

ORDINANCE NO. 1487

AN ORDINANCE APPROVING THE BIG WILLOW CREEK 3RD AMENDMENT DEVELOPMENT AGREEMENT FOR APPROXIMATELY 41.33 ACRES OF PROPERTY LOCATED AT APPROXIMATELY 491 WEST 11400 SOUTH WITHIN DRAPER CITY.

WHEREAS, the Land Use and Development Code of the Draper City Municipal Code has been established to provide regulations concerning general developments within the City Boundaries; and

WHEREAS, the City Council hereby determines that it will be in the best interest of the City to allow development of the subject property in accordance with the Development Agreement; and

WHEREAS, the Development Agreement will allow modified approval time frames for Phase 3 than would otherwise be allowed; and

WHEREAS, the proposed Development Agreement set forth herein has been reviewed by the Planning Commission and the City Council, and all appropriate public hearings have been held in accordance with Utah law to obtain public input regarding the proposed modifications to development standards; and

WHEREAS, the Planning Commission has reviewed and made a recommendation to the City Council concerning the proposed Development Agreement, and the City Council has found the proposed Development Agreement to be consistent with the City's General Plan.

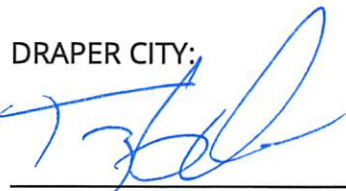
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH:

Section 1. Development Agreement. The City of Draper approves the Development Agreement provided in Exhibit A, otherwise known as the Big Willow Creek 3rd Amendment Development Agreement.

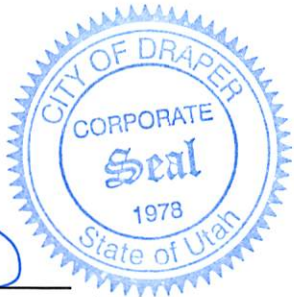
Section 2. Severability Clause. If any part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance and all provisions, clauses, and words of this Ordinance shall be severable.

Section 3. Effective Date. This Ordinance shall become effective immediately upon publication or posting, or 30 days after final passage, whichever is closer to the date of final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, ON THE 20TH DAY OF APRIL, 2021.

DRAPER CITY:


Mayor Troy K. Walker



ATTEST:



Laura Oscarson, CMC, City Recorder

VOTE TAKEN:

	YES	NO
Councilmember Green	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember T. Lowery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember F. Lowry	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Vawdrey	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mayor Walker	<input type="checkbox"/>	<input type="checkbox"/>

EXHIBIT A

DEVELOPMENT AGREEMENT

**THIRD AMENDMENT TO
BIG WILLOW CREEK SUBDIVISION DEVELOPMENT AGREEMENT**

This Third Amendment to Big Willow Creek Subdivision Development Agreement (“Third Amendment”) is entered into this 20th day of April 2021 (“Effective Date”), by and between Draper City, a municipal corporation of the State of Utah, (“City”), and Ivory Development, LLC, a Utah limited liability company (“Developer”), sometimes referred to jointly herein as “Parties.”

RECITALS:

WHEREAS the Parties previously entered into that certain Big Willow Creek Subdivision Development Agreement (“Agreement”) dated on or about February 13, 2017, with respect to real property located in Draper City, Salt Lake County, State of Utah (“Property”);

WHEREAS the Parties previously entered into that certain First Amendment to Big Willow Creek Subdivision Development Agreement dated April 16, 2019;

WHEREAS the Parties previously entered into that certain Second Amendment to Big Willow Creek Subdivision Development Agreement dated May 5, 2020;

WHEREAS Developer and the City have cooperated in the preparation of this Third Amendment and desire to enter into this Third Amendment to specify the rights and responsibilities of Developer to develop the Property, the Additional Property, and the H/H Property as expressed in this Third Amendment and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Third Amendment.

NOW, THEREFORE, in consideration of the promises, covenants, representations and warranties hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined herein shall have the same meanings assigned such terms in the Agreement, as amended.

2. Secondary Access. Paragraph 15 of the Agreement shall be deleted and restated in its entirety to state as follows:

15. Developer shall, upon approval of the final plat for Phases 2 or Phase 3 of the Project, and after obtaining the necessary permits, have the right to commence construction of the proposed site improvements of Phase 2 or Phase 3 prior to the construction of a second access to the Project through the Jenson Farms subdivision (“Jenson Access”). A public right-of-way easement has been dedicated to the City over the land in Jenson Farms for the construction of the second access road to the Project. Developer has the right to design and construct an access road through the Jenson Access at Developer’s sole cost.

Developer acknowledges that the City cannot control the timing of the construction of the Jenson Access. The City acknowledges that the developer of the Jenson Farms Subdivision (“Jenson Developer”), who is presently Gough Homes, is currently responsible for constructing the Jenson Access, and if Developer constructs the Jenson Access, the Jenson Farms Subdivision and the Jenson Developer will be directly benefitted thereby. In the event the Developer constructs the Jenson Access, the City shall, upon the joint written request of Developer and Jenson Developer or its successor or assign, make a good faith effort to facilitate a reimbursement agreement between Developer and Jenson Developer or its successor or assign on terms mutually agreeable to Developer and the Jenson Developer or its successor or assign. Developer recognizes and accepts all economic risk and all liabilities associated with commencing construction prior to Developer’s ability to record a plat and sell lots.

Ivory shall not seek building permits for homes in Phase 2 or Phase 3 until the City signs the final plats of Phase 2 or Phase 3. The City will not sign the Phase 2 or Phase 3 final plat without one of the following occurring:

- The final drawings for a second access to Big Willow Phase 2 or Phase 3 shall be approved by the City and a bond for the full construction costs shall be paid for the second access road improvements, or
- The construction of an approved second access to Big Willow Phase 2 or Phase 3 has been completed and accepted by the City.

The secondary access shall consist of the full public right-of-way improvements, including but not limited to curb, gutter, sidewalk, paved asphalt street, and other requirements as outlines in the Draper City Municipal Code.

Furthermore, the City will not:

- Accept a public improvement bond for the improvements in Phase 2 or Phase 3 without the payment of a public improvement bond for an approved second access to Big Willow Phase 2 or Phase 3,
- Accept the public improvements for Phase 2 or Phase 3 until the Phase 2 Final Plat or Phase 3 Final Plat is recorded and a warranty bond for said improvements has been paid, and
- Issue any building permits for the construction of any homes in Phase 2 or Phase 3 until the Jenson Access has been completed and accepted by the City.

3. Interpretation/ Conflicting Terms. In the event of a conflict in the terms and conditions of this Third Amendment with the terms and conditions of the Agreement, the terms and conditions of this Third Amendment shall be binding and govern the conduct of the parties.

4. No Other Changes. All provisions in the Agreement, except as specifically amended by this Third Amendment shall remain in full force and effect.

5. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, but with all such counterparts being taken together to constitute a single original.

IN WITNESS WHEREOF, the parties hereto have set their hands to this Third Amendment effective as of the date above first written.

Developer:

IVORY DEVELOPMENT, LLC,
a Utah limited liability company

By: _____

Name: _____

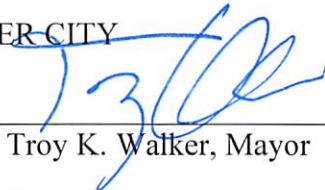
Its: _____

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this ____ day of _____, 2021, personally appeared before me _____, known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he/she is the _____ of Ivory Development, LLC, a Utah limited liability company, and acknowledged to me that said limited liability company executed the same.

Notary Public

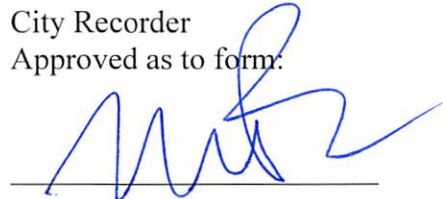
City:
DRAPER CITY

By 
Troy K. Walker, Mayor

Attest:



City Recorder
Approved as to form:



City Attorney



Dated: 4.21.21

Dated: 4.21.21

To be published on Friday, April 23, 2021, in *Deseret News*

City of Draper Notice of Ordinance Adoption – On April 20, 2021, the Draper City Council approved Ordinance #1487, approving the Big Willow 3rd Amendment Development Agreement. The complete ordinance is on file at the Draper City Recorder’s Office and online at www.draperutah.gov. Published this 23rd day of April 2021. Laura Oscarson, Draper City Recorder.

