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WHEN RECORDED MAIL TO:

James R. Blakesley
2595 East 3300 South
Salt Lake City, Utah 84109

7578124
02/18/2000 11:16 AM 22.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
JAMES R BLAKESLEY
2595 E 3300 S 3RD FLOOR
SLC UT 84109
BY: ADB, DEPUTY - WI 7 P.

OPEN SPACE EASEMENT

This OPEN SPACE EASEMENT is made by the HARVEL PARK HOMEOWNERS ASSOCIATION, INC., a Utah non-profit corporation, of 7857 Harvel Drive, Sandy, Utah 84070 (the "Grantor") in favor of the IVORY HOMES, a Utah limited partnership, of 970 Woodoak Lane, Midvale, Utah 84047, a Utah limited partnership (the "Grantee").

RECITALS:

A. The HARVEL PARK CONDOMINIUM PROJECT is located in Salt Lake County, Utah ("HARVEL PARK").

B. HARVEL PARK and the Grantor are governed by a DECLARATION OF CONDOMINIUM FOR HARVEL PARK recorded in the office of the County Recorder of Salt Lake County, Utah (the "Declaration").

C. Grantor is an association of all of the unit owners at HARVEL PARK acting as a group in accordance with the Declaration.

D. The Association is duly constituted organization representing all of the owners of condominium units at HARVEL PARK and is acting on behalf of all of said owners.

E. Grantor is managed by a Board of Trustees.

F. Grantor is obligated by the Declaration to operate, manage and control the Common Areas and Facilities at HARVEL PARK.

G. Grantor is authorized by the Declaration to grant non-exclusive easements.

H. That certain real estate located in Salt Lake County, Utah, approximately 45' x 10', highlighted on Exhibit "A" attached hereto and incorporated herein by this reference, is part of the Common Area at HARVEL PARK (the "Burdened Parcel").

I. The Burdened Parcel is described with particularity on Exhibit "A-1" attached hereto and incorporated herein by this reference.

J. Grantee is the owner of that certain real estate located in Salt Lake County, Utah, which adjoins the Burdened Parcel and is described more particularly as follows (the "Benefitted Parcel"):

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Lot 2, PINES SUBDIVISION, according to the official plat thereof on file in the office of the County Recorder of Salt Lake County, Utah.

K. Grantor desires to keep title to the Burdened Parcel as currently vested, maintain the current use of the Burdened Parcel, and grant to Grantor a non-exclusive easement on, over, under, across and through said Parcel subject to the provisions set forth below.

L. The parties wish to maintain the Burdened Parcel as perpetual *open space* for the mutual benefit of Grantee, Grantor, and other owners of the surrounding property.

GRANT:

NOW THEREFORE, for the reasons set forth above and in consideration of the covenants and promises contained herein, and other good and valuable consideration, Grantor makes the following grants, agreements, covenants and restrictions:

1. Easement. Grantor hereby grants to Grantee a perpetual non-exclusive easement to use the Burdened Parcel as *open space* (as that term is defined in Section 2 herein) for the benefit of Grantee, its successors and assigns as the owners from time to time of all or any part of the Benefitted Parcel according to the official plat thereof on file with the office of the Salt Lake County Recorder, subject to the easements, rights-of-ways and encumbrances of record, which will be benefitted by the easement herein granted.

2. Owner(s). The owners of the units at HARVEL PARK and the owner of the Benefitted Parcel are sometimes referred to individually as the "Owner" and collectively as the "Owners".

3. Definition of Open Space. In the event the Salt Lake County shall adopt an ordinance which contains a definition of the term *open space* and makes such definition applicable to the Burdened Parcel, that definition shall be incorporated into this easement agreement by reference. In the absence of such a definition, the term *open space* shall mean land on which improvements and activities shall be permitted and prohibited as designated in subsections 2.1 and 2.1, below, respectively.

3.1. Permitted. The following improvements and activities shall be permitted: underground utilities, including water and sewer, driveway, cement, landscaping, trees, shrubs, bushes, grass, flower bed, planting bed and sprinkling system. In addition, fencing is also permitted provided it is constructed of wood, vinyl or wrought-iron, it is no higher than three (3') feet and no closer than the front yard set back.

3.2. Prohibited. The following improvements and activities shall be prohibited: chain link fencing, temporary or permanent buildings or building-type structures of any kind, impervious surfaces other than those mentioned in subsection 2.1 hereof, 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; provided, however, the owner of the Benefitted Parcel may place his garbage cans or trash receptacles on the Burdened Parcel, but only on garbage pick-up day and then for no

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longer than twenty-four (24) hours.

4. **Unimpeded Access.** Grantor agrees that neither it nor the members of the Association will do anything to prohibit or discourage Grantee's free and uninterrupted use of the Burdened Parcel, subject only to the terms and conditions set forth herein.

5. **Easement Appurtenant.** Each and all of the easements and rights granted or created herein are appurtenances to the Benefitted Parcel and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such Benefitted Parcel. The Benefitted Parcel shall constitute the dominant estate, and the Burdened Parcel shall constitute the servient estate. Each and all of the easements, covenants, restrictions and provisions contained in this Agreement create equitable servitudes upon, and constitute covenants running with, the land. The easement shall bind every person or entity having any fee, leasehold or other interest in any portion of the Burdened Parcel at any time or from time to time.

6. **Transfer of Title.** 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 Benefitted or Burdened Parcels, 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 Parcels, or any part thereof, in any manner which would constitute a violation or breach of any of the easements and covenants contained herein.

7. **Maintenance.** Grantee shall maintain, repair and replace the Burdened Parcel, and any improvements thereon, in accordance with community standards. If Grantee fails to do so, and fails to cure the default within fifteen (15) days after written notice from Grantor, Grantor may make the necessary repairs, the reasonable cost of which shall be the ultimate responsibility of Grantee.

8. **Duration.** The easements, covenants, restrictions and other provisions of this Agreement shall be of perpetual duration.

9. **Amendment.** This Agreement, or any easement, covenant, restriction or undertaking contained herein, may be terminated or amended only by the recording of the appropriate document in the Office of the County Recorder of Salt Lake County, Utah, executed by both Grantor and Grantee.

10. **Indemnification.** By acceptance of this easement, Grantee agrees to indemnify and hold harmless Grantor (and its members, successors and/or assigns who may hold legal title to the Burdened Parcel) from and against all liabilities, claims, judgments, attorney's fees, etc., which may arise solely by virtue of their ownership of legal title to the Burdened Parcels.

11. **Attorney's Fees.** In the event any action is instituted by a party to enforce any of the provisions contained herein, the prevailing party in such shall be entitled to reasonable attorney's fees, costs and expenses.

12. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement

of the parties and any and all prior agreements or understandings with regard to the subject matter hereof are canceled in their entirety and are of no force and effect.

13. Captions. The captions appearing in this Agreements are for convenience in reference only. Should there be any conflict between any caption and the section with which it appears, the section and not the caption shall control.

14. Waiver. The waiver by any party to this agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or waiver of any subsequent breach.

15. No Partnership. Nothing in this Agreement shall be deemed or constituted to create the relationship of principal and agent or partnership or joint venture or of any other similar association between the parties hereto.

DATED this 8th day of February, 2000.

HARVEL PARK HOMEOWNERS ASSOCIATION, INC.

By: Donna B Hamblin
Name: Donna B. Hamblin
Title: President

By: Laura Bown
Name: Laura Bown
Title: Secretary

IVORY HOMES,
a Utah limited partnership

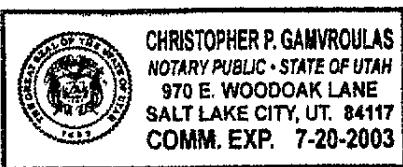
By: CDI
Name: Clark D. Ivory
Title: General Partner

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NEXT PAGE.]

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STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

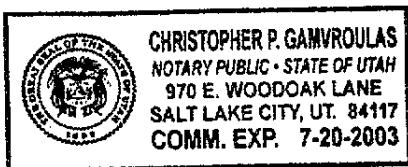
The foregoing instrument was acknowledged before me this 8th day of February, 2000, by DONNA B. HAMBLIN and LAURA BOWN, the President and Secretary of HARVEL PARK HOMEOWNERS ASSOCIATION, INC., a Utah non-profit corporation, pursuant to its Articles of Incorporation or Resolution of its Board of Trustees, and said DONNA B. HAMBLIN and LAURA BOWN duly acknowledged to me that said corporation executed the same.



Christopher P. Gamvroulas
NOTARY PUBLIC
Residing at: SLC, UT
My Commission Expires: 7/20/2003

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 8th day of February, 2000, by CLARK D. IVORY, Member of Value, L.C., who is General Partner of IVORY HOMES, Ltd., and said CLARK D. IVORY duly acknowledged to me that said partnership executed the same.



Christopher P. Gamvroulas
NOTARY PUBLIC
Residing at: SLC, UT
My Commission Expires: 7/20/2003

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EXHIBIT "A-1"

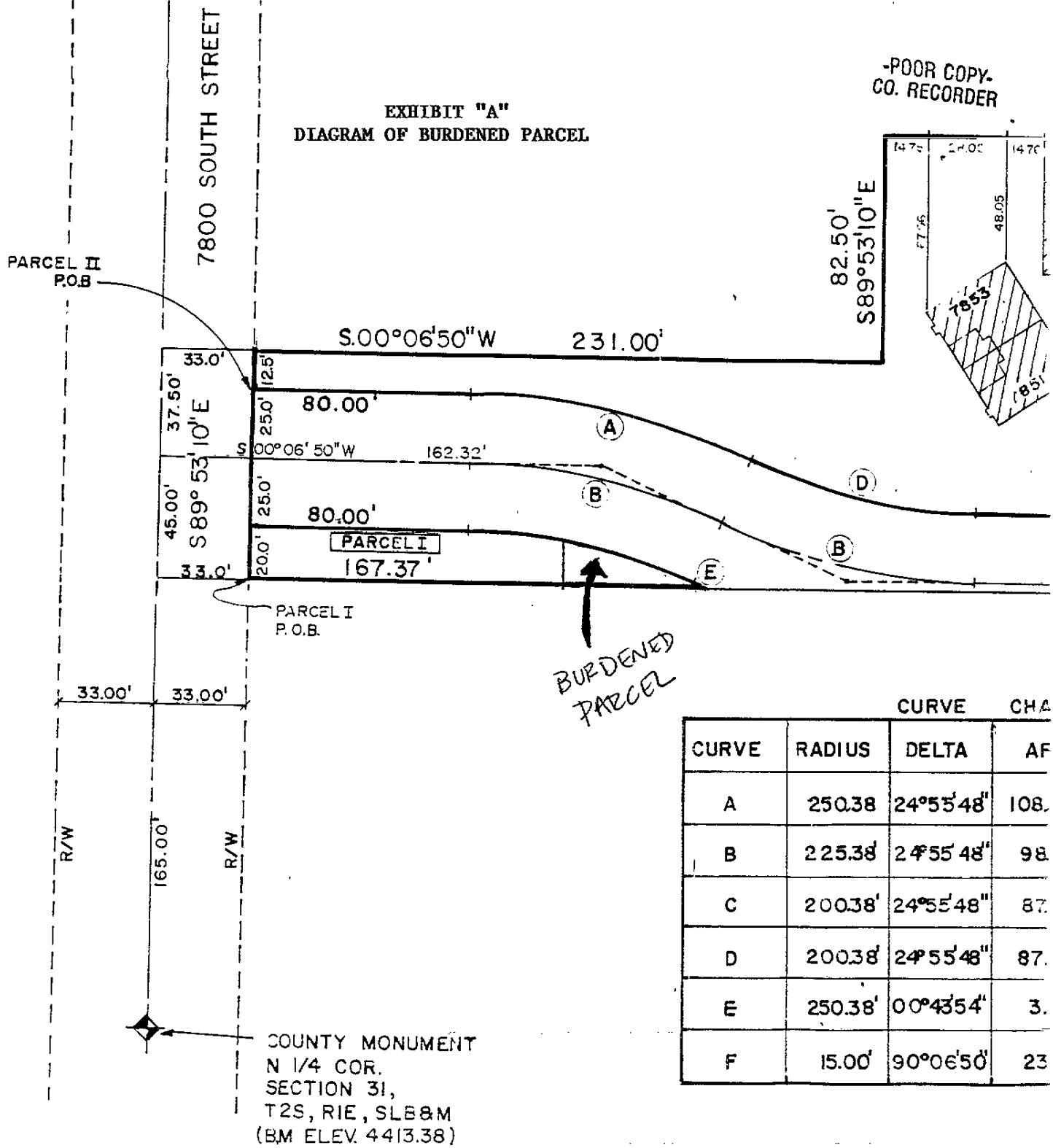
LEGAL DESCRIPTION OF BURDENED PARCEL

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

BEGINNING AT A POINT WHICH LIES SOUTH $89^{\circ}53'10''$ EAST 165.00 FEET ALONG THE SECTION LINE AND SOUTH $00^{\circ}06'50''$ WEST 155.91 FEET FROM THE NORTH 1/4 CORNER OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH $89^{\circ}53'10''$ EAST 15.35 FEET TO A POINT ON A 200.38 FOOT NON-TANGENT CURVE TO THE RIGHT (RADIUS BEARS NORTH $77^{\circ}31'14''$ WEST); THENCE ALONG THE ARC OF SAID CURVE 43.94 FEET THROUGH AN INCLUDED ANGLE OF $12^{\circ}33'52''$ TO A POINT ON A 250.38 FOOT RADIUS REVERSE CURVE; THENCE ALONG THE ARC OF SAID REVERSE CURVE 3.20 FEET THROUGH AND INCLUDED ANGLE OF $00^{\circ}43'54''$ TO A POINT ON THE WEST LINE OF HARVEL PARK CONDOMINIUMS, AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF; THENCE ALONG SAID WEST LINE SOUTH $00^{\circ}06'50''$ WEST 1109.38' TO THE CENTER LINE OF WASATCH AVE. (8000 SOUTH); THENCE ALONG SAID CENTER LINE SOUTH $89^{\circ}51'19''$ WEST 167.41 FEET; THENCE NORTH $00^{\circ}13'00''$ EAST 1343.50 FEET ALONG THE EAST LINE OF SILVER ACRES SUBDIVISION NO.1 ACCORDING TO THE OFFICIAL PLAT THEREOF TO THE POINT OF BEGINNING.

EXHIBIT "A"
DIAGRAM OF BURDENED PARCEL

-POOR COPY.
CO. RECORDER



CURVE	RADIUS	DELTA	CH
A	250.38	24°55'48"	108.
B	225.38	24°55'48"	98.
C	200.38	24°55'48"	87.
D	200.38	24°55'48"	87.
E	250.38	00°43'54"	3.
F	15.00	90°06'50"	23

UNIT NUMBERS	MAIN LEVEL FLOOR ELEV.
7851 & 7853	17.84
7855 & 7857	19.05
7859 & 7861	19.44
7863 & 7865	19.38
7867 & 7869	19.50
7901 & 7903	19.52
7905 & 7907	20.23
7909 & 7911	20.79

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