

**DECLARATION OF PROTECTIVE COVENANTS
FOR
TUSCANY FARMS SUBDIVISION**

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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2002 Mar 21 3:57 pm FEE 42.00 BY AB
RECORDED FOR COTTONWOOD TITLE

**A SUBDIVISION IN
UTAH COUNTY , STATE OF UTAH**

**IVORY HOMES, LTD.
DEVELOPER**

WHEN RECORDED RETURN TO:

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

**DECLARATION OF PROTECTIVE COVENANTS
FOR
TUSCANY FARMS SUBDIVISION**

THIS DECLARATION OF PROTECTIVE COVENANTS FOR TUSCANY FARMS SUBDIVISION (the "Declaration"), dated for reference March 14, 2002, 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 has subdivided the Property into Plat A, Lots 101 through 129 of the TUSCANY FARMS SUBDIVISION.

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

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

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

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

c. "Committee" shall mean the ARC.

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

for Ivory Homes.

- e. "Dwelling" shall mean the detached single family residence, place of habitation, abode, or living unit constructed upon a Lot.
- f. "Entry" shall mean the entry way into the Subdivision.
- g. "Entry Monument" shall mean the monument identifying the Subdivision and surrounding landscaping located at the Entry to the Project.
- h. "Ivory Homes" shall mean and refer to the Developer, Ivory Homes, Ltd.
- i. "Lot" or "Lots" shall mean the subdivided and recorded lot or lots within Property and where the context so requires any Dwelling constructed thereon.
- j. "Owner" or "Owners" shall mean the record owner or owners of a fee simple title to any Lot, whether one or more natural persons or legal entities, and excluding those persons having such interest merely as security for the performance of an obligation.
- k. "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.
- l. "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.
- m. "Period of Developer Control" shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of last of the following Events: (1) Four months after 100% of the Dwellings constructed upon Lots owned by Developer have been sold; or (2) Five years from the effective date of this Declaration; or (3) When in its sole discretion the Developer so determines.
- n. "Person" shall unless otherwise indicated mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.
- o. "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.

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

q. "Project" shall mean the Subdivision.

r. "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.

s. "Subdivision" shall mean TUSCANY FARMS Subdivision.

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 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 must be (a) reviewed and approved by the ARC or its designee and (b) consistent with the restrictions set forth herein governing the Subdivision.

5. **Architectural Review Committee ("ARC").** Until the termination of the "Period of Developer Control," the ARC has the sole right and exclusive authority to resolve all architectural issues and may, in its sole discretion, designate one or more persons from time to time to act on its behalf in reviewing applications hereunder as the ARC, which before the termination of the "Period of Developer Control" shall consist of three individuals, two of whom must be appointed by Developer and the third must be appointed by the Developer, and thereafter may consist of (a) a single individual, architect or engineer, or (b) a committee comprised of architects, engineers or other persons who may or may not be Owners, or (c) a combination thereof. Powers may be delegated by the ARC, provided any such delegation shall specify the scope of responsibilities delegated, and, prior to the termination of the Period of Developer Control, shall be subject to the irrevocable right of Developer to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and/or to veto any decision which Developer determines, in its sole discretion, to be inappropriate or inadvisable. The initial ARC will be made up of Christopher Gamvroulas, David Zollinger, and Brian Apsley, who shall serve until such time as their successors are qualified and appointed. a. **Terms.** Members serving on the ARC shall be appointed or elected to serve two (2) year terms. Any member of the ARC who fails on three (3) successive occasions to attend regularly scheduled meetings or who has failed to attend at least twenty-five percent (25%) of all regularly scheduled meetings held during any twelve (12) month period shall automatically forfeit his

seat. Except for members of the ARC appointed by the Developer prior to the termination of the Period of Developer Control, members of the ARC may be removed at any time by the affirmative vote of at least a majority of the Owners. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the ARC until his successor qualifies and is properly appointed by the Developer or, after the termination of the Period of Developer Control, elected by the Owners. Members of ARC shall not be compensated for their services, although they may be reimbursed for costs advanced.

6. 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:

a. **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.

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

c. **Standing.** The power to sue and be sued.

d. **Contractual Authority.** The authority to enter into contracts which in any way concern the Subdivision.

e. **Promulgate Rules.** The authority to promulgate such reasonable rules and regulations as may be necessary or desirable to aid the ARC in carrying out any of its functions.

f. **Determine Common Expenses.** The authority to determine the Common Expenses of operating the ARC and administering the Declaration.

g. **Assessments.** The authority to assess each Lot Owner his share of the Common Expenses.

h. **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.

7. Common Profits, Expenses, and Voting Rights. The common profits of the Property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to, the Lot Owners equally.

8. 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.

9. 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.

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

11. Finance Charge. A finance charge of 1.5% per month may be assessed on the outstanding balance of all delinquent accounts.

12. Insurance. If reasonably available, the ARC may elect to purchase adequate liability and directors and officers insurance, and a fidelity bond.

13. Transfer of Control of ARC. Within forty-five (45) days after the termination of the Period of Developer Control (unless otherwise agreed), Developer shall transfer the right to appoint two members of the ARC to the Lot Owners acting as a group in accordance with this Declaration.

14. 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 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. In the event that the ARC fails to approve or to disapprove

any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved; provided, however, anything to the contrary notwithstanding, no Dwelling shall be constructed or altered unless it meets the following minimum requirements:

- a. Only single family residential Dwellings are allowed.
- b. The height of any Dwelling shall not exceed two stories above ground.
- c. No slab on grade Dwellings are permitted.
- d. Without the prior written consent of the ARC, a basement is required for each Dwelling.
- e. Without the prior written consent of the ARC, each Dwelling shall have a private garage for not less than two motor vehicles.
- f. The Dwelling exteriors, in their entirety, must consist of either maintenance free stucco and masonry, unless another construction material is approved by the ARC in writing. No aluminum or vinyl is permitted.
- g. Any detached accessory building must conform in design and materials with the primary residential Dwelling.
- h. All front yards of Lots shall be fully landscaped within one (1) year 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 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 is not be allowed. Natural wood, white vinyl or masonry fencing is permitted. 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.
- j. 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.

15. **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.

16. 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.

17. 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.

18. 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.

19. **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) 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.

20. **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.

21. **Enforcement of Architectural Guidelines.** Any construction, alteration, or other work done in violation of this Declaration shall be considered to be nonconforming. Upon written request from the ARC an Owner shall at his own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

22. **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.

23. **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 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; (2) the business activity conforms to all zoning requirements for the Subdivision; (3) the business activity does not involve persons coming onto the Subdivision who do not reside in the Subdivision or door-to-door solicitation of residents of the Subdivision; and (4) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as may be determined in the sole discretion of the ARC. Notwithstanding the foregoing, the leasing of a Dwelling shall not be considered a trade or business within the meaning of this subsection.

c. **Storage and Parking of Vehicles.** The driving, parking, standing, and storing of motor vehicles in, on or about the 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.

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 a side yard well behind the house line or in the rear yard, and (c) a proper Parking Pad Fence has been installed. Semi-Trailers 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 as a dumping ground. All trash, garbage, debris, rubbish or other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period on pick-up days.

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 without the prior written consent of the Developer or ARC, which shall not be unreasonably withheld. In making its decisions, the Developer and/or ARC shall abide by and be subject to all relevant local, state and federal laws, including but not limited to all FCC guidelines, rules and regulations as they may be amended or supplemented from time to time. Insofar as is reasonably possible without impairing reception, satellite dishes, aerials and antennae shall be positioned so that they are screened from view from the street.

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. Up to 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, grading, and drainage of the land in each Lot shall be completed strictly in accordance with the Developer's Landscaping Guidelines, and so as to comply with and not impair all Utah County Ordinances and flood control requirements.

m. **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.

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 with 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.

24. Large Animals. Since the Project is situated in an agricultural area, there are and will be large animals in the neighborhood, including by way of illustration but not limitation horses and cows, with their accompanying sounds and smells. Each Owner by accepting a deed or other document of conveyance to his Lot, expressly and knowingly and voluntarily assumes not only the benefits of living in a rural setting but also this inherent risk, that is, the dangers and conditions which are an integral part of having large animals in the neighborhood, and promises not to make and hereby waives any claim against or recover from Developer or the Association for any injury, bother, disturbance or annoyance resulting from such inherent risks or the large animals.

25. Irrigation Ditches. There are irrigation ditches and other potential water hazards in the Project which constitute an inherent risk, that is, dangers or conditions which are an integral part of having such irrigation ditches and water features. Each Owner by accepting a deed or other document of conveyance to his Lot, expressly and knowingly and voluntarily assumes this inherent risk, and promises not to make and hereby waives any claim against or recover from Developer or the Association for any injury resulting from such inherent risks, the irrigation ditches or the water features in the Project.

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

a. Sales Office and Models. Developer shall have the right to maintain one (1) or more sales offices and one (1) or more model Lots, Homes or Dwelling at any one time. Such office and/or models may be one or more of the Lots owned by it, or one or more of any separate structures or facilities placed on the Property for the purpose of aiding Developer's sales effort, or any combination of the foregoing;

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 which 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.

27. **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.

28. **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.

29. **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.


30. **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.

31. **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.

32. **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.

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 14 day of March, 2002 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.

Phyllis Trimble

NOTARY PUBLIC
Residing at: *SLC, UT*
My Commission Expires: *1/18/05*

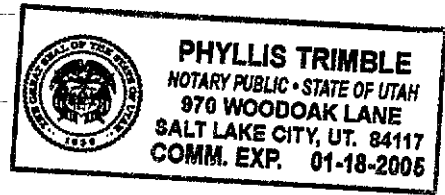


EXHIBIT "A"
LEGAL DESCRIPTION

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

A PARCEL OF LAND LYING WITHIN THE WEST 1/2 OF SECTION 17, TOWNSHIP 5 SOUTH, RANGE 2 EAST, S.L.B. & M., UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MONUMENT MARKING THE NORTH 1/4 CORNER OF SAID SECTION 17; THENCE S.89°39'25"W. ALONG THE SECTION LINE A DISTANCE OF 43.33 FEET AND SOUTH A DISTANCE OF 2472.97 FEET TO THE REAL POINT OF BEGINNING; THENCE S.00°51'53"W. MORE OR LESS ALONG A FENCE LINE, A DISTANCE OF 132.04 FEET TO A FOUND IRON PIN LS# 154551; THENCE S.00°57'01"W. ALONG A FENCE LINE A DISTANCE OF 144.48 FEET; THENCE S.00°46'49"W. ALONG A FENCE LINE A DISTANCE OF 90.08 FEET; THENCE S.00°32'50"W. ALONG A FENCE LINE A DISTANCE OF 133.70 FEET TO A POINT ON THE WEST LINE OF THE ZAMBONI PROPERTY AS DESCRIBED IN A CORRECTED WARRANTY DEED, RECORDED AS ENTRY NO. 56895 IN 1996; THENCE S.00°52'10"W. ALONG SAID ZAMBONI PROPERTY, A DISTANCE OF 291.86 FEET TO THE NORTH LINE OF 1800 NORTH STREET; THENCE N.89°26'38"W. ALONG SAID NORTH LINE, A DISTANCE OF 656.71 FEET TO A FOUND IRON PIN; THENCE N.00°28'30"E. A DISTANCE OF 174.24 FEET; THENCE N.89°26'30"W. A DISTANCE OF 125.00 FEET; THENCE S.00°28'30"W. A DISTANCE OF 174.24 FEET TO THE NORTH LINE OF 1800 NORTH STREET; THENCE N.89°26'38"W. ALONG SAID NORTH LINE A DISTANCE OF 94.69 FEET TO A FOUND IRON PIN AND THE WEST LINE OF THE WORKMAN PROPERTY AS DESCRIBED IN A QUIT CLAIM DEED RECORDED AS ENTRY NO. 40618 IN 1997; THENCE N.00°13'24"E. ALONG SAID WEST LINE, A DISTANCE OF 662.09 FEET; THENCE N.00°43'11"E. A DISTANCE OF 362.00 FEET TO A FOUND 1/2" IRON PIN, L.S. 154551 AND THE SOUTHEAST CORNER OF THE NIELSEN PROPERTY AS DESCRIBED IN A QUIT CLAIM DEED FROM BLACKHAM TO NIELSEN RECORDED AS ENTRY NO. 5678 IN 1978; THENCE ALONG SAID NIELSEN PROPERTY THE FOLLOWING 2 COURSES AND DISTANCES, 1) THENCE N.00°00'05"W. MORE OR LESS ALONG A FENCE LINE, A DISTANCE OF 80.63 FEET; THENCE S.82°58'13"E. A DISTANCE OF 201.53 FEET; THENCE S.85°30'39"E. A DISTANCE OF 57.04 FEET; THENCE S.80°36'06"E. A DISTANCE OF 183.75 FEET; THENCE S.09°23'54"W. A DISTANCE OF 27.47 FEET; THENCE S.19°42'31"W. A DISTANCE OF 223.19 FEET; THENCE S.37°54'28"E. A DISTANCE OF 119.34 FEET; THENCE N.44°30'45"E. A DISTANCE OF 82.38 FEET; THENCE S.50°43'45"E. A DISTANCE OF 56.24 FEET; THENCE S.81°20'51"E. A DISTANCE OF 148.04 FEET; THENCE S.70°47'26"E. A DISTANCE OF 80.15 FEET; THENCE N.24°32'05"E. A DISTANCE OF 113.67 FEET; THENCE S.83°46'45"E. A DISTANCE OF 78.75 FEET TO THE REAL POINT OF BEGINNING, CONTAINING 17.64 ACRES OF LAND.