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E# 2252388 PG 1 OF 34  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
29-MAR-07 2:11 PM FEE \$111.00 DEP CC  
REC FOR: COTTONWOOD TITLE INSURANCE AGE  
ELECTRONICALLY RECORDED

WHEN RECORDED RETURN TO:  
Ivory Development, LLC,  
A Utah limited liability company  
1544 North Woodland Park Drive, #300  
Layton, Utah 84041  
(801) 775-8853

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BARLOW SUBDIVISION PHASE 3,**

This Declaration of Covenants, Conditions and Restrictions for Barlow Subdivision Phase 3, located in West Haven, Utah (the "Declaration") is executed by Ivory Development, LLC. of 1544 North Woodland Park Drive, #300, Layton, Utah 84041 (the "Developer"), with reference to the following:

**RECITALS**

- A. Developer is the owner of certain real property located in the City of West Haven and County of Weber, State of Utah, described more particularly on Exhibit "A" attached hereto and incorporated herein by this reference (the "Tract").
- B. The Plat Map shows 39 Lots, numbered 72-110, inclusive, located within the Tract.
- C. The Property is an area of unique natural beauty, featuring distinctive terrain.
- D. There is no Common Area in the Tract.
- E. There is no homeowners Association.
- F. The governing documents will be enforced by an architectural review committee.
- G. Since the completion of the Project may be in phases, the completed Project will consist of the original Phase 3 and all subsequent phases.
- H. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Developer to provide a general plan for development of the land, 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 attractiveness, quality and value of the lands and improvements therein.

08-464-0001 thru 08-464-0020 ✓  
08-465-0001 thru 08-465-0010, 0017, 0018, 0019. ✓

**COVENANTS, CONDITIONS AND RESTRICTIONS, CONDITIONS AND RESTRICTIONS**

Now, Therefore, for the reasons recited above, the Developer hereby covenants, agrees, and declares that the Property shall be subject to the following covenants, conditions and restrictions:

1. **Definitions.** The following definitions shall apply to this Declaration:
  - a. **"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 sole opinion of the ARC.
  - b. **"Additional Charges"** shall mean and refer to late fees, interest, attorneys fees, costs and expense..
  - c. **"Architectural Review Committee"** or **"ARC"** shall mean and refer to the person or persons appointed to review, interpret and enforce the Project Documents, designs, plans, specifications, homes, architecture, fencing, and landscaping within the Project.
  - d. **"Builder"** shall mean an owner, developer or contractor who obtains a construction or occupancy permit for one or more Lots.
  - e. **"Capital Improvement"** shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.
  - f. **"City"** shall mean and refer to the City of West Haven, Utah.
  - g. **"Common Expense"** shall mean and refer to all expenses incurred by the ARC in administering and enforcing the Declaration.
  - h. **"Dwelling Unit"** shall mean and refer to both the use and architectural style of a home, residence, dwelling or living unit constructed upon a Lot. Mechanical equipment and appurtenances located within any one Dwelling Unit, or located without said Dwelling Unit but designated and designed to serve only that Dwelling Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Dwelling Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Dwelling Unit or serving only the Dwelling Unit, and any

structural members, parts, components or any other property of any kind, including fixtures or appliances within any Dwelling Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Dwelling Unit is located shall be deemed to be part of the Dwelling Unit. Where the context clearly requires, the term "Dwelling Unit" may refer to a Lot.

i. **"Entry"** shall mean the entry way into the Project.

j. **"Entry Monument"** shall mean the monument, planter boxes, landscaping features and other physical improvements identifying the Project located at or near the Entry or entrance to the Project.

k. **"Guest"** shall mean and refer to a guest, visitor or invitee to a Lot.

l. **"Individual Charge"** shall mean and refer to a charge levied against an Owner or Permittee for all expenses resulting from the act or omission of such Person, excepting the Owner's failure to pay any Assessment.

1) The act or negligence of any Owner or Permittee shall be deemed to be the act or negligence of the Owner responsible for such Person.

2) Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner or Permittee including:

a) The cost to repair any damage to any portion of the Tract on account of loss or damage caused by such Person; or

b) The cost to satisfy any expense to any other Owner or Owners or to the ARC 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.

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

m. **"Managing Member"** shall mean and refer to the person appointed by the Developer to unilaterally make all day-to-day business decisions for the ARC.

n. **"Owner" or "Owners"** shall mean the record owner or owners of a fee simple title to any Lot, whether one or more natural persons or legal entities, and excluding those persons having such interest merely as security for the performance of an obligation.

o. **"Parking Pad"** shall mean and refer to a cement or concrete, (or other construction material approved in writing by the ARC) parking pad constructed or installed on a Lot for the purpose of parking or storing of a Recreational, Commercial, or Oversized Vehicle.

p. **"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.

q. **"Period of Developer Control"** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of last of the following Events: (1) Four months after 100% of the Dwelling Units constructed upon Lots owned by Developer have been sold; or (2) Five years from the effective date of this Declaration; or (3) When in its sole discretion the Developer so determines.

r. **"Permittee"** shall mean and refer to a Guest, family member, renter, tenant, lessee, resident, occupant of or any Person permitted by Owner on a Lot.

s. **"Person"** shall unless otherwise indicated mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

t. **"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.

u. **"Plat Map"** shall mean and refer to the Final Plat Map or Maps of Barlow Subdivision Phase 3 as they may be amended from time to time. The Plat Map will show the location of the Lots.

v. **"Project"** shall mean Barlow Subdivision Phase 3.

w. **"Project Documents"** shall mean and refer to this Declaration, Architectural or Design Guidelines, and any Rules and Regulations adopted by the ARC from time to time.

x. **"Property"** shall mean and refer to the Tract.

y. **"Recreational, Oversized or Commercial Vehicle"** shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, bobcat, non-passenger vehicle, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, trailers, including but not limited to a camper trailer, boat trailer, horse trailer, or other utility trailer of any kind, or any other recreational, oversized or commercial transportation device of any kind so defined by the ARC.

z. **"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.

2. **Area of Application.** This Declaration shall apply to all of the Property.

3. **Right to Expand Application.** The Developer shall have the exclusive, unilateral, unconditional, and irrevocable right to expand the application of this Declaration to other real property by written amendment to this Declaration duly recorded.

4. **Description and Legal Status of the Property.** The Plat Map shows the type and location of each Lot and its Lot Number and the Common Area in the vicinity. It is intended that Phase 3 will consist of up to 39 residential Lots, numbered Lots 72 through 110, inclusive. All Lots shall be capable of being independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

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 Barlow Subdivision Phase 3, as the same is identified in the Plat Map recorded in Weber County, Utah as Entry No. \_\_\_\_\_ of the official records of the County Recorder of Weber County, Utah (as said Plat Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of Barlow Subdivision Phase 3, recorded in Weber County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page(s) \_\_\_\_\_ of the official records of the County Recorder of Weber County, Utah (as said Declaration may have heretofore been supplemented).

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

6. **Meetings.** The ARC shall meet as often as is necessary at a convenient time and place. A meeting of Owners may be called by the ARC. The ARC shall call a meeting of Owners upon receipt of a petition signed by at least 25% of the Owners. The meeting shall be held at a time and place determined by the ARC upon at least fifteen (15) and not more than thirty (30) days prior written notice to each Owner at his last known address. The ARC shall designate the person to preside over and conduct any meeting of Owners.

7. **The Maintenance Responsibility of the Owners or Area of Personal**

**Responsibility.** Each Owner shall maintain and keep in good repair his Lot, Dwelling Unit and all improvements thereon or therein.

8. **Common Profits, Expenses, and Voting Rights.** The common profits of the Tract shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to, the Owners equally.

9. **Common Expenses.** Each Owner is responsible for and shall pay his share of the Common Assessments and any Assessments against him or his Lot, and:

a. **Developer.** Anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments on any Lot owned by it until such time as: (1) the physical structures are substantially completed; (2) certificates of permanent occupancy are issued and the Dwelling Units are sold or rented; or (3) Developer elects in writing to pay the Assessments, whichever first occurs.

b. **Purpose of Common Area Expenses.** The Assessments provided for herein shall be used for the general purpose of operating the ARC and administering and enforcing the Project Documents.

c. **Creation of 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 deed, covenants and agrees to pay to the ARC his share of the Common Expenses and all of his Assessments.

d. **Budget.** At least thirty (30) days prior to the beginning of a new fiscal year, the ARC shall prepare and deliver to the Owners a proposed Budget which:

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

2) **Basis.** Shall be based upon advance estimates of cash requirements by the ARC to provide for the payment of all estimated expenses growing out of or connected with the administration and enforcement of the Project Documents.

e. **Approval of Budget and Assessments.** The proposed Budget and the Assessments shall become effective unless disapproved by the affirmative written vote of at least a majority of the Owners at a meeting duly called for this purpose. Notwithstanding the foregoing, however, if the Owners disapprove of the proposed budget and Assessments or the ARC 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.

f. **Personal Obligation of Owner.** Each Owner is liable to pay his share of the Common Expenses, all of his 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.

g. **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 ARC may from time to time effect an equitable change in the amount of said payments.

h. **Reserve Account.** The ARC shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and capital improvements.

i. **Statement of Assessments Due.** Upon written request, the ARC 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 ARC, shall be deemed conclusive evidence that all Assessments are paid current. The ARC may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

j. **Debt Collection.** An Assessment, Additional Charge or fine is a debt of the Owner at the time it is made and is collectible as such. Suit to recover a personal judgment for unpaid fines is maintainable by the ARC without foreclosing or waiving the lien securing it. If any Owner fails or refuses to make any payment of an Assessment, Additional Charge or fine when due, that amount constitutes a lien on the interest of the Owner in the Property, and upon the recording of notice of lien, it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (a) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (b) 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.

k. **Late Fees.** A late fee in a sum determined by the ARC may be charged on all payments received more than ten (10) days after they were due.

l. **Default Interest.** Default interest of 1.5% per month may be assessed on the outstanding balance of all delinquent accounts.

10. **Architectural and Related Issues.** Since aesthetics, the integrity and harmony of the original design, and the quality of construction and materials throughout the Project is important, all architectural designs, plans, specifications, construction materials, and construction must be (a) reviewed and approved by the ARC or its designee and (b) consistent with the restrictions set forth herein governing the Project.

a. **General Status, Authority and Duties of ARC.** The ARC shall adopt an annual budget, pay all Common Expenses, allocate the Common Expenses among the Owners,

bill the Owners for their portion of the Common Expenses, collect the Assessments, and take all other actions necessary or incident thereto. Any instrument executed by the ARC, its legal representative or Managing Member which 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. The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners. The ARC and Managing Member shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions. Until the end of the Period of Developer's Control, the Developer shall have the exclusive, unilateral and irrevocable right to appoint the members of the ARC and the Managing Member. The ARC may adopt, repeal, modify and enforce reasonable rules and regulations.

b. **Delegation of Management Responsibilities.** The ARC may delegate some of its management responsibilities to either a professional management company or manager, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The ARC may also employ architects, engineers, landscape professionals, contractors, subcontractors, general laborers, grounds crew, maintenance personnel, bookkeepers, accountants, attorneys, administrative and clerical personnel as necessary to perform its management responsibilities.

c. **Duties, Powers and Standing.** Until the termination of the "Period of Developer Control," the ARC has the sole right and exclusive authority to resolve all architectural issues and may, in its sole discretion, designate one or more persons from time to time to act on its behalf in reviewing applications hereunder as the ARC, which before the termination of the "Period of Developer Control" shall consist of three individuals, two of whom must be appointed by Developer, and thereafter may consist of (a) a single individual, architect or engineer, or (b) a committee comprised of architects, engineers or other persons who may or may not be Owners, or (c) a combination thereof. Powers may be delegated by the ARC, provided any such delegation shall specify the scope of responsibilities delegated, and, prior to the termination of the Period of Developer Control, shall be subject to the irrevocable right of Developer to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and/or to veto any decision which Developer determines, in its sole discretion, to be inappropriate or inadvisable. The initial ARC will be made up of Eric Freebairn, who shall act as the managing Member, who shall serve until such time as his successors are qualified and appointed. Members serving on the ARC shall be appointed or elected to serve two (2) year terms. Any member of the ARC who fails on three (3) successive occasions to attend regularly scheduled meetings or who has failed to attend at least twenty-five percent (25%) of all regularly scheduled meetings held during any twelve (12) month period shall automatically forfeit his seat. Except for members of the ARC appointed by the Developer prior to the termination of the Period of Developer Control, members of the ARC may be removed at any time by the affirmative vote of at least a majority of the Owners. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the ARC until his successor qualifies and is properly appointed by the Developer or, after the termination of the



Period of Developer Control, elected by the Owners. Members of ARC shall not be compensated for their services, although they may be reimbursed for costs advanced. 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. The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners. 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, including without limitation:

1) **Access.** The power and authority to enter into or upon any Lot to make inspections, evaluations or repairs and to do other work necessary for the proper maintenance and operation of the Project or to enforce the decisions of the ARC. Except in the case of an emergency, residents shall be given at least twenty-four (24) hours prior notice before the ARC may exercise this power.

2) **Respond to Complaints.** While the ARC will not police the development, relative to any of these covenants, it shall have the power and authority, but not the obligation, to respond to written concerns of Owners about any issue.

3) **Execute Documents.** The authority to execute and record, on behalf of the ARC, any amendment to the Declaration which has been approved by the vote or consent necessary to authorize such amendment.

4) **Standing.** The power to sue and be sued.

5) **Contractual Authority.** The authority to enter into contracts which in any way concern the Project.

6) **Promulgate Rules.** The authority to promulgate such reasonable rules and regulations as may be necessary or desirable to aid the ARC in carrying out any of its functions, including by way of illustration but not limitation Parking Rules or Landscaping Rules.

7) **Determine Common Expenses.** The authority to determine the Common Expenses of operating the ARC and administering the architectural guidelines in the Project Documents.

8) **All other Acts.** The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the ARC to perform its functions for and in behalf of the Owners.

d. **Composition of Architectural Review Committees.** The Architectural Review Committee shall consist of at least one (1) but no more than three (3) members who need not be Owners. The member or members of the Architectural Review Committee shall be

appointed by the Developer during the Period of Developer's Control and thereafter the member or members shall be elected by the Owners.

e. **Managing Member.** Anything to the contrary notwithstanding, during the Period of Developer's Control, the ARC 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 Developer, who shall manage the ARC and administer the Project Documents. The Developer hereby designates Eric Freebairn as the initial Managing Member of the ARC.

f. **Transfer of Control of ARC.** Unless otherwise agreed in writing, within forty-five (45) days after the termination of the Period of Developer Control, Developer shall transfer the right to the Owners to appoint at least two members of the ARC.

g. **Default in Management of ARC.** In the event of the failure of a duly qualified and functioning ARC, the City may but is not obligated to administer and operate the ARC.

11. **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.

a. **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.

b. **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.

c. **Minimum Dwelling Unit Requirements.** No Dwelling Unit shall be constructed or altered unless it meets the following minimum requirements:

- 1) Only single family residential Dwelling Units are allowed.
- 2) The height of any Dwelling Unit shall not exceed two stories above ground.
- 3) No slab on grade Dwelling Units are permitted.
- 4) Without the prior written consent of the ARC, a basement is required for each Dwelling Unit.

5) Without the prior written consent of the ARC, each Dwelling Unit shall have a private garage for not less than two motor vehicles.

6) The Dwelling Unit exteriors, in their entirety, must consist of stucco with brick or stone unless another construction material is expressly approved by the ARC in writing. No aluminum or vinyl is permitted.

7) Any detached accessory building must conform in design and materials with the primary residential Dwelling Unit.

8) Any and all plans and specifications for an Accessory Building must be submitted, reviewed and approved in writing in advance.

9) Any detached accessory building must conform in design and materials with the primary residential Dwelling Unit.

10) All Lots shall be fully landscaped in accordance with Section 20(k) below.

11) No fence or similar structure shall be placed in any front yard. No fence or similar structure shall be placed in any side or rear yard in excess of six (6) feet. Vinyl fencing is allowed without additional approval required. Vinyl, masonry and chain link fencing is allowed. Wood fencing is prohibited. If there is a dispute as to what constitutes the front, side or rear yards, or whether a variance has been granted, the decision of the ARC shall be final, binding and conclusive.

12) Conditional uses may be allowed for a swimming pool, cabana, equipment building, outdoor recreational activities, such as an athletic court, tennis courts, basketball court, soccer pitch, batting cage, and so forth.

13) No tin sheds are allowed.

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

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.

2) Floor plans of each floor level to scale.

3) Elevations to scale of all sides of the Dwelling Unit.

4) One major section through Dwelling Unit.

5) A perspective (optional).

6) Specifications of all outside materials to be used on the exterior of the Dwelling Unit.

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

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.

2) Detailed floor plans.

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

4) Detailed sections, cross and longitudinal.

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 Dwelling Unit.

f. **Landscaping.** All Lot landscaping, grading, and drainage is subject to the following covenants, conditions, restrictions and Developers, and shall be completed strictly in accordance with the Landscaping Guidelines adopted by the Developer or the ARC and so as to comply with and not impair all applicable ordinances and flood control requirements.

1) All Lot landscaping must be completed within nine (9) months of closing.

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 with the Street Tree Planting Plan adopted by the Developer, if any.

3) The Developer will provide the City with a bond for landscaping whenever possible.

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.

5) By accepting a deed or other document of conveyance to a Lot, the Owner hereby agrees, acknowledges and consents that if the Developer is required by the City to install front yard landscaping prior to receiving a final inspection on the Lot, to the basic front yard landscaping so provided and further agrees that the landscaping installed by Developer is in lieu of, abrogates and cancels any 2,000 sq. ft. of sod promised on any promotional materials, including by way of illustration but not limitation the Purchase Price Addendum and the Ivory Homes Catalogue of Homes.

6) The Owner is responsible for the initial planting of trees.

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

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

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

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.

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.

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

13) Should any Owner fail to comply with the provisions of this paragraph, the Developer 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.

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.

g. **Easements and Rights of Way.** Declarant hereby reserves to itself and grants to the Association a nonexclusive, perpetual right-of-way and easement over, across and through the Tract, together with the right to use, operate, maintain, repair and replace the Common Areas and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

1) **Common Use of Easement.** Said easement is to be used in common by the Declarant, Association and Owners, subject to all of the terms, covenants, conditions and restrictions set forth herein.

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

3) **Benefited Expense Regarding Landscaping.** Each Phase is 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 Phase, or any part thereof (the "Benefited Expense"), although such Benefited Expense shall not be considered part of the Master Operating Expenses.

4) **Encroachments.** If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Lot or Dwelling Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot or Dwelling Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Lot or Dwelling Unit, 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 Areas and Facilities or the Lots or Dwelling Units. 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 Map, 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.

5) **Improvements.** Improvements, including Lots or Dwelling Units, and/or Common Areas and Facilities constructed as subsequent phases of the Project may encroach upon portions of the Common Areas and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and this Declaration necessary to repair, maintain and operate such improvements is hereby granted.

6) **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 Dwelling Unit he is occupying and to any Limited Common Areas and Facilities appurtenant to his Lot or Dwelling Unit, and he shall have the right to the horizontal, vertical and lateral support of his Lot.

7) **Declarant's Easement.** The Association hereby grants and conveys to the Declarant an exclusive easement to make such use of the Common Areas 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 and maintain the Common Areas and Facilities for use by the Owners, Members, and the MHOA.

8) **Construction Easements.** The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Common Areas 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, Dwelling Units, and Common Areas and Facilities. The Owners of Lots 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, Units or the Common Areas and Facilities appurtenant thereto until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

9) **Locations Facilities Easements.** Declarant reserves 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. Declarant further reserves a right of access to the Locations of Facilities over, across, and through all other Common Areas and Facilities of the Project in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant 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 Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

10) **Entry Monument Easement.** Easements the Entry Monument and corresponding utility and drainage systems and facilities, and irrigation are reserved hereby and on the recorded Plat. An Owner may not do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. If a drainage channel is altered by an Owner, the Declarant and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass. In addition, the easement and right of way area of or on each Lot, including by way of illustration

but not limitation, the Entry Monument, in whole or in part, utilities, drainage systems and facilities, and irrigation, and all improvements within said area shall be maintained continuously by the Owner of the property, at his sole expense, excepting those improvements for which a public authority or utility company is expressly responsible.

11). **Joint or Common Utility Easements with Neighboring Subdivisions or Developments.** The Declarant 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 Declarants of adjoining subdivisions, projects or developments any and all reasonable and necessary utility easements or rights of way for access, ingress, egress, transportation, cable, utilities, gas, water, power, sewer, storm drain systems, and so forth under, over, across or through Barlow Subdivision.

h. **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.

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.

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 Developer, Weber County and the City.

i. **Accessory Buildings.** Since Accessory Buildings are considered "conditional uses," each application to construct or install an Accessory Building will be evaluated separately by the ARC, subject to the following guidelines:

1) Any detached Accessory Building must conform in design and construction materials with the primary residential Dwelling Unit;

2) The maximum height of an Accessory Building shall be 12 feet, (although the ARC may grant an exception if, in its sole opinion, such is in the best interest of the Project);

3) Tin sheds are not allowed; and

4) If there is a dispute of any kind whatsoever, such as whether a structure is an Accessory Building, the decision of the Developer or upon the termination of the Period of Developer's Control the Management Committee shall be final, conclusive and binding

j. **Approval.** In the event that the ARC fails to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested,



the application shall be considered approved, subject to the minimum requirements as set forth herein.

l. **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.

m. **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, and prior written consent of the West Haven City Board of Adjustment. 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) estop 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.

n. **Limitation of Liability.** Neither the Developer 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 Developer 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.

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

p. **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 Project, subject to the notice and the opportunity to be heard.

In the event of sanctions after notice and hearing, neither the ARC or the Developer, nor their employees, agents, representatives or consultants shall be held liable to any person for exercising the rights granted by this Section.

q. **Ivory Homes Catalogue.** Any and every home design, plan or specification contained within the Ivory Homes Catalogue shall be considered approved and qualify for construction, and no other consent shall be required, provided the home elevations meet and the home otherwise satisfies all of the architectural control requirements of the City PUD ordinance.. Any and all deviations from the Ivory Homes Catalogue, including by way of illustration but not limitation, design, construction materials and coloration, must be expressly approved in writing by the ARC: The approval of the Ivory Homes Sales staff and/or construction personnel is insufficient.

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

a. **Private Residence.** No Lot shall be used except for residential purposes.

b. **Business Use.** No resident may operate a commercial trade or business in or from his Unit 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 Unit. No commercial trade or business may be conducted in or from a Unit 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 ARC, as they may be modified from time to time; and (d) the resident has obtained the prior written consent of the ARC. Notwithstanding the foregoing, the leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

c. **Storage and Parking of Vehicles.** The driving, parking, standing, and storing of motor vehicles in, on or about the Project is governed and regulated by the Project Documents, including:

1) The parking rules and regulations adopted by the ARC, as they may be amended from time to time;

2) No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any driveway or Dwelling Unit or to create an obstacle or potentially dangerous condition.

3) No Resident shall repair or restore any vehicle of any kind in, on or about any Lot, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

4) 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 designed and constructed.

5) All garages shall be used primarily for the parking and storage of vehicles.

6) Parking on the street is prohibited.

7) All motor vehicles parked so as to be visible from the street or another Lot must be undamaged (less than \$1,000.00 to repair), in good mechanical condition, registered, and licensed.

8) Except as otherwise expressly permitted, motor vehicles may not be "stored" so as to be visible from the street or another Dwelling Unit. This includes by way of illustration but not limitation unregistered, unlicensed, abandoned, disabled, or damaged (\$1,000 +) motor vehicles.

9) Except for purposes of loading or unloading passengers or supplies, for a period of time not to exceed twenty-four (24) hours, all Recreational, Commercial, and Oversized Vehicles may be stored on a properly constructed Parking Pad provided (a) the Vehicle is in good running condition and properly licensed and registered, (b) the Parking Pad is located in the rear yard (i.e., behind the front of the house), and (c) a proper Parking Pad Fence has been installed. Eighteen-wheel semi trailers and similar oversized transportation devices are not allowed.

10) Eighteen wheeled semi-trailers or other similar transportation devices are not allowed.

11) Vehicles parked in violation of this Declaration may be immobilized, impounded, or towed by the ARC or its designee without further notice and at the owner's sole risk and expense.

d. **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.

e. **Aerials, Antennas, and Satellite Systems.** All exterior aerials, antenna and satellite dishes (collectively "antenna") must be positioned so that they are screened from view from the street. No antenna shall be erected, maintained or used in, on or about any Dwelling Unit, outdoors and above ground, whether attached to or on top of any building, structure, Dwelling Unit, or otherwise, within the Project without the prior written consent of the Developer or ARC, which shall not be unreasonably withheld. If there is a conflict between this subsection and the FCC guidelines, the latter shall in all respects govern and control. In making its decisions, the Developer and/or ARC shall abide by and be subject to all relevant local, state

and federal laws, including but not limited to all FCC guidelines, rules and regulations as they may be amended or supplemented from time to time.

f. **Animals and Pets.** The City allows animals on Lots based upon the size of the Lot. Animals as that term is defined by City Ordinance are allowed. No pets, animals, livestock, or poultry of any kind may be commercially bred at the Project. Domestic pets permitted by City ordinance are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts may constitute a nuisance: (1) causing damage to the property of anyone other than the pet owner; (2) causing unreasonable fouling of the air by odors; (3) causing unsanitary conditions; (4) running loose throughout the Project and not in a cage or on a leash and under the control of a responsible person; (5) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (6) molesting or harassing passersby by lunging at them or chasing passing vehicles; (7) attacking or threatening to attack people or other domestic animals; (8) 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; or (9) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents.

g. **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.

h. **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 Dwelling Unit, and promptly restore the property to its original condition.

i. **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 Dwelling Unit; provided, however, this restriction does not apply to and is not binding upon the Developer, who may use whatever signs it deems appropriate to market its Lots. "For Rent" or "For Lease" signs on a Lot, or showing from a Dwelling Unit are prohibited.

j. **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 Project land use and buildings.

k. **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 neighborhood, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property.

l. **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.

m. **Entry Monument.** If an Owner purchases a Lot which includes a common improvement, including by way of illustration but not limitation an Entry, Entry Monument, planter, planter box, planter strip, perimeter fence, wall, street light, exterior lighting or other landscaping treatment of any kind, shall, at his sole expense, maintain such common elements in good condition, and may not improve his property or place any plant, hedge, tree, bush, shrub or object, natural or artificial, behind, to the side or in front of such improvement or feature or so as to impair, obstruct, block or impede the view or purpose of the Entry, Entry Monument or other improvement, planter box, landscaping strip, or any such special landscaping feature.

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

13. **Owner-Occupied.** In order to maintain the value of the purchased property and subdivision, a Dwelling Unit 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: (a) The vested owner (as shown on the records of the Utah County Recorder); (b) The vested owner and/or his spouse, children or siblings; or (c) 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.

14. **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 Dwelling Units is subject to the following covenants, conditions and restrictions:

a. Renting rules and regulations adopted by the Management Committee, as they may be amended from time to time.

b. No Owner may lease or rent his Dwelling Unit for a period of one (1) year from the date of closing.

c. No Owner shall be permitted to lease his Dwelling Unit 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 Dwelling Unit, 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 Management Committee.

d. "For Rent" or "For Lease" signs are prohibited.

e. The Management Committee 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 Management Committee.

f. The ARC may also require that Owners use lease forms or addenda, such as the Crime Free Addendum or the Project Addendum, approved by the ARC (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.

g. 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 Dwelling Unit.

15. **Transfer Fee.** 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, to pay to the ARC a sum equal to five percent (5%) of the gross sales price on the Lot as a transfer fee if his Lot is sold or if he enters into a lease/option or other similar agreement on the Lot during the initial two (2) year period after the date of closing.

16. **Delegation of Management Responsibilities.** The Property may be managed by a professional manager, selected by the Developer or, upon the termination of the Period of Developer's Control, the ARC. The agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the ARC 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.

17. **View Impairment.** Neither the Developer nor the ARC guarantees or represents that any view over and across any property, including any Lot or Building will be preserved without impairment. Neither the Developer nor the ARC shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied Developers for view purposes or for the passage of light and air are hereby expressly disclaimed.

18. **Common Utilities.** The Developer may provide water and power utility services to the Entry, Entry Monument and other common elements at its expense (the "Common Utility Service"). Such Common Utility Service shall be maintained and paid for by the ARC as a Common Expense; provided, however, the Developer ARC may elect to provide such Common Utility Services through a meter or meters on an individual Lot or Lots and, if so, each such Owner agrees, by accepting a deed or other document of conveyance to such Lot, to provide, and not terminate, delay or interrupt, those Common Utility Services to the Entry, Entry Monument or other common elements not separately metered and billed to the ARC by the provider, although in such circumstance the Owner of each such Lot shall be entitled to the following credits:

a. **Water.** A monthly credit an amount equal to the difference between the water bill for each such Lot and the average water bill for all of the other Lots in the Project; and

b. **Power.** A monthly credit in an amount equal to the greater of (1) \$5.00 or (2) a sum equal to the number of watts in the light bulb, multiplied by the Kilowatt rate of the local power company, multiplied by 4,000, divided by 1,000, and divided by 12.

19. **Insurance.** The ARC will obtain insurance against loss or damage for:

a. **Directors and Officers Insurance.** Adequate director's and officer's liability coverage.

b. **Public Liability Insurance.** An adequate public liability policy.

c. **Fidelity Bond.** An adequate fidelity bond to cover all non-compensated officers as well as all employees for theft of common funds.

d. **Adjust Claims.** The ARC is granted the right to adjust claims.

e. **Priority of Coverage.** If there is a duplication of insurance coverage, the insurance of the Owner shall be considered primary and the insurance of the ARC shall be considered secondary.

20. **Destruction, Condemnation, and Obsolescence.** Upon the occurrence of any damage or destruction to the Tract or any part thereof, or upon a complete or partial taking of the Tract under eminent domain or by grant or conveyance in lieu thereof, restoration shall be undertaken by the ARC promptly without a vote of the Owners in the event of minor destruction and in the event of substantial destruction upon the affirmative vote of a majority of the Owners. The ARC, as attorney-in-fact for each Owner, shall represent the interest of all of the Owners 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. Any action to terminate the legal status of the Tract after substantial destruction or condemnation occurs shall be agreed to by Owners who represent at least sixty-seven (67%) percent of the total votes in the Tract and by at least a majority of the Eligible Mortgage holders.

21. **Consent or Vote Without a Meeting.** 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 Owners who collectively hold the required percentages, subject to the following conditions: (a) a copy of the notice and ballot must be given to each Owner, (b) all necessary ballots and consents must be obtained prior to the expiration of sixty (60) days from the time the first written ballot or consent is obtained, (c) 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, and (d) if approved, written notice of the

approval must be given to all Owners at least ten (10) days before any action is required by them.

22. **Developer's Sales Program.** Notwithstanding anything to the contrary, until the termination of the Period of Developer Control neither the Owners nor the ARC shall interfere or attempt to interfere with Developer's completion of improvements and sale of all of its remaining Lots and Dwelling Units, and Developer shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots and Dwelling Units owned by it:

a. **Sales Office and Models.** Developer shall have the right to maintain one (1) or more sales offices and one (1) or more model Lot or Dwelling Unit at any one time. Such office and/or models may be one or more of the Lots owned by it, or one or more of any separate structures or facilities placed on the Property for the purpose of aiding Developer's sales effort, or any combination of the foregoing; sales offices must comply with the City of West Haven ordinances and criteria.

b. **Promotional.** Developer 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.

c. **Relocation and Removal.** Developer 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. Within a reasonable period of time after the happening of the occurrence, Developer 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 Developer's sales effort.

d. **Limitation on Improvements by Owners and the ARC.** Until the termination of the Period of Developer Control, neither the Owners nor the ARC shall, without the written consent of Developer, make any improvement to the Project or alteration to any improvement created or constructed by Developer.

e. **Relocation Rights and Encroachments.** In the development of and/or future phases the right to make adjustments in the number of Lots or the location of Lots and the streets with the permission of the City. If any portion of a Lot encroaches or comes to encroach upon another Lot or Lots as a result of construction, reconstruction, repair, shifting, settling or movement, an Developer for such encroachment is created hereby and shall exist so long as such encroachment exists.

f. **Developer's Rights Assignable.** All of the rights of Developer 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 Dwelling Units in the Project title to which is vested in Developer 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, protection and controls which are accorded to Developer (in its capacity as Builder) herein.

23. **Fines.** The ARC may fine an Owner or Permittee for material violations of the Project Documents. The Owner or Permittee may appeal a fine issued by requesting a hearing with the ARC within thirty (30) days of delivery of a written notice of the fine. A fine assessed which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of other Common Expenses or Individual Charges.

24. **Assignment of Rents.** If an Owner who is leasing his Dwelling Unit fails to pay any assessment for a period of more than sixty (60) days after it is due and payable, the ARC may demand that the renter pay to the ARC directly all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the ARC is paid in full; provided, however, the ARC must give the owner written notice of the assignment of rents and this notice shall:

(1) provide notice to the renter that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the Project Documents;

(2) state the amount of the assessment due, including any interest or late payment fee;

(3) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and

(4) provide the requirements and rights described herein.

b. **Notice.** If the Owner fails to pay the amount of the assessment due by the date specified in the notice, the Manager or ARC may deliver written notice to the renter, in accordance with the Project Documents, that demands future payments due to the owner be paid to the ARC pursuant hereto. A copy of the notice must be mailed to the Owner at his last known address as shown on the books and records of the ARC. The notice provided to the renter must state:

(1) that due to the Owner's failure to pay the assessment within the time period allowed, the owner has been notified of the ARC's intent to collect all lease payments due to the ARC pursuant hereto.

(2) that until notification by the ARC that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the owner are to be paid to the ARC; and

(3) payment by the renter to the ARC in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (6) suit or other action may not be initiated by the Owner against the renter for failure to pay.

Within thirty (30) days of payment in full of the assessment, including any interest or late payment fee, the ARC must notify the renter in writing that future lease payments are no longer due to the ARC. A copy of this notification must also be mailed to the Owner.

26. **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 term "shall" is mandatory and the term "may" is permissive, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

27. **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 the Developer and all parties who hereafter acquire any interest in a Lot, or the Property, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or resident of a Lot 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, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

28. **Enforcement and Right to Recover Attorneys Fees.** Should the ARC, Manager, or an aggrieved Owner be required to take action to enforce or construe the Declaration or any rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, including a claim for injunctive relief or damages, whether such remedy is pursued by filing suit or otherwise, the prevailing party shall be entitled to recover his reasonable attorneys fees, costs and expenses which may arise or accrue. The City is granted the right but not the obligation to enforce the Declaration.

29. **Limitation of Liability.** The covenants, conditions and restrictions set forth in this Declaration, together with any rules and regulations adopted by the ARC are established for the benefit of the Property and the Owners. Any damage, loss, claim or liability which might arise due to any decision, act, or failure to act of Developer, ARC, or any of their members, shall be exempt from any civil claim or action, including negligence, brought by any person owning or having an interest in any Lot. The ARC (and its members) and Managing Member shall be indemnified, saved and held harmless from any such action or failure to act, and exempt from any civil claim or action resulting from any act or failure to act (whether intended or implied)

while functioning as a member of the ARC or as the Managing Member, or for decisions that they may render during the course of their service, unless said party is guilty of gross negligence.

30. **Mortgage Protection.** Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. The lien or claim against a Unit for unpaid Assessments shall be subordinate to any Mortgage recorded on or before the date such Assessments become due.

31. **Combination of Lots.** An owner of two or more adjoining Lots shall have the right upon approval of the ARC and the mortgagees of said Lots, to combine one or more adjoining Lots or portions thereof and to alter or amend the Declaration and Plat Map to reflect such combination.

a. **Documentation.** Such combinations may be accomplished by the Owner recording a deed or an amendment or amendments to this Declaration, or Plat Map describing the change. All costs and expenses required in such amendments shall be borne by the unit owner desiring such combination.

b. **Approval.** All such deeds and/or amendments must be approved by attorneys employed by the ARC to insure the continuing legality of the Declaration and the Plat Map. The cost of such review by the attorneys shall be borne by the person wishing to combine the Lots.

c. **Percentage Interests.** Any such deeds and/or amendments of the Declaration or Map shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Project.

32. **Amendments.** 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 in the Tract 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 ARC. In such instrument an officer or delegate of the ARC shall certify that the vote required by this Section for amendment has occurred.

a. **Initial Developer Right to Amend.** The Developer alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot.

b. **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 Developer 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.

c. **Developer's Right to Amend Unilaterally Prior to Termination of Developer's Right to Control.** Prior to the expiration of the Period of Developer's Control, Developer may unilaterally amend this Declaration for any other purpose; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner, nor shall it adversely affect title to any property without the consent of the affected Owner.

d. **To Satisfy Requirements of Lenders.** Anything to the contrary notwithstanding, Developer reserves 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 portions thereof. Any such amendment shall be effected by the recordation by Developer of an Amendment duly signed by the Developer, 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 desire of Developer to retain control of the ARC and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Developer, Developer shall have the unilateral right to amend this Declaration to restore such control.

e. **Developer's Rights.** No provision of this Declaration reserving or granting to Developer the Developmental Rights shall be amended without the prior express written consent of Developer, which consent may be withheld, conditioned or delayed for any reason or for no reason at Developer's sole and exclusive discretion.

33. **Developer's Sales Program.** Anything to the contrary notwithstanding, for so long as Developer 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 Developer from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Developer in accordance with the Declaration. Until the Developer has sold all of its property in the Tract, neither the Owners nor the ARC shall interfere or attempt to interfere with the completion of improvements and sale of all remaining Lots, and Developer 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 Developer:

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

b. **Promotional.** Developer 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 in the Tract.

c. **Relocation and Removal.** Developer 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 Developer's last Lot in the Tract, Developer shall have the right to remove from the Tract any signs, banners or similar devices and any separate structure or facility which was placed within the Tract for the purpose of aiding Developer's sales effort.

34. **Limitation on Improvements by Owners and/or ARC.** Until 120 days after the date of the closing of the sale of Developer's last Lot in the Tract, neither the Owners nor the ARC shall, without the written consent of Developer, make any improvement to or alteration to the property, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Lots as originally created or constructed by Developer.

35. **Developer's Rights Assignable.** All of the rights of Developer 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 Tract title to which is vested in Developer 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 Developer (in its capacity as Developer) herein.

36. **Expansion of Subdivision.**

a. **Reservation of Option to Expand.** Developer hereby reserves the option to expand the Tract to annex, add and/or include additional land, Common Area and Facilities, and Lots (the "Additional Land"). This option to expand may be exercised from time to time, at different times and in any order, without limitation. Such right may be exercised by Developer unilaterally and without first obtaining the consent or vote of the ARC or Owners, and shall be limited only as herein specifically provided. Such Lots shall be created on any or all portions of the Additional Land.

b. **Supplemental Declarations and Supplemental Maps.** Such annexation or expansion may be accomplished by the filing for record by Developer in the Office of the

County Recorder, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots, together with supplemental Plat Map or Maps containing the same information with respect to the new Lots as was required on the Plat Map with respect to the Phase I Lots. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

c. **Expansion of Definitions.** In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to The Tract as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to The Tract by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in The Tract, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the Office of the County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Lots in the Tract as it existed before such expansion the respective undivided interests in the new Common Area and Facilities added to The Tract as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lot in the Tract as it existed, interest so acquired by the Owner of the Lot encumbering any new Common Area and Facilities added to the Tract as a result of such expansion.

d. **Declaration Operative on New Lots.** The new Lots shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Lots therein shall be subject to the incidents of common ownership with all the provisions and protective covenants pertaining to a planned residential development as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said Office of the County Recorder.

e. **Right of Developer to Adjust Ownership Interest in Common Area and Facilities.** Each deed of a Lot shall be deemed to irrevocably reserve to the Developer the power to appoint to Owners, from time to time, the percentages in the Common Area and Facilities set forth in Supplemental Declaration. The proportionate interest of each Owner in the Common Area and Facilities after any expansion of the Tract shall be an undivided interest of the Tract as expanded. A power coupled with an interest is hereby granted to the Developer, its successors and assigns, as attorney in fact to shift percentages of the Common Area and Facilities in accordance with Supplemental Declarations recorded pursuant hereto and each deed of a Lot in the Tract shall be deemed a grant of such power to the Developer. Various provisions of this Declaration and deeds and mortgages of the Lots may contain clauses designed to accomplish a shifting of the Common Area and Facilities. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Area and Facilities can be accomplished.

Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Area and Facilities contained therein shall automatically become

effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Tract conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

f. **Other Provisions Concerning Expansion.** If the Tract is expanded as hereinbefore contained, then it is further provided that:

1) All or any part of the Additional Land may be added to the Tract without any limitations whatsoever save and except that all additional Lots created must be restricted to multi family residential housing limited to one family per Dwelling Unit.

2) Portions of the Additional Land may be added to the Tract at different times without any limitations.

3) Developer shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the Developer areas as shown on the Map. The GARY M. WRIGHT shall not allow anything to be built upon or interfere with said Developer areas.

4) No assurances are made concerning:

a) The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Tract.

b) Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Lots will be comparable to the Phase I facilities on a per Lot basis and will be of a similar quality of materials and construction to Phase I and will be substantially completed prior to annexation.

c) Whether any Lots created on any portion of the Additional Land will be substantially identical to those within the initial the Tract except that Lots will be constructed of an equal or better quality of materials and construction than the Lots in Phase I.

4) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Developer any obligation respecting, or to restrict Developer in any way with regard to: (a) the submission of any portion of the Additional Land to the provisions of the Declaration; (b) the creation, construction, or addition to the Tract of any additional property; (c) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (d) the taking of any particular action with respect to the Additional Land, the Tract, or any Land.

37. **Duration.** The covenants and restrictions of this Declaration shall endure for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Dated the 12th day of March, 2007.

DEVELOPER:  
IVORY DEVELOPMENT, LLC.


By:   
Name: Gary M. Wright  
Title: Authorized Agent



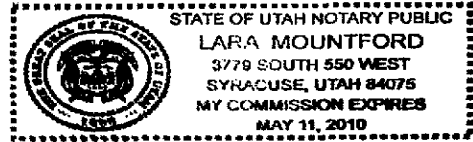
**ACKNOWLEDGMENT**

STATE OF UTAH            )  
  ss:  
COUNTY OF DAVIS        )

The foregoing instrument was acknowledged before me this 14 day March, 2007 by Gary M. Wright, the Authorized Agent of Ivory Development, a Utah limited liability company, and said Gary M. Wright duly acknowledged to me that said IVORY DEVELOPMENT, LLC. executed the same.

  
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NOTARY PUBLIC  
Residing at: Davis Co., UT  
My Commission Expires: 5/11/2010



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
Boundary description for Barlow Subdivision Phase 3

The Property referred to in the foregoing document is located in Weber County, Utah and is described more particularly as follows:

**BOUNDARY DESCRIPTION**

*A part of the Southeast Quarter of Section 9, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey:*

*Beginning at the intersection of the South boundary of Regal Country Estates Phase No. 1, a subdivision in West Haven City, Weber County, Utah and the West boundary of the Layton Canal; said point being 2530.27 feet North 0°42'44" East and 119.77 feet North 89°15'01" West from the Southeast corner of said Section 9; running thence two (2) course along the West boundary of said Layton Canal as follows: South 0°57'01" West 491.56 feet and South 30°21'56" West 311.87 feet; thence North 89°21'13" West 754.41 feet along the North boundary of Foxglen Subdivisions 9 and 13, Roy City, Weber County, Utah as established on the ground and said line extended to the East boundary of Barlow Subdivision Phase 1 extended; thence North 1°06'30" East 434.98 feet extended to the South right of way line of 4475 South Street; thence four (4) courses along the boundary of Barlow Subdivision Phase 2, West Haven City, Weber County, Utah as follows North 20°45'34" West 64.46 feet, North 0°47'04" East 118.83 feet, S89°15'01"E 149.00' and N0°47'00"E 150.28' feet to the South boundary of Regal Country Estates Phase 3, a subdivision in West Haven City, Weber County, Utah; thence South 89°15'01" East 781.99 feet along the South Boundary of said Regal Country Estates Phases 3 and 1 to the point of beginning.*

*Contains 15.063 Acres*