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DOC # 2020035001

Agreement Page 1 of 9
Russell Shirts Washington County Recorder
07/09/2020 10:50:22 AM Fee \$ 0.00
By SOUTHERN UTAH TITLE CO



WHEN RECORDED RETURN TO:

WCWCD

533 East Waterworks Dr.

St. George, Utah 84770

Space Above This Line for Recorder's Use

Serial No. W-4-2-7-311-SLL

Impact Fee Promissory Note and Security Agreement

THIS AGREEMENT is entered this 10 day of June, 2020 between the Washington County Water Conservancy District, hereinafter referred to as "**District**", and Ivory Southern, LLC hereinafter referred to as "**Owner**".

WHEREAS, the **District** has established a water impact fee ("IMPACT FEE") which is required to be paid at the recording of subdivision plats, and

WHEREAS, the **Owner** has a vested interest in the project by virtue of a signed agreement with Brennan Holdings No. 200, LLC to purchase all the lots within Escondido at Sienna Hills, Phase 3 and Brennan Holdings No. 200 has a vested interest in the project by virtue pursuant to an unrecorded Lease Agreement, as evidenced by a MEMORANDUM OF LEASE, dated January 1, 2018, pursuant to the certain Development Lease Agreement No. 1133 (the "Lease") executed by the STATE OF UTAH, acting by and through the SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, as LESSOR, and by BRENNAN HOLDINGS NO. 200, LLC, a Utah limited liability company, as LESSEE, for a term of five (5) years from the date of this Memorandum, upon the terms, conditions and covenants therein provided, recorded January 31, 2018, as Doc. No. 20180004376, Official Washington County Records. (Affects this and other property) Addendum No. 1 to Development Lease Agreement No. 1133 recorded March 21, 2019, as Doc No. 20190010269 of Official Records. Addendum

No. 2 to Development Lease Agreement No. 1133, recorded May 8, 2019, as Doc No. 20190017354 of Official Records. Addendum No. 3 to Development Lease Agreement No. 1133, recorded May 31, 2019, as Doc No. 20190021191 of Official Records. Addendum No. 4 to Development Lease Agreement No. 1133, recorded August 20, 2019, as Doc No. 20190033299 of Official Records. Addendum No. 5 to Development Lease Agreement No. 1133, recorded January 13, 2020, as Doc No. 20200001877 of Official Records. Addendum No. 6 to Development Lease Agreement No. 1133, recorded April 13, 2020, as Doc No. 20200017906 of Official Records

WHEREAS, the **Owner** desires to record a plat, the legal description of which is attached hereto and incorporated herein by this reference as **Exhibit A** (the "Property"); and

WHEREAS, the parties desire to reach an arrangement to allow **Owner** to postpone payment of some or all of the IMPACT FEE until after recording of the subdivision plat while providing for the orderly payment of fees;

NOW, THEREFORE, the **District** and **Owner** agree as follows:

1. The **Owner** executes this agreement to be recorded with the subdivision plat and which shall be an encumbrance upon each and every residential lot and any common area for which the IMPACT FEE is to be charged.
2. The IMPACT FEE shall be paid for each residential lot upon the earlier of the following events:
 - a. upon the sale of the lot by the **Owner** to a third party;
 - b. upon the issuance of a building permit for construction on the lot; or
 - c. three years from the date of this agreement.
3. The IMPACT FEE for common areas shall be due and payable upon the earliest of

issuance of a water meter for the common area or three years from the date of this agreement.

4. If the requirement of provision 2.a, above, is not met for any lot or if provision 3 is not met, the IMPACT FEE shall be immediately due and payable in full for all lots and all common area in the subdivision.

5. The amount paid will be the amount of the applicable IMPACT FEE in effect at the time of payment.

6. This agreement will be recorded simultaneously with the recording of the final plat with the Washington County Recorder's Office. The **District** shall release each individual lot upon the payment of the IMPACT FEE for that lot as set forth above.

7. In the event the **Owner** has not paid in full the IMPACT FEES for all lots within the subdivision when due and payable as set forth above, the **District** shall have the right to foreclose the Property and/or foreclose **Owner's** interest in the Lease, as applicable, as if it were a trust deed, with all the rights granted by the laws of the State of Utah for foreclosure and shall also be entitled to recover all costs including but not limited to court costs and attorney's fees. During such time as title to the property is held by SKTLA, the **District** may only foreclose on **Owner's** interest in the property pursuant to the **Ivory Southern-Brennan Agreement**.

8. The parties intend, declare and covenant that the terms, conditions, agreement and covenants set forth in this Agreement shall run with the land and shall bind, and the benefits and burdens shall inure to, the parties and their respective successors and assigns.

SIGNATURES ON SUCCEEDING PAGE.

**WASHINGTON COUNTY WATER
CONSERVANCY DISTRICT:**

By M. [Signature]

OWNER:

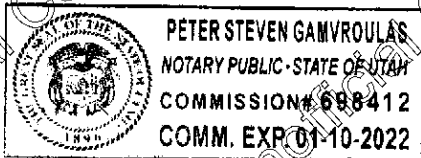
By: [Signature]
Manager - David Wolfgramm

STATE OF UTAH)

)ss.

COUNTY OF WASHINGTON)

On the 10TH day of JUNE, 2020, personally appeared before me DAVID WOLFGRAMM, MANAGER of IVORY SOUTHERN LLC, hereinafter "CORPORATION/PARTNERSHIP/LLC", who acknowledged to me that he/she executed the foregoing instrument on behalf of the CORPORATION/PARTNERSHIP/LLC, by appropriate authority, and that the document was the act of CORPORATION/PARTNERSHIP for its stated purpose.



[Signature]
NOTARY PUBLIC

Exhibit A

All of lot numbers 21 through 44 and lot numbers 115 through 144 (54 total lots) inclusive, in the Escondido at Sienna Hills, Phase 3 which is located in the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 7, Township 42 South, Range 14 West, SLB&M, Washington County, Utah, as per plat thereof recorded in the office of the Washington County Recorder, State of Utah.

District Initials: MH

Owner Initials: sew

AGREEMENT***(SITLA-Developer Recording of Impact Fee Promissory Note)***

This Agreement is entered into this 1 day of JULY, 2020, (the "Effective Date") between the Washington County Water Conservancy District ("WCWCD"), State of Utah, acting by and through the School and Institutional Trust Lands Administration ("SITLA"), Brennan Holdings No. 200, LLC, a Utah limited liability company ("Brennan") and Ivory Southern, LLC, a Utah limited liability company ("Ivory Southern").

1. PURPOSE OF THE AGREEMENT

Upon recordation of the Escondido at Sienna Hills, Phase 3 subdivision plat (the "Plat"), WCWCD requires that impact fees for the subdivision be paid in full or that an Impact Fee Promissory Note and Security Agreement (the "Note") is recorded along with the Plat. Ivory Southern wishes to execute a Note for the payment of the WCWCD water impact fees for the single-family lots and common areas shown on the Plat. The form of the Note is attached as Exhibit "1" to this Agreement. The Plat for the lots has not yet been recorded.

2. AGREEMENT BY EACH PARTY

2.1 SITLA is the owner of property (the "Property") which is to be subdivided into a subdivision to be known as the Escondido at Sienna Hills, Phase 3 the legal description of which is attached hereto as Exhibit "2".

2.2 SITLA has entered into a Development Lease Agreement with Brennan wherein, after recordation of the Plat for the above referenced proposed subdivision, SITLA will convey the lots to Brennan upon payment to SITLA pursuant to the terms of said Development Lease Agreement. Ivory Southern has entered into an agreement with Brennan to simultaneously purchase all of the lots within the property under a dual closing as outlined in the Development Lease Agreement.

2.3 The parties agree that the Note will be executed by Ivory Southern. Ivory Southern agrees to execute the Note to WCWCD, to be recorded concurrently with the Plat and to vest upon (a) a patent conveying the lots from SITLA to Brennan, and (b) a warranty deed conveying the lots from Brennan to Ivory Southern, said patent and deed to be recorded as soon as reasonably possible after the recordation of the Plat and Note. Payments will be due on sale of any lot by Ivory Southern as provided in the Note.

2.4 WCWCD has agreed to allow for the Note to vest upon the conveyance of the Property as set forth in Section 2.3 based upon (i) Ivory Southern assurances of strict

compliance with the due on sale clause of the Note and (ii) the documents in the chain of title on the Property being recorded as set forth in Section 3.

3. CHAIN OF TITLE OF RECORDING DOCUMENTS

In order for this Agreement to be effective, the following documents are to be recorded in the following order without any other documents being recorded in the interim:

- 3.1 The Official Subdivision Plat (along with applicable restrictive covenants)
- 3.2 Impact Fee Promissory Note from Ivory Southern to WCWCD
- 3.3 Patent from SITLA to Brennan
- 3.4 Warranty Deed from Brennan to Ivory Southern

4. SUPPLY OF WATER.

The parties hereby acknowledge and agree that, in the event the items set forth in Sections 2 and 3 are not performed in full, no water shall be made available to the Property unless and until the impact fees are paid in full for each and every lot and common area within the subdivision.

5. TERM.

This Agreement shall commence on the Effective Date and shall terminate with the payment of all impact fees due in accordance with the Note or as otherwise provided in Section 4.

6. GOVERNING LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah, without regard to its choice or conflicts of laws principles.

7. ENTIRE AGREEMENT; AUTHORITY

This Agreement shall constitute the entire agreement between the parties on this matter and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon the parties except to the extent incorporated in this Agreement. The parties signing this Agreement hereby declare that they have the authority to execute such documents on behalf of their respective organizations.

8. MODIFICATION OF AGREEMENT

Any modification of this Agreement or additional obligation assumed by the parties in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

9. ASSIGNMENT OF RIGHTS

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

10. EXHIBITS

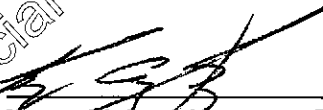
- 1. Form of Promissory Note and Security Agreement
- 2. Legal Description of Property

Effective as of that date first set forth herein.

SIGNATURES ON SUCCEEDING PAGE.

State of Utah, Acting by and through the School and Institutional Trust Lands Administration

Signed by:


Name: Kyle Pastey
its: Assistant Director

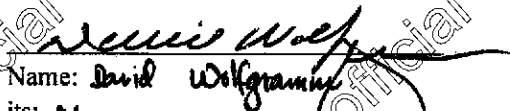
Brennan Holdings No. 200, LLC, a Utah limited liability company

Signed by:


Name: James A. Raines
its: Authorized Agent

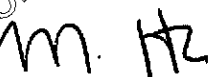
Ivory Southern, a Utah limited liability company

Signed by:


Name: David Wolfgramm
its: Manager

Washington County Water Conservancy District

Signed by:


Name: Melanie Hansen
its: Assistant Office Manager
Impact Fee Administrator

SITIA-Developer Recording Agreement