

**FIRST AMENDMENT TO THE
MASTER DEVELOPMENT AGREEMENT
BETWEEN
EAGLE MOUNTAIN CITY, UTAH
(formerly known as "The Town of Eagle Mountain")
AND
PATTERSON CONSTRUCTION COMPANY
DEVELOPER**

This First Amendment to the Master Development Agreement, the "First Amended Master Development Agreement" is entered into as of the 10th day of September, 2005 by and between Eagle Mountain City, Utah, a Utah Municipal Corporation (the "City") and Patterson Construction Company ("Developer") for the master planned area called "Sage Valley."

This First Amended Master Development Agreement is made with reference to the following facts and representations of the parties:

The Developer and the City intend to amend and supercede the original Master Development Agreement between the parties for Sage Valley in this Agreement and to continue in effect all other terms and conditions in the original Master Development Agreement;

The Developer owns all of the private land ("Developer's Land") designated on Exhibit "1" (Master Development Plan), which is the Master Development Plan ("Sage Valley MDP") approved by Eagle Mountain City for the Developer's project. The Developer is entitled under the original Master Development Plan to develop up to 67 residential units on the property described in Exhibit "1" subject to the Developers compliance with the terms of the Original Master Development Agreement approved by the City in 1999; under the terms of this First Amended Master Development Agreement the Developer will be allowed to plat up to a total of ninety-eight (98) buildable lots in the Master Planned Areas. Plat A of Sage Valley has been recorded and therefore all of the additional lots shall be in Plat B.

The Developer and the City have engaged in development planning for the area described on Exhibit "1" the Master Development Plan for the Developer's Land and the Developer has requested that the Master Development Plan be amended to increase the density allowed in the Master Planned Area as described more specifically above;

The Developer will make investments in the construction of off-site and on-site (subdivision) public infrastructure, related substantially to Developer's Land and the public infrastructure improvements will become the property of the City. The funding of improvements, the completion of improvements required in Sage Valley Plat A and the additional investment planned by the Developer are a part of the consideration for the City to enter this Amended Agreement with the Developer;

The Eagle Mountain City Planning Commission and City Council have approved the Developer's Amended Master Development Plan which is depicted on the map which is Exhibit "1". The City and the Developer wish to preserve and to define specifically the rights and responsibilities of each party with respect to the project in this First Amended Master Development Agreement;

The parties desire to assure fair and equitable treatment for the Developer and the City under the terms and conditions of this Agreement.

The Developer understands and acknowledges that the City is relying on the faithful performance of the Developer of all the terms and conditions of this Agreement, funding of all improvements, dedication of rights of way, water rights, the implementation of the Developer's financial plan for improvements including construction of streets, other public facilities and utilities required by the City, and compliance with the City Development Code as consideration for the land uses approved in the Amended Sage Valley MDP.

The City acknowledges that Developer is relying upon the execution and continuing validity of this First Amended Master Development Agreement and the City's faithful performance of the City's obligations to respect the densities and uses on Exhibit "1" under this First Amended Master Development Agreement in exchange for the Developer's existing and continued commitment and expenditure of funds for the future improvement projects which will service the Sage Valley Development as identified in the City Capital Facilities Plan ("CFP"). (Exhibit "3"). The parties understand that the Capital Facilities Plan may be amended from time to time as changing circumstances concerning the Developer's project and other land development requires and that the CFP as amended is the governing CFP under this Agreement. The parties do not anticipate that significant changes will be made in the CFP affecting the Sage Valley area.

Now, therefore, in consideration of the foregoing facts and the following mutual promises the parties agree as follows:

1.0 Definitions.

1.1 Buildout means the completion of all of the development of all of Developer's Land in the approved Amended Master Development Plan.

1.2 Development Phase or Phases mean the development of any portion of the Amended Sage Valley MDP.

1.3 Approved Amended Development Master Plan (Exhibit "1") means the configurations, uses and densities for Developer's Land as depicted on Exhibit "1" which is attached and incorporated herein by reference and which was previously approved, adopted and accepted by the City on March 15, 2005.

1.4 Developer means Patterson Construction Company.

1.5 Developer's Land means the land owned by the Developer and illustrated on Exhibit "1."

1.6 Master Developer means a Developer which has received approval for a Master Development Plan under the provisions of the Development Code.

1.7 Project or Developer's Project means the Sage Valley development of the land within the Amended Sage Valley MDP including all associated improvements required by this Agreement and land uses depicted on Exhibit 1 to this Agreement.

1.8 City's Development Code means the "Eagle Mountain Development City Code."

1.9 City's General Plan means the General Plan adopted pursuant to Section 10-9-103 (I)(f) and 301, U.C.A.

2.0 Rights and Responsibilities of Developer.

2.1 Developer's Reliance. The City acknowledges that Developer is relying upon the execution and continuing validity of this First Amended Master Development Agreement and the City's faithful performance of the City's obligations under this First Amended Master Development Agreement in the performance of Developer's existing and continued obligations under this Agreement.

2.2 Completion of Requirements and Compliance with Special Conditions. In addition to the requirements of the Development Code, the Developer will complete the public facilities, utilities and other infrastructure improvements to serve the Sage Valley project defined in the original Master Development Agreement ("MDA") which is the subject of this First Amended Master Development Agreement.

2.3 Phase Densities. The parties understand that the total possible permitted residential units under the Sage Valley MDP at the date of the First Amended Master Development Agreement is 100 less the number of

unbuildable lots allowed to be platted for a total of 98 buildable lots.

2.4 Dedication of Public Improvements for Parks. All of the required park land and improvements must be dedicated and completed prior to the recordation of the Sage Valley Plat B.

2.5 Additional Requirements.

2.5.1 Completion of Improvements. All previous applicable conditions of approval for Sage Valley Plat A must be satisfied which may include but is not limited to the storm drain improvements, neighborhood park, and Plat A which trails are to be completed and approved by the Planning, Engineering, and Public Works Departments before any Plat B lots are recorded.

2.5.2 County Health Department Approval. A note shall be added to future plats that states that no building permit will be issued for a lot until the Utah County Health Department approves the septic tank and drain field design.

2.5.3 Trail Easement Vacation. That the existing trail easement along the rear lots lines of lots 17-21 is vacated (trail is moved to the front of lots).

2.5.4 Monument Sign. That a subdivision entryway monument is provided along S.R. 73 and lot number 1.

2.5.5 Development Code Tier 1 Standards. All Tier 1 development standards, as defined in the current Development Code, shall be met, including setbacks, lot size transitioning, bonus density requirements, and lot frontages.

2.5.6 Storm Water. Storm water discharge issues shall be resolved (such as the release of the storm water into existing storm drain channels from the proposed ponds), and that 100 yr. storm water flows shall be accommodated.

2.5.7 West Canyon Wash. No part of any home shall be constructed within 50 feet of the West Canyon Wash. A geo-tech report shall be provided for West Canyon Wash and the Wash shall be stabilized to the satisfaction of the City Engineer against further erosion and bank caving.

2.5.8 Unbuildable Lots. Lots 23 and 24 are Unbuildable and

are not to be approved for building or as vested density units (see previous condition).

2.5.9 Phones. Adequate telephone capacity shall be provided for the remaining subdivisions at the Developer's sole cost and expense (three lines per home).

2.5.10 Traffic Study. A traffic impact study shall be provided for the main entrance of Sage Valley showing an adequate level of service "C" in and through Sage Valley Plat A.

2.5.11 Street Lights. Streetlights shall be provided throughout the remaining subdivision to match the existing Plat A requirements.

2.5.12 Park Improvements. See Exhibit 2.

2.5.13 Fee in Lieu of Park Improvement. A fee of \$10,000.00 shall be paid to the City prior to the recordation of any further subdivisions in lieu of further improvements by the Developer to the open space in Plat A , east of Lot 17.

3.0 Ordinances and Requirements of General Applicability. This Development Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards or rules regulating development generally applicable to the entire area of the City such as requiring compliance with the City Capital Facilities Plan, Parks Master Plan, including park and trail dedications, utility construction and connections, mandating utility capacities, requiring street development or other such similar rules so long as these ordinances or rules do not materially increase the amount of exactions or dedications vested in the Developer under this Development Agreement or the Master Development Plan.

3.1 Impact fees. This Development Agreement shall also not be construed to prohibit the City from adopting or amending lawfully imposed impact fees applicable to the Developer's Land and all other parcels developed or to be developed within the City.

3.2 Statement Regarding Compelling, Countervailing Public Interests. The City acknowledges that it is familiar with the "compelling, countervailing public interest" test that is generally an exception to the doctrine of Vested Rights in the State of Utah; the City acknowledges that as of the date of this Agreement, the City Council can foresee no facts under which a desire by the City to modify Developer's rights under this First Amended Development Agreement and/or Master Development Plan would be justified by a "compelling, countervailing public interest."

4.0 General Provisions.

4.1 Authority. The parties to this Development Agreement each

warrant that they have all of the necessary authority to execute this Development Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this First Amended Development Agreement pursuant to an action of the City Council on August 16, 2005 and is approved as to form and as to being lawful and binding on the City by the signature of the Counsel for the City.

4.2 Assignability. The rights and responsibilities of Developer under this Development Agreement may be assigned in whole or in part, by Developer with the consent of the City. The City may not unreasonably withhold its consent. Developer shall notify the City of any proposed assignment with a complete description of the proposed assignee, its financial capacity and development experience. Unless the City objects in writing within thirty (30) days, the City shall be deemed to have approved of and consented to the assignment. Developer's selling or conveying individual lots or parcels of land to builders, individuals or other developers shall not be deemed to be an "assignment" subject to the above referred approval by the City unless specifically designated as an assignment by the Developer. Further, when Developer sells or conveys individual tracts or parcels of lands to such builders, users or developers, the lands so sold and conveyed shall bear the same rights, privileges, uses, configurations, and densities as applicable to such parcel and be subject to the same limitations and rights of the City when owned by the Developer and as set forth in this Development Agreement without any required approval, review, or consent by the City except as otherwise provided herein.

4.3 Time Is Of The Essence. Time is of the essence to this Development Agreement and every right or responsibility shall be performed within the times specified.

4.4 Remedies Upon Default. In the event of the default by any party to this Development Agreement, the non-defaulting party shall be entitled to collect from the defaulting party its provable damages, including, but not limited to, its reasonable attorneys' fees and expenses. In addition, the parties acknowledge that the remedies of damages may not always be sufficient and the parties hereby consent to the Court's imposition of specific performance and/or injunctive relief. All rights and remedies under this Development Agreement, and/or statute or common law shall be deemed cumulative and the selection of one of the rights or remedies shall not be deemed a waiver of any other right or remedy.

4.5 Non-Waiver. Failure of any 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 date any such right or any other right it may have.

4.6 Term of Agreement. This First Amended Development

Agreement shall be deemed to have commenced on March 15, 2005 and shall extend for a period of 20 years or until Build-out, whichever comes first.

4.7 Severability. If any provision of this Development Agreement is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this First Amended Development Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Development Agreement shall remain in full force and effect.

4.8 No Joint Venture/No Third Party Beneficiaries. This Development Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Developer. Further, the parties do not intend this First Amended Development Agreement to create any third-party beneficiary rights. The parties acknowledge that this First Amended Development Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to Developer's Properties unless the City has accepted the dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's. Developer shall have the full and exclusive control of all of Developer's Properties.

4.9 Recordation and Running With The Land. This First Amended Development Agreement shall be recorded in the chain of title for all of Developer's Properties described in Exhibit 1.

4.10 Entire Agreement. This Development Agreement is the Entire Agreement between the parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

4.11 Applicable Law. This Development Agreement is entered into in Utah County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

4.12 Venue. Any action to enforce this Development Agreement shall be brought only in the Fourth District Court for the State of Utah.

4.13 Notices. All notices required or permitted under this First Amended Development Agreement shall be given in writing by certified mail and regular mail to the following addresses:

To the City: Mayor Brian B Olsen
Eagle Mountain City, Utah
1650 E. Stagecoach Run
Eagle Mountain, UT 84043

Gina Peterson, City Recorder
Eagle Mountain City, Utah
1650 E. Stagecoach Run
Eagle Mountain, UT 84043

With Copies to City Counsel: Gerald H. Kinghorn
Parsons Kinghorn Harris
111 E Broadway #1100
Salt Lake City, UT 84111

Developer: Patterson Construction Company
11009 North 6400 West
Highland, Utah 84043

The addresses for notice may be modified by either party or their successors by written notice to the other party.

Made and entered into as of the date and year first written above.

Developer
Patterson Construction Company

The City

By: _____
(Signature)

By: Brian B. Olsen
Brian B. Olsen, Mayor

JAMES PATTERSON
(Printed name)



Title: PRESIDENT

Attest:

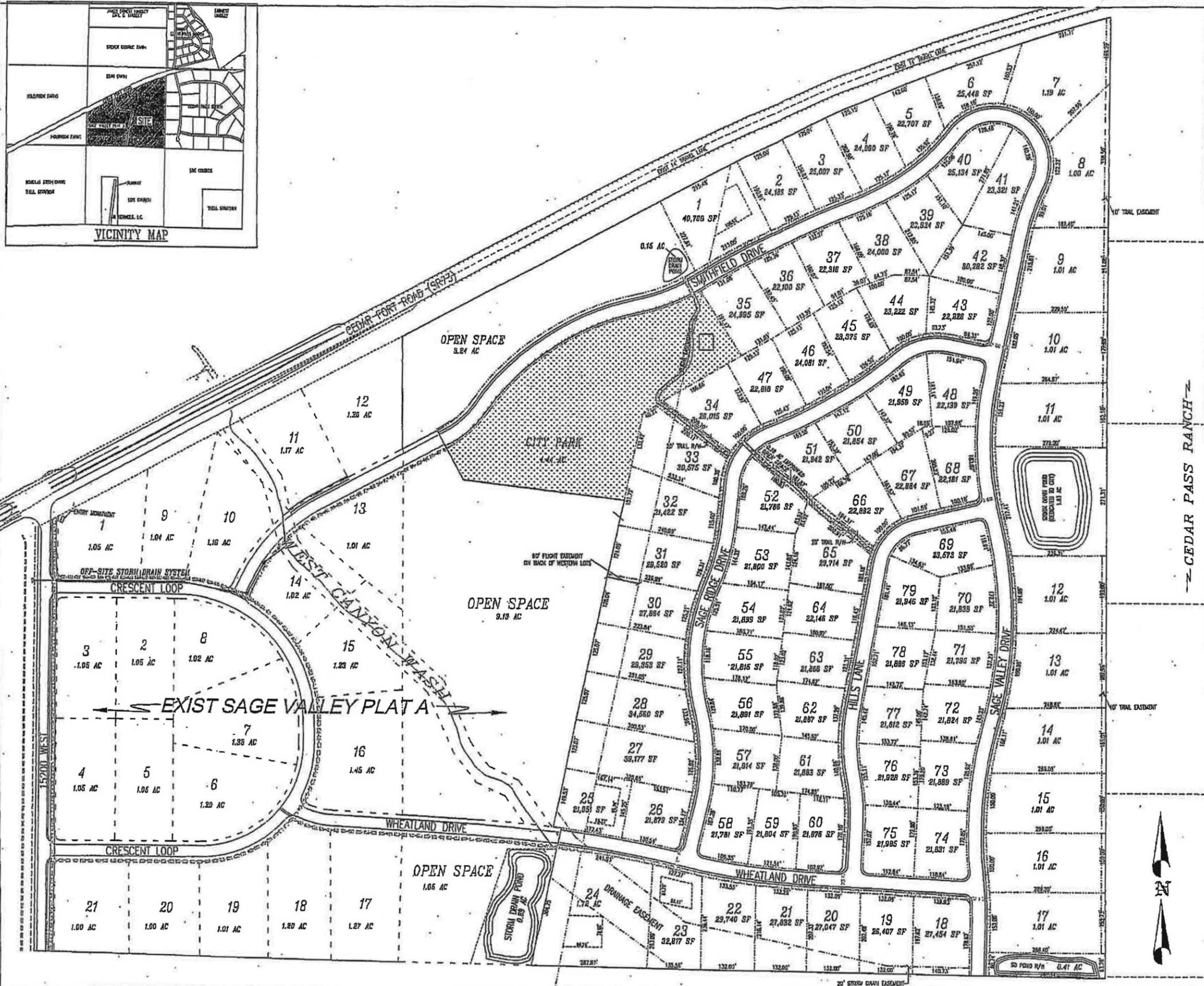
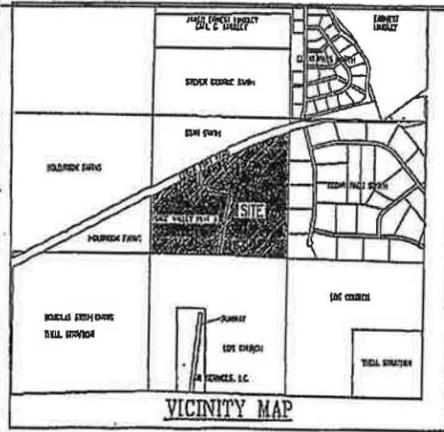
Approved as to form and legality:

Gina Peterson
Gina Peterson, City Recorder

Gerald H. Kinghorn
Gerald H. Kinghorn, City Counsel

EXHIBIT 1

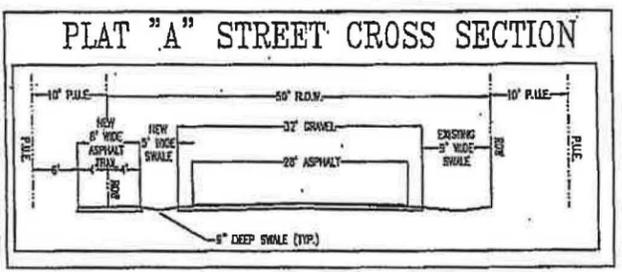
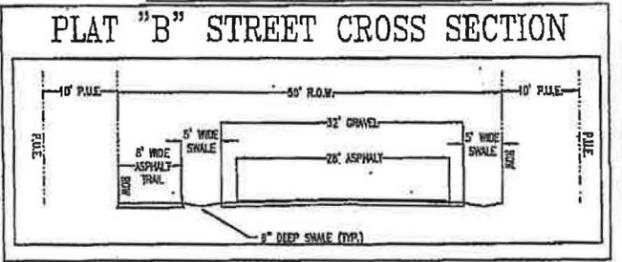
**Amended Master
Development Plan (Map)**



- ### GENERAL NOTES
1. THIS REQUIRES A MASTER DEVELOPMENT PLAN AMENDMENT.
 2. THIS IS PROPOSED AS A TIER 1 RESIDENTIAL SUBDIVISION.
 3. ALL TIER 1 IMPROVEMENTS INCLUDING AMENITIES, TRAILS, ENTRY MONUMENTS, IMPROVED OPEN SPACE, & PROFESSIONAL LAND PLANNING WILL BE INCLUDED.
 4. EXISTING FLIGHT ZONE EASEMENT RUNS THROUGH THE OPEN SPACE AND PARK AREA AND 80' OF THE BACK OF THE WESTERN LOTS OF PHASE 2.
 5. THIS PROJECT WILL PROBABLY BE BUILT IN 3 PHASES. PHASING TO BE DETERMINED LATER.
 6. THE STORM DRAIN SYSTEM WILL CONSIST OF 4 PONDS AS SHOWN.
 7. SEWER LINES WILL NOT BE CONSTRUCTED. EACH LOT WILL HAVE A SEPTIC TANK AND DRAIN FIELD. TESTS HAVE ALREADY BEEN PERFORMED.
 8. OPEN SPACE AND PONDS TO BE DEEDED TO & OWNED BY CITY.
 9. A 20' WIDE EASEMENT THROUGH PHASE 2 LOTS 18-21, WILL BE USED FOR STORM DRAINAGE.
 10. NOTE LARGE LOTS (1.0 AC) NEAR CEDAR PASS RANCH.
 11. TRAILS, & CITY PARK WILL BE IMPROVED TO MEET THE 4% DEVELOPED OPEN SPACE REQUIREMENTS AS SHOWN.
 12. STREET LIGHTS WILL BE INSTALLED AT ALL INTERSECTIONS.
 13. OFFSITE STORM DRAIN IN SAGE VALLEY PLAT A WILL BE CONSTRUCTED AS PART OF THIS PHASE IMPROVEMENTS.
 14. LOTS W/ANIMAL RIGHTS-IN CONFORMANCE WITH CITY CODE.

TABULATIONS

TOTAL AREA	109.87 AC
PLAT A	40.11 AC
PHASE 2	69.76 AC
IMPR. OPEN SPACE	4.61 AC=4.20%
PLUS AMENITIES: TRAILS, ETC.	
NON-IMPR. OPEN SPACE	14.02 AC=12.76%
STORM DRAIN PONDS	3.08 AC
ROADWAY R/W	11.19 AC
PLAT A LOT AREA	23.70 AC
PHASE 2 LOT AREA	52.27 AC
TOTAL LOT AREA	76.97 AC
# OF LOTS	100 LOTS
DENSITY	0.91 DU/AC
AVG. LOT SIZE	33,528 SF (0.74 AC)
SMALLEST LOT	21,780 SF (0.50 AC)
LARGEST LOT	75,082 SF (1.72 AC)



JAN 28 2005

EXHIBIT 2
**Schedule of
Required Improvements**

EXHIBIT 2

Plat A Completion:

General Notes:

1. All dirt and debris needs to be cleared from the paved surfaces.
2. All water cans and sewer stubs need to be located.

15200 West Street:

1. The asphalt at the north curb return for the north loop of Crescent Drive has failed and needs to be patched. Three water valves will need to be reset at this location.
2. The fire hydrant valve located between lots 1 and 9 will need to be relocated into the paved road surface.
3. The gutter on Airport Road (15200 West) needs to be cleared of all debris. Gutter needs to be cracked sealed.

Crescent Loop:

1. A drainage swale needs to be constructed per city standards, particularly along the inside of Crescent loop. The swale needs to be re-graded in other areas.
2. Crack seal the waterways at Smithfield Drive and Wheatland Drive.
3. Water valves will need to be reset at tees at Smithfield Drive and Wheatland Drive.

Smithfield Drive:

1. Approximately 10'x65 feet of asphalt has failed and will need to be patched. Patch will need to include a sawcut to remove existing asphalt, and new base and asphalt to match existing section.
2. Inlet to pipe on West Canyon Wash to be cleaned.
3. Discharge pipe on West Canyon Wash to be cleaned. Additional rip rap will need to be added to maintain a 5'x10' apron on discharge pipe.
4. The fire hydrant valve located at lot 12 will need to be relocated into the paved road surface.

Park and Trails Completion:

4.44 acre park area irrigated sod

Trail corridors between lots 33-34, 51-52, and 65-66 to be irrigated wildflower and native grass seed mixture.

One 450 sq. ft. park pavilion with 4 picnic tables

One BBQ

One bicycle rack

One volleyball pit

55 trees (may be located within park and other open spaces throughout Flats A and B)

One tot lot

Entryway monument

All trails in Plat A (8' asphalt within ROW) and in park area as shown on Amended Master Development Plan Map

Off-site dorm drainage Improvements as shown on MDP Map

All improvements must be in accordance with Eagle Mountain City Specifications. A Landscape/Park plan must be submitted and approved by the Planning and Engineering Departments. The Entryway Monument design must be approved by the Planning Department before construction.

EXHIBIT 3
Capital Facilities Plan