

DRAFT October 19, 2005  
WHEN RECORDED RETURN TO:  
IVORY NORTH,  
a Utah Partnership  
1544 North Woodland Park Drive  
Suite 300  
Layton, Utah 84041

E 2196530 B 4105 P 413-454  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
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**DECLARATION OF PROTECTIVE COVENANTS  
MOUNTAIN VIEW SUBDIVISION, PHASE 1**  
an expandable planned residential development in Woods Cross, Utah

This Declaration of Protective Covenants for the Mountain View Subdivision, Phase 1, an expandable planned residential development in Woods Cross, Utah, is made and executed by IVORY NORTH, a Utah Partnership, of 1544 North Woodland Park Drive, Suite 300, Woods Cross, Utah 84041 (hereinafter referred to as the "Declarant").

**RECITALS**

A. This Declaration of Protective Covenants for Mountain View Subdivision, Phase 1, an expandable planned residential development in Woods, Cross, Utah, affects that certain real property located in the City of Woods Cross, County of Davis, State of Utah described with particularity in Article II set forth below (the "Tract").

B. Declarant is the owner of the Tract.

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

D. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to create a single family residential subdivision in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.

E. Declarant has constructed, or is in the process of constructing, a single family residential subdivision upon the Tract.

F. There is a unique landscape easement which requires or will require common care, management, and control.

G. All of such construction has been, or is to be, performed in accordance with the plans contained in the Final Plat to be recorded concurrently herewith and the Development Agreement with the City of Woods Cross.

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H. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the subdivision subject to the Final Plat, this Declaration and the Development Agreement.

I. The Declarant desires that the subdivision be known as "Mountain View."

J. The streets in the subdivision shall be dedicated to Woods Cross City.

K. The Declarant desires that the Tract shall be subject to the protective covenants herein recited.

L. The Declarant desires, by filing this Declaration of Protective Covenants, to submit the Mountain View Subdivision, Phase 1, an expandable planned residential development in Woods Cross, Utah, 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.

## AGREEMENT

NOW, THEREFORE, the Declarant does hereby establish the nature of the use and enjoyment of all Lots in this single family residential subdivision and does hereby declare that the conveyances of said Lots shall be made subject to the following conditions, restrictions, stipulations, and provisions:

### ARTICLE I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1. Accessory Building shall mean and refer to any structure which is not the preliminary structure, containing at least 120 square feet, and requires a building permit, and shall not include any shed, shack or other out-building for which a building permit is not required.

2. Architectural Review Committee or ARC is the person or committee appointed by the Declarant to interpret and enforce the Home Plans.

3. Assessment shall mean and refer the allocation of Common Expenses among the Owners or maintenance charge which each Lot or Owner, by virtue of his acceptance of a deed or other document of conveyance thereto, is obligated to pay.

4. Association shall mean and refer to the association of all of the Owners taken as, or acting as, a group in accordance with this Declaration.

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5. Board of Trustees shall mean and refer to the group of neighbors who own Lots in the Subdivision and volunteer and are elected or appointed to (a) administer the Declaration, (b) manage the Common Elements, and (c) operate the Association.

6. Business and Trade are terms which shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this subsection.

7. City shall mean and refer to the City of Woods Cross, Utah.

8. Club Ivory shall mean and refer to the Swimming Pool, Clubhouse and related recreational amenities constructed by the Declarant during phase 1 for the exclusive use of the Owners.

9. Common Elements shall mean and refer to all common features and elements in the Project, including by way of illustration but not limitation Common Area Parcel A, Common Area Parcel B including Club Ivory, Landscaped Easements, Landscaped Roundabout, Street Lights, Entry Monument, sidewalks, walkways, perimeter fencing, and other common improvements of a less significant nature.

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 Elements; (c) Expenses agreed upon as "common expenses" by the Association; and (d) Expenses declared "common expenses" by the Project Documents.

11. Declaration shall mean and refer to this Declaration of Protective Covenants for Mountain View Subdivision, Phase 1.

12. Entry Monument shall mean and refer to the entry monument at the entrance to Mountain View.

13. Final Plat shall mean and refer to the Final Plat or maps of this subdivision on file with the Davis County Recorder. The Map will show the location of the Lots, Landscape Easement, Entry Monument, and other Common Elements.

14. Home Plans shall mean and refer to the design guidelines, architectural design, development, landscaping, and other guidelines, standards, controls, and procedures, including but not limited to, application and plan review procedures, adopted

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pursuant hereto and applicable to the Project. All homes constructed within the Project or on the Property shall be restricted to those home plans shown in that certain annual catalog used by Declarant entitled "Ivory Homes Catalog of Homes 2005," a current copy of which is attached to the Developmental Plan with the City and incorporated herein by this reference, as it may be updated annually, subject to the prior review and approval of the City.

15. Landscape Easement shall mean and refer to Parcel "B," which is intended to be Club Ivory and a landscaped park, Parcel "A" a forty foot (40') buffer zone located on Redwood Road, and other landscaped Common Area, as shown on the Final Plat, descriptions of which are incorporated herein by this reference.

16. Lot shall mean and refer to a portion of the Property, other than the Common Elements, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plats or Surveys filed with this Declaration. Where the context indicates or requires, the term Lot includes any structure constructed or located on the Lot.

17. Majority shall mean and refer to those eligible persons or votes of Owners or other groups as the context may indicate totaling more than fifty (50.0%) percent of the total eligible number.

18. Map shall mean and refer to the Final Plat.

19. Member shall mean and refer to each Owner who, by virtue of his acceptance of a deed or other document of conveyance to a Lot, is a member of the Association, unless the context clearly requires otherwise.

20. Open Space shall mean and refer to the definition of "open space" adopted by the City by applicable ordinance. In the absence of such a definition, the term "open space" shall mean land on which improvements and activities shall be permitted and prohibited as designated in subsections (a) and (b) respectively.

a. Permitted. The following improvements and activities shall be permitted unimproved land, landscaping, green space, and open space.

b. Prohibited. The following improvements and activities shall be prohibited: temporary or permanent buildings or building-type structures or any kind, impervious surfaces other than those used only for maintenance of the Common Areas and Facilities, noxious or offensive activities of any kind, any activity which is or which may become a nuisance, and dumping or storage of refuse, garbage or other waste.

21. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Davis County, Utah) of a fee or an undivided fee

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interest in a Lot. The term Owner does not mean or include 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.

22. Plat shall mean and refer to the Final Plat.
23. Project shall mean and refer to the Mountain View subdivision.
24. Project Documents shall mean and refer jointly and severally to this Declaration, By-Laws, Final Plat, Rules and Regulations, and Articles of Incorporation as they may be adopted and/or modified by the Association from time to time.
25. Property shall mean and refer to the Land, real estate, or real property which is submitted to this Declaration.
26. Roundabout shall mean and refer to the roundabout road feature at the intersection of Mountain View Boulevard and 1500 South Street as shown on the Final Plat.
27. Street or Streets shall mean and refer to the streets or roads within Mountain View which are or will be dedicated to Woods Cross City.
28. Street Lights shall mean and refer to the private exterior street lights and light posts installed by the Declarant.
29. Survey Map shall mean and refer to the Final Plat.
30. Tract shall mean and refer to the real property subject to the protective covenants of this Declaration.

## ARTICLE II. SUBMISSION

The Land described with particularity below is hereby made subject to these protective covenants, conditions and restrictions: See Exhibit "A," attached hereto and incorporated herein by this reference;

SUBJECT TO the described easements and rights of way;

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property; and

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-

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governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Maps or otherwise existing; an easement for each and every Common Elements improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such Common Elements improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

ALL OF THE FOREGOING IS ALSO SUBJECT TO:

An easement for public utilities and drainage, telephone and gas for the installation.

The Landscape Easement and Roundabout.

There is hereby created a blanket easement upon, across, over and under the Property, including by way of illustration but not limitation, Club Ivory, the Landscape Easement and Roundabout, for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Property, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property in such a way as to unreasonably encroach upon or limit the use of the Common Elements or any structure thereon. In the initial exercise of easement rights under this section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right, power and authority to grant such easement on said property without conflicting with the terms hereof.

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**ARTICLE III. AREA OF APPLICATION AND EXPANSION OF PROJECT**

1. Initial Lots. This Declaration shall apply to all of the Property and to any other real estate annexed in the manner set forth below. It is intended initially that in Phase 1 there will be sixty-seven (67) Lots, numbered 1-67, inclusive. Declarant reserves the right to change the Lot Numbers to correspond to the Final Plat, as it may be supplemented or amended.

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

3. Right to Expand Application. Without any other additional approval required, the Declarant shall have the exclusive, unilateral, unconditional, and irrevocable right to (a) amend the Declaration and Bylaws, (b) convert the use or modify boundary of a Lot or Lots to accommodate roads, easements, common area or other recreational amenities; and (c) expand the application of this Declaration to other real property by written supplement to this Declaration duly recorded.

4. Grant of Common Elements. The Declarant hereby grants the Common Elements to the Association.

5. Important Notices. Many areas in Woods Cross have ground water problems due to a seasonally high (fluctuating) water table. Approval of the Final Plat does not constitute representation by the City or Declarant that building at any specified elevation will solve ground water problems. Solution of these problems is the sole responsibility of the Permit Applicant and the Owner. All finish floor elevations on buildings constructed shall be at least six inches (6") above the curb, or street, or proposed street level adjacent to the building, except where the Owner provides an independent engineering report that is approved by the City. This Subdivision is located in the Airport Overlay Zone subject to aviation easement.

**ARTICLE IV. RESIDENTIAL AREA COVENANTS**

1. Land Use and Building Type. This is a residential subdivision and all Lots must be used exclusively for residential purposes by a single family, which includes both the architecture and appearance of the buildings and the nature of their use. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family residential dwelling. IVORY HOMES shall be the exclusive builder and shall construct all of the homes on the Lots. Thus, all building plans and specifications must be approved by the Declarant in writing. All exterior elevations, front, side and rear, of all buildings shall be either brick and stucco or rock and stucco. Other construction materials are not allowed on the front exterior elevations. Aluminum or vinyl is not permitted except on the eaves, soffit and fascia.

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2. Architectural Control. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Declarant as to the quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the front building setback line unless similarly approved.

3. Dwelling Cost, Quality and Size. Declarant shall determine the quality, size and cost of each home constructed upon a Lot. The minimum Lot size will be 8,000 square feet with a minimum side yard setback of 8 feet on each side, for a combined distance of sixteen (16') feet between homes, a front yard set back of twenty-five (25') feet, and minimum frontage of seventy (70') feet.

4. Location of Dwelling and Landscaping. The Declarant shall determine the location of a home upon a Lot, which must be within the Buildable Area designated on the Map. All landscaping, including the front, rear and side yards, must be completed within nine (9) months of the issuance of a certificate of occupancy.

5. Streets and Traffic. Streets within the Project shall be developed in accordance with the approved Project Master Plan and the City's General Plan, and shall be subject to City review and approval. Street connections to Redwood Road shall be coordinated with representatives of UDOT and the City, as required by the City. Declarant will stub a street through to the 0.7 acre park located in the southeast corner of the Property in a location acceptable to the City.

6. Entry Monument and Buffer. Declarant will construct an attractive entrance monument at the entry way to the Project to be maintained as part of the Common Area and Facilities by the Association. Declarant will construct a buffer zone acceptable to the City within a forty (40') foot setback area abutting Redwood Road running adjacent to the Project.

7. Trail Location and Maintenance. A trail will be constructed by Declarant through the Project within the A-1 drain right-of-way and in those areas shown on the Project Master Plan approved by the City (the "Project Trail"). The City will maintain the Project Trail once constructed.

8. Parks, Amenities and Open Space. As part of the Common Areas and Facilities, Declarant will construct open space and landscaping within the A-1 drain right-of-way, Club Ivory and three parks at various locations throughout the Project. Declarant in phases 2 and 3 will install at no cost to the City, a gazebo, picnic shelter, tot lot, playground and volleyball area in the 0.7 acre park located in the southeast corner of the Property. The gazebo is to be located in the 0.4 acre park. Declarant will construct



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and install landscaped open space within the power and sewer corridors on the west side of the Project.

9. Temporary Turnaround – Lots 53 and 67. Lots 53 and 67 will have a temporary concrete turn-around which is 22 feet by 27 feet located on the north property line of each lot. These temporary concrete turn-arounds will be eliminated at such time as Mountain View Boulevard becomes a through street.

10. Easement. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat and over the rear ten (10') feet of each Lot. Within these easements, no structure, planting or other material 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 or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

11. Prohibited Activities. No noxious or offensive activity shall be carried on in, on or about any Lot. Nothing shall be done or omitted on a Lot or the Common Elements which may be or may become an annoyance or nuisance to the neighborhood. The following acts or activities shall be deemed to constitute a nuisance:

a. The development of any unclean, unhealthy, unsafe, unsanitary, unsightly, or other condition on, in or about a Lot or the Common Elements, including the Landscape Easement, which creates a nuisance.

b. The storage of any item, property or thing that will cause any Lot or the Common Elements to appear to be in an unsightly, unclean, unhealthy, unsanitary, unsafe or other condition that is or will be noxious to the senses;

c. The storage of any substance, toxin, hazardous waste, pollutant, thing or material in, on or about any Lot or the Common Elements that do or are likely to emit any foul, unpleasant or noxious odors, or that do or are likely to cause any unreasonable amount of noise or other condition that does or is likely to disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, or their guests or invitees, particularly if the local law enforcement agencies must be called to restore order; and

e. The maintenance of any plants, animals, devices or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly,

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unpleasant, or of a nature as may diminish or destroy the enjoyment of the neighborhood by other residents, their guests, visitors or invitees.

f. The drying of clothes or storage of any articles which are unsightly (in the sole opinion of the Declarant and the Association) will be permitted unless in enclosed areas designed for such purposes.

12. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-buildings shall be used on any lot at any time as a residence either temporarily or permanently. No Mobile Homes, pre-fabricated homes, or homes built off the Property are permitted.

13. Signs. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one (1) square foot, one sign of not more than 2' x 2' square feet advertising the property For Sale or For Rent, except signs used by the Declarant to advertise the property during the construction and sales period may be as large as deemed appropriate by the Declarant.

14. Pets, Animals, Livestock and Poultry. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per unit are allowed; provided, however, pets must be properly licensed and registered (if required) with the appropriate governmental agencies, owners may be required to pay a pet deposit to the Board of Trustees, obtain a certificate of registration from the Association, and abide by all local ordinances and pet rules and regulations adopted from time to time. Pets may not create a nuisance. The following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) defecating on any common area when the feces are not immediately cleaned up by the responsible party; (e) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents. Pets in the Common Element area must be in a cage or on a leash and under the control of a responsible person.

15. Garbage Removal. Each Owner shall deposit all garbage, trash, debris and refuse from his Lot into the trash receptacle or receptacles which will be made available by the applicable solid waste collector. Each Owner shall make his trash receptacle available to the solid waste collector for pick up on the designated day each week; however, trash receptacles may not be left in the street for a period in excess of twelve

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(12) hours, and when not placed on the street for pick up trash receptacles shall be located in a place not visible from the street.

16. Unsightly Materials and Objects. No unsightly materials, items, objects or things which impair the aesthetics or value or use or utility of the Project are to be stored on any Lot in view of the general public.

17. Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty five (25') feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

18. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

19. Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope 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 drainage channels. The slope control areas of each lot and all improvements in them shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. No Accessory Building, shed or other structure may be constructed or installed so as to impair in any way the natural drainage flow or swells established by Declarant, nor within 10' of the rear or side Lot lines.

20. Fencing. Only white vinyl fencing is allowed. No other fencing materials are permitted without the express written consent of the Declarant or its successors and assigns. No fence or other similar structure shall be erected in any required front yard of a dwelling to a height in excess of three and one-half (3.5') feet; nor shall any fence or other similar structure be erected in any side or rear yard to a height in excess of six (6') feet. Fencing on corner Lots shall meet the requirements of the ordinances of the City of Woods Cross regarding vision triangle standards for safety visibility.

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21. Construction Materials/Elevations. The elevations and/or exterior surfaces of each home must be constructed entirely of one of the following: Either (a) stucco and rock; or (b) stucco and brick. Aluminum or vinyl is allowed only on the eaves, fascia and soffit.

22. Parking, Storage, Junk, Clotheslines, Open Space and City Ordinances. All motor vehicles driven on or transported into the Project shall be subject to the following restrictions:

a. No damaged (in excess of \$1,000.00) or inoperative motor vehicle or transportation device of any kind shall be placed or remain on any Lot or adjacent street for more than forty-eight (48) hours.

b. No recreational, oversized, or commercial type vehicles and no tractor-trailer trucks shall be parked on the front yard setback of any Lot, or within the side yard building setback on the street side of a corner Lot, or on the residential street except while loading or unloading (no more than forty-eight (48) hours or more than one (1) time during any seven (7) day period), or engaged in transportation.

c. No pads used for the storage of vehicles or other materials either temporarily or permanently shall be constructed or installed, nor shall any trailers, mobile homes, trucks over three (3) quarter ton capacity, boats and watercraft, campers not on a truck bed, motor homes, buses, tractors, commercial, oversized or recreational vehicles, or maintenance and commercial equipment of any kind be parked or stored in the Project unless it is behind the front yard setback and without the side yard building setback on the street side of a corner Lot, and in an enclosed area screened from street and public view (so as not to be visible to the public or other Owners), and in a manner so as not to impair the view or line of sight of another Lot.

d. Sufficient side yard gate access should be planned and provided for in the design of the home, to permit ingress, egress and storage of trailers, oversized, or recreational type vehicles on the side and rear yards.

e. No motor vehicle or any other transportation device of any kind may be parked or stationed in a fire lane or in a red zone, in an unsafe or dangerous manner, or so as to obstruct or block access to any Lot, driveway, street, or other transportation device.

f. No Owner or resident may repair, change the oil or other fluids of, or restore any motor vehicle of any kind in, on or about any Lot or Common Elements, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

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g. The storage or accumulation of junk, trash, manure or other offensive or commercial materials is prohibited.

h. Facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view.

i. Open yard space shall remain unoccupied and unobstructed by buildings, vehicles and/or hard surfaces such as asphalt, cement and packed surface from this time henceforth and forever.

j. Any violations of Woods Cross City ordinances are expressly prohibited.

23. Pools, Spas, Game Courts and Batting Cages. Pools, spas, game courts and batting cages shall be located so as to avoid unreasonably impacting adjacent properties with balls, light or sound. Pool heaters and pumps must be screened from view from the street.

24. Unightly Work, Hobbies and Conditions. The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.

25. Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting or graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

26. Energy Conservation Equipment. Subject to the requirements of U.C.A., Section 17-27-901, no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on a Lot without the prior written consent of the Declarant and/or Association.

27. Business Use. No resident may operate a commercial trade or business in or from his Unit with employees of any kind. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Unit. No commercial trade or business may be conducted in or from a Unit unless (a) the business activity conforms to all home occupation and zoning requirements governing the Project; (b) the operator has a city issued business license; (c) the business activity satisfies the Home Occupation Guidelines adopted by the Management Committee, as they may be modified from time to time; and (d) the resident has obtained the prior written consent of the Management Committee. Notwithstanding the foregoing, neither the leasing of a

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Dwelling nor the operation of a Day Care Center or Pre-School shall be considered a trade or business within the meaning of this subsection.

28. Accessory Buildings. Since Accessory Buildings are considered "conditional uses," each application will be evaluated separately. Any detached Accessory Building must conform in design and construction materials with the primary residential Dwelling. No Accessory Building may be larger than 10' x 15'. The maximum height of an Accessory Building shall be 15 feet, unless the Board of Trustees grants an exception, provided all surrounding neighbors agree in writing, and which in no event may be greater than 18 feet. Construction must be completed within 60 days of the commencement of construction. Tin sheds are not allowed.

29. Insurance. Nothing shall be done or kept in, on or about any Lot or the Common Elements which may result in the cancellation of or increase the premium (over what the Association would have paid but for such activity) for the insurance on the Property.

30. Laws. Nothing shall be done or kept in, on or about any Lot or the Common Elements, or any part thereof, which would be a violation of any statute, rule, law, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

31. Damage or Waste. No damage to or waste of the Common Elements shall be committed by any Owner, his family members, friends, guests, visitors or invitees. Each Owner shall indemnify and hold the Association, Board of Trustees, and other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or his family members, guests, visitors or invitees; provided, however, that any invitee, guest or visitor of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

32. Maintenance. The Lots and Common Elements shall be maintained in a usable, clean, functional, aesthetic, attractive and good condition. The Owners are responsible to maintain their Lots. The Association is responsible to maintain the Common Elements, including without limitation Club Ivory, Landscaping Easement, Roundabout, Street Lighting, and Entry Monument.

33. Landscaping. All Lot landscaping, grading, and drainage shall be completed strictly in accordance with the Landscaping Guidelines adopted by the Declarant or the ARC and so as to comply with and not impair all applicable ordinances and flood control requirements.

(a) All Lot landscaping must be completed within six (6) months of closing. 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,

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appropriate bushes and shrubs, and the planting of trees in accordance with the Street Tree Planting Plan, a copy of which is attached hereto, marked Exhibit "D" and incorporated herein by this reference. The Declarant is responsible for the initial planting of trees. Trees, lawns, shrubs, or other plantings placed on a Lot shall be properly nurtured, maintained and replaced by the Owner. Any weeds or diseased or dead lawn, trees, ground cover, bushes or shrubs shall be removed and replaced. All replacement trees must also satisfy the requirements of the Street Tree Planting Plan. 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.

(b) No concrete, cement or masonry products, pavers, brick, stone, cobblestone, tile, terrazzo, slabs, slate, rocks, pebbles, gravel, permeable pavements and so forth or other artificial or impermeable surfaces (collectively "controlled surfaces") may be installed or constructed as landscaping in the front, side or rear yards of a Lot without the express prior written consent of the ARC. Front, side or rear yards constructed primarily or substantially of controlled surfaces are prohibited.

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

34. Default in Fulfillment of Landscaping Obligation or Unauthorized Structure. If any Owner refuses or remove an unauthorized structure from his Lot or fails to fulfill his landscaping obligations, and fails to cure the default within thirty (30) days after written notice, the Board of Trustees shall have the right, but not the duty, without further notice or warning to remove the unauthorized structure and/or perform the maintenance, without being guilty of a trespass, and the cost thereof shall constitute the Individual Assessment of that Owner.

35. Subsurface Drain System. The Declarant will construct basements in the homes within the Project, it will include a subsurface drainage system which shall keep subsurface waters under control and out of the basements of the homes. Following completion of construction of the subsurface drain system and expiration of any applicable warranty period, the system shall be transferred and dedicated to, and operated and maintained by the City.

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36. Storm Drain System, Slope and Drainage Control. The Declarant shall establish a storm drainage system designed to serve the entire Project (the "Master Storm Drain System"). The A-1 drain right-of-way shall be used as part of the storm drain and detention facilities. No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with the Master Storm Drain System, established controls, 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 to the detention basin. It shall be the responsibility of each Owner to see that the use of his Lot conforms with and continues to conform with any established grading and drainage plan that has previously been designed by the Declarant. No changes to the Established Drainage Pattern on any Lot shall be permitted without the prior written consent of the Declarant or Association. For purposes of this section, the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements in existence at the time a Lot is conveyed to a purchaser by the Declarant, its successor or assign. The cost of all improvements, maintenance, repairs and replacements of that part of the Master Storm Drain System located within the boundaries of any Lot shall be the responsibility of the Owner. The cost of all improvements, maintenance, repairs and replacements of that part of the Master Storm Drain System located in the Common Area shall be the responsibility of the Association. If an Owner fails to properly manage, maintain, repair or replace that part of the Master Storm Drain System on his Lot, then the Association shall have the right, but not the obligation, to maintain, repair or replace the systems and to charge the cost thereby incurred to said Owner. The Association shall not have the authority to change, by vote, alienation, alteration, transfer, sale, or otherwise, the use of the currently existing areas and structures designed to control storm water runoff unless the consent of the appropriate governmental agencies has first been obtained in writing.

37. City Right of Enforcement. The City is hereby made a party to the covenants established by this Declaration for the sole purpose of protecting and preserving the use of the Subsurface Drain System and the Master Storm Drain System, and structures that serve the Project; however, the City shall not be a member of the Association and it shall have no vote in the management, operation or regulations of its affairs although the City is hereby granted a right of enforcement.

38. Access Easement and Right-of-Way. Easements. The Declarant, Association and City are hereby granted easements and rights of way for the purpose of access, ingress and egress, and the installation and maintenance of the Subsurface Drain System and the Master Storm Drain System.

39. Storage of Commercial Equipment. No Lot shall be used or maintained as a storage area for commercial equipment of any kind for use in a trade or business except as permitted by county codes for a residential area and then it should be stored out of the general view.



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40. Subdivision of Lots. No Owner shall at any time be permitted to subdivide or attempt to subdivide his Lot.

41. Decorative Street Lighting. The Declarant will provide decorative street lighting throughout the Project and those utility services not separately metered and billed to the individual Lots by the provider; provided, however, the Declarant may elect to provide power to the decorative street lighting from an individual Lot or Lots, in which case the Owner shall be entitled to a monthly credit in an amount equal to the greater of:

a. \$5.00; or

b. The sum equal to the number of watts in the light bulb, multiplied by the UP&L kilowatt rate, multiplied by 4,000, divided by 1,000, and divided by 12.

42. Secondary Water. Declarant will make arrangements with Weber Basin Water Conservancy District to provide secondary water service to the Project.

#### **ARTICLE V. ARCHITECTURAL REVIEW COMMITTEE**

1. Membership. The Architectural Review Committee shall consist of the Declarant, so long as it shall own any of the Lots in the subdivision. Thereafter the Board of Trustees or its designees shall constitute the ARC. No member of the ARC shall be entitled to any compensation for services provided.

2. Home Requirements. The Declarant intends to use a mix of the plan sizes and choices shown in the 2004 Ivory Homes Catalog of Homes, as it may be amended or supplemented, in selecting the homes to be built within the Project. Declarant intends that at least 65% of the two-story homes constructed within the Project or on the Property will contain 2,000 or more finished square feet excluding basements, carports, garages and porches. Declarant intends that at least 65% of the single story homes, including ramblers, constructed within the Project or on the Property will contain 1,900 or more finished square feet excluding basements, carports, garages and porches. The design elements for the homes will be consistent with the design elements reflected in the Ivory Homes Catalog of Homes.

3. Architectural Issues. Since aesthetics, the harmony of design, and quality of construction and materials throughout the Project are important, all architectural designs, plans, specifications and construction must be (a) reviewed and approved in writing by the ARC, subject to the right of the Management Committee to review the ARC's decision, and (b) consistent with the (i) restrictions set forth herein governing the Project and (ii) Home Plans.

4. Procedures for Approval of Plans and Specifications. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and

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location of all proposed structural alterations and improvements shall be submitted to the ARC for review and approval (or disapproval). In reviewing each submission, the ARC may consider the design, harmony of external design with existing structures, business utility, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Decisions of the Management Committee 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. In the event that the ARC fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be considered approved. Any ARC decision disapproving design, plans or specifications may be appealed, in whole or in part, to the Management Committee.

5. 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. 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.

6. Limitation of Liability. Neither the Association, ARC, Management Committee, Declarant, nor any of their employees, agents, representatives or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the Declarant, Association, ARC and Management Committee, and their agents, representatives, members and employees, harmless from any and all loss, damage or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, costs, awards or judgments arising out of their review or approval of architectural designs, plans and specifications.

7. Enforcement. Any construction, alteration, or other work done in violation of this Declaration shall be deemed to be nonconforming. Upon written request from the Declarant, Association, ARC or Management Committee, any such Owner shall, at his own cost and expense, remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Declarant, Association, ARC or Management Committee, or their designee, 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. All

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costs incurred, shall be paid by Owner within thirty (30) days of billing. Default interest shall accrue on delinquent accounts at the fixed rate of 1.5% per month, and shall be treated for all purposes as an Additional Charge or Assessment.

#### ARTICLE VI. RIGHT OF ENTRY

1. Right of Entry. Wherever sanitary sewer connections, water connections, electricity, gas, telephone or drainage facilities are installed within the subject property, the owners of any Lot or Lots served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below. Any premises so entered shall be restored by those entering to as near its original condition as is reasonably possible. Nothing in this section can be construed to grant any new easement without the express written authorization of the Owner.

#### ARTICLE VII. OWNERSHIP, OPERATION AND MANAGEMENT

1. Ownership - Association of Owners. The Owners shall comprise the Association. The Association is created for the maintenance of the Common Elements and enforcement of these protective covenants. Membership in the association is appurtenant to and runs with each Lot. All Common Expenses shall be shared and allocated equally among the Lots and Owners. Each Lot shall be considered to hold one (1) share for all purposes.

2. Maintenance Costs. The cost of maintenance of the Common Elements shall be shared equally between all Owners.

3. By-laws of Property Owners Association. The procedure for the administration and management of the Association and the subject property shall be governed by the following By-Laws attached hereto as Exhibit "B" and incorporated herein by this reference.

4. Payment of Common Expenses. In addition, each Owner hereby agrees to pay to the Board of Trustees promptly his portion of all Common Expenses, including but not limited to the cost of maintaining, repairing and replacing the Landscape Easement, Entry Way and private street lighting, the operation of all machinery and equipment related thereto, the cost of the power and electricity to operate the private street lighting, and all other related expenses, debts, obligations, and liabilities incurred by the Association hereunder.

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a. Purpose of Assessments. 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.

b. Budget. Before the Annual Meeting of the Association each year, the Board of Trustees shall prepare a budget which shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following September 1. The budget shall be based upon advance estimates of cash requirements by the Board of Trustees to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements, which estimates shall include but are not limited to expenses of management, grounds maintenance and repair of the entry way and the street lights, premiums for all insurance which the Board of Trustees is required or permitted to maintain, wages for 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 said Association for the benefit of the Owners under and by reason of this Declaration.

c. 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 Members of the Association. Notwithstanding the foregoing, however, if the Membership disapproves the proposed budget and Assessments or the Board of Trustees fails for any reason to establish the budget and Common Elements 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 Common Elements Assessments in affect for the then current year shall continue for the succeeding year.

d. Method of Payment. The Board of Trustees has the sole authority and discretion to determine how and when the Assessments are to be paid.

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

5. Personal Obligation of Owner. Owners are jointly and severally liable to pay all Assessments and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust, who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.

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6. Declarant's Rights. Declarant is not obligated to pay for any Common Expenses on any Lots it may own until the following events have occurred: (a) a home has been constructed on the Lot, (b) a permanent certificate of occupancy has been issued, and (c) the home has been sold or rented.

7. 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 otherwise entitled under Utah law, and to that extent the Owner, by accepting a deed to the Lot or as a party to any other type of conveyance, waives his right to claim the priority thereof.

8. Individual Assessments. In addition, individual assessments may be levied by the Board of Trustees against a Lot and its Owner to pay or reimburse the Association for: (a) fines (after notice of the violation and an opportunity to be heard before the fine becomes final) levied and costs incurred in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Elements for which the Owner is responsible; (c) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents; and (d) attorneys fees, interest, and other charges relating thereto as provided in this Declaration.

9. Lien. If any Unit Owner fails or refuses to make any payment of his portion of the Common Expenses when due, in whole or in part, that amount constitutes a lien on the interest of the Owner in the property, and upon the recording of a notice of 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 Unit in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the unit owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

10. Late Fees and Default Interest. Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of Twenty Five and No/100th Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of One and one-half percent (1.5%) per month shall accrue on the outstanding balance of all delinquent accounts.

11. Remedies. If any Assessments remain unpaid, the Board of Trustees, may elect to institute a lawsuit to obtain a judgment or foreclose the lien, or both.

12. Duty to Pay Independent. The duty to pay Assessments is independent of the duty of the Association to maintain the Common Elements.

13. Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board of Trustees. The sale or foreclosure shall be conducted in the same manner as

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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 Assessments, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Board of Trustees 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 Association may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same. If the Board of Trustees 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 or otherwise accepting conveyance of an interest in the Property, hereby irrevocably appoints the attorney of the Association (provided 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.

14. Indemnity. The Association and each Owner, by acceptance of a deed to a Lot or other document of conveyance, agrees to and shall indemnify every officer of the Association and Member of the Board of Trustees against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then said Board of Directors) to which he may be a party by reason of being or having been an officer of the Association or Member of the said Board. The officers and Members of Board of Trustees shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers of the Association and Members of said Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of said Association (except to the extent that such officers or Members of said Board may also be Members of said Association), and said Association shall indemnify and forever hold each such officer and Member of the said Board of Trustees free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or Member of the said Board, or former officer or Member of the said Board, may be entitled.

#### ARTICLE VIII. INSURANCE

1. Insurance. The Association shall if reasonably available purchase and maintain adequate property insurance, public liability insurance, directors and officers insurance, and a fidelity bond.

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2. Deductible. The deductible on a claim made against the property insurance policy of the Association shall be paid for by the party responsible for the loss covered by the claim. If multiple parties are responsible then each shall pay his proportionate share and if no party or parties are clearly responsible, then the deductible shall be paid by said Association.

3. Individual Insurance. Each Owner and Resident shall purchase and maintain adequate liability and property insurance on his Lot, Dwelling Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association.

4. Priority of Coverage. In the event of duplicate coverage of a claim or loss, the Owner's insurance shall be primary and the insurance of the Association shall be secondary.

#### **ARTICLE IX. DURATION, MANAGEMENT, ENFORCEMENT AND AMENDMENT**

1. Duration of Restrictions. These covenants are to run with the Land and shall be binding upon all Owners and all persons claiming any right, title or interest in or to the Property by, through or under them for a period of forty (40) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by at least a majority of the then Owners has been recorded, agreeing to change said covenants in whole or in part.

2. Management. The Association shall be managed by a professional manager or a professional management company, and may not be self-managed without the prior written unanimous consent of all Owners.

2. Enforcement. A Owner or the Board of Trustees, shall be entitled to prosecute any proceeding, at law or equity, against any person, firm, entity, partnership, limited liability company, corporation or party violating, attempting or threatening to violate any of the terms, covenants, conditions and restrictions contained herein or interfere with the administration of the Project, and shall be entitled to recover from the defaulting party all reasonable attorney's fees and costs incurred thereby, regardless of whether a lawsuit is filed. Failure by the Board of Trustees or any Owner to enforce any of said covenants or restrictions shall in no event be deemed a waiver of the right to do so thereafter.

#### **ARTICLE X FINES**

1. Fines. Each Owner and Resident is responsible for adhering to the Project Documents governing the Project. A breach of these restrictive covenants and rules is subject to enforcement pursuant to the Amended and Restated and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his or her residents, tenants

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and/or guests. Fines levied against residents, tenants, and guests are the responsibility of the Owner. The Management Committee shall react to each material violation in the following manner:

a. Appeal. Fines imposed are final unless appealed in writing to the Management Committee within thirty (30) days of written notification of the violation. If a request for a hearing is not submitted to the Management Committee within thirty (30) days, the right to a hearing is waived, and the fine imposed will stand. A request for a hearing to appeal should be sent in writing to the Manager or Secretary of the Association.

b. Notice. Before assessing a fine under Subsection (a), the Management Committee shall give notice to the homeowner of the violation and inform the owner that the fine will be imposed if the violation is not cured within the time provided in the Amended and Restated, bylaws, or rules, which shall be at least forty-eight (48) hours.

c. Basis for Fine and Amounts. A fine assessed under Subsection (a) shall:

(1) be made only for a violation of a restrictive covenant, rule or regulation;

(2) be in the amount specifically provided for in the Amended and Restated, bylaws, or association rules for that specific type of violation, not to exceed \$500.00; and

(3) accrue interest and late fees as provided herein.

d. Cumulative Fines. Cumulative fines for a continuing violation may not exceed \$500.00 per month.

e. Review. An Owner who is assessed a fine under Subsection (a) may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with standards of due process adopted by the Management Committee. No finance charge, default interest, or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

f. Appeal. An Owner may appeal a fine issued under Subsection (a) by initiating a civil action within one hundred and eighty (180) days after: (1) A hearing has been held and a final decision has been rendered by the management committee under Subsection (e); or (2) The time to request an informal hearing under Subsection (e) has expired without Owner making such a request.

g. Lien. A fine assessed under Subsection (a) which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in



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accordance with the same standards as a lien for the nonpayment of common expenses under Section 26(c) above.

**ARTICLE XI  
TERMINATION OF UTILITIES AND RIGHT TO USE AMENITIES FOR NON-  
PAYMENT OF ASSESSMENTS.**

1. Termination. If an owner fails or refuses to pay any assessment when due, the management committee may (1) terminate the owner's right to receive utility services paid as a common expense; and (2) terminate the owner's right of access and use of recreational facilities., after giving notice and an opportunity to be heard.

2. Notice. Before terminating utility services or right of access and use of recreational facilities, the manager or management committee shall give written notice to the owner in the manner provided in the Amended and Restated, bylaws, or association rules. The notice shall state:

a. 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 Amended and Restated, bylaws, or association rules, which time shall be stated and be at least 48 hours;

b. the amount of the assessment due, including any interest or late payment fee; and

c. the right to request a hearing.

3. Review. An owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the management committee within 14 days from the date the notice is received. A notice shall be considered received on the date (1) it is hand delivered, (2) it is delivered by certified mail, return receipt requested, or (3) 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

4. Procedures. The hearing shall be conducted in accordance with the standards provided in the Amended and Restated, bylaws, or association rules.

5. Stay. 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.

6. Reinstatement. Upon payment of the assessment due, including any interest or late payment fee, the Manager or Management Committee shall immediately take action to reinstate the terminated utility services to the unit and right to use of recreational facilities.

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**ARTICLE XII  
ASSIGNMENT OF RENTS.**

1. Right to Rents. If the owner of a unit who is leasing the unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the management committee may demand the tenant to pay to the association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid; provided, however, the manager or management committee must give the owner written notice, in accordance with the Amended and Restated, 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 Amended and Restated, 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.

2. Notice. If the owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or management committee may deliver written notice to the tenant, in accordance with the Amended and Restated, bylaws, or association rules, that demands future payments due to the owner be paid to the association pursuant hereto. A copy of the notice must be mailed to the owner at his last known address as shown on the books and records of the 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 management committee's 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.

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3. Deposits. 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.

4. Termination of Rent Collections; Notice. Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or management committee 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.

5. Definition. As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a unit by any person or persons, other than the owner, for which the owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

### **ARTICLE XIII TRANSFER OF MANAGEMENT AND CONTROL**

Declarant may at any time relinquish its reserved right to select the Members of the Management Committee and may elect to transfer the management of the Association to a Management Committee elected by the Owners. To do so Declarant shall notify the Owners in writing of the effective date of such transfer (the "Transfer Date"). Notice shall be given at least thirty (30) days prior thereto. Declarant shall schedule a meeting for the Owners to elect the Members of the Management Committee. The newly elected members shall take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management, including by way of illustration but not limitation, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds and the books and records of the Association to the newly elected Management Committee.

### **ARTICLE XIV DECLARANT'S SALES PROGRAM**

1. Declarant's Sales Program. No one shall interfere or attempt to interfere with the completion of improvements and sale of Declarant's Lots.

2. Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

a) Sales Office and Model Units. 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 Lots owned by the Declarant, one

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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;

b) Promotional. 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.

c) Common Area Use. Declarant shall have the right to use all of the Common Areas and Facilities in any way necessary to facilitate sales.

d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or other promotional devices. Declarant shall have the right to remove from the Project any signs, banners or other promotional devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

e) Declarant may but is not required to establish an annual budget for the Association and distribute it to the Owners during its period of control.

3. Limitation on Improvements by Association. No one shall, without the written consent of Declarant, make any improvement to or alteration in or to any of the Common Areas and Facilities created or constructed by Declarant.

4. Declarant's Rights Assignable. 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.

#### **ARTICLE XV. EXPANSION**

1. Expansion of the Project. This is an expandable Project.

(a) Application and Reservation of Option to Expand. This Declaration shall apply to all of the Property. Without any other additional approval required, the Declarant hereby reserves and shall have the exclusive, unilateral, unconditional, and irrevocable right to, so long as all of the density and other requirements imposed by the City are satisfied (1) convert the use of a Lot or Lots, (2) convert the use of Common Area and (3) expand the application of this Declaration to other real property by written supplements to this Declaration duly recorded (the "Annexed Land"). This option to expand may be exercised from time to time, at different times and in any order, without

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limitation, and such right may be exercised without first obtaining the consent or vote of Owners or Mortgagees.

(b) Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Davis County, Utah, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots, together with supplemental Map or Maps containing the same information with respect to the new Lots as was required on the Map with respect to the Lots in Phase 1. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

(c) Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Annexed Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the Project, as expanded, with additional references to the original and supplemental declarations and the maps. The recordation in the office of the Davis County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners in the Project as it existed before such expansion the respective undivided interests in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lot in the Project as it existed, a security interest in the Common Areas of the Project, as expanded.

(d) Declaration Operative on New Lots. The new Lots shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Lots therein shall be subject to common ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said office of the Davis County Recorder.

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

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supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

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

(1) All or any part of the Annexed Land may be added to the Project without any limitations whatsoever save and except that all additional Lots designated on the Map for the development of Homes in a residential area must be restricted to multi family residential housing limited to one family per Dwelling Unit.

(2) Portions of the Annexed Land may be added to the Project at different times without any limitations.

(3) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the easement areas as shown on the Map. The Association of Unit Owners shall not allow anything to be built upon or interfere with said easement areas.

(4) No assurances are made concerning:

(a) The locations of any improvement that may be made on any portion of the Annexed Land that may be added to the Project.

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

(c) Whether any Lots, homes or amenities created on any portion of the Annexed Land will be substantially identical to those within the initial Project, except that they will be constructed of an equal or better quality of materials and construction than the Lots and homes in Phase I.

(d) Type, size, or maximum number of limited common areas as private yard areas which may be created within any portion of the Annexed Land added to the Project.

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

## ARTICLE XVI. MISCELLANEOUS

1. Snow Removal and Indemnification of Woods Cross City. The Association agrees to and hereby undertakes to save, indemnify and hold the City of Woods Cross harmless from any and all liability, loss or damage the Association may suffer as a result of claims, demands, costs or judgments against it arising out of, caused by or related to snow removal.

2. Agent for Service of Process. The initial agent to receive service of process is Gary M. Wright of 1544 North Woodland Park Drive, Woods Cross, Utah 84041, which is also the initial office of the registered agent. After transition, the President of an Association is the person to receive service of process and the office of the registered agent is the street address of the President of the Association.

3. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall only continue until twenty-one (21) years after the death of all lives in being on the date this instrument is recorded, at which time they shall automatically terminate or be terminated.

4. Binding Effect of Covenants. All Owners shall, at all times, obey all such rules, covenants, conditions and restrictions, and see that the same are faithfully observed by those persons over whom they have or exercise control and supervision. It is understood and agreed that such rules, covenants, conditions and restrictions shall run with the land, and shall inure to the benefit of and be binding upon all Owners and their heirs, successors and assigns.

5. Severability. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the above provisions which shall remain in full force and effect.

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6. Effective Date. This Declaration of Protective Covenants shall become effective the date it is recorded in the Office of the County Recorder of Davis County, Utah.



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IN WITNESS WHEREOF, the undersigned have executed these covenants and restrictions the 24 day of April, 2005.

IVORY NORTH,  
a Utah partnership

By: *Gary M. Wright*  
Name: Gary M. Wright  
Title: General Partner

STATE OF UTAH            )  
  )ss:  
COUNTY OF DAVIS        )

On the 24 day of April, 2005, personally appeared before me Gary M. Wright, who by me being duly sworn, did say that she is the General Partner of IVORY NORTH, a Utah partnership, and that the within and foregoing instrument was signed in behalf of said partnership by authority of its Partnership Agreement, and said Gary M. Wright, duly acknowledged to me that said Partnership executed the same.

*Cortlund G. Ashton*



NOTARY PUBLIC  
Residing At: SALT LAKE, UT  
My Commission Expires: 8/25/07

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EXHIBIT "A"

The Land described in the foregoing document is located in DAVIS COUNTY, UTAH and is described more particularly as follows:

LEGAL DESCRIPTION

BEGINNING AT A POINT WHICH IS N0°12'36"W, 1332.93 FEET AND N89°56'02"W, 41.00 FEET FROM THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE S0°15'30"W, 486.96 FEET; THENCE S3°29'30"E, 155.24 FEET; THENCE WEST, 184.94 FEET; THENCE SOUTH, 320.32 FEET; THENCE N89°48'31"W, 575.26 FEET; THENCE S88°20'00"W, 95.00 FEET; THENCE N1°40'00"W, 282.28 FEET; THENCE N89°34'02"W, 114.68 FEET; THENCE N67°21'47"W, 131.91 FEET; THENCE N45°21'04"W, 68.83 FEET; THENCE N60°30'43"W, 128.03 FEET; THENCE N28°09'03"E, 120.53 FEET; THENCE N21°30'27"E, 147.86 FEET; THENCE N2°57'54"E, 99.16 FEET; THENCE N0°01'07"W, 100.70 FEET; THENCE N19°39'14"W, 59.46 FEET; THENCE NORTH, 80.00 FEET; THENCE N5°19'20"W, 140.61 FEET; THENCE EAST, 390.76 FEET; THENCE S0°12'36"E, 200.80 FEET; THENCE S89°56'02"E, 778.33 FEET TO THE POINT OF BEGINNING.

CONTAINS: 23.9882 ACRES - 67 LOTS

06-079-0033 + 06-079-0030

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**EXHIBIT "B"**  
**BY-LAWS**

The administration of Mountain View (the "property") and the Mountain View Homeowners Association, Inc. (the "Association") shall be governed by these Bylaws.

1. Application of Bylaws.

All present and future unit owners, mortgagees, lessees and occupants of units and their employees, and any other persons who may use the facilities of the property in any manner are subject to the Declaration, these Bylaws and all rules made pursuant hereto and any amendment thereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a unit shall constitute an agreement that the provisions of the Declaration and these Bylaws (and any rules and regulations made pursuant thereto), as they may be amended from time to time, are accepted, ratified and will be complied with.

2. Board of Trustees.

a). The administration of the property on behalf of the Association shall be conducted by a Board of Trustees of three (3) to nine (9) natural individuals.

b). Until all of the Lots in the subdivision have been sold, the Declarant shall appoint all of the members of the Board of Trustees. At each annual meeting of the Association thereafter, the unit owners shall elect the members of the Board of Trustees for the forthcoming year. At least thirty (30) days prior to any annual meeting of the Association, the Board of Trustees shall elect from the unit owners a nominating committee of not less than three (3) members (none of whom shall be members of the then Board of Trustees) who shall recommend to owners present at the annual meeting one nominee for each position on the Board of Trustees to be filled at that particular annual meeting. Nominations for positions on the Board of Trustees may also be made by petition filed with the secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by ten (10) or more unit owners and signed by the nominee named therein indicating his willingness to serve as a member of the Board of Trustees, if elected. Members of the Board of Trustees shall be required to be unit owners, and must be natural individuals and residents of the State of Utah.

c). Members of the Board of Trustees shall serve for a term of two (2) years. The terms of no more than three (3) members will end each year. The members of the Board of Trustees shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the Board of Trustees who fails to attend three (3) consecutive Board of Trustees meetings or fails to attend at least 25% of the

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Board of Trustees meetings held during any calendar year shall forfeit his membership on the Board of Trustees.

d). Any member of the Board of Trustees may resign at any time by giving written notice to the president of the Association, or the remaining Board of Trustees members. Any member of the Board of Trustees may be removed from membership on the Board of Trustees by a two-thirds majority vote of the Association. Whenever there shall occur a vacancy on the Board of Trustees due to death, resignation, removal or any other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the Association, at which time said vacancy shall be filled by the Association for the unexpired term, if any.

e). The members of the Board of Trustees shall receive no compensation for their services unless expressly approved by a majority of the Association; provided, however, that any member of the Board of Trustees may be employed by the Association in another capacity and receive compensation for such employment.

f). The Board of Trustees, for the benefit of the property and the Association, shall manage the business, property and affairs of the property and the Association and enforce the provisions of the Declaration, these Bylaws, the house rules and the administrative rules and regulations governing the property. The Board of Trustees shall have the powers, duties and responsibilities with respect to the property as contained in the act, the Declaration and these Bylaws.

g). The meetings of the Board of Trustees shall be held at such places within the State of Utah as the Board of Trustees shall determine. A majority of the members of the Board of Trustees shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board of Trustees. The Board of Trustees shall annually elect all of the officers of the Association. The meeting for the election of officers shall be held at the first meeting of the Board of Trustees immediately following the annual meeting of the Association.

h). Special meetings of the Board of Trustees may be called by the president or by any two (2) Board of Trustees members.

i). Regular meetings of the Board of Trustees may be held without call or notice. The person or persons calling a special meeting of the Board of Trustees shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

j). Any member of the Board of Trustees may, at any time, waive notice of any meeting of the Board of Trustees in writing, and such waiver shall be deemed

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equivalent to the giving of such notice. Attendance by a member of the Board of Trustees at a meeting shall constitute a waiver of notice of such meeting except if a Board of Trustees member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Board of Trustees are present at any meeting of the Board of Trustees, no notice shall be required and any business may be transacted at such meeting.

k). The fiscal year shall be determined by the Board of Trustees.

l). Because service on the Board of Trustees is voluntary and in the interest of being sensitive to time and commitments, it is proposed that the Committee may hold meetings via telephone, so long as all members have no difficulty hearing each other. Members of the Board of Trustees or any subcommittee designated by the Board of Trustees may participate in a meeting of the Board of Trustees or subcommittee by means of conference telephone or other similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant hereto shall constitute presence in person at such meeting.

m). All Board of Trustees meetings shall be open to all voting members, but attendees other than members of the Board of Trustees may not participate in any discussion or deliberation unless a majority of a quorum requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

n). Any action to be taken at the meeting of the Board of Trustees or any action that be taken at a meeting of the Board of Trustees may be taken without a meeting if a consent in writing, setting for the action so taken, shall be signed by all the members of the Board of Trustees. An explanation of the action taken shall be posted at a prominent place or places within the common areas with three (3) days after the written consents of all of the members of the Board of Trustees have been obtained.

o). The Board of Trustees, with approval of a majority of a quorum, adjourn a meeting and reconvene an executive session to discuss and vote upon personnel matters, litigation or threatened litigation in which the Association is or may become involved, and orders of business of a privileged, confidential, sensitive or similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

### 3. Meetings of the Association.

a). The presence in person or by proxy at any meeting of the Association of fifty percent (50%) of the unit owners in response to notice of all unit owners of record properly given shall constitute a quorum. In the event that fifty percent (50%) of the unit owners are not present in person or by proxy, the meeting shall be adjourned for twenty-

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four (24) hours, at which time it shall reconvene and any number of unit owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the Declaration, any action may be taken at any meeting of the unit owners upon a majority vote of the unit owners who are present in person or by proxy and who are voting.

b). Unless otherwise determined by the Board of Trustees, the annual meeting of the Association shall be held on the second Thursday of June at 7:00 p.m. at the property or at such other reasonable date, time and place (not more than sixty (60) days before or after such date) as may be designated by written notice by the Board of Trustees delivered to the unit owners not less than fifteen (15) days prior to the date fixed for said meeting. At or prior to an annual meeting, the Board of Trustees shall furnish to the unit owners: (a) a budget for the coming fiscal year that shall itemize the estimated common expenses of the coming fiscal year with the estimated allocation thereof to each unit owner; and (b) a statement of the common expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each unit owner. Within ten (10) days after the annual meeting, that budget statement shall be delivered to the unit owners who were not present at the annual meeting.

c). Special meetings of the Association may be held at any time at the property or at such other reasonable place to consider matters which, by the terms of the Declaration, require the approval of all or some of the unit owners, or for any other reasonable purpose. Special meetings shall be called by written notice, signed by a majority of the Board of Trustees, or by unit owners representing at least one-third (1/3) in interest of the undivided ownership of the common areas and facilities and delivered to all unit owners not less than fifteen (15) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting, and the matters to be considered.

d). Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with the Declaration or these Bylaws.

#### 4. Officers.

a). All officers and employees of the Association shall serve at the will of the Board of Trustees. The officers shall be a president, secretary and treasurer. The Board of Trustees may appoint such other assistant officers as the Board of Trustees may deem necessary. No officer shall be required to be a unit owner, but the president must be a member of the Board of Trustees. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Board of Trustees and may be removed and replaced by the Board of Trustees.

b). The president shall be the chief executive of the Board of Trustees and shall preside at all meetings of the unit owners and of the Board of Trustees and may exercise the powers ordinarily allocable to the presiding officer of an Association, including the appointment of committees. The president shall exercise general supervision over the property and its affairs. He shall sign on behalf of the Association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the Board of Trustees may require.

c). The secretary shall keep minutes of all proceedings of the Board of Trustees and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the unit owners and the Board of Trustees. In the absence or inability of the president, the secretary shall perform the functions of the president.

d). The treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of funds and the keeping of records to a manager or managing company.

#### 5. Litigation.

a). If any action is brought by one or more but less than all unit owners on behalf of the Association and recovery is had, the plaintiffs expenses, including reasonable counsel's fees, shall be a common expense; provided, however, that if such action is brought against the unit owners or against the Board of Trustees, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the unit owners. The plaintiffs expenses, including counsel fees, shall not be charged to or borne by the other unit owners, as a common expense or otherwise.

b). Complaints brought against the Association, the Board of Trustees or the officers, employees or agents thereof, in their respective capacities as such, or the property as a whole, shall be directed to the Board of Trustees, which shall promptly give written notice thereof to the unit owners and any mortgagees and shall be defended by the Board of Trustees, and the unit owners and mortgagees shall have no right to participate other than through the Board of Trustees in such defense. Complaints against one or more, but less than all unit owners shall be directed to such unit owners, who shall promptly give written notice thereof to the Board of Trustees and to the mortgagees affecting such units, and shall be defended by such unit owners.

6. Abatement and Enjoinment of Violations by Unit Owners. The violation of any house rules or administrative rules or regulations adopted by the Board of Trustees or the breach of any provision contained herein, or the breach of any provision of the Declaration, shall give the Board of Trustees the right, in addition to any other rights set forth in these Bylaws:

a). To enter the unit in which or as to which such violation or breach exists and to similarly abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Trustees shall not thereby be deemed guilty in any manner of trespass; or

b). To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

7. Accounting.

a). The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the treasurer.

b). At the close of each fiscal year, the books and records of the Board of Trustees shall be audited by a certified public accountant approved by the Association.

c). The books and accounts of the Association shall be available for inspection at the office of the Association by any unit owner or his authorized representative during regular business hours.

8. Special Committees.

The Board of Trustees by resolution may designate one or more special committees, each committee to consist of two (2) or more unit owners, which to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Board of Trustees. Such special committees shall keep regular minutes of their proceedings and report the same to the Board of Trustees when required. The members of such special committee or committees designated shall be appointed by the Board of Trustees or the president. The Board of Trustees or the president may appoint unit owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

9. Lease.

The Board of Trustees shall have the authority but not the obligation to enter into a lease agreement with Academia West LLC d/b/a Academia Charter School for up to fifteen (15) parking spaces; provided, however any such lease shall terminate if the building currently occupied by Academia, at approximately 1700 West Hill Field Road, Woods Cross, Utah, ceases to be used in its entirety as a charter school



10. Amendment of Bylaws.

These Bylaws may be amended unilaterally by the Declarant or by a majority affirmative vote of the Association at a meeting duly called for such purposes; provided the changes are approved by the Declarant or its successors and assigns in writing. Upon such an affirmative vote, the Board of Trustees shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote of the unit owners and mortgagees where necessary and the amendment shall be effective upon recording.

10. Severability.

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

11. Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

12. Effective Date.

These Bylaws shall take effect upon recording of the Declaration of which they are a part.

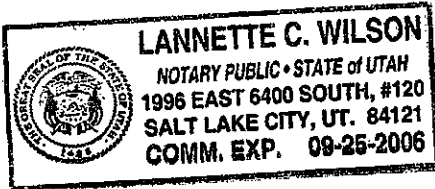
IN WITNESS WHEREOF, the undersigned have executed these covenants and restrictions the 24 day of April, 2005.

IVORY NORTH,  
a Utah partnership

By:   
Name: Gary M. Wright  
Title: General Partner

STATE OF UTAH )  
 )ss:  
COUNTY OF DAVIS )

On the 08 day of ~~April~~ **NOVEMBER**, 2005, personally appeared before me Gary M. Wright, who by me being duly sworn, did say that she is the General Partner of IVORY NORTH, a Utah partnership, and that the within and foregoing instrument was signed in behalf of said partnership by authority of its Partnership Agreement, and said Gary M. Wright, duly acknowledged to me that said Partnership executed the same.



Lannette C. Wilson  
NOTARY PUBLIC  
Residing At: **DRAPER UTAH**  
Commission Expires: **09-25-06**