

Parcel ID #  
03-017-0016,  
03-017-0018

**NIBLEY CITY  
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT ("Agreement"), entered into this 12 day of September, 2022, between Heritage Crossing, LLC, a Utah limited liability company, hereinafter referred to as "Developer" and Nibley City, here in after referred to as "City", and

WHEREAS, Heritage Crossing, hereinafter referred to as "the Development" and more particularly described as the following:

All of that Real Property described in Deed Book 2299 Page 973 of the Official Records of Cache County located in the SW1/4 of Section 20, Township 11 North, Range 1 East, Salt Lake Base and Meridian, Nibley, Utah, more particularly described as a composite as follows: Beginning at the northwest corner of parcel 03-017-0018 as described in the 3200 SOUTH & 1200 WEST ROUNDABOUT BOUNDARY LINE ADJUSTMENTS AND ROADWAY DEDICATIONS according to the Official Records thereof on file in the Office of the Cache County Recorder, located S89°51'19"E along the 1/4 Section line 2,353.49 feet and South 25.00 feet from the West 1/4 Corner of Section 20, T11N, R1E, S.L.B.&M.; thence along said BOUNDARY LINE ADJUSTMENTS AND ROADWAY DEDICATIONS the following fifteen (15) courses and distances: thence S89°51'19"E 259.72 feet; thence S0°42'00"W 677.25 feet; thence along the arc of a 1056.00 radius curve to the right 164.46 feet through a central angle of 8°55'24" (chord: S5°09'42"W 164.30 feet); thence S9°37'24"W 38.72 feet; thence S10°12'23"W 66.89 feet; thence S9°47'37"E 33.62 feet; thence S10°12'23"W 22.75 feet; thence along the arc of a 88.00 foot radius curve to the right 73.62 feet through a central angle of 47°55'52" (chord: S34°10'19"W 71.49 feet); thence S58°08'15"W 10.69 feet; thence along the arc of a 185.20 foot radius curve to the right 61.63 feet through a central angle of 19°03'55" (chord: S67°40'13"W 61.34 feet); thence S68°02'28"W 18.30 feet; thence N88°51'12"W 214.63 feet; thence N0°10'30"E 597.31 feet; thence S89°51'08"E 115.19 feet; thence N0°03'24"E 494.64 feet to the point of beginning

WHEREAS, the Development has been approved for platting; and

WHEREAS, plans for the Development are on file with Nibley City and are incorporated by reference herein; and

WHEREAS, it is necessary for the interest of the public welfare that improvements to be made be constructed in accordance with the specifications set forth in said plans and as provided by Nibley City Ordinances and Design Standards; and

WHEREAS, Developer desires to record a final plat of the Development in order to obtain building permits and construct structures after the necessary infrastructure is installed, approved and accepted; and

WHEREAS, in accordance with said Nibley City ordinances, including Chapter 21.14 of the Nibley City Code, the Developer is required to furnish security for the completion of all improvements.

NOW THEREFORE, to induce Nibley City to approve said plans and allow use of city-owned utilities and access and/or other improvements, the Developer does hereby unconditionally promise and agree with Nibley City as follows:

1. Developer hereby acknowledges receipt of a copy of the Nibley City Subdivision Ordinance. Developer hereby acknowledges that Developer has read the Subdivision Ordinance (or that an agent of Developer has), and that Developer understands the provisions of the Subdivision Ordinance and that Developer will fully and completely comply with the provisions and requirements therein contained.

2. In accordance with Nibley City Code 21.14, Developer shall tender to Nibley City an Improvement Completion Assurance in the amount of \$963,113.88, which is the original bond amount of \$994,352.50 less the amount of work already completed of \$31,238.62. Subject to Section 17 below, in the event that Developer shall fail or neglect to fulfill the obligations under this Agreement, Nibley City shall have the right to foreclose on the Improvement Completion Assurance and to construct or cause to be constructed said streets and other improvements as shown on said plans as required by Nibley City ordinances and Design Standards. Upon completion of said improvements Developer shall be liable to pay to, and indemnify Nibley City for, the final total cost actually incurred by Nibley City in foreclosing on the Improvement Completion Assurance and completing all required improvements, including but not limited to, engineering, legal and contingent costs, together with any damages which Nibley City may sustain on account of the failure of Developer to carry out and execute all of the provisions of this Agreement, which said sums are secured by the Improvement Completion Assurance. Notwithstanding the foregoing, prior to Developer's obligation to pay to Nibley City for the foregoing costs, if necessary, Nibley City shall provide Developer with actual invoices, bills of sale, receipts, or other reasonably acceptable documentation, as determined by Developer in its reasonable discretion, evidencing such actual costs incurred by Nibley City. Developer's liability shall in no way be limited to the amount of the Improvement Completion Assurance. At the discretion of Developer and per the Nibley City Financial Assurance Code and Process, this Improvement Completion Assurance may be included as a provision or part of the Surety Bond specified in Paragraph 8 below.

3. The Developer shall complete all improvements in substantial accordance with the approved construction drawings, landscape plan, final plat, applicable City codes, statutes, and ordinances, and to the fullest extent permitted under the laws of the City, State of Utah, and United States (collectively, the "Vested Rights").

4. Developer shall construct each sewer manhole collar and each water valve collar in appropriate locations according to the approved construction drawings.

5. Developer shall supply the City with water rights or shares as set forth in Nibley City Code Section 21.12.020 for the Development, as follows: 24.78 Acre-ft. of water rights or 8.26 water shares from the Black Smith Fork Irrigation Company or an equivalent amount of acre feet from another irrigation company located in Nibley City. If Developer is unable to supply the City with water right shares, Developer may pay to the City at the rate of \$7,500 per share, prorated

as necessary. Developer shall provide said shares to the City before the commencement of construction.

6. At the discretion of the Developer, the Developer as the option to either pay the City a "street tree fee" for the purchasing and installing of trees within the Development or purchase and install the street trees as improvements to the Development. Within the Development these include trees along 3200 south, 1250 West/3100 South, and 3050 South. The number of trees total 64 and the type of tree is referenced in the Landscape plan approved by Nibley City Planning Commission. The City fee for all 64 trees is \$44,342 or \$570 per tree as calculated in the Street Tree Cost letter in Exhibit A. If the Developer elects to purchase and plant the street trees, Developer will have up to 2 years after the completion of the Development to install street trees adjacent to constructed homes, except for the street trees along 1200 West, which trees must be installed prior to completion of the Development as described below. At the end of the 2-year period, the Developer may choose to pay the per tree cost to the City for any unplanted trees after which the City will assume the responsibility to construct the remaining trees; request to extend tree planting for another 2 years; or install the remaining trees after providing reasonable means for watering and maintenance. While the street trees remain an obligation of the Developer, a proportional portion of the Surety Bond will remain in place to guarantee the cost of installation. 1200 West landscaping improvements, including street trees, shall be installed as per Landscape plan approved by planning commission prior to commencing the 1 year warranty period unless commencement begins after October 15<sup>th</sup> upon which, 1200 West landscaping improvement completion may be deferred to the following 15<sup>th</sup> of May. After Developer's completion of 1200 West landscaping improvement requirements, Nibley City shall be responsible for maintenance of such landscaping improvements. In all cases, proportional financial assurances shall be held by the Developer until improvements are completed per the prescribed improvement completion, inspection, and acceptance process and the financial assurance release process, as set forth in Nibley City Code, this Agreement, and the terms of any specific agreement, instrument, or document governing the financial assurances.

7. Developer is responsible for installing curb and gutter and any associated asphalt from the west end of the Development on 3200 south heading east and adjoining the curb and gutter already installed by Nibley City.

8. Developer shall provide a Surety Bond in the sum equal to ten percent (10%), a total of \$96,311.39, of the estimated costs of all improvements installed in the Development as estimated by the City Engineer for the period of Developer's warranty on the improvements in the Development as described in Nibley City Code 21.14.050. The Surety Bond shall meet all the criteria outlined in Nibley City Code Chapter 21.14. At the discretion of Developer and per the Nibley City Financial Assurance Code and Process, this Surety Bond may be included as a provision or part of the Improvement Completion Assurance specified in Paragraph 2 above.

a. Warranty. The Developer shall warrant 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 accepts the improvements when completed by the Developer, or on behalf of the Developer, and

as requested by the Developer for conditional acceptance as provided by separate agreement or by law.

9. The Developer shall pay the City a one-time fixed amount of \$9,425 to be used only for the improvement of an 8-foot wide trail at the north edge of the Development. The City shall be obligated to design, install, and maintain this trail as shown on the Nibley City Parks, Trails, Open Space and Recreation Master Plan and such installation shall not interfere in any way with Developer's construction of the Development and its improvements.

10. Developer shall comply with all applicable federal, Utah State, county, and City ordinances, requirements, regulations, standards, and laws that are currently in effect or pending adoption pursuant to Utah Code Ann. § 10-9a-509, except as expressly and specifically modified by this Agreement ("Applicable Law") for each aspect of this Development, including payment of fees and compliance with design and construction standards. Nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all such Applicable Law as now existing and as enacted and/or amended prior to construction, subject to Developer's Vested Rights as set forth in Section 15 below. In the event of a conflict between this Agreement and any applicable federal, state, county, or city requirement, regulation, or law, the federal, state, county, or city requirement, regulation, or law shall prevail to the extent of such conflict.

11. Developer shall not engage in any construction or disturbance of soil in the Development prior to issuance of the Notice to Proceed by the Public Works Director, with the exception of utility stubs which may be completed prior to the issuance of the Notice to Proceed due to the current construction on 1200 West and 3200 South. The Notice to Proceed shall not be unreasonably withheld, conditioned, or delayed by the Public Works Director or the City. In the event the Public Works Director is unavailable to issue such Notice to Proceed in a timely manner then the City Engineer or City Manager shall be authorized to issue the same without the need for any additional consents or approvals.

12. Developer shall include a note on the final plat that limits the use and modification of the on-lot stormwater basins to the effect that the intended stormwater system design is not compromised by improvements to the property; and that the integrity of the stormwater quality benefits provided by the stormwater basin design is also not compromised by improvements to the property.

13. Developer shall include a note on the final plat indicating that property owners are required to improve lots such that stormwater generated on the lot is either kept on the lot or conveyed to the street and in no case shall a lot be allowed to discharge stormwater to another residential lot.

14. Upsizing. The City shall not require Developer to "upsized" any public improvements (i.e., to construct the improvements to a size larger than required to service the Development) unless the City agrees to compensate Developer for the pro rata cost incurred as a result of such upsizing. Compensation to Developer for any upsizing of improvements shall be agreed to by Developer and the City as part of a customary reimbursement agreement which may be entered into by such parties; provided, however, execution of such reimbursement agreement

shall not be deemed as a condition precedent to Developer commencing construction and/or the City processing and issuing or approving any applications submitted by Developer.

15. Vested Rights and Reserved Legislative Powers.

a. Vested Rights. Developer may develop the Development in accordance with the Vested Rights. The parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law, and at equity. The parties specifically intend that this Agreement grants to Developer "vested rights" as that term is also construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509.

b. Construction Improvements. Developer is obligated to construct improvements in substantial accordance with all City codes, ordinances, and standards ("City Requirements") adopted by the Nibley City Council at the time of vesting. City staff and Developer worked in good faith to develop construction improvement plans that meet City Requirements; however, if items on the construction plans are identified by the City or Developer to be non-compliant with City Requirements, Developer shall construct improvements according to City Requirements.

c. Applicable Development Regulations. Neither the City nor any department or agency of the City shall impose upon the Development (whether by initiative, or other means) any ordinance, resolution, rule, regulation, standard, directive, condition, or other measure (each a "New Law") that reduces or impacts the rights provided by this Agreement or by the Vested Rights. Without limiting the generality of the foregoing, any New Law shall be deemed to conflict with this Agreement and/or the Vested Rights if it would accomplish any of the following results in a manner inconsistent with or more restrictive than Applicable Law, either by specific reference to the Development or as part of a general enactment that applies to or affects the Development: (i) change any land uses or permitted uses of the Development; (ii) limit or control the rate, timing, phasing, or sequencing of the approval or construction of all or any part of the Development in any manner other than as permitted by this Agreement and Applicable Law; or (iii) apply to the Development any New Law otherwise allowed by this Agreement that is not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites with similar land use designations.

d. Legislative Powers. The City shall process each application of the Developer consistent with the Vested Rights, provided that nothing in this Agreement shall limit the future exercise of the police power and legislative authority of the City, which power and authority is expressly reserved and retained. Notwithstanding such retained power, no New Law that conflicts with this Agreement or the Vested Rights shall apply to the Development unless the City finds and determines that the policies, facts, and circumstances satisfy the compelling, countervailing public interest exception to the vested rights doctrine, consistent with Utah Code Ann. § 10-9a-509 and Western Land Equities v. City of Logan, 617 P.2d 388 (Utah 1980). Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any New Law that may affect the Vested Rights, this Agreement, or the Development.

16. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto mentioned and permitted successors and assigns; provided, however, that this Agreement cannot be assigned, transferred or conveyed by either party, without the express, written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

17. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within ninety (90) days following delivery to the defaulting party of written notice of such delinquency and/or default. Notwithstanding the foregoing, if the identified default or delinquency cannot be reasonably cured with the foregoing 90-day period, the defaulting party shall not be in default so long as said defaulting party commences to cure the identified default within that 90-day period and diligently continues such cure in good faith until complete. Prior to either party exercising any default remedies set forth herein, the non-defaulting party hereby agrees to meet and confer with the defaulting party to explore and determine, in good faith, a mutually acceptable resolution to cure the default or an acceptable plan to cure the default in the future.

18. Termination. Notwithstanding anything in this Agreement to the contrary, the term of this Agreement shall be until ten (10) years after this Agreement is recorded (unless earlier terminated or modified by written amendment as set forth below). The term may be extended automatically for up to two (2) periods of five (5) years each if no Event of Default remains uncured, or Developer has commenced any curing activities. Upon termination or expiration of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the 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.

19. Force Majeure. Any prevention, delay, or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations, or controls; pandemics or epidemics; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period of time equal to the duration of that prevention, delay, or stoppage.

20. Notices. Any notices, requests, and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer:

Heritage Crossing, LLC  
 Attn: Darlene Carter and Matt Dean  
 1222 W. Legacy Crossing Blvd., Ste. 6  
 Centerville, UT 84014  
[darlene@cw.land](mailto:darlene@cw.land) and [matt@cw.land](mailto:matt@cw.land)



With a copy to:

CW Development Group, LLC  
Attn: Tony Hill  
1222 W. Legacy Crossing Blvd., Ste. 6  
Centerville, UT 84014  
[tony@cw.land](mailto:tony@cw.land)

To the City:

Nibley City  
Attn: Justin Maughan., City Manager  
455 W 3200 S  
Nibley, UT 84321  
[jm@nibleycity.com](mailto:jm@nibleycity.com)

21. **Applicable Law.** This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

22. **Estoppel Certificate.** If no Event of Default has occurred or remains uncured in the provisions of this Agreement and upon five (5) days prior written request by Developer or a sub-developer, the City will execute an estoppel certificate to any third party certifying that Developer (or a sub-developer), as the case may be, at that time is not in default of the terms of this Agreement.

23. **Relationship of the Parties.** This Agreement does not create any joint venture, partnership, undertaking, business arrangement, or fiduciary relationship between the City and the Developer.

24. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

25. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

26. **Mutual Drafting.** Each party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either party based on which party drafted any particular portion of this Agreement.

27. **Entire Agreement.** This Agreement, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

28. **No Third Parties.** This Agreement, and all Exhibits thereto, is intended for the sole benefit of the named parties thereto. No third party, except for permitted successors and assigns, shall have any right to enforce any of the terms or obligations herein.

29. Recordation and Running with the Land. This Agreement shall be recorded in the chain of title for the Development. This Agreement shall be deemed to run with the land.

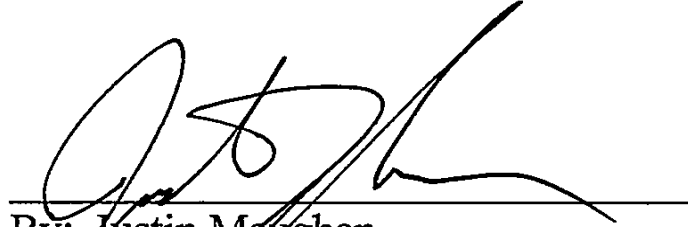
30. Attorney Fees. Both Parties shall pay for their own attorney fees and costs arising out of or connected in any way to the execution of this Agreement. Any Party that prevails in any legal proceeding, including court proceedings, arbitration, and administrative proceedings, to enforce this Agreement or adjudicate any issues under or in connection with this Agreement will be entitled to recover its reasonable attorney fees, costs, and expenses of such proceeding.

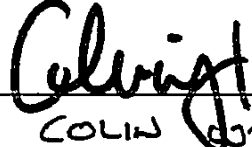


IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

**NIBLEY CITY**

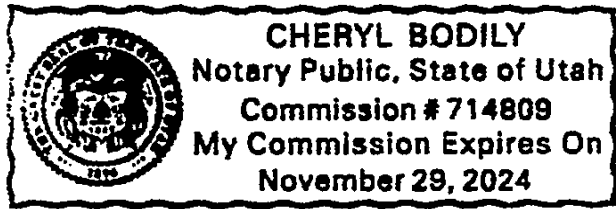
**DEVELOPER**

  
By: Justin Maughan  
Its: City Manager

**Heritage Crossing, LLC**  
a Utah limited liability company  
  
By: COLIN WRIGHT  
Its: MANAGER

STATE OF UTAH )  
                                  :SS  
County of Cache )

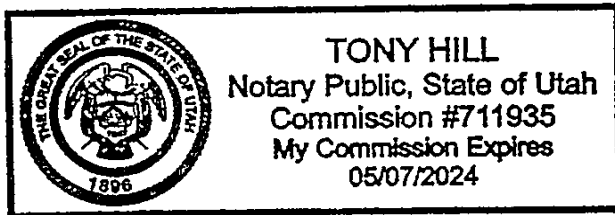
On this 13 day of September, 2022, personally appeared before me JUSTIN MAUGHAN, City Manager, the signer of the within instrument, who duly acknowledged to me that he executed the same as City Manager for Nibley City Corporation.




  
NOTARY PUBLIC

STATE OF UTAH )  
                                  : SS  
County of Davis )

On the 22 day of AUGUST, 2022, personally appeared before me, COLIN WRIGHT, who being by me duly sworn did say that she/he is the MANAGER of Heritage Crossing, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with property authority and duly acknowledged to me that she/he executed the same.



  
NOTARY PUBLIC

**Exhibit A**  
**Street Tree Costs**

Mayor  
Larry Jacobson



Council Members  
Kathryn Beus  
Kay Sweeten  
Norman Larsen  
Nathan Laursen  
Tom Bernhardt

7/14/2022

Matthew Payne  
1222 Legacy Crossing BLVD.  
Centerville, UT 84014

**RE: Heritage Crossings Subdivision – Nibley City Tree Cost Calculation**

The purpose of this letter is to provide a cost for the installation of street trees within the Heritage Crossings Subdivision in accordance with City Code that allows for developers to pay the City to install the required trees for a subdivision rather than having the trees installed at their own expense.

A fee of \$44,342 shall be provided to the City in order for the City to assume responsibility to construct this portion of the development. The attached table provides the support calculations identifying how costs were calculated.

Thank You,

Darren Farar, PE  
City Engineer  
Nibley City

**Heritage Crossings Tree Planting Cost Estimate**

<b>Heritage Crossings Tree Planting Cost Estimate</b>						
<b>Number of Trees</b>	<b>Cost (material &amp; labor)</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
64	\$570	\$36,480	\$38,304	\$40,219	\$42,230	<u>\$44,342</u>
1	Assumes an average of 5% inflation per year over the next 5 years.					
2	Price does not include the cost to construct irrigation systems.					
a.	Irrigation systems for trees that are maintained by the City shall be constructed by the developer prior to subdivision acceptance.					
b.	Irrigation systems for trees that are the responsibility of individual lot owners, shall be constructed by the homeowner in connection with construction of the residence.					