

16
9
RETURNED

E 1985104 B 3536 P 194
RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
2004 MAY 10 9:55 AM FEE 48.00 DEP MJW
REC'D FOR IVORY HOMES

all, Co Garden Est 3 MAY 10 2004

12-546--0301 thru
0322

DECLARATION OF PROTECTIVE COVENANTS

FOR

COUNTRY GARDENS ESTATES
PHASE 3 SUBDIVISION

A RESIDENTIAL SUBDIVISION

IN

DAVIS COUNTY, UTAH

IVORY NORTH,
A Utah joint venture

WHEN RECORDED RETURN TO:
Ivory North c/o Gary M. Wright
1544 N. Woodland Park Drive, Suite 300
Layton, Utah 84041

**DECLARATION OF PROTECTIVE COVENANTS
FOR
COUNTRY GARDEN ESTATES
PHASE 3 SUBDIVISION**

This DECLARATION OF PROTECTIVE COVENANTS FOR COUNTRY GARDEN ESTATES PHASE 3 SUBDIVISION, (the "Declaration") is executed by IVORY NORTH, a Utah joint venture, of 1544 North Woodland Park Drive, Suite 300, Layton, Utah 84041 (the "Developer"), with reference to the following:

RECITALS

- A. Developer is the owner of certain property located in Davis County, Utah described more particularly on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").
- B. Developer has subdivided the Property into 22 Lots, to wit: Lots 301-322, inclusive.
- C. Developer has established this Declaration of Protective Covenants in order to enhance and protect the value and attractiveness of the Property.

COVENANTS AND USE 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. "Builder" shall mean an Owner, developer or contractor who obtains a construction or occupancy permit for one or more Lots.
 - b. "Committee" shall mean and refer to the Architectural Review Committee.
 - c. "Dwelling" shall mean the detached single-family residence, place of habitation, abode or living unit constructed upon a Lot.
 - d. "End of Developer Control Period" shall mean the time when the Developer has sold all of the Lots and Dwellings in the Subdivision.
 - e. "Lot" or "Lots" shall mean the subdivided and recorded lot or lots within Property and where the context so requires any Dwelling constructed thereon.
 - f. "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.
 - g. "Property" shall mean the Subdivision.
 - h. "Subdivision" shall mean COUNTRY GARDEN ESTATES PHASE 3 SUBDIVISION.

2. 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. Landscaping. 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.
 - d. 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 right 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 right 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.
 - e. Walls, Fence and Hedges. No fence, wall, hedge, or other similar structure shall be erected in a required front yard to a height in excess of three (3) feet, nor shall any structure be erected in any side or rear yard to a height in excess of six (6) feet. No fence, wall, hedge or other similar structure shall be erected in any front yard of any adjoining Lot to a height in excess of six (6) feet any nearer to the street than the minimum building setback line. Where a retaining wall may be topped by a fence, wall or hedge or similar structure six (6) feet in height. The only acceptable fencing materials are wood, masonry, vinyl, wrought iron, or chain link with white slats.
 - 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. No automobiles, vans, sport utility vehicles, trucks, campers, motor homes, trailers, boats, watercraft, recreational commercial, oversized or other vehicles shall be stored on streets or in front yards. Recreational, commercial, oversized or other motor vehicles may be stored on cement parking slabs in side yards so long as they are in running condition, regularly used, and currently licensed and registered. 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.
 - h. 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.
 - i. 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 residence.
5. Architectural Issues. Since aesthetics, the harmony of design, and quality of construction and materials throughout the Subdivision is important, all architectural designs, plans, specifications and construction must be (a) reviewed and approved by the ARC or its designee and (b) consistent with the restrictions set forth herein governing the Subdivision.
- a. Architectural Review Committee (the "ARC"). Until the End of the Developer Control Period, the Developer has the sole right and exclusive authority to resolve all architectural issues and may, in its sole discretion, designate one or more persons from time to time to act on its behalf in reviewing applications hereunder as the ARC, which may consist of (a) a single individual, architect or engineer, or (b) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation shall specify the scope of responsibilities delegated, and shall be subject to the irrevocable right of Developer to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and/or to veto any decision which

Developer determines, in its sole discretion, to be inappropriate or inadvisable. So long as the Developer has the right to resolve all architectural issues, the jurisdiction of the foregoing entities shall be limited to such matters as are specifically delegated to it by the Developer. The initial ARC will be made up of Gary M. Wright, Eric Freebairn, and Kirt Harmon, who shall serve until such time as their successors are qualified and appointed.

- b. Transfer of Control of ARC. Upon the End of Developer Control Period, the Developer shall transfer the right to resolve all architectural issues and control of the ARC to the Association.
- c. Procedures for Approval of Plans and Specifications. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the ARC may consider the design, harmony of external design with existing structures, 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 committee members change over time. In the event the ARC fails to approve or disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, 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) automobiles.
 - 4) Exterior materials may include any combination of brick, stone, rock or maintenance-free stucco.
 - 5) The front of each Dwelling may include any combination of brick, stone or rock, and maintenance-free stucco.
 - 6) Any detached accessory building must conform in design and materials with the primary residential Dwelling.
- d. Final Plans and Specifications and Working Drawings. The ARC may require, as a minimum, the following:
 - 1) Plot plans to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, retaining walls, with elevations of the existing and finished grade and contours including those at the outside corners of the buildings and at

adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

- 2) Detailed floor plans.
 - 3) Detailed elevations, indicating all materials and showing existing and finished grades.
 - 4) Detailed sections, cross and longitudinal.
 - 5) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used on the exterior of the Dwelling.
- e. 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.
- f. 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.
- g. Limitation of Liability. Neither the ARC, or any agent thereof, nor Developer or any of its employees, agents, 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, the ARC, their agents, representatives, members and employees 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, costs, awards or judgments arising out of their review or approval of architectural designs, plans and specifications.
- h. 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 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.

- i. 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 Developer or 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 Developer, Association, ARC, or their officers or directors shall be held liable to any person for exercising the rights granted by this Section.
 - j. Standing. In addition to the foregoing, the Developer acting for and in behalf of the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and the decisions of the ARC.
6. 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 enforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.
 7. 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 ARC, 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.
 8. 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 attorney's fees, costs and expenses which may arise or accrue.

9. Limitation of Liability. The protective covenants, conditions and restrictions set forth in this Declaration 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 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.
10. Amendments. This Declaration may be amended upon the affirmative written approval of at least 67% of the Owners of the Lots. Any amendment shall be valid immediately upon recording of the document amending the Declaration in the office of the County Recorder of Davis County, Utah; provided, however, so long as the Developer shall own at least one (1) Lot in the Subdivision, no amendment shall be valid or enforceable without Developer's prior written consent.
11. 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 day and year first above written.

DECLARANT:

IVORY NORTH, a joint venture

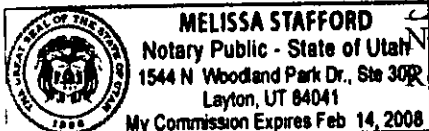
BY: GMW DEVELOPMENT, INC., Partner

By: *Gary M. Wright*

Title: Gary M. Wright, President

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On the 27th day of April, 2002, personally appeared before me Gary M. Wright, who by me being duly sworn, did say that he is the President of GMW DEVELOPMENT, INC., a Utah corporation, and that GMW DEVELOPMENT, INC. is a Partner of IVORY NORTH, a joint venture, and that the within and foregoing instrument was signed in behalf of said IVORY NORTH pursuant to the joint venture agreement and by authority of a resolution of the joint ventures, and said Gary M. Wright, duly acknowledged to me that IVORY NORTH executed the same.



NOTARY PUBLIC

Residing At:

Davis County

Beginning at the Southwest Corner of lot 214, Country Garden Estates Phase 2 Subdivision, said point being South 89°53'40" West 1067.10 feet along the quarter Section line from the East Quarter Corner of Section 22, Township 4 North, Range 2 West, Salt Lake Base and Meridian and running;

thence North 00°06'19" West 157.13 feet along the east line to an interior corner of Country Garden Estates Phase 2 Subdivision, being on the south line of 3175 South Street;

thence South 89°51'06" East 31.39 feet along the south line to the Southeast corner of Country Garden Estates Phase 2 Subdivision, being on the south line of 3175 South Street;

thence North 00°06'19" West 183.70 feet along the east line to the Northeast Corner of Lot 213, Country Garden Estates Phase 2 Subdivision;

thence South 89°53'41" West 43.00 feet along the north line of Lot 213 to the Southeast Corner of Lot 211, Country Garden Estates Phase 2 Subdivision;

thence North 00°06'19" West 85.00 feet along the east line to the Northeast Corner of Lot 211, Country Garden Estates Phase 2 Subdivision, being on the south line of Carlton Place Subdivision Phase 1;

thence North 89°53'41" East 842.57 feet along the south line of Carlton Place Subdivision Phase 1;

thence South 00°14'02" West 425.70 feet to the quarter section line;

thence South 89°53'40" West 828.44 feet along said quarter section to the point of beginning.

Contains: 348,426 square feet, 7.999 acres.