

DECLARATION OF PROTECTIVE COVENANTS

FOR

UTAH HIGHLANDS

A RESIDENTIAL SUBDIVISION

IN

UTAH COUNTY, UTAH

IVORY HOMES, LTD.,
a Utah limited Partnership

AS DEVELOPER

WHEN RECORDED RETURN TO:

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DECLARATION OF PROTECTIVE COVENANTS FOR UTAH HIGHLANDS
SUBDIVISION

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**DECLARATION OF PROTECTIVE COVENANTS
FOR
UTAH HIGHLANDS SUBDIVISION**

This DECLARATION OF PROTECTIVE COVENANTS for UTAH HIGHLANDS SUBDIVISION, (the "Declaration") is executed by IVORY HOMES, LTD., of 970 Woodoak Lane, Salt Lake City, Utah 84117 (the "Developer"), with reference to the following:

RECITALS

- A. The Property is an area of unique natural beauty, featuring distinctive terrain.
- B. Developer has constructed, is in the process of constructing or will construct upon the Property a residential subdivision which shall include certain residential lots and other improvements.
- C. Developer has subdivided or will subdivide the Property into Lots 201-241, inclusive.
- D. Developer desires to provide a general plan for the development of all of the Property and for the establishment of covenants, conditions and restrictions to enhance and protect the value and attractiveness of the Property, all in accordance with the provisions of this Declaration of Protective Covenants.
- E. By subjecting the Property to this Declaration of Protective Covenants, it is the desire, intent and purpose of Developer to 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.
- F. This Declaration of Protective Covenants affects that certain real property located in Utah County, Utah described with particularity in Exhibit "A", which is attached hereto and incorporated herein by this reference (the "Property").
- G. Developer intends to sell to various purchasers fee title to the individual Lots or Dwellings contained in the Property, subject to the Plat and this Declaration of Protective Covenants.

- I. Since the development of the Property has been and will be in phases, the completed Subdivision will consist of Plat A, Plat B and all subsequent plats or phases.
- J. Developer desires by filing this Declaration of Protective Covenants to submit prior phases, the current phase and all future phases, and all improvements now or hereafter constructed upon the Property, to the terms, covenants and conditions of this Declaration.
- K. The Project or Subdivision is to be known as UTAH HIGHLANDS.
- L. Developer is either the owner of the Property submitted to this Declaration of Protective Covenants or, the Lots already sold, the Developer has obtained the written consent of the owner(s) to do so.

COVENANTS, 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. "Architectural Review Committee" of the "ARC" shall mean that body of delegated to consider, investigate, take action or report on the use restrictions, design guidelines, construction and maintenance of the Lots and/or Dwellings in the Subdivision
 - b. "Assessment" shall mean the amount assessed an Owner by the Architectural Review Committee.
 - c. "Builder" shall mean an Owner, developer or contractor who obtains a constructions or occupancy permit for one or more lots.
 - d. "Common Expense" shall mean: (1) All sums lawfully assessed against the Owners; (2) Expenses of administration of the ARC; (3) Expenses of managing and regulating the Property; (4) Expenses of enforcing this Declaration of Protective Covenants; and (5) Expenses declared common expenses by a majority of the Lot Owners.
 - e. "Committee" shall mean the Architectural Review Committee.
 - f. "Dwelling" shall mean the detached single family residence, place of habitation, abode or living unit constructed upon a Lot.
 - g. "Lot" or "Lots" shall mean the subdivided and recorded lot or lots within Property and where the context so requires any Dwelling constructed thereon.

- h. "Majority" shall mean more than 50.0%.
 - i. "Owner" or "Owners" shall mean the record owner or owners, whether one or more persons or entities, of a fee simple title to any Lot, excluding those having such interest merely as security for the performance of an obligation.
 - j. "Project" shall mean the Subdivision.
 - k. "Property" shall mean the real property comprising the Subdivision.
 - l. "Subdivision" shall mean the UTAH HIGHLANDS SUBDIVISION.
2. Area of Application. This Declaration shall apply to all of the Property.
3. Right to Expand Application. The Developer shall have the right to expand the application of this Declaration to other property by written amendment to this Declaration duly recorded, and without additional Owner approval required. This may be done from time to time, at different times and in any order, without limitation, although the Developer is not obligated to expand the Subdivision. Any expansion shall be accomplished by the filing for record by Developer in the office of the County Recorder of Utah County, Utah, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots, together with a supplemental Plat or Plats containing the same information with respect to the new Lots as was required on the original Plat. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion. Upon recording the Supplemental Plat and/or Declaration in the office of the Utah County Recorder, the new Lots shall be considered subject to all the terms, covenants and conditions of this Declaration of Protective Covenants.
4. Use Restrictions and Nature of the Project. The Lots are subject to the following use restrictions which shall govern both the architecture of the Dwellings and the activities permitted therein:
- a. Residential Purposes. No Lot shall be used except for single family residential purposes.
 - b. 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 Subdivision land use and buildings.
 - c. Design Guidelines. No Dwelling shall be constructed or altered unless it meets the following requirements:
 - 1) Only single family residential Dwellings are allowed.

- 2) Height of any Dwelling shall not exceed two (2) stories above ground.
- 3) Each Dwelling shall have a private garage for not less than two (2) motor vehicles.
- 4) Any detached accessory building must conform in design and materials with the primary residential Dwelling.

5) All front yards of Lots shall be fully landscaped within one (1) year of the closing on the transaction. All landscaping, grading and drainage of the land in each Lot shall be completed so as to comply with and not impair all flood control requirements of the Subdivision and the other Lots.

6) 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. CHAIN LINK FENCING SHALL NOT BE ALLOWED. White vinyl or masonry fencing is allowed. With the prior written consent of ARC a wood fence of the highest quality may be allowed. Any fencing or similar structure using other 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.

d. Standards. 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.

e. 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.

f. 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 conforms with and

continues to conform with any established grading and drainage plan that has previously been designed by the Developer.

g. 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. Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Property or which result in unreasonable levels of sound or light pollution are prohibited.

h. Parking. Motor vehicles may not be parked on the street overnight. Motor vehicles must be parked in the garage or driveway. Except as expressly noted, parking of motor vehicles in the front yard is prohibited. Recreational, commercial and other similarly oversized other motor vehicles and trailers may be stored on cement parking slabs in side or rear yards provided: (1) they are in running condition, (2) regularly used, (3) currently licensed and registered, and (4) do not constitute an eyesore in the opinion of the ARC.

i. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste (hereinafter referred to collectively as "Trash"). All Trash shall be kept at all times in sanitary containers. All Trash containers shall be kept in sanitary condition. No Trash containers, unsightly material or objects are to be stored on any Lot in view of the general public, except on Trash pick-up days and then for a period not in excess of twenty-four (24) hours. Disposal of any oil, gas, or lubricants, and the storage or disposal of other hazardous materials anywhere within the Property is prohibited.

j. 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.

k. Construction Materials. All building exteriors must be constructed of masonry, maintenance free stucco or combinations thereof. Aluminum or vinyl is only permitted on the fascia and trim. Any construction materials not expressly and specifically identified herein are subject to the written consent and approval of the Architectural Review Committee. Any detached accessory buildings or structures must conform in design and materials with the primary residential dwelling in order to maintain uniformity of appearance and quality of construction.

5. Architectural Review Committee.

a. Appointment or Election of Members. Until such time as the Developer shall transfer control of the ARC to the Owners (the "Period of Developer's Control"), the Developer shall have the exclusive right to appoint the members of the ARC. Thereafter, the ARC shall be comprised of three (3) Owners, the majority of which shall constitute a quorum. The concurrence of the majority of the members of the ARC shall be necessary to carry out the provisions applicable

to this Committee. In the event of death or resignation of any of the members of the Committee, the surviving members of the ARC shall have full authority to appoint another person to fill said vacancy. Except for the members appointed to the ARC by the Developer, all members of the ARC must be Owners and residents of the subdivision at the time of their appointment. Should any member move his residence outside of the subdivision he shall be disqualified to serve and the ARC shall declare a vacancy.

b. **Remuneration, Limitation of Liability and Indemnity.** It is understood that the ARC members shall serve without pay, and are to give of their time as a public service to the Subdivision. Therefore, neither the ARC nor any member thereof 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. any liability incurred due to an oversight or implied mistake that might arise due to the action of the ARC or any of its members while carrying out the functions of the ARC will be exempt from any and all civil claims brought by Owners or residents. Therefore, each Owner (or all of the Owners acting as a group according to this Declaration) shall save, indemnify and hold harmless from any such action the ARC and its members, including without limitation all defense costs and attorney fees, as a result of any claims, demands, costs, awards or judgments arising out of their review or approval of architectural designs, plans and specifications; and they shall be exempt from any civil recourse either intended or implied to any of the ARC members while serving in the capacity of the ARC, or for the decisions, acts, omissions, judgements and the like which they may take or render during the course of their service, including negligent acts or omissions.

c. **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.

d. **Variance.** The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (1) be effective unless in writing, (2) be contrary to the restrictions set forth in the body of this Declaration, or (3) 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.

e. **Enforcement.** Any construction, alteration, or other work done in violation of this Declaration shall be deemed to be nonconforming. Upon written request from the Developer or ARC, Owners shall, at their 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 Developer, ARC or Management Committee, or their designee, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser. All costs incurred, together with the interest at the fixed rate of 1.5% per month, shall be treated as an Assessment.

6. Committee Procedure and Grant of Authority

a. The ARC shall consider, approve and/or reject the following items; provided, however, during the Period of Developer's Control, with only his written approval and consent the ARC can accept or reject:

- 1) Preliminary Plans of proposed residences.
- 2) Planning problems or complaints by Owners.

b. That ARC shall act within thirty (30) days on any of the above, and place its action in writing to be held as a permanent record, with copies to parties concerned and on file.

c. The final plans shall be delivered to the ARC, which shall accept or reject them for review within thirty (30) days, and so notify the Owner in writing.

d. An Owner whose plans are rejected shall meet with the ARC at the ARC's invitation where he shall be informed of the nature of the cause of the action so that he can take the steps necessary toward obtaining approval of his plans.

e. Finally, the ARC has the authority to judge Dwellings, construction materials, fences, planting, landscaping and other improvements in the Subdivision, on whatever basis available to it with the aim of preserving what it feels are the best interests of the property owners represented. These shall include, but not be limited to aesthetics, reasonable protections of view, quality of construction, quality of materials and the like. All decisions of the ARC shall be conclusive, binding and final.

f. In the event the ARC fails to approve or disapprove such proposed design and location within thirty (30) days after such plans and specifications have been submitted to it in writing, then this covenant will be deemed to have been complied with, provided the said structure shall conform to and be in harmony with existing structures in the tract and with the other provisions herein contained.

g. The ARC shall have, and is hereby granted, the following authority and powers:

- 1) The power and authority to enter into or upon any Lot.
- 2) The 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 Subdivision for utilities, roads, and other purposes reasonably necessary or useful for the operation or regulation of the Subdivision.

3) The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat Map which has been approved by at least 67% of the Owners in writing.

4) The power to sue and be sued.

5) The authority to enter into contracts which in any way concern the Subdivision, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

6) The authority to promulgate such reasonable design guidelines, administrative rules, regulations and procedures as may be necessary or desirable to aid the ARC in carrying out any of its functions.

7) The authority to conduct meetings.

8) The authority to issue citations, levy fines and make Assessments.

9) The authority to interpret and enforce this Declaration.

10) 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 on behalf of the Owners.

h. By the acceptance of a deed to a lot or any other document of conveyance, each owner expressly agrees that individual assessments may be levied against him and his lot by the ARC to pay, compensate or reimburse the ARC for: (1) late fees, (2) default interest on amounts due at 1.5% per month (unless otherwise determined by the ARC), (3) fines levied for violations of these covenants; (4) costs and expenses incurred by the ARC in interpreting and/or enforcing these restrictions; and (5) reasonable attorney's fees, default interest, late fees, and other charges relating thereto.

i. Each Assessment is a debt of the Owner at the time the Assessment is made and is collectible as such. If any Owner fails or refuses to make any payment of the debt when due, that amount constitutes a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the ARC is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the lot in favor of any assessing unit or special improvement district; and (2) 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.

j. If any Assessments remain unpaid, the ARC may institute suit to collect the amounts due and/or commence procedures to foreclose the lien.

k. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the ARC or its agents the right and power to bring all actions against him personally for the

collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

l. No Owner may waive or otherwise exempt himself from liability for the payment of any Assessments provided for herein by the abandonment of his Lot.

m. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the ARC to take some action or perform some function required to be taken or performed by the ARC under this Declaration or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

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

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

p. Each Owner by accepting a deed or other document of conveyance to a Lot hereby irrevocably appoints the ARC as his attorney in fact to collect rent from any person renting his Lot, if the Lot is rented and owner is delinquent in the payment of his assessments. Rent due shall be paid directly to the ARC upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the renter, against rent due, for the amount of money paid to the ARC.

q. No fine shall be valid or enforceable until the Owner has received written notice of the ARC's intent to fine and an opportunity to be heard.

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

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

b. Floor plans of each floor level to scale.

- c. Elevations to scale of all sides of the Dwelling.
 - d. One major section through Dwelling.
 - e. A perspective (optional).
 - f. Specifications of all outside materials to be used on the exterior of the Dwelling.
8. Final Plans and Specifications and Working Drawings. The ARC may require, as a minimum, the following:
- a. Plot plans to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, retaining walls, with elevations of the existing and finished grade and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.
 - b. Detailed floor plans.
 - c. Detailed elevations, indicating all materials and showing existing and finished grades.
 - d. Detailed sections, cross and longitudinal.
 - e. Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used with supplements, addendums or riders noting the colors of all materials to be used on the exterior of the Dwelling.
9. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.
10. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Owners, all other signatories hereto, all parties who hereafter acquire any interest in a Lot, the Subdivision or the Property, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

EXHIBIT "A"
LEGAL DESCRIPTION

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

COMMENCING N00°02'31"W ALONG THE SECTION LINE 1093.63 FEET AND EAST 1.38 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 33, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE AS FOLLOWS N01°01'24"W 521.15 FEET ALONG THE CENTERLINE OF 600 EAST STREET EAST 449.47 FEET ALONG THE SOUTHERLY BOUNDARY LINE OF HIGH BENCH ESTATES, THENCE N01°06'24"W 214.80 FEET ALONG THE EASTERLY BOUNDARY LINE OF HIGH BENCH ESTATES, THENCE S89°59'57" EAST 176.30 FEET; THENCE S11°57'15" EAST 12.27 FEET; THENCE S89°59'57" EAST 294.38 FEET; THENCE N00°00'20" EAST 12.00 FEET; THENCE S89°59'57" EAST 300.00 FEET; THENCE S00°00'20" WEST 166.34 FEET; THENCE S18°57'16" EAST 59.21 FEET; THENCE S00°00'20" WEST 150.00 FEET; THENCE S89°59'41" EAST 100.00 FEET; THENCE S00°00'20" WEST 150.00 FEET; THENCE S07°54'37" WEST 56.58 FEET; THENCE S00°00'10" EAST 167.05 FEET; THENCE S89°59'09" WEST 416.88 FEET; THENCE N00°00'10" WEST 124.46 FEET; THENCE N34°44'59" WEST 38.00 FEET; THENCE ARC LENGTH 507.03 FEET CHD BEARS S73°00'26" WEST 498.95 FEET, R = 818.00 FEET; THENCE S89°59'09" WEST 406.31 FEET TO THE POINT OF BEGINNING.

AREA = 18.81 ACRES