

AFTER RECORDING RETURN TO:  
IVORY DEVELOPMENT, INC.  
978 Woodoak Lane  
Salt Lake City, Utah 84117  
(801) 747-7440

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### FOR DA VINCI PLACE

This Declaration of Covenants, Conditions and Restrictions for Da Vinci Place, a planned residential development located in Orem, Utah (the "Declaration") is made and executed by Ivory Development, LLC. of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the "Developer"), with reference to the following:

#### RECITALS:

- A. This Declaration of Covenants, Conditions and Restrictions for Da Vinci Place affects that certain real property located in Utah County, Utah described with particularity in Article II below (hereinafter referred to as the "Tract").
- B. Declarant is the owner of the Tract.
- C. Declarant has constructed, is in the process of constructing or will construct upon the Tract a single family residential subdivision which shall include certain Lots, Common Area, and other improvements. All of such construction has been, or is to be, performed in accordance with the plans contained in the Final Plat to be recorded concurrently herewith and the Development Agreement entered into by Declarant and Orem City as recorded against the Property.
- D. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Tract, and a corresponding membership interest in the Association of Lot Owners (which shall own the Common Area), subject to the Final Plat, Development Agreement, and the covenants, conditions and restrictions set forth herein.
- E. Declarant desires, by filing this Declaration and Final Plat, to submit the Tract and all improvements now or hereafter constructed thereon to the terms, covenants and conditions of this Declaration.

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following Declaration:

#### I. DEFINITIONS

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

1. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association.

2. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Da Vinci Place Homeowners Association on file or to be filed with the State of Utah.

3. Assessments shall mean and refer to the fees, dues and amounts assessed Lot Owners to pay for the Common Expenses incurred in the operation, maintenance and regulation of the Project.

4. Association shall mean and refer to the association of Lot Owners at Da Vinci Place, acting as a group in accordance with the Declaration.

5. Building shall mean and refer to any of the structures constructed in the Project.

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

7. By Laws shall mean and refer to the document attached to this Declaration as Exhibit "C".

8. Capital Improvement shall mean and refer to a new significant fixed asset added to the Project, and not included in its original design or construction, intended to enhance, upgrade and improve the utility, value or beauty of the Common Areas or Facilities. The term Capital Improvement does not include the repair, maintenance or replacement of existing significant fixed assets.

9. Capital Improvement Expenses shall mean and refer to all expenses related to the design, purchase, installation or construction of a Capital Improvement.

10. City shall mean and refer to Orem City.

11. Class B Control Period shall mean and refer to the period of time during which the Class B Member is entitled to appoint all or a majority of the members of the Management Committee.

12. Committee shall mean and refer to the Management Committee.

13. Common Areas shall mean and refer to all real property in the Project in which the Association owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including but not limited to the following items:

a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Lots.

b) All Common Areas and Facilities designated as such in the Plat Map or Maps;

c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Lot Owners, such as telephone, electricity, street lights, gas, water, and sewer;

d) The Project's outdoor grounds, Tennis, Pavilions and related amenities, frontage on 1200 North Street, frontage on Research Way, green space, landscaping, sidewalks and entry.;

e) All portions of the Project not dedicated to the City or specifically included within the individual Lots; and

f) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

14. Common Expense shall mean and refer to:

a) All sums lawfully assessed against the Lot Owners;

b) Expenses of administration, maintenance, repair, or replacement of the Common Areas and Facilities;

c) Expenses agreed upon as common expenses by the Association; and

d) Expenses declared common expenses by the Project Documents.

15. Community shall mean and refer to the Project.

16. Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community as determined by the Management Committee from time to time.

17. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Da Vinci Place.
18. Declarant shall mean and refer to Ivory Development, LLC, a Utah Limited Liability Corporation, and its successors and assigns, unless otherwise indicated.
19. Dedicated Streets shall mean and refer to those roads, streets and drives, formally dedicated to the City.
20. Dedicated Trails shall mean and refer to those trails formally dedicated to the City.
21. Dwelling Unit or Unit shall mean and refer to the single family home or residential structure constructed upon a Lot.
22. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.
23. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.
24. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an "eligible vote".
25. Family shall mean *one* of the following: (1) a single person living alone; or (2) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, such as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent or great-grandchild, and an additional person as domestic help or a caretaker; or (3) a group of not more than three unrelated persons who live together, cook together, and maintain a common household and single housekeeping unit, to be distinguished from a group occupying a boarding house, lodging house, club, fraternity, or hotel.
26. Final Plat shall mean and refer to the "Plat Map or Maps of Da Vinci Place" on file in the office of the County Recorder of Utah County, as they may be amended from time to time. The Plat Map will show the location of the lots and Common Area.
27. Guest shall mean and refer to a temporary visitor, invitee or person whose presence within the Project is approved by or is at the request of a particular resident.
28. Improvement shall mean and refer to all existing physical structures and appurtenances to the Property of every kind and type, including but not limited to all buildings, dwelling units, fixtures, plumbing, electrical, heating, air conditioning

and utility systems, roads, walkways, driveways, parking areas, fences, walls, stairs, landscaping, trees, shrubs, bushes and green space,

29. Land shall mean and refer to all of the real property subject to this Declaration.

30. Lot shall mean and refer to a portion of the Property, other than the Common Area, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat Map filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any dwelling unit, physical structure or improvement constructed on the Lot.

31. Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.

32. Lot Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Utah County, Utah) of a fee or an undivided fee interest in a Lot, including but not limited to both the seller and buyer under an executory sales contract (e.g. uniform real estate, land sales contract, or other similar instrument). The term Lot Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

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

34. Management Committee shall mean and refer to those Lot Owners duly elected and qualified to manage, operate and regulate the Association.

35. Manager shall mean and refer to the person or entity appointed or hired to manage and operate the Project.

36. Map shall mean and refer to the Plat Map on file in the office of the County Recorder of Utah County.

37. Member shall mean and refer to an Owner obligated, by virtue of his Ownership, to be a shareholder in the Association.

38. Mortgage shall mean and refer exclusively to either a first mortgage or first deed of trust on any Lot, but shall not mean or refer to an executory contract of sale.

39. Mortgagee shall mean and refer exclusively to a mortgagee under either a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under an executory contract of sale.

40. Owner shall mean and refer to the Lot Owner.

41. Permanent Resident shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any calendar year.

42. Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

43. Private Way shall mean and refer to those courtyards, roads, streets, paths, ways or drives not dedicated to any city, county, state or other governmental agency.

44. Project shall mean and refer to DA VINCI PLACE.

45. Project Documents shall mean collectively the Declaration, By Laws, Rules and Regulations, and Articles of Incorporation.

46. Property shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to this Declaration.

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

48. Single Family Home or Residence shall mean and refer to both the architectural style of a Dwelling Unit and the nature of the residential occupancy, use or activity permitted.

49. Total Votes shall mean and refer to all of the available votes in the Project.

## **II. SUBMISSION**

The Land, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is located in Utah County, Utah, is hereby submitted to the terms, covenants and conditions of this Declaration, and is hereby made subject to, and shall be governed and regulated by, this Declaration of restrictive covenants. In addition:

The Land is SUBJECT TO the described easements and rights of way, TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any

easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Plat Maps or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

### **III. COVENANTS, CONDITIONS, AND RESTRICTIONS**

The foregoing submission is made upon and under the following covenants, conditions, and restrictions:

1. Area of Application. This Declaration shall apply to all of the Property.
2. Right to Expand Application. Without any other additional approval required, the Developer shall have the exclusive, unilateral, unconditional, and irrevocable right to expand the application of this Declaration to other real property by written amendment to this Declaration duly recorded.
3. Description of Improvements. The significant improvements in the Project include, or shall include, sixty-seven (45) Lots and Common Area consisting of certain common grounds, green space and landscaping; Tennis Court and related amenities; Pavilion; frontage on 1200 North Street and frontage on research Way; sidewalks; utility systems; and Entry and Entry Monument. The Entry Monument shall be constructed of rock, wrought Iron, Concrete, and stucco. The common fencing throughout the Project shall be of wrought iron, masonry and vinyl construction. The Project will also contain other improvements of a less significant nature.
4. Description and Legal Status of the Property. The Lots shall be individually owned and the Common Areas shall be owned by the Association.
5. Membership in the Association. Membership in the Association is mandatory, appurtenant to the ownership of a Lot, and may not be partitioned therefrom.
6. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

All of LOT No. \_\_\_\_ contained within DA VINCI PLACE, as the same is identified in the Final Plat recorded in Utah County, Utah as Entry No. \_\_\_\_, in Book \_\_\_\_, at Page \_\_\_\_ (as said Final Plat may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restrictions of DA VINCI PLACE, recorded in Utah County, Utah as Entry No. \_\_\_\_, in Book \_\_\_\_, at Page \_\_\_\_, (as said Declaration may have heretofore been amended or supplemented), together with a 1/45th membership interest in and to the Association.

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

7. Ownership and Use. Each Owner shall be entitled to the exclusive ownership and possession of his Lot and to membership in the Association as set forth herein, subject, however, to the following:

a) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple Ownership of his Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned as any other property rights by persons. This is a residential community and as such the Lots shall be used only for residential purposes, unless a change of use is authorized in writing by the Declarant. The Common Areas shall only be used in a manner consistent with the residential nature of the Project.

b) Title to the Common Area. The Common Area, described with particularity in the Final Plat, is granted to and shall be owned by the Association for and in behalf of the Owners.

c) Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions:

(1) The right of the Association to limit the number of Guests and residents;

(2) The right of the Association to suspend the voting privilege and/or right to use the recreational amenities; and

(3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of regulating transportation, maintaining the roadways or providing utilities and other similar or related purposes. During the Class B Control Period, any such dedication or transfer shall be effective only if approved in writing by the Declarant.

d) Rules and Regulations. The Management Committee, shall have the power and authority to adopt, amend or repeal rules and regulations, and architectural guidelines, from time to time.



e) Restrictions and Limitations of Use. The use of the Lots is subject to the following initial use restrictions:

(1) Parties Bound. The Project Documents shall be binding upon all Owners and residents, their family members, Guests and invitees.

(2) Nuisance. It shall be the responsibility of each Owner and resident to prevent the creation or maintenance of a nuisance in, on or about the Project, and to promptly abate any nuisance created. For purposes of this section a "nuisance" includes but is not limited to the following:

a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;

b. The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

c. The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

f. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project by other residents, their guests or invitees; and

g. Maintaining a party house as that term is defined in U.C.A., Section 78-38-9, as amended or supplemented from time to time.

(3) Unsightly Work, Hobbies or Unkempt Condition.

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

(4) Removing Garbage, Dust & Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

(5) Subdivision of a Lot. No Lot shall be subdivided or partitioned, unless a variance is granted in writing by the Declarant, except by the Declarant who may unilaterally combine Lots, in whole or in part, by executing and delivering a quit claim deed or other document of conveyance and noting the change by a written supplement to this Declaration duly recorded, in accordance with the applicable state and City regulations, laws, and ordinances regarding the same.

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

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

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

(9) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, refuse, garbage or other waste, which shall not be kept except in sanitary containers. All incinerators or other equipment for the

storage or disposal of such material shall be kept in a clean and sanitary condition. Each Lot and its abutting street are to be kept free of rubbish, trash, refuse, garbage, waste, litter, weeds and other similar items by the Owner.

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

(11) Sight Distance at Intersections. A clear vision area is required at each intersection. This area is defined by a triangle created by connecting the intersection of the curb face of each street. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty five (35') feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. A 25' sight-line limitation shall apply on a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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

(13) Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of each lot and all improvements in them shall be maintained continuously by the Association, except for those improvements for which a public authority or utility company is responsible. No structure may be constructed, placed or installed so as to impair in any way the natural drainage flow or swells established by Declarant, nor within ten feet (10') of the rear or side Lot lines. Landscaping and all grading and drainage shall be designed in such a way to control water run-off so that any Lot within the Project will not be adversely affected by another. Furthermore, the grades initially established by the ARC or Declarant may not be altered without the prior written consent of the ARC.

(14) Fencing. No fence or other similar structure shall be erected in any required front yard of a Lot to a height in excess of four (3') feet if

sight obscuring materials are used and four feet (4') if non-sight-obscuring materials are used; nor shall any fence or other similar structure be erected in any side or rear yard to a height in excess of six (6') feet. The property owner must allow access to every utility located adjacent to the public right of way. These utilities include fire hydrants, water meters, telephone pedestals, power poles, power boxes, cable boxes, irrigation facilities, or any other utility feature. The fence must be built with a minimum three-foot (3') clearance from the outer-most edge of the utility. Fencing on corner lots shall meet City ordinances regarding vision triangle standards for safety visibility. Chain link fencing is not allowed. Vinyl, masonry, wrought iron fencing is permitted. Any fencing or similar structure using other construction materials requires the prior written approval of the ARC. If there is a dispute as to what constitutes the front, side or rear yards, the decision of the ARC shall be final, binding and conclusive.

(15) Parking and Storage of Motor Vehicles. All motor vehicles driven on or transported into the Project shall be subject to Parking Rules and Regulations adopted by the Management Committee, and the following initial restrictions:

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

b. No Recreational, Oversized, or Commercial type vehicles and no tractor-trailer trucks may be parked in the Project except in an attached garage constructed for that purpose.

c. No yard pads designed for the storage of Recreational, Commercial or Oversized vehicles, tractor-trailer trucks or other materials either temporarily or permanently may be constructed, installed or used in the Project.

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

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

(16) Pools, Spas, and Game Courts. Pools, spas, and game courts shall be located so as to avoid unreasonably impacting adjacent properties with

balls, light or sound. Pool heaters and pumps must be screened from view from the street.

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

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

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

(20) Business Use. No resident may operate a commercial trade or business in or from his Unit with employees of any kind. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Dwelling Unit. No commercial trade or business may be conducted in or from a Lot or Dwelling Unit unless (a) the business activity conforms to all home occupation and zoning requirements governing the Project; (b) the operator has a city issued business license; (c) the business activity satisfies any home occupation guidelines adopted by the Management Committee; and (d) the resident has obtained the prior written consent of the Management Committee. Notwithstanding the foregoing, the leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

(21) Storage of Commercial Equipment. No Lot shall be used or maintained as a storage area for commercial equipment of any kind for use in a trade or business.

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

(23) Structural Alterations. No structural alterations to the Common Area or Facilities are allowed without the prior written consent of the Declarant or ARC.

(24) Mail Boxes. The initial mail box must be the one approved and provided by the Declarant. All replacement mail boxes must be approved in writing by the ARC prior to installation.

(25) Junk. The storage or accumulation of junk, trash, manure or other offensive or commercial materials is prohibited.

(26). Clotheslines. Clotheslines or other facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view.

(27) Open Yard Space. Open yard space shall remain unoccupied and unobstructed by buildings, vehicles and/or hard surfaces such as asphalt, cement and packed surface from this time henceforth and forever, unless authorized in writing by the Declarant or Management Committee.

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

(29) Laws. Nothing shall be done or kept in, on or about any Lot or the Common Area, or any part thereof, which would be a violation of any statute, rule, law, ordinance, regulation, permit or other validly imposed requirement of any governmental body. Any violations of City ordinances are expressly prohibited. In the event of conflict between the provisions of these Covenants and any applicable state, City, or other governmental body law, rule, regulation or ordinance, the applicable provision of state, City or governmental body law, rule, regulation or ordinance shall govern.

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

8. Land Use and Building Type. This is a residential subdivision which includes both the architecture and appearance of the buildings and the nature of their use. All Lots must be used exclusively for residential purposes by a single family. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family residential dwelling. Accessory Buildings are not permitted. A small storage shed may be allowed but only with the prior written consent of the Declarant or ARC. IVORY HOMES shall be the exclusive builder and shall construct all of the homes on the Lots. All building plans and specifications must be approved by the Declarant in writing. The front exterior elevations of all buildings shall be either brick

and stucco or rock and stucco or brick/rock concrete siding. Other construction materials are not allowed on the front exterior elevations

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

10. Dwelling Cost, Quality and Size. Declarant shall determine the quality, size and cost of each home constructed upon a Lot.

11. Location of Dwelling and Landscaping. The Declarant shall determine the location of a home upon a Lot, which must be within the Buildable Area designated on the Final Plat.

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

13. Maintenance. The Lots and Common Area, including without limitation the Landscaping Easement and Entry Monument, shall be maintained in a usable, clean, functional, aesthetic, attractive and good condition.

14. Landscaping. The Declarant will build-out and install all landscaping on the Lots and in the Common Area, including the placement of sod and sprinkling system in the front, side and rear yards. The Association shall maintain, repair and replace all landscaping on all Lots (including the front, side and rear yards unless otherwise specifically and expressly noted) and in the Common Area. The Association shall have absolute and unilateral control over the landscaping in the front yards, including the design, location, selection, and planting of all trees, shrubs, bushes, sod and plants, and no alterations, modifications or changes of any kind may be made by any Owner or resident at any time without the prior written consent of the Architectural Review Committee, and any such alteration, modification or change made without its prior written consent shall be considered non-conforming. Upon the written request of the Architectural Review Committee, any non-conforming landscaping shall be removed and the property shall be restored to its original condition forthwith. The Association's rear

yard care will be limited to the maintenance, repair and replacement of the grass and sprinkling system. Each Owner is responsible for and may landscape his own planting, garden and flower beds in his rear yard area or contract with the Association to do so.

#### IV. ARCHITECTURAL REVIEW COMMITTEE

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

2. Architectural Review Committee ("ARC"). While the ARC will not police the Project, the ARC will respond to complaints and has the sole right and exclusive authority to resolve all architectural issue. Powers may be delegated by the ARC, provided any such delegation shall specify the scope of responsibilities delegated and shall be subject to the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and/or to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable. The initial ARC will be made up of the Declarant, who shall serve until such time as its successors are qualified and appointed. Members serving on the ARC shall be appointed or elected to serve a two (2) year term and until his successor is qualified and appointed. The initial members of the ARC are Chris Gamvroulas, David Zollinger, and Brad Mackay, who shall serve until such time as their successors are qualified and appointed.

3. ARC Powers and Standing. Any instrument executed by the ARC or its legal representative that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners. The ARC shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions, including without limitation:

a. Access. The power and authority to enter into or upon any Lot to make inspections, evaluations or repairs and to do other work necessary for the proper maintenance and operation of the Project, to enforce the decisions of the ARC, or to avoid damage to person or property in an emergency, and shall not be guilty of a trespass.

b. Execute Documents. The authority to execute and record, on behalf of and for the benefit of Owners, any contract, document, instrument or writing.



- c. Standing. The power to sue and be sued.
- d. Contractual Authority. The authority to enter into contracts which in any way concern the Project.
- e. Promulgate Rules. The authority to promulgate such reasonable rules and regulations as may be necessary or desirable to aid the ARC in carrying out any of its functions, including by way of illustration but not limitation design guidelines.
- f. Determine Common Expenses. The authority to determine the Common Expenses of operating the ARC and administering the Declaration.
- g. Assessments. The authority to assess each Lot Owner his share of the Common Expenses. The common profits of the Property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to the Owners equally and uniformly.
- h. All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the ARC to perform its functions for and in behalf of the Owners.

4. Procedures for Approval of Plans and Specifications. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. 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. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time. In the event that the ARC fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved; provided, however, anything to the contrary notwithstanding, no Dwelling shall be constructed or altered unless it meets the following minimum requirements:

- a. Only single family residential Dwellings are allowed.
- b. The height of any Dwelling shall not exceed two stories above ground.
- c. Without the prior written consent of the Declarant or the ARC, a basement is required for each Dwelling.

d. Without the prior written consent of the Declarant or the ARC, each Dwelling shall have a private garage for not less than two motor vehicles.

e. The Dwelling exteriors, in their entirety, must consist of either maintenance free stucco and masonry, unless another construction material is approved by the ARC in writing. No aluminum or vinyl is permitted except on awnings, eaves, and fascia.

f. No detached accessory buildings are permitted.

g. Landscaping. See section III, item 14, on page 15.

h. Fencing: See section III, item 7e-14, on page 11.

i. 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.

5. Ivory Homes Catalogue. Any and every home design, plan or specification contained within the then current Ivory Homes Catalogue shall be considered approved and qualify for construction, and no other consent shall be required.

6. Preliminary Architectural Drawings, Plans and Specifications. The ARC may require, as a minimum, the following:

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

b. Floor plans of each floor level to scale.

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

d. One major section through Dwelling.

e. A perspective (optional).

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

7. Final Plans and Specifications and Working Drawings. The ARC may require, as a minimum, the following:

a. Plot plans to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, retaining walls, with elevations of the existing and finished grade and

contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

- b. Detailed floor plans.
- c. Detailed elevations, indicating all materials and showing existing and finished grades.
- d. Detailed sections, cross and longitudinal.
- e. Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used with supplements, addenda or riders noting the colors of all materials to be used on the exterior of the Dwelling.

8. 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.

9. Variance. The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

10. Limitation of Liability. Neither the Declarant 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 Declarant 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.

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

request from the ARC an Owner shall at his own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

12. Default in Fulfillment of Landscaping Obligation or Unauthorized Structure. If any Owner refuses or remove an unauthorized structure from his Lot after written notice, the ARC shall have the right, but not the duty, without further notice or warning to remove the unauthorized structure and/or perform the maintenance, without being guilty of a trespass, and the cost thereof shall be the debt of the Owner at the time the cost is incurred and is collectable as such. Suit to recover a money judgment for non payment is maintainable without foreclosing or waiving the lien securing it. If any owner fails or refuses to make payment when due, that amount constitutes a lien on the interest of the owner in the property, and upon the recording of notice of lien by the ARC or its agent, it is a lien upon the Owner's interest in the property prior to 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 prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

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

14. Leases. Any agreement for the leasing, rental, or occupancy of a Lot shall be in writing. Every lease shall be subject to the provisions of the Project Documents. Any failure by a tenant to comply with the terms of the Project Documents shall be a default under the lease. No Owner shall be permitted to lease his Unit on a transient, hotel, vacation, or short-term basis, which shall be deemed to be any rental within an initial term of less than one (1) year. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his entire Unit. The foregoing lease restrictions do not apply to mortgages who have taken title or possession of a Lot by foreclosure or a deed in lieu of foreclosure.

15. Easements: Drainage, Support, Maintenance and Repair. The following easements and rights of way are hereby RESERVED for and GRANTED to the Association:

a) A non-exclusive easement over, across, through, above and under the Lots and the Common Area for the operation, maintenance and regulation of the Common Area, amenities and facilities; and

b) A reciprocal easement on, over, under, through and across all Lots and Common Area for the drainage of surface waters on, over, under, through and across the Project. The Declarant shall establish a storm drainage system designed to serve the entire Project (the "Master Storm Drain System"). No Lot Owner shall interfere with the Master Storm Drain System established by the Declarant, or its successors or assigns. Each lot shall be developed in a manner consistent with the Master Storm Drain System, and so as not to detract therefrom or interfere therewith, or the Established Drainage Pattern on any other Lot in the Project. No changes to the Established Drainage Pattern on any Lot shall be permitted without the prior written consent of the Management Committee. For purposes of this Section, the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements in existence at the time such Lot is conveyed to a home purchaser by the Declarant, its successor or assign. The City shall have the right to clean and maintain any storm drain or system deemed to be in disrepair within the Project. The Association shall not have the authority to change, by vote, alienation, alteration, transfer, sale, or otherwise, the use of the currently existing areas and structures designed to control storm water run-off unless the consent of the City, or its successor, has first been obtained in writing and compliance with all applicable City ordinances, rules and regulations.

16. Liability of Owners and Residents For Damages. Any Owner or resident shall be liable to the Association or other Owners or Residents for damages to person or property in the Community caused by his negligence.

17. Encroachments. In the event that any portion of the Common Area or a Lot encroaches or comes to encroach upon other Common Area or a Lot as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

18. Management Committee. The Association shall be managed by a Management Committee which shall be comprised of three (3) members. Until the end of Class B membership, the Declarant shall have the exclusive and irrevocable right to appoint all of the Members of the Committee and their successors or replacements. At the first Annual Homeowners Meeting after the end of the Class B Control Period, the Members of the Committee shall be elected by the Owners. Two (2) of the Members shall be elected for two (2) year terms and one (1) Member shall be elected for a one (1) year term. Thereafter, all Members shall be elected for two (2) year terms. This staggering feature will provide continuity to the management of the Association.

a) Qualify. To qualify, a member of the Committee must be an individual Owner, or the legal representative of an organizational Owner.

b) Vacancies. Any vacant seat on the Committee shall be filled with a member elected or appointed to serve a two (2) year term.

c) Dismissal. Any Committee member who fails on three (3) successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Committee meetings (whether regular or special) held

during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining Committee Members shall elect a replacement to sit on the Committee until the next meeting of the Association.

d) Removal of Committee Member/Declarant's Rights. Except for Committee Members appointed by the Declarant before the end of the Class B Control Period, Committee Members may be removed at any time by the affirmative vote of a majority of the members of the Association. A replacement to serve the remainder of the removed member's unexpired term shall be elected at the same meeting.

e) Term. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Committee until his successor qualifies and is properly elected by the Association.

f) No Compensation. Committee members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Committee business and approved by the Committee.

19. Committee Officers and Agents. The Committee shall perform its functions through those three (3) members who are elected as officers by the Committee and through such agents or employees as the Committee may appoint. There shall be a President, Vice-President and Secretary/Treasurer. Any Committee officer, agent, or employee may at any time be removed, with or without cause, by the vote of a majority of the Committee members. Provided, however, if a member of the Committee is removed as an officer, he shall continue to be member of the Committee.

20. Committee Meetings. A regular meeting of the Committee shall be held immediately after the adjournment of each annual Owners meeting or at such other time as the members of the Committee may decide. Other regular meetings shall be held at periodic intervals (no longer than monthly) at such time and place as the Committee may determine. No notice need be given of regular Committee meetings. Special Committee meetings shall be held whenever called by the President or by any two (2) members of the Committee. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Committee member at least twenty-four (24) hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all Committee members may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any committee meeting shall consist of a majority of all the members then in office.

21. Status and General Authority of Committee. Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its

Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

- a) To Enter. The power and authority to enter into or upon any Lot to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the residents.
- b) Grant Easements. The power and authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.
- c) Execute Documents. The power and authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment.
- d) Standing. The power to sue and be sued.
- e) Enter Into Contracts. The power and authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
- f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the members in the Association.
- g) To Purchase. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the members in the Association.
- h) To Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least seventy five (75%) of the members in the Association.
- i) Promulgate Rules. The power and authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration.
- j) Meetings. The power and authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Members of the Association or residents not on the Committee, to retire to

executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Committee meetings.

k) Assignment or Leasing of Open Common Area Parking Spaces. The power and authority to assign or lease open Common Area parking spaces to residents.

l) Street Lights. The power and authority to locate street lights on Lots, in the Common Area, and on the Dedicated Streets and Trails.

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

22. Delegation of Management Responsibilities. The Association must be managed by a professional manager or a professional management company. The termination provision of any such contract must not require a termination penalty or any advance notice of more than ninety (90) days, no such contract shall be for a term greater than one (1) year.

23. Classes of Membership and Voting Allocations. The Association shall have two (2) classes of membership -- Class A and Class B, described more particularly as follows:

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

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

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

(3) Multiple Owners. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

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

b) Class B. Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to ten (10) votes per Lot owned. However, under no circumstances shall declarant or



successor of declarant have fewer than one (1) more vote than all class A votes combined. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership one hundred and twenty (120) days after certificates of occupancy have been issued for and all of the Dwelling Units constructed upon the Lots have been sold or when, in its sole discretion, Declarant so determines (herein referred to as the "Event" or "Events").

From and after the happening of these Events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, the Declarant shall call a meeting, in the manner described in the By -Laws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to a Management Committee elected by the members of the Association.

24. Lists of Lot Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Committee shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him or her; (b) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity; and the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Utah County, Utah. The Committee may for all purposes act and rely on the information concerning Lot ownership in its records or, at its option, the records of the county recorder. The address of any Owner shall be deemed to be the address of the Lot owned by such person unless the Committee is otherwise advised in writing.

25. Reserve Account(s) and Analysis Report. The Management Committee shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and/or major repairs, if any. The reserve account or accounts shall be funded out of Assessments. The Management Committee shall dedicate a portion of the monthly Assessment for the reserve account or accounts. The Management Committee shall prepare and update at least annually a written Reserve Account Analysis, and make the report(s) available to the Owners at the annual meeting of the Association. In addition:

a) Committee Discretion/Expenditure Limit. Major Repairs or Capital Improvements to the Project which cost twenty percent (20%) or less of the Total Annual Operations Budget and do not materially alter the nature of the Project, may be authorized by the Management Committee alone (the "Spending Limit.")

b) Owner Approval/Expenditure Limit. Any major Repair or Capital Improvement, the cost of which will exceed the Spending Limit, must, prior to the commencement of construction, be authorized by at least a majority of the Owners.

c) Homeowner Approval/Changing the Nature of the Project. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) of the undivided ownership interest in the Project.

26. Operation, Maintenance and Alterations. The Lots and Common Area shall be maintained by the Lot Owners and the Association as follows:

a) Area of Common Responsibility. The Association shall maintain, repair and replace, as needed from time to time, the following items:

- Landscaping, including all front yard landscaping (as detailed in Article III, Section 14);
- All Sidewalks and Urban Trails within the Project (routine maintenance such as snow removal, leaf removal and access);
- All Walkways within the Project, including, but not limited to, the public access and right-of-way Walkway between Lot 47 and Lot 48;
- All Parkstrip Improvements within the Project.
- All landscaping, sod, sprinklers, trees, shrubs, bushes and other improvements on or to the Dedicated Trails;
- Grass and sprinkling systems in the rear yards;
- All Common Areas and Facilities;
- All "Common Areas" owned by the Association identified on the Final Plat;
- All "Common Area" dedicated to the HOA, entitled as "H.O.A. Maintained" and identified on the Final Plat; and
- All common elements not expressly included in the Area of Personal Responsibility.

b) Area of Personal Responsibility. Each Owner shall maintain, repair and replace the following:

- All of his Dwelling Unit, including but not limited to the roof, exterior surfaces, foundation, footings, columns, girders, beams, supports and main walls thereof and private fencing;
- All utility services servicing his Lot, such as power, light, gas, hot and cold water, heating, refrigeration and air conditioning systems;
- All fixtures, furnishings, windows, doors, patios, balconies and decks, garage doors and garage door systems;
- All of his cement work, driveway, sidewalks;
- All of his rear yard planting, garden and flower beds; and
- Other areas in the rear or side yards not maintained by the Association.

(c) Right to Enter. The Association is hereby granted the right, without claim of trespass or invasion of privacy, to enter any Lot, including the front, side and rear yard areas, any

fenced or gated areas to fertilize, weed, remove dead or diseased plant life and trash trees, prune, or otherwise care for the landscaping.

d) Snow and Ice Accumulations. The City shall be responsible for removing snow and ice accumulations from the Dedicated Streets. The Association is responsible for removing all ice and snow accumulations from all sidewalks, Urban Trails, Walkways, and other common areas and/or walkways. Each Lot Owner is responsible for removing all ice and snow accumulations from his driveway and pedestrian areas on his Lot exclusively serving or designed to provide access exclusively to his Lot or Dwelling Unit.

e) Garbage Removal. Each Owner shall deposit all garbage, trash, debris and refuse from his Lot into the trash receptacle or receptacles which will be made available by the applicable solid waste collector. Each Unit Owner shall make his trash receptacle available to the solid waste collector for pick up on the designated day each week; however, trash receptacles may not be left in the street for a period in excess of twelve (12) hours, and when not placed on the street for pick up, trash receptacles shall be located in a place not visible from the street.

f) Utilities. The Association shall provide those utility services not separately metered and billed to the individual Owners by the provider; provided, however, the Declarant may elect to provide electricity to certain Common Area lamp posts from an individual Lot in which case the Lot Owner shall be entitled to a monthly credit in an amount equal to the greater of:

(1) \$2.00, or

(2) The sum equal to the number of watts in the light bulb, multiplied by the Utah Power and Light Kilowatt rate, multiplied by 4,000, divided by 1,000, and divided by 12.

g) Standard of Care - Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, and good condition. If a dispute arises between a Lot Owner or resident as to the condition of a Lot, the decision of the Management Committee shall be final and conclusive.

h) Neglect. If the Committee determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

(1) Assessment. Such costs as are incurred by the Association in the performance of an item included in the Area of Personal Responsibility shall be added to and

become a part of the assessment to which such Owner and Lot is subject, and shall be secured by a lien against his Lot regardless of whether a notice of lien is filed.

(2) Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Committee. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.

(3) Emergency Situation. If the Committee determines that an emergency exists, then notice and the opportunity to cure the default is not necessary.

(4) Optional Repairs. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

(5) Right of Entry. The Association or its agents or employees shall have a right to entry upon or into any Lot or Common Area as necessary to perform such work and shall not be liable for trespass for such entry or work.

i) Changes to Areas of Personal or Common Responsibility. The Management Committee may, in its sole discretion, add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Lot Owners.

j) Alterations to the Common Area. Anything to the contrary notwithstanding and until the end of the Class B Control Period, the Declarant may make changes to the Common Area without the consent of either the Association or the Management Committee; provided, however, no Owner or resident may make any structural alterations, modifications, changes or improvements to the Common Area, including but not limited to any additions, extensions, enclosures, fencing, decks, patios, walkways, structures or sheds not shown on the approved plans and specifications, without the prior written consent of the Management Committee.

27. Common Expenses. Each Owner, upon receipt of a deed or other document of conveyance to a Lot, agrees to pay his share of the Common Expenses; provided, however, anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments until such time as any residential structure, building or dwelling unit is substantially complete, a permanent certificate of occupancy has been issued and the Dwelling has been sold or rented, or, in the alternative, the Developer elects in writing to commence payment, whichever first occurs.

a) Purpose of Assessments. The Assessments are for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal

property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Management Committee.

b) Creation of Assessments. The Assessments shall pay for the Common Expenses of the Association as may be from time to time specifically authorized by the Management Committee.

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

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

(2) Basis. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to maintain, common lighting, water charges, staining, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting Assessments, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

d) Apportionment. The common profits of the property shall be distributed among, the common expenses shall be charged and voting rights shall be allocated to the Lot Owners equally.

e) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Common Area Fee schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

f) Payment of Assessments. The Management Committee has the sole authority and discretion to determine how and when the annual Assessments are paid.

g) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed, accruing interest, late fees, and collection costs, including attorneys fees. No first mortgagee or beneficiary under a first deed of trust who obtains title to a Lot pursuant to the

remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.

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

i) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

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

l) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled, which each Owner, by virtue of his acceptance of a deed or other document of conveyance to a Lot, waives.

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

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

b) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association.

The Committee in its discretion may allow any special assessment to be paid in installments.

29. Benefit Assessments. The Management Committee shall also have the power specifically to assess the Owners in a particular area pursuant to this Section as, in its discretion, it shall deem necessary or appropriate, if the specific assessment is not for any maintenance, repair or replacement ordinarily required by this Declaration and the Owner has the choice to accept or reject the benefit.

(a) Benefit Only To Specific Lot. If the expense benefits less than all of the Lots, then those Lots benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Lots according to the benefit received.

(b) Unequal or Disproportionate Benefit. If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Lots according to the benefit received.

Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

30. Individual Assessments. Individual Assessments shall be levied by the Committee against a Lot and its Owner to reimburse the Association for:

a) fines levied for violations of and costs incurred in enforcing the Project Documents;

b) costs associated with the maintenance, repair or replacement of Common Area for which the Lot Owner is responsible;

c) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents; and

d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

31. Collections. Assessments must be paid in a timely manner and shall be collected as follows:

a) Time is of the Essence. Time is of the essence and all Assessments shall be paid promptly when due.

b) Delinquent Assessments. Any Assessments which are not paid when due are delinquent.

c) Late Fees and Default Interest. Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of twenty five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of One and one-half percent (1.5%) per month shall accrue on all delinquent accounts.

d) Notice of Lien. If any Assessment is a notice of lien evidencing the unpaid amounts, accruing interest, late charges, attorney's fees, the cost of a foreclosure or abstractor's report, and any other Additional Charges permitted by law should be filed with the County Recorder. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. It may be executed by the Association's attorney, manager, Committee Member or other designated agent.

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

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

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

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

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

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



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

l) Attorney in Fact. Each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Lot, if the Lot is rented and Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

32. Liability of Management Committee. The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's Assessments reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he or she may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

33. Insurance. The Management Committee shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, insurance on the Common Areas satisfying at least the following requirements:

a) Property Insurance. Blanket property insurance using the standard "Special" or "All-Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard residential subdivision casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgment and in its sole discretion.

b) Flood Insurance. If any part of the Project's improvements are in a Special Flood Hazard Area -- which is designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map (FIRM) -- the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Unit Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

c) Liability Insurance. Liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated subdivisions in the county. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.

d) Director's and Officer's Insurance. Adequate director's and officer's liability insurance (aka Errors and Omissions insurance).

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

(1) Agents. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

(2) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots, plus reserve funds.

(3) Quality of Coverage. The bonds required shall meet the following additional requirements:

a. they shall name the Committee, the Owners Association, and the Property Manager as obligee;

b. if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense;

c. the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and

d. the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.

f) Earthquake Insurance shall not be required unless requested by a least Seventy five percent (75%) of the Members of the Association.

g) Miscellaneous Items. The following provisions shall apply to all insurance coverage:

(1) Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports -- International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurers Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service -- if the carrier is issuing a master policy or an insurance policy for the Common Area in the Project.

(2) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Lot Owners of DA VINCI PLACE, for the use and benefit of the individual Owners."

(3) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

(4) Beneficiary. In any policy covering the entire Project, each Owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

(5) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(6) Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

(7) Other Miscellaneous Provisions. Each insurance policy shall contain at least the following additional miscellaneous items:

- a. Waiver of Subrogation. A waiver of the right of a subrogation against Owners individually;
- b. Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Owner; and
- c. Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the Association.

(8) Individual Insurance. Each Owner and resident shall purchase and maintain adequate liability and property insurance on his Lot, Dwelling Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the Property at any particular time.

(9) Primary Coverage. The insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.

(10) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

(11) Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Lot, and may be enforced by them.

(12) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated subdivision in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and,; or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction;

Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

(13) Restrictions on Policies. No insurance policy shall be maintained where:

a. Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA.

b. Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

c. Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

(14) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

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

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

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

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

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

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

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

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

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

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

(9) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

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

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

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

e) Excess Insurance. If the insurance proceeds condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This covenant is also for the benefit of the Association and any Mortgagee, and, therefore, may also be enforced by them. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

f) Inadequate Insurance. In the event the cost of Restoration exceeds Available Funds, all of the Lots shall be assessed for the deficiency on the basis of their respective percentages of undivided Ownership interest in the Common Areas.

g) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though the Project will continue as a P. U. D. ) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Lots.

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

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

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

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

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

35. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

a) Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and

b) Change In Ownership. Any change in Ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

36. Mortgagee Protection. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Lot in foreclosure. The lien or claim against a Lot for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Assessments becoming due thereafter.

b) Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, By-Laws, Articles of Incorporation, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available", as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall



have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause upon at least sixty (60) days prior written notice to the other party thereto.

e) Eligible Mortgagee Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

(2) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

(3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.

(4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

f) No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction.

37. Amendment. This Declaration may be amended by the Declarant at any time. In addition:

a) Consent of the Owners. The affirmative vote of at least sixty-seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Plat Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained; and

b) Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one percent (51%) of the undivided Ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Plat Map which establishes, provides for, governs, or regulates any of the following:

- Voting rights;
- Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- Reductions in reserves for maintenance, repair, and replacement of Common Areas, Facilities and Elements;
- Responsibility for maintenance and repairs;
- Reallocation of interests in the Common Area, Limited Common Area, and general or limited common elements, or rights to their use;
- Redefinition of any Lot boundaries;
- Convertibility of Lots into Common Area or Elements, or vice versa;
- Expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- Hazard or fidelity insurance requirements;
- Imposition of any restrictions on the leasing of Lots or Dwelling Units;
- Imposition of any restrictions on a Lot Owner's right to sell or transfer his Lot;
- A decision by the Association (if it consists of more than 50 Lots) to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;
- Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the documents; and
- Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

Any addition or amendment shall not be considered material for purposes of this Paragraph b) if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have

approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Project as a Utah subdivision if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

38. Declarant's Sales Program. Notwithstanding anything to the contrary, until Declarant has sold all the Lots owned by it in the Project or the expiration of a reasonable sales period following five (5) years after the date on which this Declaration is filed for record in the office of the County Recorder, whichever first occurs (hereinafter referred to as the "Occurrence"), neither the Owners, the Association nor the Committee shall interfere with the completion of improvements and sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

a) Sales Office and Model Lots. Declarant shall have the right to maintain one(1) or more sales offices and one (1) or more model Lots, homes or Units at any one time. Such office and/or models may be one or more of the Lots owned by it, or one or more of any separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

c) Common Area Use. Declarant shall have the right to use the Common Areas of the Project to facilitate sales.

d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the occurrence, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

39. Limitation on Improvements by Association. Until the occurrence described above, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

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

41. Working Capital Fund. A working capital fund shall be established by the Declarant to meet unforeseen expenditures or to purchase any additional equipment or services. The initial working capital fund shall be in an amount equal to two (2) months of estimated common assessments for each Lot. Each Lot's share of the working capital fund shall be collected either at the time the sale of any Unit is closed or when control of the Project is transferred to the Lot Owners, whichever first occurs. Any amounts paid into the working capital fund shall not be considered as advance payments of regular monthly assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Lot Owners. The Declarant is prohibited from using the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. When a Unit is sold, however, the Declarant may reimburse itself for monies it has paid the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when the Unit is sold.

42. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select members of the Committee, and to transfer management of the Project to the Association. If and when Declarant elects to do so, Declarant shall send written notification to each Owner of the effective date of the transfer (the "Transfer or Transition Date") at least Forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the members of their own Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Area expenses of the Committee incurred prior to the Transfer Date to be paid in full on or before such date.

43. Certain Provisions Applicable to Declarant. Notwithstanding any other provision herein contained, for so long as Declarant continues to own any of the Lots the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments or Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration.

a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Lot, and no person shall rely upon any warranty or representation not so specifically made therein.

b) No amendment may be made to the Declaration without the written consent of Declarant so long as Declarant retains the ownership of five (5) or more Lots; provided, however, that the obligation to acquire said written consent of Declarant shall cease on a date five (5) years from the date of recording of the final phase of the Declaration.

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

45. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or resident of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

46. Enforcement and Right to Recover Attorneys Fees. The Association, Management Committee, or any aggrieved Unit Owner may take action, at law or in equity, to enforce the terms, covenants or conditions of the Project Documents. Should the Association, Management Committee or a Unit Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

47. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. However, neither the Association nor the Committee shall in any way be considered insurers or guarantors of security within the Project. Neither the Association nor the Management Committee 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 and residents, their guests and invitees, as applicable, acknowledge that neither the Association nor the Committee represent or warrant that any security measures undertaken will insure their safety. All Owners and residents, their guests and invitees, acknowledge and understand that the Association and Committee are not insurers of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association and Committee have made no representations or warranties, nor have they relied upon any representations or warranties,

expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Project.

48. Agent for Service of Process. The initial Registered Agent shall be Christopher P. Gamvroulas and the initial office of the Registered Agent shall be 978 Woodoak Lane, Salt Lake City, Utah 84117. After the occurrence of the Event, the President of the Association shall be the person to receive service of process in the cases authorized by the Act and the office.

49. Fines. Each Owner and Resident is responsible for adhering to the Project Documents governing the Project. A breach of the Project Documents is subject to enforcement pursuant to the declaration and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his family members, residents, tenants and Guests. Fines levied against the family members, residents, tenants, and Guests of an Owner are the responsibility of the Owner. The Management Committee shall react to each material violation in the following manner:

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

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

c. A fine assessed under Subsection (a) shall:

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

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

(3) accrue interest and late fees as provided in the declaration, bylaws, or association rules.

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

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

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

g. A fine assessed under Subsection (a) which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under Section 26(c) above.

50. Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.

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

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

(1) utility services or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within the time provided in the declaration, bylaws, or association rules, which time shall be stated and be at least 48 hours;

(2) the amount of the assessment due, including any interest or late payment fee; and

(3) the right to request a hearing.

c. An owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the management committee within 14 days from the date the notice is received. A notice shall be considered received on the date (a) it is hand delivered, (b) it is delivered by certified mail, return receipt requested, or (c) five (5) days after it is deposited in the U.S. Mail, postage prepaid, addressed to the owner's last known address on the books and records of the Association

d. The hearing shall be conducted in accordance with the standards provided in the declaration, bylaws, or association rules.

e. If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

f. Upon payment of the assessment due, including any interest or late payment fee, the manager or management committee shall immediately take action to reinstate the terminated utility services to the Lot and right to use of recreational facilities.

51. Assignment of Rents.

a. If the owner of a Lot who is leasing the Lot fails to pay any assessment for a period of more than 60 days after it is due and payable, the management committee may demand the tenant to pay to the association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid; provided, however, the manager or management committee must give the owner written notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand full payment from the tenant. This notice shall:

(1) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, bylaws, or association rules;

(2) state the amount of the assessment due, including any interest or late payment fee;

(3) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and

(4) provide the requirements and rights described herein.

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

(1) that due to the owner's failure to pay the assessment within the time period allowed, the owner has been notified of the management committee's intent to collect all lease payments due to the association pursuant hereto.

(2) that until notification by the association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the owner are to be paid to the association; and

(3) payment by the tenant to the association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (6) suit or other action may not be initiated by the owner against the tenant for failure to pay.



c. All funds paid to the association pursuant hereto shall be deposited in a separate account and disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the owner within five business days of payment in full to the association.

d. Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or management committee must notify the tenant in writing that future lease payments are no longer due to the association. A copy of this notification must be mailed to the owner.

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

52. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.





EXHIBIT "A"  
LEGAL DESCRIPTION

The Land described in the foregoing Declaration is located in Utah County, Utah and is described more particularly as follows:

A portion of Lots 2 and 3, Plat "G", Timpanogos Research and Technology Park, as shown on file in the office of the Utah County Recorder, Utah County, Utah.

Also being described as:

Commencing at a point located South 89°54'39" West along the Section line 328.07 feet and North 33.00 feet from the Southeast corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 89°54'42" West 488.66 feet; thence along the arc of a 100.00 foot radius curve to the right 34.82 feet (chord bears North 80°06'54" West 34.64 feet); thence along the arc of a 100.00 foot radius curve to the left 34.82 feet (chord bears North 80°06'54" West 34.64 feet); thence South 89°54'39" West 200.00 feet; thence along the arc of a 15.00 foot radius curve to the right 23.59 feet (chord bears North 45°02'40" West 21.23 feet); North 187.85 feet; thence along the arc of a 100.00 foot radius curve to the left 22.41 feet (chord bears North 06°25'09" West 22.36 feet); thence along the arc of a 100.00 foot radius curve to the right 22.41 feet (chord bears North 06°25'09" West 22.36 feet); thence North 452.87 feet; thence East 164.19 feet; thence South 45°00'00" East 250.00 feet; thence East 226.27 feet South 66°45'53" East 227.17 feet; South 00°07'16" East 444.59 feet to the point of beginning.

Area: 446,293 SF 10.25 Acres

## EXHIBIT "B"

<u>Lot No.</u>	<u>Percentage of Ownership Interest</u>	
1	1/45th	2.2222%
2	1/45th	2.2222%
3	1/45th	2.2222%
4	1/45th	2.2222%
5	1/45th	2.2222%
6	1/45th	2.2222%
7	1/45th	2.2222%
8	1/45th	2.2222%
9	1/45th	2.2222%
10	1/45th	2.2222%
11	1/45th	2.2222%
12	1/45th	2.2222%
13	1/45th	2.2222%
14	1/45th	2.2222%
15	1/45th	2.2222%
16	1/45th	2.2222%
17	1/45th	2.2222%
18	1/45th	2.2222%
19	1/45th	2.2222%
20	1/45th	2.2222%
21	1/45th	2.2222%
22	1/45th	2.2222%
23	1/45th	2.2222%
24	1/45th	2.2222%
25	1/45th	2.2222%
26	1/45th	2.2222%
27	1/45th	2.2222%
28	1/45th	2.2222%
29	1/45th	2.2222%
30	1/45th	2.2222%
31	1/45th	2.2222%
32	1/45th	2.2222%
33	1/45th	2.2222%
34	1/45th	2.2222%
35	1/45th	2.2222%
36	1/45th	2.2222%
37	1/45th	2.2222%
38	1/45th	2.2222%
39	1/45th	2.2222%
40	1/45th	2.2222%
41	1/45th	2.2222%

42	1/45th	2.2222%
43	1/45th	2.2222%
44	1/45th	2.2222%
45	1/45th	2.2222%

TOTAL: 100.00%

EXHIBIT "C"  
BY-LAWS OF DA VINCI PLACE

The following are adopted by the Declarant as the administrative By-Laws of the Association of DA VINCI PLACE:

ARTICLE I

PLAN OF LOT OWNERSHIP AND INCORPORATION

1. Submission. These By-Laws are referred to and incorporated by reference in the Declaration of Covenants, Conditions and Restrictions of DA VINCI PLACE (the "Declaration"), which is located in Utah County, State of Utah. These By-Laws shall govern the administration of the Association of Lot Owners of DA VINCI PLACE.

2. Office and Registered Agent. The initial Registered Agent shall be Christopher P. Gamvroulas of 978 East Woodoak Lane, Salt Lake City, Utah 84117. However, after transfer of management and control of the Association is made by the Developer to the members of the Association, the Registered Agent shall be the President of the Association and the Registered Office shall be the home of the President or such other place as shall be designated by him.

3. By-Laws Applicability. All present and future Owners, residents, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted entrance at DA VINCI PLACE, shall be subject to and abide by these By-Laws.

ARTICLE II

ASSOCIATION

1. Composition. The association of lot owners is a mandatory association consisting of all Lot Owners at DA VINCI PLACE.

2. Place of Meeting. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Committee from time to time and stated in the notice of meeting.

3. Special Meetings. The President or a majority of the members of the Management Committee may call a special meeting of the Association, or if he is so directed by resolution of the Committee or upon receipt of a petition signed and presented to the Secretary of the Committee by at least 25% of the members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

4. Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Owners not less than ten and not more than thirty days in advance of such meeting; and (b) each special meeting of the Owners at least three days and not more than twenty days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his respective Lot or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

5. Voting Requirements. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Act, Declaration, By-Laws, Rules and Regulations, and shall have fully paid all Assessments and/or Additional Charges due.

6. Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or in cases where the Lot Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Lot Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Committee not less than 48 hours before the meeting. Only individual Lot Owners or the legal representative of an Organizational Lot Owner may be proxies.

7. Quorum Voting. A majority of the members of the Association shall constitute a quorum for the adoption of decisions. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. The Owners present at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Lot Owners representing a majority of the members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Lot Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

8. Order of Business. The order of business at all meetings of the Association shall be as follows:

- a) roll call;
- b) proof of notice of meeting;
- c) reading of minutes of preceding meeting;



- d) reports of officers;
- e) report of special committees, if any;
- f) election of inspectors of election, if applicable;
- g) election of Committee Members, if applicable;
- h) unfinished business; and
- i) new business.

9. Conduct of Meeting. The President shall, or in his absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record of all transactions occurring thereat.

a) Open Meetings. A portion of each meeting of the Committee shall be open to all members of the Association, but members other than members of the Committee may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Committee. The Committee shall establish procedures, policies and guidelines for conducting of its meetings, retiring to executive session, and prohibiting photographs and/or any electronic (video or audio) recordation of the meetings, or any part thereof.

b) Executive Session. The Committee may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in open session.

c) Action Without A Formal Meeting. Any action to be taken at a meeting of the Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all members of the Committee.

### ARTICLE III

#### MANAGEMENT COMMITTEE

1. Powers and Duties. The affairs and business of the Association shall be managed by the Management Committee. The Management Committee shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things necessary to operate and maintain the Project. The Committee shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Committee may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for at least the following:

- a) Preparation of an annual budget;
- b) Establishing the Assessments;

- c) Providing for the maintenance of the Common Areas;
- d) Hiring and dismissing of personnel;
- e) Collecting and depositing Assessments;
- f) Paying Common Expenses;
- g) Opening bank accounts;
- h) Making, amending, and enforcing Rules and Regulations;
- i) Enforcing by legal means the provisions of the Project Documents;
- j) Obtaining insurance;
- k) Keeping the Association's books and records with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. The said documents, books, 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, and the same, upon a resolution approved by a majority of the Members of the Association, shall be audited by an outside auditor employed by the Committee who shall not be a resident of the Project, or an Owner therein. The cost of such audit shall be a Common Expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Lot in the Project who requests the same in writing from the Secretary. A mortgage holder, at its expense, may have an audited statement prepared at any time.
- l) Providing necessary utility services for the Common Areas;
- m) Impounding, towing or otherwise removing any motor vehicle parked, stored or standing in violation of the parking rules and regulations or in an unauthorized area;
- n) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Act, the Declaration, the By-Laws, or to do anything required by a proper resolution of the Management Committee or Association.

2. Composition of Management Committee. The Management Committee shall be composed of three (3) members of the Association. Only individual Lot Owners or officers or

agents of organizational Owners other than individuals shall be eligible for Committee Membership.

3. Election and Term of Office of the Committee. The term of office of membership on the Committee shall be two years. At the expiration of the member's term, a successor shall be elected.

4. Corporation Meeting. The first meeting of the members of the Committee shall be immediately following the annual meeting of the Association or at such other time and place designated by the Committee.

5. Regular Meetings. Regular meetings of the Committee shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Committee, but no less often than monthly.

6. Special Meetings. Special meetings of the Committee may be called by the President, Vice-President or a majority of the members on at least forty-eight hours prior notice to each member. Such notice shall be given personally, by regular U. S. mail postage prepaid, or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Committee shall be valid for any and all purposes.

7. Waiver of Notice. Before or at any meeting of the Committee, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Committee shall constitute a waiver of notice. If all the members are present at any meeting of the Committee, no notice shall be required and any business may be transacted at such meeting.

8. Committee's Quorum. At all meetings of the Committee, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Committee members present at a meeting at which a quorum is present shall be deemed to be the acts of the Committee. If, at any meeting of the Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. Vacancies. Vacancies in the Committee caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Committee at a special meeting of the Committee held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the committee; and each person so elected shall be a member for the remainder of the term of the member so replaced and until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

10. Removal of Committee Member. A member may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Committee Member who misses 25% or more of the Committee Meetings or who misses three consecutive meetings, in any calendar year, shall be automatically removed from the Committee.

11. Conduct of Meetings. The President shall preside over all meetings of the Committee and the Secretary shall keep a Minute Book of the Committee recording therein all resolutions adopted by the Committee and a record of all transactions and proceedings occurring at such meetings.

12. Report of Committee. The Committee shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

#### ARTICLE IV

##### OFFICERS

1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Committee. The Committee may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Committee. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Association shall be elected annually by the Committee at the Corporation meeting of each Committee and shall hold office at the pleasure of the Committee. Any vacancy in an office shall be filled by the Committee at a regular meeting or special meeting called for such purpose.

3. Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Committee may be removed at any time by the affirmative vote of a majority of the Committee, and his successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purposes.

4. President. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Committee and shall be an ex officio member of all committees; he shall have general and active management of the business of the Committee and shall see that all orders and resolutions of the Committee are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.

5. Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Committee or the President shall prescribe. If neither the President nor the Vice-President is able to act, the Committee shall appoint a member of the Committee to do so on an interim basis.

6. Secretary. The Secretary shall attend all meetings of the Committee and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him or her for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notices for all meetings of the Association and the Committee and shall perform such other duties as may be prescribed by the Committee. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Committee including resolutions.

7. Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Managing Agent, and with the Assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Committee. He shall disburse funds as ordered by the Committee, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Committee, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

ARTICLE V

FISCAL YEAR

The fiscal year of the Association shall be the calendar year consisting of the twelve month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Committee should it be deemed advisable or in the best interests of the Association.

ARTICLE VI

AMENDMENT TO BY-LAWS

1. Amendments. These By-Laws may be modified or amended either (i) by the affirmative vote of a majority of the members of the Association or (ii) pursuant to a written instrument of consent duly executed by a majority of the members of the Association provided all of the written consents are obtained within a ninety day period.

2. Recording. An amendment to these By-Laws shall become effective immediately upon recordation in the Office of the County Recorder of Utah County, State of Utah.

ARTICLE VII

NOTICE

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage pre-paid, a) if to an Owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Committee or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

ARTICLE VIII

COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the

same meaning as they are defined to have in the Declaration. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall in all respects control.

2. Severability. If any provisions of these By-Laws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these By-Laws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

3. Waiver. No restriction, condition, obligation, or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

4. Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these by-Laws.

5. Construction. Whenever in these By-Laws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine.

6. Liability of Committee Members. The members of the Committee and the officers of the Association shall not be liable to any member of the Association for any damage, loss or liability arising out of or caused by their voluntary participation as a member of the Committee, including but not limited to any claims due to negligence, mistake of judgment, or for any acts or omissions made in good faith. In addition, the members of the Association agree to indemnify and hold the members of the Committee and officers of the Association harmless from any and all claims arising out of or caused by their voluntary participation as a member of the Committee or officer of the Association to the extent any damage, loss or liability is not covered by insurance, unless caused by gross negligence or willful neglect.

DEVELOPER:  
IVORY DEVELOPMENT, LLC.

By: Christopher P. Gamvroulas  
Name: Christopher P. Gamvroulas  
Title: Manager

**ACKNOWLEDGMENT**

STATE OF UTAH            )  
                                  ss:  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 25 day November, 2004 by Christopher P. Gamvroulas, the Manager of Ivory Development, a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that said IVORY DEVELOPMENT, LLC. executed the same.

