

### HARVEST ACRES SUBDIVISION, PHASE 2 SUBDIVISION DEVELOPMENT AGREEMENT

THIS SUBDIVISION DEVELOPMENT AGREEMENT (hereinafter "Agreement"), is made and entered into this 18 day of September, 2023, by and between the TREMONTON CITY, a body corporate and politic of the State of Utah, (hereinafter the "City") and HERITAGE LAND DEVELOPMENT, LLC (hereinafter "Developer") the City or Developer may be referred to individually as "Party" or collectively as Parties:

#### RECITALS

WHEREAS, Developer desires to develop certain real property situated in the corporate city limits of Tremonton City, Box Elder County, State of Utah (hereinafter sometimes referred to as the "Property" or "Development") and legally described as follows, to wit:

Part of the the Northeast Quarter of Section 15, Township 11 North, Range 3 West of the Salt Lake Base and Meridian described as follows:

Commencing at the Northeast Corner of Section 15, Township 11 North, Range 3 West of the Salt Lake Base and Meridian monumented with a Rail Road Spike, thence S87°25'45"W 2521.21 feet along the north line of the Northeast Quarter of said Section 15 to the east right of way line of the railroad; thence S03°36'11"W 488.48 feet along said right of way line to the POINT OF BEGINNING and running

thence along the boundary of Harvest Acres Subdivision, Phase 1 recorded in the Box Elder County Recorder's Office under Entry No. 443120 on November, 10, 2021 the next four courses:

- 1) thence S 83°38'36" E 159.20 feet;
  - 2) thence S 87°15'25" E 96.26 feet;
  - 3) thence S 89°28'56" E 60.00 feet;
  - 4) thence N 87°25'45" E 101.00 feet;
- thence N 87°25'45" E 834.21 feet to the west right of way line of Bear River Canal;
- thence S 00°54'41" E 294.48 feet along said right of way line;
  - thence S 89°04'11" W 109.77 feet;
  - thence N 65°18'05" W 65.99 feet;
  - thence S 88°02'30" W 230.15 feet;
  - thence S 86°08'10" W 60.14 feet;
  - thence S 88°02'30" W 115.07 feet;
  - thence S 00°06'23" W 70.05 feet;
  - thence N 72°40'47" W 73.28 feet;
  - thence N 76°18'38" W 75.47 feet;
  - thence S 86°10'57" W 77.82 feet;
  - thence N 87°50'54" W 164.79 feet;
  - thence N 73°27'05" W 61.25 feet;
  - thence N 86°15'58" W 91.09 feet;
  - thence S 03°36'11" W 248.21 feet to the right of way line of Interstate 15;
  - thence N 57°00'22" W 183.64 feet along said right of way line east right of way line of the railroad;
  - thence N 03°36'11" E 419.87 feet along said right of way line to the point of beginning, containing 8.61 acres, more or less

WHEREAS, Developer desires to develop the Property and Developer has submitted to the City all plats, plans (including utility plans), reports, and other documents required for the approval of a Final Plat according to the City's outlined policies, procedures, and code; and

Entry No. 467224  
 09/20/2023 11:15:39 AM  
 AGREEMENT For: HERITAGE LAND DEVELOPMENT  
 Chad Montgomery, Box Elder County Utah Recorder

B: 1565 P: 0759  
 FEE \$40.00  
 Pages: 22



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WHEREAS, the Parties hereto have agreed that the development of the Property will require municipal services from the City in order to serve such area and will further require the installation of certain improvements primarily of benefit to the lands to be developed and not to the City of Tremonton as a whole; and

WHEREAS, the City has approved the Final Plat for recording with the Recorder's Office of Box Elder County, Utah, which was submitted by the Developer subject to certain requirements and conditions, which involved the installation of and construction of utilities and other municipal improvements in connection with the Property; and

WHEREAS, Utah Code 10-9a-102 provides the City's general land use authority to adopt ordinances, resolutions, rules, and may enter into development agreements.

NOW, THEREFORE, in consideration of the promises of the Parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

### **SECTION 1. GENERAL CONDITIONS**

A. **Development Activities.** The terms of this Agreement shall govern all development activities of the Developer pertaining to the Property. For the purposes of this Agreement, "development activities" shall include, pursuant to Utah Code Annotated (hereinafter "UCA") § 10-9a-103(8), but be not limited to, the following: any change in the use of land that creates additional demand and needs for public facilities. Furthermore, for purposes of this agreement only, "development activities" shall also include the following: (1) the actual construction of improvements, (2) obtaining a permit therefore, or (3) any change in grade, contour, or appearance of the Property caused by, or on behalf of, the Developer with the intent to construct improvements thereon, none of which shall occur until execution of the Agreement and City approval of the Final Plat.

B. **Time Limitations for Improvements.** All water lines, sanitary sewer collection lines, storm sewer lines and facilities, streets, curbs, gutters, sidewalks, streetlights, and trails shall be installed as shown on the Final Plat, Construction Drawings and in full compliance with the standards and specification of the City, at the time of approval of the Final Plat, subject to a two (2) year time limitation from the date of approval of the Final Plat, which is in compliance with Title II, Chapter 2.05 of the Tremonton City Land Use and Development Code. In the event that the Developer commences or performs any construction pursuant hereto after the passage of two (2) years from the date of approval of the Final Plat, the Developer shall resubmit the Final Plat and documentation supporting a new guaranty bond to the City Engineer for reexamination. Pursuant to UCA § 10-9a-603, the City may then require the Developer to comply with the approved standards and specifications of the City at the time of resubmission.

After two (2) years from the date of approval of the Final Plat, if any development improvements have not been completed, the City, at its sole discretion, may use the guaranty bond money to complete development improvements.

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C. **Culinary Water and Sewer Treatment Capacity.** The City, which includes the Tremonton City Culinary Water Authority and Tremonton City Sanitary Sewer Authority, does not reserve or warrant water capacity or sewer treatment capacity until the issuance of a building permit. Recording of the Final Plat, execution of this Agreement, and/or recording of any lot within the Development does not constitute a reservation or warranty for water capacity and/or sewer treatment capacity

D. **Fee-in-Lieu Payments.** In cases where a Developer shall be required by City Ordinance to install an improvement, but circumstances, as determined by the City Engineer, prevent the construction of the improvement, the Developer shall pay a fee-in-lieu of construction. The fee-in-lieu payment shall be the current cost of constructing the improvement as estimated by the City Engineer and formalized in Section 2- "Special Conditions in this Agreement." The fee-in-lieu payment shall be used towards the costs of installing the required improvements, the timing of when said improvement shall be constructed shall be at the sole discretion of the City and absolve the Developer from making the improvement in the future or paying the future cost of the required improvement.

E. **Off-Site Project Improvements.** Developer may be required to install off-site improvements without participation or reimbursement from the City or surrounding property owners. Such improvements are identified as "Project Improvements" as defined by Utah Code Annotated 11-36a-102 (14), which generally include improvements that are: 1) planned and designed to provide service for the Development; 2) necessary for the use and convenience of the occupants or users of the Development, and 3) improvements that are not identified or reimbursed as a "System Improvement" as defined by Utah Code Annotated 11-36a-102 (21).

F. **Secondary Water System.** In accordance with Utah Code Annotated 10-9a-508, subdivisions that require water service shall provide to the City, in addition to those requirements and improvements associated with culinary water, the necessary water shares in the Bear River Canal Company sufficient to meet the municipal needs that will be created by the Development. Said dedication of water shares shall occur prior to, or contemporaneous with, the approval for subdivision of Property. All such water share dedications shall occur prior to the recording of the subdivision with the Box Elder County Recorder. Developer shall also construct a secondary water transmission and distribution system in accordance with the City's construction standards sufficient to satisfy the existing and future uses of the occupants to be supplied by the City's Secondary Water System in the Development. The use of the water shares dedicated to the City by the Developer and connection of the Developer's installed secondary water distribution system within the Development to secondary water transmission lines constructed by the City shall be at the City's sole discretion.

G. **Building Permit Issuance.** No building permit for the construction of any structure within the development shall be issued by the City until all individual lots in the development are staked by a licensed surveyor, the public water lines and stubs to each lot, charged fire hydrants, sanitary sewer lines, and stubs to each lot, street lights and public streets (including all-weather access, curb, gutter, and pavement with at least the base course completed), serving such structure have been completed and accepted by the City.

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H. **Certificate of Occupancy.** No Certificates of Occupancy shall be issued by the City for any structure within the development until gas lines to the structure are installed, street signs are installed, and all electrical lines are installed.

I. **Financial Responsibilities of Developer.** Except as otherwise herein specifically agreed, the Developer agrees to install and pay for all water, sanitary sewer, and storm drainage facilities and appurtenances, and all streets, curbs, gutters, sidewalks, trails, and other public improvements required by this Development as shown on the Final Plat, Construction Drawings and other approved documents pertaining to this Development on file with the City.

J. **Utility Line Installments.** Street improvements shall not be installed until all utility lines to be placed therein have been completely installed, including all individual lot service lines (water and sewer) leading in and from the main to the property line, all electrical lines, and all communication conduits.

K. **Inspection by City Officials.** The installation of all utilities shown on the Final Plat and Construction Drawings shall be inspected by the Engineering Department and/or Public Works Department of the City and shall be subject to such department's approval. The Developer agrees to correct any deficiencies in such installations to meet the requirements of the plans and/or specifications applicable to such installation. In case of conflict, the Tremonton City Public Works Standards shall supersede the Final Plat and Construction Drawings, unless written exceptions have been made.

L. **Form of Recorded Drawings.** The Developer shall provide the City Engineer with two (2) certified Record Plan Drawings upon completion of each phase of the construction. Utilities will not be initially accepted prior to as-built drawings being submitted to and approved by the City of Tremonton. The City reserves the right to request alternative forms of plans (i.e., CAD drawings, GIS images, etc.).

M. **Developer Compliance with EPA and other Regulations.** The Developer specifically represents that to the best of its knowledge, all property dedicated (both in fee simple and as easements) to the City associated with this Development (whether on or off-site) is in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders or requirements, including solid waste requirements, as defined by the US Environmental Protection Agency Regulations at 40 CFR Part 261, and that such property as is dedicated to the City pursuant to this Development, is in compliance with all such requirements pertaining to the disposal or existence in or on such dedicated property of any hazardous substances, pollutants or contaminants, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The Developer, for itself and its successor(s) in interest, does hereby indemnify and hold harmless the City from any liability whatsoever that may be imposed upon the City by any governmental authority or any third Party, pertaining to the disposal of hazardous substances, pollutants or contaminants, and cleanup necessitated by leaking underground storage tanks, excavation and/or backfill of hazardous substances, pollutants or contaminants, or environmental cleanup responsibilities of any nature whatsoever on, of, or related to any property dedicated to the City in connection with this Development, provided that such damages or liability are not caused by circumstances



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arising entirely after the date of acceptance by the City of the public improvements constructed on the dedicated property, except to the extent that such circumstances are the result of the acts or omissions of the Developer. Said indemnification shall not extend to claims, actions, or other liability arising as a result of any hazardous substance, pollutant, or contaminant generated or deposited by the City, its agents or representatives, upon the property dedicated to the City in connection with this Development. The City agrees to give notice to the Developer that he must obtain a complete discharge of all City liability through such settlement. Failure of the City to give notice of any such claim to the Developer within ninety (90) days after the City of first receives a notice of such claim under the Utah Governmental Immunity Act for the same, shall cause this indemnity and hold harmless agreement by the Developer to not apply to such claim and such failure shall constitute a release of this indemnity and hold harmless agreement as to such claim.

N. **City Ownership Rights.** The Developer acknowledges and agrees that the City, as the owner of any adjacent property (the "City Property") on which off-site improvements may be constructed, or that may be damaged by the Developer's activities hereunder, expressly retains (and does not by this Development Agreement waive) its rights as the property owner. The City's rights as an owner may include without limitation those rights associated with the protection of the City Property from damage, and/or the enforcement of restrictions, limitations, and requirements associated with activities on the City Property by the Developer as an easement recipient.

O. **Developer Vesting.** Developer, by and through execution of this agreement, receives a vested right to develop the number of lots shown and configured on the Final Plat, without interference from the City, so long as development is completed in accordance with the plans specifically shown on the Final Plat, Construction Drawings and pursuant to the statutory requirements codified by Utah State and Tremonton City Codes. Furthermore, following the execution of the Agreement, the Developer's right to develop and construct in accordance with the statutory requirements at the time of execution of the Agreement shall be deemed vested.

## SECTION 2. SPECIAL CONDITIONS

### BEFORE RECORDING OF THE PLAT

- Development Processing/Application Fees. The Developer shall pay the development application review fees contained in the City's Consolidated Fee Schedule as follows prior to recording the plat:
  - Preliminary Plat Fee. A fee of \$254.00, which is \$150 plus \$4.00 per lot.
  - Final Plat Fee. A fee of \$1290.00, which is \$250 plus \$40.00 per lot.
  - Construction Drawings. A fee of \$6,598.57, which is ½ of 1% of the estimated costs of the improvements.
  
- Fee in Lieu Street Lights. The Developer shall pay a fee in lieu in the amount of \$14,000.00 for four (4) street lights prior to recording the plat.

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- Fee in Lieu Street Signs. The Developer shall pay a fee in lieu in the amount of \$2,070.00 for street signs prior to recording plat.
- Fee in Lieu Chip Seal. The Developer shall pay a fee in lieu in the amount of \$19,264.24 for the chip sealing of all public streets prior to recording the plat.
- Bear River Water Canal Shares. In accordance with Section 2.06.105 of the Tremonton City Land Use Code, the Developer dedicates to Tremonton City 3.65 water shares in the Bear River Canal Company prior to the recording of the plat.
- Roll Back Taxes. In accordance with the Tremonton City Land Use Code 2.04.060 A 6, the Developer pays any rollback taxes prior to the recording of the plat.
- Rocky Mountain Power Notification. In accordance with Tremonton City Ordinance No. 20-07, before the City approves any new subdivision and before the recordation of the plat, the City shall require the developer to obtain Rocky Mountain Power’s approval of Electrical Facilities, including underground facilities to be installed by the developer, and associated rights of way depicted on the plat. The developer shall mail a copy of the plat to Rocky Mountain Power:

Rocky Mountain Power  
 Attn: Estimating Department  
 Local Address 596 North 400 West  
 Tremonton, Utah 84337

AFTER RECORDING OF THE PLAT

- Open Trench & UTOPIA. In accordance with Section 2.06.060 of the Tremonton City Land Use Code, the Developer shall give written notice to utility companies, including UTOPIA, a minimum of ten (10) days prior to the availability of access to open trenches. Tremonton City currently has the following individuals as UTOPIA representatives to coordinate the open trench:

Brian Kelsey  
 Outside Plant Design Manager  
 Office: (801) 613-3868 | Cell: (801)-792-1353  
[bkelsey@utopiafiber.com](mailto:bkelsey@utopiafiber.com)

Keith Perkins  
 Construction Manager  
 Office: (801) 613-3863 | Cell: (801) 330-5601  
[kperkins@utopiafiber.com](mailto:kperkins@utopiafiber.com)

- Field Drains. Field drains (open joint clay tile drains) cross this Development and were installed for agricultural purposes. No one entity claims ownership of these field drains. As required, Section 2.06.025 of the Tremonton City Land Use Code, through the

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development process, if encountered, the Developer agrees to reroute any field drain to ensure continuity.

- Parcel A. The recording of Harvest Acres Subdivision, Phase 2, creates Parcel A, which has lot dimensions of approximately 12.5' wide by 295' long. Parcel A does not meet the dimensional standards of the zoning ordinance for a lot; the purpose of Parcel A is to provide extra corridor width for the Bear River Canal Company to maintain the Central Canal. The Developer agrees to deed Parcel A to the Bear River Canal Company within ninety days (90) days of recording the Harvest Acres Subdivision, Phase 2.
- Red Curb. In accordance with the City's Pre-Annexation Agreement for the Hansen Annexation adopted with Resolution No. 20-39, the Developer agrees to paint the curbs red on 300 West south of 1300 South.
- Permanent Property Survey Markers. The Developer agrees to install permanent property survey markers for Lots 38 and Lots 39 delineating the 300 West right-of-way from the private property. This requirement is associated with the curb, gutter, and sidewalk being located in a way to directs traffic to the underpass, which appears to make the front yards of these lots larger. The permanent property survey markers for Lots 38 and Lots 39 are meant to put the property owners on notice of where their property ends.
- Irrigation Ditch, Bear River Canal Company, & Indemnification. The Developer covenants that they have talked with all the parties that have an interest in the irrigation ditch that is being abandon through the Development, that the Developer will provide an alternative means for property owners to receive their irrigation water, and that these alternative means have been approved by the property owners. The Developer agrees to indemnify the City from any liability associated with the abandonment of the irrigation ditch through the Development and any claim from the Bear River Canal Company regarding the platting of this subdivision impeding their claim for an easement.
- Construction Fencing Along the Canal. The Developer shall erect a construction fence after the completion of the dirt work and pouring of foundations, but before framing or any other phase of construction, which will generate considerable construction debris. The construction fence is to mitigate construction debris from blowing into the Central Canal and plugging conduits.
- Permanent Fencing along the Canal. In accordance with the Tremonton City Land Use Code 1.18.035, the Developer is required to install a fence on the property line that borders the Central Canal. The Developer agrees to construct the six-foot (6') fence that is a privacy (completely sight-obscuring) fence. The fence shall be owned and maintained by the owner of the property where the fence is located.
- Reimbursement for Storm Drain Basin Property and Water Shares. In accordance with the City's Pre-Annexation Agreement for the Hansen Annexation adopted with Resolution No. 20-39, the City committed to reimburse the Developer for a regional storm drain pond. More specifically, the Regional Storm Drain Basin is a System

Improvement, and as such, the City shall reimburse the Developer \$20,000 per acre for 3.1 acres that the Developer has previously conveyed to the City and 3.1 shares in the Bear River Canal Company necessary for the irrigation of the Regional Storm Drain Basin that has already been conveyed to the City. The City shall reimburse the Developer \$5,000 per water share. The Developer has already agreed to payment for the 3.1 acres of real property and 3.1 shares in the Bear River Canal Company to be reimbursed from storm drain impact fees collected from the Development. The Developer acknowledges that there is no date certain for reimbursement, other than that the City shall first remit payment of stormwater impact fee received from the Development within thirty (30) days from receipt of stormwater impact fees until the total reimbursement amount for the 3.1 acres of real property and 3.1 shares in the Bear River Canal Company is reimbursed in full to the Developer.

### SECTION 3. MISCELLANEOUS

A. **Construction Site Safety.** The Developer agrees to provide and install, at its expense, adequate barricades, flaggers, warning signs, and similar safety devices at all construction sites within the public right-of-way and/or other areas as deemed necessary by the City Engineer, City Public Works Department, and Traffic Engineer in accordance with any and all Federal Regulations, the City's Policies and Procedures, Utah Department of Transportation Requirements, OHSA, and Manual of Uniform Traffic Control Devices ("MUTCD") and shall not remove said safety devices until the construction has been completed.

B. **Construction Site Waste.** The Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary, but no less than daily and; at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. The Developer further agrees to maintain the finished street surfaces so that they are free from dirt caused by the Developer's operation or as a result of building activity. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City to withhold building permits and/or certificates of occupancy until the problem is corrected to the satisfaction of the City Building Inspector and/or the City Public Works Director. If the Developer fails to adequately clean such streets within two (2) days after receipt of written notice, the City may have the streets cleaned at the Developer's expense, and the Developer shall be responsible for prompt payment of all such costs. The Developer also agrees to require all contractors within the Development to keep the public right-of-way clean and free from the accumulation of dirt, rubbish, and building materials. Under no circumstances shall the Developer or any sub-contractors use open burning procedures to dispose of waste materials.

C. **Compliance with City Building Inspector, City Engineer, and City Public Works Director.** The Developer hereby agrees that it will require its contractors and subcontractors to cooperate with the City's Building Inspector, City Engineer, or City Public

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Works Director by ceasing operations when winds are of sufficient velocity to create blowing dust, which, in the inspector's opinion, is hazardous to the public health and welfare.

**D. Protection Strips and Undevelopable Lots.** Developer covenants and warrants that they have not, or will not in the future, unlawfully divide real property in such a way that a parcel of property is created or left behind that cannot be developed according to the requirements of Tremonton City Land Use Ordinances, or other applicable laws. Examples of a parcel of property that is created or left behind that cannot be developed include, but are not limited to, spite strips or protection strips, which are parcels created or left for the sole purpose of denying another property owner access to their property, parcels with insufficient square footage, parcels with insufficient buildable area, parcels that do not meet the requirements of Tremonton City Land Use Ordinances, and parcels that do not abut on a dedicated street. When a Developer unlawfully divides property, the Developer agrees, as a remedy, to dedicate and otherwise deed ownership of these undevelopable parcels of land to the City within thirty (30) days of the City's written request.

**E. Consequences of Developer non-compliance with Final Plat and the Agreement.** The Developer shall, pursuant to the terms of this Agreement, complete all improvements and perform all other obligations required herein, for such improvements or obligations that may be shown on the Final Plat and Construction Drawings, or required within this Agreement or any document executed in the future that are required by the City for amending the Development's Final Plat, Construction Drawings, or this Agreement.

In addition to the other remedies contained within this Agreement for the Developer's non-compliance or default with the obligations required herein, the Parties agree that the City may delay the processing of any future land use applications, land use decisions, and/or land use permits submitted to the City for projects in which the Developer may have an ownership interest until the Developer non-compliance or default has been cured. The Developer acknowledges and agrees to waive any time constraints applicable in Utah Code, with which the City would otherwise be required to comply for the processing of land use applications, land use decisions, and land use permits for the Developer's non-compliance or default. Any future land use applications, land use decisions, and/or land use permits may include, but are not limited to, preliminary plats, final plats, site plans, building permits, certificates of occupancy, sign permits, zoning, rezoning, and annexations within the Development or outside of the boundaries of the Development, for which Tremonton City is Land Use Authority. An ownership interest in a future land use application, land use decisions, and/or land use permit includes, the Developer, Developer's spouse, and/or Developer's minor children ownership as an individual or a member of a corporation with assets that are the subject to the future land use application. If the City suspects that the Developer may have ownership in the future land use application, it is the Developer's burden to prove the contrary.. The City may also place liens on vacant lots still owned by the Developer as it deems necessary to ensure performance in accordance with the terms of the Agreement.

**F. No Waiver of Regulation(s).** Nothing herein contained shall be construed as a waiver of any requirements of the City Code or the Utah Code Annotated, in its current form as of the date of approval of the Final Plat, and the Developer agrees to comply with all requirements of the same.

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G. **Severability of Waivers.** A waiver by any party of any provision hereof, whether in writing or by course of conduct or otherwise, shall be valid only in the instance for which it is given, and shall not be deemed a continuing waiver of said provision, nor shall it be construed as a waiver of any other provision hereof.

H. **City Council Budgetary Discretion.** All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for the purpose being annually appropriated, budgeted, and otherwise made available by the Tremonton City Council, in its discretion.

I. **Covenants Run with the Land.** This Agreement shall run with the Property, including any subsequent, approved amendments to the Final Plat of all or a portion of the Property. This Agreement shall also be binding upon and inure to the benefit of the Parties hereto, their respective personal representatives, heirs, successors, grantees, and assigns. It is agreed that all improvements required pursuant to this Agreement touch and concern the Property regardless of whether such improvements are located on the Property. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement.

J. **Liability Release.** With limitations pursuant to Utah Code Annotated § 10-9a-607, in the event the Developer transfers title to the Property and is thereby divested of all equitable and legal interest in the Property, the Developer shall be released from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of any such transfer of interest. In such an event, the succeeding property owner shall be bound by the terms of this Agreement.

K. **Irrigation Ditch, Bear River Canal Company, & Indemnification.** The Developer covenants that they have talked with all the parties that have an interest in the irrigation ditch that is being abandon through the Development and that the Developer will provide an alternative means for property owners to receive their irrigation water and that these alternative means have been approved by the property owners. The Developer agrees to indemnify the City from any liability associated with the abandonment of the irrigation ditch through the Development and any claim from the Bear River Canal Company regarding the platting of this subdivision impeding their claim for an easement.

L. **Default and Mediation.** Each and every term of this Agreement shall be deemed to be a material element hereof. In the event that either Party shall fail to perform according to the terms of this Agreement, such Party may be declared in default. In the event that a Party has been declared in default hereof, such defaulting Party shall be given written notice specifying such default and shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to: (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance or; (c) avail itself of any other remedy at law or equity.



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In the event of the default of any of the provisions hereof by either Party, which shall give rise to commencement of legal or equitable action against said defaulting Party, the Parties hereby agree to submit to non-binding mediation before the commencement of an action in any Court of law. In any such event, the defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney's fees and costs incurred by reason of the default. Nothing herein shall be construed to prevent or interfere with the City's rights and remedies specified in Paragraph III.D of this Agreement.

M. **No Third-Party Beneficiaries.** Except as may be otherwise expressly provided herein, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third Party or Parties, and no third Party or Parties shall have any right of action hereunder for any cause whatsoever.

N. **Applicable Laws.** It is expressly understood and agreed by and between the Parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Utah and the City of Tremonton, Utah.

O. **Notice.** Any notice or other communication given by any Party hereto to any other Party relating to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, addressed to such other Party at their respective addresses as set forth below; and such notice or other communication shall be deemed given when so hand-delivered or three (3) days after so mailed:

If to the City: Tremonton City  
102 S. Tremont Street  
Tremonton, UT 84337

With a copy to: Daines & Jenkins, LLP  
108 North Main Street  
Logan, UT 84321

If to the Developer: Heritage Land Development, LLC  
470 North 2450 West  
Tremonton, Utah

Notwithstanding the foregoing, if any Party to this Agreement, or its successors, grantees or assigns, wishes to change the person, entity, or address to which notices under this Agreement are to be sent as provided above, such Party shall do so by giving the other Parties to this Agreement written notice of such change.

P. **Word Meanings.** When used in this Agreement, words of the masculine gender shall include the feminine and neutral gender, and when the sentence so indicates, words of the neutral gender shall refer to any gender; and words in the singular shall include the plural and vice versa. This Agreement shall be construed according to its fair meaning and as if prepared by

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all Parties hereto, and shall be deemed to be and contain the entire understanding and agreement between the Parties hereto pertaining to the matters addressed in this Agreement.

**Q. Complete Agreement.** There shall be deemed to be no other terms, conditions, promises, understandings, statements, representations, expressed or implied, concerning this Agreement, unless set forth in writing signed by all of the Parties hereto. Further, paragraph headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement.

**R. Property Owner as Party.** The Owner is made a Party to this Agreement solely for the purpose of subjecting the Property to the covenants contained in this Agreement. The City and the Developer expressly acknowledge and agree that the Owner shall not be liable for any obligations of the Developer under this Agreement, unless the Owner were to exercise any of the rights of the Developer in which event the obligations of the Developer shall become those of the Owner.

Developer expressly acknowledges and agrees that the Owner shall not be liable for any obligations of the Developer under this Agreement, unless the Owner were to exercise any of the rights of the Developer in which event the obligations of the Developer shall become those of the Owner.

**S. Greenbelt Taxes.** Pursuant to Utah Code Annotated § 10-9a-603(3), The City shall require payment of all Greenbelt Taxes, if applicable, prior to Recordation of the Final Plat.

**T. Recording.** The City and Developer/Owner are authorized to record or file any notices or instruments with the Box Elder County Recorder's Office appropriate to assuring the perpetual enforceability of the Agreement, and the Developer/Owner agrees to execute any such instruments upon reasonable request.

**U. "Arms Length" Transaction.** The Parties hereto expressly disclaim and disavow any partnership, joint venture or fiduciary status, or relationship between them and expressly affirm that they have entered into this Agreement as independent Parties and that the same is in all respects an "arms-length" transaction.

**V. Severability.** Should any portion of this Agreement be deemed invalid or unenforceable by the rule of law or otherwise, all other aspects of the Agreement shall remain enforceable and in full effect.

**W. Incorporation of Recitals and Exhibits.** The above recitals and all exhibits attached hereto are incorporated herein by this reference and expressly made a part of this Agreement.

**X. Preparation of Agreement.** The Parties hereto acknowledge that they have both participated in the preparation of this Agreement and, if any question arises regarding its interpretation, no presumption shall be drawn in favor of or against any Party hereto with respect to the drafting hereof.

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Y. **Amendments.** This Agreement may be amended at any time upon unanimous agreement of the Parties hereto, which amendment(s) must be reduced to writing and signed by all Parties in order to become effective.

Z. **Further Instruments.** The Parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

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THE CITY OF TREMONTON, UTAH

By: [Signature]  
Mayor, Tremonton City



ATTEST:

[Signature]  
City Recorder

APPROVED AS TO CONTENT:

[Signature]  
City Engineer

APPROVED AS TO FORM:

[Signature]  
City Attorney

DEVELOPER:

By: [Signature]

Print Name: Jay Stocking

OWNER:

By: [Signature]

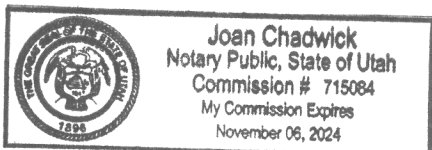
Print Name: Heritage Land Development LLC

Developer/Owner Acknowledgment:

State of Utah )

County of Box Elder ) §

On this 15 day of September, in the year 2023, before me Joan Chadwick  
a notary public, personally appeared Jay Stocking, and proved on the basis of satisfactory  
evidence to be the person(s) whose name(s) subscribed to this instrument, and acknowledge  
executing the same.



[Signature]  
Notary Public

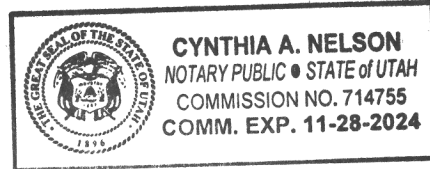
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Tremonton City Acknowledgment:

State of Utah )  
County of Box Elder ) §

On this 19 day of September, in the year 2023, before me Cynthia Nelson  
a notary public, personally appeared Lyle Holmgren, Mayor,  
and proved on the basis of satisfactory evidence to be the person(s) subscribed to  
this instrument, and acknowledge executing the same.

Cynthia A Nelson  
Notary Public



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EXHIBIT "A"

CONSTRUCTION/IMPROVEMENT GUARANTEE:

The Bond guaranteeing the Developer's timely and proper installation and warranty of required improvements shall be equal in value to at least one hundred-ten (110) percent of the cost of the required improvements, as estimated by the City Engineer contained in Exhibit "B." The purpose of the bond is to enable the City to make or complete the required improvements in the event of the developer's inability or failure to do so. The City need not complete the required improvements before collecting on the bond. The City may, in its sole discretion, delay taking action on the bond and allow the developer to complete the improvements if it receives adequate assurances that the improvements shall be completed in a timely and proper manner. The additional ten (10) percent shall be used to make up any deficiencies in the bond amount and to reimburse the City for collection costs, including attorney's fees, inflationary costs, etc.

All required improvements shall be completed and pass City inspections within one (1) year of the date that the Final Plat is recorded. Required improvements for plats recorded between November 1<sup>st</sup> and March 31<sup>st</sup> shall be completed by the next October 1<sup>st</sup>. For example, the required improvements for a plat recorded on February 6<sup>th</sup> shall be completed by October 1<sup>st</sup>, in the same calendar year. Failure to meet this time frame may result in the forfeiture of the bond. A written agreement to extend the completion of the improvements may be granted by the Land Use Authority Board, where due to circumstances as determined by the Land Use Authority Board would delay the completion of required improvements.

All subdivision improvements shall be completed by qualified contractors in accordance with Title III General Public Works Construction Standards and Specifications. No work may be commenced on improvements intended to be dedicated to the City without approved construction drawings and a pre-construction meeting with the City.

The Bond shall be an escrow bond or cash bond in favor of the City. The requirements relating to each of these types of bonds are detailed below. The City Attorney shall approve any bond submitted pursuant to this section. The City Attorney reserves the right to reject any of the bond types if it has a rational basis for doing so. Escrow bonds shall be held by a federally insured bank, savings and loan or credit union, or a title insurance underwriter authorized to do business in the State of Utah. A developer may use a cash bond by tendering the required bond amount in cash or certified funds to the City, partial releases may be made from the cash bond as allowed for other bond types, but shall retain ten (10) percent of the bond through the warranty period for any repairs necessary prior to final approval at the end of the warranty period. If no repairs are required at the end of the warranty period, the remaining portion of the bond shall be released to the Developer. The City shall not pay any interest on funds held as a cash bond.



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#### MAINTENANCE GUARANTEE:

The Developer hereby warrants and guarantees to the City for a period of one (1) years from the date of completion and final inspection by the City of the public improvements warranted hereunder, the full and complete maintenance and repair of the public improvements constructed for this Development. This warranty and guarantee are made in accordance with the Tremonton City Land Use Code and/or the Utah Code Annotated, as applicable. This guarantee applies to the streets and all other appurtenant structures and amenities lying within the rights-of-way, easements, and other public properties, including, without limitation, all curbing, sidewalks, trails, drainage pipes, culverts, catch basins, drainage ditches, and landscaping and all other improvements contained in Exhibit "B" of this Agreement. Any maintenance and/or repair required on utilities shall be coordinated with the owning utility company or city department. The Developer shall maintain said public improvements in a manner that will assure compliance on a consistent basis with all construction standards, safety requirements, and environmental protection requirements of the City until one (1) year following the final inspection. The Developer shall also correct and repair or cause to be corrected and repaired, all damages to said public improvements resulting from development-related or building-related activities. The City may require the Developer to guarantee and warrant that any repairs remain free from defect for a period of one (1) year following the date that the repairs pass City inspection. The City may retain the Developer's guarantee until the repairs have lasted through the warranty period, and may take action on the bond if necessary to properly complete the repairs. In the event, the Developer fails to correct any damages within thirty (30) days after written notice thereof, then said damages may be corrected by the City and all costs and charges billed to and paid by the Developer. The City shall also have any other remedies available to it as authorized by this Agreement. Any damages which occurred prior to the end of said one (1) year period, which are unrepaired at the termination of said period, shall remain the responsibility of the Developer.

#### REPAIR GUARANTEE:

The Developer agrees to hold the City harmless for a one (1) year period, commencing upon the date of completion and final inspection by the City of the public improvements constructed for this Development, from any and all claims, damages, or demands arising on account of the design and construction of public improvements of the Property shown on the approved plans and documents for this Development; and the Developer furthermore commits to make necessary repairs to said public improvements, to include, without limitation, all improvements contained in Exhibit "B" of this Agreement, roads, streets, fills, embankments, ditches, cross pans, sub-drains, culverts, walls and bridges within the right-of-way easements and other public properties, resulting from failures caused by design and/or construction defects. This agreement to hold the City harmless includes defects in materials and workmanship, as well as defects caused by or consisting of settling trenches, fills, or excavations.

Further, the Developer agrees that the City shall not be liable to the Developer during the warranty period, for any claim of damages resulting from negligence in exercising engineering techniques and due caution in the construction of cross drains, drives, structures or buildings, the changing of courses of streams and rivers, flooding from natural creeks and rivers, and any other

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matter whatsoever on private property. Any and all monetary liability occurring under this paragraph shall be the liability of the Developer.

The obligations of the Developer pursuant to the "maintenance guarantee" and "repair guarantee" provisions set forth above may not be assigned or transferred to any other person or entity unless the warranted improvements are completed by, and a letter of acceptance of the warranted improvements is received from the City by, such other person or entity.

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EXHIBIT "B" CITY ENGINEER'S ESTIMATE FOR COST OF IMPROVEMENTS



JONES & ASSOCIATES  
Consulting Engineers

**Initial Escrow Estimate**

September 11, 2023

Mr. Shawn Warnke  
Tremonton City  
102 South Tremont Street  
Tremonton, Utah 84337

RE: **Harvest Acres - Phase 2**

Shawn,

I have completed a review of the cost estimate for the above referenced subdivision and have included my breakdown of the costs in the attached spreadsheet. The costs and amounts generally followed the Engineer's Estimate from Alliance Consulting Engineers, however there were a couple of changes. The recommended escrow amounts are as follows.

Description	Estimated Cost of Improvements	Previous Amount Released	Work Completed this Period	Current Amount Req'd in Escrow
Culinary Water System	\$321,650.00	\$0.00	\$296,900.00	\$24,750.00
Sanitary Sewer System	\$181,320.00	\$0.00	\$177,570.00	\$3,750.00
Storm Drain System	\$90,000.00	\$0.00	\$84,000.00	\$6,000.00
Irrigation System	\$157,400.00	\$0.00	\$137,400.00	\$20,000.00
Landscaping	\$0.00	\$0.00	\$0.00	\$0.00
Streets	\$348,670.00	\$0.00	\$326,170.00	\$22,500.00
Sidewalk	\$82,200.00	\$0.00	\$0.00	\$82,200.00
Miscellaneous Items	\$11,000.00	\$0.00	\$0.00	\$11,000.00
10% Contingency	\$119,224.00	\$0.00	\$0.00	\$119,224.00
<b>Totals</b>	<b>\$1,311,464.00</b>	<b>\$0.00</b>	<b>\$1,022,040.00</b>	<b>\$289,424.00</b>

<u>Prepaid Items</u>	
Chip Seal and Fog Coat (\$2.81/sy)	\$19,264.24
Street Lights (\$3,500/ea)	\$14,000.00
<b>Totals</b>	<b>\$33,264.24</b>

<u>Water Shares Required</u>	
BRCC Water Shares	3.65 shares

Sincerely,

Chris Breinholt, P.E.  
Jones & Associates Engineering

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<b>Estimated Cost of Improvements</b>				<b>Completed Items</b>		
<b>Item</b>	<b>Units</b>	<b>Unit Price</b>	<b>Total</b>	<b>Released Amount</b>	<b>Remaining Amount</b>	
<b><u>CULINARY WATER SYSTEM</u></b>						
8" Water Main	2,240	lf	\$55.00	\$123,200.00	\$123,200.00	\$0.00
8" Water line Tees, Bends	17	ea	\$3,000.00	\$51,000.00	\$51,000.00	\$0.00
8" gate valves	12	ea	\$1,500.00	\$18,000.00	\$18,000.00	\$0.00
Fire Hydrants	7	ea	\$6,250.00	\$43,750.00	\$25,000.00	\$18,750.00
Temp blow off	1	ea	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00
Connect to Existing Water Lines	2	ea	\$1,700.00	\$3,400.00	\$3,400.00	\$0.00
Plug	5	ea	\$800.00	\$4,000.00	\$4,000.00	\$0.00
Water Service Laterals	26	ea	\$1,800.00	\$46,800.00	\$46,800.00	\$0.00
Bedding	1,500	ton	\$15.00	\$22,500.00	\$22,500.00	\$0.00
Valve Collars	12	ea	\$500.00	\$6,000.00	\$0.00	\$6,000.00
Testing	1	ls	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00
<b>CULINARY WATER SYSTEM SUBTOTAL =</b>			<b>\$321,650.00</b>	<b>\$296,900.00</b>	<b>\$24,750.00</b>	
<b><u>SANITARY SEWER SYSTEM</u></b>						
8" P.V.C. Main Line	1,585	lf	\$42.00	\$66,570.00	\$66,570.00	\$0.00
10" P.V.C. Main Line	0	lf	\$30.00	\$0.00	\$0.00	\$0.00
Sewer Services	26	ea	\$1,350.00	\$35,100.00	\$35,100.00	\$0.00
Manholes	5	ea	\$5,000.00	\$25,000.00	\$25,000.00	\$0.00
Bedding/trench fill	3,260	ton	\$15.00	\$48,900.00	\$48,900.00	\$0.00
Manhole Collars	5	ea	\$750.00	\$3,750.00	\$0.00	\$3,750.00
Clean and Camera	1	ls	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00
<b>SANITARY SEWER SYSTEMS SUBTOTAL =</b>			<b>\$181,320.00</b>	<b>\$177,570.00</b>	<b>\$3,750.00</b>	
<b><u>STORM DRAIN SYSTEM</u></b>						
15" ADS Storm Pipe"	900	lf	\$35.00	\$31,500.00	\$31,500.00	\$0.00
18" ADS Storm Pipe"	140	lf	\$45.00	\$6,300.00	\$6,300.00	\$0.00
Storm manhole	1	ea	\$3,000.00	\$3,000.00	\$3,000.00	\$0.00
Catch Basin\Junction Box	18	ea	\$2,400.00	\$43,200.00	\$43,200.00	\$0.00
Grading of channels/ponds	1	LS	\$6,000.00	\$6,000.00	\$0.00	\$6,000.00
<b>STORM DRAIN SYSTEM SUBTOTAL =</b>			<b>\$90,000.00</b>	<b>\$84,000.00</b>	<b>\$6,000.00</b>	
<b><u>SECONDARY WATER SYSTEM</u></b>						
6" Irrigation main	2,160	L.F. @	\$40.00	\$86,400.00	\$86,400.00	\$0.00
Irrigation laterals	16	Each	\$2,000.00	\$32,000.00	\$32,000.00	\$0.00
Irrigation fittings	1	lump	\$18,000.00	\$18,000.00	\$18,000.00	\$0.00
Drain station	3	Each	\$5,000.00	\$15,000.00	\$0.00	\$15,000.00
Valve Collars	10	ea	\$500.00	\$5,000.00	\$0.00	\$5,000.00
Testing	1	LS	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00
<b>SECONDARY WATER SYSTEM SUBTOTAL =</b>			<b>\$157,400.00</b>	<b>\$137,400.00</b>	<b>\$20,000.00</b>	
<b><u>LANDSCAPING</u></b>						
Detention pond landscaping		LS		\$0.00	\$0.00	\$0.00
Park Strip Landscaping		LS		\$0.00	\$0.00	\$0.00
<b>LANDSCAPING SUBTOTAL=</b>			<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	

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<b><u>STREET IMPROVEMENTS</u></b>						
Base & Asphalt	61,700	sf	\$2.75	\$169,675.00	\$169,675.00	\$0.00
Clear and Grub, excavation	1	LS	\$10,000.00	\$10,000.00	\$10,000.00	\$0.00
Fill to bring road to subgrade	4,050	ton	\$14.00	\$56,700.00	\$56,700.00	\$0.00
Curb & Gutter	3,460	lf	\$19.00	\$65,740.00	\$65,740.00	\$0.00
Saw cut road	450	lf	\$3.50	\$1,575.00	\$1,575.00	\$0.00
Asphalt removal	2,230	sf	\$1.00	\$2,230.00	\$2,230.00	\$0.00
Asphalt re-asphalt	8,100	sf	\$2.50	\$20,250.00	\$20,250.00	\$0.00
Construct temporary turn around w/3" of asphalt and 8" road base	3	ea	\$7,500.00	\$22,500.00	\$0.00	\$22,500.00
<b>STREET IMPROVEMENTS SUBTOTAL =</b>				<b>\$348,670.00</b>	<b>\$326,170.00</b>	<b>\$22,500.00</b>
<b><u>SIDEWALK</u></b>						
4' Sidewalk w/ Base	3,400	lf	\$19.00	\$64,600.00	\$0.00	\$64,600.00
Handicap Ramps	11	ea	\$1,600.00	\$17,600.00	\$0.00	\$17,600.00
<b>SIDEWALKS SUBTOTAL =</b>				<b>\$82,200.00</b>	<b>\$0.00</b>	<b>\$82,200.00</b>
<b><u>MISCELLANEOUS</u></b>						
Survey Street Monuments	3	ea	\$1,000.00	\$3,000.00	\$0.00	\$3,000.00
SWPPP Implementation	1	ls	\$8,000.00	\$8,000.00	\$0.00	\$8,000.00
<b>MISC. SUBTOTAL =</b>				<b>\$11,000.00</b>	<b>\$0.00</b>	<b>\$11,000.00</b>
Estimated Improvement Cost =				\$1,192,240.00		
10% Contingency and Guarantee				\$119,224.00		
<b>TOTAL ESCROW AMOUNT</b>				<b>\$1,311,464.00</b>		<b>\$289,424.00</b>

<b><u>PREPAID ITEMS</u></b>				
Chip and Seal	6855.6	sy	\$2.81	\$19,264.24
Light Poles	4	ea	\$3,500.00	\$14,000.00

<b><u>WATER SHARE SUMMARY</u></b>			
	Lots	Shares per Lot	Shares per Lot Size
6,000 TO 8,000		0.10	0
8,001 to 10,000	19	0.13	2.47
10,001 to 12,000	6	0.16	0.96
12,001 to 14,000		0.19	0
14,001 to 16,000	1	0.22	0.22
16,001 to 18,000		0.25	0
18,001 to 20,000		0.29	0
>20,000		TBD	
<b>Total Shares Required</b>			<b>3.65 Total Shares</b>

