



ENT 4536-2024 PG 1 of 13  
ANDREA ALLEN  
UTAH COUNTY RECORDER  
2024 Jan 24 03:25 PM FEE 40.00 BY KR  
RECORDED FOR EAGLE MOUNTAIN CITY

When Recorded Return To:

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

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR  
THE MARKETPLACE AT EAGLE MOUNTAIN TOWN CENTER**

This *Development Agreement for the Marketplace at Eagle Mountain Town Center* (this “Development Agreement”) is entered into between Eagle Mountain City, a Utah municipal corporation (the “City”) and EM Commercial Development, LLC., a Utah limited liability company (the “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. Developer has applied for and received approval by the City to rezone the Property to Commercial Community and for Master Site Plan approval (together the “Development Applications”) for the Property (the “Project”).

C. The Master Site Plan serves as the Preliminary Plat for the Project (except the Future Development area).

D. The City has approved the Development Applications 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. Subject to the terms and conditions of this Agreement, development of the Property shall be governed by the procedures, standards and requirements of the City Code in effect as of the date of a final plat application for development is filed for each portion of the Project.

2. General Land Use Plan. The Property shall be developed in accordance with the Master Site Plan attached hereto as Exhibit B and incorporated herein (the “Master Site Plan”). Minor amendments to the Master Site Plan, including minor changes to building sizes,

configuration, parking numbers and locations, etc. may be reviewed and approved with individual site plans.

3. Internal Road Construction and Dedication. Developer shall be required to construct all internal roads for the Project, including the public roads linking Raven Way, Osprey Way, Eagle Mountain Blvd and Pony Express Parkway (the “Internal Public Roads”). A map depicting the Internal Public Roads (divided into Sections A, B and C) is attached hereto as Exhibit C. The Internal Public Road shall be constructed in accordance with the City’s standard 60’ residential road configuration and shall be dedicated to Eagle Mountain City by Developer. Developer shall be solely responsible for all costs associated with the construction of the Internal Public Road. The portion of the Internal Public Road depicted as Road Section A shall be dedicated to the City prior to or in conjunction with the recording of any final plat within Area A, and shall be completed prior to issuance of a certificate of occupancy for any building in Area A. The portion of the Internal Public Road depicted as Road Section B shall be dedicated to the City prior to or in conjunction with the recording of any final plat within Area B, and shall be completed prior to issuance of a certificate of occupancy for any building in Area B. The portion of the Internal Public Road depicted as Road Section C shall be dedicated to the City prior to or in conjunction with the recording of any final plat within Area C, and shall be completed prior to issuance of a certificate of occupancy for any building in Area C. The portion of the Internal Public Road depicted as Road Section D shall be dedicated to the City prior to or in conjunction with the recording of any final plat within Area D, and shall be completed prior to issuance of a certificate of occupancy for any building in Area D. Road improvements also include sidewalks, street signs, fire hydrants, and streetlights (Developer shall pay the City for the cost of the streetlights, to be installed by City contractor).

4. Pony Express Parkway Improvements. The City is currently in the process of widening Pony Express Parkway, which will include expanding the asphalt and installing curb and gutter (the “City Widening Project”). Developer shall not be required to pay for any portion of the City Widening Project. Developer shall dedicate to the City the property depicted on the Master Site Plan that is necessary to widen and improve Pony Express Parkway (approximately 76’ from the center of the median). Developer shall be required to fully improve the approximately 28.5’ park strip along Pony Express Parkway at Developer’s cost, including installing landscaping improvements (including trees, sod, sprinklers, berming, and possible water-wise landscaping) and an eight (8) foot asphalt trail. Developer shall pay City for streetlights at 300-foot intervals, to be installed by City contractor. Developer shall be required to construct any improvements to the median in Pony Express Parkway to create turn lanes for ingress and egress to the Project, to be approved by the City Engineer.

5. Eagle Mountain Boulevard Improvements. Developer shall dedicate to the City the property depicted on the Master Site Plan that is necessary to widen and improve Eagle Mountain Boulevard (approximately 61’ from the center of the median). Developer shall be required to fully improve the approximately 20’ park strip along Eagle Mountain Boulevard at Developer’s cost, including installing landscaping improvements (including trees, sod, sprinklers, berming, and possible water-wise landscaping) and an eight (8) foot asphalt trail. Developer shall pay City for streetlights at 300-foot intervals, to be installed by City contractor. Developer shall be required to

construct any improvements to the median in Eagle Mountain Boulevard (including expanding the asphalt if necessary) to create turn lanes for ingress and egress to the Project.

6. Retention Area. The City currently owns an approximately 2.14-acre parcel within the Project that is designated as Parcel No. 59:044:0015 (“Existing Detention Parcel”). In order to accommodate the Project, City has agreed to exchange the Existing Detention Parcel for the approximately 2.161-acre detention area shown on the Master Site Plan (the “New Detention Area”). Developer shall be required to fully improve the New Detention Area, including all landscaping fencing, and other improvements for the New Detention Area. Developer shall complete construction of the New Detention Area in conjunction with the Area D Internal Public Road.

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7. External Walls. Developer shall construct a six-foot solid decorative concrete or masonry wall along the North and West perimeter of the portion of the Project that is zoned commercial. The portion of the External Wall contained in Area A shall be completed in conjunction with construction of the Public Road within Area A, and shall be completed prior to issuance of a certificate of occupancy for any building in Area A. The portion of the External Wall contained in Area B shall be completed in conjunction with construction of the Public Road within Area B, and may be completed after issuance of a certificate of occupancy for Lots 201 and 202 to accommodate current construction schedules, and shall be completed prior to issuance of a certificate of occupancy for any building on lots 203 – 205 in Area B. The portion of the External Wall contained in Area C as well as the rest of the wall along the North side of the property shall be completed in conjunction with construction of the Public Road within Area C, and shall be completed prior to issuance of a certificate of occupancy for any building in Area C. The portion of the External Wall contained in Area D as well as the rest of the wall along the West side of the property shall be completed in conjunction with construction of the Public Road within Area D, and shall be completed prior to issuance of a certificate of occupancy for any building in Area D.

8. Trail System. A twenty-foot wide area on the west side of the Project shall be improved by Developer with a trail and landscaping improvements.

9. Landscaping, Trail and Wall Plan. Prior to approval of any final plat for the Project, Developer shall submit to the City planning department, and obtain approval from the Planning Director and Parks Director, for a detailed landscaping, trail and wall plan that includes: (1) landscaping along Eagle Mountain Boulevard, Pony Express Parkway, the Internal Public Roads and the New Detention Area, (2) the design and building materials for the external walls, and (3) the trail system. If the Planning Director and Parks Director deny the landscaping and wall plan, the Developer may appeal the denial of the plan to the City Council. It is understood that the approved landscaping along public roads will be constructed in concurrence with the adjacent lots, to allow for connections to future water service lines.

10. Building Layout and Architecture. Architectural theming (materials, colors, detailing, style) of commercial buildings shall be consistent throughout the project. Developer agrees, as much as possible, to locate buildings at or near the minimum front setback line, with pedestrian access leading to the primary entrance and landscaping between the building and the

street. Building elevations shall comply with EMMC Chapter 17.72 by adding Hardie board accents, architectural detailing, building materials mixtures, and additional vertical articulation/modulation.

11. Future Development Area. Prior to any development in the areas labeled “Future Development,” Developer shall submit an updated Master Site Plan or Preliminary Plat application for those areas. Although Developer has indicated their intent to return in the future with a rezone application to a zone that allows for multi-family residential development, Developer acknowledges that any development in the Future Development areas that is not an approved use in the Commercial Community zone will require a rezone, which rezone may be denied by the City.

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12. 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.

13. 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.

14. 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 working 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.

15. 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 for the Property specifically identified in this Agreement.

16. Term of Agreement. The term of this Agreement shall commence upon execution of this Agreement and shall continue until the six (6) year anniversary of this Agreement, provided that the City acknowledges that any approved and existing uses at the expiration of this Agreement may continue.

17. 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 5 day of October, 2023.

**EM COMMERCIAL DEVELOPMENT, LLC**

By: its Manager, CP EM, LLC,  
a Utah limited liability company

By:   
\_\_\_\_\_  
William G. Gaskill, Manager



By: its Manager, Diamante Vista, L.L.C.,  
a Utah limited liability company

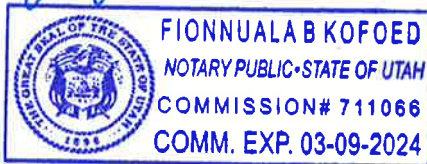
By: *Tiffany A. Walden*  
Tiffany A. Walden, Manager

STATE OF UTAH            )  
  ss:  
COUNTY OF UTAH        )

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*9* On this 5 day of October, 2023 personally appeared before me  
*Tiffany A. Walden*, who acknowledged to me that (s)he had authority to and  
did execute the foregoing document on behalf of CP EM, LLC.

*William J. Gaskill*

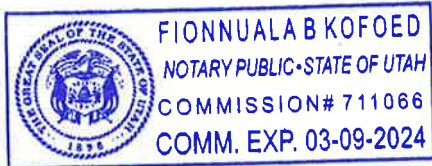


*Fionnuala B. Kofoed*  
Notary Public

DATED this 5 day of October, 2023.

STATE OF UTAH            )  
  ss:  
COUNTY OF UTAH        )

On this 5 day of October, 2023 personally appeared before me  
*Tiffany A. Walden*, who acknowledged to me that (s)he had authority to and  
did execute the foregoing document on behalf of Diamante Vista, L.L.C.



*Fionnuala B. Kofoed*  
Notary Public

*[Handwritten mark]*

DATED this 27 day of September, 20223.

ATTEST:

EAGLE MOUNTAIN CITY

[Signature]  
City Recorder



[Signature]  
Tom Westmoreland, Mayor

Approved as to form:

[Signature]  
City Attorney

[Handwritten mark]

# EXHIBIT A

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**NOTES**

The purpose of this survey is to determine the boundaries of the property described in the accompanying plat and to show the location of the corners and monuments thereon. The survey was conducted by the undersigned surveyor on the date indicated on the plat. The survey was conducted in accordance with the rules and regulations of the State Board of Land Surveyors and the provisions of the Utah Land Survey Act. The survey was conducted in accordance with the provisions of the Utah Land Survey Act and the rules and regulations of the State Board of Land Surveyors. The survey was conducted in accordance with the provisions of the Utah Land Survey Act and the rules and regulations of the State Board of Land Surveyors. The survey was conducted in accordance with the provisions of the Utah Land Survey Act and the rules and regulations of the State Board of Land Surveyors.

**LEGAL DESCRIPTIONS**

TABLE 1

SECTION 14, T4N, R10E, S11W, CO. 4, UT.

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**EXHIBIT A**

**BOUNDARY TOPOGRAPHICAL SURVEY**

**SECTION 14, T4N, R10E, S11W, CO. 4, UT.**

**PROPERTY OF MOUNTAIN VISTA RANCH, LLC**

**PREPARED FOR: MOUNTAIN VISTA RANCH, LLC**

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## LEGAL DESCRIPTIONS

(TITLE REPORT)

### PARCEL 1:

A portion of the SE 1/4 and SW 1/4 of Section 12, Township 6 South, Range 2 West, Salt Lake Base and Meridian, Eagle Mountain City, Utah, more particularly described as follows:

Beginning on the westerly line of Sweetwater Road located N0°27'04"E along the Section line 1,333.00 feet to the Northeast Corner of the South SE 1/2 of the SE 1/4 Section 12 and S88°43'29"W along the 1\16th Section (40 acre) line 2,351.47 from the Southeast Corner of Section 12, T6S, R2W, S.L.B.& M.; thence S18°56'36"W along said westerly line of Sweetwater Road 729.56 feet to the northerly line of Eagle Mountain Boulevard;

thence Northwesterly along said road and along the arc of a 9,953.50 foot radius non-tangent curve (radius bears: N18°57'04"E) 929.60 feet through a central angle of 5°21'04" (chord: N68°22'24"W 929.26 feet) to the southeast corner of that Real Property described as Deed Entry No. 72747:2000 of the Official Records of Utah County; thence along said deed the following 5 (five) courses and distances: N24°17'50"E 228.84 feet; thence Northwesterly along the arc of a 9,725.00 119.69 foot radius curve to the left 185.84 feet through a central angle of 88°57'51" (chord: S70°19'00"W 167.73 feet); thence S25°50'05"W 90.46 feet; thence along the arc of a 20.00 foot radius curve to the left 31.57 feet through a central angle of 90°27' 15" ( chord: S 19°23 '33"E 28.40 feet) to the north line of said Eagle Mountain Boulevard;

thence Northwesterly along the arc of a 9,953.50 foot radius non-tangent curve (radius bears: N25°22'50"E) 507.95 feet through a central angle of 2°55'26" (chord: N63°09'27"W 507.90 feet) to the north line of the South 1/2 of the SW 1/4 of said Section; thence N88°40'38"E along the 1/16 (40 acre) line 1,406.78 feet to the northwest corner of the South 1/2 of the SE1/4 of said Section; thence; thence N88° 43'29"E along the 1/16th (40 acre) line 317.50 feet to the point of beginning.

### PARCEL 2:

Commencing North 1243.99 feet and East 321.88 feet from the South 1/4 Corner of Section 12, Township 6 South, Range 2 West, Salt Lake Base and Meridian; thence N18°55'24"E 28.66 feet; thence along the arc of a 1749.46 radius curve to the left (chord bears: N10°00'28"E 538.914 feet); thence N1°22'57"E 9.64 feet; thence N89°50'58"W 25.78 feet; thence S1°12'23"W 9.72 feet; thence along the arc of a 1750 foot radius curve to the right (chord bears: S2°27'33"W 76.53 feet) 76.54 feet; thence West 391.09 feet; thence North 251.34 feet; thence S89°57'53"W 1199.87 feet; thence South 101.6 feet; thence East 305.8 feet; thence South 306 feet; thence West 306 feet; thence North 407.6 feet; thence S89°57'53"W 189.01 feet; thence S1°21'47"W 752.08 feet; thence along the arc of a 9950.49 foot radius curve to the left ( chord: S61 °44'39"E 23 .49 feet); thence N88°57'07"E 1703. 74 feet to beginning.

### TOGETHER WITH the following:

Commencing North 1746.91 feet and West 2271.8 feet from the Southeast Corner of Section 12, Township 6 South, Range 2 West, Salt Lake Base and Meridian; thence West 391.09 feet; thence

North 251.34 feet; thence N89°57'53"E 99.05 feet; thence S22°13'07"E 177.82 feet; thence S89°50'58"E 228.29 feet; thence S1°12'23"W 9.72 feet; thence along the arc of a 1750 foot radius curve to the right (chord bears: S2°27'33"W 76.53 feet to the beginning.

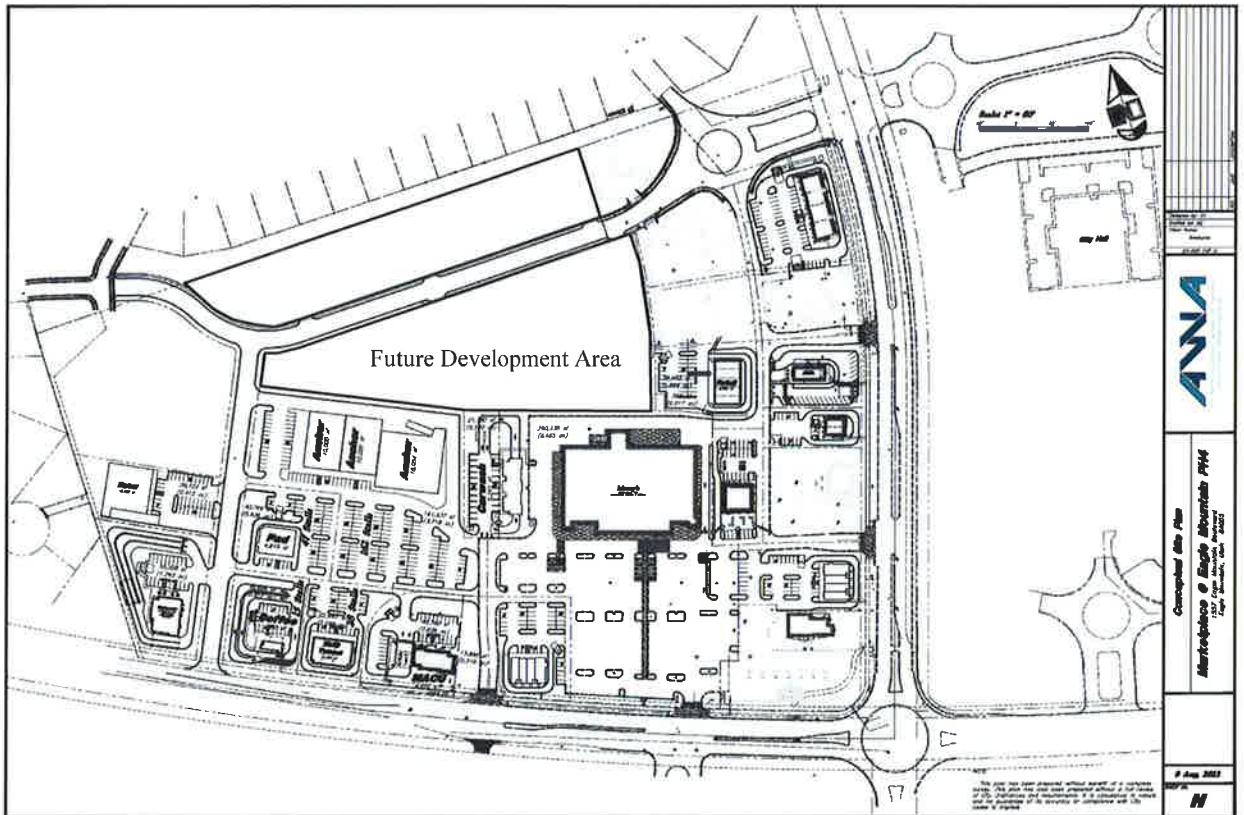
**LESS AND EXCEPTING the following:**

A portion of the SE 1/4 and SW 1/4 of Section 12, Township 6 South, Range 2 West, Salt Lake Base and Meridian, Eagle Mountain City, Utah, more particularly described as follows:

Beginning on the westerly line of Sweetwater Road located N0°27'04"E along the Section line 1,333.00 feet to the Northeast Corner of the South 1/2 of the SE 1/4 of Section 12 and S88°43'29"W along the 1\16th Section (40 acre) line 2,351.47 from the Southeast Corner of Section 12, T6S, R2W, S.L.B.& M.; thence S18°56'36"W along said westerly line of Sweetwater Road 729.56 feet to the northerly line of Eagle Mountain Boulevard; thence Northwesterly along said road and along the arc of a 9,953.50 foot radius non-tangent curve (radius bears: N18°57'04"E) 929.60 feet through a central angle of 5°21'04" (chord: N68°22'24"W 929.26 feet) to the southeast corner of that Real Property described as Deed Entry No. 72747:2000 of the Official Records of Utah County; thence along said deed the following 5 (five) courses and distances: N24°17'50"E 228.84 feet; thence Northwesterly along the arc of a 9,725.00 foot radius non-tangent curve (radius bears: N24°18'19"E) 83.78 feet through a central angle of 0°29'37" (chord: N65°26'53"W 83.78 feet) to a point of reverse curvature; thence along the arc of a 119.69 foot radius curve to the left 185.84 feet through a central angle of 88°57'51" (chord: S70°19'00"W 167.73 feet); thence S25°50'05"W 90.46 feet; thence along the arc of a 20.00 foot radius curve to the left 31.57 feet through a central angle of 90°27'15" (chord: S 19°23'33"E 28.40 feet) to the north line of said Eagle Mountain Boulevard; thence Northwesterly along the arc of a 9,953.50 foot radius non-tangent curve (radius bears: N25°22'50"E) 507.95 feet through a central angle of 2°55'26" (chord: N63°09'27"W 507.90 feet) to the north line of the South½ of the SW 1/4 of said Section; thence N88°40'38"E along the 1/16th (40 acre) line 1,406.78 feet to the northwest corner of the South½ of the SE 1/4 of said Section; thence; thence N88°43'29"E along the 1/16th (40 acre) line 317.50 feet to the point of beginning.

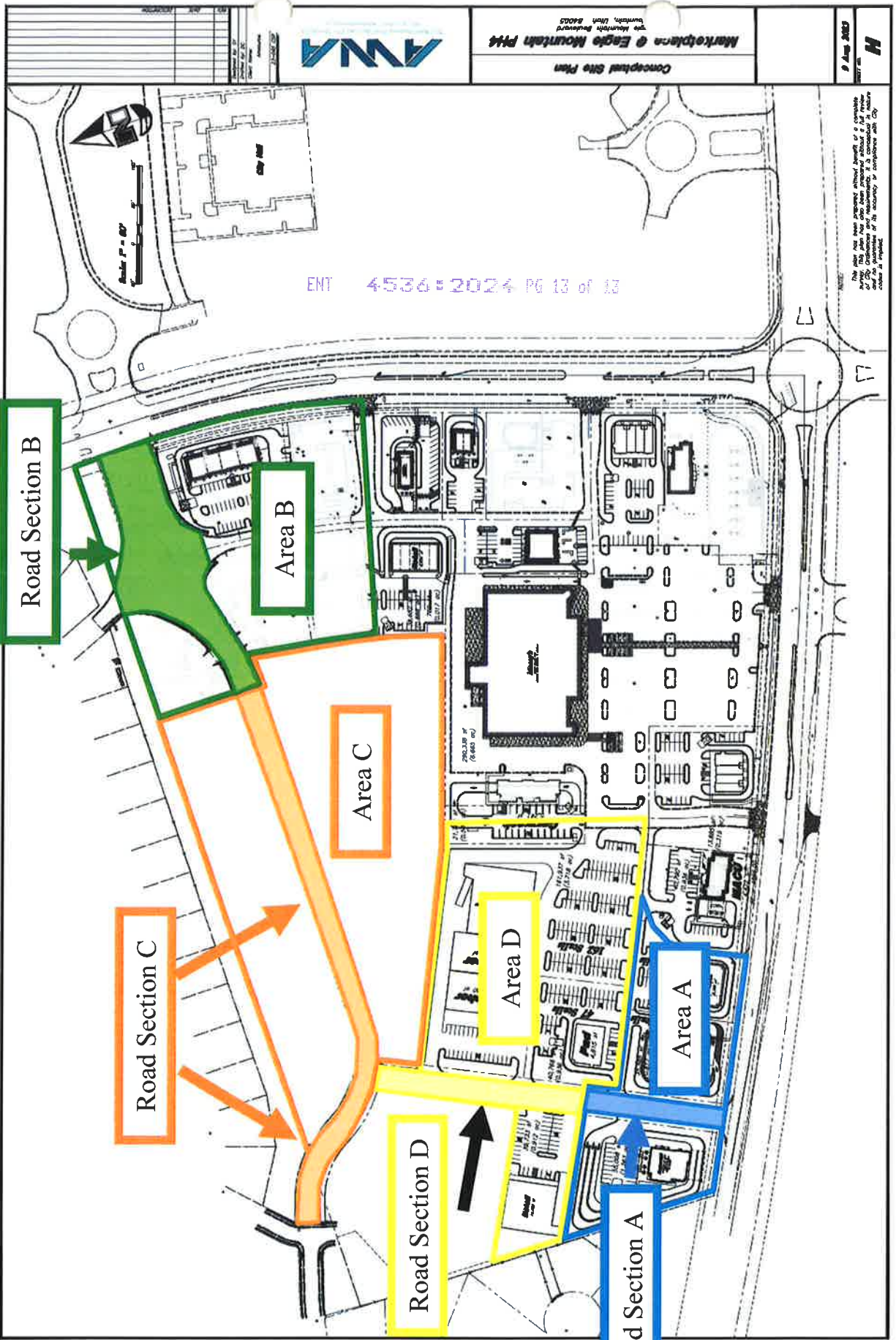
# EXHIBIT B

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# EXHIBIT C





The plan has been prepared without benefit of a complete survey. The plan has been prepared without a full review of the site and is intended to provide a general overview of the site. The plan is not intended to be used as a basis for construction or other engineering work. The plan is not intended to be used as a basis for any other purpose.

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