November 27, 2018

TO: ACHD Commission

FROM: Christy Little, Planning Review Supervisor

SUBJECT: Release of Development Agreement – Eagle Island Marketplace
Staff Report for December 5, 2018 Commission Meeting

Facts & Findings
1. ACHD, Lazy P Limited Partnership (Owner), and Eisenberg Linchin LLC (Developer) entered into the Development Agreement dated May 18, 2011, associated with Eagle Island Marketplace (Development).
2. The Agreement provided for a driveway on Linder Road to be constructed and utilized by the Developer until such time that a collector roadway was constructed north of the site.
3. The City of Eagle did not require a public street connection to Eagle Island Marketplace as a condition of approval of parcels north of this site; which makes the terms of the Development Agreement infeasible.
4. The driveway on Linder Road is necessary to provide access to Eagle Island Marketplace for large trucks serving this commercial development. Since no alternative access is available, the driveway should remain.
5. The Release of Development Agreement has been approved for form and content by the District Legal Department.

Recommendation
Approve the Release of Development Agreement and authorize the President of the Commission to execute the Release.

Attachments:
Release of Development Agreement
Development Agreement
RELEASE OF DEVELOPMENT AGREEMENT

Eagle Island Marketplace DEVELOPMENT AGREEMENT

THIS RELEASE OF DEVELOPMENT AGREEMENT, is being issued pursuant to that certain DEVELOPMENT AGREEMENT, dated May 18, 2011, and recorded May 19, 2011, at Instrument No. 111041341 of the real property records in the Office of the Clerk and Recorder, Ada county, state of Idaho (Agreement) entered into by and between Ada County Highway District, and Lazy P Limited Partnership (Owner), and Eisenberg Linchin, LLC (Developer).

The ADA COUNTY HIGHWAY DISTRICT (ACHD) hereby advises that said required improvements are no longer required. ACHD acknowledges that the Owner and Developer have no obligation to close the Driveway on Linder Road.

ADA COUNTY HIGHWAY DISTRICT

By: Sara Baker

Its: Commission President

Dated: December 5, 2018.
DEVELOPMENT AGREEMENT

This Development Agreement is made and entered into this ________ day of May, 2011, by and between ADA COUNTY HIGHWAY DISTRICT, and LAZY P LIMITED PARTNERSHIP, and EISENBERG LINCHIN, LLC;

WITNESSETH:

FOR GOOD AND SUFFICIENT CONSIDERATION, IT IS AGREED:

SECTION 1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

(a) The term "ACHD" shall refer to ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the State of Idaho whose address is 3775 Adams Street, Garden City, Idaho 83714; the contact person at ACHD is Gary Inselman, Manager, Right-of-Way and Development Services, whose telephone number is (208) 387-6180, and whose fax telephone number is (208) 387-6393.

(b) The term "Agreement" shall refer to this Development Agreement.

(c) The term "Owner" shall refer to Lazy P Limited Partnership, an Idaho limited partnership, whose address is 7610 Amity Road, Nampa, Idaho, 83687, Attn: Kay Perkins, Vice President, Secretary, Treasurer/General Partner, whose telephone number is (208) 866-2839 and whose fax telephone number is (208) 461-3991.

(d) The term "Developer" shall refer to Eisenberg Linchin LLC, an Arizona limited liability corporation, whose address is 2390 E. Camelback Road #202, Phoenix, Arizona, 85016, Attn: Craig Eisenberg, President, whose telephone number is 602-468-6100 and whose fax telephone number is (602) 468-6103.

(e) The term "Development" shall refer to the Eagle Island Marketplace Subdivision project located at the northeast corner of Chinden Boulevard and Linder Road, Ada County, Idaho (see vicinity map and site plan, Exhibit 'A', attached hereto and incorporated herein by reference).
(f) The term "Development Area" shall refer to Lot 24, Block 1, Bodily and Bunderson Springs Subdivision No. 2, Township 4 North, Range 1 West, Section 24, Ada County, Idaho (Tax Parcel No. R1006840300); and Lot 25, Block 1, Bodily and Bunderson Springs Subdivision No. 2, Township 4 North, Range 1 West, Section 24, Ada County, Idaho (Tax Parcel No. R1006840400); the Development Area is currently owned by the Owner.

(g) The term "Driveway" shall refer to one (1) temporary 30-foot wide full access driveway on Linder Road located approximately 1,230-feet (measured near edge to near edge) north of the Chinden Boulevard/Linder Road intersection.

SECTION 2. Recitals.

2.1 Developer is developing the Development, and preliminary plat approval of the Development was obtained from the ACHD Commission on September 1, 2010.

2.2 In approving the Development in ACHD Case # 201000057-CAP-DA-MSP-S-ZC, the ACHD Commission authorized the construction of the Driveway. The Driveway will be closed in the future when the collector roadway north of the Development site is constructed. The Driveway will be closed with the placement and installation of curb, gutter and sidewalk at the cost of the Developer and/or Owner.

2.3 The Driveway authorized by the ACHD Commission and memorialized under this Agreement is revocable by ACHD at any time.

SECTION 3. Driveway on Linder Road.

3.1 Subject to the terms and conditions as provided here in, the Development shall be allowed to construct and utilize the Driveway.

3.2 The Driveway will be closed by the Developer and/or Owner no later than sixty (60) days following receipt of written notification by ACHD that the collector roadway north of the Development site has been constructed and that the same collector roadway has been accepted by ACHD for maintenance.

3.3 Closure of the Driveway will be accomplished by the Developer and/or Owner with the placement and installation of curb, gutter and sidewalk (hereinafter referred to in this Agreement as the "Work") within the public right-of-way (or applicable easement) in accordance with ACHD reviewed and approved construction plans and the cost of the Work shall be the complete and sole responsibility of the Developer and/or Owner. The Work shall be subject to ACHD issuance of a right-of-way work permit which permit shall not be unreasonably withheld and which permit shall be issued by ACHD upon payment of all applicable permit fees. Execution of this Agreement by ACHD shall not constitute issuance of a right-of-way work permit. Upon completion of the Work, the Developer and/or Owner shall provide ACHD written certification that the Work is complete and in accordance with the approved
construction plans and all applicable ACHD specifications. Within fifteen (15) days after
delivery of the written certification, ACHD shall inspect the Work and either (i) accept
the same, or (ii) provide a written itemization of those matters it reasonably believes to
be non-conforming, in which case, Developer and/or Owner shall promptly cause
remediation of all non-conforming matters. ACHD shall acknowledge its acceptance of
the Work as complete and in accordance with the approved plans and all applicable
ACHD specifications by closing the permit within fifteen (15) days after the later of (i)
the delivery of the written certification, or (ii) satisfactory remediation of any non-
conforming matters.

3.4 In the event of Developer’s and/or Owner’s default under this Agreement,
ACHD may unilaterally, without waiving any claims or remedies against the Developer
and/or Owner, and upon ten (10) days advance written notice to Developer and/or
Owner, take all such measures reasonably necessary to close the Driveway and in such
instance, the Developer and/or Owner shall be financially obligated to reimburse ACHD
any and all of its costs relating to such measures and Developer’s and/or Owner’s
reimbursement of ACHD shall be due and payable to ACHD thirty (30) days after
issuance of ACHD’s invoice. If ACHD takes action to close the Driveway pursuant to
this Section, Developer and/or Owner shall cooperate with ACHD and Developer and/or
Owner shall provide ACHD unrestricted access to the Driveway and the portion of the
Development Area immediately adjacent to the Driveway as is reasonably necessary to
accomplish the closure and Developer shall waive any and all claims against ACHD for
damage to the Development Area resulting from, or in any way associated with,
ACHD’s efforts in closing the Driveway.

3.5 Any provision of this Agreement notwithstanding, Developer and Owner
acknowledge that the Driveway authorized by the ACHD Commission and memorialized
under this Agreement is revocable by ACHD at any time for any reason in which case,
ACHD shall demand closure of the Driveway in accordance with the terms and
conditions of this Agreement upon sixty (60) days written notice to Developer and
Owner.

SECTION 4. Indemnification. Developer and/or Owner shall indemnify, save harmless,
and defend ACHD, its officers, employees, directors, and agents, from expenses of and
against suits, actions, or losses of every kind, nature and description, including costs,
expenses and attorney fees caused by or arising out of any acts by Developer and/or
Owner or their officers, agents or employees which arise from or which are in any way
connected to the performance of the Work under Section 3.3 of this Agreement.
Developer and/or Owner shall also indemnify, save harmless, and defend ACHD its
officers, employees, directors, and agents, from expenses of and against suits, actions,
or losses of every kind, nature and description, including costs, expenses and attorney
fees caused by or arising out of any acts by ACHD or ACHD’s officers, agents or
employees which arise from or which are in any way connected to the performance
measures to close the Driveway under Section 3.4 of this Agreement.
SECTION 5. Attorneys' Fees. Should any party find it necessary to employ an attorney for representation in any action seeking enforcement of any of the provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach of this Agreement, or to resolve any disagreement in interpretation of this Agreement, the unsuccessful party in any final judgment entered therein agrees to reimburse the prevailing party for all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred by the prevailing party in connection therewith and in connection with any appeal, and the same may be included in such judgment.

SECTION 6. Notices. Any and all notices given by either of the parties hereto shall be in writing and deemed delivered when either: (i) delivered personally, or (ii) sent by fax by a program that will confirm fax delivery and also First Class U. S. Mail, postage prepaid, to the other party, or (iii) deposited in the United States Mail, certified, return receipt requested, postage prepaid; and, in any case, addressed to the other party at the address set forth in Section 1 and faxed to the other party at the fax telephone number set forth in Section 1, or at such other telephone number or mailing address as may be provided by written notice of such change given to the other in the same manner as above provided.

SECTION 7. Warranty. Developer and/or Owner shall warrant the Work to be free of defects in materials and workmanship for a period of two (2) years after acceptance of the Work by ACHD.

SECTION 8. Representations and Warranties. Developer and/or Owner represents and warrants that upon completion, the Work shall be free and clear of all liens and encumbrances that were not created by or with the written consent of ACHD. Developer and/or Owner shall provide ACHD lien waivers from all contractors prior to acceptance of the Work by ACHD.

SECTION 9. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Idaho.

SECTION 10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

SECTION 11. Time of Essence. All times provided for in this Agreement or in any other instrument or document incorporated herein or contemplated hereby for the performance of an act will be strictly construed, it being agreed that time is of the essence of this Agreement.

SECTION 12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors and assigns, and shall survive any transfer by Developer and/or Owner of all or part of its interest in the Development or the Development Area.
SECTION 13. Recordation and Agreement Runs with the Land. This Agreement shall be recorded in the land records of Ada County with the Ada County Recorder's Office. This Agreement shall run with the land and be a burden upon the land comprising the Development Area.

SECTION 14. No Joint Venture. The parties hereto agree that nothing herein contained shall be construed to create a joint venture, partnership, or other similar relationship which might subject any party to liability for the debts and/or obligations of the others, except as otherwise expressly agreed in this Agreement.

SECTION 15. Recitals. The Recitals above are incorporated into the body of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

LAZY P LIMITED PARTNERSHIP

By: ____________________________
Title: ____________________________

EISENBERG LINCHIN, LLC

By: ____________________________
Title: ____________________________

ADA COUNTY HIGHWAY DISTRICT

By: ____________________________
Title: ____________________________
STATE OF IDAHO  

COUNTY OF ADA  

On this _____ day of _____, 20___, before me, ________________________, a Notary Public in and for said State, personally appeared ________________________, known or identified to me to be the ________________________ of LAZY P. LIMITED PARTNERSHIP, the Partnership that executed the instrument or the person who executed the instrument on behalf of said Partnership, and acknowledged to me that such Partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

__________________________
Notary Public for the State of Idaho

Residing at ________________________

My Commission Expires: ________________________

STATE OF IDAHO  

COUNTY OF ADA  

On this ___ day of ___, 20___, before me, ________________________, a Notary Public in and for said State, personally appeared ________________________, known or identified to me to be the ________________________ of EISENBERG LINCHIN, LLC, the Limited Liability Corporation that executed the instrument or the person who executed the instrument on behalf of said Limited Liability Corporation, and acknowledged to me that such Limited Liability Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

__________________________
Notary Public for the State of Idaho

Residing at ________________________

My Commission Expires: ________________________
STATE OF IDAHO )
 ) ss.
COUNTY OF ADA )

On this 19th day of May, 2011, before me, Breann Shearer, a Notary Public in and for said State, personally appeared Gary Inselman, known or identified to me to be the Manager, Right-of-Way and Development Services of ADA COUNTY HIGHWAY DISTRICT, the political subdivision that executed the instrument or the person who executed the instrument on behalf of the political subdivision, and acknowledged to me that such political subdivision executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

BREANN SHEARER
NOTARY PUBLIC
STATE OF IDAHO

Breann Shearer
Notary Public for the State of Idaho
Residing at Boise, ID
My Commission Expires: July 19, 2013
LAZY P LIMITED PARTNERSHIP,
an Idaho limited partnership

By: LAZY P LEGACY CORPORATION,
an Idaho corporation
Its: General Partner

[Signature]
By: Scott W. Powell
Its: President

[Signature]
By: Kay Perkins
Its: Vice-President, Secretary and Treasurer
STATE OF COLORADO  
) ss.
County of Arapahoe)

On this 13th day of May, 2011, before me, Desirae Branch, a Notary Public in and for said State, personally appeared Scott W. Powell, known or identified to me to be the President of Lazy P Legacy Corporation, the general partner of Lazy P Limited Partnership, and one of the officers of the general partnership that executed the within instrument by subscribing the name of Lazy P Limited Partnership, and acknowledged to me that such limited partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day, month and year in this certificate first above written.

Desirae Branch
Notary Public for Colorado
Residing at 301 S. Tower Pk. Ave, Aurora
My commission expires Nov 26, 2011

STATE OF IDAHO
) ss.
County of Ada

On this 12th day of May, 2011, before me, Marcella J. Powell, a Notary Public in and for said State, personally appeared Kay Perkins, known or identified to me to be the Vice President, Secretary and Treasurer of Lazy P Legacy Corporation, the general partner of Lazy P Limited Partnership, and one of the officers of the general partnership that executed the within instrument by subscribing the name of Lazy P Limited Partnership, and acknowledged to me that such limited partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day, month and year in this certificate first above written.

Notary Public for Idaho
Residing at Boise, ID
My commission expires 3/4/2015
LAZY P LIMITED PARTNERSHIP,
an Idaho limited partnership

By: LAZY P LEGACY CORPORATION,
an Idaho corporation
Its: General Partner

By: Scott W. Powell
Its: President

By: Kay Perkins
Its: Vice-President, Secretary and Treasurer
STATE OF COLORADO  

County of ________________

On this ___ day of __________, 2011, before me, ___________________________, a Notary Public in and for said State, personally appeared Scott W. Powell, known or identified to me to be the President of Lazy P Legacy Corporation, the general partner of Lazy P Limited Partnership, and one of the officers of the general partnership that executed the within instrument by subscribing the name of Lazy P Limited Partnership, and acknowledged to me that such limited partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day, month and year in this certificate first above written.

Notary Public for Colorado
Residing at __________________________
My commission expires __________________________

STATE OF IDAHO  

County of Ada  

On this 12th day of May, 2011, before me, MARCELLE L. MORRIS, a Notary Public in and for said State, personally appeared Kay Perkins, known or identified to me to be the Vice President, Secretary and Treasurer of Lazy P Legacy Corporation, the general partner of Lazy P Limited Partnership, and one of the officers of the general partnership that executed the within instrument by subscribing the name of Lazy P Limited Partnership, and acknowledged to me that such limited partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day, month and year in this certificate first above written.

Notary Public for Idaho
Residing at BOISE, ID  
My commission expires 3/4/2015