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REC FOR: IVORY HOMES

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WHISPERING MEADOWS**

09-558-0001 THRU 0036 ⁷

**A SUBDIVISION
IN
CITY OF ROY, WEBER COUNTY, STATE OF UTAH**

**IVORY DEVELOPMENT, LLC.
a Utah limited liability company
DEVELOPER**

WHEN RECORDED RETURN TO:

**IVORY DEVELOPMENT, LLC
978 East Woodoak Lane
Salt Lake City, Utah 84117**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WHISPERING MEADOWS SUBDIVISION,**

This Declaration of Covenants, Conditions and Restrictions for Whispering Meadows Subdivision (the "Declaration"), located in Roy, Utah, is executed by Ivory Development, LLC, a Utah limited liability company, of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the "Developer"), with reference to the following:

RECITALS

A. Developer is the owner of certain real property located in the City of Roy and County of Weber, State of Utah, described more particularly on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. The Property is an area of unique natural beauty, featuring distinctive terrain.

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

D. 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.

E. The Property will consist of Lots, a park strip, which will be maintained by the Association, and other improvements of a less significant nature.

**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 is not the preliminary structure, containing at least one hundred and twenty (120) square feet, requires a building permit, and is considered by the Architectural Review Committee as an "Accessory Building". No shed, shack or other outbuilding or structure for which a building permit is not required shall be considered an "Accessory Building".

b. **"Architectural Review Committee"** shall mean the person or persons appointed to review the designs, plans, specifications, homes, architecture, fencing, and landscaping within the Subdivision (the "ARC").

c. **"Association"** shall mean all of the Owners acting as a group in accordance with the Declaration.

d. **"Board of Directors"** shall mean and refer to the governing board of the Association.

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. **"Common Areas and Facilities"** shall mean and refer to all of the common elements in the Project including by way of illustration but not limitation the park strip, Entry and Entry Monument.

g. **"Common Expense"** shall mean and refer to all expenses incurred by the Association in maintaining, repairing, and replacing the Common Area.

h. **"Entry"** shall mean the entry way into the Subdivision.

i. **"Entry Monument"** shall mean the monument identifying the Subdivision and surrounding landscaping and planter area located at the Entry to the Project.

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

k. **"Management Committee" or "Committee"** shall mean and refer to the Board of Directors.

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

m. **"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.

n. **"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.

o. **"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.

p. **"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 Dwellings 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.

q. **"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.

r. **"Plat Map"** shall mean and refer to the Final Plat of WHISPERING MEADOWS as it may be amended from time to time. The Plat Map will show the location of the Lots.

s. **"Project"** shall mean the Subdivision.

t. **"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, boat trailer, horse trailer, or any other recreational, oversized or commercial transportation device of any kind.

u. **"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.

v. **"Subdivision "** shall mean the Project.

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

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

y. **Water-Wise Techniques** shall mean and refer to the guidelines marked Exhibit "C," attached hereto and incorporated herein by this reference.

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 park strip. The park strip is hereby granted to and shall be owned by the Association, subject to Developer's right to adjust the location and boundaries of the park strip and Lots. Each Lot Owner shall have an appurtenant equal undivided percentage of ownership interest in the Association. All Lots shall be capable of being independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

5. **Grant of Common Area.** The Developer hereby grants to the Association all of its right, title and interest in and to the Common Area, subject to the covenants, conditions, restrictions, easements and development rights set forth in the Declaration, as it may be amended and supplemented from time to time.

6. **Membership in the Association.** Membership in the Association is mandatory, may not be partitioned from the ownership of a Lot, and each Lot Owner by virtue of his accepting a deed or other document of conveyance to a Lot is deemed to be a member of the Association.

7. **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 Whispering Meadows Subdivision, Plat ____, a subdivision, as the same is identified in the Plat Map recorded in ~~Weber~~ County, Utah as Entry No. _____ of the official records or the County Recorder of ~~Weber~~ County, Utah (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of Whispering Meadows, recorded in ~~Weber~~ County, Utah as Entry No. _____ of the official records of the County Recorder of ~~Weber~~ County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership

interest in the Association.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Neither the membership in the Association, nor percentage of ownership interest in the Association shall be separated from the Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Lot to which they relate.

8. **Management.** The Association shall be managed by a Management Committee, who may delegate its authority to a managing member; provided, however, in the event of the failure of a duly qualified and functioning Management Committee, the City may but is not obligated to administer and operate the Association.

9. **General Status, Authority and Duties of Management Committee.** The Management Committee shall adopt an annual budget, insure the Common Areas and Facilities, 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 Management Committee, 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 Management Committee shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners. The Management Committee 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. The Management Committee may appoint officers and agents of the Association, such as a President and Secretary, who may but need not be members of the Committee. 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 Management Committee and the Managing Member. In addition, the Management Committee shall have:

a. **Access.** The right, power and authority to access to each Lot: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Lot being entered, as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and Facilities; and (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Lot or Lots, provided that a reasonable effort is made to provide notice to the occupant of the Lot prior to entry.

b. **Grant Easements.** The right, power and authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or

regulation of the Project.

c. **Execute Documents.** The right, power and authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary to authorize such amendment.

d. **Standing.** The right, power and authority to sue and be sued.

e. **Enter Into Contracts.** The right, power and authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

f. **Transfer Interests in Real Property.** The right, power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least 67% of the Lots.

g. **Add or Purchase Property.** The right, power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least at least 67% of the Lots.

h. **Promulgate Rules.** The right, power and authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the Act and this Declaration.

i. **Meetings.** The right, power and authority to establish procedures for decorum and order at its meetings and those of the Association.

j. **Delegation of Authority.** The right, power and authority to delegate its responsibilities over the management and control of the Common Areas and regulation of the Project to a manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

k. **All other Acts.** The right, power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

10. **Delegation of Management Responsibilities.** The Management Committee may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. 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 Management Committee may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to

perform its management responsibilities.

11. **Owners Meetings.** The Association shall meet at least annually at a time and place set by the Management Committee.

12. **Expenditures for Capital Improvements.** Expenditures for capital improvements must be approved by at least sixty-seven percent (67%) of the Owners.

13. **The Maintenance Responsibility of the Association or Area of Common Responsibility.** The Association shall maintain and keep in good repair all Common Area including the park strip.

14. **The Maintenance Responsibility of the Owners or Area of Personal Responsibility.** Each Owner shall maintain and keep in good repair his Lot and all improvements thereon, including maintenance and landscaping of public right-of-way adjacent to or adjoining each Lot.

15. **Alterations to the Common Area.** Anything to the contrary notwithstanding and until the termination of the Period of Developer's Control, the Developer may make changes to the Common Area without the consent of either the Association, ARC or the Management Committee; provided, however, no Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Common Area or Facilities, including but not limited to the construction or installation of any additions, the extension or enclosure of any existing structures not shown on the approved plans and specifications, without the prior written consent of the ARC.

16. **Common Expenses, and Voting Rights.** The common expenses shall be charged to and the voting rights shall distributed among the Lot Owners equally.

17. **Common Expenses.** Each Owner is responsible for and shall pay his share of the Common Expenses and any Assessment assessed by the Management Committee, provided, however:

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 Dwellings 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 managing the Common Areas and Facilities and administering the Project Documents.

c. **Creation of Assessments.** Since the Assessments shall pay for the Common Expenses of the Association, as shall be determined by the Management Committee from time to time, each Owner, by acceptance of a deed to a Lot, whether or not it shall be so

expressed in such deed, covenants and agrees to pay to the Association in a timely manner his share of the Common Expenses and all of his Assessments.

d. **Budget.** At least thirty (30) days prior to the Annual Homeowners Meeting, the Management Committee 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 Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, which estimate shall include but is not limited to expenses of management, irrigation water, grounds maintenance, taxes and special assessments, insurance premiums, water and sewer charges, replacement of those common elements that must be replaced on a periodic basis, wages, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, major repair reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

e. **Approval of Budget and Assessments.** The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the percentage of ownership interest in the Common Areas. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee 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 Common Area 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.** Owners are liable to pay all Assessments assessed and additional charges, such as attorneys fees and costs; 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 Unit 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 Units is too large or too small as a result of unanticipated income or expenses, the Management Committee may from time to time effect an equitable change in the amount of said payments.

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

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

j. **Statement of Assessments Due.** Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his Unit. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

k. **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 Association or 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.

l. **Late Fees.** A reasonable late fee may be charged on all payments received more than ten (10) days after they were due.

m. **Default Interest.** A reasonable finance charge may be assessed on the outstanding balance of all delinquent accounts.

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

o. **Foreclosure of Lien and/or Collection Action.** If the Assessments remain unpaid, the Association may, as determined by the Management Committee, institute suit to collect the amounts due and/or to foreclose the lien.

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

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

r. **Application of Payments.** All payments shall be applied as follows: Additional Charges, Delinquent Assessments and Current Assessments.

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

t. **Appointment of Trustee.** If the Management Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby authorizes the Management Committee to execute and record a written Appointment of Trustee, appointing the attorney for the Association as the Trustee, provided he is a member of the Utah State Bar, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

u. **Lenders, Foreclosures and Unpaid Assessments.** Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorney fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot in a voluntary conveyance or pursuant to the remedies in a

mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including reasonable attorney fees, against the Lot for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

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

a. **Architectural Review Committee ("ARC").** 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 Christopher P. Gamvroulas, 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.

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

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.

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.

c. **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.

d. **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.

e. **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.

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

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

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

- a) Only single family residential Dwellings are allowed.
- b) The height of any Dwelling shall not exceed two stories above ground.
- c) No slab on grade Dwellings are permitted.
- d) Without the prior written consent of the ARC, a basement is required for each Dwelling.
- e) Without the prior written consent of the ARC, each Dwelling shall have a private garage for not less than two motor vehicles.
- f) The Dwelling exteriors, in their entirety, must consist of either maintenance free stucco and masonry, unless another construction material is approved by the ARC in writing. No aluminum or vinyl is permitted.
- g) Any detached Accessory Building must conform in design and materials with the primary residential Dwelling.
- h) Any and all plans and specifications for an Accessory Building must be submitted, reviewed and approved in writing in advance.
- i) Any detached Accessory Building must conform in design and materials with the primary residential Dwelling.
- j) All Lots shall be fully landscaped in accordance with Section 20(k) below.

k) 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. Wood, masonry and wrought iron fencing may be allowed with the express prior written consent of the ARC, although approval may be denied. Chain link fencing is strictly prohibited. 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.

l) 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.

m) Anything to the contrary notwithstanding, no tin sheds are allowed in the Subdivision.

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

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

b) Floor plans of each floor level to scale.

c) Elevations to scale of all sides of the Dwelling.

d) One major section through Dwelling.

e) A perspective (optional).

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

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

a) 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.

b) Detailed floor plans.

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

d) Detailed sections, cross and longitudinal.

e) 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.

6) **Landscaping.** All Lot landscaping, grading, and drainage is subject to the following covenants, conditions, restrictions and easements, 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.

a) All Lot landscaping must be completed within nine (9) months of the date of substantial completion of the home.

b) 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, a copy of which is attached hereto, marked Exhibit "D" and incorporated herein by this reference.

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

d) 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.

e) 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.

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

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

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

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

j) 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.

k) 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.

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

m) If Developer is required to install front yard landscaping prior to receiving a final inspection from the City, then the Owner, by accepting a deed or other document of conveyance to a Lot, acknowledges, understands and agrees that only a basic front yard landscaping will be provided by Developer and that this service will be provided in lieu of the 2,000 sq. ft. of sod promised on any promotional materials, including but not limited to the Purchase Price Addendum and/or the Ivory Homes Catalogue of Homes.

n) 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.

o) 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.

p) Each Owner may but is not required to implement the Water-Wise Techniques.

7) **Easements.** Easements for utilities, the Entry Monument, drainage systems and facilities, and irrigation are reserved hereby and as shown on the recorded Plat. If any portion of the Entry or Entry Monument encroaches or comes to encroach upon a Lot, in whole or in part, as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists. 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 Developer 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.

8) **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.

a) 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.

b) 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, Salt Lake County and the City.

9) **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:

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

b) 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); and

c) 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

10) **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.

11) **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.

12) **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 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.

13) **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.

14) **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.

15) **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.

16) **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.

19. **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 Subdivision:

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

2) **Denial of Access.** 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 or to create an obstacle or potentially dangerous condition.

3) **Repairs.** 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) **Garages.** 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. All garages shall be used primarily for the parking and storage of vehicles.

5) **Street Parking.** Parking on the street is prohibited.

6) **Damaged Vehicles.** 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.

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

8) **Oversized Vehicles.** 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.

9) **Towing.** 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, outdoors and above ground, whether attached to or on top of any building, structure, Dwelling, 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.** Large animals as that term is defined by City Ordinance are not allowed. No pets, animals, livestock, or poultry of any kind may be commercially bred at the Project. Up to two (2) domestic pets as that term is defined by City Ordinance per Lot are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts 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, 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 in the Common Area, on a Lot, or showing from a Dwelling Unit are strictly 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.

o. **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.

p. **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:

1) **Rental Rules.** Renting rules and regulations adopted by the Management Committee, as they may be amended from time to time.

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

3) **Short Term Rentals.** 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.

4) **Signage.** "For Rent" or "For Lease" signs are prohibited.

5) **Approvals.** 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.

6) **Rental Agreements.** The Association may also require that Owners use lease forms or addenda, such as the Crime Free Addendum or the Project Addendum, approved by the Association (or include specific terms in their leases); and the ARC may impose a review or administration fee on the lease or transfer of any Lot.

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

q. **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 Association 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 one (1) year period after the date of closing.

r. **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 easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

s. **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:

1) **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

2) **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.

20. **Insurance.** The Manager, Management Committee or Association, will obtain insurance against loss or damage by fire and other hazards for: (a) all Common Areas and Facilities; and (b) all Buildings that contain more than one Dwelling, including any improvement which is a permanent part of a Building. The insurance coverage shall be written on the property in the name of the Manager, Management Committee or Association, as trustee for each of the Lot Owners in the percentages established in this Declaration. The insurance premiums shall be a Common Expense. This Section is without prejudice to the right of each Owner to insure his own Dwelling for his benefit. The Manager, Management Committee or Association shall satisfy at least the following minimum requirements:

a. **Property Insurance.** Blanket property insurance using the standard "Special" or "All Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard 'condominium' casualty policy.

b. **Liability Insurance.** A public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

c. **Directors and Officers Insurance.** A director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in coverage.

d. **Fidelity Bond.** A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds.

e. **Deductible.** The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and in the event of multiple responsible

parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the Unit Owner, then the Association shall be responsible for the deductible.

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

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

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

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

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

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

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

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

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

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

9) **"Available Funds"** shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including

a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.

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

c. **Restoration of the Project.** Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

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

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

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

g. **Reallocation in Event of Partial Restoration.** In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will

continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.

h. **Sale of Project.** Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, condominium Ownership under this Declaration and the Condominium Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

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

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

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

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

22. **Classes of Membership and Voting Allocations.** The Association shall have two (2) classes of membership: Class A and Class B.

a. **Class A Members.** Class A Members shall be all Owners with the exception of the Class B Members. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

1) **One Vote.** Each Lot shall have one (1) vote;

2) **Subject To Assessment.** No vote shall be cast or counted for any Lot not subject to assessment;

3) **Multiple Owners.** When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities

themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

4) **Assignment of Voting Rights to Lessee.** Any Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

b. **Class B Members.** The Class B Control Period shall mean and refer to the period of time during which the Class B Member is entitled to appoint all or a majority of the members of the ARC and/or the Management Committee. The Class B Member shall be the Developer and any successor of Developer who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Developer. The Class B Member shall originally be entitled to five (5) votes per Lot owned; provided, however, the Class B member shall always have at least the same number of votes as all of the Class A members combined plus one. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership at the end of the Period of Developer's Control. From and after the happening of this event, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, the Developer shall call a meeting, to formally transfer control and management.

23. **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.

24. **Developer's Sales Program.** Notwithstanding anything to the contrary, until the termination of the Period of Developer Control neither the Owners nor the Developer shall interfere or attempt to interfere with Developer's completion of improvements and sale of all of its remaining Lots and Dwellings, 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 Dwellings 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 Lots, Homes or Dwelling 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 Roy City 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 Subdivision 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 Association.** Until the termination of the Period of Developer Control, neither the Owners nor the Association shall, without the written consent of Developer, make any improvement to the Project or alteration to any improvement created or constructed by Developer.

e. **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 Dwellings 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.

25. **Fines.** The Management Committee may charge fines for violations of the governing documents. A fine which remains unpaid after its due date shall become a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Assessments herein.

26. **Assignment of Rents.** If an Owner/Landlord fails to pay any assessment for a period of more than 30 days after it is due and payable, the Management Committee may demand the tenant to pay to the Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid; provided, however, the Manager or Management Committee must give the Owner prior written notice of its intent to demand full payment from the tenant. As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a unit by any person or persons, other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

27. **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.

28. **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. The City shall have the right but not the obligation to enforce the Declaration.

29. **Enforcement and Right to Recover Attorneys Fees.** Should Roy City, the ARC, Managing Member, Management Committee, Association, 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.

30. **Limitation of Liability.** The covenants, conditions and restrictions set forth in this Declaration, together with any rules and regulations adopted by the Management Committee or 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, Management Committee or 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 Management Committee and ARC and its members 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 for decisions that they may render during the course of their service, unless said party is guilty of gross negligence.

31. **Mortgagee 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.

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

a. **Documentation.** Such combinations may be accomplished by the Owner recording a deed or an amendment or amendments to this Declaration, or 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 Association to insure the continuing legality of the Declaration and the 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 common areas and facilities which are appurtenant to the Lots involved in the alterations. The remaining combined Lot, if two or more Lots are totally combined, will acquire the total of the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Lots that are combined. If a portion of one Lot is combined with another, the resulting Lots shall acquire a proportionate percentage of the total undivided interest in the Common Areas and Facilities of the Lots involved in the combination on the basis of area remaining in the respective, combined Lots. The percentage of undivided interest in the common areas and facilities appurtenant to all other Lots shall not be changed. All such amendments must, in all instances, be consented to in writing by the Management Committee and also all other persons holding interest in the Lots affected. The consent of other Lot owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the common areas and facilities of the other Lot owners remain unchanged.

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

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 s 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 or Member hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner or Member.

d. **To Satisfy Requirements of Lenders.** Notwithstanding anything to the contrary, 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 s, 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 Memberships and all persons having an interest therein. It is the desire of Developer to retain control of the Association 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.

34. **Duration.** The covenants and restrictions of this Declaration shall endure for a term of fifty (50) 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 6 day of March, 2007.

DEVELOPER:
IVORY DEVELOPMENT, LLC.

By: *Christopher P. Gamvroulas*
Name: Christopher P. Gamvroulas
Title: Managing Member

ACKNOWLEDGMENT

STATE OF UTAH)
 ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 6 day March, 2007 by Christopher P. Gamvroulas, the Managing Member of Ivory Development, a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that said IVORY DEVELOPMENT, LLC. executed the same.

Donna Perkins
NOTARY PUBLIC
Residing at: *Salt Lake*
My Commission Expires: *5/30/2010*



EXHIBIT "A"
LEGAL DESCRIPTION

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

Legal Description

BOUNDARY DESCRIPTION

OWNER: IVORY HOMES

PART OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY, BEGINNING SOUTH 00025'40" WEST 65.12 FEET AND NORTH 89D45'44" WEST 33.00 FEET FROM THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER RUNNING THENCE NORTHWESTERLY ALONG THE ARC OF A 20.83 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 32.66 FEET (LONG CHORD BEARS NORTH 44D40'02" WEST 29.41 FEET, THENCE NORTH 89D45'44" WEST 79.17 FEET, THENCE NORTH 85D58'08" WEST 170.71 FEET, THENCE NORTH 89D45'44" WEST 588.12 FEET, THENCE SOUTH 00D08'00" WEST 604.00 FEET, MORE OR LESS, TO THE R/W RAILROAD RIGHT OF WAY, THENCE EAST ALONG SAID RIGHT OF WAY 855.41 FEET, THENCE NORTH 00D25'40" EAST 363.48 FEET ALONG THE WEST LINE OF 3100 WEST STREET, THENCE NORTH 00D25'40" EAST 204.85 FEET ALONG SAID STREET TO THE BEGINNING.

CONTAINS: 11.80 ACRES

EXHIBIT "B"**BY-LAWS
FOR
WHISPERING MEADOWSHOMEOWNERS ASSOCIATION****ARTICLE I
NAME AND LOCATION**

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

**ARTICLE II
DEFINITIONS**

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

**ARTICLE III
MEETINGS OF MEMBERS OF THE ASSOCIATION**

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

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

Section 3.03 Notice of Meetings. Written notice of each meeting of the Association shall be given to each Owner by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to said Owner addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.04 Quorum. Those Owners present shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws.

Section 3.05 Proxies. At all Association meetings, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall expire, if not previously revoked, eleven (11) months after the date it is given by the Owner.

ARTICLE IV MANAGEMENT COMMITTEE AND TERM OF OFFICE

Section 4.01 Number. The affairs of the Association shall be managed by a Management Committee comprised of three (3) natural persons. Each Member must be duly qualified and appointed or elected.

Section 4.02 Replacement. If a Member resigns or is otherwise unable or unwilling to serve, then the remaining Members shall appoint a replacement to complete his term of office.

Section 4.03 Term of Office. Each Member on the Management Committee shall serve a term of at least one (1) year.

Section 4.04 Compensation. No Member shall receive compensation for any service he may render to the Association as a member of the Management Committee, although he may be reimbursed for his actual expenses incurred in the performance of his duties and may enter into an independent contract to provide other services. A Member may enter into a separate and independent contract with the Association to provide additional services for a fee.

Section 4.05 Action Taken Without a Meeting. The Management Committee shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Members. Any action so approved shall have the same effect as though taken at a meeting of the Management Committee.

Section 4.06 Voting. Each Member shall have one vote.

Section 4.07 Managing Member. Anything to the contrary notwithstanding, during the Period of Developer's Control, the Management Committee 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 Common Areas and Facilities and administer the Project Documents for and in behalf of the Association and the Architectural Review Committee. The Developer hereby designates Christopher P. Gamvroulas as the initial Managing Member of the Association.

**ARTICLE V
POWERS AND DUTIES OF THE MANAGEMENT COMMITTEE**

Section 5.03 Powers. The Association shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing, the Association may act through its Management Committee and shall specifically have the powers and duties set out in this Article V, including

Section 5.03.1 Assessments. The power and duty to levy Assessments on the Owners, and to enforce payment of such assessments in accordance with the Declaration.

Section 5.03.2 Association Property. The right to own and/or lease the Association Property and the duty to maintain and manage the Common Areas and Facilities and improvements thereon. In particular the Association shall:

a. Maintain and repair in an attractive, safe and functional condition the Common Areas and Facilities;

b. Pay all taxes and assessments levied upon the Common Areas and Facilities and all taxes and assessments payable by the Association;

c. Obtain any water, sewer, gas and electric services needed for the Common Areas and Facilities; and

d. Do each and every other thing reasonable and necessary to operate the Common Areas and Facilities and the Association.

**ARTICLE VI
OFFICERS AND THEIR DUTIES**

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

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

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

Section 6.04 Special Appointments. The Management Committee may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Management Committee may from time to time determine.

Section 6.05 Resignation and Removal. Any officer may be removed from office with or without cause by a majority vote of the Management Committee. Any officer may resign at any time by giving written notice to the Management Committee, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.06 Vacancies. A vacancy in any office may be filled by appointment by the management Committee. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

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

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

ARTICLE VII ARCHITECTURAL REVIEW AND OTHER COMMITTEES

Section 7.01 Architectural Review Committees. The Architectural Review Committee shall consist of at least one (1) and no more than nine (9) members. The members of the Architectural Review Committee shall be appointed by the Developer during the Period of Developer's Control. The initial members of the Architectural Review Committee, who shall serve until their successors are appointed, are Christopher P. Gamvroulas, Steven Palmer and Eric Freebairn. During the Period of Developer's Control, the Architectural Review Committee assigns and delegates all of its rights, power and authority to a Managing Member selected by the Developer, who shall manage the Architectural Review Committee and administer the Project Documents. The initial Managing Member of the Association shall be Christopher P. Gamvroulas.

Section 7.02 Other Committees. Management Committee may appoint such committees as deemed appropriate in carrying out its purpose.

ARTICLE VIII BOOKS AND RECORDS

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

Section 8.02 Signatures. All checks, drafts, contracts, and legally binding agreements must be signed by at least two (2) persons, one of whom must be the president or secretary, and the other the professional property manager.

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

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

ARTICLE IX AMENDMENTS

Section 9.01 Amendment to Bylaws. These Bylaws may only be amended (a) unilaterally by the Developer until the expiration of the Period of Developer's Control, or (b) the affirmative vote of a majority of the members of the Board of Directors, or (c) the affirmative vote of a majority of the members of the Lots.

Section 9.02 Conflict Between Articles, Bylaws and Declaration. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall in all respects govern and control.

**ARTICLE X
MISCELLANEOUS**

Section 10.01 Miscellaneous. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, the Developer has hereunto set his hand this 6 day of March, 2008.

DEVELOPER:
IVORY DEVELOPMENT, LLC.

By: *Christopher P. Gamvroulas*
Name: Christopher P. Gamvroulas
Title: Managing Member

ACKNOWLEDGMENT

STATE OF UTAH)
 ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 6 day March, 2008 by Christopher P. Gamvroulas, the Managing Member of IVORY DEVELOPMENT, LLC., a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that said IVORY DEVELOPMENT, LLC. executed the same.

Donna Perkins
NOTARY PUBLIC
Residing at: *Salt Lake*
My Commission Expires: *5/30/2010*

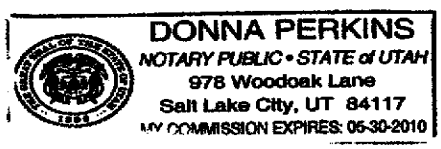


EXHIBIT "C"
WATER-WISE TECHNIQUES GUIDELINES

WATER-WISE LANDSCAPE IDEAS

GENEROUS PAVED PATIOS AND TERRACES PROVIDE NOT ONLY OUTDOOR LIVING SPACES AND ENTERTAINMENT OPPORTUNITIES, BUT THEY REDUCE THE AMOUNT OF WATERING IN YOUR YARD. REMEMBER, IT'S IMPORTANT TO SHADE THESE PAVED SURFACES...

AN ARBOR, TRELLIS, OR ROOFED GARDEN STRUCTURE CAN HELP DEFINE SPACES BUT ALSO ADD SHADE AND HELP TO REDUCE EVAPORATION.

REDUCE THE AMOUNT OF LAWN TO THAT NECESSARY FOR OUTDOOR ACTIVITIES. A GOOD GOAL FOR THE FRONT YARD IS A MAXIMUM OF 60 TO 70 PER CENT OF THE TOTAL PLANTED AREA.

PLACE SHADE TREES TO MAXIMIZE THEIR EFFECT ON SOLAR MODIFICATION OR PROTECTION FROM WIND. CONSIDER NEEDS FOR BOTH THE YARD AND THE HOUSE.

CONSIDER MAKING UTILITY AREAS OR OUT-OF-SIGHT SIDE YARDS A HARD-SURFACE PAVEMENT OR GRAVEL SURFACE TO REDUCE WATER USAGE.

CONSIDER USING ADDITIONAL PAVEMENTS IN THE FRONT YARD. THEY CAN PROVIDE AN INVITING ENTRY SPACE. IT WILL ALSO REDUCE THE AREA REQUIRING IRRIGATION.

SPACE PLANTS ADEQUATELY TO PROVIDE, AT MATURITY, COVERAGE AND SHADE FOR THE SOIL.

A WOOD BANK MULCH IN NEWLY PLANTED BEDS CAN HELP CONDITION SOIL AND REDUCE EVAPORATION FROM THE SOIL SURFACE.

CONSIDER ALTERNATE SURFACES IN PLAY AREAS SUCH AS SAND OR WOOD CHIPS MADE ESPECIALLY FOR PLAY AREAS.



IDEAS FOR IRRIGATION SYSTEMS

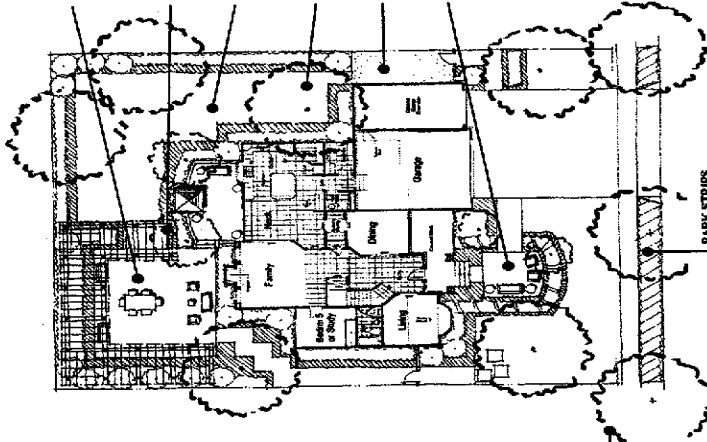
AN AUTOMATIC IRRIGATION SYSTEM, WHEN PROPERLY MAINTAINED AND MONITORED, CAN REDUCE WATER WASTE.

MAKE SURE THAT LAWN AREAS AND SHRUB BEDS ARE ON SEPARATE WATER VALVES. SHRUBS USE MUCH LESS WATER THAN LAWN, SO SHOULD BE WATERED LESS. SEPARATING THE VALVES AND MONITORING WATER NEEDS WILL SAVE WATER.

WHEN LAYING OUT YOUR SYSTEM, ALSO CONSIDER MICROCLIMATES. THE NORTH AND EAST SIDES OF YOUR HOUSE WILL BE IN SHADE LONGER THAN THE SOUTH AND WEST SIDES.

DRIP IRRIGATION SYSTEMS CAN BE EFFECTIVE IN SHRUB BEDS AND WILL HELP CONSERVE WATER.

WATER YOUR YARD DURING EARLY MORNING HOURS TO HELP MINIMIZE EVAPORATION.



PARK STRIPS

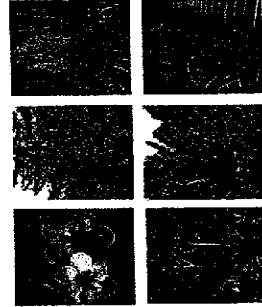
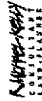
...ADD AN AESTHETIC QUALITY TO THE NEIGHBORHOOD THAT BECOMES A COMMUNAL BENEFIT. BUT BEING SURROUNDED BY PAVEMENTS, PARK STRIPS ARE HOT AND DRY OUT QUICKLY, SO LAWN IS NOT THE BEST CHOICE FOR THESE AREAS. A GOOD ALTERNATIVE IS TO PLANT YOUR PARK STRIP WITH A SINGLE GROUND COVER. SOME GOOD CHOICES FOR PARK STRIP PLANTINGS ARE:

- LILJA REPTANS (CARPET BOGIES); SHORT, DARK GREEN AND BRINGS WITH PURPLE FLOWERS IN SUMMER.
 - CERASTIUM TOMBIDOSA (SNOW IN SUMMER); SHORT, BLUE-GREY WITH WHITE FLOWERS IN LATE SPRING.
 - SOLIDAGO SEROTINA (GOLDEN'S BLOOD); SHORT, BROWN-GREEN WITH RED BLOSSOMS IN SPRING.
 - THYMUS SERPYLLIFOLIUS (MOTHER OF THYME); SHORT, SOFT GREEN WITH LAVENDER FLOWERS IN SUMMER.
 - TRICHA MIMOR (MOMMY FERNWINGS); TRAILING, DEEP RICH GREEN WITH PURPLE FLOWERS IN SPRING.
- GRAVEL AND ROCK ARE DISCOURAGED BECAUSE THEY ADD TO THE PROBLEM OF REFLECTED, RADIANANT HEAT. HOWEVER, USE PAVERS TO PROVIDE PEDESTRIAN ACCESS.



IVORY HOMES WATER-WISE LANDSCAPING

THESE IDEAS ARE NOT MEANT TO BE USED AS A SUBSTITUTE FOR A LANDSCAPE DESIGNER'S ADVICE. LANDSCAPING IS A PROFESSIONAL SERVICE. CONTACT US AT 408-438-1111 FOR MORE INFORMATION.



STREET TREES

...CAN CONTRIBUTE TO THE NEIGHBORHOOD AESTHETIC, BUT THEY ALSO SHADE AND COOL PAVEMENTS. THIS CAN HELP REDUCE AMBIENT TEMPERATURES AND HELP REDUCE COOLING COSTS. PLANTING AND CARING FOR STREET TREES IS AN IMPORTANT ELEMENT IN IMPROVING YOUR COMMUNITY'S LONG-TERM SUSTAINABILITY.

INSTALLATION:

YOUR COMMUNITY MAY HAVE STREET TREES THAT HAVE BEEN INSTALLED. IN OTHER CASES, YOU MAY BE EXPECTED TO PROVIDE AND PLANT THE STREET TREES. IN EITHER CASE, YOUR STREET TREES WILL BE PART OF AN OVERALL COMMUNITY STREET TREE PLAN. CHECK THE COVENANTS OR OTHER MATERIALS YOU RECEIVED AND MAKE SURE THAT YOUR PLANT REQUIRED STREET TREES IN ACCORDANCE WITH THE PLAN PROVIDED.

MAINTENANCE:

- YOU HAVE AN IMPORTANT RESPONSIBILITY TO PROPERLY MAINTAIN YOUR STREET TREES. IF ONE HOME OWNER REFUSES TO PLANT OR PROPERLY MAINTAIN STREET TREES IN FRONT OF THEIR HOME, THE ENTIRE NEIGHBORHOOD FEELS THE EFFECT.
- BE CERTAIN THAT ADEQUATE WATER IS PROVIDED TO YOUR STREET TREES SO THAT THEY WILL BE HEALTHY.
- PRUNING IS NECESSARY TO PREVENT PROBLEMS OR DISEASE, BUT DON'T OVERPRUNE TO MODIFY THE NATURAL SHAPE OF THE TREE.
- STAKING IS NOT NORMALLY NECESSARY, BUT IF YOUR TREE IS NOT GROWING STRAIGHT, IT MAY BE IMPORTANT.
- TREES SHOULD BE FERTILIZED ANNUALLY.
- COMMERCIAL FERTILIZERS ARE AVAILABLE IN MANY FORMS. CHECK WITH YOUR LOCAL NURSESWAN FOR RECOMMENDATIONS.

SUGGESTED PLANT LIST WATER-WISE PLANTS

FIRST, THESE LIST ARE NOT EXHAUSTIVE. THEY ARE MEANT TO GIVE SOME EXAMPLES OF THE PLANT MATERIALS THAT CAN BE USED TO SAVE WATER, BUT ALLOW INTEREST AND VARIETY IN YOUR LANDSCAPE. CONSULT WITH A NURSESWAN OR LANDSCAPE ARCHITECT TO DETERMINE OTHER SUGGESTIONS.

SHADE TREES

USE TO PROVIDE SHADE TO REDUCE PLANTING AND MAINTENANCE REQUIREMENTS FROM PLANT MATERIALS. SHADE WILL REDUCE WATER USE AND HELP REDUCE THE HEAT ISLAND EFFECT AND IMPACT OF HARDER SUN ON THE HOUSE. YOUR HOME:

- Acer glabrum
- Celtis occidentalis
- Sapium japonica

CENTRAL TREES

USE IN AREAS WHERE LARGE TREES ARE NOT PRACTICAL. CAN HELP WITH SOLAR MODIFICATION AS WELL AS PROVIDING AESTHETIC INTEREST.

- Acer campestre
- Kalmia latifolia
- Washington Thorn

EVERGREEN TREES

USE IN LOCATIONS WHERE YOU WOULD SHADE TREES, BUT DURING THE YEAR WHEN THE WINDS CAN BE MOST DAMAGING TO THE TREES. EVERGREENS PROVIDE YEAR-ROUND PROTECTION AND REDUCE THE VALUABLE SEASONS OF THE WINTER SUN, AND MAKE SURE YOU HAVE THE SPACE FOR IT TO GROW.

- Pinus pungens
- Pinus spp.

SHRUBS

THESE ARE SHRUBS THAT WILL GROW TO FEET TALL OR MORE. VERIFY THEIR POTENTIAL SIZE AND CAREFULLY CONSIDER THEIR PLACEMENT. USE IN AREAS WHERE YOU WOULD SHADE TREES, OR GROUPINGS. THEY CAN HELP REDUCE THE IMPACT OF WINDS. THEY CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS. THEY CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS.

- Anemone pulsatilla
- Clematis vitalba
- Physocarpus opulifolius

PERENNIALS

THESE ARE PERENNIALS THAT WILL GROW TO FEET TALL OR MORE. VERIFY THEIR POTENTIAL SIZE AND CAREFULLY CONSIDER THEIR PLACEMENT. USE IN AREAS WHERE YOU WOULD SHADE TREES, OR GROUPINGS. THEY CAN HELP REDUCE THE IMPACT OF WINDS. THEY CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS.

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- Clematis vitalba
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GROUND COVERS

GROUND COVERS ARE A VALUABLE TOOL TO HELP COVER THE SOIL AND REDUCE EVAPORATION FROM THE SOIL SURFACE. THEY WILL GROW TO FEET TALL OR MORE. VERIFY THEIR POTENTIAL SIZE AND CAREFULLY CONSIDER THEIR PLACEMENT. USE IN AREAS WHERE YOU WOULD SHADE TREES, OR GROUPINGS. THEY CAN HELP REDUCE THE IMPACT OF WINDS. THEY CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS.

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VINES

THESE CAN BE USED TO COVER TREES OR TRELLIS IN AREAS THAT REQUIRE SOME SHADE. THESE TREES CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS. THEY CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS.

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- Clematis vitalba
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FLOWERS

COLORFUL FLOWERS ALWAYS BRING A GARDEN TO LIFE. A WATER-WISE LANDSCAPE DOES NOT MEAN A BROWN GARDEN. THE RIGHT COLOR CAN BE USED TO HELP COVER THE SOIL AND REDUCE EVAPORATION FROM THE SOIL SURFACE. THEY WILL GROW TO FEET TALL OR MORE. VERIFY THEIR POTENTIAL SIZE AND CAREFULLY CONSIDER THEIR PLACEMENT. USE IN AREAS WHERE YOU WOULD SHADE TREES, OR GROUPINGS. THEY CAN HELP REDUCE THE IMPACT OF WINDS. THEY CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS.

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HERBS

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GRASSES

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MOSS

MOSS CAN BE USED TO COVER TREES OR TRELLIS IN AREAS THAT REQUIRE SOME SHADE. THESE TREES CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS. THEY CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS.

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ROCKS

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WOOD

WOOD CAN BE USED TO COVER TREES OR TRELLIS IN AREAS THAT REQUIRE SOME SHADE. THESE TREES CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS. THEY CAN BE PLANTED IN AREAS OR GROUPINGS THAT CAN HELP REDUCE THE IMPACT OF WINDS.

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- Clematis vitalba
- Physocarpus opulifolius