

**After recording, return to:
Ivory Development, LLC
978 Woodoak Lane
Salt Lake City, UT 84117**

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR
DEER CREEK ESTATES
IN MIDWAY, UTAH**

RECITALS

- A. The certain Declaration of Covenants, Conditions and Restrictions for Deer Creek Estates Subdivision (the “Initial Declaration”) was recorded with the Office of Recorder for Wasatch County, Utah on August 29, 2017 as Entry No. 442120, Book 1199, Pages 1761-1776 by Deer Creek Estates, LLC (the “Initial Declarant”) for the Deer Creek Estates subdivision.
- B. Deer Creek Estates Subdivision Plat A was recorded with the Office of Recorder for Wasatch County, Utah on August 29, 2017 as Entry No. 442119, Book 1204, Pages 386-395.
- C. Deer Creek Estates Subdivision Plat B was recorded with the Office of Recorder for Wasatch County, Utah on October 13, 2017 as Entry Nos. 443947, Book 1199, Pages 1751-1760.
- D. Pursuant to that certain Warranty Deed recorded with the Office of Recorder for Wasatch County, Utah on May 22, 2018 as Entry No. 451730, Book 1223, Pages 823-825, Ivory Development, LLC is the successor in interest to Initial Declarant’s rights under the Initial Declaration and the successor Declarant for the Deer Creek Estates subdivision.
- E. Ivory Development, LLC desires to amend and restate the Initial Declaration to: (1) clarify the respective right and obligations of the Declarant and the Owners; (2) refine and streamline the architectural review process required for construction of a Home and Lot landscaping; and (3) facilitate completion of the Project in accordance with the Declarant’s design scheme; and (4) enhance and protect the Project’s value and attractiveness.
- F. Article VII Section 3 of the Initial Declaration provides that until the Declarant has conveyed greater than ninety percent (90%) of the Lots, the Declarant may unilaterally amend the Initial Declaration. As of the date of this instrument, only ten percent (10%) of the Lots have been conveyed to individual purchasers.
- G. The Project will be developed as a residential subdivision comprised of detached single-family homes. The Project does not include any common areas, private roadways, or a

community association (as defined in the Utah Community Association Act, Utah Code § 57-8a-101 *et seq.*)

H. The Terms and Conditions established herein are for the mutual benefit and burden of the Declarant, Owners, Occupants, Lenders and all others acquiring any interest in the Project.

I. The Terms and Conditions constitute equitable servitudes which shall run with the land and shall govern the development and use of the property within the Project and shall be binding upon and inure to the benefit of the Declarant, the Owners and their heirs, successors, and assigns, and any other Person that now or hereafter has any legal, equitable, or beneficial interest in any portion of the Project. By taking title to a Lot, an Owner joins in and accepts the intent, purpose, and objectives of this Amended Declaration and agrees to be bound by it and acknowledges the benefits received from its existence and the Declarant’s development of the Project and accepts the burdens that accompany these benefits.

J. Capitalized terms in this Amended Declaration are defined in Article 1 herein or in other sections of this Amended Declaration.

NOW, THEREFORE, for the reasons set forth in the above Recitals and subject to the Terms and Conditions set forth below, this Amended Declaration is adopted by the Declarant, pursuant to the rights and authority described above.

**ARTICLE 1
DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 “Accessory Structure” shall mean and refer to any detached, subordinate building or structure incidental to the Home and located on the same Lot occupied by the Home and shall include any shed, shack, detached garage, or other outbuilding.
- 1.2 “Amended Declaration” shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Deer Creek Estates.
- 1.3 “ARC” shall mean and refer to the architectural control committee established by the Declarant to review building plans and landscaping plans and to ensure that construction homes and other structures, landscaping, and other improvements on a Lot conform with the Declarant’s design scheme for the Subdivision, the Term and Conditions established in the Governing Documents and Community-Wide Standards.
- 1.4 “Builder” shall mean and refer to Ivory Homes, Ltd. and its assigns.
- 1.5 “City” shall mean and refer to the City of Midway located in Wasatch County, Utah.
- 1.6 “Community-Wide Standards” shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Project or, at a minimum, the standards initially established by the Declarant and/or described in this Amended Declaration. The Community-Wide Standards may or may not be set forth in writing.
- 1.7 “Declarant” shall mean and refer to the successor declarant Ivory Development, LLC.
- 1.8 “Governing Documents” shall mean and refer to this Amended Declaration, the Plat, and any other recorded instrument by which the Declarant may exercise power with regard to the development of the Project or otherwise affect the Project.

- 1.9 “Home” shall mean and refer to a residence or dwelling constructed on a Lot intended for Single-Family occupancy and, when constructed, is included in the definition of Lot below as the context may require.
- 1.10 “Lender” shall mean and refer to a holder of a mortgage or deed of trust on a Lot.
- 1.11 “Lot” shall mean and refer to any individual building lot within the Subdivision, depicted as a separately identified parcel on the Plat, which may be independently owned and conveyed and on which a detached Single-Family Home is or will be constructed. The term “Lot” shall include the Home when constructed thereon as well as any constructed Accessory Structure and other improvements to the Lot. The term “Lot” does not include any property or improvements dedicated to the City or the public. More than one Lot is referred to herein as “Lots.”
- 1.12 “Occupant” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, living in, or otherwise occupying a Home or a Lot, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. “Occupants” shall mean and refer to more than one Occupant.
- 1.13 “Owner” shall mean and refer to the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the Office of Recorder for Wasatch County, Utah. “Owners” shall mean and refer to more than one Owner. The term “Owner” shall not include a mortgagee or a trustee for or beneficiary of a deed of trust. The term “Owner” also shall not include the Declarant.
- 1.14 “Person” shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity. The term “Persons” shall mean and refer to more than one Person.
- 1.15 “Plat” shall mean and refer to the record of survey maps for the Deer Creek Estates subdivision recorded with the Office of Recorder for Wasatch County, Utah and all valid recorded amendments and supplements thereto.
- 1.16 “Project” shall mean and refer to the Deer Creek Estates subdivision and all structures and improvements therein, including the Lots and Subdivision Improvements. The Project shall include any additional land made subject to this Amended Declaration at such time the Supplement to Declaration and plat map for the additional land is recorded.
- 1.17 “Single-Family” shall mean and refer to a single family as the term is defined by City ordinance. In the absence of definition by City ordinance, Single-Family shall mean and refer to any one of the following: (a) an individual; (b) a group of individuals related to each other by blood, marriage, adoption or guardianship; (c) a group of not more than three (3) unrelated persons who maintain a common household (distinguishable from a group occupying a boarding house, club, fraternity, or hotel).
- 1.18 “Street Tree Plan” shall mean and refer to the street tree plan for the Subdivision adopted by the Declarant in accordance with City ordinance.
- 1.19 “Subdivision” shall mean and refer to the Deer Creek Estates subdivision development, including all Lots and other real property, as reflected on the Plat.

- 1.20 “Subdivision Improvements” shall mean and refer to all subdivision improvements that have been or may be installed which are outside of the boundaries of a Lot or within easements as identified on the Plat that are necessary to provide public road access and utility services and include other construction work and installations required to comply with any conditions of the City or other governmental or quasi governmental entity for approval of the Subdivision or any Plat thereof.
- 1.21 “Supplement to Declaration” shall mean and refer to any amendment or supplement to this Amended Declaration to annex additional land into the Project and subject such additional land to the covenants, conditions and restrictions contained in this Amended Declaration. A Supplement to Declaration shall also mean and refer to any recorded instrument adopting any additional covenants, conditions or restrictions for the Project.
- 1.22 “Terms and Conditions” shall mean and refer to any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.

ARTICLE 2 THE PROJECT

- 2.1 Nature of the Project. The Project is residential subdivision development presently comprised of twenty (20) Lots. In conjunction with the development of the Project, open space parcels 1 and 2 depicted on the Plat have been dedicated to the City and shall be administered and maintained by the City as a neighborhood park. The Project is not a cooperative or a community association and is not a condominium.
- 2.2 Existing Conditions Affecting the Project. By taking title to a Lot and/or by residing in the Subdivision, Owners and Occupants acknowledge certain existing conditions adjacent to or near the Subdivision. Specifically, the Subdivision is located adjacent to and/or near farm properties. Hours of farm operation may begin early and run late. Farm operations on adjacent or nearby properties may result in ground-water seepage and/or irrigation overspray within the Subdivision. Farm animals may produce noise and odors bothersome to some Owners and Occupants. Additionally, the Subdivision is located near the Heber Valley Wastewater Treatment Facility (the “Facility”). The Facility operates twenty-four (24) hours a day and may produce noise and odors bothersome to some Owners and Occupants.
- 2.3 Project Name. The Project is named “Deer Creek Estates.”
- 2.3 Expansion of Project. The Project may be expanded by the Declarant. Additional land, whether or not directly adjacent to the Project, may be developed and made part of the Project and made subject to this Amended Declaration by recording of a Supplement to Declaration or similar instrument, together with a plat map for the subject property.
- 2.4 Binding Effect of Governing Documents. The Declarant hereby declares that the Project and all of the Lots shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions in the Governing Documents.

**ARTICLE 3
DESCRIPTION OF THE LOTS**

3.1 The Lot.

- (a) Subject to further specification herein and/or on the Plat, each Lot, generally, consists of the real property and all structures and other improvements on or within the boundary lines of the Lot as shown on the Plat.
- (b) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Lot shall be part of the Lot. Additionally, any mechanical equipment, systems, or other improvement located outside of the boundaries of the Lot but designated and designed to serve only that Lot shall be considered part of the Lot.
- (c) Consistent with the Plat, Lots 12 and 13 will have temporary turnarounds and are subject to drainage easements which prohibit the construction of any structure and the installation of any trees or shrubs within the easement.
- (d) Cluster mailboxes for the Subdivision are or will be located on Lot 20, consistent with the requirements of the United States Postal Service

3.2 Lot Number. The distinct Lot number that identifies the Lot on the Plat may be different than the mailing address of the Lot.

3.3 Plat. The Plat and all dimensions, descriptions, and identification of boundaries thereon shall be binding on the Project and the Owners.

ARTICLE 4 EASEMENTS

- 4.1 Utilities Easements. Utility Easements and rights-of-way over, under, across and through the Project for the installation and maintenance of power lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and other such lines, fixtures, or equipment needed or determined by the Declarant to be helpful in serving the Project, the Lots, or the Owners and Occupants in the Project are reserved to the Declarant, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the ownership rights and/or quiet enjoyment of the Lots by the Owners or Occupants. The Declarant shall have the power to grant and convey, for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over, under and through the Project, including the Lots, for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for power, cable television, telecommunications, internet, telephone, sewers, storm water drains and pipes, water systems, irrigation systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Lot, implicitly consents to such easements and rights-of-way and authorizes and appoints the Declarant as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Notwithstanding, each Owner, and those claiming by, through or under an Owner, agrees to promptly execute and deliver all documents and instruments and do such other things as may be necessary or convenient to effect the same at the request of the Declarant; provided, however, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Lot.
- 4.2 Construction Easement. A temporary construction easement is hereby reserved to the Declarant and the Builder and their respective assigns, over, under, across, and through the Project for all purposes reasonably necessary or convenient for the construction of Subdivision Improvements and initial construction of each Home. By acceptance of any instrument creating an interest in a Lot or the Project and/or by residing in the Project, each Owner and Occupant acknowledges that there will be construction activities, traffic, noise, odors, vibrations, and other activities which temporarily may disrupt an Owner or Occupants' quiet enjoyment of a Lot until construction of the entire Project is completed and waives any right to object to the same; provided, however, that Declarant and the Builder shall use commercially reasonable efforts to minimize the adverse impact of construction on the Owners and Occupants.
- 4.3 Easements for Encroachments. If any portion of any Subdivision Improvement encroaches upon any Lot, or if any Lot encroaches upon any other Lot as a result of the manner in which the Subdivision Improvements are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Declarant, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

- 4.4 No View Easement. There are no view easements or any view rights appurtenant to the Project or to any Lot. Views from a Lot and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project.

ARTICLE 5 USE RESTRICTIONS

- 5.1 Nuisance. No noxious or offensive activity shall be carried on, in or about the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any property or liability insurance for or decrease the value of a Lot. Without limiting the foregoing, any violation of any provision of this Amended Declaration or any activity within the Project which constitutes a violation of any applicable law, ordinance, or governmental regulation shall be deemed a nuisance.
- 5.2 Parking Restrictions. Except for “customary parking” and “temporary parking,” as permitted by this Section 5.2, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, or boats) shall be parked, stored, or located within any portion of the Project, except for on approved concrete parking pads, behind a screening fence, and behind the front plane of the Home. For purposes of this Section, “customary parking” shall mean the parking of operable, properly registered automobiles, motorcycles, noncommercial trucks, and vans within the Home’s garage or driveway. “Temporary parking” shall mean parking on public roadways of operable, properly registered vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants.
- 5.3 Underground Utilities. All gas, electrical, water, telephone, cable, fiber optics, and other utility lines serving the Subdivision shall be located underground, including lines within any Lot which service the Lot. No propane or oil tanks may be installed on any Lot except for temporary heat during construction.
- 5.4 Exterior Lighting. Except for Subdivision lighting installed by the City or lighting by the Declarant, any outdoor lighting shall be subject to approval by the ARC and no outdoor lighting shall be permitted except for lighting directed downward, the light from which is confined to the Lot on which it is installed.
- 5.5 No Outside Speakers and Amplifiers. No radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Home shall be permitted.
- 5.6 Restrictions on Repair Work. No repair, restoration, or similar work on any detached equipment, machinery, or fixtures, including without limitation, motor vehicles, shall be permitted within the Project except within a Home’s garage.
- 5.7 No Unsightly Items. All garbage, rubbish, debris, recycling, landscaping trimmings and cuttings, unsightly materials or objects shall be regularly removed from the Lot and properly disposed of and shall not be allowed to accumulate therein or thereon. Except for garbage or recycling pick-up day, garbage and recycling containers shall be stored in

- the Home's garage or behind approved fencing or otherwise screened from view of neighboring Lots and the street.
- 5.8 No Fires or Fireworks. No open fires (excluding Barbeques and fire pits constructed on a Lot as part of an approved landscape plan) or fireworks are permitted anywhere in the Project.
- 5.9 No Shooting and Hunting. Except as otherwise allowed by law, discharge of any type of firearm (including, pellet guns, BB guns, and bows) is prohibited within the Project. Hunting, including bow-hunting, anywhere within the Project is prohibited.
- 5.10 Animals. Animals generally kept in households such as dogs, cats, birds, fish, hamsters, and ferrets may be kept in the Project consistent with City ordinance. Notwithstanding the foregoing, no animal may be kept on Lot which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. No livestock, poultry, or poisonous reptile may be kept on any Lot. Owners and Occupants are responsible to clean up after their animals. No kennel or dog run may be located closer than fifty (50) feet to any neighboring Home.
- 5.11 Aerials, Antennas, and Satellite Systems. All exterior aerials, antenna and satellite dishes must be installed and positioned in accordance with Federal Communication Commission guidelines, rules and regulations, as they may be amended or supplemented from time to time.
- 5.12 Solar Energy Systems. Installation of any type of ground or roof-mounted solar energy system shall require written ARC approval. No roof-mounted solar energy system shall be permitted which extends above the roof line. All roof-mounted solar panel frames, support brackets, and visible piping or wiring shall be the same color as the roof material. Ground-mounted solar energy systems may not be located anywhere on a Lot that is visible from the street.
- 5.13 Temporary Structures. Except as provided in Article 9 below, no structure or building of a temporary character, including a tent, trailer or shack, shall be placed upon the Project or any Lot.
- 5.14 Signs. Except as provided in Article 9 below, 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, not to exceed 2 feet x 2 feet in size, for the specific purpose of advertising the sale of a Lot. "For Rent" or "For Lease" signs visible anywhere on a Lot are strictly prohibited. Notwithstanding, an Owner may display one (1) political sign per candidate or ballot measure not to exceed twenty-four (24) inches by twenty-four (24) inches in size for up to sixty (60) days before and no more than two (2) days after any federal, state or municipal election.
- 5.12 Residential Occupancy. No trade or business may be conducted in or from any Lot unless:
- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Lot;

- (b) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
- (c) the business activity does not involve solicitation of Occupants or Owners of the Project;
- (d) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers or other individuals coming into the Project who do not reside in the Project, as determined by the ARC, in its sole discretion.
- (e) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Project;
- (f) the business activity is disclosed to the ARC before business is commenced and a description of the business activity is provided, together with a statement of the amount of space required in the Home or on the Lot for such activity, and a description of any impact on the Project; and
- (g) the Owner of the Lot resides in the Home in which the business activity is proposed for the entire time any business activity is conducted.

ARTICLE 6
MINIMUM STANDARDS AND REQUIREMENTS

- 6.1 Declarant-appointed ARC. To protect the integrity of the Declarant's design scheme for the Project, the Declarant may appoint an ARC to review construction and landscaping and subsequent remodeling, expansion, or other modification or alteration of Home's exterior or Lot landscaping. Members of the ARC may or may not be Owners. In the absence of an appointed ARC, the Declarant may exercise any and all of the rights and authority granted to the ARC in this Amended Declaration.
- 6.2 Minimum Requirements. No Home shall be constructed or altered without the ARC's prior written approval. Each Home must meet the following minimum requirements for the Project:
- (a) The Home is a detached Single-Family dwelling.
 - (b) The Home shall not exceed two (2) stories.
 - (c) Homes shall not exceed thirty-five (35) feet in height from grade.
 - (d) Homes shall face 300 East.
 - (d) Basements and slab on grade Homes are permitted within the Project.
 - (e) A Home's garage shall accommodate parking for at least two (2) automobiles.
 - (f) Exterior materials for a Home shall consist of maintenance-free stucco, masonry, or hardi board. Except for soffit and fascia, aluminum and vinyl siding are prohibited within the Project. Lots 1,6, 7 18 and 19 require full fiber-cement wraps.
 - (g) Setback requirement shall be as follows:

- (i) Front: Forty (40) feet for odd-numbered Lots; Fifty (50) feet for even-numbered Lots.
- (ii) Side: Ten (10) feet minimum; Twenty-four (24) feet in total for both sides.
- (iii) Side-corner: Thirty (30) feet.
- (iv) Rear: Thirty (30) feet.

6.3 Preliminary Plans. The Declarant or the ARC may require, as a minimum, the following:

- (a) Plot plan to scale of entire site with the Homes and other structures located and elevation of floors shown above or below a designated point on the street.
- (b) Floor plans of each floor level to scale.
- (c) Elevations to scale of all sides of the Home.
- (d) One major section through Home.
- (e) A perspective.
- (f) Specifications of all outside materials to be used on the exterior of the Home.

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

- (a) Plot plans to scale showing the entire site, the Home, garages, walks, drives, fence, carriage lights, and retaining walls with elevations of the existing and finished grade and contours including those at the outside corners of the structures and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.
- (b) Detailed floor plans.
- (c) Detailed elevations, indicating all materials and showing existing and finished grades.
- (d) Detailed sections, cross and longitudinal.
- (e) Specifications of all Lot landscaping materials.

6.5 Pre-Approved Plans. Initial construction of a Home by the Builder from plans in the Ivory Homes Catalogue that can comply with City set-back requirements and the set-back requirements in Subsection 6.2(g) above on a Lot and which comply with height restrictions, with exterior materials selected from the Ivory Homes Design Center, shall satisfy the minimum standards and requirements in this Section 6 and shall not require written approval from the ARC; provided, however, that any and all deviation from an Ivory Homes Catalogue plan, including, without limitation, design, square footage, or construction materials, shall require approval by the ARC. Approval by the Builder's sales personnel, design staff, or construction personnel is insufficient for purposes of this Section 6.5.

6.6 Landscaping. Each Owner shall be responsible to install front, side, and rear yard landscaping for each Lot, including, specifically, an irrigation system and sod, pursuant to an ARC-approved Lot landscaping plan which is consistent with City ordinance, the Street Tree Plan, and the requirements below. All Lot landscaping, including the installation of an automatic sprinkler/irrigation system, planting of required Lot trees and

street trees required under the Street-Tree Plan, and laying of sod, must be completed within nine (9) months of the date of closing on the purchase of the Lot and in accordance with the Community Wide Standards. For Homes not constructed by the Builder, Lot landscaping shall be completed within nine (9) months from issuance of a certificate of occupancy. Secondary water may be available from the Midway Irrigation Company.

- (a) Each Owner shall ensure that grading and drainage on his/her/their Lot, conforms with the grading and drainage plan established by the Declarant and the City and any storm drain water pollution prevention plan applicable to the Subdivision. No structure, improvements, plants, or other material or item may be placed or permitted to remain on a Lot which may interfere with or damage the Lot or any neighboring Lots or which may 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 or interfere with any utility easement or right of way.
- (b) To protect and preserve the integrity of the footings and foundations for the Home and other structures constructed within the Project, no sod or other water-intensive plants shall be planted which directly abuts or is immediately around any foundation. The Lot landscape plan shall provide for and each Owner shall be responsible to maintain a minimum of five (5) feet between the exterior of the foundation and any sod or other water-intensive plants (“Restricted Landscape Zone”). If approved as part of the Owner’s landscape plan, the Restricted Landscape Zone may be used as a planting bed, subject to restrictions in this Amended Declaration regarding slope, grading, and drainage, and subject to the restrictions below regarding irrigation systems.
- (c) Trees, lawns, shrubs, or other plantings placed on a Lot shall be properly nurtured, maintained and replaced by the Owner. Trees, bushes and shrubs shall be pruned, trimmed and topped as necessary. Any diseased or dead lawn, trees, ground cover, bushes or shrubs on a Lot shall be removed and replaced by the Owner. The Owner shall keep his/her/their Lot reasonably free of weeds.
- (d) Park-strip, front, side, and/or rear yard landscaping comprised primarily or substantially of “Controlled Surfaces” are prohibited. For purposes of this subsection, “Controlled Surface” shall mean and refer to concrete, masonry products, pavers, brick, stone, cobblestone, tile, terrazzo, slabs, slate, rock, pebbles, gravel, wood, woodchips, bark, decking, artificial turf, and other artificial and/or impermeable products. Concrete parking pads and/or approaches may be installed with the prior written approval of the ARC. Gravel or other loose material in parking pads and approaches is prohibited. Any material change or modification to previously approved landscape shall require prior written consent of the ARC.
- (e) Construction or installation of any gazebo, trellis, pergola or similar landscaping element is prohibited without prior, written approval of the ARC. Gazebos, trellises, pergolas and other such design elements constructed on a Lot shall be consistent with the Home on that Lot with respect to architectural style, color and

materials and must otherwise comport with the Community Wide Standards, as determined by the ARC, in its sole discretion.

- (b) Unless constructed or installed by the Declarant or Builder in conjunction with the original construction of the Home, construction or installation of any patio, deck, or covered deck is prohibited without prior, written approval of the ARC. Patios and decks constructed on a Lot must be consistent with the Home on that Lot with respect to size, architectural style, color and materials and must otherwise comport with the Community Wide Standards, as determined by the ARC, in its sole discretion.
- 6.7 Fencing. Except for fences constructed or installed by the Declarant or Builder, if any, construction or installation of fences on a Lot is prohibited without prior, written approval of the ARC. Front yard fencing of any kind is prohibited. Side and/or rear yard fences must comport with applicable City ordinance governing set back and height. Side and/or rear yard fences constructed or installed on a Lot must be consistent with the Home on that Lot with respect to architectural style, color and materials and must otherwise comport with the Community Wide Standards, as determined by the ARC, in its sole discretion. Fences permitted under this Amended Declaration shall be made of high quality durable materials requiring minimal maintenance such as wrought iron, masonry, or vinyl. The following materials are prohibited: (i) plastic material (other than vinyl); (ii) materials not typically used or manufactured for fencing such as metal roofing panels, corrugated or sheet metal, tarps, or plywood; (iii) solid or private composite materials or similar hollow-wall panels or product; and (iv) chain link.
- (a) Fencing that extends beyond the front plane of the home (front yard fencing) is prohibited.
- 6.8 Accessory Structure. No Accessory Structure shall be permitted without the prior written approval of the ARC. No Accessory structure shall exceed twenty-five (25) feet in height. An Accessory Structure's building footprint must be smaller than the building footprint of the Home. No Accessory Structure may occupy more than twenty-five percent (25%) of the rear yard. An Accessory Structure constructed or installed on a Lot shall be consistent with the Home on that Lot with respect to architectural style, color and materials and must otherwise comport with the Community Wide Standards, as determined by the ARC, in its sole discretion.
- 6.9 Variance. Notwithstanding anything to the contrary in this Article 6, the ARC may authorize variances from compliance with the minimum standards and requirements when topography, natural obstructions, environmental considerations, esthetics, or hardship require. For purposes of this Section 6.9, neither an inability to obtain City or other governmental approval or a building permit nor financing restrictions or limitations shall be considered as a hardship meriting a variance.

ARTICLE 7

LEASING AND NON-OWNER OCCUPANCY

- 7.1 Non-Owner Occupancy. Leasing and non-owner occupancy of a Home shall be governed by this Article 7.
- 7.2 Definitions. For the purpose of this Article 7, the following definitions shall apply:

- (a) “Non-Owner Occupied” means:
- (i) For a Lot owned in whole or in part by a natural Person or Persons, the Home is occupied by someone when no individual Owner occupies the Home as the individual Owner’s primary residence; or
 - (ii) For a Home owned entirely by one or more entities or trusts, the Home is occupied by anyone.
- (b) “Family Member” means:
- (i) the parent, sibling, or child of an Owner and that Owner’s spouse and/or children, or
 - (ii) in the case of a Home owned by a trust or other entity created for estate planning purposes, a Person occupying the Home if the trust or other estate planning entity that owns the Home was created for the estate of (1) a current Occupant of the Home; or (2) the parent, child, or sibling of the current Occupant of the Home.

7.3 Restriction on Leasing and Non-Owner Occupancy. Subject to the requirements in this Article 7, any Home may be leased or Non-Owner Occupied; provided, however, that any lease or agreement for non-owner occupancy must be for an initial term of at least six (6) months and shall provide as a term of the agreement that the Occupant shall comply with this Amended Declaration and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-owner occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Occupant. No Home may be leased for transient, short-term, or seasonal use, whether for pay or not. No Owner may lease individual rooms or lease less than the entire Home.

7.4 Exceptions for Family Members. If only Family Members occupy a Home, then the restrictions in Subsections 7.3 above shall not apply to that occupancy;

ARTICLE 8 GENERAL PROVISIONS

8.1 Enforcement. The Declarant and each Owner shall have the right, but not the obligation, to enforce, by proceedings at law or in equity, all Terms and Conditions, including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation. The prevailing party in any enforcement action shall be entitled to recover its reasonable attorneys’ fees and costs.

8.2 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner and Occupant consents to the rights reserved to the Declarant in this Amended Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Amended Declaration and the Plat, subject to the limitations in Section 9.5. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same. Such acceptance shall be deemed an appointment of the Declarant, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on

such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Declarant's reserved rights as set forth in this Amended Declaration and shall not be affected by the disability of any such Owner or Occupant.

- 8.3 Security. The Declarant shall not, in any way, be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project and shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each Owner and Occupant in the Project acknowledges that the Declarant owes no duty to any Owner or Occupant related to security or criminal conduct. By taking title to a Lot and/or residing in the Project, Owners and Occupants specifically waive any such claim and assume all risks for loss or damage to Persons or property resulting from criminal conduct.
- 8.4 Reasonable Accommodations. Notwithstanding anything to the contrary in this Amended Declaration, the Declarant, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with respect to anyone else.
- 8.5 No Representations and Warranties. EACH OWNER UNDERSTANDS AND ACKNOWLEDGES AND AGREES THROUGH TAKING TITLE TO A LOT THAT THE DECLARANT HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT HE/SHE/THEY HAS/HAVE NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

ARTICLE 9 DECLARANT RIGHTS

- 9.1 Special Declarant Rights. Notwithstanding any herein to the contrary, the Declarant shall have the all rights and powers provided for in this Article 9. If any other article in this Amended Declaration contains the words "notwithstanding anything to the contrary," or words of similar import, the provisions therein shall all nonetheless be subject to the terms in this Article 9.
- 9.2 Declarant Control Period. For purposes of this Article 9, and as used in this Amended Declaration, the "Declarant Control Period" shall mean and refer to the period of time during which the Declarant owns any Lot or other land within the Project.
- 9.3 Easement Rights. The Declarant shall have and hereby retains an easement for access over, under, across and through the entire Project and may utilize, allow anyone else to utilize, or may grant easements over, under across, and through any easement right reserved to anyone in the Amended Declaration.

- 9.4 Right to Amend Amended Declaration. During the Declarant Control Period, the Declarant shall have the unilateral right to amend this Amended Declaration without consent of any Owner, provided that such amendment does not materially impact the residential nature of the Project.
- 9.5 Right to Amend Plat. Subject to necessary approvals from the City or governmental or quasi-governmental entity or agency with jurisdiction over the Project, during the Declarant Control Period, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Lot that has any boundary modified by the Plat.
- 9.6 Expansion of Project/Additional Land. The Declarant may add land to or withdraw land from the Project and expand or contract the Project, at any time, and for any reason.
- 9.7 Assignment of Special Declarant Rights. The Declarant, at any time, by recording a written notice, may assign or transfer all or some of its control, power, authority, or decision-making ability to any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Amended Declaration, the rights of the Declarant as provided for in this Amended Declaration may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project.
- 9.8 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in the Amended Declaration as it relates to the Lots owned by the Declarant.
- 9.9 ARC Rights. The ARC rights and authority established by this Amended Declaration shall survive the expiration of the Period of Declarant Control.
- 9.10 No Modification of Declarant Rights. Declarant Rights in this Amended Declaration and, specifically, in this Article 9 shall not be substantively or procedurally altered without the written consent of the Declarant during the Declarant Control Period. Any attempt to amend without proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of Article 9 without the consent of the Declarant.
- 9.11 Use of Lots for Sales Activities. During the Declarant Control Period, the Declarant shall have the right to use any Lot owned by it in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of Lots owned by the Declarant or to be added to the Project, as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices and/or model Homes. Such offices or models may be located on any Lot with the permission of the Owner of that Lot (who may be the Declarant) or in one or more separate structures, trailers, or facilities placed in the Project to aid the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street parking as parking for sales only or to otherwise restrict and use any common parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.

- 9.12 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article 9 shall not be construed to impose any obligation, legal or equitable, related to the issues to which they might apply. Each Owner, by taking title to a Lot, waives and disclaims any such duty and affirmatively acknowledges that no such duty exists or should be imposed as a result of the Special Declarant Rights.

**ARTICLE 10
CONFLICT AND LITIGATION AVOIDANCE**

- 10.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Lot that Owner is purchasing or any aspect of the Project, all prior to purchasing a Lot. Having had the ability to inspect and having paid market price for a Lot in the condition it and other Lots in the Project are in at the time of purchase, it is acknowledged that it is unfair and improper thereafter to seek to have the Declarant and/or the Builder or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lot for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Lot during any period when litigation is pending. For this reason, the Owners and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners.
- 10.2 Owner Warranties. The Declarant may, but is not obligated to, provide certain warranties to the Owners related to the Lot purchased. The first Owner of a Lot to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty and only consistent with the warranty itself. No Owner shall have the right to assign any rights of any kind to any other Person related to pursuing litigation against the Declarant.
- 10.3 Waiver of Subrogation and Release. Each Owner waives any right to subrogation against the Declarant and the Builder in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant and Builder (including their respective principles, officers, managers, shareholders, members, employees, agents, and representatives). To the fullest extent permitted by law, each Owner, by taking title to a Lot, releases the Declarant and Builder (including their respective principles, officers, managers, shareholders, members, employees, agents and representatives) from any and all liability to the Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or Builder (including their respective principles, officers, managers, shareholders, members, employees, agents and representatives). Each Owner,

by taking title to a Lot, agrees to indemnify and defend the Declarant and the Builder, and any of their respective officers, employees, owners, or representatives, from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

10.4 Declarant Litigation.

- (a) An Owner may only make a claim against the Declarant, to the extent allowed herein or by law after the following efforts at dispute resolution have been completed:
 - (i) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined in Subsection 10.4(d) below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get its contractor or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process;
 - (ii) Mandatory Mediation: if the dispute is not resolved within the Right to Cure period, the parties shall participate in mediation prior to taking further action.
- (b) For any claim allowed by law or by this Amended Declaration, the parties agree to binding arbitration of all claims asserted against the Declarant, or subcontractor by any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. The parties to any such arbitration shall work, in good faith, to agree upon the arbitrator, arbitration service, and all aspects of the arbitration and mediation proceedings.
- (c) In the event the parties are unable to agree regarding the mediation or arbitration service, the dispute shall be submitted to the American Arbitration Association for mediation and/or arbitration. Arbitration rules applicable to construction disputes shall apply; subject to the requirements of this Amended Declaration and shall be modified accordingly in case of any conflict between the arbitration rules and this Amended Declaration.
- (d) For purposes of this Section 10.4, "Notice of Claim" shall mean and include the following information: (i) The nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a specific description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (iv) photographs of any alleged condition, if applicable; (v) samples of any alleged defective conditions or materials; (vi) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom; and (vii) the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
- (e) Except as to an Owner Warranty and to the fullest extent permitted by the law, an Owner, by taking title to a Lot, shall not and agrees not to commence or maintain any arbitration, litigation, or other action against the Declarant, or any of its

principles, officers, managers, shareholders, members, employees, agents and representatives, for any reason, including, but not limited to, alleged construction defects or any damages arising therefrom.

ARTICLE 11
INTERPRETATION, CONSTRUCTION, AND APPLICATION OF AMENDED
DECLARATION

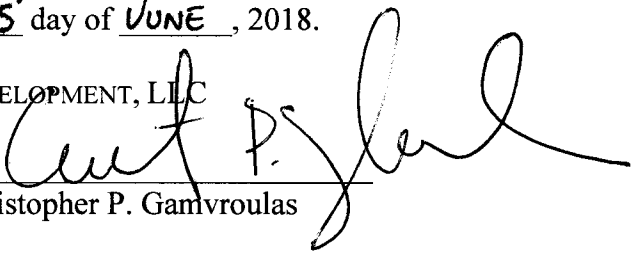
- 11.1 Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat, and then this Amended Declaration.
- 11.2 Severability. Invalidation of any of the Terms and Conditions (or any portion thereof) by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 11.3 Interpretation. The provisions of this Amended Declaration shall be liberally construed to effectuate the purposes stated in the Recitals.
- 11.4 Gender and Number. Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 11.5 Effect of Amended Declaration. This Amended Declaration is made solely for the purposes set forth in the Recitals and the Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Amended Declaration, or as to the compliance of any of these provisions with applicable laws, ordinances, regulations and the like applicable thereto. The Declarant shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.
- 11.6 Governing Law. This Amended Declaration is made pursuant to and shall be interpreted and enforced under the laws of the State of Utah.
- 11.7 Duration. The Terms and Conditions of this Amended Declaration shall endure for a term of twenty (20) years from the date this Amended Declaration is recorded.
- 11.8 Amendment. Subject to the right to unilaterally amend reserved to the Declarant in Article 9, this Amended Declaration may be amended only by consent of all Owners.

Dated this 15TH day of JUNE, 2018.

IVORY DEVELOPMENT, LLC

By:

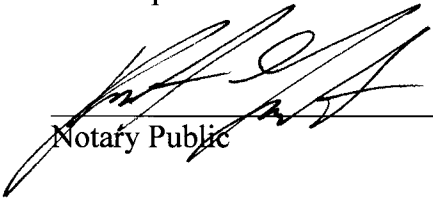
Christopher P. Gamvroulas



Its: President

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On this 15TH day of JUNE, 2018, personally appeared before me CHRISTOPHER P. GAMVROULAS, whose identity is personally known to me, (proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did state that he is the President of Ivory Development, LLC and that said document was signed by him on behalf of said corporation with all necessary authority.



Notary Public

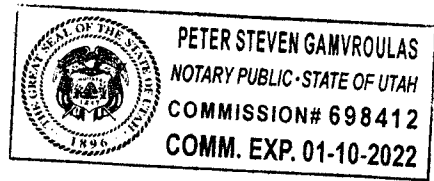


EXHIBIT "A"**PROPERTY DESCRIPTION**

The real property and Lots referred to in the foregoing AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DEER CREEK ESTATES are located in Wasatch County, Utah and are described more particularly as follows:

- Deer Creek Estates Subdivision Plat A, Lots 1 through 7 and 18 through 20, as shown on the official plat thereof on file and of record in the Office of Recorder for Wasatch County, Utah.
- Deer Creek Estates Subdivision Plat B, Lots 8 through 12 and 13 through 17, as shown on the official plat thereof on file and of record in the Office of Recorder for Wasatch County, Utah.

Parcel Number:

00-0021-2586
 00-0021-2587
 00-0021-2588
 00-0021-2589
 00-0021-2590
 00-0021-2591
 00-0021-2592
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 00-0021-2684
 00-0021-2685

Serial Number:

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 0QE-A002-0-002-044
 0QE-A003-0-002-044
 0QE-A004-0-002-044
 0QE-A005-0-002-044
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