

The resolution was approved, but the Sage Park Business Center development agreement was not executed. Signature copies of the agreement were hand delivered to Isaac Patterson on 02.25.2020 but were not returned to the Recorder's Office. A revised development agreement was approved by the City Council via resolution on May 19, 2020.

**RESOLUTION NO. R- 18 -2019**

**A RESOLUTION OF EAGLE MOUNTAIN CITY, UTAH,  
APPROVING THE SAGE PARK BUSINESS CENTER DEVELOPMENT AGREEMENT**

*PREAMBLE*

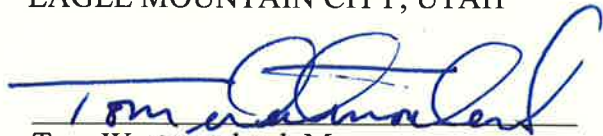
WHEREAS, the City Council of Eagle Mountain City, Utah finds that it is in the public interest to approve the Sage Park Business Center Development Agreement as set forth herein;

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 proposed Sage Park Business Center Development Agreement as set forth in Exhibit A.
2. The Sage Park Business Center Development Agreement 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 3rd day of December, 2019.

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 on the 3rd day of December, 2019.

Those voting aye:

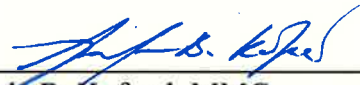
- Donna Burnham
- Melissa Clark
- Colby Curtis
- Stephanie Gricius
- Benjamin Reaves

Those voting nay:

- Donna Burnham
- Melissa Clark
- Colby Curtis
- Stephanie Gricius
- Benjamin Reaves

Those excused:

- Donna Burnham
- Melissa Clark
- Colby Curtis
- Stephanie Gricius
- Benjamin Reaves

  
\_\_\_\_\_  
Fionnuata B. Kofoed, MMC  
City Recorder

# Exhibit A

When Recorded Return To:

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

**DEVELOPMENT AND USE AGREEMENT  
FOR THE  
SAGE PARK BUSINESS CENTER AND RESIDENTIAL DEVELOPMENT  
AREA**

This *Development Agreement for the Sage Park Business Center and Residential Development Area* (this “Development Agreement” or “Agreement”) is entered into between Eagle Mountain City, a Utah municipal corporation (the “City”) and Patterson Construction, Inc., a Utah corporation (“Developer”). City and Developer shall be referred to as the “Parties” to this Agreement, and individually each as a “Party”.

This Agreement is made with reference to the following facts.

- A. Developer is the owner of certain real property located in Eagle Mountain City which property is described on Exhibit A, attached hereto and incorporated herein (the “Property”).
- B. The Property is currently zoned Residential and is subject to an approved preliminary plat (the “Approved Preliminary Plat”).
- C. Developer has submitted an application to the City to rezone the Property to a mix of Business Center and Residential, which will require Developer to vacate a portion of the Approved Preliminary Plat.
- D. The City has approved the rezone of the Property subject to developer agreeing to the conditions and restrictions set forth in the Agreement with respect to the development and use of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties contained herein, and for other valuable consideration received, the Parties agree as follows:

1. Governing Standards. The Parties agree that the recitals stated above are incorporated into and form a part of this Agreement. Persons and entities hereafter developing or using the Property or any portions of the project thereon shall accomplish such development in

accordance with the provisions of the Eagle Mountain Municipal Code (“EMMC”), ordinances, and regulations (collectively “City’s Laws”) in effect as of the date of this Agreement, and the provisions of this Agreement. This Agreement contains certain requirements and conditions for development and use of the Property and the Project in addition to those contained in the City’s Laws. Development of the Property shall be governed by the procedures, standards and requirements of the City’s Laws in effect as of the date of this Agreement and the approved final plat or plats for the project. In the event of a conflict between the terms of the City’s Laws then in effect and the terms of this Agreement, the terms of this Agreement shall control.

2. General Land Use Plan. The Property shall be developed in the general configuration as shown on the concept plan attached hereto as Exhibit B, and incorporated herein (the “Concept Plan”). The Parties understand that the final size, configuration and layout of buildings may vary slightly from the Concept Plan.

3. Collector Road Dedication. The Property shall be developed in the general configuration as shown on the concept plan attached hereto and incorporated herein (the “Concept Plan”). In consideration for the City rezoning the Property, Developer shall construct and dedicate to the City a 94’ wide Major Collector Road in accordance with the design standards in Eagle Mountain City Code Table 16.35.130(b) in the location shown on the Concept Plan (the “Collector Road”).

4. Commercial Storage Access Road. It is the understanding of the parties that Developer may propose a right in / right out access into the Project to the North of the Collector Road. The City shall consider the access in accordance with the then existing EMMC requirements.

5. Zoning and Land Uses.

A. The portion of the Property to the North of the collector road shall be zoned as follows:

1. Up to but not exceeding nine (9) acres in the Northwest corner of the Property shall be zoned Commercial Storage in accordance with EMMC Chapter 17.38 (the “Commercial Storage Area”). The Commercial Storage Area shall not be directly adjacent to the Collector Road, and at least 550 feet of the frontage along Eagle Mountain Boulevard shall be Business Park Area and not Commercial Storage Area. Self-storage or mini-storage units shall be Permitted Uses within the Commercial Storage Area.

2. The remaining portion of the Property to the North of the Collector Road shall be zoned Business Park in accordance with EMMC Chapter 17.37 (the “Business Park Area”). Unless otherwise approved by amendment to this Agreement, the following uses shall be the only uses (permitted or conditional) allowed in the Business Park Area:

- a. Permitted Uses:
  - i. Office buildings including professional, medical, or corporate offices or corporate campuses;
  - ii. Retail establishments such as shopping centers, grocery stores, restaurants, banks, department stores, and similar retail uses;
  - iii. Commercial fitness and recreation;
  - iv. Theaters, art galleries, museums, or similar cultural and entertainment uses
  - v. Public and private utility structures or facilities (excluding communications towers);
  - vi. Public/civic buildings;
  - vii. Schools;
  - viii. Contract construction services establishments & contractor offices (sometimes known as flex-use buildings); and
  - ix. Day care center/preschool.
  
- b. Conditional Uses:
  - i. Light manufacturing and assembly which are not obnoxious or offensive by reason of emission of odor, dust, smoke, noxious gases, noise, vibration, glare, heat, or other impacts, nor hazardous by way of materials, process, product, or waste, and which encloses all equipment, compressors, generators, and other ancillary equipment within a building or structure; and
  
  - ii. Auto and truck repair, but not including auto body.

Notwithstanding anything to the contrary, Developer acknowledges and agrees that the City may deny approval of any building that is not conducive to the permitted or conditional uses set forth herein.

B. The portion of the Property to the South of the Collector Road shall be zoned Residential, provided that the density of the residential area cannot exceed the density that would have been allowed under the Approved Preliminary Plat.

6. Right to Develop. The City's approval of this Agreement grants to the Developer the right to develop the Property and construct the project in accordance with the uses, improvements and general configuration of development for the project set forth in this Agreement and the Concept Plan for the Property. In the event of any conflict between the City Code and the express terms of this Agreement, the express terms of this Agreement shall control.

7. Dedication of Facilities. <sup>3</sup>Developer agrees to improve and dedicate to

the City, free and clear of all financial encumbrances, all required utilities, streets, utility facilities, and other public improvements for the use of utilities, roads, and other public ways. These facilities shall be dedicated in conjunction with the approvals of the respective subdivision plats within the Property.

8. Developers' Remedies Upon Default. Developer acknowledges and agrees that Developers' sole and exclusive remedy under this Agreement shall be specific performance of the development rights granted in this Agreement and City's obligations under this Agreement. IN NO EVENT SHALL CITY BE LIABLE TO DEVELOPERS, THEIR 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.

9. City's Remedies Upon Default. Upon default of any of the requirements of this Agreement, the City may withhold all further reviews, approvals, licenses, building permits and/or other permits for development until the Default has been cured, or if the default is not able to be immediately cured, Developer is actively to cure the default. The City may further exercise its right to draw on any security posted or provided in connection with the project and relating to remedying of the particular default. The City may further exercise all rights and remedies available at law and in equity, including, but not limited to, injunctive relief or specific performance.

10. Reserved Powers. The parties agree that the City reserves certain legislative powers to amend its Code to apply standards for development and construction generally applicable throughout the City. However, it is the intent of the parties to vest the Developer with the specific land uses and maximum densities for the Property specifically identified in this Agreement. Subject to the terms and conditions of this Agreement, Developer shall be required to comply in accordance with the provisions of the Code, ordinances, and regulations (collectively "City's Laws") in effect as of the date of this Agreement, and the provisions of this Agreement as of the date of execution.

11. Term of Agreement. The term of this Agreement shall commence upon execution of this Agreement and shall continue for a period of twenty (20) year anniversary of this Agreement, provide that the City acknowledges that any approved and existing uses at the expiration of this Agreement may continue as non-conforming uses.

12. Miscellaneous Provisions:

A. Integration. This Agreement constitutes the entire understanding and agreement between the Parties, and supersedes any previous agreement, representation, or understanding between the Parties relating to the subject matter hereof; provided however, that the Code shall govern the procedures and standards for approval of each subdivision and public improvement.



B. Severable. The provisions of this Agreement are severable, and should any provision hereof be deemed unenforceable or invalid, such unenforceability or invalidity provision shall not affect the remaining provisions of this Agreement.

C. Waiver. Any waiver by any Party hereto of any breach of any kind or character what so ever by the other Party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement on the part of another Party.

D. No Modification. This Agreement may not be modified except by an instrument in writing signed by the Parties hereto.

E. Governing Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Utah.

F. Costs of Enforcement. In the event of default on the part of any Party to this Agreement, that Party shall be liable for all costs and expenses incurred by the other Parties enforcing the provisions of this Agreement, whether or not legal action is instituted.

G. Binding Effect. This Agreement shall run with the land and be binding upon and inure to the benefit of the successors, heirs and assigns of the Parties hereto, and to any entities resulting from the reorganization, consolidation, or merger of any Party hereto.

H. Agreement to Run With the Land. This Agreement shall be recorded against the Property and shall be deemed to run with the land and shall be binding on Developer and all successors and assigns of any of the foregoing.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**PATTERSON CONSTRUCTION, INC.**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF UTAH            )  
  ss:  
COUNTY OF UTAH        )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ personally  
appeared before me \_\_\_\_\_, who

acknowledged to me that he had authority to and did execute the foregoing document on behalf of Patterson Construction, Inc.

\_\_\_\_\_  
Notary Public

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

ATTEST:

**EAGLE MOUNTAIN CITY**

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Tom Westmoreland, Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

# EXHIBIT A

# EXHIBIT B