

ORDINANCE NO. 2020-23

AN ORDINANCE ADOPTING THE FIRST ADDENDUM TO THE VXC ANNEXATION AGREEMENT.

BE IT ORDAINED by the City Council of Heber City, Utah that the First Addendum to the VXC Annexation Agreement has been **ADOPTED** as shown in Exhibit 1.

This Ordinance shall take effect immediately upon passage.

ADOPTED and PASSED by the City Council of Heber City, Utah this 19th day of May, 2020, by the following vote:

	AYE	NAY
Council Member Heidi Franco	<u>X</u>	___
Council Member Wayne Hardman	<u>X</u>	___
Council Member Rachel Kahler	___	<u>X</u>
Council Member Ryan PC Stack	<u>X</u>	___
Council Member Mike Johnston	<u>X</u>	___



APPROVED:

Kelleen Potter
Mayor Kelleen Potter

ATTEST:

Trina W Cooke

Date: 5/19/2020

RECORDER

Date of First Recording: _____

WHEN RECORDED RETURN TO
Heber City Attorney
75 North Main Street
Heber City, Utah 84032

Affects Parcel Nos.: See Exhibit A

FIRST AMENDMENT TO VXC ANNEXATION AGREEMENT

(AKA HUTCHINSON ANNEXATION)

AND COVENANT RUNNING WITH THE LAND

This *First Amendment to VXC Annexation Agreement (aka Hutchinson Annexation) and Covenant Running with the Land* (“**Amendment**”) is made as of the date set forth below by and among Heber City, a municipal corporation and political subdivision of the State of Utah (“**City**”), Ivory Land Corporation, a Utah corporation (“**Ivory**”), and Wasatch Back Holdings, LLC, a Utah limited liability company (“**Wasatch Back**”).

RECITALS

A. On or about June 4, 2019, City, Wasatch Back, and Hutchinson Enterprises, Inc. (“**Hutchinson**”) entered into that certain *VXC Annexation Agreement (aka Hutchinson Annexation) and Covenant Running with the Land* (“**Annexation Agreement**”).

B. The Annexation Agreement refers to Hutchinson and Wasatch Back, collectively, as “**Petitioner**.”

C. The Annexation Agreement was recorded in the real property records of Wasatch County, Utah, on or about July 25, 2019, as Entry No. 465988.

D. The real property located in Wasatch County, Utah, which is encumbered by the Annexation Agreement (“**Property**”) is identified with particularity on Exhibit A, hereto.

E. Pursuant to Section 15 of the Annexation Agreement, the provisions thereof run with the land. Ivory is Hutchinson’s successor-in-interest with respect to a portion of the Property and has assumed the rights, obligations, and duties of Hutchinson under the Annexation Agreement.

F. Pursuant to Section 18(c) of the Annexation Agreement, the Annexation Agreement may be amended by a writing signed by the City and the parties comprising Petitioner.

G. The City, Wasatch Back, and Ivory (as successor-in-interest to Hutchinson) now wish to modify the terms of the Annexation Agreement on the terms and conditions set forth herein.

AMENDMENT

In consideration of the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, Ivory, and Wasatch Back hereby agree as follows:

1. Recitals Incorporated. The foregoing Recitals are hereby incorporated and made part of the parties' agreement.

2. Spring and Coyote Park. Any requirement in the Annexation Agreement that the parties comprising the Petitioner to dedicate any portion of the Property containing a spring, or to construct a park on any portion of the Property will be amended as set forth in this Section.
 - a. Dedication of Real Property. In connection with the recordation of the applicable subdivision plat, Wasatch Back (or its successor-in-interest) will dedicate to the City that portion of land in the southeast corner of the Property, as depicted on Exhibit B hereto ("Coyote Park Parcel"). Thereafter, the City shall own and maintain the Coyote Park Parcel. Except as set forth in this paragraph, there will be no other obligation for the parties comprising the Petitioner to dedicate any other parcels to the City for park or open space purposes. The dedication of the Coyote Park Parcel will satisfy: (i) Wasatch Back's open space requirements under the COSZ ordinance, and (ii) the park requirement P-070 referenced in the Heber City Master Plan 2018 to 2040 (Master Plan). Ivory shall be responsible to satisfy any other open space requirements arising under the COSZ ordinance requirements on the portion of the Property owned by Ivory. Said park shall be a minimum area of 2.85 acres.

 - b. Improvement of Coyote Park Parcel. Other than the obligations set forth in this Amendment, Ivory and Wasatch Back shall have no obligation to contribute to, or participate in, any improvements on the Coyote Park Parcel. The Petitioners shall grant the City reasonable access to allow for construction activities related to the Coyote Park Parcel, provided, however, that such construction activities shall not interfere with the residential development of the remaining portions of the Property.

3. Trails.

- a. Hwy 40 Trail. Wasatch Back and Ivory shall both install the required landscaping along Hwy 40 and pay a fee in lieu, commensurate with the phasing of the project, to the City for the construction of the trail. In addition, Ivory shall install a berm to serve as a buffer to Highway 40. Wasatch Back shall not be required to build a berm and may use the property for access from Highway 40. The landscaping along Hwy 40 shall include water-wise landscaping features, such as trees, shrubs, grasses, native vegetation, water conserving irrigation systems. The amount of said fee for the trail shall be determined by a bid or estimate process.. Said landscaping shall primarily incorporate native vegetation. Said construction shall be subject to City Engineer's approval. Ivory shall construct said berm commensurate with its phasing of the Project. The City would then progressively construct said trail and trail system as the level of connectivity develops.
- b. Wasatch Back and Ivory shall donate their respective lands required to accommodate the trails as outlined in Exhibit "E" via plat recordings. Ivory shall not be responsible for the constructions or development of any trails offsite that are on the Sorenson Property. These trails shall be a portion of two internal trail loops that connect with the Sorenson property to include and complete the section of trail located on the west side of the canal.
- c. Wasatch Back shall provide a trail easement to accommodate a 6 foot pedestrian trail from the most eastern street knuckle of the single family homes to the future park. The trail shall be constructed by Wasatch Back, commensurate with the development of the adjacent lots.
- d. Wasatch Back and Ivory's trail system should connect with each other, such that their respective trails systems would be continuous with each other, and the above mentioned two internal trail loops, and connect any and all stub-ins or dead-ends of the Highway 40 buffer trails.

4. Zoning. Notwithstanding anything in the Annexation Agreement to the contrary, including Section 3 of the Annexation Agreement, this First Amendment shall be conditioned

upon the Property being zoned as set forth on **Exhibit D** to this Amendment. The modification from the previously approved zoning for the Property adjusts the line of delineation between R-3 Zone and the R-3 COSZ Overlay.

- a. **COSZ Setbacks.** The setback on the Property between portions of the Property designated as within the Clustered Open Space Zone (“COSZ”) and the properties adjacent to the Coyote Ridge Subdivision shall be thirty (30) feet. This thirty (30) foot setback shall not apply to the borders of the COSZ zone within the Property and the “Barn Parcel”
- b. **Barn Parcel.** Wasatch Back Holdings will be permitted a parcel between the 100 foot highway buffer and the 60 foot future road way easement identified as Road Stub “A” on Exhibit J of the Annexation Agreement. Said parcel shall be either developed as a barn style building, for the private use of Wasatch Back, or incorporated into and consistent with future adjacent development(s). The setbacks for said parcel shall be as follows:
 - i. 20 feet from the highway buffer and future roadway easement.
 - ii. 5 feet on the north side.
 - iii. 12 feet on the south side.

5. **Density.** Section 4 of the Annexation Agreement is hereby amended to allow the average, overall residential density on the entire Property of up to 4.55 units per acre. As part of and included therein, Wasatch Back will be permitted 12 units per acre, as allowed in the COSZ, for the dedication of the additional 2.35 acres of park space, totaling 28 additional units for a density of 6.14 units per acre. Ivory will be permitted 4 unites per acres on the base density. The preceding average residential density limitations shall not include the required affordable housing units. Units dedicated to affordable housing shall be in addition to and not included in the calculation of the average densities, with the affordable units not to exceed the required 10% of the total allowed density.

Boone Property. In the event that Ivory is able to acquire the Boone Property, the City would allow Ivory an additional 8 units of residential development, to be used anywhere on Ivory’s Property, without requiring additional open space. The said 8 units shall be in addition to and not included in the calculation of the average densities outlined in Section 5.

6. **Affordable Housing.** All affordable housing built within on the Property shall be subject to Section 18.102 of the Heber Valley land use code and approved by the Wasatch County

Affordable Housing Authority. The affordable housing requirement shall be applied to the base density of 4.0 units per acre. The additional densities granted to Wasatch Back and Ivory for the park space and acquisition of the Boone Property will not increase the required affordable housing above and beyond the original base density.

7. Adjoining Roads. Section 6(g) of the Annexation Agreement is hereby amended to provide that Wasatch Back will construct the road stub identified as "B" on Exhibit J to the Annexation Agreement and provide a 60 foot wide public road easement in lieu of the construction of the road stub identified as "A" on Exhibit J of the Annexation Agreement, for the connectivity of future adjacent developments. Said easement shall be located as far east as possible to align with the North and Lloyd property boundary. Ivory will construct the road stub identified as "D" on Exhibit J to the Annexation Agreement.

8. Connections to Coyote Lane. In the event that Ivory acquires the Boone property, the cul-de-sac on Coyote Lane shall be removed and access relocated to the north/south collector road.

9. Road Standards. The road standards applicable to the Property shall be those described on Exhibit C. In the event this section conflicts with any other regulation, ordinance, or standard, this section shall control.

Vested Rights. The parties intend that the Annexation Agreement will provide the parties comprising Petitioner the right to develop and use the Property in accordance with the rights, standards, terms and conditions set forth in the laws and ordinances of Heber City as of the effective date of the Annexation Agreement ("**Vested Laws**"). Further, notwithstanding the right to develop under the Vested Laws, the parties comprising Petitioner may, at such parties' discretion, elect to develop the Property (or any portion thereof) pursuant to any future amendments or modifications to the Vested Laws in effect when an application for such development is submitted to the City

11. Effective Date. This Amendment shall be effective on the date when all parties have executed this Agreement.

12. Scope of Amendment. Except as expressly modified or changed in this Amendment, the terms and conditions of the Annexation Agreement remain in full force and effect. However, in the event of a conflict between the terms of the Annexation Agreement and this Amendment, this Amendment will control.

[End of Amendment. Signature Pages Follow.]

Wherefore, the parties have executed the foregoing Amendment.



CITY

Heber City, a municipal corporation and political subdivision

By: Kelleen Potter
Name: Kelleen
Title: Mayor
Date: 8/17/2020

Attest: Irina W. Cooke
City Recorder

STATE OF UTAH)
 SS.
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 17th day of August, 2020, by Kelleen Potter, as Mayor of Heber City.

Seal:



Kelly Rogers
Notary Public

IVORY

Ivory Land Corporation, a Utah corporation

By: *Chris P. Gamvroulas*

Name: CHRIS GAMVROULAS

Title: MANAGER

Date: 7/21/20

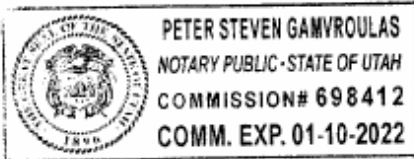
STATE OF UTAH)

SS.

COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 21ST day of JULY, 2020, by CHRISTOPHER P. GAMVROULAS as PRESIDENT of Ivory Land Corporation.

Seal:



Peter Steven Gamvroulas
Notary Public

WASATCH BACK

**Wasatch Back Holdings, LLC, a Utah
limited liability company**

By: *[Signature]*

Name: Glen K Lent

Title: Manager

Date: 7/1/20

STATE OF UTAH)
 SS.
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 1st day of July,
2020, by Glen Lent, as Manager of Wasatch Back
Holdings, LLC.

Seal:



[Signature]
Notary Public

EXHIBIT A

(Legal Description and Parcel Numbers)

Parcels

00-0021-4364

00-0021-4372

00-0021-4365

00-0021-4367

00-0021-4371

00-0021-4370

00-0021-4369

00-0021-4368

00-0021-4366

00-0021-4374

00-0021-4375

00-0021-4376

00-0021-4377

00-0021-4378

00-0021-4373

ANNEXATION DESCRIPTION

BEGINNING AT A POINT ON THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 29, SAID POINT OF BEGINNING BEING $500^{\circ}24'55''\text{E}$ 1682.68 FEET ALONG SAID EAST LINE FROM THE NORTH QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE ALONG SAID EAST LINE $500^{\circ}24'55''\text{E}$ 410.40 FEET; THENCE $\text{N}89^{\circ}35'23''\text{E}$ 529.97 FEET; THENCE $\text{S}48^{\circ}55'23''\text{W}$ 75.24 FEET; THENCE $\text{S}31^{\circ}39'37''\text{E}$ 599.94 FEET; THENCE $500^{\circ}24'35''\text{E}$ 23.74 FEET; THENCE $\text{S}13^{\circ}20'03''\text{W}$ 231.00 FEET THE WESTERLY BOUNDARY LINE OF THE COVE AT VALLEY HILLS FINAL PLAT; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING THREE COURSES: (1) $\text{S}18^{\circ}55'11''\text{W}$ 131.17 FEET; (2) $\text{S}17^{\circ}56'57''\text{W}$ 307.00 FEET; (3) $\text{S}15^{\circ}18'57''\text{W}$ 199.30 FEET; THENCE $\text{N}72^{\circ}24'22''\text{W}$ 87.87 FEET; THENCE $\text{N}19^{\circ}34'41''\text{E}$ 11.98 FEET; THENCE $\text{S}88^{\circ}22'27''\text{W}$ 1654.35 FEET TO THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 40; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 6950.49 FEET, A DISTANCE OF 489.79 FEET, A CHORD DIRECTION OF $\text{N}04^{\circ}09'12''\text{E}$ AND A CHORD DISTANCE OF 489.69 FEET AND $\text{N}02^{\circ}08'05''\text{E}$ 1336.33 FEET; THENCE LEAVING SAID EASTERLY RIGHT OF WAY LINE $\text{N}89^{\circ}32'18''\text{E}$ 1100.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 68.13 ACRES IN AREA

EXHIBIT B
(Coyote Park Parcel)



EXHIBIT C (Road Standards)

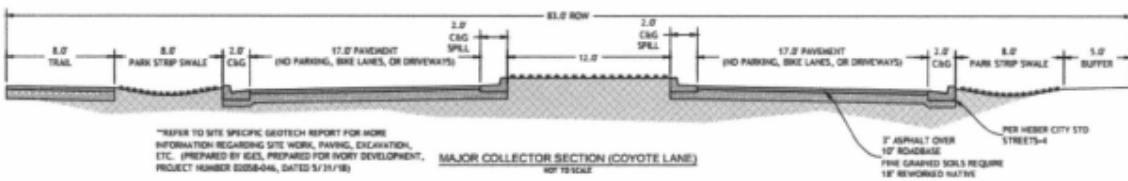
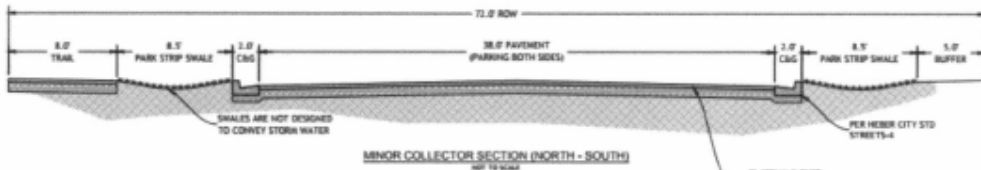
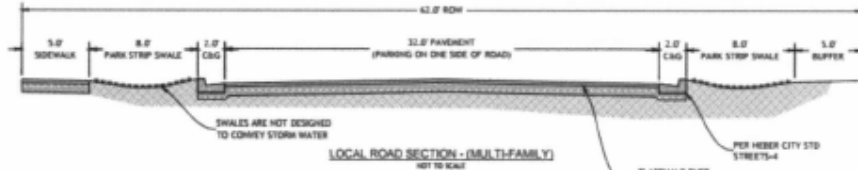
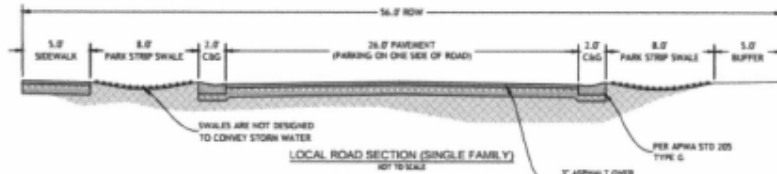
FUTURE PHASE

LEGEND:

S1, SPEED LIMIT / 25

S1, STOP

T1, STREET NAME SIGN



*REFER TO SITE SPECIFIC GEOTECH REPORT FOR MORE INFORMATION REGARDING SITE WORK, PAVING, ELEVATIONS, ETC. (PREPARED BY K&L, PREPARED FOR IVORY DEVELOPMENT, PROJECT NUMBER E028-04L, DATED 5/31/18)

EXHIBIT D
(Zoning of the Property)



To remain R-3 COSZ

EXHIBIT E (Trails Exhibit)

