

# COTTONWOOD HEIGHTS

## RESOLUTION No. 2021-66

### A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH IVORY DEVELOPMENT, LLC FOR THE ACQUISITION OF REALTY FOR A PUBLIC PARK (COTTONWOOD CANYON COVE SUBDIVISION)

**WHEREAS**, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 14 December 2021 to consider, among other things, approving a development agreement (the "*Agreement*") with Ivory Development, LLC ("*Developer*") concerning Developer's proposed Cottonwood Canyon Cove Subdivision located near 3635 East 7650 South in the City, whereunder, among other things, the City would acquire approximately two acres of ground for use as a public park; and

**WHEREAS**, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the City's residents to approve the City's entry into the Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City; and be it

**FURTHER RESOLVED** that the City's mayor is authorized to negotiate and approve such modifications to the Agreement as he reasonably may deem appropriate (in consultation with the City's manager, community and economic development director and attorney) to facilitate the City's acquisition of the proposed park realty on the best possible terms, and then to execute and deliver such modified Agreement on behalf of the City.

This Resolution, assigned no. 2021-66, shall take effect immediately upon passage.

~~PASSED AND APPROVED~~ <sup>Tabled</sup> effective 14 December 2021.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By:   
Paula Melgar, Recorder



By:   
Michael J. Peterson, Mayor

**VOTING:**

Michael J. Peterson  
Douglas Petersen  
J. Scott Bracken  
Tali C. Bruce  
Christine Watson Mikell

Yea ☒ Nay ☐  
Yea ☒ Nay ☐  
Yea ☒ Nay ☐  
Yea ☒ Nay ☐  
Yea ☒ Nay ☐

TABLED

**DEPOSITED** in the office of the City Recorder this 14<sup>th</sup> day of December 2021.

**RECORDED** this 15 day of December 2021.

# DEVELOPMENT AGREEMENT

**THIS AGREEMENT** entered into this \_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the city of **COTTONWOOD HEIGHTS**, hereinafter referred to as "**City**," and **IVORY DEVELOPMENT, LLC**, hereinafter referred to as "**Developer**." Developer and City are, from time to time, hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

**WHEREAS**, Developer is owns, or has contracted to become the owner, of the real property described on attached Exhibit "A" (the "**Property**");

**WHEREAS**, Developer has proposed subdividing a portion of the Property into the Avondale Subdivision, consisting of 13 single family lots (the "**Subdivision**");

**WHEREAS**, City desires to preserve the existing recreation area on the Property as a City park (the "**Park**");

**WHEREAS**, City, acting pursuant to its authority under the Municipal Land Use, Development, and Management Act, UTAH CODE ANN. §§10-9a-101, *et. seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Subdivision and therefore has elected to approve and enter into this Agreement in order to advance City's policies, goals, and objectives and the health, safety and general welfare of the public; and

**WHEREAS**, each Party acknowledges that it is entering into this Agreement voluntarily, and that all of the terms of the Agreement are valid conditions of development of the Subdivision;

**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 are 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 City (the "**Effective Date**"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals as of its full execution and delivery by the Parties.

1.2 Term. The term of this Agreement (the "**Term**") shall commence upon the Effective Date and continue for a period of fifteen (15) years from the Effective Date. Unless otherwise agreed in writing between 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 any 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.     **OBLIGATIONS OF DEVELOPER AND CITY.**

2.1     **Obligations of Developer.**

(a)     All homes in the Subdivision shall be single family detached homes. The home's exteriors shall consist predominantly of maintenance free masonry, Hardie board, natural or stained wood. No stucco, or aluminum or vinyl siding will be allowed, except for the home's soffit and fascia.

(b)     Developer shall sell and convey by special warranty deed unencumbered fee simple title to at least two acres of the Property to City for creation of the Park, for a purchase price not to exceed \$350,000 per acre. Closing of such transaction shall be a condition of final City approval of the Subdivision, and shall occur at a time, on a date, and at a place in Salt Lake County, Utah reasonably specified by City. The location of the Park on the Property shall be substantially as shown on attached Exhibit "B" (the "*Project Plan*"), the Parties agreeing that the existing pavilion (the "*Pavilion*") on the Property located adjacent to 7650 South shall be preserved in the Park.

(c)     Developer shall complete a sensitive lands analysis of the Property, which shall be subject to City's review and approval for compliance with all applicable City ordinances prior to City granting final approval of the plat of the Subdivision. If the sensitive lands analysis identifies any geotechnical or geologic conditions that impact the layout of the Subdivision or the Park, an alternate plan shall be developed that is as similar as possible to the current Subdivision and Park plan and that in any case (i) preserves the Pavilion as part of the Park, (ii) provides as much public street frontage for the Park as practicable, and (iii) provides the pedestrian path connecting Doverhill Drive to the Park area. Any updated or amended Subdivision plat or plans for the Park shall be subject to review and approval by City in accordance with its standard practices and subject to all applicable laws and ordinances.

(d)     Developer shall prepare and submit a land disturbance plan for the Property that minimizes disturbance to the Park during Subdivision development to the greatest extent practicable.

(e)     Developer shall preserve as many healthy trees in the Park as possible, following a tree preservation plan prepared at Developer's cost by a licensed arborist selected by Developer and reasonably acceptable to City. The tree preservation plan shall identify trees to be preserved and mitigation standards to protect trees from damage during construction. Trees identified for protection that become unintentionally damaged during construction shall be replaced by Developer in a manner reasonably acceptable to City.

(f)     Developer shall install trees along Doverhill Drive as well as the private access lane in front of each new home in the Subdivision, following the street tree requirements in City ordinances. The location and type(s) of trees shall be identified in the final site construction plans prior to final plat recordation and shall be included in the development bond for the project.

(g)     Developer shall construct all homes in the Subdivision to be electric-ready, optimized to access the following electric technologies immediately or in the future: clothes

dryer, electric vehicle charger, cooktop/range, heat pump space heater, and water heater. This requirement will be verified during the building permit process as part of each home's plan review.

(h) Developer shall construct all homes in the Subdivision to be solar-ready, optimized to support a rooftop photovoltaic (PV) system immediately or in the future, by designing rooftops to support the weight and wind loads required by a PV system; providing a roof warranty which is not voided by the installation of a PV system; providing preinstalled conduit from the roof area to the electrical panel; and providing reserved electrical panel capacity. This requirement will be verified during the building permit process as part of the permit plan review. If a PV system is installed during construction or within 24 months after issuance of a certificate of occupancy for each home, city permit and inspection fees for the PV system will be waived.

(i) Developer shall install all landscapes in the Subdivision to be water-wise, optimized to reduce water consumption from yard spaces, through adherence to the conservation standards published by the Central Utah Water Conservancy District. This requirement will be verified during the building permit review process for each home in the Subdivision.

(j) Developer is strongly encouraged to utilize low-impact design principles for its stormwater and drainage system in consultation with City staff and pursuant to City ordinances. Developer's final storm drain system shall be approved by the City Engineer and shall not substantially affect the layout and grading of the Park.

(k) Developer shall install the meandering sidewalk shown on the Plan as a bonded item in the project. The sidewalk shall be constructed of concrete or asphalt, and shall include adequate fencing and/or buffering from the adjacent private properties. Final proposed improvements shall be subject to City's approval prior to recordation of the final Subdivision plat.

(l) All aspects of the Project Plan and the Subdivision shall comply with all applicable laws and City ordinances.

## 2.2 Obligations of City.

(a) City agrees to landscape the Park within twelve (12) months after Developer's completion of the Subdivision's bonded public improvements, which completion date shall be City's final acceptance of the road improvements following the warranty period.

(b) City tentatively approves the Subdivision's design, lot dimensions, setbacks, private road design, hammer-head turnaround design, and location and boundary of the Park and pedestrian trail as shown on the Plan. Final City approval of such matters is contingent on approval of the Subdivision by City's planning commission, compliance with all applicable City codes and ordinances, and full completion of all sensitive lands hazards analyses required by City ordinance, as reviewed and approved by City's Development Review Committee ("DRC").

(c) City shall calculate the maximum structure height from the final grading plan for the Subdivision, as reviewed and approved by the DRC. The approved final subdivision grade will be considered the new 'existing grade' from which building height is calculated. The maximum structure height shall be thirty-five (35) feet and shall be measured in

accordance with City ordinances pertaining to building height (i.e. measured from the average existing grade at the four corners of any structure to the highest point of the roof).

### Section 3. **VESTED RIGHTS AND APPLICABLE LAW.**

#### 3.1 *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 in effect on the Effective Date. To such an extent that the terms and conditions of this Agreement conflict with the applicable law or City's future ordinances, standards, or regulations, this Agreement shall be considered a land use application and an ordinance adopted by 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). Developer's vested rights shall include the right to be excepted from any future building moratorium.

(b) Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police power by 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 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.

### Section 4. **MISCELLANEOUS.**

4.1 *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.

4.2 *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.

4.3 *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, including subsequent approvals, to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

4.4 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.

4.5 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.

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

4.7 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.

4.12 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.

4.13 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.

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

4.15. Integrated Agreement. 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 City and Developer.

Section 5. **SIGNING AND RECORDATION OF AGREEMENT**. 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 Salt Lake,

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

**COTTONWOOD HEIGHTS**, a Utah  
municipality

**Attest:**

\_\_\_\_\_  
**Paula Melgar**, City Recorder

By: \_\_\_\_\_  
**Michael** \_\_\_\_\_, Mayor

STATE OF UTAH                    )  
                                          ss:  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_, by Michael \_\_\_\_\_ and Paula Melgar, who executed the foregoing instrument in their capacities as the mayor and the recorder, respectively, of the city of **COTTONWOOD HEIGHTS**.

\_\_\_\_\_  
NOTARY PUBLIC

**IVORY DEVELOPMENT, LLC**, a Utah  
limited liability company

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

STATE OF UTAH                    )  
                                          ss:  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2022, by \_\_\_\_\_ and \_\_\_\_\_, who executed the foregoing instrument in  
their capacities as the manager and the \_\_\_\_\_, respectively, of the **IVORY  
DEVELOPMENT, LLC**, a Utah limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT “B”**

**PROJECT PLAN**