



W2867111

**HARRISVILLE CITY
SUBDIVISION IMPROVEMENT
AGREEMENT**

EH 2867111 PG 1 OF 11
LEANN H KILTS, WEBER COUNTY RECORDER
10-JUL-17 403 PM FEE \$1.00 DEP DC
REC FOR: HARRISVILLE CITY

The parties desiring to enter in to this Subdivision Improvement Agreement (“the Agreement”) are Ivory Development LLC (“the Developer”) and Harrisville City Corporation, a municipal corporation of the State of Utah located in Weber County, (“the City”). The Effective Date of this Agreement will be the date that this final subdivision plat approval is granted by the City.

RECITALS

WHEREAS, the Developer seeks permission to subdivide property within the City, to be known as Thoroughbred Crossing (the “Subdivision”), which property is more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, the City seeks to protect the health, safety and general welfare of the residents by requiring the completion of various improvements in the Subdivision and thereby to limit the harmful effects of standard subdivisions, including premature subdivision which leaves property undeveloped and unproductive; and

WHEREAS, the purpose of this Agreement is to protect the City from the cost of completing subdivision improvements itself and is not executed for the benefit of material, men, laborers, or others providing work, services or material to the Subdivision or for the benefit of lot or home buyers in the Subdivision; and

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the City’s Municipal Code enforced at the time of the application for this Subdivision;

NOW, THEREFORE, the Parties hereby agree as follows:

DEVELOPER’S OBLIGATIONS

1. **Improvements:** The Developer shall construct and install, at his own expense, those on-site and off-site subdivision improvements listed on Exhibit “B” attached hereto and incorporated herein by this reference (the “Improvements”). The Developer’s obligation to complete the Improvements will arise immediately upon final plat approval by the City, will be independent of any obligations of the City contained herein and will not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the development.

2. **Security:** To secure the performance of his obligations hereunder, the Developer will, prior to the effective date, deposit in Escrow the amount of \$218,507.39 as security for the completion of the Improvements. The escrow hereinafter referred to as (“Security”) will be issued by Wells Fargo Bank, N.A. (or other financial institution that is subsequently approved by the City) to be known as (“Bank”). Security is to be established in an escrow account payable at sight to the City and will expire upon satisfactory completion of Improvements and final acceptance by the City Council of all Improvements. The Security payable to the City at any time upon presentation of: (i) a sight draft drawn on the issuing Bank in the amount to which the City is entitled to draw pursuant to the terms of this Agreement; or (ii) an affidavit executed by an authorized City official stating that the Developer is in default under this Agreement.

Should the Developer fail or refuse to pay required development fees, including engineering fees, then the city may, at its option, collect the same from funds held in escrow in the amount equal to the amount of development and engineering fees. Engineering fees are calculated based upon the billing statements for the development for services rendered by the City Engineer. Developer is also responsible for any collection costs including court costs and attorney's fees.

Should the Developer fail or refuse to complete the said off-site improvements in accordance with the provisions hereof, particularly within the time stated, or should the Developer become insolvent before a completion thereof; then the City may, at its option, determine the cost of completing said off-site improvements on the basis of reliable estimates and bids. This may apply to all sums deposited in the escrow against the said cost of completion and may proceed to legally obtain the escrow funds and use the proceeds there from to pay the cost of completing the said off-site improvements and to pay all related expenses including but not limited to court cost and attorney=s fees.

3. **Standards:** The Developer will construct the Improvements according to the Public Works Standards and Technical Specifications, municipal code, applicable building and fire codes, and other codes adopted or enforced by City, all of which are incorporated herein by this reference. *The Developer agrees for City issuing building permits after initial acceptance of improvements, to allow the City to collect and retain utility fees for the time between initial and final acceptance of the utility lines. Building permits will be issued on condition that all improvements necessary to satisfy fire code requirements have been installed and that enough security is held in escrow to complete all required improvements for the Subdivision, including any repairs or replacements after initial installation.*
4. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of one (1) year from the date that the City conditionally accepts an improvement when said improvement is fully completed by the Developer and the Developer request such conditional acceptance. *15% of the final cost estimate, shall constitute a guarantee that the said off-site improvements are installed in accordance with the subdivision standards of the City as to quality and service ability and shall be held by the City for a period of one (1) year from the time the last improvement is Ainitially accepted@ by the City or until one (1) year after the time the last improvement needing repair or placement is again accepted. At the end of the one year period the said 15% shall be returned to Developer provided the off-site improvements have proved to have been constructed or installed in accordance with the standards of the City as to quality and service ability, otherwise, to be applied toward construction or installation of said improvements in accordance with City standards or the repair or replacing the same so as to bring them into conformity with City standards, Developer will pay the difference to the City on demand. The City shall not issue any building permits until the improvements needing repair, replacement, etc, are completed and again accepted*
5. **Completion Periods:** *All of the said off-site improvements shall be fully installed and completed within two (2) years from the final plat approval by the City Council. If not completed within two (2) years, the Developer may apply to the Planning Commission and the City Council for an extension of one (1) year=s time with additional one-year extensions after the first extension if the Planning Commission and City Council agree. Said extensions shall be subject to adequate security for the completion of said improvements being made by increasing the amount of the escrow account.*

6. **Compliance with Law:** The Developer will comply with all relevant laws, ordinances, and regulations in effect at the time of application for this Subdivision, and as provided herein. When necessary to protect public health, the Developer will be subject to laws, ordinances and regulations that become effective after final plat approval.
7. **Dedication:** The developer will dedicate to the City or other applicable agencies, as may designated by the City, the Improvements listed on Exhibit "B" attached hereto and incorporated herein by this reference pursuant to the procedure described below.
8. **Reimbursement of Service Connections.** Developer agrees to reimburse the City the total amount of \$ _____ representing utility service connection stub into certain lots in the Subdivision. Developer hereby authorizes the City to collect the sum of \$ _____ from the building permits issued for single-family structure developed as part of this Subdivision in an amount calculated by dividing the \$ _____ equally across the total number of lots in the Subdivision.

CITY'S OBLIGATIONS

9. **Plat Approval:** The City will grant final subdivision plat approval to the Subdivision under the terms and conditions previously agreed to by the Parties if those terms and conditions are consistent with all relevant state laws and local ordinances in effect at the time of final plat approval.
10. **Inspection and Certification:** The City will inspect the Improvements as they are being constructed and, if acceptable to the City Engineer, certify such improvement as being in compliance with the standards and specifications of the City. Such inspection and certification, if appropriate, will occur within a reasonable time after of notice by the Developer that he desires to have the City inspect an improvement. Before obtaining certification of any such improvement, the Developer will present to the City valid lien waivers from all persons providing materials or performing work on the improvement for which certification is sought. Certification by the City Engineer does not constitute a waiver by the City of the right to draw funds under the Security on account of defects in or failure of any improvement that is detected or which occurs following such certification.
11. **Notice of Defect:** The City will provide timely notice to the Developer whenever inspection reveals that an improvement does not conform to the standards and specifications shown on the approved subdivision improvement drawings on file with the City or City Engineer or where an improvement is otherwise defective. The Developer will have 30 days from the issuance of such notice to cure or substantially cure the defect. The City may not declare a default under this Agreement during the 30 day cure period on account of any such defect unless it is clear that the Developer does not intend to cure the defect. The Developer will have no right to cure defects in or failure of any improvement found to exist or occurring after the City accepts dedication of the improvement(s).
12. **Acceptance of Dedication:** The City, or other applicable agency, will accept the dedication of any validly certified improvement within 30 days of the Developer's offer to dedicate the improvement. The City's or

agency's acceptance of dedication is expressly conditioned on the presentation by the Developer of a policy of title insurance, where appropriate, for the benefit of the City showing that the Developer owns the improvement in fee simple and that there are no liens, encumbrances, or other restrictions on the improvement unacceptable to the City in its reasonable judgment. Acceptance of the dedication of any improvement does not constitute a waiver by the City of the right to draw funds under the Security on account of any defect in or failure of the improvement that is detected or which occurs after the acceptance of the dedication. The Improvements must be offered to the City in no more than one (1) dedication per month.

13. **Reduction of Security:** After the acceptance of any improvement, the amount which the City is entitled to draw on the Security may be reduced by an amount equal to 90 percent of the estimated cost of the improvement as shown on Exhibit B. Upon the acceptance of all of the Improvements, the balance that may be drawn under the Security will be available to the City until final acceptance of the Subdivision is granted by the City Council.
14. **Use of Proceeds:** The City will use funds drawn under the Security only for the purposes of completing the Improvements or correcting defects in or failures of the Improvements and pay costs incurred by the city relating to planning, engineering, and inspection of the Subdivision and its Improvements.

OTHER PROVISIONS

15. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Construction Period:
 - a. Developer's failure to commence construction of the Improvements within one (1) year of final subdivision plat approval;
 - b. Developer's failure to complete construction of the Improvements within two (2) years of final subdivision plat approval;
 - c. Developer's failure to cure defective construction of any improvement within applicable cure period;
 - d. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;
 - e. Foreclosure of any lien against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure.

The City may not declare a default until written notice has been given to the Developer.

16. **Measure of Damages:** The measure of damages for breach of this Agreement will be the reasonable cost of completing the Improvements. For improvements upon which construction has not begun, the estimated cost of the Improvements as shown on Exhibit B will be prima facie evidence of the minimum cost of completion. However, neither that amount or the amount of the Security establishes the maximum amount of the Developer's liability. The City will be entitled to complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced. The measure of damages to the City is the actual cost of completion, and

fees incurred by the City for planning, engineering, inspections, and enforcement (including attorney's fees and costs).

17. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the Security to the extent of the face amount of the Security, less 90 percent of the estimated cost (as shown on Exhibit B) of all Improvements theretofore accepted by the City. The City will have the right to complete Improvements itself or contract with a third party for completion, and the Developer hereby grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such improvements. Alternatively, the City may assign the proceeds of the Security to a subsequent developer (or a lender) who has acquired the Subdivision by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements. In addition, the City also may suspend final plat approval during which time the Developer will have no right to sell, transfer, or otherwise convey lots or homes within the Subdivision without the express written approval of the City or until the Improvements are completed and by the City. These remedies are cumulative in nature except that, during the Warranty Period, the City's only remedy will be to draw funds deposited in escrow as Security.
18. **Indemnification:** The Developer hereby expressly agrees to indemnify and hold the City harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development site and elsewhere pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer. The Developer is not an agent or employee of the City. Nothing herein shall be construed to waive the City's right and/or defense of governmental immunity.
19. **No Waiver:** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any of the Improvements.

- XX. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed by the City and by the Developer or his authorized officer. Such amendment or modification will be properly notarized before it may be effective.
- XXI. **Attorney's Fees:** Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator, or mediator awards relief to both parties, each will bear its own costs in their entirety.
- XXII. **Other Approval and Vested Rights:** The City does not warrant by this Agreement that the Developer is or is not entitled to any other approval(s), permits, or licenses required by the City, or another agency, or that Developer has vested right to such, before the Developer is entitled to commence development of the Subdivision or to transfer ownership of property in the Subdivision.
- XXIII. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement, except that if the City does not exercise its rights within 60 days following knowledge of an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the City to exercise its rights.
- XXIV. **Scope:** This Agreement constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.
- XXV. **Time:** For the purpose of computing the Commencement, Abandonment, and Completion Periods, and time periods for City action, such times in which civil disaster, acts of God, or extreme weather conditions occur or exist will not be included if such times prevent the Developer or City from performing his/its obligations under the Agreement.
- XXVI. **Headings.** The paragraph headings used in this Agreement are for convenience purposes only and shall not be construed or interpreted to provide any separate legal right.
- XXVII. **Severability:** If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.
- XXVIII. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonable withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also bind the heirs, successors, and assigns of the Developer. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will release the original developer's Security if it accepts new Security from any developer or lender who obtains the Property. However, no act of the City will constitute a release of the original developer from this liability under this Agreement.

_____, the corporation which executed the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of a Resolution of its Board of Directors that the said corporation executed the same.

Notary Public
Residing at:

**

FOR HARRISVILLE CITY:

Bruce Richmond
Mayor

7-10-17
Date

ATTEST:

Jennie Knight
City Recorder

APPROVED AS TO FORM:

[Signature]
City Attorney

SCHEDULE OF EXHIBITS

- EXHIBIT A: PROPERTY DESCRIPTION FOR SUBDIVISION – SEE EXHIBIT A
- EXHIBIT B: REQUIRED ON & OFF SITE SUBDIVISION IMPROVEMENTS – SEE EXHIBIT B

EXHIBIT A

Beginning at a point on the northerly right-of-way line of Larsen Lane at the southwest corner of Lot 3-R, GREENLAND ESTATES Subdivision, according to the Official Plat thereof on file in the Office of the Weber County Recorder, located $N88^{\circ}47'18''W$ along the Section line 1,660.86 feet and South 1,416.64 feet from the Northeast Corner of Section 8, T6N, R1W, S.L.B.& M.; thence $S60^{\circ}36'24''W$ (record: $S60^{\circ}36'00''W$) along the north line of Larsen Lane 713.99 feet; thence $N0^{\circ}47'00''E$ 297.29 feet; thence $S60^{\circ}36'24''W$ 113.79 feet to the easterly line of THOROUGHbred MEADOWS Subdivision (1st Amendment), as constructed and according to the Official Plat thereof on file in the Office of the Weber County Recorder; thence along said plat the following 6 (six) courses and distances: $N1^{\circ}16'58''E$ 568.20 feet; thence $N71^{\circ}42'34''E$ 148.61 feet; thence along the arc of a 400.00 foot radius curve to the right 36.14 feet through a central angle of $5^{\circ}10'38''$ (chord: $N74^{\circ}17'53''E$ 36.13 feet); thence $N76^{\circ}53'12''E$ 154.54 feet; thence along the arc of a 400.00 foot radius curve to the left 134.88 feet through a central angle of $19^{\circ}19'12''$ (chord: $N67^{\circ}13'36''E$ 134.24 feet); thence $N57^{\circ}34'00''E$ 36.31 feet to the westerly line of CINNAMON PARK Subdivision No. 2, according to the Official Plat thereof on file in the Office of the Weber County Recorder; thence along said plat the following 3 (three) courses and distances: $S26^{\circ}53'36''E$ (record: $S27^{\circ}13'E$) 25.72 feet; thence $S38^{\circ}40'36''E$ (record: $S39^{\circ}E$) 163.00 feet; thence $S72^{\circ}34'36''E$ (record: $S72^{\circ}54'E$) 44.97 feet to the northwest corner of GREENLAND ESTATES Subdivision, according to the Official Plat thereof on file in the Office of the Weber County Recorder; thence $S8^{\circ}20'36''E$ (record: $S8^{\circ}21'00''E$) along said boundary 463.20 feet to the point of beginning.

CITY ENGINEER'S ESTIMATE OF ITEMS LEFT TO COMPLETE

City: Harrisville City

Subdivision: Thoroughbred Crossing

Date: June 20, 2017

Developer: Ivory Homes - *Ivory Development LLC*

Page: Sheet 1 of 1

ITEM NO.	LINE ITEM DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
<u>SITE SCHEDULE & MISC.</u>				
1	Street sign	3 ea	\$500.00	\$1,500.00
2	Street Light	3 ea	\$3,500.00	\$10,500.00
3	Move power pole	1 ea	\$10,000.00	\$10,000.00
4	Fencing	1,540 lf	\$23.00	\$35,420.00
			subtotal	\$57,420.00
<u>STREET IMPROVEMENTS</u>				
5	4' Sidewalk	2284 lf	\$18.00	\$41,112.00
6	ADA Ramp	6 ea	\$350.00	\$2,100.00
7	Chip & Seal Coat	52,410 sf	\$0.25	\$13,102.50
8	Gravel Larson Lane shoulder	695 ton	\$13.00	\$9,035.00
9	Furnish & install Monuments	3 ea	\$500.00	\$1,500.00
			subtotal	\$66,849.50
<u>STORM DRAIN IMPROVEMENTS</u>				
10	Concrete collars	2 ea	\$500.00	\$1,000.00
11	Outlet control box	1 ls	\$3,250.00	\$3,250.00
			subtotal	\$4,250.00
<u>SEWER</u>				
12	Concrete collars	6 ea	\$500.00	\$3,000.00
13	Clean & video entire main line	1 ls	\$200.00	\$200.00
			subtotal	\$3,200.00
<u>CULINARY</u>				
14	Concrete collars	3 ea	\$350.00	\$1,050.00
			subtotal	\$1,050.00
<u>SECONDARY</u>				
15	Concrete collars	3 ea	\$350.00	\$1,050.00
			subtotal	\$1,050.00
<u>IRRIGATION</u>				
16	Concrete collars	4 ea	\$500.00	\$2,000.00
			subtotal	\$2,000.00
<u>SWPPP</u>				
17	Maintain BMP's	1 ls	\$4,550.00	\$4,550.00
			subtotal	\$4,550.00
	TOTAL IMPROVEMENTS			\$140,369.50
	10% contingency	1 LS	\$78,137.89	\$78,137.89
Total Escrow Amount				\$218,507.39

Jones & Associates Consulting Engineers

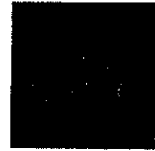
SUBDIVISION COST ESTIMATE APPROVAL

Brent W. Slater Date: *6/20/17*

Brent W. Slater, PLS
Jones & Associates

June 26, 2017

Harrisville City
Attn: Jennie Knight
363 West Independence Blvd.
Harrisville, UT 84404



Re: Subdivision Improvement Agreement
Ivory Homes / Ivory Development, LLC
Thoroughbred Crossing Subdivision in Harrisville, Utah

Jennie:

Section 2 of the attached Harrisville City Subdivision Improvement Agreement requires that Developer (Ivory Development, LLC) deposit in Escrow the amount of \$218,507.39 as security for the completion of the Improvements. Please be advised that in satisfaction of this requirement Wells Fargo Bank, N.A. ("Bank") has set aside \$218,507.39 under a credit facility (account #1002671) to the Ivory Companies for the purpose of a subdivision improvement bond in favor of Harrisville City. These funds will only be released upon receiving written notice from Harrisville City pursuant to the agreement.

Please forward an executed copy of this letter acknowledging the City's acceptance of and agreement to the above together with a copy of the fully executed Subdivision Improvement Agreement to the following address, or email a copy to the email address below:

Wells Fargo Bank - Attn: Mark Lemon
299 S. Main Street, Suite 600
Salt Lake City, Utah 84111.

If you have any questions or concerns, please contact Wells Fargo by email at Erik.W.Bengtzen@wellsfargo.com or by phone at (385) 415-8195.

Sincerely,
WELLS FARGO BANK, N.A.

Mark Lemon, Vice President
Commercial Real Estate

Harrisville City
ACCEPTED AND AGREED TO:

By:

Name:

Title: *City Admin.*

Date: *6.28.17*