning purposes, a Person occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of (1) a current Occupant of the Unit; or (2) the parent, child, or sibling of the current Occupant of the Unit.
- 7.3 **Restriction on Leasing and Non-Owner Occupancy.** Any Unit may be leased or Non-Owner Occupied; provided:
  - (a) Any lease or agreement for otherwise allowable non-owner occupancy shall provide as a term of the agreement that the Occupant shall comply with this Declaration and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-owner occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Occupant;
  - (c) No Owner may lease individual rooms or lease less than the entire Unit except as provided in the Act for internal accessory dwelling units, as the term is defined in Utah Code Ann. §10-9a-530.

## ARTICLE 8

### GENERAL PROVISIONS

- 8.1 **Enforcement.** The Declarant and each Owner shall have the right, but not the obligation, to enforce, by proceedings at law or in equity, all Terms and Conditions, including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation. The prevailing party in any enforcement action shall be entitled to recover its attorneys' fees and costs.
- 8.2 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant consents to the rights reserved to the Declarant in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration and the Plat; subject to the limitations in Section 9.4. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same. Such acceptance shall be deemed an appointment of the Declarant, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Declarant's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.
- 8.3 **Security.** The Declarant shall not, in any way, be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project and shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that the Declarant owed no duty to any Owner or Occupant related to security or criminal conduct. By taking title to a Unit and/or residing in the Project, Owners and Occupants specifically waive any such claim and assume all risks for loss or damage to Persons or property resulting from criminal conduct.
- 8.4 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Declarant, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

8.5 **No Representations and Warranties.** EACH OWNER UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE TO A UNIT OR RESIDING IN THE PROJECT THAT THE DECLARANT HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT HE/SHE HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

## **ARTICLE 9** **DECLARANT RIGHTS**

9.1 **Special Declarant Rights.** Notwithstanding any herein to the contrary, the Declarant shall have the all rights and powers provided for in this Article 9. If any other article in this Declaration contains the words "notwithstanding anything to the contrary," or words of similar import, the provisions therein shall all nonetheless be subject to the terms in this Article 9.

9.2 **Declarant Control Period.** For purposes of this Article 9, and as used in this Declaration, the "Declarant Control Period" shall mean and refer to the period of time during which the Declarant owns any Unit or other land within the Project.

9.3 **Easement Rights.** During the Declarant Control Period, Declarant shall have an easement for access over, under, across and through the entire Project and may utilize, allow anyone else to utilize, or may grant easements over, under across, and through any easement right reserved to anyone in the Declaration.

9.4 **Right to Amend Plat.** Subject to necessary approvals from any applicable municipality or government agency, during the Declarant Control Period, the Declarant shall have the right to seek amendment, change, or modification of the Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat.

9.5 **Expansion of Project/Additional Land.** The Declarant may add land to or withdraw land from the Project and expand or contract the Project, at any time, and for any reason, consistent with City ordinance.

9.6 **Assignment of Special Declarant Rights.** The Declarant, at any time, by recording a written notice, may assign or transfer all or some of its control, power, authority, or decision-making ability to any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project.

9.7 **Exceptions from Use Restrictions.** The Declarant shall not be bound by any use restriction in the Declaration as it relates to the Units owned by the Declarant.

9.8 **No Modification of Declarant Rights.** Declarant Rights in this Declaration and, specifically, in this Article 9 shall not be substantively or procedurally altered without the written consent of the Declarant during the Declarant Control Period. Any attempt to

amend without proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of Article 9 without the consent of the Declarant.

9.9 **Use of Units for Sales Activities.** During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of Units owned by the Declarant or to be added to the Project, as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Unit with the permission of the Owner of that Unit (who may be the Declarant) or in one or more separate structures, trailers, or facilities placed in the Project to aid the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street parking as parking for sales only or to otherwise restrict and use any common parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.

9.10 **Declarant Rights Do Not Impose Obligations.** The Declarant Rights provided for in this Article 9 shall not be construed to impose any obligation, legal or equitable, related to the issues to which they might apply. Each Owner, by taking title to a Unit, waives and disclaims any such duty and affirmatively acknowledges that no such duty exists or should be imposed as a result of the Special Declarant Rights.

## **ARTICLE 10** **CONFLICT AND LITIGATION AVOIDANCE**

10.1 **Statement of Intent.** Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Unit or Lot that Owner is purchasing or any aspect of the Project, all prior to purchasing a Unit. Having had the ability to inspect and having paid market price for a Unit in the condition it and other Units in the Project are in at the time of purchase, it is acknowledged that it is unfair and improper thereafter to seek to have the Declarant and/or the Builder or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, the Owners and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners.

10.2 **Owner Warranties.** The Declarant may, but is not obligated to, provide certain warranties to the Owners related to the Units purchased. The first Owner of a Unit to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have

the right to directly enforce and seek performance from the Declarant of any terms of the warranty and only consistent with the warranty itself. No Owner shall have the right to assign any rights of any kind to any other Person related to pursuing litigation against the Declarant.

10.3 **Waiver of Subrogation and Release.** Each Owner waives any right to subrogation against the Declarant and the Builder in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant and Builder (including their respective principles, officers, managers, shareholders, members, employees, agents, and representatives). To the fullest extent permitted by law, each Owner, by taking title to a Unit, releases the Declarant and Builder (including their respective principles, officers, managers, shareholders, members, employees, agents and representatives) from any and all liability to the Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or Builder (including their respective principles, officers, managers, shareholders, members, employees, agents and representatives). Each Owner, by taking title to a Unit, agrees to indemnify and defend the Declarant and the Builder, and any of their respective officers, employees, owners, or representatives, from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

10.4 **Declarant Litigation.**

(a) An Owner may only make a claim against the Declarant, to the extent allowed herein or by law after the following efforts at dispute resolution have been completed:

(i) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined in Subsection 10.4(d) below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get its contractor or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; and

(ii) Mandatory Mediation: if the dispute is not resolved within the Right to Cure period, the parties shall participate in mediation prior to taking further action.

(b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against the Declarant, or subcontractor by any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. The parties to any such arbitration shall work, in good faith, to agree upon the arbitrator, arbitration service, and all aspects of the arbitration and mediation proceedings.

- (c) In the event the parties are unable to agree regarding the mediation or arbitration service, the dispute shall be submitted to the American Arbitration Association for mediation and/or arbitration. Arbitration rules applicable to construction disputes shall apply, subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the arbitration rules and this Declaration.
- (d) For purposes of this Section 10.4, "Notice of Claim" shall mean and include the following information: (i) The nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a specific description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (iv) photographs of any alleged condition, if applicable; (v) samples of any alleged defective conditions or materials; (vi) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom; and (vii) the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
- (e) Except as to an Owner Warranty and to the fullest extent permitted by the law, an Owner, by taking title to a Unit, shall not and agrees not to commence or maintain any arbitration, litigation, or other action against the Declarant, or any of its principles, officers, managers, shareholders, members, employees, agents and representatives, for any reason, including, but not limited to, alleged construction defects or any damages arising therefrom.

## ARTICLE 11

### INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

- 11.1 **Conflicting Provisions.** In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Declaration and then the Plat.
- 11.2 **Severability.** Invalidation of any of the Terms and Conditions (or any portion thereof) by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 11.3 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purposes stated in the Recitals.
- 11.4 **Gender and Number.** Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 11.5 **Effect of Declaration.** This Declaration is made solely for the purposes set forth in the Recitals and the Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with applicable laws, ordinances, regulations and the like applicable thereto. The Declarant shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.
- 11.6 **Governing Law.** This Declaration is made pursuant to and shall be interpreted and enforced under the laws of the State of Utah.

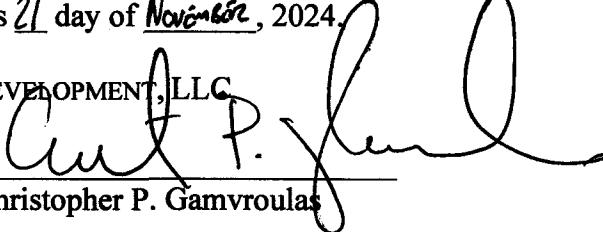
11.7 Amendment. Subject to the exceptions in Article 9, this Declaration may be amended only by consent of all Owners.

[Remainder of this page intentionally left blank]

Dated this 21<sup>st</sup> day of November, 2024.

IVORY DEVELOPMENT, LLC

By:

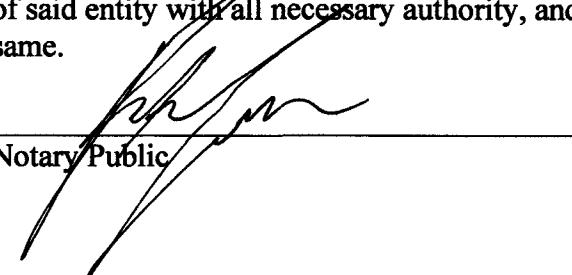
  
Christopher P. Gamvroulas

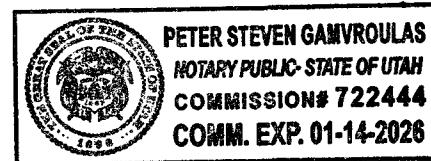
Its: President

STATE OF UTAH )  
COUNTY OF SALT LAKE ) ss.  
                          )

On this 21<sup>st</sup> day of November, 2024, personally appeared before me

Christopher P. Gamvroulas, whose identity is personally known to me, (proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the President of Ivory Development, LLC and that said document was signed by him/her on behalf of said entity with all necessary authority, and acknowledged to me that said entity executed the same.

  
Notary Public



**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

The real property and lots or units referred to in the foregoing DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HOLLADAY PEAKS SUBDIVISION are located in Salt Lake County, Utah and are described more particularly as follows:

***HOLLADAY PEAKS SUBDIVISION LEGAL DESCRIPTION***

**Holladay Peaks Subdivision, Lots 1, 2, 5, 6, 7, 8, 9, and 10, inclusive, as shown on the official subdivision final plat on file and of record with the County Recorder for Salt Lake County, Utah September 30<sup>th</sup>, 2024, as Entry No. 14294193.**

**Parcel Nos. \_\_\_\_\_ through \_\_\_\_\_**

22-09-182-012  
22-09-182-013  
22-09-182-016  
22-09-183-009  
22-09-183-010  
22-09-183-011  
22-09-183-012  
22-09-183-013