

**DECLARATION OF PROTECTIVE COVENANTS  
FOR  
DRY CREEK HIGHLANDS SUBDIVISION  
PHASE 1**

ENT 130561;2003 PG 1 of 18  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2003 Aug 14 3:33 pm FEE 77.00 BY SFS  
RECORDED FOR COTTONWOOD TITLE

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**A SUBDIVISION  
IN THE  
CITY OF HIGHLAND  
UTAH COUNTY  
STATE OF UTAH**

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**IVORY HOMES, LTD.  
DEVELOPER**

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**WHEN RECORDED RETURN TO:**

*IVORY HOMES, LTD.  
970 E. Woodoak Lane  
Salt Lake City, Utah 84117*

**DECLARATION OF PROTECTIVE COVENANTS  
FOR  
DRY CREEK HIGHLANDS SUBDIVISION  
PHASE 1**

THIS DECLARATION OF PROTECTIVE COVENANTS FOR DRY CREEK HIGHLANDS SUBDIVISION PHASE 1 (the "Declaration") is executed by IVORY HOMES, LTD., of 970 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 UTAH COUNTY, Utah, described more particularly on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").
- B. Developer desires to submit the Property to protective covenants.
- C. Developer has subdivided the Property into 33 lots, described as Lots No. 101 through 133, inclusive, DRY CREEK HIGHLANDS SUBDIVISION PHASE 1.
- D. The Property is an area of unique natural beauty, featuring distinctive terrain.
- E. 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.

**PROTECTIVE 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. "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(s) appointed to review the home and landscaping designs, plans and specifications, engineering, architecture, fencing, landscaping and related items within the Subdivision (the "ARC").

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

d. "Design Guidelines" shall mean and refer to the then current Design Guidelines for Ivory Homes.

e. "Developer" shall mean and refer to Ivory Homes, Ltd.

f. "Dwelling" shall mean the detached single family residence, home, place of habitation, abode, or living unit constructed upon a Lot.

g. "Ivory Homes" shall mean and refer to the Developer.

h. "Lot" or "Lots" shall mean the subdivided and recorded lot(s) within Property and where the context so requires any Dwelling constructed thereon.

i. "Owner" or "Owners" shall mean the holder 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.

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

k. "Parking Pad Fence" shall mean and refer to the fence surrounding the Parking Pad constructed of cinder block, vinyl, wood, or other construction material approved by the ARC in writing.

l. "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 the earliest of the following Events: (1) Four months after 100% of the Dwellings constructed upon Lots owned by Developer, including property added to the Project, have been sold; or (2) Seven years from the effective date of this Declaration; or (3) When in its sole discretion the Developer so determines and records a written Notice of Termination of Developer's Control.

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

n. "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.

o. "Plat Map" shall mean and refer to the "Subdivision Map or Maps of the Project," as it may be amended from time to time. The Plat Map will show the location of the Lots.

p. "Project" shall mean the Subdivision.

q. "Recreational, Oversized or Commercial Vehicle" shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, 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.

r. "Subdivision" shall mean DRY CREEK HIGHLANDS PHASE 1.

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

3. **Right to Expand Application.** Without any other additional approval required, the Developer shall have the exclusive, unconditional, and irrevocable right to (a) convert the use of a lot or lots to accommodate a swimming pool and/or other recreational amenities; and (b) expand the application of this Declaration to other real property by written amendment to this Declaration duly recorded.

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

5. **Architectural Review Committee ("ARC").** The Developer has the power and authority to resolve all architectural issues during the Period of Developer's Control and appoint all of the members of the ARC. Thereafter, the members of the ARC shall be elected by the Owners. The initial members of the ARC are Chris Gamvroulas, David Zollinger, and Brian Apsley, who shall serve until such time as their successors are qualified and appointed.

a. **Authority.** The ARC shall resolve all architectural issues, 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

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. **Review Plans.** The power and authority to review and approve or disapprove all architectural designs, plans, specifications, construction materials, and construction.

2. **Respond to Complaints.** While the ARC will not police the Subdivision, it shall have the power and authority, but not the obligation, to respond to written concerns of Owners relating to these covenants.

3. **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 Subdivision 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.

4. **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.

5. **Enforcement.** The power and authority to issue sanctions, fine, or otherwise individually assess an Owner for a violation of the Design Guidelines or seek other more formal legal remedies, including but not limited to injunctive relief and damages.

6. **Insurance.** If reasonably available, the ARC may elect to purchase adequate liability as well as errors and omissions coverage, and a fidelity bond, the premiums for which shall be a Common Expense.

7. **Approval of Plans and Specifications.** Architectural designs, Plans and Specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements, including by way of illustration but not limitation all primary Dwellings and Accessory Buildings, shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

No Building shall be erected, placed or altered on any Lot until the construction plans and specifications, including a plan showing the location of the structure upon the Lot have been approved by the ARC and it has been determined that the proposed quality of construction, harmony of external design, topography, landscaping, drainage, and finish grade elevation are acceptable. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line unless similarly approved. No Dwelling shall be constructed or altered unless it meets the following minimum requirements:

- a. No Lot shall be used except for residential purposes for a single family.
- b. No Building shall be erected, altered, placed, or permitted to remain on any lot other than detached single family dwellings not to exceed two stories in height with a private garage for not less than two vehicles.
- c. No slab on grade Dwelling is permitted.
- d. Building location must conform to the requirements of Highland City.
- e. For the purpose of this section, eaves, steps and porches shall not be considered as a part of a building, although this shall not be construed to permit any portion of a building on a Lot to encroach upon any other Lot.
- f. All exterior materials utilized on Dwellings shall consist of natural materials including by way of illustration but not limitation stone, brick, stucco, and wood. Aluminum, steel, and vinyl siding may only be used for soffit and fascia unless otherwise approved by the ARC in writing.
- g. 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 20 feet.
- h. 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 Subdivision 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 adopted by the ARC.
- i. No fence or similar structure shall be built in any front yard nor shall any fence or similar structure be built in any side or rear yard in excess of six (6) feet except that fences which abut the conservation and trail easement may not exceed (4) four feet. Chain link fencing and white vinyl fencing are not allowed. Wrought iron, vinyl or masonry fencing is permitted and must be earth tone colors. 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. No fencing of any kind is allowed within the conservation and trail easement.

j. For the installation of and maintenance of utilities and drainage facilities, areas are reserved as shown on the recorded plat. Within these easements, 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 or flow of drainage channels in the area, or which may obstruct or retard the flow of water through drainage channels in the easement. The easement area of each of the Lots and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

k. 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.

l. No owner of any Lot within the subdivision shall at any time be permitted to subdivide his Lot into two or more sublots less in square foot area than the area of the Lot at the time of its initial purchase.

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

9. **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.

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

a. Plot plans to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, retaining walls, with elevations of the existing and finished grade and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

b. Detailed floor plans.

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

d. Detailed sections, cross and longitudinal.

e. Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used with supplements, addenda or riders noting the colors of all materials to be used on the exterior of the Dwelling.

11. **Approvals.** The approval or disapproval of proposed plans and specifications by the ARC as required hereby shall be in writing. If the ARC or its designated representative fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted to it or, in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, formal written approval will not be required and the plans and specifications shall be considered approved.

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

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

14. **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.

**15. 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 or Highland City 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 or Highland City 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.

**16. Fines.** After written notice of the violation and a hearing, the ARC may fine or otherwise sanction an Owner for his failure to comply with this Declaration or any rules and regulations adopted by the ARC from time to time.

**16. Debt Collection.** An assessment 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 ARC without foreclosing or waiving the lien securing it. If any Owner fails or refuses to make any payment of a 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.

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

**18. Default Interest.** Default interest of 1.5% per month may be assessed on the outstanding balance of all delinquent accounts.

**19. 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 Subdivision, 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.

20. **Trail or Conservation Easement.** Lots 22 through 33, inclusive (the “Burdened Lots”), back onto a Trail or Conservation Easement as shown on the Plat Map. In the event that Utah County or Highland City shall adopt an ordinance which contains a definition of the term “Open Space” and which makes such definition applicable to the Burdened Lots, that definition shall be incorporated herein by this reference. In the absence of such a definition, the term “Open Space” for purposes of this section shall mean and refer to the 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 and activities shall be permitted: trail, trail surface, natural terrain, and raw or unimproved land, walking and jogging.

b. Prohibited. The following improvements and activities shall be prohibited: unauthorized landscaping, bushes, trees, shrubs, flowers, grass, sod, seeding, groundcover or the like; Accessory Buildings, temporary or permanent buildings or building-type structures, including any shed, shack or out-building, fencing, gate, or any kind of impervious surfaces other than those used only for activities permitted by subsection (a) hereof, operation, parking or storage of motorized vehicles of any kind except those used for landscaping maintenance, machinery which is affixed to the property and which can be seen or heard from adjacent property, noxious or offensive activities of any kind, any activity which is or which may become a nuisance, and dumping or storage of refuse, garbage or other waste.

No Owner or resident may do anything to interfere with this Open Space. Each and all of the easements and rights granted or created herein are appurtenances to the benefit of all of the other lots in the Subdivision (the “Benefited Lots”) and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such Benefited Lots. The Benefited Lots shall constitute the dominant estate, and the Burdened Lot shall constitute the servient estate. Each and all of the easements, covenants, restrictions and provisions contained herein create equitable servitudes upon, and constitute covenants running with, the land and shall bind every person or entity having any fee, leasehold or other interest in any portion of the Burdened Lots at any time or from time to time. The acceptance of any transfer or conveyance of title from any of the Owners or their respective heirs, representatives, successors or assigns of all or any part of their interest in the Burdened Lot, or any part thereof, shall be deemed to constitute the agreement of the prospective grantee to agree not to use, occupy or allow any lessee or occupant to use or occupy the Lot, or any part thereof, in any manner which would constitute a violation or breach of any of the easements and covenants contained herein.

21. **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 Subdivision:

a. **Private Residence.** No Lot shall be used except for residential purposes for a single family 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 commercial trade or business may be conducted in or from any Dwelling unless: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling in a manner which distinguishes it from the use of and activities in other residences in the Project; (2) the business activity conforms to all home occupation and zoning requirements governing the Project; (3) the business activity is consistent with the residential character of the Project, and (4) does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the ARC. Notwithstanding the foregoing, the leasing of a Dwelling or shall not be considered a trade or business within the meaning of this subsection. (5) The trade or business does not have employees of any kind (6) The trade or business does not store any inventory over 250 cubic feet which must be contained within the dwelling unit.

c. **Storage and Parking of Vehicles.** The driving, parking, standing, and storing of motor vehicles in, on or about the Subdivision 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) 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 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. **Maintenance.** All Lots and Dwellings shall be kept by the Owner in good repair and maintenance and in a clean, safe, sanitary and attractive condition.

e. **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and all such items must be kept in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each Lot and its abutting street are to be kept free of trash, weeds and other refuse by the lot owner. No unsightly material or objects are to be stored on any Lot in view of the general public. Garbage containers shall be stored out of sight except for twenty-four (24) hours on garbage pick-up days.

f. **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 Subdivision not in accordance with 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.

g. **Animals and Pets.** The keeping of animals other than those ordinarily kept as family pets within the Subdivision is forbidden. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Unless a written waiver is granted by the Developer or ARC, no more than two domestic pets per Dwelling are allowed; provided, however, all pets must be properly licensed and registered (if required) with the appropriate governmental agencies and follow all applicable local ordinances. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (1) it causes damage to the property of anyone other than its owner; (2) it causes unreasonable fouling of the air by odors; (3) it causes unsanitary conditions; (4) it defecates on any common area and the feces are not immediately cleaned up by the responsible party; (5) it barks, whines or howls, or makes other

disturbing noises in an excessive, continuous or untimely fashion; (6) it molests or harasses passersby by lunging at them or chasing passing vehicles; (7) it attacks people or other domestic animals; (8) it otherwise acts so as to bother, annoy or disturb other reasonable residents or interferes with their right to the peaceful and quiet enjoyment of their property; or (9) by virtue of the number of pets maintained, they are offensive or dangerous to the health, welfare or safety of other residents. Pets in the Subdivision at large must be behind a fence, in a cage or on a leash and under the control of a responsible person.

h. **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.

i. **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.

j. **Signs.** No signs, billboards or advertising structures may be built or displayed on the Property or any Lot except for a single sign with a maximum size of 4' x 4' for specific purpose of advertising the sale or rental of a Dwelling; provided, however, this requirement does not relate to Developer, who may use whatever signs it deems appropriate to market its Lots.

k. **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.

l. **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 Highland City and UTAH COUNTY Ordinances and flood control requirements.

m. **Easements.** Use the property subject to the easements and rights of way granted to the Association.

n. **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 to the grading and drainage plan established by the Developer and UTAH COUNTY.

o. **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.

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.

o. **Clotheslines.** No clothesline or storage or any articles which are unsightly in the opinion of the ARC will be permitted unless located in enclosed areas built and designed for such purposes.

q. **Conditional Uses.** The following conditional uses may also be allowed:

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

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

22. **Easements and Rights of Way.** There are hereby reserved to and the Association is hereby granted a non-exclusive easement and right of way on, over, under, through, and across all Lots and the Property for purposes of access, installation, construction, operation, regulation, inspection, maintenance, repair, replacement, and related services of the public utilities, landscaping, and other common amenities; and

23. **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 or Dwellings 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;

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

d. **Limitation on Improvements by the ARC.** Until the termination of the Period of Developer Control, neither the Owners nor the Developer shall, without the written consent of Developer, make any improvement to the Subdivision 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 Subdivision 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.

24. **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.

25. **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, the Subdivision 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.

26. **Enforcement and Right to Recover Attorney's Fees.** Should the ARC 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.

27. **Limitation of Liability.** The protective covenants, conditions and restrictions set forth in this Declaration, together with any rules and regulations adopted by the 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 or the Committee or any of its 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 Committee 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.

28. **Amendments.** This Declaration may be amended upon the affirmative written approval of at least a majority of the Owners of the Lots and shall be valid immediately upon recording of the document amending the Declaration in the office of the County Recorder of UTAH COUNTY, Utah; provided, however, (a) so long as Developer shall own at least one (1) Lot in the Subdivision, no amendment shall be valid or enforceable without its express prior written consent, and (b) any amendments affecting fencing, grading, or any UTAH COUNTY Ordinances shall require the prior written consent of UTAH COUNTY.

29. **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 11 day of <sup>August</sup>~~July~~, 2003.

DEVELOPER:  
IVORY HOMES, LTD.  
By: VALUE, L.C.  
Its: General Partner

By:   
Name: Clark D. Ivory  
Title: Manager



ACKNOWLEDGMENT

STATE OF UTAH )  
SS:  
COUNTY OF SALT LAKE )

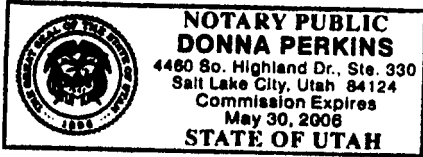
The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of <sup>August</sup> ~~July~~, 2003 by Clark D. Ivory, the Manager of VALUE, L.C., the General Partner of IVORY HOMES, LTD., a Utah limited partnership, and said Clark D. Ivory duly acknowledged to me that said IVORY HOMES, LTD. executed the same.

*Donna Perkins*

NOTARY PUBLIC

Residing at:

My Commission Expires:



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

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

BOUNDARY DESCRIPTION

Beginning at the East Quarter Corner of Section 27, Township 4 South, Range 1 East, Salt Lake Base and Meridian thence as follows

<u>Course</u>	<u>Distance</u>	<u>Remarks</u>
S00°01'34"E	1319.180 feet	along the Westerly Boundary Line of Dry Creek Bench Subdivision
S89°37'00"W	299.424 feet	along the North Line of Bull River Land Company LC Property
S40°45'00"W	19.850 feet,	S83°30'00"W 112.320 feet, S89°43'00"W 265.390 feet, N41°01'58"W 79.703 feet,
N55°10'36"W	61.755 feet	
N73°48'32"W	76.609 feet	
N84°45'15"W	108.065 feet	
N53°07'58"W	37.845 feet	
N16°08'25"W	42.232 feet	
N15°40'50"E	44.661 feet	
N29°47'31"E	136.127 feet	
N11°22'15"W	94.168 feet	
N08°03'20"E	57.799 feet	
N25°50'23"W	50.087 feet	
N58°18'37"W	85.996 feet	
N14°37'28"W	66.973 feet	
N25°43'43"E	46.757 feet	
N35°03'48"E	53.563 feet	
N37°01'06"E	61.791 feet	
N17°47'02"W	74.297 feet	
N35°39'45"W	30.737 feet	
N33°58'35"E	38.477 feet	
N04°02'28"E	57.806 feet	
N18°26'57"W	58.202 feet	
N22°29'15"W	121.183 feet	
N02°15'08"W	117.179 feet	
N18°16'21"E	55.593 feet	To a point on a 322.000 foot radius curve to the
		right, thence easterly along the arc of said curve 27.694 feet, chord bears S75°28'40"E 27.686 feet
N19°58'32"E	105.862 feet	
S61°16'55"E	122.335 feet	
N89°47'20"E	866.113 feet	to the point of beginning.

Contains 34 LOTS ON 30.163 acres.

BASIS OF BEARINGS: S00°01'34"E FROM THE EAST ¼ TO THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN.