

ORDINANCE NO. O-48-2025

AN ORDINANCE OF EAGLE MOUNTAIN CITY, UTAH,
APPROVING THE DEVELOPMENT AGREEMENT FOR
MERITAGE HOMES IN HARMONY SUBDIVISION

PREAMBLE

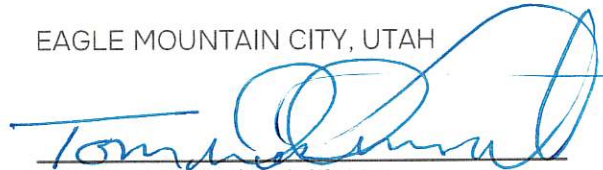
The City Council of Eagle Mountain City, Utah, finds that it is in the public interest to approve the Meritage Homes Development Agreement, as set forth more specifically in Exhibit A.

NOW THEREFORE, BE IT ORDAINED 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 Meritage Homes in Harmony Subdivision, as set forth in Exhibit A.
2. The Development Agreement for Meritage Homes in Harmony Subdivision is hereby approved, as set forth more specifically in Exhibit A.
3. This Ordinance shall take effect upon its first publication or posting.

ADOPTED by the City Council of Eagle Mountain City, Utah, this 21st day of October, 2025.

EAGLE MOUNTAIN CITY, UTAH


Tom Westmoreland, Mayor

ATTEST:


Gina L. Olsen, CMC
City Recorder



CERTIFICATION

The above ordinance was adopted by the City Council of Eagle Mountain City on the 21st day of October, 2025.

Those voting yes:	Those voting no:	Those excused:	Those abstaining:
☒ Donna Burnham	☐ Donna Burnham	☐ Donna Burnham	☐ Donna Burnham
☒ Melissa Clark	☐ Melissa Clark	☐ Melissa Clark	☐ Melissa Clark
☒ Jared Gray	☐ Jared Gray	☐ Jared Gray	☐ Jared Gray
☒ Rich Wood	☐ Rich Wood	☐ Rich Wood	☐ Rich Wood
☒ Brett Wright	☐ Brett Wright	☐ Brett Wright	☐ Brett Wright





Gina L. Olsen, CMC
City Recorder

Posted on 11/14/25 by VM.

Exhibit A

WHEN RECORDED, RETURN TO:

Eagle Mountain City
Attn: Gina L. Olsen, City Recorder
1650 Stagecoach Run
Eagle Mountain, UT 84005

**DEVELOPMENT AGREEMENT
FOR MERITAGE HOMES IN HARMONY SUBDIVISION**

This Development Agreement for Meritage Homes in Harmony Subdivision ("Agreement") is made and entered into as of the 21 day of October, 2025, by and between Eagle Mountain City, a political subdivision of the State of Utah ("City") and Meritage Homes of Utah, Inc., an Arizona corporation ("Builder"). City and Builder are sometimes referred to herein individually as a "Party," and collectively as the "Parties."

RECITALS

A. On or about January 6, 2015, City entered into a development agreement ("Harmony DA") with Eagle Mountain Properties, LLC (the "Developer") regarding the Harmony Preliminary Plat. The Harmony DA is recorded with the Utah County Recorder as Entry No. 93083:2018.

B. Builder purchased the land encompassing Plats A-12, A-15, and A-16 within Harmony Phase A ("Meritage Parcels") that is subject to the Harmony DA. Plats A-15 and A-16 abut future planned roads to be known as Walden Parkway and Johnny Circle. The City's Master Transportation Plan identifies Walden Parkway as a "Future Minor Collector" road. Although Johnny Circle is not currently identified as a collector road on the City's Master Transportation Plan, the City considers Johnny Circle a future collector road.

C. Eagle Mountain alleges that Section 19 of the Harmony DA requires that the Developer install six-foot privacy fencing or a decorative wall for all rear lots that abut a collector or arterial road ("Privacy Fencing") during the installation of the subdivision infrastructure and as a result, the City will not issue building permits in Plats A-15 and A-16, resulting in unanticipated delays.

D. The Parties interpret the meaning of Section 19 differently. Eagle Mountain alleges that Builder is responsible for the construction and installation of Privacy Fencing made out of stone, masonry or decorative concrete pursuant to Section 19. Builder alleges that the Harmony DA allows for Privacy Fencing made out of Other Privacy Fencing Materials (defined below) and that the Harmony DA does not require that Privacy Fencing be made out of stone, masonry or decorative concrete only.

E. In an effort to move forward without any further delay, the Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

AGREEMENT

1. **Recitals.** The above-stated recitals are incorporated herein as part of this Agreement.

2. **Fence Completion and Security Timing.**

2.1. *Bond.* Builder shall post a surety (in the form of a letter of credit or a surety bond) in an amount equal to 110 percent of the estimated cost of the Privacy Fencing (as if made out of stone, masonry or decorative concrete) to guarantee the performance of its obligation to install the Privacy Fencing within the timelines and in the manner required by this Agreement (the “Bond”).

2.2. *Start Date.* Within nine (9) months of the Effective Date, provided that such deadline shall be extended by any delays resulting from a Force Majeure Event (defined below), Builder shall begin installing Privacy Fencing made of durable materials consisting of either stone, masonry or decorative concrete (including precast concrete) along the rear lot lines of the lots identified with a pink line on Exhibit A attached hereto (the “Meritage Privacy Fencing”). After beginning to install the Privacy Fencing, Builder shall proceed with reasonable diligence to complete the installation. Installation shall be complete within four (4) months after beginning the process, unless a Force Majeure Event occurs.

2.3. *Municipal Approvals.* Upon posting of the Bond, the City shall agree to not withhold issuance of municipal approvals in relation to the Meritage Parcels, including without limitation building permits, inspections, and certificates of occupancy, solely on the basis that the Privacy Fencing has not yet been started or completed. Notwithstanding the foregoing, the City may withhold municipal approvals if Builder fails to comply with the requirement of Sections 2.1 and 2.2 above. Notwithstanding anything to the contrary in this Agreement, if Builder’s deadline to begin installing Privacy Fencing is extended due to a delay caused by a Force Majeure Event as set forth in Section 2.2, then the deadline and the City’s ability to withhold municipal approvals as contemplated in this Section 2.3 shall be delayed by an amount of time equal to the delay caused by such Force Majeure Event.

2.4. *Future Approval of Other Privacy Fencing Materials.* If at any time prior to Builder’s completion of installation of Privacy Fencing, (i) City approves the construction of Privacy Fencing out of materials other than stone, masonry or decorative concrete (including precast concrete) (“Other Privacy Fencing Materials”) along existing or future planned collector or arterial roads in the Harmony subdivision legally described on Exhibit A of the Harmony DA (“Harmony Subdivision”) or another approval that does not have current vesting, or (ii) a court, City, or any administrative agency determines that Other Privacy Fencing Materials are permissible along existing or future collector or arterial roads in the Harmony Subdivision, then City shall allow Builder the option to use the Other Privacy Fencing Materials in the installation of the Privacy Fencing subject to this Agreement, in which case the Bond shall be reduced to an amount equal to 110 percent of the estimated cost of the Privacy Fencing made out of the Other Privacy Fencing Materials.

2.5. *Force Majeure.* Builder shall be excused for the period of any delay in performing any obligation under this Agreement caused by any of the following: (a) strikes, lockouts, work stoppages, acts of God, inability to obtain labor or materials, enemy action, acts of terrorism (whether of foreign, domestic or unknown origin), civil commotion, fire, unavoidable casualty, delays resulting from investigations relating to, or remediation or mitigation of, known or unknown environmental conditions, delays in obtaining demolition, construction and similar permits, approvals or licenses, (b) a resurgence in COVID-19 or other epidemic, pandemic or similar health matters that results in cessation of some or all construction activities or restrictions on the use of labor; (c) labor and materials shortages and delays;

and (d) any other circumstances that are beyond the reasonable control of Builder, including, without limitation, governmental and court actions (each, a "Force Majeure Event").

3. **Recording.** The Parties shall cause this Agreement to be recorded in the records of the Utah County Recorder.

4. **Default.**

4.1. *Notice.* If Builder or Eagle Mountain fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party.

4.2. *Contents of the Notice of Default.* The Notice of Default shall:

4.2.1. Specific Claim. Specify the claimed event of Default;

4.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; and

4.2.3. Optional Cure. If City chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than thirty (30) days duration.

4.3. *Mediation.* Upon the issuance of a Notice of Default, the Parties may engage in mediation or another dispute resolution process. Neither Party shall be obligated to mediate if doing so would delay or otherwise prejudice any remedy available at law, in that Party's sole discretion.

5. **Builder's Exclusive Remedy.** Builder's sole and exclusive remedy under this Agreement shall be specific performance of the rights granted in this Agreement and City's obligations under this Agreement. IN NO EVENT SHALL CITY BE LIABLE TO BUILDER, 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. **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.

7. **Time is of the Essence.** Time shall be of the essence with respect to the duties imposed on the Parties under this Agreement. Unless a time limit is specified for the performance of such duties each Party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

8. **Construction of the Agreement.** This Agreement has been reviewed and revised by legal counsel for each of the Parties and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

9. **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.

10. **Entire Agreement.** This Agreement shall supersede all prior agreements between the Parties with respect to the subject matter herein, and all prior agreements and understandings are merged herein. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the Parties.

11. **Applicable Law.** This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the Parties which arise hereunder, are to be construed and enforced in accordance with the laws of the State of Utah.

12. **Notices.** Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four (4) days after being sent by registered or certified mail, properly addressed to the Parties as follows:

To the Builder:

Meritage Homes of Utah, Inc.
18655 North Claret Drive, Suite 400
Scottsdale, Arizona 85255
Attention: Regional Counsel

To the City:

City Recorder
Eagle Mountain City
1650 E. Stagecoach Run
Eagle Mountain, UT 84005

13. **Execution of the Agreement.** This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other Party within seven (7) days of receipt of said facsimile copy.

14. **Hold Harmless.** Builder shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability for damages or equitable relief arising out of claims for personal injury or property damage arising from the breach of this Agreement by Builder, its contractors, subcontractors, agents, employees or other persons acting on its behalf.

15. **Relationship of the Parties.** This Agreement is not intended to create any partnership, joint venture or other arrangement between City and Builder. This Agreement is not intended to create any third-party beneficiary rights for any person or entity not a party to this Agreement. It is specifically

understood by the Parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Builder, (ii) intentionally deleted; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Meritage Parcels not dedicated to the City; and (iv) Builder shall have the full power and exclusive control of the Meritage Parcels subject to the obligations of Builder as set forth in this Agreement, any recorded documents affecting the Meritage Parcels, and any other agreements between Builder and third parties. Further, this Agreement may not be used or interpreted by a court or the City as setting a precedent relating to Privacy Fencing subject to the Harmony DA.

16. **Title and Authority.** Builder expressly warrants and represents to City that it is a limited liability company in good standing and that such company owns or controls all right, title and interest in and to the Meritage Parcels and that no portion of the Meritage Parcels, or any right, title or interest therein has been sold, assigned or otherwise transferred to any other entity or individual. Builder warrants that the undersigned individual has full power and authority to enter into this Agreement on behalf of Builder. Builder understands that City is relying on such representations and warranties in executing this Agreement.

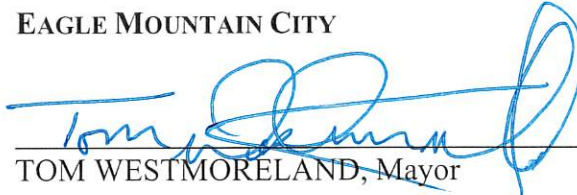
17. **Further Assurances, Documents, and Acts.** Each of the Parties agrees to cooperate in good faith with the other and to execute and deliver such further documents, and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each Party as allowed by law. Notwithstanding the foregoing, neither Party is restricted from assisting the City and/or Developer in the resolution of their differing interpretations of the Harmony DA.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

[signatures on following pages]

CITY

EAGLE MOUNTAIN CITY


TOM WESTMORELAND, Mayor

ATTEST


GINA L. OLSEN, City Recorder




City Attorney
Approved as to form and legality

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

On the 21 day of October, 2025, personally appeared before me TOM WESTMORELAND, who being by me duly sworn, did say that he is the MAYOR OF EAGLE MOUNTAIN CITY, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.




NOTARY PUBLIC

BUILDER

MERITAGE HOMES OF UTAH, INC
An Arizona Corporation

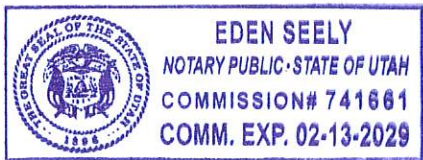


LISA ALBERS Vice President

BUILDER ACKNOWLEDGMENT

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

On the 22 day of October, 2025, personally appeared before me Lisa Albers duly sworn, did say that he/she is the VP of MERITAGE HOMES OF UTAH INC, an Arizona corporation and that the foregoing instrument was duly authorized by the corporation and signed in behalf of said corporation.





NOTARY PUBLIC

[illegible]

