

WHEN RECORDED RETURN TO:

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Salt Lake City, Utah 84117
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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
04/17/2015 09:22 AM
FEE \$135.00 Pgs: 48
DEP RTT REC'D FOR SYRACUSE CITY

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR MONTEREY
ESTATES PHASE 1 - AMENDED SUBDIVISION**

12-822-0101 → 0120 & 0123 → 0132

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This Amended and Restated Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monterey Estates Subdivision - Phase 1 Amended (the "Declaration") is executed by Ivory Development, LLC, a Utah limited liability company, of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the "Declarant"), with reference to the following:

RECITALS

A. The original Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monterey Estates Subdivision was recorded in the office of the Davis County Recorder on April 24, 2014 as Entry No. 2800231 in Book 6004 at Pages 10-26 of the official records (the "Original Declaration").

B. Declarant is the owner of certain real property located in Davis County, Utah described more particularly on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

C. Declarant has subdivided the Property into a subdivision consisting or to consist of one hundred and ninety (190) Lots. Phase 1 consists or will consist of thirty (30) Lots numbered 101-130, inclusive.

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

E. Declarant desires to provide a general plan for the development of all of the Property and for the establishment of covenants, conditions, and restrictions to enhance and protect the value and attractiveness of this uniquely attractive residential property, all in accordance with the provisions of this Declaration.

F. The development of the Property and the construction of the improvements thereon has been, or is to be, performed in accordance with the plans contained in the Final Plat recorded or

to be recorded concurrently herewith.

G. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Subdivision.

H. The Declarant desires by filing this Declaration to re-submit Monterey Estates and all improvements now or hereafter constructed thereon to the terms, covenants, conditions, and restrictions set forth below which shall constitute equitable servitudes and shall run with the land, to add Common Area and Facilities, and establish a homeowners association.

COVENANTS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above, the Declarant 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:

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

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

1.3. The term Assessment shall mean and refer to any amount imposed upon, assessed, or charged an Owner.

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

1.5. The term Board of Directors shall mean and refer to the governing board of the Association.

1.6. The term Bylaws shall mean and refer to the administrative code of rules for the administration of the Association.

1.7. The term City shall mean and refer to the City of Syracuse in Davis County, Utah.

1.8. The term Club Ivory Amenity shall mean and refer to the Swimming Pool,

Splash Pad and related recreational amenities.

1.9. Common Areas shall mean and refer to all real property in the Project owned or controlled by the Association, including but not limited to the following items:

- a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Lots.
- b) All Common Areas and Facilities designated as such in the Final Plat;
- c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Lot Owners, such as power, gas, water and sewer;
- d) Parcel B (the Club Ivory Amenity);
- e) The Project's common landscaping and open space; and
- f) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned or controlled by the Association for the common benefit of its Members.

Utility installations such as power, gas, water, and sewer may be dedicated to the City and, if so, this definition shall not be construed to allow the Association to exclude the City from the ownership and control of the utility systems so dedicated.

1.10. Common Expense shall mean and refer to: (a) All sums lawfully assessed against the Owners; (b) Expenses of administration, maintenance, repair or replacement of the Common Area and Facilities; (c) Expenses allocated by the Association among the Owners; (d) Expenses agreed upon as common expenses by the Association; and (d) Expenses declared common expenses by the Declaration.

1.11. The term Declaration shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Monterey Estates Subdivision.

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

1.13. The term Declarant shall mean and include Ivory Development, LLC and any

Amended and Restated Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and Bylaws, for Monterey Estates Subdivision - Phase 1 Page 3

person or persons who might acquire title from it to all or some of the unsold Lots through purchase, assignment, or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where any person purchases all or some of the remaining Lots in a sale in the nature of a bulk sale. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Declaration; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant and by its successor in interest as the new Declarant.

1.14. The term Default Assessment shall mean and refer to an Assessment against an Owner or a Lot for failure to perform an obligation under the Project Documents or because the Association has incurred an expense on behalf of the Owner under the Declaration.

1.15. The term Design Guidelines shall mean and refer to any design guidelines required by the City, Association or the Architectural Review Committee.

1.16. The term Developmental Rights shall mean and refer to the right granted hereunder to the Declarant, its agents, representatives, employees, successors and assigns to develop and improve the Property.

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

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

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

1.20. The term Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Owners. A vote which is for any reason suspended is not an "eligible vote".

1.21. The term Final Plat shall mean and refer to the recorded Final Plat for Monterey Estates Subdivision on file in the Office of the County Recorder.

1.22. The term Governing Documents shall mean and refer to the Declaration, Bylaws, Articles of Incorporation, and Rules and Regulations.

1.23. The term Guest shall mean and refer to a guest, visitor, or invitee of an Owner.

1.24. The term Home shall mean and refer to a dwelling, residence or home constructed upon a Lot.

1.25. The term Improvement shall mean and refer to any physical change or addition to the Land to make it more valuable.

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

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

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

c) Default Assessment; or

d) Fine.

Individual charges may be secured by a lien against the Owner's interest in the property and the Association also shall have all other collection remedies, both legal and equitable, available under Utah law and this Declaration.

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

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

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

1.30. The term Lot shall mean and refer to a lot as shown on the Final Plat. Each Lot shall be assigned a separate "parcel" or tax identification number by the appropriate governmental agency.

1.31. The term Lot Number shall mean and refer to the number, letter, or combination thereof designating a particular Lot as identified on the Final Plat.

1.32. The term Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

1.33. The term Manager shall mean and refer to the Person appointed or hired by the Board of Directors to manage and operate the Property.

1.34. The term Map shall mean and refer to the Final Plat.

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

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

1.37. The term Office of the County Recorder or County Recorder shall mean and refer to the Office of the County Recorder of Davis County, Utah.

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

1.39. The term Parcel A shall mean and refer to a park located within the Project.

1.40. The term Parcel B shall mean and refer to the Club Ivory Amenity.

1.41. The term Period of Declarant's Control shall mean and refer to the period of time during which the Declarant has the legal right to appoint the directors of the Association.

1.42. The term Permittee shall mean a Guest, renter or other natural person permitted onto the Property by an Owner or resident, including family members.

1.43. The term Person shall mean and refer to a natural person, corporation,

partnership, trust, limited liability company, or other legal entity.

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

1.45. The term Private Street, Road, Cul-de-sac, Way or Drive shall mean and refer to those streets, roads, cul-de-sacs, ways, drives, or turnabouts within the Project not dedicated to the City or any county, state, or other governmental body politic, entity or agency. It is anticipated that the road or roads in the Project will be public.

1.46. The term Project shall mean and refer to the Monterey Estates Subdivision as it may be expanded from time to time.

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

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

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

1.50. The term Reinvestment Fee Covenant means and refers to the covenant to pay a Reinvestment Fee.

1.51. The term Reinvestment Fee means a fee charged by the Association pursuant to the Reinvestment Fee Covenant.

1.52. The term Residence Number shall mean and refer to the number, letter, or combination of name, numbers, and letters that identifies a Lot.

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

1.54. The term Single Family shall mean and refer to the city ordinance or if there is not one, then to one of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (c) a group of not more than three (3) unrelated persons who maintain a common household, to be distinguished from a group occupying a boarding house, club, fraternity or hotel. The Single Family may include up an additional person or an additional person or persons approved in writing by the Architectural Review Committee, such as a caretaker or as domestic help.

1.55. The term Single Family Residence shall mean and refer to (a) both the architectural style of a Lot and (b) the nature of the residential use permitted therein.

1.56. The term Total Votes shall mean and refer to the total number of Eligible Votes appertaining to all Lots at the Project.

1.57. The term Tract shall mean and refer to all of the land or real estate submitted to this Declaration.

1.58. The term Unit shall mean and refer to a Home.

1.59. The term Use Restrictions shall mean and refer to the use restrictions and limitations expressly set forth herein. The initial Use Restrictions are subject to change.

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

2. Description, Legal Status, and Residential Nature of the Project. The Final Plat shows the Lot Number of each Lot in the Project and its location. All Lots shall be capable of being independently owned, encumbered, and conveyed, subject to all easements and encumbrances of record. It is intended that there will be one hundred and ninety (190) Lots in the Project. The number of Lots is subject to change. Phase 1 shall consist of thirty (30) Lots, numbered 101-130. Parcel A is located in the Phase 1 property. This is a residential subdivision and only single family residences are allowed.

3. Area of Application. This Declaration and the Utah Community Association Act, Utah Code Ann., Sections 57-8a-101 et seq. (the "Act") shall apply to all of the Property submitted hereby and subsequently submitted by a supplemental declaration.

4. Right to Expand Application. The Declarant shall have the unilateral right to expand the application of this Declaration to other property by written amendment to this Declaration duly recorded, and without additional Owner approval required.

5. Association. Membership in the Association is mandatory. Each Lot Owner by virtue of his acceptance of a deed or other document of conveyance to a Lot is a member of the Association and membership may not be partitioned or separated from the ownership of a Lot. The Association shall have a corporate status. The Board of Directors may unilaterally re-file the articles of incorporation of the Association if its status has been suspended or dissolved, and may adopt the prior bylaws. In addition, the Association shall register with the Utah Department of Commerce and pay the Registration Fee. The Registration shall be updated within ninety (90) days after a change in any of the information provided. If the Association has failed to register or update its registration with the State of Utah may not record a notice of lien against a Unit or enforce a previous lien. The Association shall meet at least annually.

6. Board of Directors. The Association shall be managed by a Board of Directors according to the Bylaws.

7. Status and General Authority of Board of Directors. Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Committee's 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 Association shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (j) below, constitute a legal entity capable of dealing in its Committee name. The Board of Directors shall have, and is hereby granted, the following authority and powers:

a) Access. The right, power and authority to have 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; or (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 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 authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment.

d) Standing. The power to sue and be sued.

e) Enter Into Contracts. The 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 power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least sixty-seven percent of the ownership interest present in person or by proxy at a meeting of the Association (at which a quorum is present) called for this purpose.

g) Purchase Property. The 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 sixty-seven percent of the ownership interest present in person or by proxy at a meeting of the Association (at which a quorum is present) called for this purpose.

h) Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least sixty-seven percent of the ownership interest present in person or by proxy at a meeting of the Association (at which a quorum is present) called for this purpose.

i) Borrow Money and Pledge Collateral. The power and authority to borrow money and pledge collateral so long as it has been approved by at sixty-seven percent of the ownership interest present in person or by proxy at a meeting of the Association (at which a quorum is present) called for this purpose.

j) Promulgate Rules. The 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.

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

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

m) 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 Board of Directors to

perform its functions on behalf of the Owners.

9. Delegation of Management Responsibilities: The Board of Directors 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 Board of Directors may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities. Any management contract may be terminated for cause on at least thirty (30) days prior notice.

10. Easements. Declarant hereby reserves to itself and grants:

a) Common Easement. A perpetual right-of-way and non-exclusive easement over, across, and through the Project for use in common by the Declarant and Owners, subject to all of the terms, covenants, conditions and restrictions set forth herein.

b) Private Easement. A perpetual private non-exclusive easement for the exclusive use and benefit of the Declarant and Owners.

c) Declarant's Easement. An exclusive easement to the Declarant, for itself and its affiliates and assignees, to make such use of the Project as may be necessary or convenient to perform the duties and functions hereunder, including, by way of illustration but not limitation, the construction of the improvements, Lots, and Homes in the Project.

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

e) Locations of Facilities Easements. A non-exclusive easement to the Declarant, for itself and its affiliates and assignees, to construct, operate, maintain, repair, and replace all types of telecommunication facilities, including but not limited to, roof antennas, within

suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, under, and through the Project in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement, or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner.

f) Non-Exclusive Utility Easement. A non-exclusive easement to the Declarant, and its affiliates and assignees, over, across, through, and under the Property for ingress to, egress from, and installation, replacement, repair, and maintenance of all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity, and cable communication that service the Property or any portion thereof as well as any such lines and systems which service property owned by the Declarant.

g) Reservation of Rights. The deeds or other documents of conveyances for any Lot or Home within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such easements and/or licenses as are provided herein, even though no specific reference to such easements appears in any such conveyance.

h) Duty to Maintain Integrity of Established Drainage Pattern. Within these easements and rights of way, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, 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. The easement and right of way area of each Lot and all improvements within said area shall be maintained continuously by the Owner, excepting those improvements for which a public authority or utility company is expressly responsible. For purposes of this subsection, the term "established drainage pattern" shall mean the drainage pattern, facilities, and improvements in existence at the time a Lot is conveyed to a home purchaser by the Declarant, its successor or assign.

i) Covenant Not To Interfere. No Owner shall interfere or attempt to interfere with the land drain system or the established drainage pattern established by the Declarant and City or their successors or assigns.

j) Improvement of Lots Relative To Established Drainage Pattern. Each Owner shall be responsible to develop, improve, and landscape his or her Lot in a manner consistent with the land drain system and the established drainage pattern, and so as not to detract from, interfere with, or impair the land drain system or the established drainage pattern on any other Lot within the Project. No changes to the land drain system or the established drainage pattern on any Lot shall be permitted without the prior written consent of the City.

k) Damage or Waste. Each Owner shall be strictly liable for any loss, damage, or claim caused to person or property in the Project caused by his negligence or carelessness, or that of his or her family members, tenants, renters, lessees, residents, occupants, guests, visitors, invitees, or permittees of his or her Lot or Home.

l) Encroachments. If any part of a Lot or Home encroaches or shall hereafter encroach upon an adjoining Lot or Home, then an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances on the affected Lots or Homes. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

11. 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 Subdivision land use and buildings.

12. Title to the Common Area. Title to the Common Area and Facilities shall be vested in the name of the Association.

13. Rules and Regulations.

a) In accordance with the Utah Community Association Act, as it may be amended or supplemented, the Board of Directors shall have the authority to adopt, amend, modify, create, expand, or enforce rules and regulations as well as architecture and landscape design criteria. Before it adopts or changes a rule or regulation, the Board of Directors shall within fifteen (15) days of its meeting provide advance notice of its intention to the Owners. The Board of Directors shall provide an open forum at the meeting and provide Owners with a chance to be heard. The Owners may, within sixty (60) days after the formal adoption of or change to a rule or regulation, and by a vote of at least a majority of the total ownership at a special meeting called for this purpose, disapprove the proposed rule or regulation.

b) (1) The rules must treat similarly situated people the same, although the rules may vary according to the type of service provided.

(2) The rules may not violate the right of Owners to display religious and holiday signs inside their Unit, although the rules may define the time, place, and manner of displays visible from outside the Unit or Lot.

(3) The rules may not regulate the content of political signs, although the Rules may define the time, place, and manner of displays visible from outside the Unit or Lot.

(4) The rules may not interfere with an Owner's determination of the composition of his or her household, although they may legally require the occupants to be members of a single housekeeping unit and may limit the total number of occupants permitted in a Unit, based its size, configuration and a fair use of the Common Areas.

(5) The rules may not interfere with activities within a Lot or Unit if the activity is legal. Limits may be made if the activities are not considered typical for a residential neighborhood, or if the activities create an additional expense for the Association, or if the activities are dangerous or pose a health concern, or if the activities constitute a nuisance, create unreasonable noise or traffic, or are unsightly or annoying, or create secondary smoke issues.

(6) If federal, state or local law permits, rules may be adopted regulating use or behavior inside a Dwelling or Lot, including by way of illustration but not limitation smoking, rentals, noise, traffic and nuisance.

(7) The rules may address a variety of matters such as user fees, the availability of the Common Area and Facilities, the denial of access and use of recreational amenities to trespassers, violators, misusers or abusers, the transfer of lots, rental terms, the disposal of personal property, etc.

(8) The rules may regulate the maintenance and use of the Common Area and Facilities, late fees, accruing interest, indemnity, etc.

(9) No rule may be in conflict, inconsistent or incongruent with the Declaration and Bylaws. If any provision of this subsection is held to be illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This subsection will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this subsection will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this subsection. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this subsection, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

14. Architectural Controls. Because protective covenants are not only worthwhile but absolutely necessary for everyone's comfort and enjoyment no Owner shall be permitted to disrupt the integrity of the Declarant's original design scheme for the Subdivision. Accordingly, the integrity of the design scheme for the Property shall be controlled by the Architectural Review Committee

(the "ARC"). Until the Declarant has sold all of the Lots (the "Period of Declarant's Control"), the Declarant hereby reserves to itself and is hereby granted the unilateral right to appoint an individual or individuals as member(s) of the ARC. This includes the right to appoint a member as the attorney-in-fact for the ARC and to act in its name, place, and stead, and on its behalf, and for its use and benefit (the "Managing Member"), including by way of illustration but not limitation the right, power and authority to exercise or perform any act, power, duty, right, or obligation whatsoever that the ARC now has, or may hereafter acquire the legal right, power, or capacity to exercise or perform in connection with, arising from, or relating to any person, item, transaction, thing, business property, real or personal, tangible or intangible, or matter whatsoever. This reservation and grant is to be construed and interpreted as a general power of attorney. The enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to said Managing Member. After the termination of the Declarant's Period of Control, the Board of Directors shall elect or appoint the member or members to serve on the ARC and if they desire a Managing Member. Directors may serve on the ARC concurrently. Each member shall serve a one (1) year term.

a) Designs, Plans and Specifications. All architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed Buildings, Homes, structures and other physical improvements to the Property 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.

b) 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.

c) 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.

d) Approval. In the event that the Declarant fails to approve any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be considered "denied."

e) Decisions of the Architectural Review Committee. If there is a dispute of any kind whatsoever involving the minimum standards and architectural guidelines, the decision of the ARC shall in all instances be final, conclusive, and binding.

e) 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 the ARC, 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.

f) 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.

g) Limitation of Liability. Neither the ARC nor any of its 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 ARC and its employees, agents, representatives, or consultants harmless from any and all loss, damage, or liability he or she 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.

h) Enforcement of Minimum Standards and 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 or her 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. Minimum Standards and Requirements for Homes. No Home shall be constructed or altered unless it meets the following minimum requirements:

a) Only single family residential Homes are allowed.

- b) The height of any Home shall not exceed two (2) stories above ground.
- c) Slab on grade Homes are permitted.
- d) Basements are permitted.
- e) Garages shall provide for not less than two (2) motor vehicles.
- f) The Home exteriors, in their entirety, must consist of maintenance free stucco and masonry. No aluminum or vinyl is permitted.
- g) Any detached accessory building must conform in design and materials with the primary residential Home.
- h) Any detached accessory building must conform in design and materials with the primary residential Home.
- i) 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. Chain link fencing is strictly prohibited.

16. Preliminary Plans. The Declarant 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 Home.
- d) One major section through Home.
- e) A perspective (optional).
- f) Specifications of all outside materials to be used on the exterior of the Home.

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

a) Plot plans to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, and retaining walls with elevations of the existing and finished grade and contours including those at the outside corners of the 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 a complete description of materials to be used with supplements, addenda, or riders noting the colors of all materials to be used on the exterior of the Home.

f) All Lot landscaping, grading, and drainage plans must be approved by the Declarant. All landscaping must be installed or completed strictly in accordance with the approved plans and so as to comply with and not impair all applicable ordinances and flood control requirements.

1. All Lot landscaping must be completed within nine (9) months of the date of completion of the date of closing on the sale of the Lot.

2. Landscaping shall include, by way of illustration but not limitation, the planting of a lawn and/or other appropriate ground cover, planting beds and flower beds, appropriate bushes and shrubs, and the planting of trees in accordance with the Street Tree Planting Plan.

3. The Declarant will provide the City with a bond for landscaping for Lots on which it builds Homes whenever possible. 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.

4. By accepting a deed or other document of conveyance to a Lot, the Owner hereby agrees, acknowledges, and consents that if the Declarant is required by the City to install front yard landscaping prior to receiving a final inspection on the Lot, the Owner further agrees that the landscaping installed by Declarant 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.

5. The Owner is responsible for the initial planting of trees in accordance with the Tree Planting Guide.

6. Trees, lawns, shrubs, or other plantings placed on a Lot shall be properly nurtured, maintained, and replaced by the Owner and at his or her sole expense.

7. Any weeds or diseased or dead lawn, trees, ground cover, bushes, or shrubs shall be removed and replaced by the Owner and at his or her sole expense.

8. All replacement trees must also satisfy the requirements of the Street Tree Planting Guide

9. 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.

10. 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 Declarant.

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

12. Should any Owner fail to comply with the provisions of this paragraph, the Declarant and after transfer of control the Board of Directors 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.

13. 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.

18. Accessory Buildings. Accessory Buildings are considered conditional uses. There is no right to construct or install an Accessory Building on a Lot. Written approval by the Declarant or the ARC is required. Each application to construct or install an Accessory Building will be evaluated separately by the Declarant, subject to the following guidelines: (1) Any detached

Accessory Building must conform in design and construction materials with the primary residential Home, and (2) The maximum height of an Accessory Building shall be twelve (12) feet. Tin sheds are not allowed.

19. Alternate Energy. No solar collectors, geothermal products, wind turbines or other alternate energy resources shall be installed without the ARC's prior express written consent.

20. 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's ordinance for planned residential developments. 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 Declarant: The approval of the Ivory Homes Sales staff and/or construction personnel is insufficient.

21. Use Restrictions and Nature of the Project. The Property is subject to the following initial use restrictions, which shall govern both the architecture and the activities within the Project:

a) Single Family Residence. No Lot shall be used except for residential purposes. That means no more than one single family may reside in a Home.

b) Business Use. No resident may operate a commercial trade or business in or from his or her Lot with employees of any kind or with customers who are not residents of the Project, or which create or maintain a nuisance. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Lot. No commercial trade or business may be conducted in or from a Lot unless (1) the business activity conforms to all home occupation and zoning requirements governing the Project; (2) the operator has a city issued business license; and (3) the business does not create a nuisance.

c) Motor Vehicles. 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 Home or to create an obstacle or potentially dangerous condition. Motor vehicles shall be parked in the garage or driveway. 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. 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. 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 must be stored in the garage or on a parking pad; provided, however that (a) the motor vehicle is in good running condition, (b) the motor vehicle or trailer is properly licensed and registered, (c) the parking pad is located in the rear yard, which means behind the geometric plane of the front of the house, and (d) a parking pad fence has been installed in accordance with the approved plans. Eighteen wheeled semi-trailers or other similar transportation devices are not allowed. No temporary carport or canopy may be installed in the front, side, or rear of the Lot.

d) Trash Pick-Up. 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 installed and positioned in accordance with 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 in the Subdivision. Animal limitations are in accordance with the City Animal Ordinance. In the event there is not city ordinance, 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 or violate City ordinance.

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 she or any other residents, guests, or invitees of his or her Lot may cause to another Owner, Lot, or Home, 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 Home or otherwise allowed by law; provided, however, this restriction does not apply to and is not binding upon the Declarant, who may use whatever signs it deems appropriate to market its Lots. "For Rent" or "For Lease" signs on a Lot or showing from a Home 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. A violation of any use restriction set forth herein shall be considered a nuisance.

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 constructed, installed, or used on any Lot at any time as a residence.

22. Leases. No Owner shall be permitted to lease his or her Home for 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 the entire Home. "For Rent" or "For Lease" signs are prohibited. 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 or her Home.

23. View Impairment. The Declarant does not guarantee or represent that any view over and across any property, including any Lot or Building will be preserved without impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

24. Common Utilities. The Declarant may provide water and power utility services to the Entry and other common elements at its expense (the "Common Utility Service"); provided, however, it 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, and pay for those Common Utility Services.

25. Operation, Maintenance and Alterations. Each Lot and the Common Area and Facilities shall be maintained, repaired, and replaced in accordance with the following covenants, conditions and restrictions:

a) Minimum Standard of Care. The Lots and Common Area and Facilities shall be maintained in a usable, clean, functional, safe, sanitary, attractive and good condition, consistent with Community Standards.

b) Landscaping. All landscaping in the Project shall be maintained and cared for

in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with any City landscaping maintenance plans or ordinances. Specific additional written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Management Committee from time to time. All landscaping shall be maintained in a safe, sanitary, aesthetic and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced within a reasonable time. All lawn areas shall be mowed and edged. All trees, shrubs and bushes shall properly pruned. All landscaping shall be aesthetic and tasteful, so as in the sole opinion of the Board of Directors not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project. Anything to the contrary notwithstanding, all landscaping must abide by and strictly comply with all soils report recommendations and City requirements.

c) Area of Common Responsibility. Unless otherwise expressly noted, the Association shall maintain, repair and replace all of the Common Area and Facilities within or serving the Project.

d) Area of Personal Responsibility. Each Owner shall maintain, repair and replace his Lot and all improvements thereto at his sole expense, including without limitation his Home constructed thereon and any Accessory Buildings. Each Owner shall be responsible for all ice and snow removal from his Lot. No Lot Owner shall allow the condition of his Lot or Home to detract from the health, safety or original design scheme of the Project.

e) Area of City Responsibility. The City is responsible for the maintenance and care of Parcel B and all snow and ice removal from the Dedicated Streets and for garbage pick-up.

f) Default Provisions. If (except in the case of an emergency) after written notice and a hearing, it is determined that any responsible party has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the Association, or Management Committee may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting or responsible party's sole cost and expense (the "Default Maintenance Cost"). The term "emergency" as used here means a situation or condition in which there is a threat of imminent and substantial harm to person or property. The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. In addition, it may be considered a "Fine" against a Lot Owner. A Fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Lot Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Common Expenses under U.C.A., Section 57-8-20.

g) Alterations to the Common Area. The Declarant may make changes to the

design and construction of the improvements located in or on the Common Areas without additional approval required, including without limitation the consent of the Management Committee or Members of the Association; provided, however, no Owner or Permittee may make any structural alterations to the Common Area (including the Limited Common Area), without the express prior written consent of the Management Committee.

h) Certain Work Prohibited. No Lot Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Lot Owners being first had and obtained.

26. Common Expenses.

a) Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lots owned by it until such time as Declarant elects in writing to pay the Assessments.

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

c) Creation of Assessments. Since the Assessments shall pay for the common expenses of the Association, as shall be determined by the Board of Directors 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 all Assessments assessed by the Board of Directors.

d) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Board shall prepare and deliver to the Owners a proposed Budget:

(1) Itemization. The Budget shall set forth an itemization of the anticipated Common Expenses (including that portion earmarked for the reserve account(s) and the Association's proportionate share of the cost of maintaining the Recreation Amenity) for the twelve (12) month calendar year, commencing with the following January 1.

(2) Basis. The Budget shall be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, including the Recreation Amenity, and regulation of the Association, which estimate shall include but is not limited to

expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board is required or permitted to maintain, common lighting and heating, common water charges, trash collection, storm drain fees, common sewer charges, sewer maintenance costs, carpeting, painting, repairs and maintenance of the Common Areas, including the Recreation Amenity, and replacement of those elements of the Common Areas, including the Recreation Amenity, that must be replaced on a periodic basis, wages for Board employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

(3) The Owners may call a special meeting within forty-five (45) days of the meeting providing the proposed Budget to vote to disapprove the Budget, although to set it aside and to reject a proposed Budget requires the affirmative written consent of at least a majority of total ownership. If the new budget is disapproved, then the prior year's budget continues.

e) Apportionment. The voting rights shall be distributed among and the Common Expenses shall be charged equally and uniformly to all of the Lot Owners.

f) 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 Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Board of Directors fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

g) Payment of Assessments. The time and method of payment shall be determined by the Board of Directors.

h) Additional Services. The Board of Directors may provide individual services for a fee.

i) Personal Obligation of Owners. All of the Owners, including the Owners of the six (6) Lots owned by the Davis School District and the six (6) Lots sold to private individuals prior to the recording of this Declaration, are liable to pay all Assessments and their share of the Common Expenses; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for more than six (6) months of unpaid Assessments which accrued prior to the

acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Lot; (2) the Owner of record in the offices of the County Recorder of Davis County, Utah; and (3) both the Buyer and Seller under any executory sales contract or other similar instrument.

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

k) Reserve Analysis -- Reserve Fund.

(1) As used in this section, the term "reserve analysis" means an analysis to determine: (a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common Areas and facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the Association of unit owners; and (b) the appropriate amount of any reserve fund.

(2) After the expiration of the Declarant's Period of Control, the Board of Directors shall cause a reserve analysis to be conducted no less frequently than required by law; and review and, if necessary, update a previously conducted reserve analysis no less frequently than required by law.

(3) The Board of Directors may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board of Directors, to conduct the reserve analysis.

(4) The Board of Directors may not use money in a reserve fund: (i) for daily maintenance expenses, unless a majority of the members of the Association vote to approve the use of reserve fund money for that purpose; or (ii) for any purpose other than the purpose for which the reserve fund was established.

(5) The Board of Directors shall maintain a reserve fund separate from other funds of the Association.

(6) This Subsection (4) may not be construed to limit the Board of Directors from prudently investing money in a reserve fund provided it is government insured.

(7) The Association shall present the Reserve Analysis and Reserve Fund to the Owners, and provide copies, as required by law.

l) Acceleration. The Board of Directors may but is not obligated to accelerate the entire annual Assessment of a delinquent Owner who has not cured his default within thirty (30) days after written notice.

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

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

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

p) Providing Payoff Information.

(1) The Association may charge a fee for providing Association payoff information needed in connection with the closing of a Unit Owner's financing, refinancing, or sale of the Owner's Unit (the "Payoff Fee").

(2) The Association may not require that the Payoff Fee be paid before closing and the Payoff Fee may not exceed \$50 without a change in the statute.

(3) If the Association fails to provide the payoff information requested within five (5) business days after the closing agent requests the information may not enforce a lien against that Unit for money due to the association at closing; provided, however, a request shall not be considered effective unless the request is conveyed in writing to the designated contact person for the Association on record with the State of Utah and contains: (a) the name, telephone number, and address of the person making the request; and (b) the facsimile number or email address for delivery of the payoff information; and (c) is accompanied by a written consent for the release of the payoff information: (a) identifying the person requesting the information as a person to whom the payoff information may be released; and the request has been signed and dated by an Owner of the Unit for which the payoff information is requested.

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

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

b) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association. The Board of Directors in its discretion may allow any special assessment to be paid in installments.

28. Individual Charges. Individual Charges may be levied by the Board of Directors against a Lot and its Owner and shall be due not earlier than thirty (30) days after written notice.

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

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

b) Late Fees. A late fee in a sum to be determined by the Board of Directors shall be assessed on all late payments. A payment received by the Board of Directors ten (10) days or more after its due date shall be considered late for purposes of this subsection.

c) Default Interest. Default interest in a sum to be determined by the Board of Directors shall accrue on all delinquent accounts.

d) Lien. If any Lot Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Board of Directors or 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.

e) Foreclosure of Lien and/or Collection Action. If the Assessments remain

unpaid, the Association may, as determined by the Board of Directors, institute suit to collect the amounts due and/or to foreclose the lien. The Declarant hereby conveys and warrants pursuant to U.C.A., Sections 57-1-20 and 57-8-45 to the individual or entity appointed as trustee with power of sale, any Lot or Lots and all improvements to such Lot or Lots for the purpose of securing payment of assessments under the terms of this Declaration.

f) 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.

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

h) 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 Board of Directors to take some action or perform some function required to be taken or performed by the Association or Board of Directors under this Declaration or the Bylaws, 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.

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

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

k) Appointment of Trustee. If the Board of Directors 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 irrevocably appoints the attorney of the Association, provided s/he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. 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. The Association shall record in the office of the county recorder a written Notice of Appointment of Trustee.

l) Attorney in Fact. Each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Lot, if the Lot is rented and Owner is delinquent in the payment of his Assessments.

m) Lenders, Foreclosures and Unpaid Assessments. Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorneys fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including a reasonable attorneys fee, 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. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board. 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 Board may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(1) A Lot may be auctioned publically and sold through either a non-judicial foreclosure (like a bank foreclosing a deed of trust) or through judicial foreclosure. A court order of sale is required for a judicial foreclosure which includes a 6-month redemption period.

(2) For purposes of a non-judicial foreclosure, when a person accepts a deed or other document of conveyance to a Lot, it is considered the same, like a bank and a deed of trust, as

conveying the Lot in trust to as trustee¹ appointed by the Association to secure payment of all assessments and costs of collection.

(3) The Association must appoint a qualified trustee, by signing and recording in the office of the county recorder a written substitution of trustee form in order to foreclose upon a Lot non-judicially.²

(4) At least thirty (30) days prior to starting its non-judicial foreclosure, the Association must send written notice to the Owner informing him or her of the Association's intent to foreclose non-judicially and the Owner's right to demand judicial foreclosure. The notice must be in the form provided by the statute and sent by certified mail.³ The Owner may object to the non-judicial foreclosure by sending a written demand for judicial foreclosure. The Owner's objection and written demand must be sent within fifteen (15) days. The Owner's objection and written demand must also be sent by certified mail.

(5) The Association may not use a non-judicial foreclosure to enforce a lien if the Owner mails the Association a written demand for judicial foreclosure: (1) by U.S. mail, certified with a return receipt requested; (2) to the address stated in the Association's Notice of Non-judicial Foreclosure and Right to Demand Judicial Foreclosure under Subsection (d); and (3) within fifteen (15) days after the date of the postmark on the envelope of the Association's Notice of Non-judicial Foreclosure and Right to Demand Judicial Foreclosure.

1 Bank, Title Company or Utah attorney

2 No redemption period. A notice of default is prepared and recorded. The Owner has 90 days to cure the default or the Unit may be sold by the Trustee. The notice of sale usually takes 30+ days. A non-judicial foreclosure takes approximately 120 days.

3 NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE

The (insert the name of the Association of unit owners), the Association for the project in which your unit is located, intends to foreclose upon your unit and allocated interest in the common areas and facilities using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the Association's lien against your unit and to collect the amount of an unpaid assessment against your unit, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the Association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that "I demand a judicial foreclosure proceeding upon my unit", or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within fifteen (15) days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is (insert the address of the Association of unit owners for receipt of a demand).

(6) The Association must follow the provisions of the law applicable to the non-judicial foreclosure of deeds of trust.

n) Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments. If an Owner fails or refuses to pay any Assessment when due, the Board of Directors may (a) terminate the Owner's right to receive utility services paid as a common expense; and (b) terminate the Owner's right of access and use of recreational facilities., after giving notice and an opportunity to be heard. The notice shall state: (1) utility services or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within the time provided in the Declaration, Bylaws, or association rules, which time shall be stated and be at least 48 hours; (2) the amount of the assessment due, including any interest or late payment fee; and (3) the right to request a hearing. An Owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the Board of Directors within 14 days from the date the notice is received. A notice shall be considered received on the date (a) it is hand delivered, (b) it is delivered by certified mail, return receipt requested, or (c) five (5) days after it is deposited in the U.S. Mail, postage prepaid, addressed to the Owner's last known address on the books and records of the Association. If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered. Upon payment of the assessment due, including any interest or late payment fee, the manager or Board of Directors shall immediately take action to reinstate the terminated utility services to the Lot and right to use of recreational facilities.

o) Assignment of Rents. If the Owner of a Lot who is leasing the Lot fails to pay any assessment for a period of more than sixty (60) days after it is due and payable, the Board of Directors 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 Board of Directors must give the Owner written notice, in accordance with the Declaration, Bylaws, or association rules, of its intent to demand full payment from the tenant. This notice shall: (a) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the Declaration, Bylaws, or association rules; (b) state the amount of the assessment due, including any interest or late payment fee; (c) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and (d) provide the requirements and rights described herein. If the Owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or Board of Directors may deliver written notice to the tenant that demands future payments due to the Owner be paid to the association pursuant hereto. A copy of the notice shall be mailed to the Owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state: (a) that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the Board of Directors' intent to collect all lease payments due to the association pursuant hereto. (b) that until notification by the association that the assessment

due, including any interest or late payment fee, has been paid, all future lease payments due to the Owner are to be paid to the association; and (c) payment by the tenant to the association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (6) suit or other action may not be initiated by the Owner against the tenant for failure to pay. All funds paid to the association pursuant hereto shall be deposited in a separate account and disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the Owner within five business days of payment in full to the association. Within five (5) business days of payment in full of the assessment, including any interest or late payment fee, the manager or Board of Directors must notify the tenant in writing that future lease payments are no longer due to the association. A copy of this notification must be mailed to the Owner. As used in this section, the terms "lease" or "leasing" or "rental agreement" or "renting" or similar terms shall mean and refer to regular, exclusive occupancy of a Lot 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.

30. Reinvestment Fee. The buyer of a Lot shall pay to the Association at the time of closing or settlement of the sale of said Lot a Reinvestment Fee in a sum to be determined by the Board of Directors. The amount of the Reinvestment Fee may not exceed 0.5% of the value of the Lot at the time of closing and shall comply with the requirements of Utah Code Ann., Section 57-1-46(5) (2010) as amended or supplemented. The Reinvestment Fee Covenant may not be enforced upon: (a) An involuntary transfer; (b) A transfer that results from a court order; (c) A bona fide transfer to a family member of the seller within three (3) degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (d) A transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; (e) The transfer of the Lot by a financial institution except to the extent that the Reinvestment Fee Covenant requires the payment of the Association's costs directly related to the transfer of the Lot, not to exceed \$250.00, as that amount may be amended by statute from time to time; or (f) The Declarant or first buyer of a Lot from the Declarant. The Board of Directors shall establish and maintain a reserve account or accounts for the Reinvestment Covenant Fees. The account or accounts are intended to be capital reserve accounts and shall be used exclusively for the purposes authorized by Utah law. Payments to the Declarant to reimburse it for advances for authorized purposes pursuant to a written subsidy or other agreement are permitted expenditures. Funds in the reserve account or accounts may not be used for litigation. The Board of Directors shall prepare and update from time to time a written Reinvestment Covenant Fee Reserve Account Analysis, and make the report available to the Owners. This Section may not be amended without the express prior written consent of the Declarant, so long as it owns at least one lot in the Project and for five years after the date of the conveyance of the last lot.

31. Declarant's Sales Program. Anything to the contrary notwithstanding, for so long as Declarant continues to own a Lot in the Subdivision the following provisions shall be deemed to be in full force and effect. No Owner or occupant shall interfere or attempt to interfere with the completion of improvements, promotion and/or sale of Lots owned by Declarant or Homes constructed thereon.

Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Homes at any one time. Such office and/or models may be one or more of the Homes owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing. Declarant 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. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, signs, banners, or similar devices. Declarant shall have the right to remove from the Project any signs, banners, or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

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

32. Allocation of Profits, Losses and Voting Rights.

a) The allocation of profits, losses and voting rights (subject to the exceptions set forth in subsection (b) below) shall be distributed among the Lots equally. The interests of each Lot shall have a permanent character and shall not be altered without the express affirmative consent of at least two-thirds (2/3) of the Lots memorialized in an amendment to the Declaration duly recorded.

b) The Project shall initially have two (2) classes of voting memberships, described more particularly as follows:

1) All Owners with the exception of the Declarant (or its successor or assign) who shall have one (1) vote. No vote shall be cast or counted for any Lot not subject to assessment. When more than one 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 Owners prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one person or entity seeks to exercise it. Any Owner who has leased his Lot 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 Owners prior to any meeting.

2) The Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant, shall be entitled to three (3) votes per Lot owned. The Period of Declarant's Control shall terminate, and Declarant shall have one (1) vote per Lot after all of the Lots have been sold or when the Declarant records a written "Notice of Termination of Period of Declarant's Control," whichever first occurs.

33. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The term *shall* is mandatory and the term *may* is permissive. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

34. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Declarant, all other signatories hereto, all parties who hereafter acquire any interest in a Lot, the Subdivision or the Property, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant 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 in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

35. Enforcement and Right to Recover Attorneys Fees. Should the Declarant, ARC or an aggrieved Owner be required to take action to enforce or construe the Declaration 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, regardless of whether a lawsuit is filed.

36. Limitation of Liability. This Declaration of covenants, conditions and restrictions is 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 Declarant or its agents, representatives, and employees shall be exempt from any civil claim or action, including an action for negligence, brought by any person owning or having an interest in any Lot.

37. Amendment of this Declaration.

a) General. Except as provided elsewhere in this Declaration, including by way of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes 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 legal representative of the Owners. In such instrument the legal representative shall certify that the vote required by this section for amendment has occurred.

b) Initial Declarant Right to Amend. The Declarant may unilaterally amend or terminate this Declaration so long as it owns any of the Property.

c) 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 Declarant if such Amendment is (1) necessary to correct typographical errors or inadvertent omissions; (2) 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 (3) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Lot unless any such Owner shall consent thereto in writing.

d) Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Period of Declarant's Control, Declarant 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 hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

e) To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of a written Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the change, modification or amendment requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots and all persons having an interest therein. It is the desire of Declarant to retain control of the Project 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 Declarant, Declarant shall have the unilateral

right to amend this Declaration to restore such control.

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

g) Consent Required. With regard to any proposed action which would require the consent of a specified percentage of Mortgagees or Eligible Mortgagees, if proper notice is given to a Mortgagee, Eligible Mortgagee, or other creditor, then a legal presumption is created that the Mortgagee and/or creditor consented, absent the delivery of a written objection.

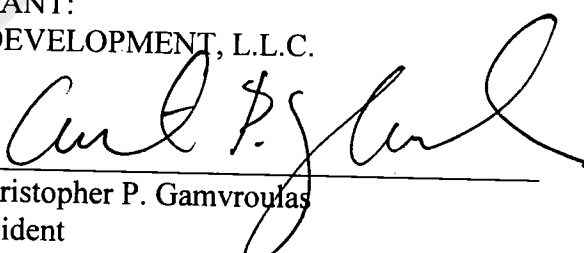
38. Fair and Reasonable Notice. Notice given in accordance with the provisions of the Revised Nonprofit Corporations Act) shall be considered fair and reasonable notice. The Association may give notice by text message, e-mail, text message, the Association website, or other electronic notice; provided, however an Owner may by making a written demand to the Association require written notice.

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

40. Effective Date. This Declaration shall take effect upon recording in the office of the County Recorder of Davis County, Utah.

Dated the ____ day of December, 2014.

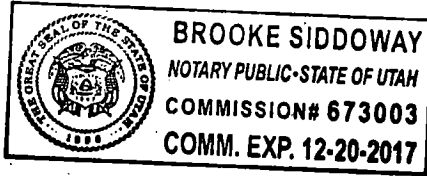
DECLARANT:
IVORY DEVELOPMENT, L.L.C.

By: 
Name: Christopher P. Gamvroulas
Title: President

ACKNOWLEDGEMENT

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

The foregoing instrument was acknowledged before me the 22nd day of December, 2014 by Christopher P. Gamvroulas, who is the President of Ivory Development, L.L.C, a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that he executed the same pursuant to a Resolution of Members and/or its Articles of Organization and Operating Agreement.



Brooke Siddoway
Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION

The Property referred to in the foregoing document as Phase 1 of the Monterey Estates Subdivision is located in Davis County, Utah and is described more particularly as follows:

A PART OF THE SOUTH HALF OF SECTION 3, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, LOCATED IN THE CITY OF SYRACUSE, COUNTY OF DAVIS, STATE OF UTAH, DESCRIBED AS FOLLOWS:

*COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 3;
THENCE N89°56'55"W 642.24 FEET ALONG THE SOUTH LINE OF SAID SECTION;
THENCE N0°03'05"E 33.00 FEET TO THE POINT OF BEGINNING;
THENCE N0°10'03"E 611.95 FEET ALONG THE EAST LINE OF THE PROPERTY DESCRIBED IN THE DEED RECORDED IN ENTRY 1021678, BOOK 1588, PAGE 130;
THENCE S89°56'56"E 95.03 FEET;
THENCE N87°42'46"E 60.05 FEET;
THENCE S89°56'56"E 188.00 FEET;
THENCE S89°05'22"E 60.01 FEET;
THENCE S89°56'56"E 93.00 FEET;
THENCE S0°03'04"W 96.89 FEET;
THENCE S50°12'42"E 93.25 FEET;
THENCE S0°03'04"W 96.50 FEET;
THENCE S89°56'56"E 141.00 FEET;
THENCE S0°03'04"W 156.50 FEET;
THENCE N89°56'56"W 78.00 FEET;
THENCE S0°03'04"W 96.50 FEET;
THENCE S89°56'56"E 578.00 FEET;
THENCE S1°10'49"E 93.72 FEET;
THENCE S72°12'01"W 45.28 FEET ALONG THE NORTH LINE OF LOT 2, NINIGRET FIELD, TO THE NORTH LINE OF 700 SOUTH STREET;
THENCE ALONG SAID NORTH LINE THE FOLLOWING TWO COURSES:
(1) N89°56'24"W 526.66 FEET;
(2) N89°56'55"W 642.24 FEET TO THE POINT OF BEGINNING.
CONTAINING 10.02 ACRES, MORE OR LESS,*

EXHIBIT "B"

**BYLAWS OF
MONTEREY ESTATES HOMEOWNERS ASSOCIATION**

**ARTICLE I
NAME AND LOCATION**

Section 1.01 Name and Location. The name of the association is Monterey Estates 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 Board of Directors may be held at such places within the State of Utah, as may be designated by Board of Directors.

**ARTICLE II
DEFINITIONS**

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

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

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

Section 3.02 Special Meetings. Special meetings of the Association may be called at any time by the President, by a majority of the Members of the Board of Directors, or by a petition signed by $\frac{1}{4}$ of the Lots.

Section 3.03 Notice of Meetings. Written notice of a meeting of the Association, regular or special, 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. Owners present in person or by proxy at a meeting of the Association shall constitute a quorum for all purposes.

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 be valid only for the meeting for which it is provided.

ARTICLE IV BOARD OF DIRECTORS AND TERM OF OFFICE

Section 4.01 Number. The affairs of the Association shall be managed by a Board of Directors comprised of three (3) natural persons. Each Member must be duly qualified and appointed or elected. The initial Members of the Board of Directors are Christopher P. Gamvroulas, Bradley T. Mackay and Eric Freebairn.

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 Board of Directors shall serve a term of two (2) years; provided, however, at the initial meeting of the Association after the termination of the Period of Declarant's Control, two of the Directors shall be elected for two (2) year terms and one (1) for a one (1) year term. Thereafter all Directors shall be elected for a two (2) year term.

Section 4.04 Compensation. No Member shall receive compensation for any service he may render to the Association as a Director, 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 Annual Meeting. The Board of Directors shall meet as often as it deems reasonably necessary but not less than annually at a convenient time and place.

Section 4.06 Special Meetings. Special meetings of the Board of Directors may be called at any time by the President or by a majority of the Members of the Board of Directors.

Section 4.07 Voting. Each Member shall have one vote.

Section 4.08 Proxies. A Director may give a written proxy to another member of the Board of Directors if he or she is unable to attend a meeting.

Section 4.09 Managing Member. During the Period of Declarant's Control, the Board of Directors shall have a Managing Member. The initial Managing Member shall be Christopher P. Gamvroulas. The Managing Member is hereby appointed the agent of the Board of Directors and is granted the right, power and authority to act unilaterally on its behalf, anything to the contrary notwithstanding. This office and agency shall expire automatically upon the termination of the Period of Declarant's Control.

**ARTICLE V
MEETINGS AND ACTION WITHOUT A MEETING**

Section 5.01 Action Taken Without a Meeting. Any action that may be taken at any meeting of Owners or the Board of Directors may be taken without a meeting if the Association delivers a written ballot to every Owner in accordance with Utah Code Ann., Section 16-6a-707 (2002) as it may be amended from time to time (or a written ballot is delivered to every member of the Board of Directors. The ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action. The number of approvals must equal or exceed the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The parties must be provided a fair and reasonable amount of time before the day on the Association or Board of Directors must receive ballots. An amount of time shall be considered fair and reasonable if the Owners (or members) are given at least 15 days from the day on which the notice is mailed, if the notice is mailed by first-class or registered mail; Owners (or members) are given at least 30 days from the day on which the notice is mailed, if the notice is mailed by other than first-class or registered mail' or considering all of the circumstances, the amount of time is otherwise reasonable. Any action so approved shall have the same effect as though taken at a meeting of the Association or Board of Directors, respectively.

Section 5.02 Action by Written Ballot. Any action that may be taken at any meeting of the Owners or the Board of Directors may be taken without a meeting if the Association delivers a written ballot to every member entitled to vote on the matter in accordance with Utah Code Ann., Section 16-6a-709 (2002) as it may be amended from time to time. Any action so approved shall have the same effect as though taken at a meeting of the Association or Board of Directors, respectively.

Section 5.03 Meetings by Telecommunications. Persons participate in a meeting of the Owners or Board of Directors by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other (or read a transcript of what is being said in real time) during the meeting. A person participating in a meeting by telecommunication shall be considered to be present in person at the meeting.

ARTICLE VI
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.03 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 Board of Directors and shall specifically have the powers and duties set out in this Article V, including

Section 6.03.1 Assessments. The power and duty to levy Assessments on the Owners, and to enforce payment of such Assessments in accordance with the Declaration.

Section 6.03.2 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 VII
OFFICERS AND THEIR DUTIES

Section 7.01 Enumeration of Officers. The officers of the Association shall be a president and secretary, plus such other officers as the Board of Directors may from time to time by resolution create. The same individual may not hold the office of president and secretary at the same time. The officers need not be Members of the Board of Directors.

Section 7.02 Election of Officers. The Board of Directors shall elect or appoint officers at the first meeting of the Board of Directors during each calendar year.

Section 7.03 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 7.04 Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

Section 7.05 Resignation and Removal. Any officer may be removed from office with or without cause by a majority vote of the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.06 Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.07 President. The president shall (a) preside at all meetings of the Board of Directors, (b) see that orders and resolutions of the Board of Directors are carried out; (c) sign all contracts; and (d) serve as the Delegate to the Master Association if required.

Section 7.08 Secretary. The secretary shall (a) record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Association, (b) keep the corporate seal of the Association and affix it on all papers requiring said seal, (c) serve notice of meetings of the Board of Directors and of the Association, (d) keep appropriate current record showing the Members of the Association together with their addresses; (e) serve as the Delegate to the Master Association if the President is unable to do so; and (f) perform such other duties as may be required by the Board of Directors.

ARTICLE VIII COMMITTEES

Section 8.01 Committees. The Board of Directors may appoint such committees as deemed appropriate in carrying out its purpose.

ARTICLE IX BOOKS AND RECORDS

Section 9.01 Books and Records. The books and records shall be kept with detailed accounts of the receipts and expenditures affecting the Tract, and the administration of the Tract, specifying the

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

Section 9.02 Signatures. The Board of Directors shall determine who is required to sign checks, drafts, contracts, and legally binding agreements.

Section 9.03 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 Director or an officer of the Association. A monthly profit and loss statement, balance sheet, and check register shall be sent or delivered by the bookkeeper or accountant to each Director. The accountant or bookkeeper shall prepare and file all tax returns for the Association.

Section 9.04 Audit. Either a (a) majority vote of the Members of the Board of Directors or (b) majority vote of all of the Owners is necessary and sufficient to require either a Compilation Report, Reviewed Statement or Audited Statement of the Association.

Section 9.05. Production of Records. The Association shall: (a) keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and any other expenses incurred; and (b) make those records available for examination by any Owners at a convenient hour during the regular work week no later than fourteen (14) days after the Owner makes a written request to examine the records.

ARTICLE X AMENDMENTS

Section 10.01 Amendment to Bylaws. These Bylaws may only be amended (a) unilaterally by the Declarant until the expiration of the Period of Declarant's Control or (b) the affirmative vote of a majority of the members of the Board of Directors, or (c) a majority of the Owners. In the event of a conflict between the decision of the Owners and the Board, the former shall in all respects govern and control.

Section 10.02 Conflict. In the case of any conflict between the Declaration and these Bylaws or the Articles of Incorporation, the former shall in all respects govern and control.

Section 10.03 Corporate Status. If the corporate status of the Association is suspended or

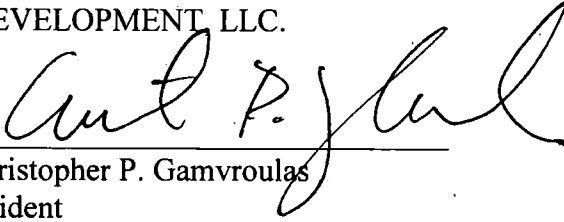
dissolved for any reason, the Board of Directors may unilaterally reinstate or recreate the corporate status.

ARTICLE XI
FISCAL YEAR

Section 11.01 Miscellaneous. Unless otherwise determined by the Board of Directors, 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 undersigned has hereunto set its hand this _____ day of December, 2014.


DECLARANT:
IVORY DEVELOPMENT, LLC.

By: 
Name: Christopher P. Gamvroulas
Title: President

ACKNOWLEDGMENT

STATE OF UTAH)
 ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 22nd day December, 2014 by Christopher P. Gamvroulas, as President 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.


NOTARY PUBLIC

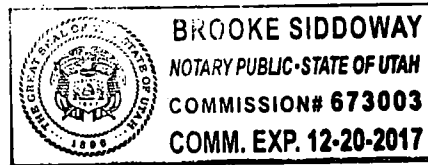


EXHIBIT "C"
STREET TREE PLANTING GUIDE

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