

**AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN  
WEST POINT CITY AND IVORY LAND CORPORATION  
AND SOLGARDEN LLC.  
(Approximately 200 South and 3000 West, East Side)**

THIS AGREEMENT for the development of land (hereinafter referred to as "Agreement") is made and entered into this 7 day of Nov, 2007, between WEST POINT CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and IVORY LAND CORPORATION AND SOLGARDEN LLC (hereinafter referred to as "Owners"). City and Owners collectively referred to as the "Parties" and separately as "Party".

12-032-0091  
0090

**RECITALS**

WHEREAS, the City has considered an application for a zone change from the present zoning of A-40 (Agricultural) and R-2 (Single Family Residential) to R-3 (Single Family Residential), R-5 (Multi-Family Residential), and C-C (Community Commercial), of certain property located at approximately 200 South and 3000 West on the east side of 3000 West and contained by the following tax identification numbers: 12-032-0091 and 12-032-0090, (hereinafter the "Subject Area"); and

WHEREAS, the overall Subject Area consists of approximately 23.78 acres; and

WHEREAS, the overall Subject Area is described in legal descriptions in more detail in "Exhibit B" attached hereto (hereinafter "Exhibit B"); and

WHEREAS, Owners are the owners of the above described property and has presented a proposal for development of the Subject Area to the City, which provides for development in a manner consistent with the overall objectives of West Point City's General Plan, and is depicted in more detail on "Exhibit A" attached hereto (hereinafter "Exhibit A"); and

WHEREAS, the City has considered the overall benefits of a "Mixed-Use" concept for the Subject Area to facilitate a combination of retail, professional business, single family residential, and multiple family residential uses that will provide a range of housing types, services and employment opportunities; and

WHEREAS, Parties desire to enter into this Agreement to provide for the rezoning of the Subject Area, in a manner consistent with the overall objectives of the City's General Plan and the intent reflected in that Plan; and

WHEREAS, City is willing to grant R-3, R-5, and C-C zoning approval for the Subject Area (as shown in "Exhibit A") subject to Owners' agreeing to certain limitations and undertakings described herein, which Agreement will enable the City Council to consider the approval of such development at this time; and

WHEREAS, City believes that entering into the Agreement with Owners is in the best

interest of the City and the health, safety, and welfare of its residents.

NOW, THEREFORE each of the Parties hereto, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, covenant and agree as follows:

**ARTICLE I  
DEFINITIONS**

The following terms have the meaning and content set forth in this Article I, in this Agreement:

1.1 "Owners' Property" shall mean that property owned by Owners, as depicted on "Exhibit A".

1.2 "City" shall mean West Point City, a body corporate and politic of the State of Utah. The principal office of City is located at 3200 West 300 North, West Point, Utah 84015.

1.3 "City's Undertakings" shall mean the obligations of the City set forth in Article III

1.4 "Owners" shall mean Ivory Land Corporation and Solgarden LLC. The principal mailing address for Ivory Land Corporation and Solgarden LLC is 978 Woodoak Lane, Salt Lake City, Utah 84117. Except where expressly indicated in this Agreement, all provisions of the Agreement shall apply jointly and severally to the Owners or any successor in interest. In the interest of advancing the project, however, any responsibility under this Agreement may be completed by any Owners so that the completing Owners may proceed with their project on their respective parcel.

1.5 "Owners' Undertakings" shall have the meaning set forth in Article IV.

1.6 "Subject Area" shall have the meaning set forth in the Recitals hereto.

1.7 "Exhibit A" shall mean the map depicting the ownership, property lines and zoning and the bubble map for proposed zoning.

**ARTICLE II  
CONDITIONS PRECEDENT**

2.1 Zoning consistent with "Exhibit A" is a condition precedent to Owners' Undertakings in Article IV. Zoning of the Subject Area shall reflect the general concept and schematic as depicted in "Exhibit A", which includes:

- 2.1.1 Approximately 10.75 acres of R-3 (Single Family Residential) zoning;
- 2.1.2 Approximately 9.2 acres of R-5 (Multi-Family Residential) zoning;
- 2.1.3 Approximately 3.8 acres of C-C (Community Commercial) zoning;

**2.2 With respect to each zoning designation:**

**2.2.1 R-3 Zone.** Owners agree to construct a high quality single family residential project based on the design criteria outlined in the West Point City Ordinances.

**2.2.2 R-5 Zone.** Owners agree to construct a high quality multi-family residential project based on the design criteria outlined in the West Point City Ordinances. Owners shall not exceed an overall density of 8.0 units per acre.

**2.2.3 C-C Zone.** Owners agree to construct a center with the focus on professional business and limited commercial uses within the C-C area.

**2.3 With respect to all zoning designations, Owners agree to design and construct superior quality structures and amenities and to comply with all landscaping provisions of the West Point City Ordinances and specific setback, landscaping and buffer requirements of Article IV of this agreement.**

**2.4 This Agreement shall not take effect until City has approved this Agreement pursuant to a resolution of the West Point City Council.**

**ARTICLE III  
CITY'S UNDERTAKINGS**

**3.1 Subject to the satisfaction of the conditions set forth in Section 2.2 and Article II, City shall approve the rezone of the Subject Area from its present zoning of A-40 and R-2 to R-3, R-5, and C-C, with an effective date no sooner than the effective date and adoption of this Agreement by the City Council. Any zoning amendment shall occur upon finding by the City Council that it is in the best interest of the health, safety and welfare of the citizens of West Point City to make such changes at this time. All permits and site plan reviews and approvals shall be made pursuant to City ordinances. Nothing herein shall be construed as a waiver of the required reviews and approvals required by City ordinance.**

**3.2 The proposed zoning changes are as reflected on "Exhibit A" for the overall area, in that the property on the north portion of the parcel is proposed for R-3 zoning which constitutes 10.75 acres. The southwest portion of the parcel immediately adjacent to 3000 West is proposed C-C zoning which constitutes 3.8 acres. The remaining 9.2 acres in the southeast corner is proposed R-5 zoning.**

**ARTICLE IV  
OWNERS' UNDERTAKINGS**

**Conditioned upon City's performance of its undertakings set forth in Article III with regard to the zoning changes of the Subject Area, and provided Owners has not terminated this Agreement pursuant to Section 7.8, Owner agree to the following:**

**4.1 Land Uses.** Development on the property shall be limited as follows:

4.1.1 Land Uses within the area depicted as C-C in "Exhibit A" shall be focused on professional business and light commercial uses specifically limited to the following uses:

4.1.1.1 The 3.8 acre area zoned C-C may not contain all uses in the C-C zoning district and shall be limited to those listed as conditional and permitted from Table 17-7-7 of Chapter 17.7 of the West Point Municipal Code. The following uses though normally allowed as conditional or permitted in a C-C area shall not be allowed: outdoor truck storage, open storage and sales of machinery and appliances, package liquor store, pawn shop, tavern, dance hall and night club, mini-storage units, a trucking terminal, mobile home park, recycling collection point, and warehouse storage.

4.1.1.2 In the situation where a use is not specifically included in Table 17-7-7, such a use shall be subject to the regulations of the use (whether permitted by right or a conditional use) to which it is related or similar, as determined by Community Development Director.

4.2 Site Plan. Owners agree to develop the properties within the subject area, such that:

4.2.1 All lighting from the subject area is directed away from the residential uses surrounding the subject area, which shall include compliance with the West Point Municipal Code restrictions of lighting.

4.2.2 The landscape plan approved by the Planning Commission, in compliance with the terms of this Agreement, shall become a part and condition of this agreement and shall constitute an adequate buffer for the purposes of this paragraph.

4.3 Landscaping. Each Owner shall see that the Subject Property within their ownership and control shall have a minimum of fifteen percent (15%) landscaping. Each parcel or lot within the development shall, independently satisfy the landscaping requirement of fifteen percent (15%) landscaping. The vehicular entranceway to the R-3 area shall be landscaped and shall be included in the landscape plan approved by the Planning Commission.

4.4 Architecture and Design. The buildings constructed shall be masonry (stucco, brick, rock) of earthtone color. Development of the Subject Area shall produce an architecturally integrated project that provides a consistent architectural feel and a high level of architectural detail. Corporate or prototype architecture shall be modified to be compatible with the surrounding neighborhood, including modifications to architecture, materials, color, bulk, scale and height. All fencing shall be of a vinyl or masonry material.

4.4.1 The facades of multi-family residential buildings in the R-5 area shall be designed to incorporate changes in building or unit plane, height or elements such as balconies, porches, arcades or dormers to lessen the visual impact of the length,

bulk or mass of the building. Each building shall include predominant characteristics shared by all buildings with the R-5 area so that the development forms a coherent design within the neighborhood and community. Each dwelling unit in the R-5 area shall be provided with an attached garage. Each dwelling unit shall not be less than 1,300 square feet.

4.4.2 Each single family residential building in the R-3 area shall be designed to form a coherent design with the neighborhood and community. All rambler style residential buildings shall not be less than 1,300 square feet. Each two-story style residential building shall not be less than 2,200 square feet.

**4.5 Not Considered Approvals.** Except as otherwise provided, these enumerations are not to be construed as approvals hereof, as any required process must be pursued independent hereof.

**4.6 Amendments.** Owners agree to limit development to the uses provided herein. If other uses are desired, Owners agrees to seek amendment of this Agreement before pursuing approval thereof.

**4.7 Conflicts.** Except as otherwise provided, any conflict between the provisions of this Agreement and the City's standards for improvements, shall be resolved in favor of the stricter requirement.

## **ARTICLE V GENERAL REQUIREMENTS AND RIGHTS OF THE CITY**

**5.1 Issuance of Permits - Owners.** Owners, or assignee, shall have the sole responsibility for obtaining all necessary building permits in connection with Owners' Undertakings and shall make application for such permits directly to West Point City and other appropriate agencies having authority to issue such permits in connection with the performance of Owners' Undertakings. City shall not unreasonably withhold or delay the issuance of its permits.

**5.2 Completion Date.** The Owners shall, in good faith, reasonably pursue completion of the development. Each phase or completed portion of the project must independently meet the requirements of this Agreement and the City's ordinances and regulations, such that it will stand alone, if no further work takes place on the project.

**5.3 Access to the Subject Area.** For the purpose of assuring compliance with this Agreement, so long as they comply with all safety rules of Owners and their contractor, representatives of City shall have the right of access to the Subject Area without charges or fees during the period of performance of Owners' Undertakings.

## **ARTICLE VI REMEDIES**

6.1 Remedies for Breach. In the event of any default or breach of this Agreement or any of its terms or conditions, the defaulting Party or any permitted successor to such Party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event cure or remedy the breach within thirty (30) days after receipt of such notice. In the event that such default or breach cannot be reasonably be cured within said thirty (30) day period, the Party receiving such notice shall, within such thirty (30) day period, take reasonable steps to commence the cure or remedy of such default or breach, and shall continue diligently thereafter to cure or remedy such default or breach in a timely manner. In case such action is not taken or diligently pursued, the aggrieve Party may institute such proceedings as may be necessary or desirable in its opinion to :

6.1.1 Cure or remedy such default is pursued, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations; and

6.1.2 If the remedy of reversion is pursued, the defaulting Owner(s) agree(s) not to contest the reversion of the zoning on undeveloped portions of the Subject Area, by the City Council to the previous zoning on the property, and hereby holds the City harmless for such reversions of the zoning from R-3, R-5 and C-C to A-40 and R-2.

6.1.3 If Owners fail to comply with applicable City codes, regulations, laws, agreements, conditions of approval, or other established requirements, City is authorized to issue orders requiring that all activities within the development cease and desist, that all work therein be stopped, also known as a "Stop Work" order.

6.2 Enforced Delay Beyond Parties' Control. For the purpose of any other provisions of this Agreement, neither City nor Owners, as the case may be, nor any successor in interest, shall be considered in breach or default of its obligations with respect to its construction obligations pursuant to this Agreement, in the event the delay in the performance of such obligations is due to unforeseeable causes beyond its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, or delays of contractors or subcontractors due to such causes or defaults of contractors or subcontractors. Unforeseeable causes shall not include the financial inability of the Parties to perform under the terms of this Agreement.

6.3 Extension. Any Party may extend, in writing, the time for the other Party's performance of any term, covenant or condition of this Agreement or permit the curing of any default or breach upon such terms and conditions as may be mutually agreeable to the Parties; provided, however, that any such extension or permissive curing of any particular default shall not operate to eliminate any of any other obligations and shall not constitute a waiver with respect to any other term, covenant or condition of this Agreement nor any other default or breach of this Agreement.

6.4 Rights of Owners. In the event of a default by Owners' assignee, Owners may elect, in their discretion, to cure the default of such assignee, provided, Owners' cure period shall be extended by thirty (30) days.

**ARTICLE VII  
GENERAL PROVISIONS**

7.1 Successors and Assigns of Owners. This Agreement shall be binding upon Owners and their successors and assigns, and where the term "Owners" is used in this Agreement it shall mean and include the successors and assigns of Owners not approved by City. Notwithstanding the foregoing, City shall not unreasonably withhold or delay its consent to any assignment or change in ownership (successor or assign of Owners) of the Subject Area.

7.2 Notices. All notices, demands and requests required or permitted to be given under this Agreement (collectively the "Notices") must be in writing and must be delivered personally or by nationally recognized overnight courier or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the Parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or on the next business day if sent by overnight courier, or three (3) business days after deposit in the mail if mailed. The initial addresses of the Parties shall be:

To Owners: **IVORY LAND CORPORATION**

978 Woodoak Lane  
Salt Lake City, Utah 84117

**SOLGARDEN LLC**

978 Woodoak Lane  
Salt Lake City, Utah 84117

To City: **WEST POINT CITY CORPORATION**

3200 West 300 North  
West Point, Utah 84015  
Attn: John Anderson, City Planner

Upon at least ten (10) days prior written notice to the other Party, either Party shall have the right to change its address to any other address within the United States of America.

If any Notice is transmitted by facsimile or similar means, the same shall be deemed served or delivered upon confirmation of transmission thereof, provided a copy of such Notice is deposited in regular mail on the same day of transmission.

7.3 Third Party Beneficiaries. Any claims of third party benefits under this Agreement are

expressly denied, except with respect to permitted assignees and successors of Developer.

**7.4 Governing Law.** It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Utah.

**7.5 Integration Clause.** This document constitutes the entire agreement between the Parties and may not be amended except in writing, signed by the City and the Owner or Owners affected by the amendment.

**7.6 Exhibits Incorporated.** Each Exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

**7.7 Attorneys' Fees.** In the event of any action or suit by a Party against the other Party for reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other Party arising out of this Agreement, the prevailing Party in such action or suit shall be entitled to have and recover from the other Party all costs and expenses incurred therein, including reasonable attorneys' fees.

**7.8 Termination.** Except as otherwise expressly provided herein, the obligation of the Parties shall terminate upon the satisfaction of the following conditions:

**7.8.1** With regard to Owners' Undertakings, performance of the Owners' Undertakings as set forth herein.

**7.8.2** With regard to City's Undertakings, performance by City of City's Undertakings as set forth herein.

Upon an Owners' request (or the request of Owners' assignee), the other Party agrees to enter into a written acknowledgment of the termination of this Agreement, or part thereof, so long as such termination (or partial termination) has occurred.

**7.9 Recordation.** This Agreement shall be recorded upon approval and execution of this agreement by the Owner(s), whose property is affected by the recording and the City.

**7.10 Site/Landscape Plan.** The Owners will prepare an overall Site/Landscape Plan reflecting the proposed development of the Subject Area. The Site/Landscape Plan shall be executed and binding on the Parties. This Plan may be amended as agreed upon by the Parties, to the extent that said amendments are consistent with the objectives of this Agreement and the City's ordinances and regulations.



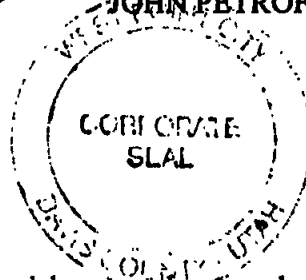
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.

WEST POINT CITY CORPORATION:

[Signature]  
JOHN PETROFF JR., Mayor

ATTEST:

Tamara Suzuki  
TAMARA SUZUKI, City Recorder



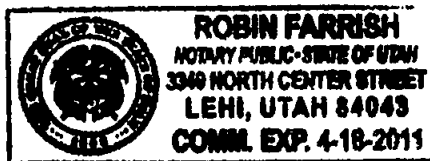
I (we), Ivoryland Corp., Solgarden LLC being duly sworn, depose and say that I (we) am (are) the owner(s) of the property identified in the attached agreement and that the statements contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge.

[Signature]  
Managing Member of Ivory Land Corporation, LLC.

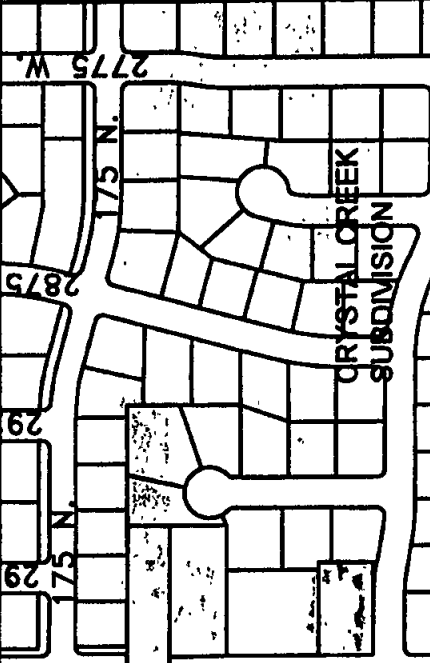
[Signature]  
Managing Member of Solgarden LLC

Subscribed and sworn to me this 7<sup>th</sup> day of November 2007

[Signature]  
Notary Public  
Residing in: Lehi, UT  
My Commission Expires: 4-18-11



SMART PROPERTY  
PROPOSED REZONE



R-3  
10.75 acres

R-5  
9.2 acres

C-C  
3.8 acres

DAVIS CO. DRAINAGE CHANNEL



SMART PROPERTY  
REZONE

NOV 2008

**Exhibit B**

**12-032-0091:**

A PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 4 NORTH, RANGE 2 WEST,; BEGINNING AT A POINT 616.33 FEET NORTH 0°03'50" ALONG THE SECTION LINE FROM THE SOUTHWEST CORNER OF SAID QUARTER SECTION; AND RUNNING THENCE NORTH 0°03'50" EAST 363.11 FEET ALONG THE SECTION LINE; THENCE SOUTH 89°54'10" EAST 1,324.96 FEET TO THE SIXTEENTH LINE; THENCE SOUTH 0°05'32" WEST 869.78 FEET ALONG SAID LINE; THENCE NORTH 89°53'19" WEST 813.34 FEET; THENCE NORTH 0°03'50" EAST 506.33 FEET; THENCE NORTH 89°53'19" WEST 511.19 FEET TO THE POINT OF BEGINNING. CONTAINING 20.51 ACRES.

**12-032-0090:**

A PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 4 NORTH, RANGE 2 WEST; BEGINNING AT A POINT 110 FEET NORTH 0°03'50" EAST ALONG THE SECTION LINE FROM THE SOUTHWEST CORNER OF SAID QUARTER SECTION AND RUN THENCE NORTH 0°03'50" EAST 317.16 FEET ALONG THE SECTION LINE; THENCE SOUTH 89°53'19" EAST 511.19 FEET; THENCE SOUTH 0°03'50" WEST 317.16 FEET; THENCE NORTH 89°53'19" WEST 511.19 FEET TO THE POINT OF BEGINNING. CONTAINING 3.15 ACRES