

ANNEXATION AGREEMENT  
AND  
COVENANT RUNNING WITH THE LAND  
(Blue Ox Development)

THIS AGREEMENT entered into this 28 day of January, 2008 by and between Heber City, hereinafter referred to as "City" and the undersigned as "Developer".

WHEREAS, the Petitioner has proposed annexation of 4.575 acres as shown in Exhibit A and described in Exhibit B; and

WHEREAS, unique conditions exist resulting from the features on and around the property and the layout and design proposed by the Developer in Exhibit C;

NOW, THEREFORE, the parties hereby agree as follows:

1. The annexation shall be zoned C-2 Commercial, consistent with the Heber City General Plan.
2. The Developer of the property shall, at the time of development of the property and prior to subdivision plat recordation, transfer to the City all required water rights necessary for said development.
3. Developer shall construct and dedicate 700 North as shown on Exhibit C to the 60 foot local street standard as shown within Heber City's Standards and Specifications, including all utilities.
4. Developer shall obtain the most current information available from the Elmbridge development to the west and make reasonable effort to align the 700 North centerlines from each development according to UDOT and Heber City specifications.
5. Developer shall improve the street frontage along Highway 40 with asphalt and curb and gutter to UDOT specifications, and landscape and maintain any additional remaining right of way.
6. Developer shall construct streets and utilities to property lines.
7. Developer shall develop the property consistent with the proposed concept shown in Exhibit C or as approved by City, primarily aiming to be compatible with the adjoining PCMU Zone; specifically, Developer shall:
  - a. Provide and maintain a minimum 50 foot wide open space area along Highway 40; Developer shall fully landscape the open space with trees spaced no less than one tree per 30 feet of frontage, plant ground cover, construct at least 2 foot tall berms, and install an irrigation system for the open space and landscaped right of way area.
  - b. Developer shall provide a meandering 8 foot wide concrete trail within the open space area, connecting

- from the existing sidewalk at the current city boundary to the north property line; The open space and trail shall be privately maintained by Developer or as provided for in the property association agreement; The open space shall not be fenced with a privacy fence; the trail shall be open to the public.
- c. Construct buildings at or near the minimum front setbacks to create a street wall along 700 North; Developer shall construct a large landscaped sidewalk with trees spaced no more than 30 feet apart across the street frontage, with direct street parking on 700 north and storefronts primarily facing the street.
  - d. Provide a unique identifying architectural feature, such as the tower shown on the southwest portion of the site as a gateway to the project. This feature may be incorporated into a building as approved by Heber City.
  - e. Provide a small mixed-use cluster of office and retail space with a landscaped plaza and an additional landmark tower pavilion with extensive landscaped buffering of the rear parking lot. The landmark tower may be incorporated into a building as approved by Heber City.
  - f. Provide landscaped plazas at the entrances to each building.
  - g. Provide a major north-south driveway in the central portion of the development accessing a large interior parking lot or as approved by City.
  - h. Provide 2 driveway stubs to the property to the north for shared access or as approved by City.
8. No individual units within the development shall be permitted direct driveway access to Highway 40.
  9. Except as provided for in Paragraph 10 below, Developer is responsible for acquiring and paying for any necessary off site easements or dedications, and off site utility construction to extend, connect, and service the development with utilities that meet current City standards and facilities master plan. Utilities include, but are not limited to, sewer, water, secondary irrigation, storm drainage, streets, electricity, gas, and cable television. Developer is not responsible to pay for or obtain the forgoing items in behalf of other developers and entities.
  10. Heber City is currently working on an alignment and design for a future sewer main line that will service this development and other future developments in the surrounding area. As the design is not yet finalized the Developer agrees as follows:
    - a. Developer will install only those portions of the new sewer line that, at the time of development, the City has determined have sufficient design information available to be constructed. Location of said sewer

- line will be on the west side of the property, running north and south, and include crossing to the west right of way line of Highway 40.
- b. Developer will grant a 20-foot wide easement, acceptable to the City, for said line.
  - c. Developer will make provisions to permanently sewer the development through said line when it is complete and operational, unless it is determined by the City, by reason of the sewer design, that the development does not need to tie into said line.
  - d. Developer will be allowed to install temporary sewer service, at Developer's expense, and contingent on meeting City and State standards, should any portion of the development require sewer service before the off site portions of said line are complete.
  - e. Developer will be eligible for reimbursement from the City for oversized portions of the new line constructed and 50% of Highway 40 crossing. Reimbursement for the incremental cost to oversize any portion of the sewer from 10-inches in diameter to the required installed size, and the Highway 40 crossing, will be directly from the City, as funds are available, not to exceed five (5) years, after acceptance of all development improvements, and based on actual construction invoices.
  - f. Developer may seek reimbursement for the first 10-inches in diameter of any off site portion of the sewer constructed by entering into a reimbursement agreement with the City to collect funds from future development that fronts and connects to the off site portions of the sewer.
11. Developer shall bury all existing overhead utilities within the property and along all street frontages.
  12. At Developer's expense, existing utilities shall be relocated into future public right of ways as needed to avoid conflict with the Developer's proposed building pads unless otherwise approved by City.
  13. This Agreement contains the entire agreement between the parties, and no statement, promise or inducement made by either party hereto, or agent of either party hereto which is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified or altered except in writing approved by the parties.
  14. This Agreement shall be a covenant running with the land, and shall be binding upon the parties and their assigns and successors in interest. This Agreement shall be recorded with the Wasatch County Recorder.
  15. In the event there is a Failure to Perform under this Agreement and it becomes reasonably necessary for either party to employ the services of an attorney in connection

therewith (whether such attorney be in-house or outside counsel), either with or without litigation, on appeal or otherwise, the prevailing party to the controversy shall be entitled to its reasonable attorney's fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year this agreement was first above written.

DATED this 28 day of January, 2008<sup>9</sup>.

HEBER CITY:

By: *David Phillips*  
David Phillips, Mayor

ATTEST:

*Paulette Wheeler*  
Heber City Recorder

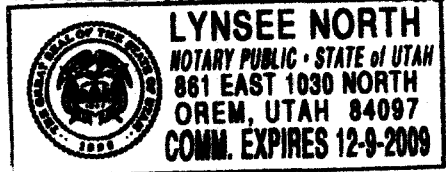
OWNER, Heber North Main Project LLC

By: *Aaron Robertson*  
Heber North Main Management  
by: Aaron Robertson

STATE OF UTAH            )  
  : ss.  
COUNTY OF WASATCH    )

On this 28 day of January, 2008<sup>9</sup>, personally appeared before me the above named Owner, who duly acknowledged to me that he is the owner in fee and executed the same as such.

*Lynsee North*  
NOTARY PUBLIC





**EXHIBIT B**

Blue OX  
Boundary Description

Commencing at a found Wasatch County Brass Cap Monument representing the North one-quarter corner of Section 32, Township 3 South, Range 5 East, Salt Lake Base and Meridian, thence along the Section Line South  $89^{\circ}31'51''$  West 1229.51 feet; thence South 1691.34 feet to the true Point of Beginning (basis of bearing; South  $89^{\circ}31'51''$  West between found Wasatch County Brass Cap Monuments representing the North one-quarter and Northwest corners of Section 32, Township 3 South, Range 5 East, Salt Lake Base and Meridian):

and running thence South 267.28 feet along the apparent East property line of the Heber North Main project, LLC. Property (Entry Number 313905 of the official records of Wasatch County) to the North property line of the Probst Trust Property (Entry Number 319386 of the official records of Wasatch County); thence along said Probst Trust North property line West 779.71 feet to the Easterly right-of-way line of U.S. Highway 40 as evidenced by found right-of-way monuments; thence along said Easterly right-of-way line North  $16^{\circ}27'05''$  East 286.41 feet to a point on the South property line of the MWE Valley Hills LLC property; said South property line being the common line of a Boundary Line Agreement recorded as Entry Number 298810 of the official records of Wasatch County; thence South  $89^{\circ}23'36''$  East along said south property line 698.64 feet to the Point of Beginning.

Containing 4.60 Acres