

RESOLUTION NO. R-179-2024

A RESOLUTION OF EAGLE MOUNTAIN CITY, UTAH, APPROVING THE DEVELOPMENT AGREEMENT FOR BRYLEE FARMS PHASE B

PREAMBLE

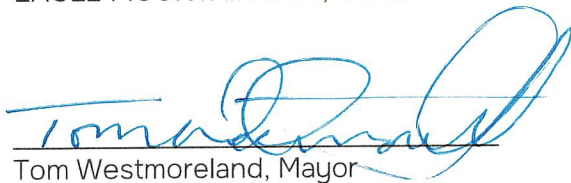
The City Council of Eagle Mountain City, Utah, finds that it is in the public interest to approve the Development Agreement for Brylee Farms Phase B, as set forth more specifically in Exhibit A.

NOW THEREFORE, BE IT RESOLVED by the City Council of Eagle Mountain City, Utah:


1. The City Council finds that all required notices and hearings have been completed as required by law to consider and approve the Development Agreement for Brylee Farms Phase B, as set forth in Exhibit A.
2. The Development Agreement for Brylee Farms Phase B is hereby approved, as set forth more specifically in Exhibit A.
3. This Resolution shall take effect upon its first publication or posting.

ADOPTED by the City Council of Eagle Mountain City, Utah, this 6th day of November, 2024.

EAGLE MOUNTAIN CITY, UTAH


Tom Westmoreland, Mayor

ATTEST:


Fionnuala B. Kofoed, MMC
City Recorder



CERTIFICATION

The above Resolution was adopted by the City Council of Eagle Mountain City, Utah on the 6th day of November, 2024.

Those voting yes:

☒ Donna Burnham

☒ Melissa Clark

☒ Jared Gray

☒ Rich Wood

☒ Brett Wright

Those voting no:

☐ Donna Burnham

☐ Melissa Clark

☐ Jared Gray

☐ Rich Wood

☐ Brett Wright

Those excused:

☐ Donna Burnham

☐ Melissa Clark

☐ Jared Gray

☐ Rich Wood

☐ Brett Wright

Those abstaining:

☐ Donna Burnham

☐ Melissa Clark

☐ Jared Gray

☐ Rich Wood

☐ Brett Wright



Fionnuala B. Kofoed, MMC
City Recorder



Exhibit A

WHEN RECORDED RETURN TO:

Eagle Mountain City
c/o City Recorder
1650 E Stagecoach Run
Eagle Mountain, UT 84005

DEVELOPMENT AGREEMENT FOR BRYLEE FARMS PHASE B

This DEVELOPMENT AGREEMENT FOR BRYLEE FARMS PHASE B (“**Agreement**”) is entered into as of this 6th day of November, 2024 (“**Effective Date**”), by and between LANDEX Development LLC, a Utah limited liability company (“**Developer**”), and Eagle Mountain City, a political subdivision of the State of Utah (“**City**”). City and Developer may hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. On July 16th, 2019, City approved a Preliminary Plat application by Concord Homes (“**Developer’s Predecessor**”), to allow development and construction of 162 townhome units at approximately, Rye Grass Dr. in City, to be known as Brylee Farms Phase B (“**Project**”).

B. On January 5th, 2021, City approved an Amended Preliminary Plat application & Site Plan Final Approval of Plats 1 & 2 by Fieldstone & Concord Homes (“**Developer’s Predecessor**”), to allow development and construction of 162 townhome units at approximately, Garden Grove Dr. in City, to be known as Brylee Farms Phase B (“**Project**”).

C. Developer or Developer’s Predecessor has recorded plats 1 & 2 in Phase B of the Project and is preparing to record the next plat.

D. Developer or Developer’s predecessor has completed construction of the infrastructure and amenities in Plats 1 & 2 of the Project, and building permits have been issued for 49 townhomes in Plats 1 & 2.

E. Developer or Developer’s predecessor has partially completed installation and construction of infrastructure and amenities for future plats of the Project.

F. Eagle Mountain Municipal Code Section 16.20.060 (“**Ordinance**”) indicates that a preliminary plat expires within two years of the approval or, in the case of phased projects, within two years of the most recent final plat approval. Developer has purchased the Project from Developer’s Predecessor, and has since been informed by the City that, in accordance with the Ordinance, the City believes that the Preliminary approvals for the project, including the preliminary plat, may have expired.

G. Developer and City desire to reinstate the preliminary approvals for the Project, and allow Developer to complete the project, all on the terms and conditions set forth herein.

H. City, acting pursuant to its authority under the Utah Code and the Eagle Mountain Municipal Code, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, in the exercise of its discretion, has elected to approve and enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Scope of Agreement. This Agreement supersedes and replaces previous approvals received on the Project only on matters addressed herein. All other approvals licenses, and entitlements previously received by the Project remain in full force and effect as of the date granted.

2. Reinstatement of Previous Approvals. To extent previously received approvals in the Project have expired, including but not limited to the preliminary plat, such approvals are hereby reinstated in full, and vested as of the original vesting date. Developer shall be entitled to complete the Project as originally approved.

3. Remaining Unit Types. Developer agrees that beginning at Plat 3, and for the remaining portions of the Project, Developer will provide a mix of housing types, sizes, and designs with the intent to improve attainability of housing. Developer shall include at least 40 three-story townhome units with garages no less than 600 square feet throughout remaining future plats. The remaining townhome units will be two story with garage sizes as originally approved.

4. Benchmarks. Developer agrees to proceed promptly with development of the Project and reasonably continue through Project completion. In accordance with Eagle Mountain City Code section 16.10.080, and tracking the four requirements in section B, Developer agrees to meet the following benchmarks:

4.1. Developer shall apply for site plan or plat approvals for Plat 3 of the Project within 120 days of the Effective Date.

4.2. In order to allow for possible coordination with limited construction seasons, Developer shall begin site work within six months of approval of the first site plan or plat.

4.3. Developer shall complete curb, gutter, and road construction in a particular plat prior to the issuance of the first certificate of occupancy for that plat.

4.4. All open space, parks, and trails that has yet to be completed is in Plat 4 of the Project. Developer shall complete all open space, parks, and trails for Plat 4 prior to the issuance of the first certificate of occupancy for that phase.

5. Rental Cap. Within 30 days of the Effective Date, Developer, as declarant, shall cause an amendment to the governing documents of the association reasonably restricting rentals of the units, with an intended cap of no more than 20% of the units being rented and not owner occupied.

6. Miscellaneous.

6.1. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police power of Eagle Mountain City in enacting zoning, subdivision development, and related land use plans, policies, ordinances and regulations after the date of this Agreement.

6.2. Expiration. This Agreement shall expire on a date that is six years from the effective date (“**Expiration Date**”). To the extent that the Project is incomplete as of the Expiration Date, or Developer fails to meet the Benchmarks in Paragraph 4, above, the unused density units shall not expire, but Developer or any successor developer shall be obligated to complete the project in accordance with the applicable City ordinances in place as of the Expiration Date. This Agreement may be extended beyond the Expiration Date upon the written agreement of the Parties, and in accordance with the standards set forth in City ordinances.

6.3. Amendments. This Agreement may be amended upon the written agreement of the Parties, and in accordance with the standards set forth in City ordinances.

6.4. Compliance with City Standards. Developer expressly acknowledges that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of City, including the payment of fees and compliance with all other applicable ordinances.

6.5. No Joint Venture or Partnership. This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto nor any rights or benefits to third parties.

6.6. Agreement to Run with the Land. This Agreement shall be recorded and shall be deemed to run with the land and shall be binding on all successors and assigns of the Developer in the ownership of any portion of the Property.

6.7. Assignment. Neither this Agreement nor any of the provisions hereof can be assigned to any other party, individual or entity without the assigning the rights as well as the responsibilities under this Agreement and without prior written consent of the City, which review is intended to assure the financial capability of any assignee. Such consent shall not be unreasonably withheld.

6.8. Attorneys’ Fees. In the event of any action at law or equity to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and court costs in addition to any other relief to which such party may be entitled.

- 6.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument. Each party agrees to exchange original signatures in due course.
- 6.10. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof, incorporates all prior agreements, and may only be modified by a subsequent writing duly executed by the parties.
- 6.11. Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the State of Utah, without giving effect to its conflict of laws principles.
- 6.12. Developer's Exclusive Remedy. Developer's sole and exclusive remedy under this Agreement shall be specific performance of the rights granted in this Agreement and Eagle Mountain's obligations under this Agreement. IN NO EVENT SHALL EAGLE MOUNTAIN CITY BE LIABLE TO DEVELOPER, ITS SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.
- 6.13. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. The provisions may be waived only in writing and signed by the party intended to be benefited by the provisions being waived.
- 6.14. Severability. Except as specifically stated herein, any provision of this Agreement, or portion thereof, that is declared by a court of competent jurisdiction to be invalid or unenforceable shall not affect the validity of the remainder of this Agreement and each paragraph of this Agreement will be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

[Signatures on following page]

CITY:

Eagle Mountain City,
a political subdivision of the State of Utah


Tom Westmoreland, Mayor

Attest:


Fionnuala Kofoed, City Recorder



Approved as to form:


Marcus Draper, City Attorney

DEVELOPER:

LANDEX Development, LLC,

By: _____
Name: _____
Title: _____

STATE OF UTAH)
):ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this ____ day of _____,
2024 by _____.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

Attest:


Fionnuala Kofoed, City Recorder,

Approved as to form:

Marcus Draper, City Attorney

DEVELOPER:

LANDEX Development, LLC,

By: 
Name: Ross Holliday
Title: Manager

STATE OF UTAH)
):ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 7 day of November 2024 by Ross Holliday, Manager of Landex Development, LLC.


NOTARY PUBLIC

Residing at: Cedar UT

My Commission Expires:

11/1/27

