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Ivory Southern, LLC
3143 S 840 E
St George, UT 84790

DOC # 20070001199

Agreement Page 1 of 13
Russell Shirts Washington County Recorder
01/08/2007 04:51:47 PM \$ 34.00 By IVORY SOUTHERN



**DEVELOPMENT AGREEMENT
FOR
HIDDEN VALLEY AND FOSSIL HILLS**

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered as of the 25th day of December, 2006 (the "Effective Date"), by and between ST. GEORGE CITY, a Utah municipal corporation, hereinafter referred to as "City"; and IVORY SOUTHERN, LLC, a Utah limited liability company, hereinafter referred to as "Developer." City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. Developer has the right to develop approximately 360± acres of land located within St. George City and situated near the Bloomington Hills area in the southern portion of the City (the "Property"), more particularly described in Exhibit A, attached hereto and incorporated herein by this reference. The Property shall include any real property expressly made subject to this Agreement by City and Developer.

B. Development of the Property into 1,072 units of residential density (the "Project") has been approved by the City as part of The Hidden Valley and Fossil Hills Planned Development Zone with accompanying zone text and Master Plan Map attached hereto as Exhibit B (collectively the "Project Plan").

C. The City intends to enter into this Development Agreement with the Developer for the purpose of vesting the development rights of the Property and guiding the development of the Project in accordance with the terms and conditions of the Agreement and in accordance with St. George City Ordinances, rules and regulations and legislative approval conditions, impact fee studies, and construction standards existing as of the date hereof (the "Applicable City Ordinances"), and to address the scope of off-site road improvements and impact fee credits for creation and dedication of a community park.

AGREEMENT

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

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.
2. Property Development.
 - a. Approval of Project Plan. The Project has been approved and is intended to be developed as a mixed-use development under provisions of the Project Plan (Exhibit B) this Agreement and the Applicable City Ordinances.

b. Changes to Project Plan. The Developer shall be entitled to minor variations from the Project Plan without amending the same. The City planning staff shall determine whether a variation is minor.

3. Parks and Open Space.

a. Community Park. The Developer shall construct in Phase One of the development, a 12.5 acre park on Parcel 2.2 (the "Community Park"). The Community Park will contain the improvements described and approved by the St. George City Leisure Services Department. Developer shall submit a plan and estimated cost to the Leisure Services Department to obtain approval prior to work beginning on the Community Park. Upon completion of the park improvements, the Community Park will be dedicated to the City. The Community Park will benefit other developments and comprise a System Improvement reimbursable by the City. The construction of the Community Park shall commence within one hundred and fifty (150) days of the execution of this Agreement by all parties. Upon dedication of the Community Park to the City, Developer shall be entitled to a waiver of, and credit for, its park impact fees in the amount of the Developer's actual costs incurred in constructing the improvements thereon. The actual costs will include the cost of physical improvements and any necessary design expenses. Actual costs do not include administrative costs or any type of overhead costs. That impact fee credit shall apply to all park impact fees legally assessed against the Project, the Property or any lot or phase thereof, under the Applicable City Ordinances, until such credit is exhausted. In the alternative, at City's option, in lieu of the Park Impact Fee waiver/credit, Developer ~~shall be entitled to~~ may receive quarterly reimbursements from the City comprising the park impact fees received by the City assessed against the Project, the Property or any lot or phase thereof ~~benefiting the Community Park~~, until the Reimbursable Costs are paid in full. Dedication of the Community Park, upon completion, shall be made by way of a separate Community Park plat.

b. Smaller Park. Parcel 3.3 of the Project contains 8.5 acres. A church will be constructed on a portion of that property, but approximately 3.5 acres will be dedicated to the City for a smaller City park (the "Smaller Park"). This Smaller Park may also be used as detention for the Hidden Valley development. The City shall construct the Smaller Park improvements at the City's cost and expense. The dedication of the Smaller Park acreage by Developer shall occur before 400 Certificates of Occupancy have been issued by the City for units constructed on lots within the Project.

c. Maintenance of Open Spaces. The City shall assume full responsibility for the maintenance of all parks, trails and other open spaces dedicated or conveyed by Developer to the City from and after any applicable warranty period or as otherwise set forth in the Applicable City Ordinances, only if said conveyances or dedications are accepted by City.

d. Hillside Dedication. Concurrent with the development of the Project certain open spaces and hillside locations will be dedicated to the City. These open spaces and hillside locations will be similar to those which are described on the attached

Exhibit D. Both City and Developer recognize that development plans may change and would thereby edit the open space and hillside locations being dedicated to the City. Developer will donate and dedicate the open space as shown in Exhibit D, or locations that are similar, which is in or adjacent to each plat in the Project at the time each plat is approved.

4. Off-site Roads and Traffic Improvements.

a. Off-site Brigham Road Improvements. Pursuant to that certain traffic report dated May 24, 2006, Developer is responsible for a certain percentage of several offsite improvements described on Exhibit C. The estimated cost of these improvements along with the Developer's responsibility have been identified on Exhibit C hereof (the "Brigham Road Improvements"). The parties agree that Developer's percentage share of The Brigham Road improvements is ~~\$593,102~~713,102, the ("Off-site Improvement Costs"). Developer shall pay the Off-site Road Improvement Costs to the City within sixty (60) days of the Effective Date of this Agreement. Payment of the Off-site Improvement Costs shall be earmarked by the City specifically for the construction of Brigham Road from Hidden Valley Drive to I-15. The Brigham Road Improvements are currently in the design phase. The parties agree that the City will proceed expeditiously to design, construct and complete the Brigham Road Improvements. If Developer feels that this project is not proceeding, Developer may give written notice to City expressing it's concerns. Following written notice from the Developer, the City would then have 10 calendar days to respond and cure.

b. Brigham Road/Hidden Valley Intersection Improvements (Item 6 on Exhibit C). City shall construct, or cause to be constructed, at its expense, the Brigham Road/Hidden Valley Intersection Improvements, according to the construction and design drawings which have been approved by St. George City. City will aggressively pursue the installation of the Brigham Road/Hidden Valley Intersection Improvements after the traffic signal is deemed to be warranted by a licensed traffic engineer.

c. Right Turn Lane at Brigham Street and 840 East. Developer will construct, or cause to be constructed, a right turn lane on Brigham Street at the intersection of Brigham Street and 840 East, consistent with the construction drawings which have been approved by St. George City (the "Right Turn Lane Improvements"). The Right Turn Lane Improvements will be constructed at Developer's expense. The construction shall occur at a time determined by the Developer, but not later than the construction of the Hidden Valley Office Building by Developer on the corner of 840 East and Brigham Road, as reflected in the Master Plan drawing attached hereto as Exhibit B.

5. Vested Rights and Reserved Legislative Powers.

a. Vested Rights. As of the Effective Date of this Agreement, Developer shall have the vested right to develop and construct the Project in accordance with the uses, densities, intensities, and general configuration of development established in the Project Plan, as supplemented by this Agreement (and all Exhibits),

subject to Applicable City Ordinance, to the extent not inconsistent herewith. It is the intent of the parties hereto to vest the Landowners with the right to develop the Project to the full extent permitted under Utah law. The parties acknowledge that the most efficient and economic development of the Project depends on numerous factors, such as market and demand, interest rates, competition, and similar factors. Accordingly, the timing, subdivision sequencing, and phasing of development of the Project shall be determined by the Landowners in their sole subjective business judgment and discretion. Any subsequent discretionary actions by the City or any conditions, terms, restrictions and requirements for such discretionary actions by the City, shall not prevent development of the Project for the uses and to the maximum density or intensity of development set forth in this Agreement.

b. Reserved Legislative Powers. Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers, such legislation shall not modify Developer's vested right as set forth herein unless facts and circumstances are present which require application of the exceptions to the vested rights doctrine as codified by Utah Code Ann. § 10-9a-509.

6. General Term and Conditions.

a. Notices. Any notices, request and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer: Ivory Southern, LLC
Colin Wright
Ivory Southern
3143 South 840 East
St. George, UT 84790

With a copy to:

Kevin Egan Anderson
Parry Anderson & Gardiner
1200 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

And

Ric McBrier
State Trust Lands
675 East 500 South, Suite 500
Salt Lake City, UT 84102

To the City: St. George City:
Legal Services
175 East 200 North
St. George, UT 84770

With a copy to:
Dave Demas
175 East 200 North
St. George, UT 84770

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

b. Attorneys' Fees. In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or the Project, the prevailing party or parties shall be entitled in addition to the remedies and damages, if any, awarded in such proceeding, to recover its or their costs and reasonable attorneys' fees.

c. Integration. This Agreement, together with the Exhibits hereto, integrates all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements or previous agreements between the parties, whether oral or written with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the respective parties hereto.

d. Headings. The 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.

e. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (if any assignments are allowed as provided herein).

f. No Third Party Rights. The obligations of Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City, Developer and any Transferees or Developer Affiliates.

g. Further Documentation. This Agreement is entered into by the parties with the recognition and anticipation that subsequent agreements implementing and carrying out the provisions of this Agreement may be necessary. The parties agree to negotiate in good faith with respect to all such future agreements.

h. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the City and Developer.

i. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the Washington County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on all successors in the ownership of any portion of the Property.

j. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of Final Plats, Certificates of Occupancy or other approvals associated therewith. All subsequent review of the development of the Project shall be subject to the terms and considerations of this Agreement and the Applicable City Laws to the extent not inconsistent therewith.

k. Applicable Law. This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with the laws of the State of Utah.

l. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Development Agreement.

m. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party in connection with this Project shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. The City shall allow plans and drawings to be submitted and permits issued in phases on an expedited basis as may be required for the progress of the design, engineering, construction and occupancy of the Project, and shall issue permits for construction for various phases prior to final review and approval of other phases submissions. Any consent, approval, permit, license or other authorization required from the City shall be given or withheld by the City in compliance with this Agreement, and the Applicable City Ordinances and standards.

n. Approval and Authority to Execute. Each of the parties represents and warrants as of the date this Agreement is executed that it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

o. Assignment. If Developer sells or transfers all or any portion of the Project, then (i) the City shall require the purchaser of the assets to assume the Developer's obligations under this Agreement; and (ii) the City shall be named as third party beneficiary of (and shall be permitted to enforce directly against the purchaser) such assumed obligations. In the event of a transfer or sale by Developer of less than all of the Property, Developer shall, nevertheless, retain exclusive control over the portions of the Property not sold or transferred, and the transferee(s) shall have no right to control or object to any subsequent amendment of this Agreement, and Developer may make any modifications thereto without notice to, or the consent of, any such transferee(s).

p. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

q. 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 therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; 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.

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

[SIGNATURE PAGE FOLLOWS]

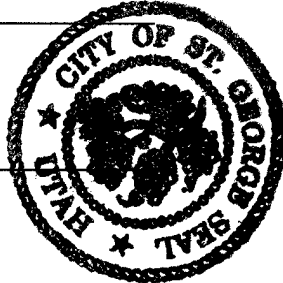
IN WITNESS WHEREOF the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

“CITY”
ST. GEORGE CITY

By: *Daniel D. McArthur*
Name: Daniel D. McArthur
Its: Mayor

ATTEST:

Gay Cragun
City Recorder



“DEVELOPER”
IVORY SOUTHERN, LLC

By: *Celiff W.*
Its: Area Manager

The undersigned, having an interest in the land concerned by this Development Agreement, hereby consents to the execution of this Development Agreement.

**THE STATE OF UTAH SCHOOL AND
INSTITUTIONAL TRUST LANDS ADMINISTRATION**

By: *Fredrick P. Van Buren*
Its: Assistant Director

CITY ACKNOWLEDGMENT

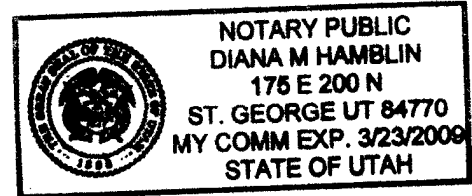
On the 28 day of December, 2006, personally appeared before my Daniel D McArthur, who being duly sworn, did say that he is the Mayor of ST. GEORGE CITY, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Wayne Mortimer acknowledged to me that the City extended the same.

Notary Public

Diana M Hamblin

My Commission Expires: 3/23/2009

Residing at: Washington, County, UT



DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH

WASHINGTON:ss

COUNTY OF ~~SALT LAKE~~)

On the 28 day of DECEMBER, 2006, personally appeared before me Colin Wright who being by me duly sworn did say that he is the President of Ivory Development, Inc., a Utah corporation, and that the within and foregoing instrument was signed on behalf of said corporation with proper authority and duly acknowledged to me that said corporation executed the same.

Notary Public

Shawn Guzman

My Commission Expires: _____

Residing at: _____

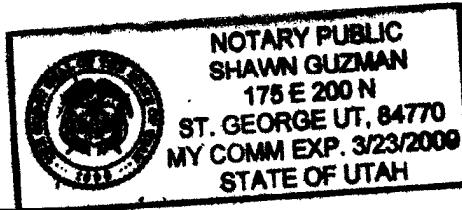


Exhibit A

SG-5-3-7-1101

Beginning at the Southwesterly most corner of US lot 12, Section 7, Township 43 South, Range 15 West, Salt Lake Base and Meridian, said point being located S 88°51'13" E along the section line 1280.54 feet from the South 1/4 corner of said Section 7, and running thence N 58°55'47" E along the Northwesterly line of said Lot 12, 193.80 feet; thence S 23°58'48" E to and along that parcel as described in entry number 907610 in the Records of Washington County 254.69 feet to the point of a 1600.00 foot radius curve to the left; thence along the arc of said curve and said parcel through a central angle of 16°07'34" a distance of 450.33 feet; thence S 40°06'22" E along said parcel 27.61 feet to a point on the Westerly boundary of Desert Hills Subdivision; thence continuing along the boundary of said Desert Hills Subdivision the following seventeen (17) courses, S 47°34'45" W 34.35 feet to a point on a 30.00 foot radius non-tangent curve to the right, the center of which bears S 43°50'17" W; thence Southeasterly and Southwesterly along the arc of said curve through a central angle of 93°01'41" a distance of 48.71 feet; thence S 46°51'58" W 237.84 feet to the point of a 429.00 foot radius curve to the left; thence along the arc of said curve through a central angle of 16°37'39" a distance of 124.50 feet; thence S 87°58'10" W 148.89 feet; thence N 78°10'16" W 93.39 feet; thence S 3°44'58" E 249.26 feet; thence S 61°50'59" E 190.14 feet; thence S 1°10'21" E 267.46 feet to the point of a 2442.00 foot radius curve to the right; thence along the arc of said curve through a central angle of 8°14'22" a distance of 351.17 feet; thence N 80°22'46" W 117.57 feet ; thence S 9°37'14" W 367.14 feet; thence S 32°15'04" W 122.28 feet; thence S 79°17'00" W 279.39 feet; thence S 6°18'11" E 239.00 feet; thence S 25°10'55" E 156.72 feet; thence S 9°19'20" W 245.83 feet; thence leaving said subdivision S 6°21'28" W 839.87 feet; thence S 77°22'21" W 3554.83 feet; thence N 88°32'22" W 439.98 feet to a point on the Easterly line of Section 13, Township 43 South, Range 16 West, Salt Lake Base and Meridian; thence N 1°15'11" E along the section line 650.60 feet to the South 1/16 corner of said Section 13; thence N 88°45'06" W along the 1/16 line 1321.56 feet to the Southeast 1/16 corner of said Section 13; thence N 1°15'24" E along the 1/16 line 1169.62 feet to a point on the Northwesterly boundary of that parcel as described in entry number 644932 in the Records of Washington County; thence N 56°53'27" E along said boundary 1600.72 feet to a point on the Easterly line of said Section 13, said point also being on the Southerly boundary of that parcel as described in entry number 642028 in the Records of Washington County; thence along said boundary the following three (3) courses, N 56°53'27" E 530.39 feet; thence N 81°07'00" E 604.88 feet; thence N 66°00'27" E 3485.32 feet to the point of beginning.

Contains 364.47 acres.

5-8586

Exhibit B

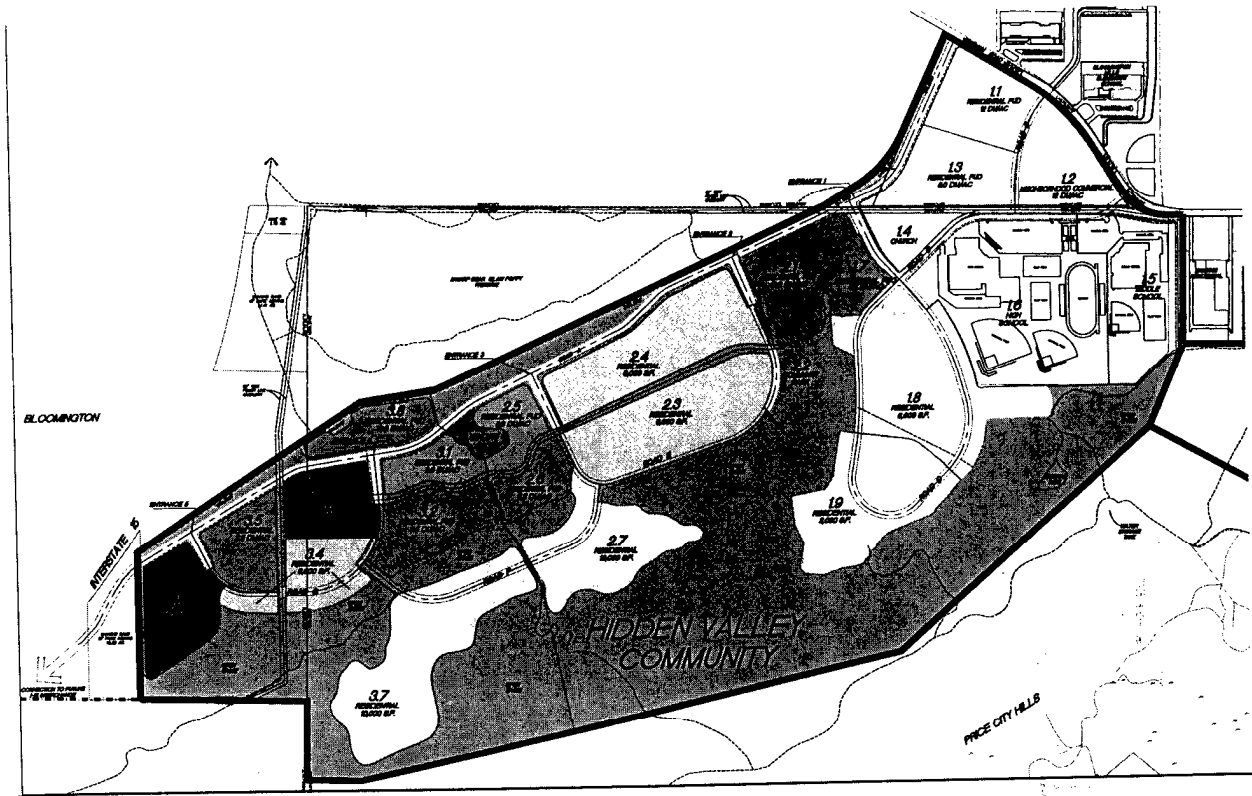


Exhibit C

IMPROVEMENTS PARTIALLY ATTRIBUTABLE TO HIDDEN VALLEY

Item	Total Estimate		project responsibility	
1 Brigham & Desert Hills	\$ 137,745	incl. traffic signal	25.8%	\$ 35,538
2 Brigham & Bloomington Hills	\$ 122,400	incl. traffic signal	25.8%	\$ 31,579
3 Brigham & River Road	\$ 187,406	incl. traffic signal	16.1%	\$ 30,172
4 Desert Hills & Price Hills	\$ 18,000		100.0%	\$ 18,000
5 Brigham Road Improvements	\$ 1,349,753		35.4%	\$ 477,813
6 Brigham & Hidden Valley	\$ 120,000	incl. traffic signal	100.0%	\$ 120,000
Totals	\$ 1,935,304			\$ 713,102

Total Financial
 Obligation SITLA
 & Ivory **\$ 713,102**

Exhibit D

HIDDEN VALLEY COMMUNITY TRAIL MASTER PLAN

St. George, Utah



LAND USE

[Symbol]	Open
[Symbol]	City Park (To be dedicated to all shared use)
[Symbol]	Community (To be dedicated to all shared use)
[Symbol]	Residential
[Symbol]	Commercial
[Symbol]	Industrial
[Symbol]	Public
[Symbol]	Other

