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**MASTER AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
AND  
RESERVATION OR GRANT OF EASEMENTS  
FOR  
ORCHARD FARMS PLANNED RESIDENTIAL UNIT DEVELOPMENT**

**LOCATED IN DAVIS COUNTY, UTAH**

**AFTER RECORDING PLEASE RETURN TO:**

**Ivory Development, LLC  
Christopher P. Gamvroulas  
978 East Woodoak Lane  
Salt Lake City, Utah 84117  
(801) 747-7440**

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CONDITIONS AND RESTRICTIONS,  
AND  
RESERVATION OR GRANT OF EASEMENTS  
ORCHARD FARMS PLANNED RESIDENTIAL UNIT DEVELOPMENT,**

This Master Amended and Restated Declaration of Covenants, Conditions and Restrictions, and Reservation or Grant of Easements for Orchard Farms Planned Residential Unit Development (the "Master Declaration") is executed by Ivory Development, LLC, of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the "Declarant").

**RECITALS:**

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

B. A prior Master Declaration was filed by Fairview Estates, LLC in Book 5274, at Page 403 (the "Prior Master Declaration").

C. Fairview Estates, LLC has conveyed all the real property and improvements comprising the project and assigned all rights as the Developer to Declarant pursuant to instrument filed in Book ~~6495~~ at Page 1025 with the Office of the Davis County Recorder.

D. Declarant desires to file this document in lieu and full replacement of the said Prior Master Declaration.

E. The Property is or will be subject to this master declaration and portions of the Property are or will be subject to a supplemental declaration for each neighborhood.

F. The Property has been or will be subdivided into a project consisting or to consist of a town home neighborhood of attached dwelling units (the "Orchard Farms Town Homes Neighborhood") and a neighborhood of detached single family residences (the "Orchard Farms SFR Neighborhood").

G. The Property has been or will be subdivided into a project consisting or to consist of up to 103 dwelling units and apartments and approximately 13.49 acres of Open Space.

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

I. Declarant desires to provide a general plan for the development of all of the Property and for the establishment of covenants, conditions and restrictions, and reservation of easements to assist the owners in managing the land and protecting the value and attractiveness of this unique residential property and each neighborhood, all in accordance with the provisions of this Declaration.

J. The development of the Property and the construction of the improvements thereon has been or is to be performed in accordance with the Development Agreement for Orchard Farms Planned Residential Development recorded September 17, 2010 as Entry No. 2553489 in Book 5111 at Pages 529-569 of the official records of the Davis County Recorder and the plans contained in the Final Plat recorded or to be recorded concurrently herewith.

K. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Project.

L. The completion of the Project may be in phases. The completed Project will consist of the original phase and all subsequent phases.

M. The Declarant desires, by filing this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Orchard Farms Planned Residential Unit Development to submit Orchard Farms and all improvements now or hereafter constructed thereon to the provisions set forth below, which shall constitute equitable servitudes and shall run with the land.

O. All of the voting requirements have been satisfied.

#### **AGREEMENT:**

NOW, THEREFORE, for the reasons recited above, and in consideration of the reciprocal benefits to be derived from the conditions, covenants, restrictions, easements and requirements set forth below, the parties hereto, and each of them, hereby agree:

#### **ARTICLE I: DEFINITIONS**

As used in this Declaration (including the "Recital" section above) each of the following terms shall have the indicated meaning:

1.1 The term **Apartment or Apartment Unit** shall mean and refer to a dwelling unit in the Condominium Neighborhood and/or Town Home Neighborhood.

1.2 The term **Area of Common Responsibility** shall mean and refer to the area which is the responsibility of the Master Association.

1.3 The term **Area of Neighborhood Responsibility** shall mean and refer to the area which is exclusively the responsibility of each individual Neighborhood Association.

1.4 The term **Area of Personal Responsibility** shall mean and refer to the area which is exclusively the responsibility of the individual private Owners.

1.5 The term **Board of Directors** shall mean and refer to the governing board of the Master Association, which shall be comprised of seven (7) members, consisting of one (1) Director from the Orchard Farms Condominium Neighborhood, one (1) Director from the Orchard Farms Town Home Neighborhood, one (1) Director from the Orchard Farms Town Home Neighborhood, and one Director from the Orchard Farms SFR Neighborhood, and four (4) Directors appointed by the Declarant; provided, however, during the Period of Declarant's Control the Declarant shall be entitled to appoint all of the members of the Board of Directors, including the Director from each Neighborhood. Neither the number of members nor the composition of the Board of Directors may be changed without the express prior written consent of the Declarant.

1.6 The term **City** shall mean and refer to City of Fruit Heights located in Davis County, Utah.

1.7 The term **Common Area and Facilities** shall mean and refer to all of the common areas and facilities in the entire Orchard Farms Planned Unit Development (the "Development") or (b) two or more Neighborhoods as shown on the Final Plat. The term Common Area and Facilities includes but is not limited to:

(a) All real property, personal property and fixtures located within the Development designated as "Common Area" in the Master Declaration and the Master Final Plat, which includes or is intended to include but is not limited to the following:

(1) Common access roads leading from the Entry or Entries to the Development to the Orchard Farms Condominium Neighborhood (excluding roads and driving lanes within the Orchard Farms Condominium Neighborhood);

(2) Common landscaping (excluding landscaping within the Orchard Farms Condominium Neighborhood), common utilities (excluding power, gas and water within the Orchard Farms Condominium Neighborhood);

(3) Monuments within the Common Area; and

(4) Common parks (excluding open space within the Orchard Farms Condominium Neighborhood).

(b) The real property and interests in real property submitted hereby and all improvements constructed thereon, excluding the individual Lots, Units and Exclusive Common Area.

(c) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the Buildings located within or constituting part of the Common Area and Facilities.

(d) The yards, gardens, open space, landscaping, parks and play areas, roads, driving lanes, parking amenities and sidewalks located within or constituting part of the Common Area, excluding the pool, clubhouse and recreational facilities located within or constituting part of the Orchard Farms Condominium Neighborhood.

(e) The installations of utilities and central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating located within the Common Area and Facilities, excluding the utilities and central services located or constituting part of the Orchard Farms Condominium Neighborhood.

(f) The elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use located within the Common Area.

(g) All Common Area and Facilities designated as such in the Master Final Plat.

(h) All Limited Common Areas designated as such in the Master Final Plat.

(i) All other parts of the Development normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the thereof managed and/or maintained by the Association for the common benefit of all of the Owners.

1.8 The term **Covenant to Share Costs** shall mean and refer the obligation of an Owner to contribute to the costs, as specifically set forth hereinafter, of maintaining, repairing and restoring the Property Subject To The Reciprocal Use Easement, including by way of illustration but not limitation the Roads and Landscaping serving the Orchard Farms Properties.

1.9 The term **Declarant** shall mean and include Declarant and any person or persons who might acquire title from it to all or some of the unsold Lots or Units through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where, any person purchases all, or some of the remaining Lots or Units in a sale in the nature of a bulk sale. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Master Declaration; provided, however, a notice of succession shall be

recorded in the Office of the County Recorder signed by both the current Declarant and by its successor in interest as the new Declarant.

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

1.11 The term **Director** shall mean and refer to a member of the Board of Directors.<sup>1</sup>

1.12 The term **Entry Monument**" shall mean the monument, planter boxes, landscaping features and other physical improvements identifying the Project located at or near the Entry or entrance to the Property or any portion thereof.

1.13 The term **Exclusive Common Area** shall mean and refer to property within the Project intended for the exclusive common use and enjoyment of a particular Neighborhood.

1.14 The term **Exclusive Amenity** shall mean and refer to a recreational amenity within the Project, such as a Swimming Pool, which is intended for the exclusive use of a particular Neighborhood.

1.15 The term **Final Plat** or **Master Final Plat** shall mean and refer to the final plat for the Property recorded in the Office of the County Recorder of Davis County.

1.16 The term **Governing Documents** shall mean and refer to this Master Declaration, Bylaws, Rules and Regulations, and Articles of Incorporation.

1.17 The term **Individual Charges** shall mean and refer to an individual charge levied against a Person by the Master Association for all expenses resulting from his act or omission including by way of illustration but not limitation:

1.17.1 The cost to repair any damage to any portion of the Project on account of the act or omission of any Person; or

1.17.2 The cost to satisfy any expense to an Owner, the Master Association or a Subassociation due to the act or omission of any Person or resulting from the breach by such Person of any of the provisions of the Governing Documents; and

1.17.3 Any transient occupancy tax, sales tax, use tax or other tax levied pursuant to the laws of the State of Utah and payable by any Person which the Master Association or any Subassociation is or shall be required or entitled to collect on behalf of the levying authority, although this subsection is not considered an acknowledgment that any such tax may be levied.

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<sup>1</sup> Each official Delegate for a Voting Group, or the official Voting Representative for the Voting Group, is a Director.

Payment of any Individual Charge may be secured by a lien against the interest of the Person in the Property. The Master Association also shall have all other remedies, both legal and equitable, described in this Master Declaration available against any Owner for nonpayment of any monetary obligation, including unpaid Master Assessments.

1.18 The term **Landscaping** shall mean and refer to the grass, trees, shrubs, bushes, flowers, plants, park strip landscaping, open space, and like improvements located within the Tract or within the Orchard Farm Properties, as well as the appurtenant sprinkler, irrigation and water drainage systems.

1.19 The term **Lot** shall mean and refer to a subdivided lot as shown on the Final Plat. Where the context indicates or requires, the term Lot shall include or designate (a) the dwelling unit or home constructed upon the Lot and/or (b) a condominium Unit.

1.20 The term **Lot Number** shall mean and refer to the number, letter or combination thereof designating a particular Lot.

1.21 The term **Master Assessment** shall mean and refer to the amount assessed an Owner, Lot by the Master Association to pay the Master Common Expenses, and shall include an amount to fund an adequate reserve fund or funds.

1.22 The term **Master Association ("MHOA")** shall mean and refer to the association of the Declarant and any Subassociations so designated by the Declaration acting as a group in accordance with the Master Declaration. The name of the Master Association if available at the State of Utah shall be the Orchard Farm Master Association.

1.23 The term **Master Common Expenses** shall mean and refer to the common expenses of maintaining, repairing and replacing the Common Area and Facilities, administering the Master Association, and enforcing the Governing Documents.

1.24 The Term **Master Declaration** shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Orchard Farm Properties.

1.25 The term **Mortgage** shall mean and refer to any mortgage, deed of trust or other security instrument by which a Lot or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.

1.26 The term **Mortgagee** shall mean and refer to any person or entity named as the mortgagee or beneficiary under any Mortgage or Trust Deed by which the interest of any Owner in the Property is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean and refer to any person or entity holding a Mortgage in first priority position against the Property or any portion thereof, including any insurer or

guarantor of a First Mortgage. Any and all Mortgagee protections contained in the Declaration shall also protect the Declarant as the holder of a First Mortgage of a Lot, or any interest therein.

1.27 The term **Neighborhood** shall mean and refer to a portion of the Project so designated by the Declarant, to wit: the Orchard Farms Town Home Neighborhood and the Orchard Farms SFR Neighborhood.

1.28 The term **Neighborhood Association** shall mean and refer to a Neighborhood association of owners acting as a group in accordance with this Master Declaration and the Supplemental Declaration for its Neighborhood.

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

1.30 The term **Open Space** shall mean and refer to in the event that Davis County or the City of Fruit Heights shall adopt an ordinance which contains a definition of the term "open space" and which makes such definition applicable to the burdened parcel as noted on the Final Plat, that definition, which shall be incorporated into this easement by reference. 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 1.30.1 and 1.30.2, respectively.

1.30.1. **Permitted.** The following improvements and activities shall be permitted: pasture, unimproved land, landscaping, trails, green space, and planting beds.

1.30.2 **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 activities permitted by Subsection 1.29.1 hereof, operation, parking or storage of motorized vehicles of any kind except those used for landscaping maintenance, machinery which is affixed to the property and which can be seen or heard from adjacent property, 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.

The Open Space as shown on the Final Plat may not be altered or removed without the express prior written consent of the City.

1.31. The term **Owner** shall mean and refer to the Person who is the record owner of a fee or an undivided fee interest in a Lot according to the official records of the County Recorder of Davis County, Utah, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.32 The term **Period of Declarant's Control** shall mean and refer to the period during which the Declarant is entitled to appoint all of the members of the Board of Directors and otherwise direct and control the development, management and operation of the Project. The



Period of Declarant's Control shall expire upon the first to occur of the following: (a) Ninety (90) days after Declarant closes on the sale of its last Lot; or (b) when, in its discretion, the Declarant so determines and records in the Office of the County Recorder a written "Notice of Termination of Period of Declarant's Control."

1.33 The term **Project** shall mean and refer to the entire Orchard Farm development as shown on the Final Plat, as it may be amended or supplemented.

1.34 The term **Property** shall mean and refer to all of the real property submitted to this Declaration.

1.35 The term **Property Manager** shall mean and refer to the person, firm or company designated by the Master Association to manage or assist in the management of the Project, the affairs of the Master Association, the affairs of a Neighborhood Association, and the Common Area and Facilities.

1.36. The term **Property Subject To The Reciprocal Use Easement** shall mean and refer to the real estate subject to the Reciprocal Use Easement located in Davis County, Utah and described with particularity on Exhibit "B" attached hereto and incorporated herein by this reference.

1.37. The term **Reciprocal Use Easement** shall mean and refer to the non-exclusive and irrevocable right of way and easement of enjoyment reserved by the Declarant and granted to the Owner to access, use and enjoy the Common Areas and Facilities at the Orchard Farms Properties, including by way of illustration but not limitation the Roads and Landscaping.

1,38 The term **Road** shall mean and refer collectively to the Dedicated Streets, Roads and Cul-de-Sacs and Private Streets, Roads, Cul-de-Sacs, Ways, Drives and Parking Spaces located within the Tract or within the Orchard Farms Properties.

1.39 The term **Single Family Residents Lot** or **SFR Lot** shall mean and refer to a Lot and/or dwelling unit in the Orchard Farms SFR Neighborhood with its appurtenant interest in the Master Association.

1.40 The term **Subassociation** shall mean and refer to a Neighborhood Association.

1.41 The term **Tree Guidelines** shall mean and refer to the tree guidelines on Exhibit "C" attached hereto and incorporated herein by this reference.

1.42 The term **Total Votes of the Master Association** shall mean and refer to the seven (7) votes of the Directors or Voting Representatives comprising serving on the Board of Directors.

1.43 The term **Town Home Apartment** or **Town Home Unit** or **Town Home Lot** shall mean and refer to a Lot in the Orchard Farms Town Home Neighborhood with its appurtenant interest in the Master Association.

1.44 The term **Use Restrictions** shall mean and refer to the use restrictions governing the Property.

1.45 The term **Unit** shall mean and refer to a "Unit" as that term is defined in the Neighborhood Amended and Restated Declaration of Condominium for Orchard Farms Condominium recorded in the office of the Davis County Recorder.

1.46 The term **Voting Group** shall mean and refer to a voting group so designated by the Declarant. For example, a Neighborhood may be designated by the Declarant as a Voting Group.

1.47 The term **Voting Representative** shall mean and refer to the Delegate responsible for casting the votes allocated to his or her Neighborhood Voting Group.

## ARTICLE II.: INCIDENTS OF OWNERSHIP

2.1 **Submission to Ownership in Planned Residential Unit Development (PRUD).**  
The Declarant hereby submits the Property, described with particularity in Exhibit "A" attached hereto and incorporated herein by this reference, together with all appurtenances thereto, to be known as Orchard Farms Planned Unit Development, to this Declaration and to the Utah Community Association Act, Utah Code Ann., Sections 57-8a-1 et. seq., as amended and supplemented (the "Act")<sup>2</sup>. Declarant hereby declares that the Property and every part thereof is and shall be held, conveyed, devised, leased, granted, encumbered, used, occupied, and otherwise transferred in any manner, subject to the provisions of this Declaration and the respective Acts. Each and all of the provisions hereof are hereby declared to be in furtherance of the general plan and scheme of ownership, and are further declared to be for the benefit of the Property and every part thereof, and for the benefit of each Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land, or as an equitable servitude, as the case may be, and shall bind all persons hereafter acquiring or owning any interest in the Property, however such interest may be obtained. All present and future Owners, Residents, Permittees and Mortgagees shall be subject to, and shall comply with the provisions of this Neighborhood Declaration and the Act. Acceptance of a deed of conveyance, or the entering into a lease, or the entering into occupancy of any Lot or Unit or accepting a mortgage on one of the Lots or Units, shall constitute an agreement that the provisions of the Declaration, and amendments thereto, are accepted and ratified by such Owner, Resident, Permittee or Mortgagee, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Lot or Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or lease thereof.

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<sup>2</sup> The Orchard Farms Condominium is subject to the Utah Condominium Ownership Act, Utah Code Ann., Sections 57-8-1 et seq., as amended and supplemented (the "Condo Act").

2.2 **Description and Ownership of Common Area and Facilities.** The Common Area and Facilities shall mean and include all of the Property owned by the Master Association for the benefit of all of the Owners. The Common Area and Facilities are not privately owned nor do they include land dedicated to the City. The Common Area is designated on the Final Plat. The Declarant will construct a public trail in the area shown as Open Space on the Northern portion of the Property running the length of the boundary of the Property or in the alternative deposit with the City funds sufficient for the City to construct the trail as per the Development Agreement.

2.3 **Description of Exclusive Common Area.** The Exclusive Common Area shall mean and include all of the property owned by a Neighborhood Association for the benefit of all of the Owners and Lots or Units in the particular Neighborhood. The Exclusive Common Area is not to be considered Common Area owned by the Master Association for the benefit of all of the Owners in the Project, nor is it privately owned, nor does it include land dedicated to the City. The Exclusive Common Area is either designated on the Final Plat or will be designated on a Supplemental Plat.

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

2.5 **Right to Expand Application, Withdraw Land, Reconfigure Structure, or Change the Nature of the Use.** The Declarant hereby reserves to itself and is hereby granted the right to:

2.5.1 **Expansion.** Expand the application of this Master Declaration in order to annex additional land or create, establish or modify Common Area, Exclusive Common Area, Units, Lots, and/or Neighborhoods.

2.5.2 **Contraction.** Contract the application of this Master Declaration in order to withdraw land, Common Area, Exclusive Common Area, Units, Lots, and/or Neighborhoods.

2.5.3 **Percentages of Ownership.** Adjust percentages of ownership.

2.5.5 **Supplements.** Supplement this Master Declaration and the Final Plat: A written supplement to this Master Declaration and/or Final Plat duly recorded shall be necessary and sufficient to expand, contract, modify and/or adjust the application of this Master Declaration and the Final Plat.

2.5.6 **Reciprocal Use Agreement.** Enter into a non-exclusive but irrevocable Reciprocal Use Agreement with the owner of the Orchard Farms Condominium Neighborhood.

2.5.7 **Covenant to Share Costs.** Enter into a Covenant to Share Costs agreement with the owner of the Orchard Farms Condominium Neighborhood.

2.6 **User Fees.** The Master Association may charge reasonable user fees. Anything to the contrary notwithstanding the Declarant is exempt from and shall not be required to pay any user fees.

2.7 **Bylaws.** The Bylaws of the Master Association are attached hereto, marked Exhibit "B," and incorporated herein by this reference.

2.8 **Description of Undivided Ownership Interest Appurtenant to a Lot.** The undivided percentage of ownership appurtenant to each Lot in the Common Area and Facilities shall be allocated on an equal and uniform basis regardless of type, size, location or value. The undivided percentage of ownership may be expressed as a fraction or as a decimal number. The undivided percentage of ownership shall have a permanent character and shall not be altered without the express affirmative written consent of at least two-thirds of the Lots and Units; provided, however, Declarant reserves the right to unilaterally adjust the undivided ownership interest of each Lot or Unit following any withdrawal or addition of land, Lots or Units within the Project, in accordance with the formula set forth herein. The sum of the percentages or fractional undivided ownership interests in the Common Area allocated to all Lots and Units throughout the entire Project shall at all times equal one hundred percent (100.0%) although Declarant is authorized to round the undivided interest of one or more Units in order to cause the total to equal one hundred percent (100.0%).

2.9 **Computation of Percentage Interest in Common Area; Common Profits, Common Expenses and Voting Rights.** The common profits of the Development shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to, the Owners, of Lots and Units at the Development according to their respective percentage or fractional undivided interests in the Common Areas and the Exclusive Common Area.

(a) The respective percentage or fractional undivided ownership interest in the Exclusive Common Area which is appurtenant to a Lot or Unit shall be equal and uniform for all Units located within the Neighborhood.

(b) The respective percentage or fractional undivided ownership interest in the Common Area which is appurtenant to a Lot or Unit shall be equal and uniform for all Lots and Units and Lots located within the Development, and equal to one (1) divided by the total number of Lots and platted Units within the Development.

### ARTICLE III: VOTING

3.1 **Delegate Voting System.** The Master Association shall be managed and operated under a representative voting system based upon Voting Groups established by the Declarant.

3.1.1 **Designation of Voting Groups.** The Declarant reserves to itself and is hereby granted the right to establish the Voting Groups, which are subject to change by the Declarant.

3.1.2 **Governing Board.** The Master Association shall be governed, controlled and directed by a Board of Directors.

3.1.3 **Number of Directors for the Master Association.** There shall be seven (7) Directors on the Board of Directors.

3.1.2 **Composition of Board of Directors for the Master Association.** Four (4) of the Directors shall be appointed by and represent the Declarant. Each of the remaining three (3) Directors shall be elected or appointed by his or her Voting Group.

3.1.3 **Designation of Directors.** The Declarant and each Voting Group shall designate a natural person as a Delegate to act as its Director and to exercise its voting power, and an alternate Director to exercise the voting power in the absence of the Director, at least sixty (60) days prior to the annual meeting of the Master Association and at such other times as the Directors may be changed.

3.1.4 **Delegate Voting.** The Delegate of each Voting Group shall be entitled to cast one (1) vote on each issue or matter before the Master Association equal to the number of Units or Lots in his or her Voting Group.

3.1.4.1 At each meeting of the Master Association, each Delegate shall cast his vote in such manner as such Delegate may, in his or her sole and reasonable discretion, deem appropriate, acting in the best interest of the group he or she represents; provided, however, that a Delegate shall have the authority to call special meetings of the owners in its Voting Group for the purpose of obtaining instructions as to the manner in which he or she is to vote on any particular issue.

3.1.4.2 In the absence of such a governing provision in the Master Declaration or Bylaws governing the Voting Group, a meeting may be called by the Delegate representing the Voting Group for the purpose of deciding how he or she shall vote and the vote of a majority of the Owners represented at that meeting shall control the Delegate's vote on that issue.

3.1.4.3 It shall be conclusively presumed for all purposes of business of the Master Association that any Delegate casting votes on behalf of his or her Voting Group will have acted with the authority and consent of all of the Owners in the Voting Group.

3.1.4.4 All agreements and determinations lawfully made by the Master Association in accordance with the voting procedures established herein shall be deemed to be final, conclusive and binding upon all of the Owners and their successors and assigns.

#### ARTICLE IV: EASEMENTS

4.1 **Grant of Easement.** Declarant hereby reserves to itself and grants to the Master Association a nonexclusive, perpetual right-of-way and easement over, across, under and through the Property for any and all purposes, together with the right to use, operate, maintain, repair and replace the Common Area and Facilities.

4.2 **Private Easement.** The easement created by subsection 4.1 above is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Declarant, Master Association and the Owners.

4.3 **Common Use of Easement.** The easement referred to in subsection 4.1 above is to be used in common by the Declarant, Master Association and the Owners, and shall be subject to all of the terms, covenants, conditions and restrictions set forth herein.

4.4 **Benefited Expense Regarding Landscaping.** Each Subassociation is hereby empowered to and may, with the prior written consent of the Master Association, elect, at its sole cost and expense and for its benefit, to upgrade the real estate within its jurisdiction, or any part thereof (the "Benefited Expense"), although such Benefited Expense shall not be considered part of the Master Common Expenses.

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

4.6 **Improvements.** Improvements, including by way of illustration but not limitation buildings, structures, Lots, Units or Common Area and Facilities, constructed as subsequent phases of the Project may encroach upon portions of the Common Area and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and this Master Declaration necessary to repair, maintain and operate such improvements is hereby granted.

4.7 **Rights of Access.** Each Owner shall have the right to ingress and egress over, upon and across the Common Area as necessary for access to his Lot.

4.8 **Support.** Each Owner shall have the right to the horizontal, vertical and lateral support of his Lot.

**4.8 Declarant's Easement.** The Declarant hereby reserves to itself and grants to the Master Association a non-exclusive easement to make such use of the Common Area and Facilities as may be necessary or convenient to perform the duties and functions that the Declarant and/or Master Association is obligated or permitted to perform hereunder, including, without limitation, the right to improve and maintain the Property for use and enjoyment of the Owners.

**4.9 Construction Easements.** The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Common Area for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project. The Owners do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their property until all improvements are complete. The Owners do hereby waive any right to object to such construction activity. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

**4.10 Locations Facilities Easements.** Declarant reserves a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, and through all other Common Area and Facilities of the Project in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee or the Master Association. The Master Association, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

**4.11 Entry Monument Easement.** The Entry Monument Easement and corresponding utility and drainage systems and facilities, and irrigation are reserved hereby and on the recorded Plat. No Subassociation or Owner may interfere with the Entry Monument Easement. No Owner or Subassociation may do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. If a drainage channel is altered by an Owner or Subassociation, then the Declarant and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass. In addition, the easement and right of way area of or on each Lot, including by way of illustration but not limitation, the Entry Monument, in whole or in part, utilities, drainage systems and facilities, and irrigation, and all improvements within said area shall be maintained

continuously by the Owner of the property, at his sole expense, excepting those improvements for which a public authority or utility company is expressly responsible.

**4.12 Temporary Access Easement.** The Declarant hereby grants to the City for fire and emergency access a temporary easement over, across and through Nicholls Road as shown on the Final Plat (the "Temporary Access Easement"). The Temporary Access Easement shall automatically terminate when a second access point is established; that is, when a second road is created into the Project.

**4.13 Reciprocal Use Easement.** The Declarant hereby reserves to itself and hereby grants to the Owner or Owners of the Units in the Orchard Farms Condominium Neighborhood the Reciprocal Use Easement on the Property Subject to the Reciprocal Use Easement. The terms of and the operating agreement for the Reciprocal Use Easement are set forth in Exhibit "E" attached hereto and incorporated herein by this reference.

**4.14 Easement of Support.** Each Lot, Unit, the Common Area and Facilities, and the Exclusive Common Area shall have an easement of lateral, adjacent, subjacent and structural support from every other Lot, Unit, the Common and Facilities, and Exclusive Common Area.

**4.15 Parking.** The Declarant reserves to itself and hereby grants to the Board of Directors the right to assign parking and adopt, modify or repeal parking rules and regulations. The parking rules and regulations are subject to change.

## ARTICLE V: NOTICES

**5. Notices.** Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by telecopy, facsimile transmission, the Master Association's website, e-mail, text message, or other electronic medium; provided, however an Owner may require by making a written request to the Association a written notice hand delivered or delivered by U.S. Mail. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board of Directors for the purpose of service of such notice or to the Lot of such Owner if no such address has been given to the Board of Directors. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the initial Managing Member of the Board of Directors, to wit:

Ivory Development, LLC  
Christopher P. Gamvroulas  
978 East Woodoak Lane  
Salt Lake City, Utah 84117



The name and address of the contact person for the Association may be changed by a written notice delivered to all of the Owners.

## ARTICLE VI: INSURANCE AND INDEMNITY

6.1 **Rules and Regulations.** The Board of Directors may adopt general insurance house rules, policies and procedures (collectively, "Insurance Rules and Regulations"). The Insurance Rules and Regulations are intended as a guide for owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners. The Insurance Rules and Regulations are subject to change.

6.2 **Insurance.** In accordance with Part 4 of the Utah Community Association Act, Utah Code Ann., Sections 57-8a-401-407, inclusive, (2011), as amended and supplemented, the Master Association shall obtain the following insurance for the Common Area and Facilities:

- Public liability; and
- Property, fire and extended hazard.<sup>34</sup>

In addition, the Master Association may obtain additional or greater coverage, including:

- Directors and officers insurance;
- Workers compensation;
- A fidelity bond; and
- Other miscellaneous coverage.

This insurance described above and/or obtained by the Master Association is referred to collectively as "Master Association Insurance Policy". The premium shall be Master Common Expense.

6.3 **Full Replacement.** The Property Insurance must be for at least **100%** of the FULL replacement cost of the item at the time insurance is purchased and at the renewal date.

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<sup>3</sup> The Property Insurance coverage must include:

- a. All Common Area and Facilities; and
- b. All Structures, Buildings, Lots, Dwelling Units, fixtures, floor coverings, wall coverings, cabinets, heating and plumbing fixtures, windows, any (other) item permanently attached.

<sup>4</sup> The Association is not obligated to insure detached Dwelling Units; that is, a Dwelling Unit that is **NOT** physically attached to another Dwelling Unit or to an above-ground structure that is part of the Common Area.

6.4 **Adjust Claims.** The Board of Directors is hereby granted the right, power and authority to adjust claims. THE ASSOCIATION IS NOT OBLIGATED TO SUBMIT A CLAIM TO ITS PROPERTY INSURANCE CARRIER IF THE GOVERNING BOARD DETERMINES THAT IN ITS REASONABLE BUSINESS JUDGMENT THE AMOUNT OF THE CLAIM IS UNLIKELY TO EXCEED THE INSURANCE DEDUCTIBLE AND, IF SO, THE UNIT OWNER'S INSURANCE POLICY PROVIDES THE PRIMARY COVERAGE, OR IF THE UNIT OWNER IS UNINSURED, THEN HE OR SHE WILL BE LIABLE FOR THE LOSS UP TO THE AMOUNT OF THE DEDUCTIBLE.

6.5 **Notice of Cancellation, Lack or Denial of Coverage.** If property or liability insurance is not reasonably available, then fair and reasonable notice must be given to the owners within seven (7) days.

6.6 **Primary Coverage.** When a claim is covered by the Association's Property Insurance and an Owner's Property Insurance, the Association's Property Insurance is considered PRIMARY, although the Unit Owner's insurance may apply to the deductible.

6.7 **Deductible.** If an Owner makes a claim on the Association's Property Insurance policy, then the Owner is responsible for the deductible on the Association Policy. If two (2) or more Owners make a claim arising out of a single event, then each Owner is responsible for payment of his or her portion of the deductible based upon his or her percentage of the loss . If an Owner fails to pay his or her share of the loss/deductible, then the Association may assess an Assessment against the Owner or his or her property and file a lien against the property to secure payment.

6.8 **Reserve.** For each claim made by an Owner on the Association's Property Insurance Policy the Association must set aside in reserve the amount of the deductible or \$10,000, whichever is less.

6.9 **Notice of Amount of Deductible/Change.** The Association shall provide notice to all Owners of (a) the amount of the deductible and (b) their obligation to pay the Association's deductible if a claim is filed, and (c) provide follow-up notice of any change to the amount of the deductible. The Association is responsible to pay the deductible if it has failed to provide the Owner with this notice.

6.10 **Insurance Proceeds.** When the Association receives insurance proceeds from its Property Insurance carrier, the Association receives the insurance proceeds in trust for the benefit of the Owner(s) and the Association.

6.11 **Severance.** All insurance policies must be consistent with the requirements of Utah law. If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any Utah law, that provision shall be considered null, void and of no-effect; provided, however, the validity of the remaining portions or provisions

shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.

## ARTICLE VII: MAINTENANCE

### 7. Maintenance.

7.1 **Area of Common Responsibility.** The Master Association shall maintain the Area of Common Responsibility which includes the Common Area and Facilities, including snow and ice removal from the Common Area. The Master Association shall maintain the Roads. The Master Association shall maintain the Landscaping, including the park strip landscaping, the Entry Monument or Monuments, Open Space, and the subsurface drains.

7.2 **Area of Personal Responsibility.** Each Owner shall maintain his or her privately owned Lot as shown on the Final Plat and all improvements therein. The Owners of Lots in the Orchard Farms SFR Neighborhood shall be responsible for the maintenance of their landscaping, including snow and ice removal, and for the maintenance, repair and replacement of the sidewalks in front of their Lots and the landscaping on their Lots.

7.3 **Area of Neighborhood Responsibility.** Each Neighborhood shall maintain its Exclusive Common Area, including snow and ice removal.

7.4 **Standard of Care.** The Property, including all Buildings, Units, Lots, Common Area, and Exclusive Common Area, shall be maintained in a usable, clean, functional, safe, sanitary, attractive and good condition.

7.5 **Landscaping - Standard of Care.** All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with any City landscaping maintenance plans or ordinances. Specific additional written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Board of Directors from time to time. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be edged and mowed. All trees, shrubs and bushes shall be pruned. No landscaping shall be allowed to affect adversely the value or use of any other Lot or to detract from the architecture, design and appearance of the Project.

7.6 **Trees.** The Master Association shall replace any damaged or dead tree with a similar tree of comparable size and/or quality in a timely manner, weather permitting, for a period of not less than one (1) year from the date it was originally planted.

7.7 **Default Provisions.** If (except in the case of an emergency) after written notice and a hearing, it is determined that any responsible party has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the Master

Association through the Board of Directors or Property Manager may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting or responsible party's sole cost and expense (the "Default Maintenance Cost"). The term "emergency" as used here means a situation or condition in which there is a threat of imminent and substantial harm to person or property. The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be secured and collectible as such in the same manner as unpaid Assessments.

**7.8 Alterations to the Common Area.** The Declarant reserves to itself and is hereby granted the right to make changes to the design and construction of the improvements located in or on the Common Area or any Exclusive Common Area. No Owner or Subassociation may make structural alterations to the Common Area without the express prior written consent of the Board of Directors.

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

**7.10 Covenant To Share Costs.** The Master Association shall pay for the cost of maintaining the Property Subject To The Reciprocal Use Easement; provided, however, the Owner or Owners of the Units in the Orchard Farms Condominium Neighborhood has covenanted and agreed, and shall, contribute annually its or their share of the Common Expenses and the Orchard Farms Condominium Neighborhood Assessment.

This section is NOT subject to change without the express prior written consent of the Declarant, its successor or assign.

## **ARTICLE VIII: BOARD OF DIRECTORS**

**8. Board of Directors.** The Master Association shall be governed by a Board of Directors who shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act and this Master Declaration, including but not limited to the following items:

8.1 To make, modify and enforce rules and regulations.

8.2 To engage the services of a professional manager, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore.

8.3 To manage the Master Association and Common Area and Facilities.

8.4 To determine and pay the Master Common Expenses.

8.5 To make and collect Assessments.

8.6 To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

8.7 To open bank accounts.

8.8 To purchase, hold, sell, convey or mortgage any one or more Lots or Units.

8.9 To sue and be sued.

8.10 To obtain insurance.

8.11 To make repairs.

8.12 To own, purchase or lease, hold and sell or otherwise dispose of items of personal property.

8.13 To keep the books and records.

8.14 To appoint officers.

8.15 To create non-exclusive easements.

8.16 To enter into covenants to share costs agreements.

8.17 To immobilize, tow and impound vehicles.

8.18 To charge fines.

8.19 To incorporate the Master Association or if its status has been suspended or dissolved to reinstate the corporate status of the Master Association.

8.20 To do all other acts necessary for the maintenance of the Project, administration of the Master Association, and enforcement of the Governing Documents.

In the event of any conflict or disagreement as to the meaning of any provision, the powers granted to the Board of Directors shall be liberally and broadly construed.

#### **ARTICLE IX: LIMITATION OF LIABILITY**

9.5 **Limitation of Liability.** The Master Association shall save, indemnify and hold any member of the Board of Directors or officer of the Master Association harmless from any and all losses, liability or claims arising out of, caused by or related to his or her service, and shall undertake all costs of defense, until and unless it is proven that he or she was guilty of

intentional misconduct. Members of the Board of Directors are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Master Association, Board of Directors or officers of the Association, although they may be recovered against individuals guilty of intentional misconduct.

## ARTICLE X: ASSESSMENTS AND FEES

### 11. Master Assessments.

11.1 **Obligation of Members of Master Association.** Each Member of the Master Association shall pay its share of the Master Common Expenses (the "Master Assessment" or "Base Fee").

11.2 **Computation of Master Assessments.** The Master Association shall base the amount of the annual Master Assessments upon budgeted estimates of the Master Common Expenses expected to be incurred during the coming calendar year, plus amounts required to establish an adequate reserve.

11.3 **Apportionment of Master Common Expenses.** The Master Common Expenses shall be allocated among each of its Members, to wit: The Orchard Farms Town Homes Association and the Orchard Farms SFR Association -- in accordance with their respective percentages of ownership interest. This section is NOT subject to change without the express prior written consent of the Declarant, its successor or assign.

11.4 **Orchard Farms Condominium Neighborhood.** The Budget referred to in Section 11.5 below shall include a line item for the cost of maintenance of the Roads<sup>5</sup> and Landscaping located within the Orchard Farms Condominium Neighborhood. If the Association and the Subassociation for the Orchard Farms Condominium elect to send out a combined billing to the Owners, then the Subassociation for the Orchard Farms Condominium Neighborhood shall contribute to the Master Association -- for the maintenance of the Road and Landscaping (and other) improvements located within the Property Subject To The Reciprocal Easement -- a sum equal to (a) the percentages noted below multiplied by (b) the amount of the line item in the annual Operating Budget of the Master Association (the "Budget") for the year in which the contribution is collected (the "Orchard Farms Condominium Neighborhood Assessment"):

Roads	_____	% <sup>6</sup>
Landscaping	_____	%

This subsection is NOT subject to change without the express prior written consent of the Declarant, its successors or assigns.

<sup>5</sup> Not to include the cost of snow and ice removal

<sup>6</sup> Does not include the cost of snow or ice removal, or any part thereof, which is the sole obligation of the Master Association.

11.5 **Budget.** The Board of Directors shall prepare and adopt an annual Budget and provide a copy of the proposed Budget to the Owners of the Orchard Farms Town Homes and the Orchard Farms SFR, the Subassociation for the Orchard Farms Condominium Neighborhood and the Owner or Owners of the Units in the Orchard Farms Condominium. The Owners of the Orchard Farms Town Homes, Orchard Farms SFR and Orchard Farms Condominium Units may call a special meeting within forty-five (45) days of the delivery of the proposed Budget to vote to disapprove the Budget, although to reject the Budget requires a fifty-one percent (51%) of total ownership. If the new Budget is disapproved, then the Budget for the prior year shall continue to be valid and enforceable until such time as a new Budget is adopted. This subsection is NOT subject to change without the express prior written consent of the Declarant, its successor or assign.

11.6 **Books and Records.** The Master Association shall (a) keep books and records in accordance with generally accepted accounting practices and (b) prepare monthly billing statements and/or ledgers for each Member detailing its share of the Master Common Expenses and any other charges.

11.7 **Payment.** Master Assessments and each Member's share of the Master Common Expenses and the Orchard Farms Condominium Neighborhood Assessments shall be payable to the Master Association annually, although payment may be made in twelve (12) equal monthly installments. Monthly invoices for each Member will be prepared by the Master Association. All Assessments will automatically be billed monthly to the Member and must be paid by the tenth (10<sup>th</sup>) day of the month in which they were due. The Board of Directors may require a credit card or debit card for payment. If so, each Owner shall provide the Master Association with a valid credit card or debit card number. Charges will be posted to the Owner's credit card or debit account by the tenth (10<sup>th</sup>) day of the following month. Statements detailing Assessments will be provided at the beginning of every month. Each Member shall keep his credit card and/or debit card current, and immediately notify the Board of any changes. Each Member hereby authorizes and directs the Master Association to charge its credit card or debit account as indicated above for all balances outstanding on a regular monthly billing schedule.

11.8 **Reserves.** The Master Association shall establish and fund a reasonable reserve account or accounts for unforeseen operating expenses, major repairs, and capital improvements. In the event the reserve account(s) fall below an amount considered acceptable by the Directors, then, in its sole discretion and without any additional approval required, the Master Association may restore or replenish the account(s) by an equitable increase in the monthly Master Assessment, a special assessment, or any combination. The Master Association may elect to accelerate the entire annual Master Assessment in the event of default.

11.9 **Equitable Changes.** If the aggregate of all monthly payments on all of the Lots and Units is too large or too small as a result of unanticipated income or expenses, the Board of Directors may from time to time effect an equitable change in the amount of the regular Assessments, and this shall not be considered a Special Assessment. Owners shall be given at least thirty (30) days written notice of any changes.

11.10 **Capital Asset Table.** The Board of Directors shall establish and update at least annually a Capital Asset Table which shall list each major asset and physical improvement for which the Master Association is responsible, its expected useful life, the present cost of replacement; the estimated cost to replace the item at the end of its useful life, the percentage and amount of each Assessment designated for the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item.

11.11 **Analysis Report.** The Board of Directors shall prepare and update as often as is necessary but at least annually a written Reserve Account Analysis, and make the report(s) available to the Owners at least thirty (30) days prior to the annual meeting of the Association.

11.12 **Standard Operating Procedures and Miscellaneous Provisions.** The making and collection of Master Assessments by the Master Association from Owners of Lots and Units for their share of Master Common Expenses shall be made as follows and subject to the following provisions:

11.12.1 The Master Common Expenses shall be charged to, and the voting rights shall be allocated among the Owners on an equal and uniform basis, regardless of size, location or value.

11.12.2 At least two separate and distinct funds shall be created and maintained by the Master Association: One for its general operating expenses and the other for its reserve account or accounts.

11.12.3 The Master Assessments charged by the Master Association shall include both the Base Fee component and a Reserve Account Fee component.

11.12.4 The duty to pay regular Master Assessments for each Lot shall commence on the first (1st) day of the calendar month following the closing of the first (1st) sale of a Lot by the Declarant and continue on the first day of each month thereafter.

11.12.5 The Board of Directors may make equitable changes in the Master Assessments during any calendar year; provided, however, the Master Association shall provide notice, by first class mail to all Owners, of any increase in the Master Assessments not less than thirty (30) nor more than sixty (60) days prior to the date any modified Assessment is due.

11.12.6 In addition to the regular Master Assessments, the Master Association may assess in any fiscal year Special Master Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any unforeseen expenditure or the construction or reconstruction, unexpected repair or replacement of a described capital asset or improvement upon any Common Area and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Master Assessments from the Owners.



11.12.7 The portion of any Special Common Assessment levied against a particular Lot shall be equal to its corresponding percentage of undivided interest.

11.12.8 These conditions for the imposition or allocation of Special Master Assessments shall not apply when the charge is to pay an increase in real property taxes or when the special assessment against an Owner is a remedy utilized by the Board of Directors to reimburse the Master Association for costs incurred in bringing the Owner and/or his Lot into compliance with the provisions of the Governing Documents.

11.12.9 The Board of Directors shall provide notice by first class mail to all Owners of any Special Master Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

11.12.10 Anything to the contrary notwithstanding, the Declarant is not obligated to pay Master Assessments of any kind on Lots or Units it owns unless a certificate of permanent occupancy has been issued and the property has been sold, rented or is occupied, excluding any Lot used as a model home.

11.12.11 If the Declarant is required to advance funds to maintain the Common Area and Facilities until a sufficient number of Lots or Units have been sold, then it shall enter into a subsidy agreement with the Master Association (the "Subsidy Agreement"); provided, however, such advances shall be considered a loan evidenced by a note and secured by the Common Area, funds in the operating account, and funds in the reserve account, even if the parties have not executed a written subsidy agreement, security instrument or other contract. The Declarant shall maintain books and records documenting funds advanced for the purpose of maintaining the property. The Master Association shall pay to the Declarant all sums due and owing under the Subsidy Agreement.

11.12.12 Declarant may pay the Master Association an amount less than its proportionate share of Master Common Expenses, its regular Master Assessments, or any Special Master Assessment provided Declarant has executed a subsidy agreement requiring Declarant to pay monies which are sufficient, together with the Master Assessments paid by all other Owners, to enable the Master Association to timely pay all of the Master Common Expenses. Any subsidy agreement shall require Declarant to pay its full proportionate share of all reserves for the repair or replacement of capital assets or improvements assessed against the Lots or Units which it owns.

11.12.13 All Master Assessments shall be due as determined by the Board of Directors.

11.12.14 Master Assessments not paid within ten (10) days after the date when due shall bear interest at a rate set by the Board of Directors from the date when due until paid.

11.12.15 The Board of Directors may charge a late fee on payments received after their due date.

11.12.16 If the percentages of ownership are reallocated, any Master Assessments or Base not yet due may be recalculated in accordance with the reallocated percentage interests.

11.12.17 Every Owner shall pay his share of the Master Common Expenses, Master Assessment and Special Master Assessment. An Assessment is a debt of the Owner at the time the Assessment is made and is collectible as such. If any Owner fails or refuses to pay an Assessment when due, that amount constitutes a lien on the interest of the Owner in the Property, and upon the recording of notice of lien, it is a lien upon the Owner's or Member's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (a) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (b) encumbrances on the interest of the Owner or Member recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

Such a lien may be enforced by sale or foreclosure, judicial or non-judicial, conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by Utah law. If the Master Association elects to pursue a non-judicial foreclosure, the Owner of the Lot, by acceptance of a deed or other document of conveyance, shall be considered to have expressly authorized the Board of Directors to appoint a trustee and record in the office of the County Recorder a Notice of Appointment. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Master Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board of Directors may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same. If the Master Association elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Master Association, provided s/he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Ann., Section 57-1-23 (1953), as amended. In addition, the Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein. The Master Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code.

11.12.18 In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed.

11.12.19 The Owner shall also be required to pay to the regular Master Association any Master Assessments and Special Master Assessments against his property which shall become due during the period of foreclosure, and all such regular Master Assessments and Special Master Assessments shall be secured by the lien being foreclosed.

11.12.20 The Board of Directors shall have the right and power in behalf of the Master Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the Property in the name of the Master Association.

11.12.21 In furtherance of such foreclosure rights, the Master Association may bring an action at law against the Owner personally obligated to pay the same or the Master Association may foreclose the lien, either judicially or non-judicially, in accordance with the provisions of the Utah Community Association Act (Title 57, Chapter 8a, Utah Code), as they may be amended or supplemented from time to time.

11.12.22 The lien of the Master Association shall be superior to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Master Declaration, a first mortgage, liens and charges in favor of the state or any political subdivision thereof, tax liens and other governmental assessments or charges past due and unpaid on the property.

11.12.23 The lien procedures described herein do not prohibit actions to recover sums for which this Master Declaration creates a lien or prohibit the Master Association from taking a deed in lieu of foreclosure.

11.12.24 The Board of Directors, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Master Assessments against the Lot. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Master Association, the Board of Directors, the property manager and every Owner, in favor of all who rely on such statement in good faith.

11.12.25 The amount of any Assessment against any Lot shall be the personal obligation of the Owner.

11.12.26 Suit to recover a money judgment for such personal obligation shall be maintainable by the Master Association without foreclosing or waiving the lien securing the same.

11.12.27 No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area and Facilities, by abandonment of his property or by waiving any services or amenities provided for in this Master Declaration.

11.12.28 In the event of any suit to recover a money judgment of unpaid Master Assessment and Special Master Assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Master Association in connection therewith, including reasonable attorneys' fees.

11.12.29 In a voluntary sale, transfer, conveyance, exchange or assignment, the personal obligation of an Owner to pay any unpaid Master Assessment and Special Master Assessment against his property shall also pass to his successors in title.

11.12.30 The Master Association through the Board of Directors shall include in the Master Assessment amounts representing sums to be used for major repairs, the replacement of or additions to capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section and shall be set up as reserve accounts for each Lot.

11.12.31 In the event of transfer of a Lot, the reserve account for such property shall be deemed transferred to the transferee of the property.

11.12.32 The Board of Directors shall not expend funds designated as reserves for any purpose other than unforeseen expenses or the repair, restoration, replacement or maintenance of major components of the Common Area and Facilities for which the Master Association is responsible and for which the reserve fund was established or for litigation involving such matters.

11.12.33 The Board of Directors shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Master Assessment to recover the full amount of the expended funds within the time limit specified above.

11.12.34 The Board of Directors annually shall cause a study to be conducted of the reserve account of the Master Association and its adequacy to satisfy anticipated future expenditure requirements. The Board of Directors shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

11.12.35 Identification of the major components which the Master Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than thirty (30) years.

11.12.36 Identification of the probable remaining useful life of the components identified above, as of the date of the study.

11.12.37 An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified above, during and at the end of its useful life.

11.12.38 An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

11.12.39 For the purposes of this Section, the term "reserve account requirements" means the estimated funds which the Board of Directors has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Master Association is obligated to maintain.

11.12.40 If an Owner shall at any time lease or rent his Lot and shall default in the payment of Master Assessments, the Board of Directors may, at its option, so long as such default shall continue, demand and receive from any tenant, lessee or renter of the Owner the rent due or becoming due, and the payment of such rent or lease payment to the Board of Directors shall be sufficient payment and discharge of such tenant, lessee or renter and the Owner for such Master Assessments to the extent of the amount so paid.

11.12.41 No Owner may waive or otherwise exempt himself or herself from liability for the payment of his share of the Master Common Expenses or his Master Assessment and any Special Master Assessments provided for herein, including but not limited to his non-use of the Common Area and Facilities or abandonment of his Lot.

11.12.42 Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorneys fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including a reasonable attorneys fee, against the Lot for its share of the Master Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

## ARTICLE XII: INITIAL USE RESTRICTIONS

12.1 **Zoning and Land Use Ordinances.** All land use and buildings shall be in compliance with all zoning and land use Ordinances as well as all regulations of the municipalities and agencies governing the Subdivision.

12.2 **Nuisance.** No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother, embarrassment or nuisance to other residents or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property.

12.4 **Compliance with Laws.** Owners shall comply with all local, state and federal ordinances, laws and regulations.

12.5 **Statutes.** Nothing shall be done or kept in, on or about any Lot or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

12.6 **Insurance.** Nothing shall be done or kept in any Building, Lot, Unit or in the Common Area and Facilities or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Lot which would increase the rate of insurance on the Project or any part thereof over what the Master Association but for such activity, would pay, without the prior written consent of the Board of Directors.

12.7 **Motor Vehicles.** The driving, parking and storage of motor vehicles within the Property are subject to rules and regulations adopted by the Board of Directors as they may be changed from time to time. Vehicles parked in violation of the rules and regulations may be immobilized, impounded, or towed by the Master Association without further notice and at the owner's sole risk and expense.

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

12.9 **Drainage and Erosion.** No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels.

12.10 **Rules and Regulations.** Each Owner shall comply with the Club management contract, rules and regulations.

12.11 **Indemnity.** Each Owner shall save, indemnify and hold the Master Association harmless against any and all loss, liability or damage caused by or resulting from his violation of the use restrictions.

### ARTICLE XIII: ARCHITECTURAL REVIEW

13.1 **Designs, Plans and Specifications.** Architectural designs, and plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements in the Project shall be submitted to the Architectural Review Committee appointed by the governing board (the "ARC") for review and approval. Designs submitted for approval shall be limited to those prepared

by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process.

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

13.1.2 Decisions of the ARC may be based on purely aesthetic considerations which may be subjective and may vary as ARC members change over time.

13.2 **Fencing.** All fencing must be pre-approved in writing by the ARC before installation. This includes the fencing material, style, type, design, location, etc. Any fencing installed without the express prior written approval of the ARC shall be presumed to be non-conforming. All non-conforming fencing shall, upon request of the ARC be removed and the property restored to its former condition at the owner's sole expense. The following fencing materials are pre-approved, although the style, type, design, location, etc., must still be approved in writing:

13.2.1 Villas - Tan Vinyl

13.2.2 Estates - Wrought Iron, Masonry, and Tan Vinyl

No fence or similar structure shall be placed in any front yard. No fence or similar structure shall be placed in any side or rear yard in excess of six (6) feet. Chain link fencing is strictly prohibited. If there is a dispute between the parties about fencing, including by way of illustration but not limitation, disputes as to fencing materials, style, type, design, or location, including what constitutes a front, side or rear yard, or whether a variance has been granted, the decision of the ARC shall be final, binding and conclusive.

13.3 **No Waiver of Future Approvals.** The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

13.4 **Variance.** The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations, and prior written consent of the City Board of Adjustment. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be

effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

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

**13.6 Enforcement of Architectural Guidelines.** Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being guilty of a trespass.

#### **ARTICLE XIV: LEASING**

**14. Leases.** For Orchard Farms Town Homes and Orchard Farms SFR:

14.1 Any agreement for the leasing, rental, or occupancy of a Lot (collectively "Rental Agreement") shall be in writing and a copy thereof shall be delivered to the Master Association upon request;

14.2 Daily or weekly rentals are prohibited;

14.3 No Owner may lease individual rooms to separate persons or less than his entire Dwelling Unit without the express written consent of the Board of Directors; and

14.4 Other than as expressly stated in this Section 14, there is no restriction on the right of any Owner to rent, ease or otherwise grant occupancy rights to his or her Lot in these Neighborhoods.

There are no restrictions on the right of any Owner to rent, lease or otherwise grant occupancy rights in a Lot or Unit.



## ARTICLE XV: TERMINATION

15.1 **Termination.** The Project may be terminated only by the unanimous agreement of all Lots or Units. This Article may not be amended, modified or repealed without the express prior written consent of all Owners.

15.2 **Recording of Notice of Removal.** All of the Owners may remove the Project from the provisions of the Master Declaration by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Lots or Units consent or agree by instruments duly recorded that their liens are transferred to the undivided ownership interest of the Owners in the Project. Provided further, as long as Declarant has ownership rights in the Project, its consent shall also be required to remove the Project from the provisions of this Master Declaration. Upon removal of the Project from the provisions of this Master Declaration, the Project shall be deemed to be owned in common by the Owners based upon the percentage of ownership of each Lot.

15.3 **Termination Agreement.** A termination agreement may provide that all of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

15.4 **Master Association as Agent.** The Master Association may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved by the Board of Directors. If any real estate in the Project is to be sold following termination, then title to the real estate shall vest in the name of the Master Association as trustee for all Owners based upon their percentages of ownership. Thereafter, the Master Association shall have all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Master Association shall continue in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on their percentages of ownership. Unless otherwise specified in the termination agreement, as long as the Master Association holds title to the property, each Owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Lot in accordance with the terms of this Master Declaration. During the period of that right of occupancy or use, each Owner and his successors in interest remain liable for all Master Assessments or Base Fees, Special Master Assessments and other obligations imposed on Owners by this Master Declaration.

15.5 **Master Association as Trustee.** Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Master Association, shall be held by the Master Association as trustee for Owners and Mortgagees as their interests may appear.

15.6 **Mortgagees.** Following termination, Mortgagees holding Mortgages on the Lots or Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

15.7 **Common Area and Facilities.** In the event of the dissolution of the Master Association the Property shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Area and Facilities and improvements on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth herein. To the extent the foregoing is not possible, the Common Area and Facilities shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners as tenants in common.

## ARTICLE XVI: DEVELOPMENT RIGHTS

16. **Development Rights.** The following development rights are hereby granted to or reserved by Declarant (collectively, "Development Rights"):

16.1 **Easement.** Declarant hereby reserves an easement throughout the Project for a period twenty (20) years from the date of the recording of this Master Declaration for the purpose of completing all improvements contemplated hereby and in the Final Plat, including but not limited to improvements to any land annexed.

16.2 **Improvements.** Declarant hereby reserves the right but not the obligation to construct any improvements shown on the Final Plat; and any other buildings, structures or improvements that Declarant desires to construct on the Property, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

16.3 **Sales Offices.** Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project and models in any of the Property which it owns or leases or on the Common Area and Facilities of the Project for so long as Declarant is an Owner within the Project. All signage shall comply with county regulations, as the same may be changed from time to time. Declarant shall be entitled to utilize, at any one time, any number of Lots or Units which it owns or leases and some or all of the Common Area and Facilities as sales offices, management offices, and models anywhere in the Project. Declarant may relocate sales offices, management offices and models to other Units or Common Area and Facilities at any time.

16.4 **Declarant's Obligation to Pay Master Assessments.** The Declarant is not obligated to pay Assessments on Lots or Units it owns unless or until a certificate of permanent occupancy has been issued and the property has been sold, rented or is occupied, excluding any Lot used as a model home.

16.5 **Waiver of Obligation to Pay Assessments on Leased Model Home.** The Owner of a Lot or Unit leased or rented to Declarant for use as a model home is hereby excused from and shall not be obligated to pay any portion of the Master Common Expenses, Master Assessment or Base Fee, or Special Master Assessment on that Lot, anything to the contrary notwithstanding.

16.6 **Changes to the Property.** Notwithstanding anything to the contrary contained in this Master Declaration, Declarant may unilaterally and in its sole discretion make such alterations, changes or modifications to any of the Property, Lot owned by it or to the adjacent Common Area, as Declarant deems necessary or appropriate, including but not limited to the creation or removal of interior walls and modifications to plumbing and electrical systems.

16.7 **Promotions.** The Declarant hereby reserves to itself the right to create promotions for the sale and marketing of the Property, including by way of illustration but not limitation the right to alter the number, type, kind, nature, or features of Lots or Units available.

16.8 **Transfer and Impact Fees.** Declarant hereby reserves the right to establish and collect community enhancement, reinvestment and impact fees, and in the event it elects to do so it shall record in the office of the Salt Lake County Recorder a written Notice in accordance with the laws of the State of Utah.

16.9 **Interference.** Neither the Master Association, Board of Directors, Subassociation or Owner may take any action or adopt any rule or regulation that interferes or diminishes any Development Rights set forth herein, without Declarant's express prior written consent, and any action taken in violation of this subsection shall be null and void and of no force or effect.

16.10 **Books and Records.** The Books and Records of the Declarant are private, privileged and confidential, and shall not be made available to any Person for inspection, copying or any other purpose, without the express prior written consent of the Declarant.

16.11 **Vested Rights.** The Declarant reserves to itself and is hereby granted the "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann., Section 10-9a-509 (2009) as amended or supplemented.

## ARTICLE XVII: SECURITY

17. **Security.** The Master Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. Neither the Declarant nor the Master Association shall in any way be considered insurers or guarantors of security within the Project, however, and neither the Declarant nor the Master Association shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners for themselves and their Permittees acknowledge that neither the Declarant, Master Association or Board of Directors represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner for himself and his Permittees acknowledge and understand that the Declarant, Master Association

and Board of Directors are not insurers and that each Owner for himself and his Permittees assumes all risks for loss or damage to persons or property within the Project and further acknowledges that Declarant, Master Association and Board of Directors have made no representations or warranties nor has any Owner or Permittees relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

## **XVIII: AMENDMENT**

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

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

18.3 **Unilateral Right to Amend Under Certain Conditions.** Anything to the contrary notwithstanding, this Master Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (a) necessary to correct typographical errors or inadvertent omissions; (b) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (c) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots or Units subject to this Master Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any such Lot, unless any such Owner shall consent thereto in writing.

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

18.5 **To Satisfy Requirements of Lenders.** Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Master Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a

condition precedent to such agency's approval of this Master Declaration or approval of the sale of Lots or Units, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots or Units and all persons having an interest therein. It is the desire of Declarant to retain control of the Master Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, Declarant shall have the unilateral right to amend this Master Declaration to restore such control.

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

**18.7 Termination of Development Status.** To amend the Declaration to terminate the Development or to modify, amend or repeal this subsection requires the unanimous consent of all Owners, anything to the contrary notwithstanding.

#### **ARTICLE XIX: DISPUTE RESOLUTION AND LIMITATION ON LITIGATION AGREEMENT TO AVOID COSTS OF LITIGATION**

**19.1 General.** Expressly excluding all mortgagees, lenders, and holders of security instruments affecting the Property, who may but are not obligated to participate in or by bound by or subject to this Dispute Resolution Article or any requirements for mediation or arbitration, the Declarant, Master Association and all Owners subject to this Master Declaration, and any person not otherwise subject to this Master Declaration who agrees to submit to this Section (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the properties at the Project, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving properties at the Project, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Master Declaration or the Governing Documents (collectively "Claim"), except for those Exempt Claims authorized under this Section, shall be subject to the procedures set forth herein.

#### **19.2 Exempt Claims.**

Any Bound Party having an Exempt Claim (as defined below) may submit it to the alternative dispute resolution procedures set forth in this Section, but there shall be no obligation

to do so. The following Claims ("Exempt Claims") shall be exempt from the provisions of hereof:

19.2.1 Any suit by Declarant against any Bound Party to enforce the provisions of this Master Declaration or to enforce any of Declarant's developmental rights set forth in this Master Declaration, including any defensive or responsive actions by the party against whom this Master Declaration is taken; Any suit by the Master Association against any Bound Party to enforce the provisions of this Master Declaration, including any defensive or responsive actions by the party against whom this Master Declaration is taken;

19.2.2 Any suit by the Master Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Master Association's ability to enforce the provisions of this Master Declaration, including any defensive or responsive actions by the party against whom this Master Declaration is taken;

19.2.3 Any suit between Owners (other than the Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Utah in the absence of a claim based on the Governing Documents, if the amount in controversy exceeds \$20,000.00; and

19.2.4 Any suit or enforcement action or exercise of any right or remedy under or in respect of any Mortgage, any indebtedness secured by such Mortgage or any other document or agreement executed in connection with such Mortgage or in respect of any right provided herein with respect to such Mortgage.

**19.3 Mandatory Procedures for All Other Claims.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") other than an Exempt Claim, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

**19.4 Notice.** The Claimant shall notify each Respondent in writing of the Claim ("Notice"), stating plainly and concisely:

19.4.1 The nature of the Claim, including date, time, location, person involved, Respondent's role in the Claim;

19.4.2 The basis of the Claim (i.e., the provision of the Master Declaration, Governing Documents, or other authority out of which the Claim arises);

19.4.3 What Claimant wants Respondent to do or not to do to resolve the Claim;  
and

19.4.4 That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

**19.5 Good Faith Negotiation.** Each Claimant and Respondent (“Parties”) shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board of Directors may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Project.

**19.6 Final and Binding Arbitration.** If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), the Claimant shall have thirty (30) days following Termination of Negotiations to submit the Claim to arbitration in accordance with the Rules of Arbitration maintained on file in the office of the Master Association or the Claim shall be deemed abandoned, and Respondent shall be release and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

**19.7 Arbitration Award.** This constitutes an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable Utah arbitration law. The arbitration award (the “Award”) shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under Utah law.

**19.8 Allocation of Costs of Resolving Claims.**

19.8.1 Each Party shall bear all its own costs incurred prior to and during the proceedings described herein, including the fees of its attorney or other representative.

19.8.2 Each Party shall share equally in the costs of conducting the arbitration proceeding (collectively, “Arbitration Costs”), except as otherwise provided herein; provided, however, if the Claim is rejected in whole or in part, the Claimant shall pay all Arbitration Costs, including the costs incurred by the Respondent.

**19.9 Enforcement of Resolution.** If the Parties agree to resolve any Claim through negotiation in accordance herewith and any Party thereafter fails to abide by the terms of such Agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth herein. In such event, the party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

## ARTICLE XX: MANAGEMENT OF MASTER ASSOCIATION

20.1 **Management.** The Master Association must be managed either (a) by the Declarant or one of Declarant's employees, agents, representatives, designees or affiliates or (b) a professional property manager or management company selected by the Board of Directors (the "Manager"), anything to the contrary notwithstanding. This section may not be changed without the prior express written consent of Declarant, its successors or assigns. The same Manager must manage the Orchard Farms Town Homes and the Orchard Farms SFR.

20.1.1 **Delegation of Authority and Subcontracts.** The Board of Directors may:

20.1.2 **Delegation.** Director some of their management responsibilities to a professional manager; and

20.1.3 **Subcontractors.** Employ general laborers, grounds-crew, maintenance personnel, bookkeeping, administrative and clerical workers as necessary to perform their management responsibilities.

20.1.4 **Conflict.** In the event of a conflict of opinion, the decision of the Declarant shall be conclusive, final and binding.

## ARTICLE XXI: MISCELLANEOUS

21.1 **Covenants to Run with Land.** This Declaration and all of the covenants, provisions, and requirements hereof are intended to be and shall constitute covenants running with the land or equitable servitudes, and shall be binding upon and shall inure to the benefit of the parties to this Declaration and any other party which has, acquires, or comes to have any interest in the property or which occupies or uses the Property and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the covenants, provisions, and requirements hereof shall be binding upon each Owner, Lot, Unit and property in the Project. All real property interests in the Project shall be subject to this Master Declaration and all of such covenants, provisions, and requirements. Each Person by virtue of accepting a deed or other document of conveyance to, or the possession of any Unit or Lot, or using the property, hereby consents and agrees to be subject to and bound by this Master Declaration and all of the conditions, covenants, restrictions, easements, provisions and requirements hereof.

21.2 **Partial Invalidity.** The invalidity or unenforceability of any portion of the Declaration shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Declaration or the application thereof to any party to this Declaration, or circumstances should to any extent be invalid, the remainder of this Declaration or the application of such provision to any party to this Declaration, or circumstances other than those as to which a holding of invalidity is reached shall not be effected thereby (unless necessarily



conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

**21.3 City Access.** The City is hereby granted a reasonable right of access to the Portion and any portions thereof during the period of construction to inspect or observe the Project and any work thereon.

**21.4 Captions.** The captions or headings which precede the paragraphs of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed.

**21.5 Construction.** Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders.

**21.6 Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

**21.7 Enforcement and Attorneys Fees.** In the event of a material violation of this document, the Manager, Board of Directors or an aggrieved Owner may bring an action for injunctive relief or damages. If this agreement is referred to an attorney for interpretation or enforcement, the prevailing party shall be entitled to recover his reasonable attorneys fees and costs, regardless of whether arbitration is commenced or a lawsuit is filed.

**21.8 Registered Agent.** The initial registered agent of the Master Association is Christopher P. Gamvroulas. The initial registered office of the Master Association is at 978 East Woodoak Lane, Salt Lake City, Utah 84117.

**21.9 Conflict.**

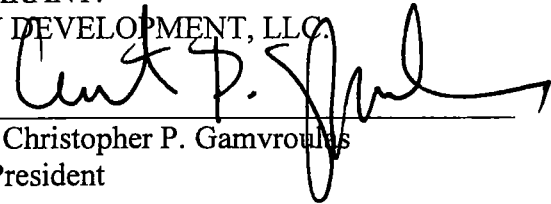
19.9.1 In the event of any conflict between a provision of this Master Declaration and a provision in a Supplemental Declaration, the former shall in all respects govern and control.

19.9.2 In the event of a dispute between the Master Association and a Subassociation regarding the interpretation or enforcement of this Master Declaration and any Supplemental Declaration for a Neighborhood, the decision of the Board of Directors of the Master Association shall be final, binding and conclusive.

21.10 **Effective Dates and Duration.** This Declaration and all of the provisions hereof (except any provisions which by their terms may cease to be effective at an earlier time) shall remain effective for a term of fifty (50) years, unless sooner terminated and extinguished by a written Termination of Declaration filed with the Davis County Recorder, and executed by all of the parties hereto. At the expiration of the initial term, the Declaration shall renew itself for additional ten (10) year periods unless terminated by the unanimous consent of all of the parties hereto.

DATED this 3 day of January, 2013.

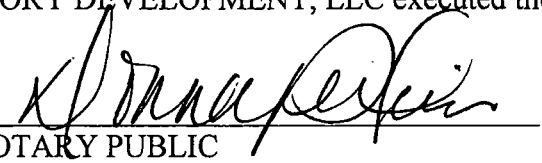
DECLARANT:  
IVORY DEVELOPMENT, LLC.

By:   
Name: Christopher P. Gamvroulas  
Title: President

**ACKNOWLEDGMENT**

STATE OF UTAH                    )  
  ss:  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 3 day of January, 2013 by Christopher P. Gamvroulas, the President of IVORY DEVELOPMENT, LLC., a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that said IVORY DEVELOPMENT, LLC executed the same.

  
NOTARY PUBLIC

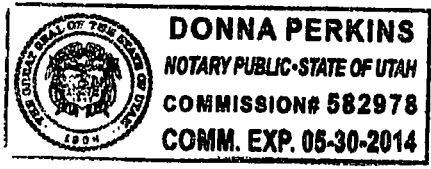


EXHIBIT A LEGAL DESCRIPTION

# LEGAL DESCRIPTION

07-278-0101 thru 0159

BEGINNING AT A POINT WHICH IS NORTH 00°05'00" EAST 400.49 FEET; AND SOUTH 38°00'00" WEST 837.30 FEET; FROM THE CENTER OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 1 WEST SALT LAKE BASE AND MERIDIAN.

THENCE SOUTH 54°57'20" EAST 66.00 FEET; THENCE SOUTHWESTERLY 101.77 FEET ALONG A 404.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 42°15'40" WEST 101.50 FEET); THENCE SOUTH 40°31'20" EAST 102.50 FEET; THENCE NORTHEASTERLY 116.93 FEET ALONG A 506.50 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 42°51'51" EAST 116.67 FEET); THENCE SOUTH 53°44'57" EAST 39.00 FEET; THENCE SOUTH 51°29'01" EAST 312.48 FEET; THENCE SOUTH 51°28'59" EAST 43.00 FEET; THENCE SOUTH 51°28'50" EAST 110.50 FEET; THENCE SOUTH 38°31'10" WEST 456.00 FEET; THENCE NORTH 51°28'50" WEST 475.50 FEET; THENCE NORTHWESTERLY 143.20 FEET ALONG A 287.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 37°11'13" WEST 141.71 FEET); THENCE SOUTH 68°52'57" WEST 3.37 FEET; THENCE SOUTHWESTERLY 12.62 FEET ALONG A 33.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS SOUTH 57°55'24" WEST 12.55 FEET); THENCE SOUTH 46°57'52" WEST 30.29 FEET; THENCE NORTH 43°02'08" WEST 42.48 FEET; THENCE NORTHWESTERLY 12.07 FEET ALONG A 10.00 RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 05°29'26" WEST 11.35 FEET); THENCE NORTHWESTERLY 32.60 FEET ALONG A 98.50 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 30°35'59" WEST 32.45 FEET); THENCE NORTH 21°07'03" WEST 57.83 FEET; THENCE NORTHWESTERLY 23.56 FEET ALONG A 15.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 66°07'03" WEST 21.21 FEET); THENCE SOUTH 68°52'57" WEST 17.87 FEET; THENCE SOUTHWESTERLY 177.66 FEET ALONG A 467.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS SOUTH 57°59'03" WEST 176.59 FEET); THENCE SOUTH 47°05'10" WEST 40.39 FEET; THENCE SOUTHWESTERLY 54.87 FEET ALONG A 35.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS SOUTH 02°10'35" WEST 49.42 FEET); THENCE NORTH 42°44'00" WEST 141.02 FEET; THENCE SOUTHEASTERLY 62.96 FEET ALONG A 40.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS SOUTH 87°49'25" EAST 56.66 FEET); THENCE NORTH 47°05'10" EAST 34.94 FEET; THENCE NORTHEASTERLY 202.76 FEET ALONG A 533.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 57°59'03" EAST 201.54 FEET); THENCE NORTH 68°52'57" EAST 238.12 FEET; THENCE NORTHEASTERLY 199.62 FEET ALONG A 338.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 51°57'49" EAST 196.73 FEET) TO THE POINT OF BEGINNING

CONTAINS 7.83 ACRES

EXHIBIT A (continued)

PHASE 2 BOUNDARY DESCRIPTION

COMMENCING AT A POINT WHICH IS NORTH 00°05'00" EAST, 400.49 FEET AND SOUTH 38°00'00" WEST, 837.30 FEET FROM THE CENTER OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND THENCE RUNNING 199.62 FEET ALONG THE ARC OF A 338.00 FOOT RADIUS TO THE RIGHT (CHORD BEARS SOUTH 51°57'49" WEST, 196.73 FEET); THENCE SOUTH 68°52'57" WEST, 238.12 FEET; THENCE 202.76 ALONG THE ARC OF A 533.00 FOOT RADIUS TO THE LEFT (CHORD BEARS SOUTH 57°59'03" WEST, 201.54 FEET); THENCE SOUTH 47°05'10" WEST, 34.94 FEET; THENCE 62.96 FEET ALONG THE ARC OF A 40.00 FOOT RADIUS TO THE RIGHT ( CHORD BEARS NORTH 87°49'25" WEST, 56.66 FEET); THENCE NORTH 42°44'00" WEST 149.16 FEET; THENCE NORTH 56°18'56 EAST, 299.85 FEET; NORTH 66°21'56 EAST, 123.56 FEET; THENCE NORTH 54°20'07" EAST, 15.41 FEET; THENCE NORTH 82°51'08" EAST, 163.08 FEET; THENCE NORTH 12°08'58" EAST, 538.90 FEET; NORTH 64°21'57" EAST 661.82 FEET TO A POINT ALONG THE SECTION LINE; THENCE SOUTH 00°05'00" WEST, 280.01 FEET ALONG THE SECTION LINE; THENCE NORTH 77°21'49" EAST, 17.12 FEET; THENCE SOUTH 82°33'44" EAST, 80.54 FEET TO AN EXISTING REBAR SET IN CONCRETE; THENCE SOUTH 397.89 FEET; THENCE NORTH 51°23'22" WEST, 131.97 FEET; THENCE SOUTH 38°31'10" WEST, 176.64 FEET; THENCE NORTH 51°28'20" WEST, 27.44 FEET; THENCE SOUTH 38°31'10" WEST, 92.00 FEET; THENCE SOUTH 51°28'50" EAST, 11.41 FEET; THENCE SOUTH 38°31'10" WEST, 92.00 FEET; THENCE SOUTH 51°28'50" EAST, 36.76 FEET; THENCE SOUTH 38°31'10" WEST, 135.13 FEET; THENCE NORTH 51°29'00" WEST, 67.81 FEET; THENCE NORTH 53°44'57" WEST, 39.00 FEET; THENCE 116.93 FEET ALONG THE ARC OF A 506.50 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 42°51'51" WEST, 116.67 FEET); THENCE NORTH 40°31'20" WEST, 102.50 FEET; THENCE 101.77 FEET ALONG THE ARC OF A 404.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 42°15'40" EAST, 101.50 FEET); THENCE NORTH 54°57'20" WEST 66.00 FEET TO THE POINT OF BEGINNING

CONTAINS 13.778 ACRES

07-281-0001  
07-285-0301 thru 0320

07-096-0096, 0097  
07-097-0059

PHASE 3 BOUNDARY DESCRIPTION

COMMENCING AT A POINT WHICH IS SOUTH 00°05'00" WEST, 34.07 FEET AND NORTH 51°23'22" WEST, 7.78 FEET FROM THE CENTER OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND THENCE RUNNING SOUTH 51°23'22" EAST, 131.97 FEET; THENCE SOUTH 51°28'50" EAST, 286.94 FEET; THENCE SOUTH 38°31'10" WEST 495.55 FEET; THENCE NORTH 51°28'50" WEST, 110.50 FEET; THENCE NORTH 51°28'59" WEST, 43.00 FEET; THENCE NORTH 51°29'01" WEST, 244.68 FEET; THENCE NORTH 38°31'10" EAST, 135.13 FEET; THENCE NORTH 51°28'50" WEST, 36.76 FEET; THENCE NORTH 38°31'10" EAST, 92.00 FEET; THENCE NORTH 51°28'50" WEST, 11.41 FEET; THENCE NORTH 38°31'10" EAST, 92.00 FEET; THENCE SOUTH 51°28'52" EAST, 27.44 FEET; THENCE NORTH 38°31'10" EAST 176.64 FEET TO THE POINT OF BEGINNING

CONTAINS 4.793 ACRES

**EXHIBIT "B"**  
**LEGAL DESCRIPTION**

The land described in the foregoing document as the PROPERTY SUBJECT TO THE RECIPROCAL USE EASEMENT is located in Davis County, Utah and is described more particularly as follows:

**LEGAL DESCRIPTION**  
**PREPARED FOR**  
**IVORY HOMES**  
**ORCHARD FARMS PRUD PHASE 1**  
(January 4, 2013)

**PROPOSED ACCESS EASEMENT**  
**THROUGH PHASE 1 TO**  
**ORCHARD FARMS CONDOMINIUMS**

An access easement located in the SW1/4 of Section 2, Township 3 North, Range 1 West, Salt Lake Base & Meridian, Fruit Heights, Utah, more particularly described as follows:  
Beginning at the intersection of the southerly line of Apple Blossom Way (950 South Street) and the westerly boundary of ORCHARD FARMS P.R.U.D. Phase 1, according to the Official Plat thereof on file in the Office of the Davis County Recorder, said point being located South 965.93 feet and West 357.57 feet from the Center ¼ Corner of Section 2, T3N, R1W, S.L.B. & M. (Basis of Bearing: N0°05'00"E between said Center ¼ Corner and the N1/4 Corner of said Section 2; thence N51°28'50"W along said Plat 43.00 feet; thence N38°31'10"E 83.00 feet; thence along the arc of an 11.00 foot radius curve to the left 17.28 feet through a central angle of 90°00'00" (chord: N6°28'50"W 15.56 feet); thence N51°28'50"W 311.00 feet; thence along the arc of a 193.00 foot radius curve to the right 93.37 feet through a central angle of 27°43'12" (chord: N37°37'05"W 92.47 feet); thence S68°52'57"W 97.44 feet; thence along the arc of a 33.00 foot radius curve to the left 12.62 feet through a central angle of 21°55'05" (chord: S57°55'24"W 12.55 feet); thence S46°57'52"W 30.29 feet; thence N43°02'08"W 42.48 feet; thence Northwesterly along the arc of a 10.00 foot radius non-tangent curve (radius bears: N60°54'52"W) 12.07 feet through a central angle of 69°10'57" (chord: N5°29'26"W 11.35 feet) to a point of reverse curvature; thence along the arc of a 98.50 foot radius curve to the right 32.60 feet through a central angle of 18°57'52" (chord: N30°35'59"W 32.45 feet); thence N21°07'03"W 57.83 feet; thence along the arc of a 15.00 foot radius curve to the left 23.56 feet through a central angle of 90°00'00" (chord: N66°07'03"W 21.21 feet); thence N68°52'57"E 73.00 feet; thence Southwesterly along the arc of a 15.00 foot radius non-tangent curve (radius bears: S21°07'03"E) 23.56 feet through a central angle of 90°00'00" (chord: S23°52'57"W 21.21 feet); thence S21°07'03"E 57.83 feet; thence along the arc of a 55.50 foot radius curve to the left 21.23 feet through a central angle of 21°55'05" (chord: S32°04'36"E 21.10 feet); thence S43°02'08"E 8.09 feet; thence along the arc of a 15.00 foot radius non-tangent curve (radius bears: N4°30'38"E) 7.58 feet through a central angle of 28°56'56" (chord: N80°01'59"E 7.50 feet) to a point of reverse curvature; thence along the arc of a 72.00 foot radius curve to the right 1.17 feet through a central angle of 0°56'02" (chord: N68°24'56"E 1.17 feet); thence N68°52'57"E 140.24 feet; thence S21°07'03"E 30.09 feet; thence along the arc of a 150.00 foot radius curve to the left 79.49 feet through a central angle of 30°21'47" (chord: S36°17'57"E 78.56 feet); thence S51°28'50"E 365.00 feet; thence S38°31'10"W 137.00 feet to the point of beginning.

Contains: 0.82+/- acres

**EXHIBIT "C"**

**BYLAWS OF THE  
ORCHARD FARMS MASTER ASSOCIATION**

**ARTICLE I  
NAME AND LOCATION**

**Section 1.01 Name.** The name of the association is the Orchard Farms Master Association (the "MHOA").

**Section 1.02 Principal Office Location.** The principal office of the corporation shall be located at 978 East Woodoak Lane, Salt Lake City, UT 84117.

**ARTICLE II  
DEFINITIONS**

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

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

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

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

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

**Section 3.04 Quorum.** Those Members present at the meeting in person or by proxy shall constitute a quorum.

**Section 3.05 Proxies.** At all Master Association meetings, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall expire, if not previously revoked, six (6) months after the date it is given by the Member.

**Section 3.06 Action Taken Without a Meeting.** The Association shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Association.

**Section 3.06 Location of Meetings.** The Meetings shall be held at a location in Davis County selected by the Board of Directors.

#### **ARTICLE IV BOARD OF DIRECTORS AND TERM OF OFFICE**

**Section 4.01 Number.** The affairs of the Master Association shall be managed by a Board of Directors comprised of seven (7) individuals.

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

**Section 4.03 Term of Office.** Each Director shall serve a term of two (2) years; provided, however, for purposes of continuity at the first meeting of the Master Association following the Period of Declarant's Control, three (3) Directors shall be elected for a one (1) year term and four (4) Directors shall be elected for a two (2) year term. Thereafter, all Directors shall be elected to serve a two (2) year term.

**Section 4.04 Compensation.** No Director shall receive compensation for any service he may render to the Master Association as a member of the Board of Directors, although he may be reimbursed for his actual expenses incurred in the performance of his duties and may enter into an independent contract to provide other services.

**Section 4.05 Meetings.** The Board of Directors shall meet as often as it deems reasonably necessary but not less than annually at a convenient time and place.

**Section 4.06 Action Taken Without a Meeting.** The Board of Directors shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

**Section 4.07 Voting.** Each Director shall have one vote for each Lot in the Voting Group based upon the percentages of ownership interest as set forth in the Declaration.

**Section 4.08 Managing Member.** During the Period of Declarant's Control, the Declarant hereby reserves to itself and is hereby granted the unilateral right to appoint an individual to act as the attorney-in-fact for the Board of Directors and in its name, place, and stead, and on its behalf, and for



its use and benefit (the "Managing Member"), including by way of illustration but not limitation the right, power and authority to exercise or perform any act, power, duty, right, or obligation whatsoever that the Board of Directors now has, or may hereafter acquire the legal right, power, or capacity to exercise or perform in connection with, arising from, or relating to any person, item, transaction, thing, business property, real or personal, tangible or intangible, or matter whatsoever. This reservation and grant is to be construed and interpreted as a general power of attorney. The enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to said Managing Member. The initial Managing Member shall be Christopher P. Gamvroulas.

## **ARTICLE V POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 5.01 Powers.** The Master Association shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. The Master Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Master Association. Without in any way limiting the generality of the foregoing, the Master Association may act through its Board and shall specifically have the powers and duties set out in this Article V, including

**Section 5.01.1 Assessments.** The power and duty to levy Master Assessments on the Members, and to enforce payment of such assessments in accordance with the provisions of Article VI hereof.

**Section 5.01.2 Property.** The Master Association has the right to own and/or lease property. The Board of Directors shall manage the Common Area and Facilities and enforce the Declaration. The Master Association shall:

5.01.2.1 Maintain and repair in an attractive, safe and functional condition the Common Area and Facilities;

5.01.2.2 Pay all taxes and assessments levied upon the Common Area and Facilities and all taxes and assessments payable by the Master Association;

5.01.2.3 Obtain any water, sewer, gas and electric services needed for the Common Area and Facilities;

5.01.2.4 Prepare a budget;

5.01.2.5 Collect Assessments.

5.01.2.6 Do each and every other thing reasonable and necessary to operate the Common Area and Facilities and direct the affairs of the Master Association.

## ARTICLE VI OFFICERS AND THEIR DUTIES

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

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

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

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

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

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

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

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

## ARTICLE VII SUBCOMMITTEES

**Section 7.01 Committees.** The Board of Directors may appoint such subcommittees as deemed appropriate in carrying out its purpose.

## ARTICLE VIII BOOKS AND RECORDS

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

**Section 8.02 Signatures.** The Board of Directors shall determine who must sign checks, drafts, contracts, and legally binding agreements.

**Section 8.03 Bookkeeping.** The accounting and financial statements for Master Association must be kept and prepared by the property manager, an independent bookkeeper, or an independent accountant, who may not be a member of the Board of Directors or an officer of the Master Association. The accountant or bookkeeper shall prepare and file all tax returns for the Master Association.

**Section 8.04 Audit.** Either a majority vote of the Directors or a majority vote of the Total Votes of the Master Association is necessary and sufficient to require either a Compilation Report, Reviewed Statement or Audited Statement of the Master Association, which shall be considered a Master Common Expense.

## ARTICLE IX AMENDMENTS

**Section 9.01 Amendment to Bylaws.** These Bylaws may only be amended as follows: (a) Unilaterally by the Declarant during the Period of Declarant's Control; and (b) thereafter by the unanimous vote of all of the Members.

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

## ARTICLE X MISCELLANEOUS

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

**Section 10.02 Partial Invalidity.** The invalidity or unenforceability of any portion of the Bylaws shall not affect the validity or enforceability of the remainder hereof, and if any provision of these Bylaws or the application thereof to any party to these Bylaws, or circumstances should to any extent be invalid, the remainder of these Bylaws or the application of such provision to any party to these Bylaws, or

circumstances other than those as to which a holding of invalidity is reached shall not be effected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of these Bylaws shall be valid and enforceable to the fullest extent permitted by law.

**Section 10.03 Captions.** The captions or headings which precede the paragraphs of these Bylaws are for convenience only and shall in no way affect the manner in which any provision hereof is construed.

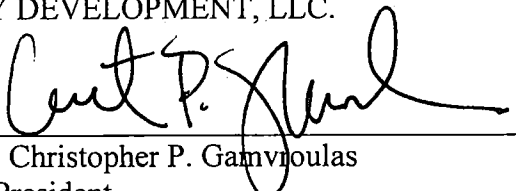
**Section 10.04 Construction.** Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders.

**Section 10.05 Governing Law.** These Bylaws shall be governed by and construed in accordance with the laws of the State of Utah.

**Section 10.06 Notices.** All notices must be fair and reasonable. Notice given in the manner authorized by the Utah Revised Nonprofit Corporation Act will be considered "fair and reasonable" notice. The Master Association may give notice by its website, e-mail, text message, or electronic medium; provided, however an Association, Subassociation or Owner may require by making a written request to the Association a written notice hand delivered or delivered by U.S. Mail.

IN WITNESS WHEREOF, the undersigned Declarant hereunto sets its hand this 3 day of January, 2013.

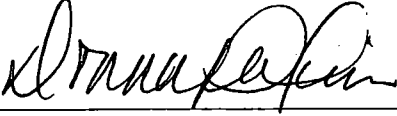
DECLARANT:  
IVORY DEVELOPMENT, LLC.

By:   
Name: Christopher P. Ganvrioulas  
Title: President

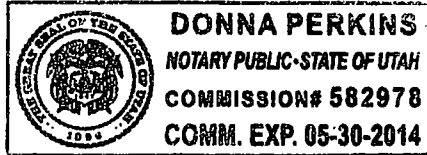
**ACKNOWLEDGMENT**

STATE OF UTAH                    )  
  ss:  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 3 day of January, 2013 by Christopher P. Gamvroulas, the President of IVORY DEVELOPMENT, LLC., a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that said IVORY DEVELOPMENT, LLC. executed the same.



\_\_\_\_\_  
NOTARY PUBLIC



**EXHIBIT "D"**  
**STREET TREE GUIDELINES**

1. The following Plant List identifies the kinds of Street Trees which may be planted. No substitutions are allowed without the express prior written consent of the Declarant or Architectural Review Committee.

2. Approved Street Tree Plant List:

<u>COMMON NAME</u>	<u>BOTANICAL NAME</u>
Common Hackberry	Celtis occidentalis
American Basswood	Tilia Americana
Common Hackberry	Celtis occidentalis
Sycamore Maple	Acer pseudoplatanus
American Basswood	Tilia Americana
American Basswood	Tilia Americana
American Basswood	Tilia Americana
Chinkapin Oak	Quercus muehlenbergii
Sycamore Maple	Acer pseudoplatanus

**EXHIBIT "E"**

**OPERATING AGREEMENT AND TERMS OF RECIPROCAL USE EASEMENT**

1. This agreement is non-exclusive.
2. This agreement is not revocable and may not be modified without the prior written consent of Ivory Development, LLC or its successors and assigns.
3. The Easement, which shall run with the land, is intended to provide pedestrian and vehicular access and circulation to, through, over, across and from the land subject to the Master Declaration of Covenants, Conditions and Restrictions, and Reservation or Grant of Easements for Orchard Farms Planned Residential Unit Development and the Orchard Farms Condominium Neighborhood Association via the Roads shown on the Final Plat to satisfy the site plan approval requirements of the City of Fruit Heights, Utah for the development of said properties. The property shall hereafter be subject to and burdened by an easement for the benefit of said parcels for such purpose.
4. The Easement is also intended to provide Landscaping and Open Space. The property shall hereafter be subject to and burdened by an easement for the benefit of said parcels for such purpose.
5. The improvements within the Reciprocal Use Easement shall be constructed and maintained in a good and useful condition by the respective property owners, with damages caused by another lot owner or his guests or invitees to be reasonably repaired by that lot owner at his sole expense. For purposes of such repairs the lots shall be subject to and burdened by temporary construction easements over such portions of the lots as are reasonably necessary for the performance of the required maintenance or repair.
6. This easement and the rights and obligations set forth herein are permanent and perpetual and intended to bind the parties hereto, their heirs, successors and assigns, and their respective properties, as equitable servitudes, and to run with the land.
7. This agreement and the cross easements granted may not be changed or expanded except by a writing signed by the parties hereto or their heirs, successors or assigns.
9. Nothing contained herein shall be deemed to be a gift or dedication of any portion of any of the properties described herein or the Reciprocal Use Easement to or for the general public or for any public purposes whatsoever, it being the intention of the parties that this cross easement be strictly limited for the purposes expressed herein.

10. The parties do not by this Reciprocal Use Easement in any way or for any purpose become partners or joint ventures with each other.

11. If any provisions herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Reciprocal Use Easement and shall in no way affect any other provisions herein contained. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

12. The cost to maintain the Reciprocal Use Easement shall be allocated in the manner set forth in the Master Declaration.

13. The property described in Exhibit "B" is known or to be known as the "Reciprocal Use Easement Area".

14. The Master Association shall maintain the Reciprocal Use Easement Area in good condition at its sole cost.

15. The Orchard Farms Condominium Neighborhood Association shall pay the Orchard Farms Condominium Neighborhood Association Assessment to the Master Association annually, although it may elect to make payments in installments.

16. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Reciprocal Use Easement. To be effective, any waiver must be signed by the party waiving the right.

17. In the event of the failure of any party hereto to comply with any provisions of this Reciprocal Use Easement, the defaulting party shall pay any and all costs and expenses, including reasonably attorneys fee, arising out of or resulting from such default, incurred by the injured party in enforcing its rights and remedies, whether such right or remedy is pursued by filing a lawsuit or otherwise.

18. There are no representations, warranties, covenants, or agreements between the parties as to the subject- matter of this Reciprocal Use Easement except as are specifically set forth herein. This writing contains the entire agreement between the parties hereto pertaining to the matters that are set forth herein and supersedes all prior verbal or written agreements of the parties relation thereto.