

**SECOND AMENDMENT TO  
DEVELOPMENT AGREEMENT FOR THE  
REDSTONE SPECIALLY PLANNED AREA  
KIMBALL JUNCTION, SUMMIT COUNTY, UTAH**

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT is entered into as of this 27<sup>th</sup> day of October, 2004, by and among BOYER SPRING CREEK, L.L.C. and BOYER KIMBALL JUNCTION, L.L.C. (together "Boyer" or "Boyer Developer"), and SUMMIT COUNTY, a political subdivision of the State of Utah, by and through its Board of County Commissioners (the "County"). This Second Amendment to Development Agreement ("Second Amendment") amends that certain Amended Development Agreement dated as of September 5, 2002, which was recorded in the Office of the Summit County Recorder on December 13, 2002, as Entry No. 641332, in Book 1496 at Pages 435-472. The Amended Development Agreement was adopted pursuant to Summit County Ordinance No. 380. The Amended Development Agreement as previously amended is herein referred to as the "Development Agreement."

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**RECITALS**

ALAN SPRIGGS, SUMMIT CO RECORDER  
2004 NOV 03 13:59 PM FEE \$1.00 BY GGB  
REQUEST: SUMMIT COUNTY CLERK

A. Boyer was the original applicant for the Redstone Specially Planned Area and is the developer of the Commercial Project within that area. SGD-EquiMark L.L.C., a Utah limited liability company, is the developer of the Residential Project, and Fox Point Affordable Housing, L.C., a Utah limited liability company ("Fox Point Developer") is the developer of the Affordable Housing Project within the area.

B. Fox Point Developer and the County have negotiated certain changes to the affordable housing provisions contained in Section 4.6.6 of the Development Agreement. The purpose of this Second Amendment is to set forth all such changes. Although the Boyer Developer is the original applicant for the SPA and would be, therefore, the sole signatory of this Second Amendment with the County, Fox Point Developer is also signing this Second Amendment in order to verify its consent to the obligations contained in the amended and restated Section 4.6.6.

**AGREEMENT:**

The parties therefore agree as follows:

1. Amended and Restated Affordable Housing Provisions. The provisions of Section 4.6.6 of the Development Agreement are amended and restated as follows, with the express intention that such amendment and restatement supersedes and fully replaces the previous version of Section 4.6.6 of the Development Agreement:

BK1657 PG1355

“4.6.6 Affordable Housing.” Fox Point Developer shall provide affordable housing pursuant to the following requirements:

- (a) The Project shall provide fifteen (15) affordable housing units, ten (10) of which are to be located over the southerly commercial buildings and five (5) of which are to be located within the Foxpoint Condominiums. The five units located within the Foxpoint Condominiums are described as follows: 5949 North Market Street, Unit 9H; 5944 North Market Street, Unit 10H; 1590 West Redstone Avenue, Unit 12H; 1526 West Redstone Avenue, Unit 14H; and 1541 West Redstone Avenue, Unit 15H, or as otherwise designated by Fox Point Developer in its sole discretion. The ten units which are located over the southerly commercial building shall be those units designated by Fox Point Developer in its sole discretion.
- (b) The affordable housing program shall conform to the following provisions, which will be administered by the Mountainlands Housing Trust or, if not by the Mountainlands Housing Trust, by Summit County or an entity authorized by Summit County:
  - (i) Initial Price Restrictions: The sales price of the affordable housing units offered by the Fox Point Developer shall not exceed \$175,000.00.
  - (ii) Initial Income and Geographical Restrictions: The affordable housing units shall be offered by Fox Point Developer to purchasers who earn no more than 80% of the 2004 Area Median Income (“AMI”) for a family of four (regardless of the actual family size of the purchaser) and who reside in Summit County or who are full time employees of a business located within Summit County and their immediate family. This initial offering under these income and geographical restrictions shall continue for a period of 90 days from the date this Second Amendment is approved by Summit County. If any affordable units are not sold within this initial 90-day period, such units may be offered by Fox Point Developer to any owner-occupant without income or geographical restriction of any kind. For purposes of this calculation, the “current year’s AMI” shall be deemed to be the AMI most recently published by the Department of Housing and Urban Development and shall be deemed to

change from the previous year's AMI on the date of publication of the new AMI.

- (iii) Subsequent Seller Price Restrictions: An owner of an affordable housing unit who elects to sell his unit shall be subject to the following deed restrictions: The owner or subsequent owner shall sell said unit at a sales price which does not exceed an increase of 3% (per every 12 months' ownership) over the seller's purchase price, plus qualified improvements. For purposes of computing the maximum sales price, the 3% increase each 12 months shall not be compounded. For example, if an owner has owned his unit for 10 years, he would be entitled to sell the unit for no more than 30% above the price at which he originally purchased the unit. The deed restriction shall be clear that a homebuyer is not guaranteed the maximum appreciated resale value. For purposes of this subparagraph, "qualified improvements" includes the cost of the necessary replacement of functional elements of the residence, including carpeting, refrigerated air conditioning, appliances, and fixtures and other similar items not materially changing the function of the residence. No credit will be given for routine maintenance or cosmetic changes. Any credit given for qualified improvements must be approved in advance of a sale by Summit County or its designee.
- (iv) Subsequent Seller Income Restrictions: A subsequent owner of an affordable housing unit who elects to sell his unit shall initially offer the unit to purchasers who earn no more than 120% of the year of sale's AMI for a family of four (regardless of the actual family size of the purchaser). If the unit is not sold within this 120-day period, the owner may thereafter offer the unit for sale without any income or geographical restrictions, but subject to all other applicable restrictions of this Second Amendment.
- (v) Every owner of an affordable housing unit [except Fox Point Developer, which is subject to the restrictions of subparagraphs (i) and (ii) above] shall be subject to the price restrictions and the income restrictions set forth in subparagraphs (iii) and (iv) above until the expiration of the affordable housing restrictions.

- (vi) All affordable housing price and income deed restrictions shall continue for a period of thirty (30) years from the date of recordation. At the end of the thirty (30) year period, the Summit County Board of Commissioners will review the restrictions to determine whether the then current housing demand and supply, Project redevelopment, the condition of the units, the resale value of the units, and other economic factors justify the continued use of the units as affordable housing. The continuation or termination of the restriction shall be evidenced by a recorded written notice. In the event that a written notice of termination is not given, then the same restriction shall be extended on the same terms for an additional ten (10) year period. Said restriction shall continue thereafter for ten (10) year periods until such time as the Summit County Board of Commissioners gives recorded, written notice of termination.
- (vii) Any purchaser of an affordable housing unit shall sign a certificate at closing evidencing the purchaser's income qualification to purchase the unit. The certificate shall be in the form attached hereto as an exhibit. A copy of the certificate and evidence of the purchase price paid shall be provided to Summit County or its designee upon closing.
- (viii) In order to help the Developer service the debt on units which do not sell quickly, Fox Point Developer shall have the right to rent the affordable housing units until such units can be sold to qualified purchasers under the following conditions: (1) such rentals shall not interfere with Fox Point Developer's efforts to sell the units to qualified purchasers; (2) such rentals shall be for terms which do not exceed a month-to-month tenancy, and (3) such rentals shall not occur within the first 90 days after this Second Amendment is fully executed.

IN WITNESS WHEREOF, this Second Amendment to Development Agreement has been executed by Summit County, by the Board of County Commissioners of Summit County, State of Utah, pursuant to Ordinance 380, authorizing such execution, and by a duly authorized representative of Boyer Developer and Fox Point Developer, as of the above stated date.

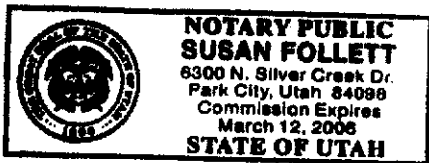
COUNTY:

BOARD OF COUNTY COMMISSIONERS OF  
SUMMIT COUNTY, STATE OF UTAH

By: *K.E. Woolstenhulme*  
Its: Chairman

STATE OF UTAH            )  
                                  ): ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of October, 2004, by K.E. Woolstenhulme, Chairman of the Board of County Commissioners of Summit County, State of Utah.



*Susan Follett*  
Notary Public

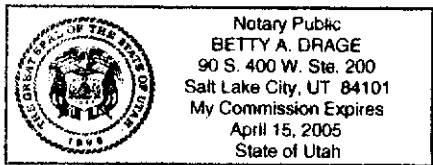
BOYER:

BOYER SPRING CREEK, L.L.C. a  
Utah limited liability company

By: *[Signature]*  
Manager

STATE OF UTAH            )  
                                  ): ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 7 day of October, 2004, by STEVEN B. OSTLER, Manager of Boyer Spring Creek, L.L.C., a Utah limited liability company.



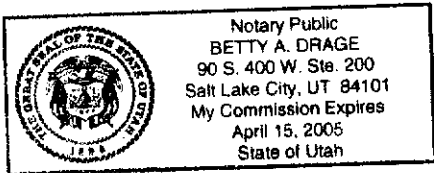
*Betty A. Drage*  
Notary Public

BOYER KIMBALL JUNCTION, L.L.C., a  
Utah limited liability company

By: [Signature]  
Manager

STATE OF UTAH )  
 )  
:SS.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 7 day of  
October, 2004, by Steven B. Ostler,  
Manager of Boyer Kimball Junction, L.L.C., a Utah limited liability company.



[Signature]  
Notary Public

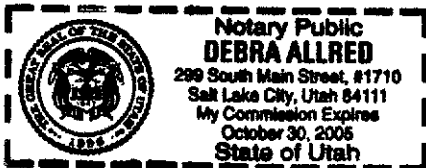
FOX POINT:

FOX POINT AFFORDABLE HOUSING, L.C., a  
Utah limited liability company

By: [Signature]  
Craig P. Burton, Manager

STATE OF UTAH )  
 )  
:SS.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 7 day of  
October, 2004, by Craig P. Burton, Manager of Fox Point Affordable  
Housing, L.C. a Utah limited liability company.



[Signature]  
Notary Public

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