

Upon recording return to:

Richard E. Danley, Jr

53 S. Swift Creek Drive

Layton, Utah 84041

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10 - 272 - 0201 thru 0240

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
02/02/2015 01:12 PM
FEE \$99.00 Pgs: 7
DEF RTT REC'D FOR COLDWATER CREEK
HOA

RETURNED
FEB 02 2015

**FOURTH AMENDMENT AND SUPPLEMENT TO THE DECLARATION OF PROTECTIVE
COVENANTS FOR COLDWATER CREEK FOR PHASE 1 AND PHASE 2**

This Fourth Amendment and Supplement To The Declaration Of Protective Covenants For Cold Water Creek For Phase 1 and Phase 2 ("**Fourth Amendment**"), is made and executed by the President and Secretary of the Board of Trustees for the Cold Water Creek Homeowners Association, Inc., a Utah Non-Profit Corporation (the "**Association**"). The Board of Trustees, pursuant to the votes cast by the Owners of the Association, hereby amends and revises the Declaration Of Protective Covenants For Cold Water Creek For Phase 1 and Phase 2 of said subdivision (the "**Subdivision**") and all existing prior supplements and amendments to said Declaration as defined and set forth herein together with the Bylaws of the Association. The Board of Trustees for the Association is hereinafter referred to as the "**Board**". The total vote by the Owners of Lots in the Subdivision in favor of approving Amendment 1 as set forth in this Fourth Amendment was 49 out of 78 Lots; and the total vote of the Owners of Lots in the Subdivision in favor of approving Amendment 2 as set forth in this Fourth Amendment was 55 out of 78 Lots; both amendments exceeded the 50% requirement for approval.

RECITALS

- A. The Declaration of the Protective Covenants for Cold Water Creek Estates was recorded in the office of the County Recorder of Davis County, Utah by Ivory North, a Utah Partnership and subsidiary of Ivory Homes ("**Ivory**") on December 14, 2005 as Entry 2130499 in Book 3931 at Page 2155 of the Official Records of said County (the "**Initial Declaration**").
- B. The related Plat Map for Phase 1 of the Subdivision was also recorded at the same time as the Initial Declaration in the Office of the County Recorder for Davis County, Utah.
- C. The Initial Declaration was amended twice by Ivory or by one of its affiliates pursuant to a First Supplement to the Declaration of Protective Covenants for Cold Water Creek Phase 2 as entry number 2225802 in Book 4174 at Page 955 of the Official Records of the Davis County Recorder, Davis County, Utah on December 07, 2006. ("**Supplement 1**"). The Initial Declaration was further amended by the First Supplement to the Declaration of Covenants, Conditions and Restrictions for Coldwater Creek Phase 2 Subdivision as entry number 2256884 on March 29, 2007 in the Official Records of the Davis County Recorder, Davis

County, Utah ("**Supplement 2**"). Supplement 1 and Supplement 2 were filed by Ivory in order to (a) add Phase 2 into the Subdivision, (b) impose on Phase 2 the Initial Declaration and all its governance provisions to form a single Subdivision governed by the Association and (c) to clarify certain covenants conditions and restrictions pursuant to the Initial Declaration. The Initial Declaration, together with Supplement 1 and Supplement 2 are hereinafter collectively referred to as the "**Ivory Declaration**".

- D. The Ivory Declaration was amended pursuant to the laws of the State of Utah by the Owners of the Lots in Phase 1 and Phase 2 of the Subdivision (the "**Owners**"), by a vote of more than 2/3rds of all the Lot Owners (67%) based on one vote for each Lot in the Subdivision as set forth in the Second Supplement And Amendment To The Declaration Of Protective Covenants For Cold Water Creek For Phase 1 and Phase 2 ("**Second Amendment**") dated November 11, 2011 and recorded on November 15, 2011 as Instrument Number 2627351 in Book 5399 at Page 969 to 980 of the Official Records of, Davis County, Utah.
- E. The Second Amendment in Paragraph 17 added a new Article XVI to the Declaration which permits the Declaration and all amendments and supplements thereto to be amended by the Owners of Lots in the Subdivision by a vote of more than fifty percent (50%) of all the Owners in the Subdivision (a) when the amendment has been approved by the Board or (b) when the amendment is by a petition signed by more than 50% of all the Owners of Lots in the Subdivision based on one vote per Lot. Paragraph 1 of the Second Amendment also revoked and terminated Supplement 2 as filed by Ivory to the Declaration.
- F. The Ivory Declaration and the Second Amendment thereto were further amended by a Third Amendment and Supplement to the Declaration of Protective Covenants For Cold Water Creek For Phase 1 and Phase 2 dated November __, 2011, as entry number 2665104 in Book 5534 at Page 18 of the Official Records of the Davis County Recorder, Davis County, Utah on June 01, 2012 (the "**Third Amendment**") to clarify the Tree Planting Plan for the Subdivision. The Third Amendment was proposed and approved by the Board and approved by more than 2/3rds of the Owners of Lots in the Subdivision. Pursuant to the Third Amendment the tree plan for the Subdivision (as set forth in Paragraph 12 of the Second Amendment and in the Ivory Declaration and all amendments and supplements to the same) are amended consistent with said Third Amendment.
- G. The Initial Declaration, Supplement 1, the Second Amendment and the Third Amendment, together with all supplements and amendments to the same, are hereinafter collectively referred to as the "**Declaration**" and are hereby amended by this Fourth Amendment. Moreover, this Fourth Amendment corrects and explains the date error on the Third Amendment. The Third Amendment shows its effective date as being November __, 2011 and the acknowledgement date by the Notary is shown as November 25, 2011. However, the vote by the Lot Owners was held in April, 2012 and the voting closed on April 15, 2012

(not November of 2011) and the execution and acknowledgement dates for the Third Amendment were actually Friday, May 25, 2012 with the Third Amendment recorded on June 1, 2012. The President and Notary each failed to catch the date error at the time of document execution. The error was carried over from the draft of the Second Amendment and it was only discovered after the recording of the Third Amendment. The execution of the Third Amendment occurred only after its approval by the Lot Owners of the Subdivision pursuant to the terms of the Declaration.

NOW, THEREFORE, pursuant to the approval of the Board and the vote of the Owners of the Subdivision, the Declaration and Bylaws of the Association are hereby amended in all respects to be consistent with this Fourth Amendment. In the event of any conflict between this Fourth Amendment and the Declaration or Bylaws, as the same currently exist, this Fourth Amendment shall control for all purposes. Any defined term or capitalized term not defined in this Fourth Amendment shall have the meaning set forth in the Declaration or the Initial Declaration, as the case may be.

- 1. Quorum Requirements to Hold a Valid Association Meeting.** The quorum requirements for any Owners meeting of the Association is here by amended in the Declaration and Bylaws to be consistent in all respects with the following provision.

The presence at any duly called meeting of the Association, in person or by proxy, of the Owners of one-third [33.333333%] of the total Lots of record in the Subdivision shall constitute a Quorum of the Lot Owners and permit the binding conduct of Association business. When a Quorum of Lot Owners is present at a duly called meeting, any action or business listed in the meeting notice may be considered and approved by majority vote of the Lot Owners who are present (in person or by proxy) at the meeting, based on one (1) vote per Lot. Majority vote means more than 50% of the Owners present (in person or by proxy) at the duly called meeting of the Association approve the matter. There are currently 78 Lots in the Subdivision; for a Quorum to be present, Owners of 26 or more Lots must be present in person or by signed proxy at the meeting. Each Lot is only entitled to one (1) vote, regardless of the number of persons present who hold an ownership interest of record in the Lot.

If Owners holding title to fewer than one-third of the total Lots in the Subdivision are present at a meeting (in person or by proxy), the meeting shall either be adjourned for 24 hours or moved to a later date and time as may be set by the Board. At the selected date and time for the rescheduled meeting the Board shall reconvene the adjourned meeting and any number of Lot Owners who are then present at the subsequent Association meeting (in person or by proxy) shall constitute a Quorum for all purposes under the Declaration and Bylaws. All actions or matters approved at any meeting where a Quorum is present shall be binding on all Owners of Lots in the Subdivision.

For an Association meeting to be duly called notice of the meeting must be sent out by US Regular Mail to the Owner of record at the street address for each Lot in the Subdivision; the notice shall be sent not less than 3 weeks or more than 6 weeks prior to the scheduled date for the meeting. If the Lot Owner provides the Association with a second address at which notices are to be sent, the Board will make a good faith effort to send a second notice to that address; but any failure to mail to the second address will not invalidate the meeting so long as a notice is sent to the address for the Lot. The Association meeting date and time may be set (a) by the Board pursuant to the Declaration and the Bylaws or (b) by the Board pursuant to a petition stating with specificity the purpose of the meeting and signed by not less than fifty percent (50%) of the eligible Lot Owners of record, based on one vote per Lot. The mailed notice shall state the date, time and location of the meeting (which must be held within the Subdivision) and sent to the address for each Lot in the Subdivision, with all postage prepaid. The notice may be sent by the Board or the management company for the Association. In addition, the Board will use good faith efforts to send out an electronic-email notice to each Lot Owner of record who has provided their email address to the Board. However, the failure of any Owner to receive an email notice of the meeting will not invalidate the meeting where US Mail notices were properly sent to the respective Lot address of each resident with all postage prepaid. The written notice for the Association meeting shall state (a) the general purpose of the meeting and outline the business to be conducted, (b) if there will be an election of Lot Owners to the Board of Trustees, (c) if any action will be taken to approve or amend the Association budget or (d) if any action will be taken to approve or amend any increase in the monthly Association assessments or (e) if any action is proposed or will be taken to approve any amendment to the Declaration or the Bylaws of the Association. No amendment to the Declaration or the Bylaws of the Association may be considered or voted upon at any meeting of the Association unless the meeting is duly called as provided herein and a complete copy of the proposed amendment is included in the mailed notice of the meeting sent to the respective Lot Owners.

This provision hereby alters and amends any inconsistent covenant, restriction or provision set forth in the Declaration or the Bylaws regarding Quorum requirements for Association meetings, and the content of meeting notices, including but not limited to, Section 3(a) of the Bylaws [as recorded on December 14, 2005 as instrument 2130499 in Book 3931 at Pages 2182 through 2189] and the Second Supplement And Amendment To The Declaration of Protective Covenants For Cold Water Creek For Phase 1 and Phase 2, Section 2 (Majority) and Section 18 D (Member Approval) [recorded on November 15, 2011 as instrument 2627351, Book 5399, at Pages 969 through 980 of the Public Records, Davis County, Utah].

2. **Lot Owner Approval Required for Any Board Approved Association Expense Exceeding \$10,000 for Any Single Item or Any Project Not Listed In the Approved Annual Association Budget.** This Requirement for Lot Owner approval of any Association expenditure approved by the Board but not listed in the approved annual Association budget is effective from the

date of this Amendment and hereby amends all inconsistent provisions in the Declaration and Bylaws to make them consistent in all respects with the following provision.

For any Association project, improvement, or facility costing \$10,000 or more [for any single item or in the aggregate for the total project], the Board must obtain in advance of commencement of the project or the purchase of the item the approval of a majority of Lot Owners in the Subdivision for each such project or item: (a) by the express inclusion of such item or project in the annual Association budget as approved by majority vote of the Lot Owners present (in person or by proxy) at the annual meeting of the Association where a Quorum is present; (b) by majority vote of all Lot Owners present (in person or by proxy) at a meeting of the Association, duly called for such purpose where a Quorum is present; or (c) by vote scheduled by the Board without meeting where 50 percent or more of the Lot Owners of record in the Subdivision approve the project or item in question. The foregoing requirement for Lot Owner approval of any project or item costing more than \$10,000, however, shall not apply to any of the following: (1) any item or project disclosed and approved as part of the annual Association budget approved by the Lot Owners, such as the periodic management contract with the professional management company for the Association, the Association annual swimming pool maintenance, repair and chemical contract, or the annual Common Area landscaping and maintenance contract; (2) any Association insurance policies or insurance coverage maintained pursuant to the Declaration, Bylaws or approved under the annual Association budget; or (3) any item or project for the replacement, repair or renovation of the existing Association property and common areas damaged but covered by (a) property or casualty loss insurance proceeds, (b) any condemnation award or (c) any replacement reserves, unless such repair, replacement or renovation will result in an increase in the monthly assessments paid by the Lot Owners or will result in a one-time-special assessment paid to the Association by the Lot Owners (in which case Lot Owner approval by majority vote is required as set forth above).

3. **Approval and Execution Date of Third Amendment.** As stated in the Recital G of this Fourth Amendment, the approval date of the Third Amendment was April 15, 2012, the date the resident Owner voting closed. The execution and notary acknowledgement dates of the Third Amendment were actually May 25, 2012 and it was recorded on June 1, 2012 in the official records of Davis County, Utah. As the document was dated in error as November __, 2011 the Board approves the correction of the date error as set forth herein.

[SIGNATURE PAGE TO FOLLOW; THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

This Fourth Amendment is executed the 2nd day of February, 2015 by the President and Secretary of the Association. By the execution hereof, the President and Secretary authorize, affirm and certify on behalf of the Board for the Association that the amendments set forth herein received the necessary approval in excess of 50% of all Lots from the Owners of the Subdivision and that the Declaration and Bylaws are validly amended as set forth herein.

RED
Cold Water Creek Homeowners Association, Inc.

By Richard E. Danley Jr.

Richard E. Danley, Jr.
President

ATTEST: CORPORATE SECRETARY

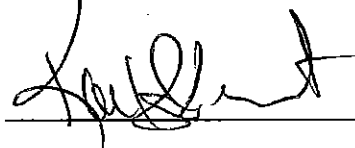
Cold Water Creek Homeowners Association, Inc.

By Jean Toller
Jean Toller
Secretary

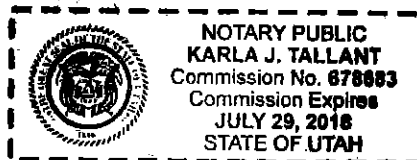
[CORPORATE SEAL]

STATE OF UTAH)
)ss:
COUNTY OF DAVIS)

On the 2nd day ~~January~~ ^{February}, 2015, personally appeared before me **Richard E Danley, Jr.**, who by me duly sworn, did say that he is the **President of the Cold Water Creek Homeowners Associate, Inc.**, a Utah non-profit corporation, and that the within and forgoing instrument was signed in behalf of said corporation by the authority of its Board of Trustees, and said Richard E Danley, Jr. duly acknowledged to me that said Corporation executed the same.

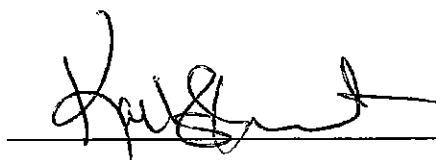


NOTARY PUBLIC
Residing At: 150 S Fort Lane Layton UT 84041
Commission Expires: 7/29/2018



STATE OF UTAH)
)ss:
COUNTY OF DAVIS)

On the 2nd day ~~January~~ ^{February}, 2015, personally appeared before me **Jean Toller**, who by me duly sworn, did say that she is the **Secretary of the Cold Water Creek Homeowners Associate, Inc.**, a Utah non-profit corporation, and that the within and forgoing instrument was signed in behalf of said corporation by the authority of its Board of Trustees, and said Jean Toller duly acknowledged to me that she attested the execution of the foregoing instrument for said Corporation on behalf of the same.



NOTARY PUBLIC
Residing At: 150 S Fort Lane Layton UT 84041
Commission Expires: 7/29/2018

