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**WHEN RECORDED RETURN TO:**

Christopher P. Gamvroulas  
IVORY DEVELOPMENT, LLC  
978 East Woodoak Lane  
Salt Lake City, Utah 84117  
(801) 268-0700

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND  
RESERVATION OF EASEMENTS,  
AND  
BYLAWS FOR EVERGREEN FARMS PHASE 3A SUBDIVISION**

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This Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and Bylaws for Evergreen Farms Phase 3A Subdivision (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. 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").
- B. Declarant has subdivided the Property into a subdivision consisting or to consist of six (6) Lots.
- C. The Property is an area of unique, natural beauty featuring distinctive terrain.
- D. 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.
- E. 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.
- F. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Subdivision.
- G. The Declarant desires by filing this Declaration of Covenants, Conditions and

Restrictions to submit Evergreen Farms Phase 3A 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.

### **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 "Accessory Building" shall mean and refer to any structure which is not the preliminary structure, contains at least 120 square feet, requires a building permit, is not a shed, shack, or other out-building (for which a building permit is not required), and qualifies as such under the totality of the circumstances.

1.2 "Assessment" shall mean and refer to any amount imposed upon, assessed, or charged an Owner.

1.3 "Association" shall mean and refer the association of Lot owners acting or taken as a group in accordance with the Declaration.

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

1.5 "Bylaws" shall mean and refer to the administrative code of rules for the administration of the Association. The initial Bylaws are attached hereto, marked Exhibit "B" and incorporated herein by this reference.

1.6 "Builder" shall mean Declarant, an Owner, or a contractor who obtains a construction or occupancy permit for one or more Buildings or Homes.

1.7 "Building" shall mean an edifice or structure designed to stand more or less permanently.

1.8 "City" shall mean the City of Layton, a municipal corporation, located within Davis County, Utah.

1.9 "Common Area" shall mean 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) The Project's common landscaping and open space;
- (e) The Layton Parkway Landscape Buffer; 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: (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 "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. It is anticipated that the streets in the Project will be public.

1.12 "Declarant" shall mean and include Ivory Development, LLC and any 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 Davis County Recorder signed by both the current Declarant and by its successor in interest as the new Declarant.

1.13 "Default Assessment" shall mean 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.

1.14 "Design Guidelines" shall mean any design guidelines required by the City, Association or the Architectural Review Committee.

1.15 "Development Rights" shall mean the right granted hereunder to the Declarant, its agents, representatives, employees, successors and assigns to develop and improve the Property.

1.16 "Entry" shall mean the entry way into the Project.

1.17 "Excavation" shall mean any disturbance to the surface of the land, including the removal of native vegetation, and also including trenching which results in removal of soil or rock from the depth of more than 12 inches from the natural surface of the land, or any grading of the surface. Excavation shall include any activities for which an excavation or grading permit would be required under the ordinances and regulations as adopted by the City.

1.18 "Fill" shall mean the depositing of earth, soil, rock or other materials to the surface of the land, whether imported from off-site or resulting from the re-grading of excavated materials from on-site, to raise the natural elevation of the surface. Fill shall include any fill material as defined under the ordinances and regulations as adopted by the City.

1.19 "Home" shall mean and refer to the home, dwelling, residence, living unit, or separate physical part of a Lot intended for independent occupancy and use. Mechanical equipment and appurtenances located within any one Home, or located without said Home but designated and designed to serve only that Home, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Home. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Home or serving only the Lot, and any structural members, parts, components, or any other property of any kind, including fixtures or appliances within any Home shall be deemed to be part of the Home.

1.20 "Individual Charge" shall mean 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 (or other sanction or penalty).

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.

1.21 "Layton Parkway Landscape Buffer" shall mean the five foot (5') landscape buffer that is part of the Layton Parkway HOA landscape ordinance directly affecting Lots 323-328, inclusive, and Lot 343.

1.22 "Lot" shall mean the subdivided and recorded lot within Property, and where the context so requires any Building or Home constructed thereon.

1.23 "Lot Number" shall mean the number and/or letter used to identify a particular Lot.

1.24 "Office of County Recorder" or "County Recorder" shall mean the Office of the County Recorder of Davis County, Utah.

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

1.26 "Period of Declarant's Control" shall mean the period of time during which the Declarant has the legal right to appoint the directors of the Association.

1.27 "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.

1.28 "Private Street, Road, Cul-de-sac, Way or Drive" shall mean 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.

1.29 "Project" shall mean the Evergreen Farms Phase 3A Subdivision.

1.30 "Property" shall mean all of real property and real property interest comprising the Subdivision.

1.31 "Single Family" shall mean and refer to a "single family" as that term is defined by City ordinance. In the absence of a City ordinance the term shall mean one of the following: (1) a single person, or (2) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (3) 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. A Single Family may include an additional natural person or persons approved in writing by the Board of Directors, such as a caretaker or domestic help.

1.34 "Subdivision" shall mean Evergreen Farms Phase 3A according to the Final Plat.

2. Description, Legal Status, and Residential Nature of the Project. The Final Plat shows the Lot Number of each Lot in Phase 3A of the Project and its location as well as the easements and rights of way of record. 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 six (6) Lots in Phase 3A of the Project, numbered 301-306, inclusive. Lots 343-345 and 347-349 are or will be subject to the Layton Parkway Landscape Buffer. This is a residential subdivision and only single family residences are allowed.

3. Corporate Status of Association. It is intended that the Association have a corporate status, that it is properly registered with the State of Utah, and that its affairs are governed, managed and directed by a Board of Directors. The Board of Directors may unilaterally re-file the articles of incorporation of the Association if its status has been suspended or dissolved, and re-adopt the Bylaws attached hereto as Exhibit "B" by which the Association shall be administered.

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

5. 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.

6. 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. Definition of Established Drainage Pattern. 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. 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.

j. 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.

k. 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.

l. 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.

m. 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.

7. 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.

8. Integrity of Common Design Scheme. Protective covenants are not only worthwhile they are 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, including aesthetic considerations.

9. Minimum 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. No dome, A-frame or modified A-frame Homes are allowed.
- b. The height of any Home shall not exceed two 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 stucco, fiber cement, masonry or stone. No aluminum or vinyl are 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 side or rear yard in excess of six (6) feet. Chain link and wood fencing is NOT allowed. Masonry, vinyl and wrought iron fencing is permitted. The decision of the Declarant or the Board of Directors shall be final, binding and conclusive if there is a dispute as to the following:
  - 1) whether fencing or a fencing material is allowed;
  - 2) the interpretation of any fencing guidelines adopted by the Declarant and/or the Board of Directors;
  - 3) the location, size or configuration of a fence;
  - 4) what constitutes the front, side or rear yards;
  - 5) whether a variance has been granted; and/or

6) any other disputed item or matter.

j. No tin sheds are allowed.

10. 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.

11. 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 six (6) 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, ground cover, planting and flower beds, bushes, shrubs and trees; provided, however, Declarant shall provide the initial buyer of a Lot a certificate for two (2) street trees, which shall be purchased and planted by the buyer in accordance with the Street Tree Plan, marked Exhibit "C", attached hereto and incorporated herein by this reference.

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.

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. In addition, the initial purchaser of a Lot shall maintain and control weeds in accordance with local ordinance requirements prior to completion of his initial landscaping.

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

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. The parties shall comply with the requirements of the Layton City ordinance for streetscape landscaping along Layton Parkway.

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

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

12. 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 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 12 feet. Tin sheds are not allowed. If there is a dispute of any kind whatsoever, including whether a structure is an Accessory Building, the decision of the Declarant shall in all instances be final, conclusive, and binding

13. Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior express written approval of the Board of Directors or any Committee established by the Board of Directors for that purpose. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, geothermal products, wind turbines or other alternate energy resources, shade screens, awnings, window coating or tinting, decorative alterations, and other work that in any way alters the exterior appearance of the Property. The Board of Directors, or Architectural Review Committee established by the Board of Directors for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Board of Directors. Such designations shall be for the purpose of achieving uniformity of appearance and preservation and

enhancement of property values.

13. 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."

14. No Waiver of Future Approvals. The approval of the Declarant 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 Declarant, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

15. Variance. The Declarant 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 Declarant 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.

16. Limitation of Liability. Neither the Declarant 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 Declarant 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.

17. Enforcement of Architectural Guidelines. Any construction, alteration, or other work done in violation of this Declaration shall be considered to be nonconforming. Upon written request from the Declarant 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 Declarant 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.

18. Contractors. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration may be excluded by the Declarant from the Project, subject to the notice and the opportunity to be heard. In the event of sanctions after notice and hearing, neither the Declarant nor its employees, agents, representatives, or consultants shall be held liable to any person for exercising the rights granted by this Section.

19. 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.

20. Slope and Drainage Control. No structure, plant, improvement, or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels. The slope control area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, excepting those improvements for which a public authority or utility company is expressly responsible. It shall be the responsibility of the Owner to see that his or her Lot strictly conforms with the grading and drainage plan established by the Declarant, Davis County, and Layton City.

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. No Mining Uses. No mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including but not limited to oil, gas, minerals, gravel, sand, rock and earth, shall ever be permitted on the Property within the Subdivision. The foregoing

limitation shall not preclude drilling and excavation in connection with the construction of roads, utility lines and other Permitted Improvements.

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. Parking on the street overnight is prohibited. 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; provided, however, insofar as it is reasonably possible, satellite dishes and systems shall be installed at the rear of the Home so as not to be visible from the street.

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 Layton 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. Enclosures, kennels, runs and the leash area must be kept clean and sanitary and must be located not less than fifteen (15) feet from any property line on such Owner's Lot. No pets may be kept in unreasonable numbers, as determined by the sole discretion of the Board, and the Board may establish rules and restrictions from time to time concerning specific breeds or types of animals

which may be kept on any Lot. No boarding of animals for hire shall be allowed within the Subdivision.

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

h. Towers, Satellite Receivers and Antennas: No towers, exposed or outside radio, television or other electronic antennae, with the exception of television receiving antennae, shall be allowed or permitted to remain on any Lot. Satellite receivers, in excess of eighteen (18) inches in diameter, must have an enclosure to screen them from view from any surrounding Lot Owner.

i. Temporary Structures. No structure of a temporary nature or character, including but not limited to any pre-fabricated homes, motor homes, mobile homes, trailers, shack, shed, tent, garage, barn, or other out-building shall be constructed, installed, or used on any Lot at any time as a residence.

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. 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.

l. 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.

m. 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.

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. 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: (1) the physical structures are substantially completed and (2) certificates of permanent occupancy are issued and the Lots are sold or rented, or (3) 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 Meeting of the Association, the Board of Directors shall prepare and deliver to the Owners a proposed Budget which shall:

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

(2) Be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, which

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

(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 by the Owners. 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.

(g) Payment of Assessments and Payoffs.

(1) The time and method of payment shall be determined by the Board of Directors.

(2) The Association may charge a fee for providing Association payoff information needed in connection with the closing of a Lot Owner's financing, refinancing, or sale of the Owner's Lot (the "Payoff Fee"). The Association may not require that the Payoff Fee be paid before closing and the Payoff Fee may not exceed the statutory limit without a change in the statute. 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 Lot 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: (1) the name, telephone number, and address of the person making the request; and (2) the facsimile number or email address for delivery of the payoff information; and (3) 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 (b) signed and dated by an Owner of the Lot for which the payoff information is requested.

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

(i) Personal Obligation of Owners. All Owners (unless expressly excluded) 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) Reassessments. With at least thirty (30) days prior written notice, the Board of Directors may elect to re-assess among all of the Owners any delinquent and unpaid Assessments.

(l) Reserve Analysis and Fund. The Board of Directors shall prepare and update a Reserve Analysis or Study (and present them to the Owners) and fund a Reserve Account in accordance with the requirements of Utah law.

(n) 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 the statutory limit for the issuance of such certificate.

(o) 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.

26. Special Assessments. In addition to the other Assessments authorized herein, the Board of Directors may levy special assessments in any year with the prior written consent of at least a majority of the Lots to cover unanticipated expenses, budget shortfalls, major repairs, deferred maintenance, or fund the reserve account.

27. 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.

28. 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 judicially or non-judicially. 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.

(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 terminate the Owner's right to receive utility services paid as a common expense provided all required statutory notices are delivered.

(o) Assignment of Rents.

1) 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 all required statutory notices are delivered.

29. Insurance. The Association shall adequately insure the Common Area and Facilities and maintain public liability insurance and a fidelity bond, all as required by statute. Each Owner shall adequately insure his Lot and improvements thereon, and maintain adequate liability insurance, all as required by statute.

30. Working Capital Fund. A working capital fund shall be established by the Declarant. Each Lot's share of the working capital fund is \$500.00 and shall be collected from the Buyer and transferred to the Association at the time of closing of the first sale of each Lot by Declarant. The purpose of the working capital fund is to insure that the Board of Directors will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the Project. Sums paid into the working capital fund are not to be considered as advance payments or regular monthly payments of Common Expenses.

31. Reinvestment Fee. The buyer or seller of a lot shall pay to the Association at the time of closing or settlement of the sale of a Lot a Reinvestment Fee in a sum to be determined by the Board of Directors, not to exceed the statutory limit. The Declarant is not required to pay this Fee. This section may not be amended without the express consent of Declarant.

32. 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.

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 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. Remedies.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by the other Owner, or by the Board in its own name. In an action brought to enforce the covenants, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys' fees and costs of litigation.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, or local laws and ordinances pertaining to healthy, safety, abatement of nuisances or other matters. The remedies available under this Declaration are to be construed as being in addition to all other remedies available by law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The delay or failure by anyone to take enforcement action with respect to any violation of this Declaration shall not be construed as a waiver of the covenants contained in this Declaration with respect to such violation or with respect to any other violations.

38. Pre-Litigation Requirements. Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant's contractors, or any other person or entitled involved in the construction of the Units unless and until all of the following requirements have been satisfied.

(a) The Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining

why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "Litigation Budget");

(b) A copy of the opinion letter described in subsection 10.3(a) above has been provided to all Owners, and, after the Owners have had a reasonable period of time to review the opinion letter, the decision to file the subject action has been approved by Owners (excluding Declarant) who collectively hold at least sixty percent (60%) of the total votes in the Association; and

(c) The Association has collected funds from the Owners, by special assessments or otherwise, equal to at least one-half (1/2) of the Litigation Budget as set forth in the opinion letter obtained pursuant to subsection 10.3(a) above.

The purpose of these requirements include the following: (i) to minimize the risks to the Association of pursuing litigation involving claims that lack merit; (ii) to minimize the risks of becoming involved in litigation that is unlikely to be successful or, even if successful, will not result in meaningful recovery sufficient to justify the costs and expenses of litigation; and (iii) to avoid becoming involved in litigation without sufficient support from the members of the Association financially and otherwise.

If any claims or actions falling within the scope of this Section 10.3 are filed without satisfying all of the requirements set forth above such claims/action shall be dismissed without prejudice and shall not be re-filed unless all such requirements have been satisfied. In any action to enforce the requirements of this Section 10.3, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. For purposes of clarity, this Section 10.3 and the requirements set forth herein shall not apply to any actions or legal proceedings filed by the Association to recover payment of any annual assessments, special assessment or other amounts required to be paid by Owners to the Association under this Declaration, nor does this Section 10.3 apply to claims or actions that individual Owners may file relating solely to their own Units. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

39. Amendments. This Declaration may be amended by the Declarant at any time and for any reason without any other approval required. When all of the Lots have been sold, then this Declaration may be amended by the affirmative written approval of two-thirds (2/3) of the Owners and shall be valid immediately upon recording of the document amending the Declaration in the office of the County Recorder of Davis County, Utah; provided, however, so long as the Declarant shall own at least one (1) Lot in the Subdivision, no amendment shall be valid or enforceable without Declarant's express prior written consent.



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

Dated the 21 day of December, 2015.

DECLARANT:  
IVORY DEVELOPMENT, L.L.C.

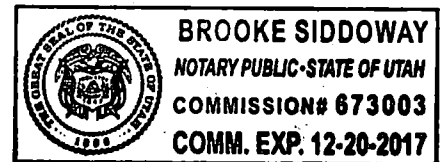
By: *Christopher P. Gamvroulas*  
Name: Christopher P. Gamvroulas  
Title: President

ACKNOWLEDGEMENT

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

The foregoing instrument was acknowledged before me the 21<sup>st</sup> day of December, 2015 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 is located in Davis County, Utah and is described more particularly as follows:

3A 11-787-0301 → 0306

A PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT ON THE EAST LINE OF SAID SOUTHWEST QUARTER BEING LOCATED SOUTH 00°12'53" EAST 285.44 FEET ALONG SAID EAST LINE FROM THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER; RUNNING THENCE ALONG SAID EAST LINE SOUTH 00°12'53" WEST 690.73 FEET; THENCE NORTH 89°47'07" WEST 82.51 FEET; THENCE NORTH 36°57'29" WEST 102.00 FEET; THENCE NORTH 30°09'44" EAST 42.36 FEET; THENCE NORTH 00°12'53" EAST 112.78 FEET; THENCE NORTH 14°17'08" WEST 59.91 FEET; THENCE NORTH 00°12'53" EAST 401.97 FEET; THENCE SOUTH 89°47'07" EAST 138.00 FEET TO THE POINT OF BEGINNING. CONTAINING 91,026 SQ.FT. OR 2.089 ACRES AND 6 LOTS.

3B pt 11-085-0058

PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF THE ROCKY MOUNTAIN POWER PROPERTY 11-085-0003 LOCATED NORTH 89°57'58" EAST 1117.02 FEET ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER AND SOUTH 36°25'35" EAST 979.71 FEET ALONG SAID EASTERLY LINE OF ROCKY MOUNTAIN POWER PROPERTY FROM THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER WHICH IS MARKED BY A DAVIS COUNTY BRASS CAP MONUMENT. RUNNING THENCE: N 53°34'25" E 113.01 FEET THENCE; N 31°20'11" E 62.65 FEET THENCE; N 53°34'25" E 113.00 FEET TO THE WESTERLY BOUNDARY OF EVERGREEN FARMS PHASE 3C THENCE ALONG SAID WESTERLY BOUNDARY THE FOLLOWING (5) FIVE COURSES; (1)S 36°25'35" E 570.97 FEET THENCE; (2)S 29°59'41" E 58.01 FEET THENCE; (3)S 31°03'13" E 30.41 FEET THENCE; (4)S 24°20'40" E 154.65 FEET THENCE; (5)S 0°02'38" E 42.00 FEET THENCE; S 89°57'22" W 270.00 FEET TO THE SOUTHEAST PROPERTY CORNER OF ROCKY MOUNTAIN POWER PROPERTY THENCE; N 36°25'35" W 660.07 FEET ALONG SAID NORTHEAST PROPERTY LINE TO THE POINT OF BEGINNING. CONTAINS 673,143 SQ.FT. 15.45 ACRES.

3C pt 11-085-0058

PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT BEING LOCATED NORTH 89°57'58" EAST 1817.64 FEET ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER AND SOUTH 0°00'00" EAST 471.57 FEET FROM THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER WHICH IS MARKED BY A DAVIS COUNTY BRASS CAP MONUMENT. RUNNING THENCE: N 53°34'25" E 113.00 FEET THENCE; N 71°42'48" E 61.03 FEET THENCE; N 53°34'25" E 113.00 FEET THENCE; S 36°25'35" E 90.00 FEET THENCE; N 43°05'04" E 157.81 FEET THENCE; S 89°47'07" E 105.94 FEET THENCE; N 79°09'37" E 59.10 FEET THENCE; S 89°47'07" E 111.0 FEET THENCE; S 0°12'53" W 421.26 FEET THENCE; S 14°17'08" E 59.91 FEET THENCE; S 0°12'53" W 112.78 FEET THENCE; S 30°09'44" W 42.36 FEET THENCE; S 36°57'29" E 102.00 FEET THENCE; S 89°47'07" E 82.51 FEET TO THE EAST LINE OF SAID SOUTHWEST QUARTER THENCE; S 00°12'53" W 267.00 FEET THENCE; N 00°02'38" W 42.00 FEET THENCE; N 42°20'40" W 154.65 FEET THENCE; N 31°03'13" W 30.41 FEET THENCE; N 29°59'41" W 58.01 FEET THENCE; N 36°25'35" W 731.90 FEET TO THE POINT OF BEGINNING. CONTAINS: 460,359 SQ. FT. 10.57 ACRES.

**EXHIBIT "B"**  
**BYLAWS OF**  
**EVERGREEN FARMS PHASE 3 HOMEOWNERS ASSOCIATION**

**ARTICLE I**  
**NAME AND LOCATION**

**Section 1 .01 Name and Location.** The name of the association is Evergreen Farms Phase 3 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 ¼ 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. 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.

**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.

**Section 3.06 Attendance at Meetings.** Provided it is not disallowed by applicable Utah law, an Owner (or his Proxy) may attend a meeting in person or by other electronic means provided he is able to communicate with the group in real time.

#### **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.

**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 Notice of Meetings.** Written notice of a meeting of the Board of Directors, 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. 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. Notice may be hand-delivered or sent by mail, e-mail, fax or other electronic medium or telecommunication.

**Section 4.08 Voting.** Each Member shall have one vote.

**Section 4.09 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 4.10 Attendance at Meetings.** Provided it is not disallowed by applicable Utah law, a Director (or his Proxy) may attend a meeting in person or by other electronic means provided he is able to communicate with the group in real time.

**Section 4.11 Electronic Communications.** Provided it is not disallowed by applicable Utah law, the Board of Directors may make decisions by e-mail or other electronic means.

**Section 4.12 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 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 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.

**5.04 Online Voting.** Secure online voting with proper software and administration is allowed unless prohibited by Utah law. The procedure may involve the creation of a ballot, notice, information and disclosure statement. It will likely include upload features. The site must be secure and that the matter properly administered. The Board must give notice that the system is established, that online voting is available, and spell out the procedure (e.g. the website name, each owner's unique user name, and so forth). In addition, each Owner must execute a written waiver saying he waives the right to receive an absentee ballot and/or proxy by hand-delivery or U.S. mail.

## 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. Administer and manage the Project;
- b. Maintain the Common Area;
- c. Obtain any and all utility services needed for the Common Areas and Facilities;
- d. Allocate the Common Expenses among all Lots and Owners, and collect Assessments;
- e. Enforce the Project Documents; and
- d. Do each and every other thing reasonable and necessary to operate the Common Area and the Association properly.

## **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 Lot Owners at a convenient hour during the regular work week no later than fourteen (14) days after the Lot Owner makes a written request to examine the records.

**ARTICLE X  
AMENDMENTS**

**Section 10.01 Amendment to Bylaws.** These Bylaws may only be (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.

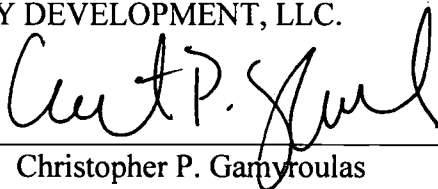
**Section 10.03 Corporate Status.** If the corporate status of the Association is suspended or dissolved for any reason, the Board of Directors may unilaterally reinstate or recreate the corporate status.

**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.

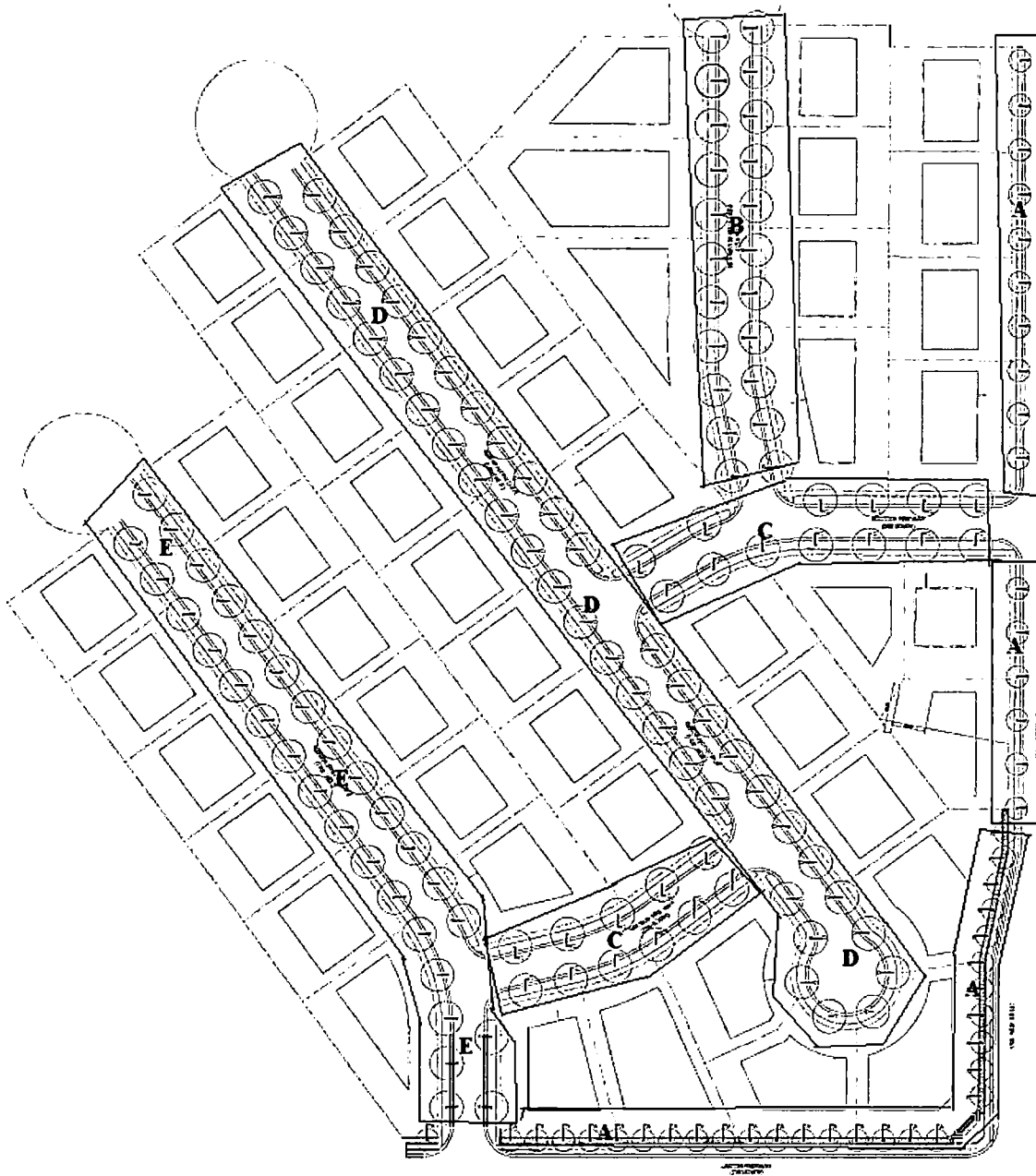
IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 21<sup>st</sup> day of December, 2015.

DECLARANT:  
IVORY DEVELOPMENT, LLC.

By:   
Name: Christopher P. Gamyroulas  
Title: President

**EXHIBIT "C"**  
**STREET TREE PLAN**

1. The initial Buyer of a Lot shall receive a certificate for two (2) street trees which shall be planted by the Buyer in accordance with the following Street Tree Plan (See next page).



**Plant List: Street Trees**

Key	Botanical Name	Common Name	Size
A	Crataegus Phaenopyrum	Washington Thorn	2" cal
B	Celtis Occidentalis	Common Hackberry	2" cal
C	Fraxinus americana	Autumn Purple Ash	2" cal
D	Quercus robur	English Oak	2" cal
E	Tilia Americana	American Linden	2" cal