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UTAH COUNTY RECORDER
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RECORDED FOR IVORY DEVELOPMENT, LLC

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COLONY POINTE**

**A PLANNED UNIT DEVELOPMENT
IN
CITY OF LEHI, UTAH COUNTY, STATE OF UTAH**

**IVORY DEVELOPMENT, LLC.
a Utah limited liability company
DEVELOPER**

WHEN RECORDED RETURN TO:

*IVORY DEVELOPMENT, LLC
978 East Woodoak Lane
Salt Lake City, Utah 84117*

← (M)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COLONY POINTE,
a planned unit development**

This Declaration of Covenants, Conditions and Restrictions for Colony Pointe, a planned unit development located in Lehi, Utah (the "Declaration") is executed by Ivory Development, LLC, of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the "Developer"), with reference to the following:

RECITALS

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

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

C. Since the completion of the Project may be in phases, the completed Planned unit development will consist of the original phase and all subsequent phases.

D. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Developer to provide a general plan for development of the land, create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.

**COVENANTS, CONDITIONS AND RESTRICTIONS, CONDITIONS AND
RESTRICTIONS**

Now, Therefore, for the reasons recited above, the Developer hereby covenants, agrees, and declares that the Property shall be subject to the following covenants, conditions and restrictions:

1. **Definitions.** The following definitions shall apply to this Declaration:

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

b. **"Architectural Review Committee"** shall mean the person or persons appointed to review the designs, plans, specifications, homes, architecture, fencing, and landscaping within the planned unit development (the "ARC").

c. **"Association"** shall mean all of the Owners acting as a group in accordance with the Declaration.

d. **"Builder"** shall mean an owner, developer or contractor who obtains a construction or occupancy permit for one or more Lots.

e. **"Capital Improvement"** shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

f. **"Common Areas and Facilities"** shall mean and refer to all of the common elements in the Project including by way of illustration but not limitation the Open Space, pool, clubhouse, walking trails, entry and entry monument.

g. **"Common Expense"** shall mean and refer to all expenses incurred by the Association in maintaining, repairing, and replacing the Common Area and Facilities.

h. **"Entry"** shall mean the entry way into the Planned unit development.

i. **"Entry Monument"** shall mean the monument identifying the Planned unit development and surrounding landscaping and planter area located at the Entry to the Project.

j. **"Person"** shall unless otherwise indicated mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

k. **"Management Committee" or "Committee"** shall mean and refer to the ARC, which shall administer the Association.

l. **"Managing Member"** shall mean and refer to the person appointed by the Developer to unilaterally make all day-to-day business decisions for the Association, ARC and Management Committee.

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

n. **"Parking Pad"** shall mean and refer to a cement or concrete, (or other construction material approved in writing by the ARC) parking pad constructed or installed on a Lot for the purpose of parking or storing of a Recreational, Commercial, or Oversized Vehicle.

o. **"Parking Pad Fence"** shall mean and refer to the cinder block, vinyl or wood (or other construction material approved by the ARC in writing) fence surrounding the Parking Pad.

p. **“Period of Developer Control”** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of last of the following Events: (1) Four months after 100% of the Dwellings constructed upon Lots owned by Developer have been sold; or (2) Five years from the effective date of this Declaration; or (3) When in its sole discretion the Developer so determines.

q. **“Planned Unit Development ”** shall mean Colony Pointe.

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

s. **“Plat Map”** shall mean and refer to the Plat Map or Maps of COLONY POINTE as they may be amended from time to time. The Plat Map will show the location of the Lots.

t. **“Project”** shall mean the Planned Unit Development.

u. **“Recreational, Oversized or Commercial Vehicle”** shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, bobcat, non-passenger vehicle, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, horse trailer, or any other recreational, oversized or commercial transportation device of any kind.

v. **“Repair”** shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

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

3. **Right to Expand Application.** 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.

4. **Description and Legal Status of the Property.** The Plat Map shows the type and location of each Lot and its Lot Number and the Common Area in the vicinity. The Common Area is hereby granted to and owned by the Association, subject to Developer’s right to adjust the location and boundaries of the Common Area and Lots. Each Lot Owner shall have an appurtenant equal undivided percentage of ownership interest in the Association. All Lots

shall be capable of being independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

5. **Grant of Common Area.** The Developer hereby grants to the Association all of its right, title and interest in and to the Common Areas and Facilities, subject to the covenants, conditions, restrictions, easements and development rights set forth in the Declaration, as it may be amended and supplemented from time to time.

6. **Membership in the Association.** Membership in the Association is mandatory, may not be partitioned from the ownership of a Lot, and each Lot Owner by virtue of his accepting a deed or other document of conveyance to a Lot is deemed to be a member of the Association.

7. **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 Colony Pointe, Plat ____, a planned unit development, as the same is identified in the Plat Map recorded in Utah County, Utah as Entry No. _____ of the official records of the County Recorder of Utah County, Utah (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of Colony Pointe, recorded in Utah County, Utah as Entry No. _____ of the official records of the County Recorder of Utah County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership interest in 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 percentage of ownership interest in the Association 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.

8. **Management.** The Association shall be managed by a Management Committee, who may delegate its authority to a managing member; provided, however, in the event of the failure of a duly qualified and functioning Management Committee, the City may but is not obligated to administer and operate the Association.

9. **General Status, Authority and Duties of Management Committee.** The Management Committee shall adopt an annual budget, insure the Common Areas and Facilities, pay all Common Expenses, allocate the Common Expenses among the Owners, bill the Owners for their portion of the Common Expenses, collect the Assessments, and take all other actions

necessary or incident thereto. Any instrument executed by the Management Committee, its legal representative or Managing Member which 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 Management Committee shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners. The Management Committee and Managing Member shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions. The Management Committee may appoint officers and agents of the Association, such as a President and Secretary, who may but need not be members of the Committee. Until the end of the Period of Developer's Control, the Developer shall have the exclusive, unilateral and irrevocable right to appoint the members of the Management Committee and the Managing Member. In addition, the Management Committee shall have:

a. **Access.** The power and authority to access to each Lot: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Lot being entered, as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and Facilities; and (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Lot or Lots, provided that a reasonable effort is made to provide notice to the occupant of the Lot prior to entry.

b. **Grant Easements.** The 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 Record of Survey 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 Owners.

g. **Add or Purchase Property.** The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Owners.

h. **Promulgate Rules.** The power and authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the Act and this Declaration.

i. **Meetings.** The power and authority to establish procedures for decorum and order at its meetings and those of the Association.

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

k. **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.

10. **Delegation of Management Responsibilities.** The Management Committee may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Management Committee may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities.

11. **Owners Meetings.** The Association shall meet at least annually at a time and place set by the Management Committee.

12. **Expenditures for Capital Improvements.** Expenditures for capital improvements must be approved by at least sixty-seven percent (67%) of the Owners.

13. **The Maintenance Responsibility of the Association or Area of Common Responsibility.** The Association shall maintain and keep in good repair all Common Area and Facilities, and any other item designated as a common responsibility or responsibility of the Association herein, including by way of illustration but not limitation all Open Space. In the event that the City of Lehi shall adopt an ordinance which contains a definition of the term "open space" and which makes such definition applicable to this Project, that definition shall be incorporated herein by this reference. In the absence of such a definition, the term "Open Space" shall mean land on which improvements and activities shall be permitted and prohibited as designated in subsections (a) and (b) below, respectively.

a. **Permitted.** The following improvements shall be permitted: landscaping, green space, unimproved land, grass, sod, ground cover, flower beds, planting beds, trees, shrubs, bushes, pools, pavilions, ball fields, clubhouses, maintenance buildings, playgrounds, and so forth.

b. **Prohibited.** The following improvements and activities shall be prohibited: parking or storage of motorized vehicles of any kind except in designated areas or those used for landscaping maintenance, machinery which is affixed to the property and which can be seen or heard from adjacent property, noxious or offensive activities of any kind, any activity which is or which may become a nuisance, and dumping or storage of refuse, garbage or other waste.

Neither the Association nor the Owners will do anything to interfere with the nature, scope of intended use of the Open Space.

14. **The Maintenance Responsibility of the Owners or Area of Personal Responsibility.** Each Owner shall maintain and keep in good repair his Lot and all improvements thereon, including maintenance and landscaping of public right-of-way adjacent to or adjoining each Lot.

15. **Alterations to the Common Area.** Anything to the contrary notwithstanding and until the termination of the Period of Developer's Control, the Developer may make changes to the Common Area without the consent of either the Association, ARC or the Management Committee; provided, however, no Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Common Area or Facilities, including but not limited to the construction or installation of any additions, the extension or enclosure of any existing structures not shown on the approved plans and specifications, without the prior written consent of the ARC.

16. **Common Profits, Expenses, and Voting Rights.** 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 Lot Owners equally.

17. **Common Expenses.** Each Owner is responsible for and shall pay his Assessments and:

a. **Developer.** Anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments on any Lot owned by it until such time as: (1) the physical structures are substantially completed; (2) certificates of permanent occupancy are issued and the Dwellings are sold or rented; or (3) Developer elects in writing to pay the Assessments, whichever first occurs.

b. **Purpose of Common Area Expenses.** The Assessments provided for herein shall be used for the general purpose of managing the Common Areas and Facilities and administering the Project Documents.

c. **Creation of Assessments.** Since the Assessments shall pay for the Common Expenses of the Association, as shall be determined by the Management Committee from time to time, each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner his share of the Common Expenses and all of his Assessments.

d. **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 and regulation of the Association, which estimate shall include but is not limited to expenses of management, irrigation water, grounds maintenance, taxes and special assessments, insurance premiums, water and sewer charges, replacement of those common elements that must be replaced on a periodic basis, wages, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, major repair reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

e. **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 percentage of ownership interest in the Common Areas. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Common Area Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

f. **Personal Obligation of Owner.** Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Unit 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.

g. **Equitable Changes.** If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Management Committee may from time to time effect an equitable change in the amount of said payments.

h. **Reserve Account.** The Management Committee shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and capital improvements.

i. **Analysis Report.** The Management Committee shall prepare and update at least annually a written Capital Asset Replacement and Reserve Account Analysis, and make the report available to the Owners at the annual meeting of the Association.

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

k. **Debt Collection.** An Assessment, Additional Charge or fine is a debt of the Owner at the time it is made and is collectible as such. Suit to recover a personal judgment for unpaid fines is maintainable by the Association or ARC without foreclosing or waiving the lien securing it. If any Owner fails or refuses to make any payment of an Assessment, Additional Charge or fine when due, that amount constitutes a lien on the interest of the Owner in the Property, and upon the recording of notice of lien, it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (a) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (b) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

l. **Late Fees.** A late fee of \$20.00 may be charged on all payments received more than ten (10) days after they were due.

m. **Default Interest.** A finance charge of 1.5% per month may be assessed on the outstanding balance of all delinquent accounts.

18. **Architectural and Related Issues.** Since aesthetics, the integrity and harmony of the original design, and the quality of construction and materials throughout the planned unit development 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 planned unit development.

a. **Architectural Review Committee ("ARC").** Until the termination of the "Period of Developer Control," the ARC has the sole right and exclusive authority to resolve all

architectural issues and may, in its sole discretion, designate one or more persons from time to time to act on its behalf in reviewing applications hereunder as the ARC, which before the termination of the "Period of Developer Control" shall consist of three individuals, two of whom must be appointed by Developer, and thereafter may consist of (a) a single individual, architect or engineer, or (b) a committee comprised of architects, engineers or other persons who may or may not be Owners, or (c) a combination thereof. Powers may be delegated by the ARC, provided any such delegation shall specify the scope of responsibilities delegated, and, prior to the termination of the Period of Developer Control, shall be subject to the irrevocable right of Developer to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and/or to veto any decision which Developer determines, in its sole discretion, to be inappropriate or inadvisable. The initial ARC will be made up of Christopher P. Gamvroulas, who shall act as the managing Member, who shall serve until such time as his successors are qualified and appointed. Members serving on the ARC shall be appointed or elected to serve two (2) year terms. Any member of the ARC who fails on three (3) successive occasions to attend regularly scheduled meetings or who has failed to attend at least twenty-five percent (25%) of all regularly scheduled meetings held during any twelve (12) month period shall automatically forfeit his seat. Except for members of the ARC appointed by the Developer prior to the termination of the Period of Developer Control, members of the ARC may be removed at any time by the affirmative vote of at least a majority of the Owners. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the ARC until his successor qualifies and is properly appointed by the Developer or, after the termination of the Period of Developer Control, elected by the Owners. Members of ARC shall not be compensated for their services, although they may be reimbursed for costs advanced.

b. **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:

1) **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 Planned unit development or to enforce the decisions of the ARC. Except in the case of an emergency, residents shall be given at least twenty-four (24) hours prior notice before the ARC may exercise this power.

2) **Respond to Complaints.** While the ARC may or may not police the development, relative to any of these covenants, it shall have the power and authority, but not the obligation, to respond to written concerns of Owners about any issue.

3) **Execute Documents.** The authority to execute and record, on behalf of the ARC, any amendment to the Declaration which has been approved by the vote or consent necessary to authorize such amendment.

4) **Standing.** The power to sue and be sued.

5) **Contractual Authority.** The authority to enter into contracts which in any way concern the Planned unit development.

6) **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 Parking Rules.

7) **Determine Common Expenses.** The authority to determine the Common Expenses of operating the ARC and administering the architectural guidelines in the Project Documents.

8) **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.

c. **Transfer of Control of ARC.** Unless otherwise agreed in writing, within forty-five (45) days after the termination of the Period of Developer Control, Developer shall transfer the right to the Owners to appoint at least two members of the ARC.

d. **Default in Management of ARC.** In the event of the failure of a duly qualified and functioning ARC, the City may but is not obligated to administer and operate the ARC.

19. **Designs, 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. Information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction should be submitted if applicable. Designs submitted for approval shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process.

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

b. **Aesthetics.** Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

c. **Minimum Dwelling Requirements.** No Dwelling shall be constructed or altered unless it meets the following minimum requirements:

- 1) Only single family residential Dwellings are allowed.
- 2) The height of any Dwelling shall not exceed two stories above ground.
- 3) No slab on grade Dwellings are permitted.
- 4) Without the prior written consent of the ARC, a basement is required for each Dwelling.
- 5) Without the prior written consent of the ARC, each Dwelling shall have a private garage for not less than two motor vehicles.
- 6) 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.
- 7) Any detached accessory building must conform in design and materials with the primary residential Dwelling. Any and all accessory building plans must be submitted, reviewed and approved in advance. The maximum height of an accessory building shall be 8 feet; however, the ARC may grant an exception at it's sole discretion.
- 8) Any detached accessory building must conform in design and materials with the primary residential Dwelling.
- 9) All front yards of Lots shall be fully landscaped within one (9) months of the closing on the transaction. Landscaping and all grading and drainage shall be designed in such a way to control water run-off so that any Lot within the planned unit development will not be adversely affected by another. Furthermore, the grades initially established by the ARC or Developer may not be altered without the prior written consent of the ARC. All landscaping must conform to the Landscaping Guidelines as adopted by the ARC from time to time.
- 10) No fence or similar structure shall be built in any front yard to a height in excess of four (4') feet, nor shall any fence or similar structure be built in any side or rear yard in excess of six (6) feet. The fencing in the rear yard of all Lots backing onto the open space park separating the Lot from the park will be 6' tan semi-private vinyl fencing installed by Ivory Development or Designee. The semi-private fencing is to remain uniform both in appearance, construction material and quality of construction, additional fencing inside or outside of the semi-private fencing will not be allowed, and privacy fencing replacing the semi-private fencing will not be allowed. Natural wood, vinyl or masonry fencing is permitted in other areas. Chain link fencing is not allowed on intersecting lots lines. Some chain link fencing may be allowed on the perimeter of the development with prior written approval. 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. If corner lots are fenced, the fencing will be installed so water utilities are accessible from the City right of way.

11) The following conditional uses may also be allowed:

a) Swimming pool, cabana, equipment building/other outdoor recreational activities (i.e., tennis courts, basketball court, soccer pitch, batting/pitching apparatus, etc.); and

b) Accessory Buildings, permanent storage sheds, detached garage structures, workshops, detached conservatories/greenhouses etc. No tin sheds are allowed.

d. **Preliminary Architectural Drawings, Plans and Specifications.** The ARC may require, as a minimum, the following additional items:

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

2) Floor plans of each floor level to scale.

3) Elevations to scale of all sides of the Dwelling.

4) One major section through Dwelling.

5) A perspective (optional).

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

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

1) 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.

2) Detailed floor plans.

3) Detailed elevations, indicating all materials and showing existing and finished grades.

4) Detailed sections, cross and longitudinal.

5) 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.

f. **Approval.** In the event that the ARC fails to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be considered approved, subject to the minimum requirements as set forth herein.

g. **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.

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

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

j. **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.

k. **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 Planned unit development, subject to the notice and the opportunity to be heard. In the event of sanctions after notice and hearing, neither the ARC or the Developer, nor their employees, agents, representatives or consultants shall be held liable to any person for exercising the rights granted by this Section.

l. **Ivory Homes Catalogue.** Any and every home design, plan or specification contained within any Ivory Homes Catalogue shall be considered approved and qualify for construction, and no other consent shall be required, provided the home elevations meet and the home otherwise satisfies all of the architectural control requirements of Lehi City PUD ordinance & zoning ordinances. All homes must meet the Lehi City Development Code for size.

20. **Use Restrictions and Nature of the Project.** The Lots are subject to the following use restrictions which shall govern both the architecture and the activities within the Planned unit development:

a. **Private Residence.** No Lot shall be used except for residential purposes and all residents shall be obligated by the following requirements: no temporary structure including trailers, tents, shacks, garages, barns or other outbuildings shall be used on any Lot at any time. No Dwelling shall be rented on a seasonal basis or for hotel or transient use. Individual rooms may not be rented to separate persons. The initial term of any lease shall be at least six (6) months. All leases shall be in writing.

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

c. **Storage and Parking of Vehicles.** The driving, parking, standing, and storing of motor vehicles in, on or about the Planned unit development shall be subject to the following:

1) The parking rules and regulations adopted by the ARC from time to time;

2) No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any driveway or Dwelling or to create an obstacle or potentially dangerous condition.

3) No Resident shall repair or restore any vehicle of any kind in, on or about any Lot, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

4) No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed.

5) All garages shall be used primarily for the parking and storage of vehicles.

6) Daytime parking on the street is allowed.

7) Overnight parking on the street is not allowed.

8) All motor vehicles parked so as to be visible from the street or another Lot must be undamaged (less than \$1000.00 to repair), in good mechanical condition, registered, and licensed.

9) Except as otherwise expressly permitted, motor vehicles may not be "stored" so as to be visible from the street or another Dwelling. This includes by way of illustration but not limitation unregistered, unlicensed, abandoned, disabled, or damaged (\$1,000 +) motor vehicles.

10) Except for purposes of loading or unloading passengers or supplies, for a period of time not to exceed twenty-four (24) hours, all Recreational, Commercial, and Oversized Vehicles may be stored on a properly constructed Parking Pad provided (a) the Vehicle is in good running condition and properly licensed and registered, (b) the Parking Pad is located in the rear yard (i.e., behind the front of the house), and (c) a proper Parking Pad Fence has been installed. Eighteen-wheel semi trailers and similar oversized transportation devices are not allowed.

11) Vehicles parked in violation of this Declaration may be immobilized, impounded, or towed by the ARC or its designee without further notice and at the owner's sole risk and expense.

d. **Garbage and Refuse Disposal.** No Lot shall be used as a dumping ground. All trash, garbage, debris, rubbish or other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period on pick-up days.

e. **Aerials, Antennas, and Satellite Systems.** No aerials, antennas, satellite dishes or systems shall be erected, maintained or used in, on or about any Dwelling, outdoors and above ground, whether attached to or on top of any building, structure, Dwelling, or otherwise, within the Planned unit development without the prior written consent of the Developer or ARC, which shall not be unreasonably withheld. In making its decisions, the Developer and/or ARC shall abide by and be subject to all relevant local, state and federal laws, including but not limited to all FCC guidelines, rules and regulations as they may be amended or supplemented from time to time. Insofar as is reasonably possible without impairing reception, satellite dishes, aerials and antennae shall be positioned so that they are screened from view from the street.

f. **Animals and Pets.** Large animals as that term is defined by Lehi City Ordinance are not allowed. No pets, animals, livestock, or poultry of any kind may be commercially bred at the planned unit development. Domestic pets as defined by Lehi City Ordinance per lot are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts may constitute a nuisance: (1) causing damage to the property of anyone other than the pet owner; (2) causing unreasonable fouling of the air by odors; (3) causing unsanitary conditions; (4) running loose throughout the Planned unit development and not in a cage or on a leash and under the control of a responsible person; (5) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (6) molesting or harassing passersby by lunging at them or chasing passing vehicles; (7) attacking or threatening to attack people or other domestic animals; (8) otherwise acting so as to bother, annoy or disturb the sensibilities of a reasonable person or interfering with the right of residents to the peaceful and quiet enjoyment of their property; or (9) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents.

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

h. **Damage or Waste.** Each Owner shall repair any damage he or any other residents, guests, or invitees of his Lot may cause to another Owner, Lot, or Dwelling, and promptly restore the property to its original condition.

i. **Signs.** No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or any Lot except for a single sign with a maximum size of 2' x 2' for specific purpose of advertising the sale or rental of a Dwelling; provided, however, this restriction does not apply to and is not binding upon the Developer, who may use whatever signs it deems appropriate to market its Lots.

j. **Zoning.** All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Planned unit development land use and buildings.

k. **Landscaping.** All landscaping must be and completed within nine (9) months of the initial closing on the Lot. All landscaping, grading, and drainage shall be completed strictly in accordance with the Developer's established grades, and so as to comply with and not impair all Lehi City and Utah County Ordinances and flood control requirements.

l. **Easements.** Easements and rights of way for the installation and maintenance of utilities, drainage systems and facilities, and irrigation are reserved, as set forth herein and in the legal descriptions of the Property. Within these easements and rights of way, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. The easement and right of way area of each Lot and all improvements within said area shall be maintained continuously by their Owners, excepting those improvements for which a public authority or utility company is expressly responsible.

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

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

o. **Accessory Buildings.** Since Accessory Buildings are considered "conditional uses," each application will be evaluated separately. Any detached Accessory Building must conform in design and construction materials with the primary residential Dwelling. The maximum height of an Accessory Building shall be 8 feet, however the ARC may grant an exception at their sole and exclusive discretion

p. **Temporary Structures.** No structure of a temporary nature or character, including but not limited to any trailer, shack, shed, tent, garage, barn or other out-building shall be used on any Lot at any time as a residence.

21. **Common Utilities.** The Developer shall provide water and power utility services to the Common Area and Facilities at its expense (the "Common Utility Service"). Such Common Utility Service shall be metered, maintained and paid for by the Association as a Common Expense;

22. **Insurance.** The Manager, Management Committee or Association, will obtain insurance against loss or damage by fire and other hazards for: (a) all Common Areas and Facilities; and (b) all Buildings that contain more than one Dwelling, including any improvement which is a permanent part of a Building. The insurance coverage shall be written on the property

in the name of the Manager, Management Committee or Association, as trustee for each of the Lot Owners in the percentages established in this Declaration. The insurance premiums shall be a Common Expense. This Section is without prejudice to the right of each Owner to insure his own Dwelling for his benefit. The Manager, Management Committee or Association shall satisfy at least the following minimum 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 'condominium' casualty policy.

b. **Liability Insurance.** A public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

c. **Directors and Officers Insurance.** A director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in coverage.

d. **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.

e. **Deductible.** The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the Unit Owner, then the Association shall be responsible for the deductible.

23. **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 taking 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 Unit 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 Units 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.** In the event 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, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

f. **Inadequate Insurance.** If the cost of Restoration exceeds Available Funds, the Management Committee may elect to make a special assessment in accordance with Article III, Section 21 above to pay for the deficiency.

g. **Reallocation in Event of Partial Restoration.** In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a condominium project) 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 Units.

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, condominium Ownership under this Declaration and the Condominium Plat 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 Unit 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 Unit 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.

24. **Classes of Membership and Voting Allocations.** The Association shall have two (2) classes of membership: Class A and Class B.

a. **Class A Members.** Class A Members shall be all Owners with the exception of the Class B Members. Class A Members shall be entitled to vote on all issues before the Association, 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) **Assignment of Voting Rights to Lessee.** 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 Members.** The 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 ARC and/or the Management Committee. The Class B Member shall be the

Developer and any successor of Developer who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Developer. The Class B Member shall originally be entitled to five (5) votes per Lot owned; provided, however, the Class B member shall always have at least the same number of votes as all of the Class A members combined plus one. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership at the end of the Period of Developer's Control. From and after the happening of this event, 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 Developer shall call a meeting, to formally transfer control and management.

25. **Consent or Vote Without a Meeting.** 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) a copy of the notice and ballot must be given to each Owner, (b) all necessary ballots and consents must be obtained prior to the expiration of sixty (60) days from the time the first written ballot or consent is obtained, (c) 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, and (d) if approved, written notice of the approval must be given to all Owners at least ten (10) days before any action is required by them.

26. **Developer's Sales Program.** Notwithstanding anything to the contrary, until the termination of the Period of Developer Control neither the Owners nor the Developer shall interfere or attempt to interfere with Developer's completion of improvements and sale of all of its remaining Lots and Dwellings, and Developer shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots and Dwellings owned by it:

a. **Sales Office and Models.** Developer shall have the right to maintain one (1) or more sales offices and one (1) or more model Lots, Homes or Dwelling 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 Developer's sales effort, or any combination of the foregoing; sales offices must comply with Lehi City ordinances and criteria.

b. **Promotional.** Developer 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. **Relocation and Removal.** Developer 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, Developer shall have the right to remove from the Planned unit development any

signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Developer's sales effort.

d. **Limitation on Improvements by Owners and the Association.** Until the termination of the Period of Developer Control, neither the Owners nor the Association shall, without the written consent of Developer, make any improvement to the Project or alteration to any improvement created or constructed by Developer.

e. **Developer's Rights Assignable.** All of the rights of Developer 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 Dwellings in the Project title to which is vested in Developer 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 Developer (in its capacity as Builder) herein.

27. **Fines.** Each Owner and Resident is responsible for adhering to the Project Documents governing the Project. A breach of these restrictive covenants and rules is subject to enforcement pursuant to the Amended and Restated and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his or her residents, tenants and/or guests. Fines levied against residents, tenants, and guests are the responsibility of the Owner. The Management Committee shall react to each material violation in the following manner:

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

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

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

- (1) be made only for a violation of a restrictive covenant, rule or regulation;
- (2) be in the amount specifically provided for in the Amended and Restated, bylaws, or association rules for that specific type of violation, not to exceed \$500.00; and
- (3) accrue interest and late fees as provided herein.

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

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

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

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

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

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

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

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 Amended and Restated, 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. **Review.** An owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the management committee within 14 days from the date the notice is received. A notice shall be considered received on the date (1) it is hand delivered, (2) it is delivered by certified mail, return receipt requested, or (3) five (5) days after it is deposited in the U.S. Mail, postage prepaid, addressed to the owner's last known address on the books and records of the Association

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

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

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

29. **Assignment of Rents.**

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

(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 Amended and Restated, 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. **Notice.** If the owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or management committee may deliver written notice to the tenant, in accordance with the Amended and Restated, bylaws, or association rules, that

demands future payments due to the owner be paid to the association pursuant hereto. A copy of the notice must be mailed to the owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

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

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

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

30. **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 term "shall" is mandatory and the term "may" is permissive, 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.

31. **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 the Developer and all parties who hereafter

acquire any interest in a Lot, or the Property, 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, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration. The City shall have the right but not the obligation to enforce the Declaration.

32. **Enforcement and Right to Recover Attorneys Fees.** Should Lehi City, the ARC, Managing Member, Management Committee, Association, or an aggrieved Owner be required to take action to enforce or construe the Declaration or any rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, including a claim for injunctive relief or damages, whether such remedy is pursued by filing suit or otherwise, the prevailing party shall be entitled to recover his reasonable attorneys fees, costs and expenses which may arise or accrue.

33. **Limitation of Liability.** The covenants, conditions and restrictions set forth in this Declaration, together with any rules and regulations adopted by the Management Committee or ARC, are established for the benefit of the Property and the Owners. Any damage, loss, claim or liability which might arise due to any decision, act, or failure to act of Developer, Management Committee or ARC, or any of their members, shall be exempt from any civil claim or action, including negligence, brought by any person owning or having an interest in any Lot. The Management Committee and ARC and its members shall be indemnified, saved and held harmless from any such action or failure to act, and exempt from any civil claim or action resulting from any act or failure to act (whether intended or implied) while functioning as a member of the ARC, or for decisions that they may render during the course of their service, unless said party is guilty of gross negligence.

35. **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. The lien or claim against a Unit for unpaid Assessments shall be subordinate to any Mortgage recorded on or before the date such Assessments become due.

36. **Combination of Lots.** An owner of two or more adjoining Lots shall have the right upon approval of the Management Committee and the mortgagees of said Lots, to combine one or more adjoining Lots or portions thereof and to alter or amend the Declaration and Map to reflect such combination.

a. **Documentation.** Such combinations may be accomplished by the Owner recording a deed or an amendment or amendments to this Declaration, or Map describing the change. All costs and expenses required in such amendments shall be borne by the unit owner desiring such combination.

b. **Approval.** All such deeds and/or amendments must be approved by attorneys employed by the Association to insure the continuing legality of the Declaration and the Map. The cost of such review by the attorneys shall be borne by the person wishing to combine the Lots.

c. **Percentage Interests.** Any such deeds and/or amendments of the Declaration or Map shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the common areas and facilities which are appurtenant to the Lots involved in the alterations. The remaining combined Lot, if two or more Lots are totally combined, will acquire the total of the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Lots that are combined. If a portion of one Lot is combined with another, the resulting Lots shall acquire a proportionate percentage of the total undivided interest in the Common Areas and Facilities of the Lots involved in the combination on the basis of area remaining in the respective, combined Lots. The percentage of undivided interest in the common areas and facilities appurtenant to all other Lots shall not be changed. All such amendments must, in all instances, be consented to in writing by the Management Committee and also all other persons holding interest in the Lots affected. The consent of other Lot owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the common areas and facilities of the other Lot owners remain unchanged.

37. **Amendments.** This Declaration may be amended:

a. **Developer.** Unilaterally by the Developer at any time; and

b. **Owners.** Upon the affirmative written approval of at least a majority of the Owners of the Lots provided, however:

1) So long as Developer shall own at least one (1) Lot in the Project, no amendment shall be valid or enforceable without its express prior written consent; and

2) Any amendments affecting fencing, grading, or any contrary to approved construction drawings and development agreement. shall require the prior written consent of the City; and

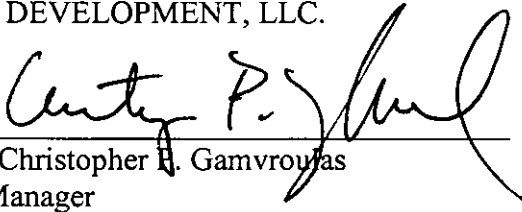
3) The Mortgagee Protection section cannot be amended without the consent of all first mortgagees.

An amendment shall be valid immediately upon recording of the document amending the Declaration in the office of the County Recorder of Utah County, Utah.

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

Dated the 28 day of December, 2004.

DEVELOPER:
IVORY DEVELOPMENT, LLC.

By: 
Name: Christopher P. Gamvroulas
Title: Manager

ACKNOWLEDGMENT

STATE OF UTAH)
 ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 28th day December, 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.


NOTARY PUBLIC
Residing at:
My Commission Expires:



EXHIBIT "A"
LEGAL DESCRIPTION

The Property referred to in the foregoing document is located in Utah County, Utah and is described more particularly as follows:

Proposed PLAT "A", COLONY POINTE SUBDIVISION, more particularly described as follows:

A portion of the NE1/4 and the NW1/4 of Section 7, Township 5 South, Range 1 East, Salt Lake Base & Meridian, located in Lehi, Utah, more particularly described as follows:

Beginning at a point located S89°44'31"W along the Section line 11.57 feet and South 1,599.50 feet from the North ¼ Corner of Section 7, T5S, R1E, S.L.B.& M.; thence S79°02'21"E 58.53 feet; thence S88°31'49"E 122.09 feet; thence N1°30'20"E 79.04 feet; thence S88°25'19"E 198.41 feet; thence S2°00'00"W 457.56 feet; thence N89°54'47"W 4.46 feet; thence S1°29'40"W 681.80 feet; thence S88°54'00"W 317.85 feet; thence N1°02'56"W 308.93 feet; thence N88°53'01"W 170.00 feet; thence S1°02'56"E 299.43 feet; thence N88°53'01"W 488.41 feet; thence N0°01'15"W 770.56 feet; thence S89°26'24"W 0.80 feet; thence N0°01'51"W 3.01 feet; thence N43°46'39"E 182.21 feet; thence S64°03'26"E 80.18 feet; thence N56°07'17"E 116.83 feet; thence N64°49'00"E 256.59 feet; thence N80°03'34"E 109.91 feet to the point of beginning.

Contains: 21.84+/- acres

**BY-LAWS FOR
COLONY POINTEHOMEOWNERS ASSOCIATION**

ARTICLE I
REGISTERED AGENT

1. 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.

ARTICLE II
ASSOCIATION

1. Composition. The association of unit owners is a mandatory association consisting of all Owners.

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 Management Committee from time to time and stated in the notice of meeting.

3. Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail to each owner at his last known address, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Association not less than ten (10) and not more than thirty (30) days in advance of such meeting. The notice shall state the purpose, day, date, time and place of the meetings. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

4. Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he is in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid his share of the Common Expenses and all Assessments and/or Additional Charges due.

5. Proxies. The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. 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 (a) if the Owner attends the meeting in person, (b) it is revoked in writing and written notice of the revocation is given to the Secretary of the Association prior to the meeting, and (c) 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 Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

6. Quorum Voting. Fifty-one (51.0%) percent 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 oral announcement at the meeting to be rescheduled. Those Owners present, either in person or by proxy, 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 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 Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

7. 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 Committee Members, if applicable;
- g. unfinished business; and
- i. new business.

8. 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 as well as record of all transactions occurring thereat.

9. Open Meeting Policy. All Management Committee meetings shall be open to all voting members, but attendees other than members of the Management Committee may not participate in any discussion or deliberation unless a majority of a quorum requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak. All participants must abide by and follow the Rules of Order or Decorum adopted by the Management Committee.

10. Action May Be Taken Without A Meeting. Any action to be taken at the meeting of the Management Committee or any action that be taken at a meeting of the Management Committee may be taken without a meeting if a consent in writing, setting for the action so taken, shall be signed by all the members of the Management Committee. An explanation of the action taken shall be posted at a prominent place or places within the common areas with three (3) days after the written consents of all of the members of the Management Committee have been obtained.

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

ARTICLE III
MANAGEMENT COMMITTEE

1. Powers and Duties. The affairs and business of the Association shall be managed by the Management Committee consisting of three (3) or more Unit Owners. 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) Allocation of the Common Expenses;
- c) Providing for the operation, care, upkeep, replacement, maintenance, and regulation of all the Common Areas and Facilities.
- d) Collecting and depositing the Assessments.
- e) Making Rules and Regulations.
- f) Establishing bank accounts.
- g) Enforcing by legal means the Project Documents.
- h) Obtaining insurance.
- i) Keeping 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. 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 Management Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with

generally accepted accounting practices. Each year the Management Committee shall obtain either a Compilation Report, Reviewed Financial Statement, or Audited Financial Statement if requested in writing by a majority of the members of the Association. A mortgage holder, at its expense, may have an Audited Financial Statement prepared at any time.

j) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Project Documents, 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) or more members.

3. Election and Term of Office of the Committee. The term of office of membership on the Management Committee shall be two (2) years. At the expiration of the member's term, a successor shall be elected.

4. First Meeting. The first meeting of the members of the Management 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 Management 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 annually.

6. Special Meetings. Special meetings of the Management Committee may be called by the President, Vice President or a majority of the members on at least forty-eight (48) 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 Management 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 Management 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 Management 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. 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 of the Management Committee 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 twenty-five percent (25%) or more of the Committee Meetings or who misses three (3) 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 Managing Member, 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. The President, Secretary and Treasurer must 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 first meeting of each Committee immediately following the annual meeting of the Association 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 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 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 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.

8. Managing Member. The officers of the Association may appoint a Managing Member of the Management Committee to act for and in their behalf.

ARTICLE V
FISCAL YEAR

The fiscal year of the Association shall be the calendar year consisting of the twelve (12) 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
INVESTMENT OF COMMON FUNDS

Common funds may only be deposited into institutions which are federally insured.

ARTICLE VII
AMENDMENT TO BY-LAWS

1. Amendments. These By-Laws may be modified or amended either (a) by the affirmative vote of a majority of the members of the Association or (b) pursuant to a written instrument of consent duly executed by a majority of the members of the Association; provided, however, all of the written consents must be obtained within a sixty (60) day period.

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

ARTICLE VIII
NOTICE

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these By-Laws (except as to notices of Association meetings which were previously addressed in Article II of 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 Unit 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 Declaration.

ARTICLE IX
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 provision of the Declaration shall control.

2. 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.

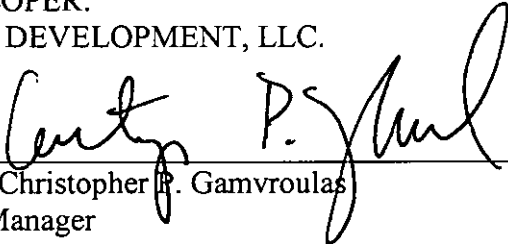
3. Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

4. Interpretation. 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; and the term "shall" is mandatory while the term "may" is permissive.

5. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

Dated the 28 day of December, 2004.

DEVELOPER:
IVORY DEVELOPMENT, LLC.

By: 
Name: Christopher P. Gamvroulas
Title: Manager

