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RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
2004 FEB 10 10:58 AM FEE 117.00 DEP LHL
REC'D FOR CENTERVILLE CITY

WHEN RECORDED, MAIL TO:

CENTERVILLE CITY
Attn: City Recorder
250 North Main
Centerville, Utah 84065

*Florentine Villas =
Gate 1 thru 67
Gate 2, 3, 4
C/A/D
West*

Parcel I.D. # 02-120-0001 thru
0072

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 20 day of November, 2003, by and between **CENTERVILLE CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and **G.M.W. DEVELOPMENT, INC., dba IVORY NORTH**, a Utah corporation, hereinafter referred to as the "Developer."

RECITALS:

WHEREAS, Developer is proposing to develop in accordance with the terms of this Agreement, approximately 23.201 acres of property which is located at approximately 400 South (Porter Lane) and 400 West within Centerville City, Davis County, State of Utah, which property is more particularly described in **Exhibit "A,"** attached hereto and by this reference made a part hereof (the "Property"); and

WHEREAS, the Property is zoned Florentine Villas Special District, a special district zone created under the Centerville City Zoning Ordinances providing for master-planned, architecturally-designed development with customized requirements and standards to permit flexibility and initiative in development; and

WHEREAS, Developer intends and desires to develop the Property as a single family residential development to be known as the "Florentine Villas" (the "Project") in accordance with the Florentine Villas Special District zoning; and

WHEREAS, Developer has applied for and received Conceptual, Preliminary and Final Plat approval from the City for development of the Project; and

WHEREAS, as a condition of Final Plat approval for the development of the Project, Developer is required to install, construct, and dedicate certain improvements and to comply with

all other terms and conditions of Final Plat approval, including entering into a development agreement acceptable to the City governing development of the Project; and

WHEREAS, this Agreement contains various general requirements and conditions for the design and development of the Property and the Project in accordance with Final Plat approval; and

WHEREAS, unless otherwise provided herein, both the Property and the Project are subject to and shall conform to all terms and conditions set forth in this Agreement as well as the ordinances, rules and regulations adopted by the City, including, but not limited to, the provisions of the Centerville City General Plan, the Centerville City Zoning Ordinance, the Centerville City Subdivision Ordinance, the Florentine Villas Special District, and all other applicable ordinances, rules and regulations of the City, collectively referred to as the "City Laws"; and

WHEREAS, the City desires and/or is interested in trading property owned by the City located adjacent to property owned by Developer in exchange for property owned by Developer as more particularly designated on the Final Plat in accordance with and subject to the terms and conditions of this Agreement; and

WHEREAS, the purpose of this Agreement is to reduce to writing the respective agreements and understandings of the parties regarding development of the Project in conformance with the City Laws and Final Plat approval for the Project;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.
2. **Property Exchange.** The City agrees to exchange with Developer approximately 3.9 acres of property owned by the City located along 400 West, which entire parcel is more particularly described in **Exhibit "B,"** attached hereto and incorporated herein by this reference ("City Property"), for approximately 3.92 acres of property owned by the Developer designated as Lot "A" and Lot "B," on the Final Plat. Lot "A" and Lot "B" shall be conveyed to the City by separate Warranty Deeds concurrent with and as a condition of recording of the Final Plat. The Warranty Deeds shall be in recordable form acceptable to the City. The City agrees to convey ownership of the City Property to Developer by Warranty Deed prior to or concurrent with the recording of the Final Plat. Approval and recordation of the Final Plat is subject to and conditioned upon Developer conveying Lot "A" and Lot "B" to the City as provided herein. Developer shall convey fee title to Lot "A" and Lot "B" to the City free and clear of any liens or encumbrances, together with all appurtenant water rights. Developer shall clear Lot "A" and Lot "B" of any physical debris and/or encumbrances prior to conveyance of the same to the City,

including, but not limited to, removal of any and all inventory, materials, junk and garbage left from previous owners of the property.

3. Development of the Project. The Project shall be developed by Developer and/or any subsequent developers in accordance with all of the requirements contained herein.

a. Street Improvements. All streets and street improvements within the Project shall be dedicated as public streets. Except as provided herein, Developer shall design, construct, install and dedicate all public streets and street improvements within the Project in accordance with applicable City Laws, the Final Plat approval, the approved Construction Drawings for the Project ("Construction Drawings"), and the terms and conditions of this Agreement. The approved Construction Drawings for the Project are incorporated herein by this reference. All streets dedicated and designed within the Project shall line up with street intersections and connections of adjacent properties as constructed or approved and shall tie-in to improvements therein, including, but not limited to, all utilities, curbs, gutters, sidewalks, and other improvements. Developer shall install four inch (4") conduit at all street intersections within the Project in accordance with the Construction Drawings. Appropriate and sufficient security to ensure completion and warranty of said improvements shall be provided in accordance with applicable City Laws.

b. Modified Street Cross-Sections. As more particularly provided on the approved Construction Drawings, modified street cross-sections have been approved for various portions of the streets within the Project. Such streets, as modified, shall be constructed in accordance with the approved street cross-sections as provided in the Construction Drawings.

c. Sidewalks. All sidewalks within the Project as designated on the Construction Drawings shall be installed and constructed by Developer at Developer's sole cost and expense in accordance with the approved Construction Drawings. Such sidewalks shall be bonded for in accordance with the bonding requirements for public improvements as set forth in the City Laws. A portion of the sidewalks within the project is intended to and shall constitute a portion of the urban trail system within the City as more particularly described and adopted by the City as part of the Centerville Village Strategic Development Master Plan, including Alternative Land Use Maps, as amendments thereto ("Urban Trails"). Those sidewalks within the Project that are designated as Urban Trails pursuant to the Centerville Village Strategic Development Master Plan, as amended, shall be designated as such on the Final Plat and Construction Drawings for the Project. All Urban Trails located outside of the public right-of-way shall be designated on the plat as subject to a public access and right-of-way easement ensuring public use of the Urban Trails in perpetuity. Routine maintenance, such as snow removal, leaf removal and access, of all sidewalks and Urban Trails within the Project shall be provided by Developer or an acceptable assignee such as an approved and functioning homeowner's association. Repair and replacement work on sidewalks and Urban Trails

shall be provided by the City after termination of the warranty period and acceptance of such improvements by the City. No driveway access shall be permitted across designated Urban Trails. A plat note shall be provided on the Final Plat providing notice of driveway restrictions across Urban Trails.

d. Walkway. A walkway as designated on the Final Plat between Lot 47 and Lot 48 shall be installed and constructed by Developer at Developer's sole cost and expense ("Walkway"). The Walkway shall be a minimum of seven feet (7') wide with a minimum of a five foot (5') wide sidewalk. The Walkway improvements shall be bonded for in accordance with the bonding requirements for public improvements as provided in the City Laws. The Walkway shall be designated on the Final Plat as subject to a public access and right-of-way easement ensuring public use of the Walkway in perpetuity. The Walkway shall be maintained by Developer or an acceptable assignee such as an approved and functioning homeowner's association.

e. Protection Strip. If desired, Developer shall enter into a Protection Strip Agreement in a form acceptable to the City regarding future development of property located adjacent to the Project and fronting onto a portion of 180 South. If desired, the Protection Strip shall be designated on the Final Plat and the signed and executed Protection Strip Agreement shall be recorded against the Protection Strip property concurrent with the recording of the Final Plat.

f. Parkstrips. All parkstrip improvements, including, but not limited to, all landscaping, irrigation and improvements therein, within the Project as designated on the Construction Drawings shall be installed and constructed by the Developer at Developer's sole cost and expense in accordance with the approved Construction Drawings ("Parkstrip Improvements"). Such Parkstrip Improvements shall be bonded for in accordance with the bonding requirements for public improvements as set forth in the City Laws. All Parkstrip Improvements within the Project, exclusive of those Parkstrip Improvements located in Lot "C" as designated on the Final Plat, shall be maintained by Developer or an acceptable assignee such as an approved and functioning homeowner's association.

g. Project and Street Lighting. All project and street lighting within the Project as designated on the Construction Drawings and the approved Lighting Plan for the Project shall be installed and constructed by Developer at Developer's sole cost and expense in accordance with the approved Construction Drawings and Lighting Plan ("Lighting"). Such Lighting shall be bonded for in accordance with the bonding requirements for public improvements as set forth in the City Laws. All Lighting shall be maintained by Developer or an acceptable assignee such as an approved and functioning homeowner's association. Such Lighting maintenance shall comply with the maintenance plan as set forth in the approved Lighting Plan for the Project.

h. Common Facilities. Developer shall construct and install Common Area improvements on Lot "D," consisting of a pool, parking area and other amenities in

accordance with Final Plat approval for the Project ("Common Facility Improvements"). Developer shall be required to obtain site plan approval for such Common Facility Improvements in accordance with the City Laws in place at the time of such application. The Common Facility Improvements shall be constructed and completed upon ninety percent (90%) build-out of the Project, based upon percentage of building permits issued for total lots within the Project. Once ninety percent (90%) of the building permits for the total lots within the Project have been issued, no further permits shall be issued until the Common Facility Improvements and all landscaping on Lot "D" have been completed. An extension of time to complete such improvements may be granted by the City for a period not to exceed forty-five (45) days due to weather conditions. Developer or other acceptable assignee such as an approved and functioning homeowner's association shall be required to maintain the landscaping and Common Facility Improvements on Lot "D." Developer shall bond for the landscaping improvements to Lot "D" at the time of site plan application for the Common Facility Improvements, as well as all other required public improvements for Lot "D" in accordance with applicable City Laws.

i. Detention Basins. Developer is required to provide adequate storm water drainage for the Project. It is expressly acknowledged by the parties that Developer's Storm Drain Plan is dependent upon use and access to off-site detention basin facilities. Approval of such plan is conditioned upon Developer's and/or the City's right to use such off-site facilities. In the event that such authority is not available, Developer shall be required to resubmit an alternative Storm Drainage Plan for the Project for review and approval by the City. As part of the storm water drainage plan for the Project, as approved by the City Engineer and conditioned upon the foregoing, Developer is required to pay for Developer's fair share of the costs to clean out an off-site detention basin located at approximately 200 South 600 West, Centerville, which detention basin Developer will utilize as part of the storm water drainage for the Project ("Detention Basin"). A copy of the Engineer's estimate for the cost of the clean out of the Detention Basin is attached hereto as **Exhibit "C,"** incorporated herein by this reference. Developer shall pay to the City Developer's estimated fair share of the costs of the Detention Basin clean out, including engineering and administrative costs, as determined by the City Engineer prior to recording of the Final Plat for the Project. The City shall provide Developer with a final accounting of actual costs incurred in the cleaning out of the Detention Basin, including engineering and administrative costs. In the event the actual costs of cleaning out the Detention Basin are less than the estimated costs for such cleaning, the City shall refund to Developer within a reasonable time after final completion of the cleaning the difference between Developer's fair share of the estimated and actual costs for the cleaning. In the event the actual costs of cleaning out the Detention Basin exceed the estimated costs for such cleaning, Developer shall pay to the City within a reasonable time after final completion of the cleaning the difference between Developer's fair share of the actual and estimated costs for the cleaning.

j. Grading. Developer shall conduct all grading, including all fill and excavation work for the Project, in accordance with the approved Grading Plan for the

Project. Developer shall comply with all City Laws regarding grading, excavation and fill work, including obtaining any required permits for the same.

k. Subsurface Drainage System. Subsurface drains and subsurface drain systems may be utilized for the Project conditioned upon compliance of such drains and systems with the procedures and requirements of the City Laws, including, but not limited to, Chapter 9-4 of the Centerville City Ordinances regarding Subsurface Drains. Subdrain improvements within the Project as designated on the Construction Drawings shall be installed and constructed by Developer at Developer's sole cost and expense ("Subdrain Improvements") in accordance with the approved Construction Drawings and applicable City Standards and Specifications regarding subdrain systems. Subdrain Improvements shall be bonded for in accordance with the bonding requirements for public improvements as set forth in the City Laws. All Subdrain Improvements located outside of the public right-of-way shall be maintained by Developer or other acceptable assignee such as an approved and functioning homeowner's association. All Subdrain Improvements located within the public right-of-way shall be dedicated to the City. Subdrain Improvements located within the public right-of-way and dedicated to the City shall be maintained by the City, subject to warranty period protection. Developer hereby agrees to pay \$2,783.00 to the City representing costs incurred by the City in obtaining a permit from the Army Corps of Engineers for the installation of off-site portions of the Subdrain Improvements for the Project.

l. Lot "C" Landscaping Improvements. Developer shall convey Lot "C" to the City by Warranty Deed concurrent with and as a condition of recording of the Final Plat. The Warranty Deed shall be in recordable form acceptable to the City. Developer agrees to install landscaping improvements on Lot "C" as more particularly described in the approved Landscaping Plan for the Project, including Parkstrip Improvements along 180 South and additional landscaping within the eastern portion of Lot "C" in accordance with the approved Landscaping Plan ("Lot "C" Improvements"). Except as otherwise provided herein, Lot "C" Improvements shall be installed by Developer within nine (9) months from the date of recording of the Final Plat. The installation of that portion of the Lot "C" Improvements located within the twenty foot (20') wide strip of land adjacent to and west of the boundary line of Lot "D" and Lots 31-34 are hereby deferred. Such deferred Improvements shall be installed by the Developer within sixty (60) days from written notice from the City or within three (3) years from the date of recording of the Final Plat, whichever is sooner. Alternatively, the parties hereby agree that the City, in its discretion, is authorized upon written notice to the Developer to draw upon the funds within the bond for installation of the deferred portion of the Lot "C" Improvements and to cause the same to be installed. All Lot "C" Improvements shall be bonded for in accordance with bonding requirements for public improvements as set forth in the City Laws. The City shall maintain the Lot "C" Improvements upon completion by Developer and acceptance by the City, subject to warranty period protection.

m. Utility Stubs for Lot "A". Developer agrees to install utility stubs for Lot "A" in locations to be designated by the City ("Utility Stubs"). Utility Stubs shall not include the construction or installation of culinary water lines. Culinary water lines for Lot "A" shall be installed by the City. Developer shall confer with the City prior to construction and installation of the Utility Stubs and obtain written confirmation of the approved location of the same. The estimated cost of the Utility Stubs is \$2,814.00. The City agrees to pay for the cost of the Utility Stubs in an amount not to exceed ten percent (10%) of the estimated cost of such improvements upon acceptable completion of the construction and installation of the Utility Stubs.

n. Park Impact Fees. In consideration of the Lot "C" Improvements, and other landscaping improvements and/or open space dedication to the City within the Project provided by Developer in excess of standard City Ordinance requirements, Developer is hereby granted a credit against park impact fees for development within the Project in an amount provided herein. The credit provided to Developer herein for park impact fees is subject to compliance with applicable City Laws and State statutes regarding impact fees. The credit provided to Developer herein for park impact fees shall not exceed the total value of such improvements and land dedication, or \$80,400, whichever is less. Developer shall provide the City with an accounting of the value and cost of the land dedication and improvements hereunder, which value and costs must be approved to the satisfaction of the City. The credit against park impact fees shall be granted to Developer in the amount provided herein at the time such fees become due and owing to the City under applicable City Laws.

o. Storm Drain Facilities Upsizing. Developer agrees to upsize a portion of the required storm drain improvements for the Project as more particularly described herein and to construct and install such upsized improvements in accordance with the approved Construction Drawings for the Project. Developer shall install approximately 430 linear feet of upsized storm drain facilities from 15" pipe to 18" pipe and approximately 480 linear feet of upsized storm drain facilities from 24" pipe to 30" pipe as more particularly set forth in the Construction Drawings. Developer is hereby granted a credit against storm drain impact fees for development within the Project in an amount provided herein. The credit provided to Developer herein for storm drain impact fees is subject to compliance with applicable City Laws and State statutes regarding impact fees. The credit provided to Developer herein for storm drain impact fees shall not exceed the estimated cost of such improvements. The estimated costs of such improvements are \$5,510.00. The credit against storm drain impact fees shall be granted to Developer in the amount provided herein at the time such fees become due and owing to the City under applicable City Laws.

p. Well Sealing. Developer shall be required to seal all wells on the Property in accordance with applicable City Laws and State statutes, standards or regulations, prior to the issuance of any building permit for construction within the Project.

4. **Compliance with City Laws and Development Standards.** The Project and all portions thereof shall be developed in accordance with the City Laws, the approved Construction Drawings, Final Plat approval, this Agreement and all subsequent amendments thereto. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to the City all such power and authority that cannot be restricted by contract, including, but not limited to, the future exercise of the City's police power. It is expressly agreed by the parties that the Project shall be developed in a single phase. Developer shall submit Home Owners' Association Articles of Incorporation and Covenants and Restrictions for review and approval by the City addressing matters required herein or by applicable City Ordinances. Such documents shall be recorded against the property concurrent with the recording of the Final Plat and in accordance with the provisions of Section 26 regarding priority of this Development Agreement.

5. **Utilities and Infrastructure.** When Developer begins construction, Developer shall install natural gas, electrical service, telephone, storm water, sanitary sewer and water systems, both culinary and secondary, and all required street improvements for the entire Project. The construction and installation of all utilities and public improvements shall be done in accordance with the design and construction standards of the utility providers and the City. Developer shall provide and designate on the Final Plat and Construction Drawings all public utility and access easements as required by City Laws, Final Plat approval, and the terms and conditions of this Agreement. Developer acknowledges the City is in the process of potentially constructing and/or installing a fiber optic network for the purpose of providing high-speed broadband services for residents and businesses within the City. Developer acknowledges that the provision of such services to residents within the Project will be a benefit to the Project and agrees to cooperate with the City for installation of such improvements if and when the City determines to construct and install such facilities.

6. **Security for Public Improvements.** In accordance with City Laws, the Developer shall post security in a form satisfactory to the City to guarantee the payment for the installation and completion of all utilities, infrastructure and public improvements, including landscaping to be constructed, installed or provided by Developer pursuant to this Agreement or in connection with the Project and all private improvements for which bonding is required herein. Except as provided herein, all utilities and improvements shall be constructed and installed at the Developer's sole expense in accordance with the City's construction and engineering standards and City Laws.

7. **Dedication or Donation.** Developer shall dedicate and convey to the City, at no cost to the City, title to all required real property in fee, public utility easements for the purpose of constructing, installing, operating and maintaining public utilities and improvements of every nature and kind as determined and required by the City, public access easements, and title to other public improvements required by the City in connection with the Project along with the appurtenant easements and rights-of-way, the City's portion of the storm drainage system, and subdrain system and related easements and rights-of-way. All public improvements within rights-of-way and easements shall be dedicated in fee. Prior to the time of dedication, Developer shall take such action as is necessary to obtain a release of any encumbrance on any property to be

dedicated to the City. Developer shall pay all delinquent taxes on the property to be dedicated to the City and shall pay Developer's pro rata share of any taxes due for the current year at the time of conveyance. Real property to be dedicated to the City in fee shall be cleared of any and all debris, trash, inventory, etc. as more particularly provided herein. The City shall have the right to inspect all such improvements and real property prior to acceptance of a conveyance thereof. Except as otherwise provided herein regarding park impact fees, Developer is making the dedications and donations provided in this Agreement voluntarily and as a contribution to the City and hereby waives and releases any claims for compensation therefor.

8. **Payment of Fees.** Developer shall pay to the City all required fees in a timely manner which are due or which may become due pursuant to the City Laws in connection with development in the Project or any portion thereof and in such amounts as are required by City Laws at the time such fees are paid and in accordance with the provisions of this Agreement.

9. **Construction Standards and Requirements.**

a. **General.** All construction on any portion of the Project shall be conducted and completed in accordance with the City Laws and the provisions of this Agreement. Prior to awarding any construction contract for any improvements to be dedicated to public use, the Developer shall submit all plans and specifications to the City Engineer for review and comment. Prior to any occupancy, final "as built" drawings shall be provided by Developer to the City without cost, for the Project. Developer shall, at Developer's sole expense, construct public improvements, including landscaping, as required by the City and as indicated in this Agreement and the City Laws.

b. **Building Permits.** No building or other structure shall be constructed within the Project without Developer or applicable applicant first obtaining a building permit for such construction in accordance with the City Laws.

c. **Indemnification and Insurance.**

i. **Indemnification.** Developer hereby agrees to indemnify and hold the City and its officers, employees, agents and representatives harmless from and against all liability, loss, damage, costs, or expenses, including attorneys' fees and court costs, arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur within the Project or occur in connection with any off-site work done for or in connection with the Project, and which shall be caused by acts done thereon, or any errors or omission of the Developer, its servants, employees or contractors. Developer shall not be responsible for (and such indemnity shall not apply to) any intentional or negligent acts or negligent omissions of the City or its agents, servants, employees or contractors. In addition, Developer shall indemnify and hold the City and its officers, employees and representatives harmless from and against any claims, liability, and reasonable

costs and attorneys' fees incurred on account of any change in the nature, direction, quantity or quality of historical drainage flows resulting from the Project or the construction of any improvements therein.

ii. Insurance. During the period from commencement of the work on the public improvements within the Project and ending on the date when construction of said improvements has been completed, the improvements have been accepted by the City and all applicable warranty periods have expired, the Developer shall furnish, or cause to be furnished, to the City, satisfactory Certificates of Insurance from reputable insurance companies evidencing death, bodily injury and property damage insurance policies in the amount of at least \$1,000,000 single limit naming the City as an additional insured. Developer shall require all contractors and other employees performing any work on the Project to maintain adequate workers compensation insurance and public liability insurance.

d. City and Other Governmental Agency Permits. Before commencement of construction or development of any buildings, structures or other work or improvements on any portion of the Property or Project, the Developer shall, at its sole expense, secure or cause to be secured any and all permits which may be required by the City and/or any other governmental entities having jurisdiction over the work or affected by its construction or development.

e. Rights of Access. Representatives of the City shall have the reasonable right of access to the Project, and any portions thereof, during any periods of construction, to inspect or observe the Project and/or any work thereon, and to remedy any defaults in construction or improvements covered by bond and/or warranty. The City is also granted a right of access to the Project, and any portions thereof, for the purpose of constructing and installing any public improvements in accordance with the terms and conditions of this Agreement.

f. Compliance with the Law. Developer shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the Developer's activities in connection with the Project, or any portion thereof, including the City Laws.

g. Inspection and Approval by the City. The City may, at its option, perform periodic inspections of the improvements being installed and constructed by the Developer or its contractors. No work involving excavation shall be covered until the same has been inspected by the City's representatives and the representatives of other governmental entities having jurisdiction over the particular improvements involved. The Developer shall warrant the materials and workmanship of all improvements installed within the Project for a period of twenty-four (24) months from and after the date of final inspection and approval by the City of the improvements. All buildings shall be inspected in

accordance with the provisions of the International Building Code and other construction codes, as adopted by the City.

h. Use and Maintenance During Construction. The Developer covenants and agrees that at all times it shall devote the Project and the Property to the uses respectively specified therefor in the approvals granted by the City and as restricted and limited by this Agreement, unless the Agreement is terminated or modified by written agreement with the City. During construction, the Developer shall keep the Project and all affected public streets and public easements free and clear from any unreasonable accumulation of debris, waste materials and any nuisances and shall contain construction debris and provide dust control so as to prevent scattering via wind, water or otherwise.

10. Default. In the event any party fails to perform its obligations hereunder or to comply with the terms of this Agreement, then if such failure is not cured within thirty (30) days after receipt of written notice of default, the non-defaulting party may, at its election, have the following remedy or remedies:

- a. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief, specific performance and/or damages.
- b. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or any development described in this Agreement until such default has been cured.
- c. The right to draw on any security posted or provided in connection with the Project.
- d. The rights and remedies set forth hereinabove shall be cumulative.

Developer shall also be in default under the terms of this Agreement under the following circumstances if not cured within thirty (30) days after notice of default is given: (i) Developer is adjudicated bankrupt or makes any voluntary or involuntary assignment for the benefit of creditors, or bankruptcy, insolvency, reorganization, arrangement, debt adjustment, receivership, liquidation, or dissolution proceedings is instituted by or against Developer; and, if instituted adversely, the one against whom such proceedings are instituted consents to the same or admits in writing the material allegations thereof, or said proceedings shall remain undismissed for one hundred fifty (150) days; or (ii) Developer has made a materially false representation or warranty in any agreement or application to the City.

11. Assignment. Neither this Agreement nor any provisions hereof, or obligations herein, can be assigned by Developer to any other person or entity without assigning the rights as well as the responsibilities of Developer under this Agreement. Developer shall not assign its rights or responsibilities herein without giving prior written notice to the City. Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment. No party shall transfer, assign, sell, lease, encumber, or otherwise

convey its rights and obligations under this Agreement separate from that party's interest in the Property except for sale of lots in the Project. In the event of a sale or transfer of the Property, or any portion thereof, the buyer or transferee shall be liable for the performance of each of the obligations contained in this Agreement as it relates to that portion of the Property it is buying. Acceptance of a deed to any portion of the Property shall constitute an agreement to assume and to be bound by the provisions of this Agreement as it relates to the Property covered by the deed, except that retail lot sales to homeowners are exempt from such provision.

12. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective officers, agents, employees, successors and assigns, when assignment is permitted. The covenants contained herein shall be deemed to run with the Property and the parties agree that a copy of this Agreement shall be recorded in the office of the Davis County Recorder, State of Utah.

13. **Notice.** All notices required or desired to be given hereunder shall be in writing and shall be deemed to have been given on the date of personal service upon the party for whom intended or if mailed, by certified mail, return receipt requested, postage prepaid, and addressed to the parties at the following addresses:

City: Centerville City
Attn: City Manager
250 North Main Street
Centerville, Utah 84014

Developer: G.M.W. Development, Inc., dba Ivory North
Attn: Gary M. Wright
1544 Woodland Park Drive, Suite 300
Layton, Utah 84041

Any party may change its address for notice under this Agreement by giving written notice to the other party in accordance with the provisions of this paragraph.

14. **Attorneys Fees.** Each party herein each agrees that should it default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing a lawsuit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.

15. **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, documents referenced herein, and all regulatory approvals given by the City for the Property and/or Project, contain the entire agreement of the parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, inducements or

understandings between the parties which are not contained in this Agreement or the regulatory approvals and permits related hereto.

16. **Headings.** Headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

17. **Non-Liability of City Officials, Employees and Others.** No officer, representative, agent or employee of the City shall be personally liable to the Developer or any successor in interest or assignee of the Developer in the event of any default or breach by the City, or for any amount which may become due Developer, or its successors or assigns, or for any obligation(s) arising under the terms of this Agreement.

18. **No Third Party Rights.** The obligations of parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than the Developer and the City, and their respective successors and assigns. The City and the Developer alone shall be entitled to enforce or waive any provision of this Agreement to the extent that such provision is for their benefit in accordance with the waiver provision set forth in this Agreement.

19. **Termination.** Notwithstanding anything in this Development Agreement to the contrary, it is hereby agreed by the parties hereto that in the event the Project is not completed within five (5) years of the date of this Agreement, or in the event the Developer does not comply with the approvals granted by the City and the provisions of this Agreement, the City shall have the right, but not the obligation, at the sole discretion of the City, to terminate this Agreement. Any termination may be effected by the City by giving written notice of intent to terminate to the Developer at its last known address, as set forth herein. Whereupon the Developer shall have thirty (30) days during which the Developer shall be given the opportunity to correct any alleged deficiencies and to take appropriate steps to complete the Project. In the event the Developer fails to satisfy the concerns of the City with regard to such matters, the City shall be released from any further obligations under this Agreement and may terminate the same. Termination of this Agreement shall constitute termination of any previous approvals granted by the City for the Project.

20. **No Waiver.** Any party's failure to enforce any provision of the Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefitted by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions, unless so expressly stated.

21. **Severability.** If any portion of this Agreement is held to be unenforceable, any enforceable portion thereof and the remaining provisions shall continue in full force and effect.

22. **Time of Essence.** Time is expressly made of the essence with respect to the performance of each and every obligation hereunder.

23. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature; governmental restrictions, regulations or controls; judicial orders; fires or other casualties; or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage. Any party seeking relief under the provisions of this paragraph shall notify the other party in writing of a force majeure event within fifteen (15) days following occurrence of the claimed force majeure event.

24. **Knowledge.** The parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks and having had the opportunity to consult with legal counsel of their choice.

25. **No Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties.

26. **Priority.** This Agreement shall be recorded against the Property senior to any Protective Covenants, Master Association covenants, and any debt security instruments encumbering the Property.

27. **Amendment.** This Agreement may be amended only in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement individually or by and through their respective, duly authorized representatives as of the day and year first above written.

ATTEST:

Marilyn Holge

City Recorder



“CITY”

CENTERVILLE CITY

By: *[Signature]*

Mayor

“DEVELOPER”

G.M.W. DEVELOPMENT, INC., dba IVORY NORTH

By: *[Signature]*

Gary M. Wright, President

CITY ACKNOWLEDGMENT

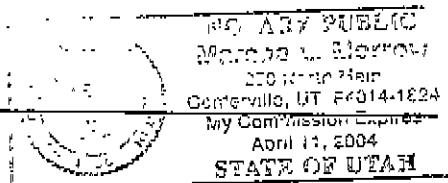
STATE OF UTAH)
)
 :ss.
COUNTY OF DAVIS)

On the 20 day of November, 2003, personally appeared before me **MICHAEL L. DEAMER**, who being duly sworn, did say that he is the Mayor of **CENTERVILLE CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Michael Deamer acknowledged to me that the City executed the same.

Marsha L. Blaylock
Notary Public

My Commission Expires:
4-11-04

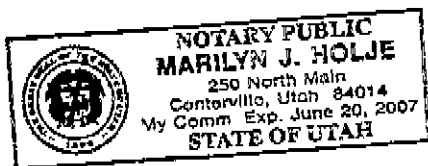
Residing at:



DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
)
 :ss.
COUNTY OF DAVIS)
)
 December

On the 23rd day of November, 2003, personally appeared before me **GARY M. WRIGHT** who being by me duly sworn did say that he is the President of **G.M.W. DEVELOPMENT, dba IVORY NORTH**, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; and they acknowledged to me that said corporation executed the same.



Marilyn J. Holje
Notary Public

My Commission Expires:
6-20-2007

Residing at:
Centerville UT

EXHIBIT "A"

LEGAL DESCRIPTION OF SUBDIVISION PROPERTY

Beginning at a point located West 7.690 feet and South 80.640 feet from the South Quarter corner of Section 7, Township 2 North, Range 1 East, Salt Lake Base and Meridian, thence South $00^{\circ}07'32''$ East 249.090 feet, thence North $89^{\circ}51'43''$ West 223.330 feet, thence South $00^{\circ}03'17''$ East 250.580 feet; thence North $89^{\circ}51'43''$ West 161.750 feet; thence North $00^{\circ}03'17''$ West 250.580 feet; thence North $89^{\circ}51'43''$ West 291.370 feet; thence North $00^{\circ}03'17''$ West 77.800 feet; thence North $89^{\circ}25'58''$ West 193.681 feet; thence North $00^{\circ}04'00''$ West 1072.792 feet; thence North $89^{\circ}54'00''$ East 441.424 feet; thence North $00^{\circ}07'51''$ West 136.630 feet; thence North $89^{\circ}53'45''$ East 427.500 feet; thence South $00^{\circ}07'32''$ East 776.370 feet; thence North $89^{\circ}59'59''$ West 266.210 feet; thence South $00^{\circ}33'21''$ West 264.258 feet; thence South $89^{\circ}26'39''$ East 269.371 feet to the point of beginning.

Contains 23.32 acres

EXHIBIT "B"**LEGAL DESCRIPTION OF CITY PROPERTY**

A parcel of land, situate Lots 3 and 4, Block 21, Big Creek Plat, Centerville Townsite A Subdivision in the Southwest Quarter of Section 7, Township 2 North, Range 1 East, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows:

Beginning at a point which is 15.00 feet South $00^{\circ}01'51''$ West and 8.00 feet South $89^{\circ}53'45''$ West, and 1441.00 feet South $00^{\circ}07'51''$ East, along the Westerly boundary line of the Old Bamberger Railroad right-of-way from the Northeast corner of said Lot 4, said point of beginning is also 916.35 feet South $89^{\circ}53'45''$ West, along the monument line in Parrish Lane and 50.00 feet South $00^{\circ}01'51''$ East, and 1441.00 feet South $00^{\circ}07'51''$ East, along the Westerly boundary line of the Old Bamberger Railroad right-of-way from a Centerville City monument at the intersection of Parrish Lane and Main Street; and running thence South $89^{\circ}53'45''$ West 427.50 feet; thence South $00^{\circ}07'51''$ East 136.63 feet; thence South $89^{\circ}53'45''$ West 443.15 feet to the Easterly right-of-way line of 400 West Street; thence South $00^{\circ}03'25''$ East 128.50 feet along said Easterly right-of-way line; thence North $89^{\circ}53'45''$ East 870.51 feet; thence North $00^{\circ}03'51''$ West 265.13 feet along the Westerly boundary line of the Old Bamberger Railroad right-of-way to the point of beginning.

EXHIBIT "C"

ENGINEER'S ESTIMATE FOR DETENTION BASIN



ESI Engineering, Inc.
 Consulting Engineers & Land Surveyors
 3500 South Main, Suite 206
 Salt Lake City, Utah 84115
 Phone 263-1752 FAX 263-1780

PROJECT FLORENTINE VILLA SUBD.
 OWNER CENTERVILLE CITY

SHEET NO
1 OF 1

ESTIMATED BY K.L.C.
 CHECKED BY F.T.C.

DATE
10-29-03

PROJECT NO.
03-079

ESTIMATE FOR OFF-SITE SUB-DRAIN IMPROVEMENTS

ITEM NO	ITEM DESCRIPTION	UNITS	QUANTITY	UNIT PRICE	AMOUNT
1	8" PVC Main	LF	1,262	\$15.00	\$18,930.00
2	48" MH	EA	6	\$1,000.00	\$6,000.00
3	2" Sewer rock	TN	475	\$10.00	\$4,750.00
4	Separation fabric	SY	1,100	\$1.00	\$1,100.00
5	Backfill w/ native material incl. compaction.	CY	1,200	\$5.00	\$6,000.00
6	Clay Dams as per Army Corp.	Each	5	\$500.00	\$2,500.00
7	Backfill w/ import granular fill in 400 W.	TN	100	\$7.50	\$750.00
8	Road-base including compaction.	TN	15	\$10.00	\$150.00
9	Asphalt patching (5" to 6" thick)	TN	10	\$60.00	\$600.00
	Subtotal				\$40,780.00
10	Contingency & Engineering		20%		\$8,156.00
	TOTAL				\$48,936.00
	Ivory Homes Share (67 Lots)		93.06%		\$45,539.84
	Wayne Carlson Share (5 Lots)		6.94%		\$3,396.16
	Wayne Carlson's Lateral	LF	160	\$15.00	\$2,400.00
	Wayne Carlson Street Backfill	TN	130	\$7.50	\$975.00
	Wayne Carlson Total Estimated Cost				\$6,771.16