



## FRANCIS COMMONS DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of this 15<sup>th</sup> day of March, 2022, by and between IVORY DEVELOPMENT, LLC, a Utah limited liability company, and any applicable permitted successors and/or assigns (collectively, hereinafter called "Developer"), and the CITY OF FRANCIS, a political subdivision of the State of Utah (hereinafter called the "City"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between Developer and the City involving the same Property (defined below) and is the entire, complete Agreement between the Parties.

### RECITALS

A. The City, acting pursuant to its authority under Utah Code Ann. Section 10-9a-101, *et. seq.*, in compliance with the Francis City Land Use Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Francis Commons Subdivision and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals, and objectives of the City, and the health, safety, and general welfare of the public.

B. Developer has a legal interest in certain real property located in the City as described in Exhibit A attached hereto (the "Property").

C. Developer intends to develop the Property as one or more subdivision(s) consisting of three different zones. 1.63 acres City Center Zone (CC Zone); 7.58 acres Residential Multifamily (M-F Zone) and 8.66 acres Residential Cottage (R-C Zones). Developer will likely build in multiple phases, containing a combined total of approximately 30 single family lots, 12 multifamily units (above and or adjacent to retail) and 56 townhome lots. This development project is commonly known generally as the Francis Commons Subdivision. The development project is approximately 17.87 acres in total and is currently located in the R-H zone.

D. Each Party acknowledges that it is entering into this Agreement voluntarily. Developer and the City consent to all of the terms of the Agreement as valid conditions of development.

**NOW, THEREFORE**, in consideration of the promises, covenants, and provisions set forth herein, and for other good and valuable consideration the receipt and adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

## AGREEMENT

### **Section 1. EFFECTIVE DATE AND TERM**

#### **1.1 Effective Date.**

This Agreement shall become effective on the date it is executed by both Developer and the City (the "Effective Date"). Prior to recordation of the Agreement, the Effective Date shall be inserted in the introductory paragraph preceding the Recitals.

#### **1.2 Term.**

The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of 25 years from the Effective Date. Unless otherwise agreed in writing between the City and Developer, Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the dedications, easements, licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

### **Section 2. DEFINITIONS**

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including its Exhibits.

"Applicable Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Approved Preliminary Plan" shall mean the preliminary plan set attached as Exhibit B.

"Governing Body" shall mean the Francis City Council.

"Changes in the Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Conditions to Current Approvals" shall have the meaning set forth in Section 3.1(b) of this Agreement.

"City" shall mean the City of Francis and shall include, unless otherwise provided, any and all of the City's agencies, departments, officials, employees or agents.

"City General Plan" or "General Plan" shall mean the General Plan of the City of Francis.

"Developer" shall have that meaning set forth in the preamble and shall also include Developer's successors and/or assigns, including but not limited to any homeowners' association which may succeed to control of all or any portion of the Project.

"Director" shall mean the Director of the Francis City Planning Department, or his or her designee.

"Effective Date" shall have that meaning set forth in Section 1.1 of this Agreement.

"Notice of Compliance" shall have that meaning set forth in Section 8.1 of this Agreement.

"Planning Commission" shall mean the Francis City Planning Commission.

"Project" shall mean the Property and the development on the Property, which is the subject of this Agreement as well as any ancillary and additional improvements or endeavors incident thereto.

"Property" shall mean the parcel or parcels of land which are the subject of this Agreement and which are more particularly described in Exhibit A.

"Subsequent Approval" means a City approval or permit, has not yet been applied for as of the date of this Agreement, and which is reasonably necessary for completion of the Project as reasonably determined by the City.

### **Section 3. OBLIGATIONS OF DEVELOPER AND THE CITY**

#### **3.1 Obligations of Developer.**

(a) ***Generally.*** The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is material consideration for Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein.

(b) ***Conditions to Current Approvals.*** Developer shall comply with all of the following Conditions to Current Approvals:

- (1) ***Payment of Fees:*** Developer agrees to pay all Francis City fees as follows:

All engineering and reasonable attorney fees and other outside

consultant fees incurred by the City in relation to the Project, as authorized by the version of the Francis City Fee and Rate Ordinance in effect at the time the fee is charged. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.

- (2) **Phasing:** The Project and its improvements may be recorded, bonded for and constructed in separate phases, as shown on the Project plans. It is anticipated that the R-C Zone portion shall be constructed in Phase 1, before or concurrently with the M-F and CC Zone portions of the property.
- (3) **Water Rights:** Developer has acquired title to the Property as well as the water rights associated with the Property. The water rights associated with the Property have previously been transferred to the City. Specifically, the City acknowledges it has already received 30 acre-feet of water which shall be applicable to the Project. Any additional water required by the Project is required to be provided by Developer and shall meet all City policies and ordinances for culinary and irrigation use, respectively. The total quantity of water rights required to be dedicated to the City for the entire Project is defined by City ordinance; specifically, net 0.45 acre-feet of wet water for culinary use for each equivalent residential unit in the Project. In addition, Developer shall transfer to the City net three (3) acre feet of wet water for irrigation of each one acre of land in the Project. The required quantity of water rights for each phase of the Project shall be deeded to the City prior to the recording of the applicable plat(s) for such phase. All relevant determinations and approvals by the Utah Division of Water Rights for change and use of the water rights in the City's water system for the Project must be completed before any building permits are issued for any structures in the applicable phase. If such determinations and approvals by the Division of Water Rights increase or reduce the total quantity of wet water available to the City based on the Developer's applications, Developer shall deed to the City the additional amount of water rights needed to comply with the determinations. Developer shall bear all responsibility and expense for processing and obtaining such determinations and approvals. The water use for the residential part of the Project is 44.1 acre-ft for culinary use and 21 acre-ft for irrigation use for a total of 65.1 acre-ft. The Developer needs transfer to the City an additional 35.1 acre-ft for the residential use in addition to the 30 acre-ft that has already been received. Once the commercial uses have been determined, the Developer will need to transfer additional water shares for the commercial uses prior receiving building permits for the commercial buildings.

- (4) **Sidewalks/Trails:** Developer agrees to construct all sidewalks and trails consistent with City Code and along all private roads within the development.
- (5) **Park:** The proposed park shall be constructed in a manner consistent with City Code and consistent with the approved preliminary plan. The HOA to be created by the Developer shall own and maintain the park.
- (6) **Roads:** All private roads in the project constructed by Developer shall be maintained by the HOA to be created by the Developer. The HOA shall maintain, in good repair, all private roads in the Development.
- (7) **Construction and/or Dedication of Project Improvements:** Developer agrees to construct and/or dedicate project improvements as reasonably directed by the City in the ordinary course, including but not limited to roads, driveways, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. Developer will satisfactorily complete construction of all Project improvements for each phase in a good and workmanlike manner no later than two (2) years after the recording of the plat for that phase, subject to reasonable delays due to events of force majeure. Developer also agrees to comply with the following, at its own expense:
- (a) Developer will construct facilities for collection and disposal of storm water within the Project, including but not necessarily limited to swales and retention ponds, as shown on the Project plans and in compliance with Applicable Law, under the direction of the City Engineer.
  - (b) Developer will construct facilities within the Project necessary to deliver water throughout the Project and its lots from the City's public water system. Developer will construct sanitary sewer facilities within the Project necessary to serve the Project and will connect such facilities to the City's sewer system, as shown on the Project plans and in compliance with Applicable Law, under the direction of the City Engineer. Under prior zoning, the nearby sewer lift station was sufficient and therefore was not included in the City's capital facilities plan. The increased density for this project will require the lift station to be improved. The estimated cost attributable to Developer for the Project is \$15,000.00. The current sewer ponds have the capacity for the Project.

- (8) **Weed Control:** Developer shall reasonably control, mow or trim weeds and vegetation at all times in all areas of the Project. Developer may assign this obligation to a successor including the applicable homeowner's association(s) for the Project. Any CC&Rs shall be provided to the City for review and given an opportunity to provide feedback and alternative language as the City deems necessary. Developer shall consider the City's feedback in good faith but shall not be bound by the City's feedback.
- (9) **Retention/Detention Ponds:** Developer will construct Retention/Detention ponds as per locations and details shown in the approved construction drawings that will function as part of the Project's storm water disposal system. Developer is required to get permission from the irrigation company to discharge storm water into the irrigation system.
- (10) **Frontage Area:** Once the Project improvements receive final construction inspection approval, each owner of a lot within the Project will at all times be responsible to conduct proper maintenance, landscaping and snow removal in the area in front of the lot up to the public road.
- (11) **Warranty:** Consistent with City standards, Developer will provide a one-year warranty for the operation of all infrastructure improvements.
- (12) **Bonding:** Developer agrees to post bonds in amounts and types established by the City related to the performance of Developer's construction obligations for the Project, pursuant to current City ordinances and standards to the extent not inconsistent with state law.
- (13) **Snow Removal:** Developer or HOA is responsible for snow removal along townhome alleys and in City Center parking areas in perpetuity. Developer or HOA is responsible for snow removal along Deer Park Drive, Elk Crest Way, and Wren Woods Way until connecting streets are dedicated to the City, at which time the City will assume snow removal duties. City is responsible for snow removal along Scenic Heights Road.

### **3.2 Obligations of the City.**

(a) **Generally.** The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

(b) **Conditions to Current Approvals.** The City shall not impose any further Conditions to Current Approvals other than those detailed in this Agreement and on the Approved Preliminary Plan as shown in Exhibit B, unless agreed to in writing by the Parties.

(c) **Acceptance of Improvements.** The City agrees to accept all Project improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that (1) the Francis City Planning and Engineering Departments promptly review and approve the plans for any Project improvements prior to construction; (2) Developer permits Francis City Planning and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; (3) the Project improvements have been inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the plans and specifications; (4) Developer has warranted the Project improvements as required by the Francis City Planning and Engineering Departments; and (5) the Project improvements pass a final inspection by the Francis City Public Works and Engineering Departments.

#### **Section 4. VESTED RIGHTS AND APPLICABLE LAW**

##### **4.1 Vested Rights.**

(a) **Generally.** As of the Effective Date of this Agreement, Developer shall have the vested right to develop the Property in accordance with this Agreement and Applicable Law. To such an extent that the terms and conditions of this Agreement conflict with the Applicable Law or the City's future ordinances, standards, or regulations, this Agreement shall be considered a land use application and an ordinance adopted by the City through its legislative power and consistent with Utah Code Ann. § 10- 9a-502 (2021), including a review and recommendation from the planning commission and a public hearing, and shall thereafter operate as an amendment to any portion of the Applicable Laws that is inconsistent with the terms and conditions of this Agreement. The Parties specifically intend that this Agreement grants to Developer "vested rights" as that term is construed in Utah Code Ann. § 10-9a-509 (2021).

(b) **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation shall not modify Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

## **4.2 Applicable Law.**

(a) **Applicable Law.** The rules, regulations, official policies, standards and specifications applicable to the development of the Property (the "Applicable Law") shall be in accordance with those set forth in the Conditions to Current Approvals set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including City ordinances and resolutions, in force and effect on the date the City Council granted preliminary approval to Developer. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City.

(b) **State and Federal Law.** Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

## **Section 5. AMENDMENT.**

Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Project. Each person or entity (other than the City and Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

## **Section 6. COOPERATION-IMPLEMENTATION**

### **6.1 Processing of Subsequent Approvals.**

(a) Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval



application including, without limitation, (i) the notice and holding of all required public hearings, and (ii) granting the Subsequent Approval application as set forth below.

(b) The City's obligations under Section 6.1(a) of this Agreement are conditioned on Developer's provision to the City, in a timely manner, of all documents, applications, plans, and other information necessary for the City to meet such obligations. It is the express intent of Developer and the City to cooperate and work diligently and in good faith to promptly obtain and issues any and all Subsequent Approvals.

(c) The City may deny an application for a Subsequent Approval by Developer only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the Conditions to Current Approvals, or (iii) the City is unable to make all findings related to the Subsequent Approval required by Applicable Law. The City may approve an application for such a Subsequent Approval subject to any conditions reasonably necessary to bring the Subsequent Approval into compliance with Applicable Law or to make the Subsequent Approval consistent with the Conditions to Current Approvals, so long as such conditions comply with Section 4.1(b) of this Agreement.

(d) If the City denies any application for a Subsequent Approval, the City must specify in reasonable detail the modifications required to obtain approval of such application. Any such specified modifications must be consistent with Applicable Law and Section 4.1(b) of this Agreement. The City shall promptly approve the application if subsequently resubmitted for the City's review and the application complies with the specified modifications.

## **6.2 Other Governmental Permits.**

(a) Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.

(b) The City shall cooperate with Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.1(b) of this Agreement. However, the City shall not be required by this Agreement to join, or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

## **Section 7. DEFAULT; TERMINATION; ANNUAL REVIEW**

### **7.1 General Provisions.**

(a) **Defaults.** Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written

mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

***(b) Termination.*** If the City elects to consider terminating this Agreement due to a material uncured default of Developer after an opportunity to cure pursuant to Section 7.1(a), above, then the City shall give to Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such hearing, Developer does not waive any and all remedies available to Developer at law or in equity.

## **7.2 Review by City**

***(a) Generally.*** The City may at any time and in its sole discretion request that Developer demonstrate that Developer is in full compliance with the terms and conditions of this Agreement. Developer shall provide any and all information requested by the City to substantiate Developer's compliance with the terms and conditions of this Agreement within thirty (30) days of the request, or at a later date as agreed between the Parties.

***(b) Determination of Non-Compliance.*** If the City Council finds and determines on the record and upon substantial evidence that Developer has not complied with the terms of this Agreement, and noncompliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to Section 7.1(a) of this Agreement. If the default is not cured timely by Developer, the City may terminate this Agreement as provided in Section 7.1(b) of this Agreement.

***(c) Dispute Resolution.*** All issues resulting from the City's Denial of a development application, default by any of the Parties, or other matters that are disputed under this Agreement shall be mediated. If the City and Developer are unable to resolve a denial, default, or dispute, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the denial, default, or issue in dispute. If the parties to the denial, default, or dispute are unable to agree on a single acceptable mediator, they shall each, within ten (10) business days, appoint their own representative.

These two representatives shall, between them, choose the single mediator. Within ten (10) business days after the selection of the chosen mediator, each party shall provide to the chosen mediator and the other party a position paper setting forth their respective positions, along with any relevant facts or circumstances. The chosen mediator shall, within fourteen (14) calendar days, review the positions of the parties to the denial, default, or dispute and schedule a mediation. The mediator's fees shall be split equally between City and Developer. The final decision of the mediator shall not be binding on the parties to the Denial.

### **7.3 Default by the City.**

In the event the City defaults under the terms of this Agreement, Developer shall have all rights and remedies provided in Section 7.1 of this Agreement and provided under Applicable Law.

### **7.4 Enforced Delay; Extension of Time of Performance.**

Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, global health crisis, pandemics or epidemics (it being understood that the parties shall use reasonable efforts which are consistent with accepted practices in the real estate industry, and in compliance with applicable health department regulations, to resume performance as soon as practicable under the circumstances), restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

## **Section 8. NOTICE OF COMPLIANCE**

### **8.1 Timing and Content.**

Within fifteen (15) days following any written request which Developer may make from time to time, the City shall execute and deliver to Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledged by the City, certifying that: (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.

## **8.2 Failure to Deliver.**

Failure to deliver a Notice of Compliance within the time set forth in Section 8.1 shall constitute a presumption that as of fifteen (15) days from the date of Developer's written request (i) this Agreement was in full force and effect without modification except as may be represented by Developer; and (ii) there were no uncured defaults in the performance of Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7.2 or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7.1 of this Agreement for defaults which commenced prior to the presumption created under this Section, and which have continued uncured.

## **Section 9. CHANGE IN DEVELOPER, ASSIGNMENT, TRANSFER AND NOTICE.**

The rights of the Developer under this agreement may be transferred or assigned, in whole or in part, with the written consent of the City. Developer shall give notice to the City of any proposed transfer or assignment at least thirty (30) days prior to the proposed date of the assignment. The City shall not unreasonably withhold, delay, or condition its consent to a proposed transfer or assignment of the rights and obligations of Developer under this Agreement.

## **Section 10. MISCELLANEOUS**

**10.1 Incorporation of Recitals and Introductory Paragraph.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

**10.2 Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

**10.3 Other Necessary Acts.** Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions to Current Approvals, and Subsequent Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

**10.4 Construction.** Each reference in this Agreement to any of the Conditions to Current Approvals or Subsequent Approvals shall be deemed to refer to the Condition to Current Approval or Subsequent Approval as it may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. 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 Agreement.

**10.5 Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

**10.6 Covenants Running with the Land and Manner of Enforcement.**

The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

The City may look to Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Project owned or controlled by such party. The City may, but is not required to, perform any obligation of Developer that Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to individual lots or units in the Project.

**10.7 Waiver.** No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach.

**10.8 Remedies.** Either Party may institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement; provided, however, that no action for monetary damages may be maintained by either party against the other party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this

Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorneys' fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).

**10.9 Utah Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

**10.10 Other Public Agencies.** The City shall not unreasonably withhold, condition, or delay its determination to enter into any agreement with another public agency concerning the subject matter and provisions of this Agreement if necessary or desirable for the development of the Project and if such agreement is consistent with this Agreement and Applicable Law. Nothing in this Agreement shall require that the City take any legal action concerning other public agencies and their provision of services or facilities other than with regard to compliance by any such other public agency with any agreement between such public agency and the City concerning subject matter and provisions of this Agreement.

**10.11 Attorneys' Fees.** In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of reasonable attorneys' fees.

**10.12 Covenant of Good Faith and Fair Dealing.** Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured by the other Party through this Agreement can be enjoyed.

**10.13 Representations.** Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing warranting Party:

(a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individual(s) represent.

(c) This Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium and equitable principles.

**10.14 No Third-Party Beneficiaries.** This Agreement is between the City and Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

**Section 11. NOTICES**

Any notice or communication required hereunder between the City and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:

Mayor  
Francis City  
2317 Spring Hollow Rd.  
Francis, UT 84036

With Copies to:

Brad Christopherson  
Francis City Attorney  
2118 E. 3900 S. #300  
Holladay, UT 84124

If to Developer:

Ivory Development, LLC  
General Counsel  
978 Woodoak Lane  
Salt Lake City, Utah 84117

**Section 12. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS**

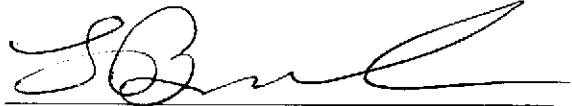
Unless otherwise noted herein, this Agreement, including its Exhibits, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the City and Developer.

**Section 13. SIGNING AND RECORDATION OF AGREEMENT**

Unless City and Developer mutually agree otherwise, this Agreement must be signed by both Developer and the City no later than ninety (90) days after the Agreement is approved by a vote of the Francis City Council, or else the City's approval of the Project will be rescinded. The City Recorder shall cause to be recorded, at Developer's expense, a fully-executed copy of this Agreement in the Official Records of the County of Summit no later than the date on which the first plat for the Project is recorded.

**IN WITNESS WHEREOF**, this Agreement has been entered into by and between Developer and the City as of the date and year first above written.

**CITY OF FRANCIS:**



Jan Brussel  
Mayor

**Attest:**



Suzanne Gillett  
City Recorder

STATE OF UTAH            )  
  ss:  
COUNTY OF SUMMIT    )

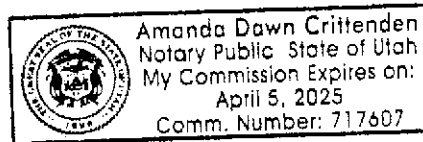
The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of March, 2022, by Jan Brussel, who executed the foregoing instrument in his capacity as the Mayor of the City of Francis, Utah, and by Suzanne Gillett, who executed the foregoing instrument in her capacity as the Francis City Recorder.

NOTARY PUBLIC

Residing at: Francis City, Summit County

My Commission Expires:

April 5, 2025





IVORY DEVELOPMENT, LLC

Christopher P. Gamvroulas  
Signature

By: (Print Name) CHRISTOPHER P. GAMVROULAS

Its: (Title) PRESIDENT

\_\_\_\_\_  
Signature

By: (Print Name) \_\_\_\_\_

Its: (Title) \_\_\_\_\_

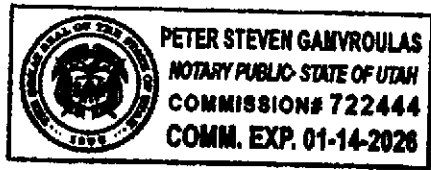
STATE OF UTAH )

COUNTY OF SALT LAKE )  
:ss

The foregoing instrument was acknowledged before me this 7<sup>TH</sup> day of MARCH, 2022, by CHRISTOPHER P. GAMVROULAS, who executed the foregoing instrument in his/her capacity as PRESIDENT of IVORY DEVELOPMENT LLC.

Peter Steven Gamvroulas  
NOTARY PUBLIC  
Residing at: SALT LAKE COUNTY

My Commission Expires:  
01-14-2026



**Exhibit "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

[Attach description of entire Project boundaries]

**AS-SURVEYED BOUNDARY DESCRIPTION:**

A PORTION OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 29,  
TOWNSHIP 2 SOUTH, RANGE 6 EAST, SALT LAKE BASE AND MERIDIAN:

BEGINNING AT A POINT N00°00'00"E 681.09 FEET AND N90°00'00"W 52.00 FEET FROM  
THE SOUTHEAST CORNER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 6 EAST, SALT  
LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 89°58'59" WEST 1265.83 FEET  
ALONG A FENCE LINE TO THE EASTERLY LINE OF RIVER BLUFFS PLAT B SUBDIVISION;  
THENCE ALONG SAID EASTERLY LINE N00°00'00"E 288.87 FEET; THENCE ALONG THE  
EASTERLY LINE OF RIVER BLUFFS SUBDIVISION N00°11'00"E 317.37 FEET; THENCE  
N12°58'03"W 70.11 FEET TO THE SOUTHERLY LINE OF WILD WILLOW SUBDIVISION,  
PHASE 2D; THENCE ALONG SAID SOUTHERLY LINE S89°37'10"E 14.15 FEET AND  
N00°22'37"E 0.69 FEET; THENCE S89°56'50"E 872.35 FEET ALONG THE SOUTHERLY LINE  
OF PARCEL FT-2037; THENCE S01°27'11"E 249.28 FEET ALONG A FENCE LINE; THENCE  
S89°56'50"E 387.72 FEET ALONG A FENCE LINE TO THE EASTERLY RIGHT OF WAY LINE  
OF STATE ROUTE 32; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE S00°00'00"E  
424.43 FEET TO THE POINT OF BEGINNING.

CONTAINS 17.37 ACRES IN AREA

FT-53-A

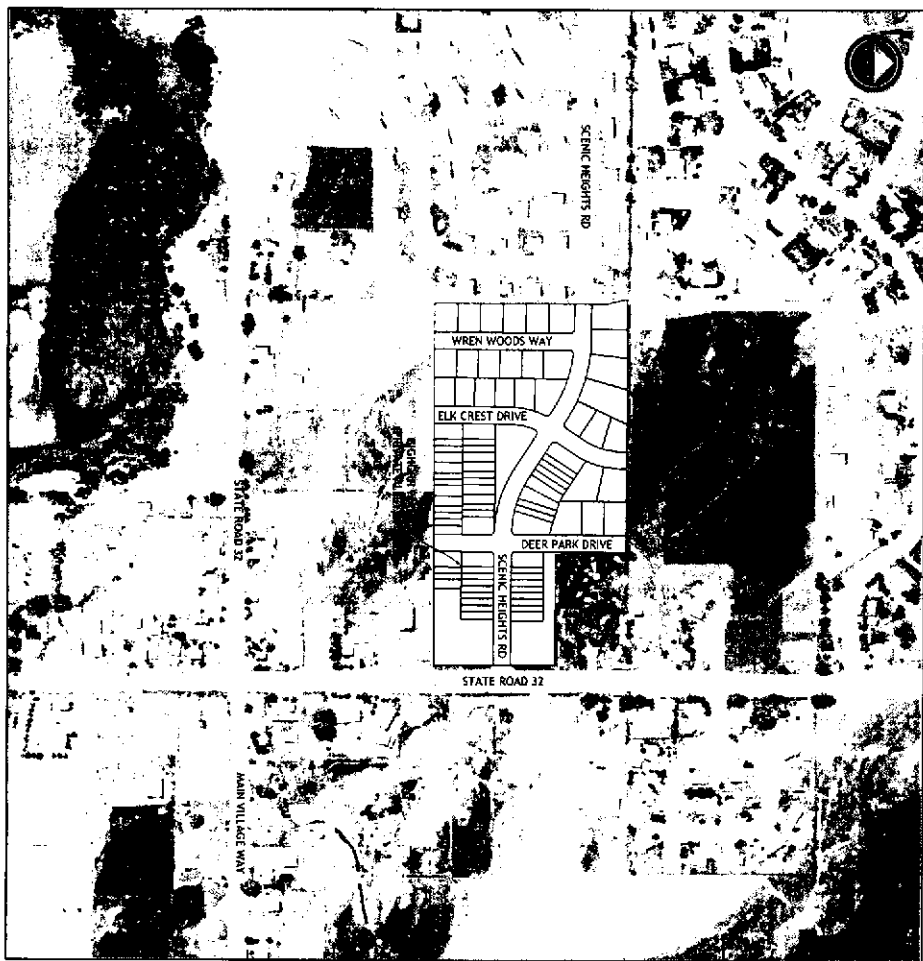
**Exhibit "B"**

**APPROVED PRELIMINARY PLAN**

# FRANCIS COMMONS

FRANCIS CITY, UTAH

## PRELIMINARY PLANS



VICINITY MAP  
1" = 200'

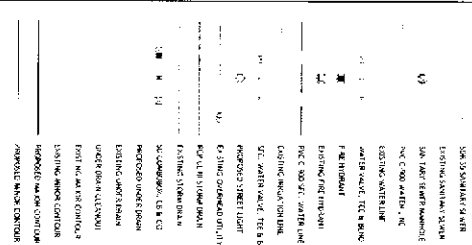
CHEMUNDA CITY

A SITE SPECIFIC GEOCHEMICAL STUDY HAS BEEN PREPARED FOR THIS PROJECT BY IDEC. THE REPORT IS DATED MAY 10, 2011, AND WAS PREPARED BY JUSTIN WINTER. THE SITE IS IDENTIFIED BY JOB PROJECT NUMBER 0308-134. THE REQUIREMENTS OUTLINED IN THIS STUDY SHALL BE FOLLOWED ON THIS PROJECT.

### REQUIREMENTS

- 0-1 TITLE SHEET
- 0-2 0-3 SUBDIVISION PLAN
- 0-4 SITE PLAN
- 0-5 OVERALL UTILITY PLAN
- 0-6 OVERALL GRADING AND DRAINAGE PLAN

### LEGEND



### NOTATIONS

THE PROJECT BENCHMARK IS A BRASS CUP MARKING THE SOUTHWEST CORNER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 6 EAST, SALT LAKE BASE & MERIDIAN. THE BENCHMARK IS LOCATED AT THE INTERSECTION OF STATE ROAD 11 AND SPRING HOLLOW ROAD APPROXIMATELY 767 FEET SOUTH OF SCENIC HEIGHTS ROAD ELEVATION = 5293.58



3415 E. 1200 SOUTH, SUITE 200, WEST VALLEY CITY, UTAH 84119  
801.973.8000 FAX 801.973.8001 WWW.EDMPARTNERS.COM

PROJECT: Francis Commons  
575 East Woodland Lane  
Salt Lake City, UT 84117  
DATE: 05/10/11

### NOTES

1. All existing ground improvements shall be removed and replaced with the same or better materials and specifications as the original.
2. All utility under improvements shall be replaced with the same or better materials and specifications as the original.
3. All improvements in this project shall be constructed in accordance with the specifications of the Utah Department of Transportation (UDOT) Standard Specifications for Road and Bridge Construction, 2003 Edition, Section 101.01.
4. Contractor to verify the location and depth of all existing utilities prior to any excavation work.
5. Contractor to verify the location and depth of all existing utilities prior to any excavation work.

01185010 Page 21 of 23 Submitted by

### REVISIONS

NO.	DATE	DESCRIPTION
1	05/10/11	ISSUED FOR PERMIT
2	05/10/11	ISSUED FOR PERMIT
3	05/10/11	ISSUED FOR PERMIT
4	05/10/11	ISSUED FOR PERMIT
5	05/10/11	ISSUED FOR PERMIT
6	05/10/11	ISSUED FOR PERMIT
7	05/10/11	ISSUED FOR PERMIT
8	05/10/11	ISSUED FOR PERMIT
9	05/10/11	ISSUED FOR PERMIT
10	05/10/11	ISSUED FOR PERMIT



Francis Commons

FILE SHEET

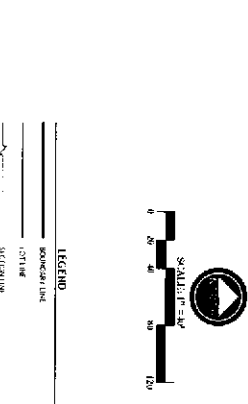
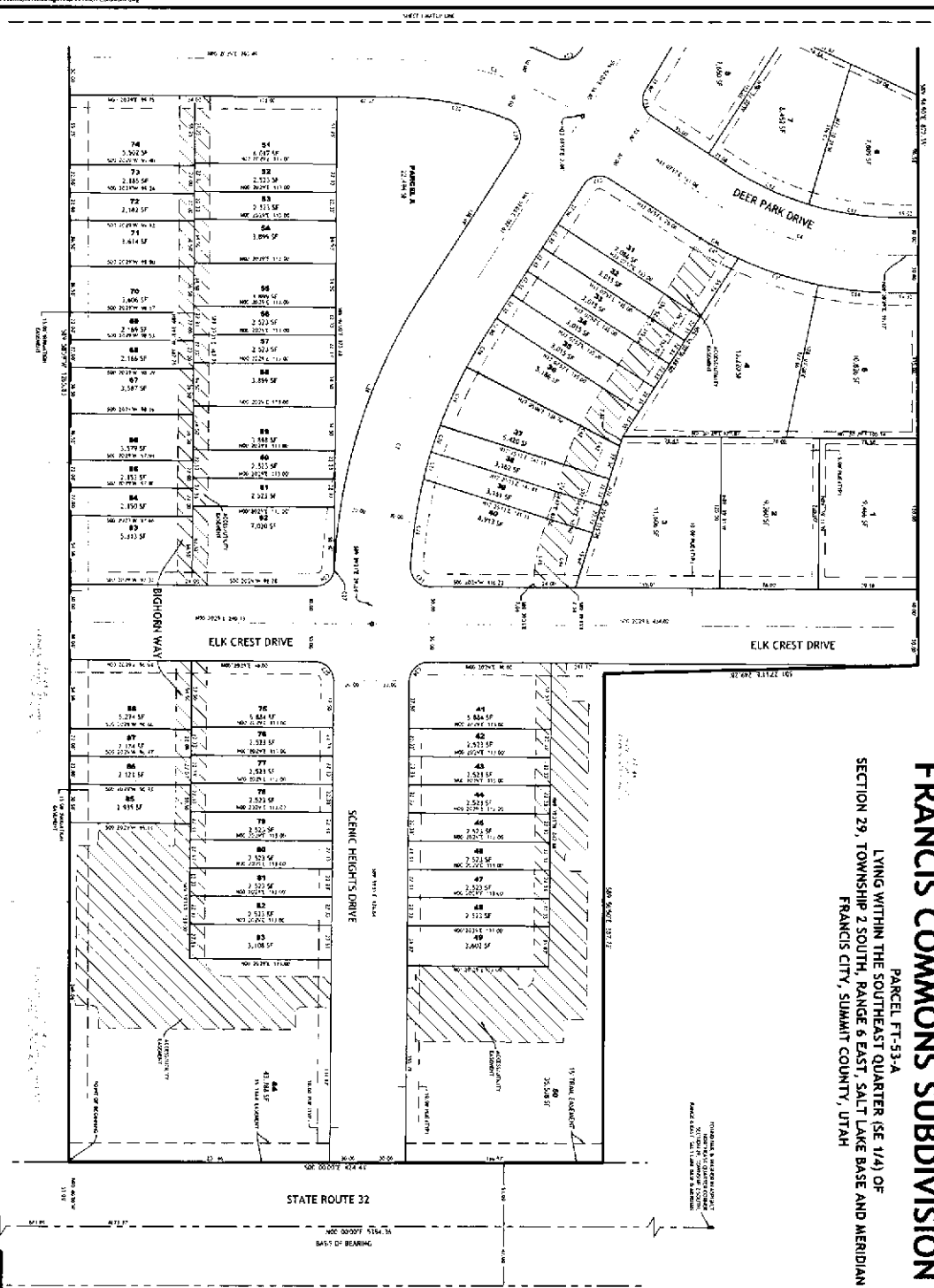
DATE: 05/10/11  
DRAWN BY: J. WINTER  
CHECKED BY: J. WINTER  
PROJECT NO.: 0308-134

DATE: 05/10/11  
CHECKED: 05/10/11  
SHEET NUMBER: 0-1



# FRANCIS COMMONS SUBDIVISION

PARCEL FT-53-A  
 LYING WITHIN THE SOUTHEAST QUARTER (SE 1/4) OF  
 SECTION 29, TOWNSHIP 2 SOUTH, RANGE 6 EAST, SALT LAKE BASE AND MERIDIAN  
 FRANCIS CITY, SUMMIT COUNTY, UTAH



- NOTES:**
1. THE SUBDIVISION IS SHOWN AS A SUBDIVISION OF THE LAND OWNED BY THE STATE OF UTAH, WHICH IS SHOWN AS A TRACT OF LAND IN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 6 EAST, SALT LAKE BASE AND MERIDIAN, FRANCIS CITY, SUMMIT COUNTY, UTAH.
  2. THE SUBDIVISION IS SHOWN AS A SUBDIVISION OF THE LAND OWNED BY THE STATE OF UTAH, WHICH IS SHOWN AS A TRACT OF LAND IN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 6 EAST, SALT LAKE BASE AND MERIDIAN, FRANCIS CITY, SUMMIT COUNTY, UTAH.
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**FRANCIS COMMONS SUBDIVISION**  
 PARCEL FT-53-A  
 LYING WITHIN THE SOUTHEAST QUARTER (SE 1/4) OF  
 SECTION 29, TOWNSHIP 2 SOUTH, RANGE 6 EAST,  
 SALT LAKE BASE AND MERIDIAN  
 FRANCIS CITY, SUMMIT COUNTY, UTAH

**SHEET 2 OF 2**

DEVELOPER:  
 EDWARDS DEVELOPMENT, LLC  
 2415 East 2000 South, Salt Lake City, UT 84119  
 (801) 487-8800  
 www.edwardsdev.com

EDM  
 ENGINEERING DESIGN & MAPPING, INC.  
 2415 East 2000 South, Salt Lake City, UT 84119  
 (801) 487-8800  
 www.edm-inc.com

RECORD # \_\_\_\_\_ STATE OF UTAH COUNTY OF SUMMIT REGISTERED AS AT THE REPORT  
 DATE \_\_\_\_\_ BY \_\_\_\_\_

2014 COUNTY RECORDS