

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 up to a 94’ wide Major Collector Road (which width shall be determined by the City) 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”). Developer shall be reimbursed for upsizing cost for any portion of the Collector Road that is more than 65 feet wide, including the value of the land required to upsize the Collector Road to greater than 65 feet at unimproved residential land value. The 65-foot cross-section includes 40 feet of asphalt.

4. Commercial Storage Access Road. It is the understanding of the parties that the success of this project is somewhat dependent on having a right in / right out access into the Project to the North of the Collector Road, as shown on the attached preferred concept plan. The City agrees to allow an access in the general location shown on the concept, subject to spacing and design standards, including acceleration and deceleration lanes, in the existing EMMC.

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.

5. 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.

6. Dedication of Facilities. 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.

7. 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.

8. 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.

9. 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 required⁴

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.

10. 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.

11. 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 whatsoever 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 27th day of October, 2020.

PATTERSON CONSTRUCTION, INC.

By: Wayne Patterson

Print Name: Wayne Patterson

Title: Secretary

STATE OF UTAH)
 ss:
COUNTY OF UTAH)

On this 27th day of October, 2020 personally appeared before me Wayne Patterson, who acknowledged to me that he had authority to and did execute the foregoing document on behalf of Patterson Construction, Inc.



Kelly W Palmer
Notary Public

DATED this 27 day of May, 2020.

ATTEST:

EAGLE MOUNTAIN CITY

[Signature]
City Recorder



[Signature]
Tom Westmoreland, Mayor

Approved as to form:

[Signature]
City Attorney

EXHIBIT A

Exhibit A

Commercial Storage Legal Description

Beginning at a point which is South $89^{\circ}55'09''$ West 1591.27 feet along the section line and North 2012.23 feet from the Northeast corner of Section 11, Township 6 South, Range 2 West, Salt Lake Base and Meridian; running

thence along the arc of a 2562.50 foot radius curve to the left a distance of 926.22 feet (curve having a central angle of $20^{\circ}42'35''$ and a long chord bears $N45^{\circ}01'53''W$ 921.19 feet); thence North $89^{\circ}42'35''$ East 943.15 feet; thence South $33^{\circ}50'12''$ East 359.55 feet; thence South $54^{\circ}00'09''$ West 233.79 feet; thence South $54^{\circ}00'08''$ West 373.85 feet to the point of beginning.

Contains: 392,050 sf or 9.00 ac

Business Park Legal Description

Beginning at a point which is South $89^{\circ}55'09''$ West 1591.27 feet along the section line and North 2012.23 feet from the Northeast corner of Section 11, Township 6 South, Range 2 West, Salt Lake Base and Meridian; running

thence North $54^{\circ}00'08''$ East 373.85 feet; thence North $54^{\circ}00'09''$ East 233.79 feet; thence North $33^{\circ}50'12''$ West 359.55 feet; thence North $89^{\circ}42'35''$ East 1312.65 feet; thence South $00^{\circ}16'26''$ West 47.00 feet; thence South $89^{\circ}42'35''$ West 66.35 feet; thence along the arc of a 500.00 foot radius curve to the left a distance of 311.60 feet (curve having a central angle of $35^{\circ}52'26''$ and a long chord bears $S71^{\circ}51'22''W$ 306.59 feet); thence South $54^{\circ}00'09''$ West 663.60 feet; thence along the arc of a 5000.00 foot radius curve to the left a distance of 672.14 feet (curve having a central angle of $07^{\circ}42'08''$ and a long chord bears $N57^{\circ}51'12''W$ 671.64 feet); thence along the arc of a 2562.50 foot radius curve to the left a distance of 267.77 feet (curve having a central angle of $05^{\circ}59'14''$ and a long chord bears $N31^{\circ}40'59''W$ 267.65 feet) to the point of beginning.

Contains: 514,430 sf or 11.81 ac

EXHIBIT B

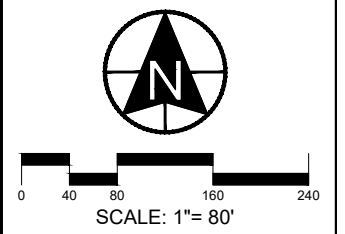
PREFERRED CONCEPT PLAN



NOTE:
 THERE IS 1115 FEET OF FRONTAGE ALONG EAGLE MOUNTAIN BLVD, OF WHICH A MAXIMUM OF 565 LF CAN BE UTILIZED FOR THE STORAGE FACILITY & A MINIMUM OF 550 LF WILL BE UTILIZED FOR OTHER BUSINESSES.

DEVELOPMENT
SAGE PARK REZONE

DEVELOPER



REVISIONS			SEAL
NO.	DATE	DESCRIPTION	
1			
2			
3			
4			
5			
6			
7			

ACTION	DATE
CONCEPT	6/10/2019

PROJECT
SAGE PARK REZONE

DESCRIPTION
CONCEPT PLAN

SHEET NAME	SHEET NUMBER
	CC2