

Please Return To:  
South Jordan City Recorder  
1600 West Towne Center Drive  
South Jordan, UT 84095

2006-043

RESOLUTION NUMBER R2006-10

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SOUTH JORDAN, COUNTY OF SALT LAKE, UTAH, PURSUANT TO UCA 10-9a-102 (2) , EXECUTING THE AGREEMENT FOR THE DEVELOPMENT OF THE KUNKLER TRUST PROPERTY BY THE BOYER COMPANY, L.C. A UTAH LIMITED LIABILITY COMPANY.

WHEREAS, Boyer Company, L.C., a Utah Limited Liability Company ("Developer") has requested the City of South Jordan ("City") enter into a development Agreement pursuant to Utah Code 10-9a-102 (2) *et seq.*, in order to allow it to make improvements to the Kunkler Trust Property ("Property"); and

WHEREAS, Property is within the municipal boundaries of the City of South Jordan, Salt Lake County, Utah, as described on and attached to the Development Agreement as Exhibit "A"; and

WHEREAS, the Mayor and City Council of the City of South Jordan find that an Agreement to govern improvements to the Property is in the interest of health, safety, and general welfare of the City and the surrounding property owners.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SOUTH JORDAN, COUNTY OF SALT LAKE, UTAH:

Section 1 That pursuant to Utah Code Annotated 10-9a-102 (2) *et seq.*, the Developer is hereby granted a Development Agreement attached hereto, for the redevelopment and improvement of the Kunkler Trust Property.

PASSED AND ADOPTED by the Mayor and City Council of the City of South Jordan, Utah, this 21 Feb day of, 2006



*W. Kent Money*  
W. Kent Money, Mayor

ATTEST:

APPROVED AS TO FORM:

*Anna West*  
Anna West, City Recorder

*John H. Geilmann*  
John H. Geilmann, City Attorney

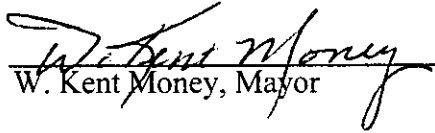
Please re-record this resolution that includes Exhibits A, B & C which were not originally recorded. See page 2 for new signatures authorizing this request.

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03/24/2006 10:37 AM \$0.00  
Book - 9270 Pg - 8008-8014  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
SOUTH JORDAN  
1600 W TOWNE CENTER DR  
SOUTH JORDAN UT 84095-8265  
BY: KLD, DEPUTY - WI 7 P.

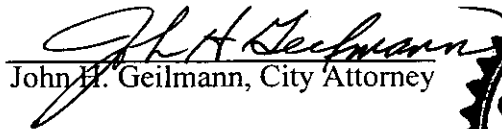
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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
SOUTH JORDAN  
1600 W TOWNE CENTER DR  
SOUTH JORDAN UT 84095-8265  
BY: ZJM, DEPUTY - WI 12 P.

RECORDED AS REQUESTED  
- CO RECORDER -

Effective February 7, 2007 the signatures below authorize the re-recording of Resolution R2006-10, to include Exhibits A, B, & C to the Development Agreement.

  
W. Kent Money, Mayor

Approved as to Form:

  
John H. Geilmann, City Attorney

Attest:

  
Anna West, City Recorder



Witness date: Feb 7, 2007  
Melanie Edmonds

## DEVELOPMENT AGREEMENT

This Agreement, regarding the redevelopment and improvement of the Kunkler Trust Property, is entered into this 21 day of February, 2006 by and between the City of South Jordan, an Utah municipal corporation, hereafter referred to as "City" and The Boyer Company, L.C. a Utah limited liability company hereafter referred to as "Developer"

### RECITALS

A. South Jordan City, acting pursuant to its authority under Utah Code Annotated 10-9a-102 (2) *et seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the proposed Kunkler Trust Properties and, in exercise of its legislative discretion, has elected to enter into this Agreement.

B. Developer desires to be the owner of certain real property known as Assessor's Parcel Numbers 2720100003 and 2719200003 hereafter referred to as the "Property". This property is legally described on Exhibit "A" attached hereto and incorporated herein by reference.

C. The property is subject to the City of South Jordan Zoning Ordinance and is currently zoned "A-5 & A-1" and designated on the future land use map as High Density Residential, Commercial, Bangerter Highway Mixed Use and Open Space. Developer and City desire to allow Developer to make improvements to the property. Developer desires a period of time in which to develop the property.

D. The improvements and changes to be made to the Property shall be consistent with the current Zoning Ordinance of the City of South Jordan, or any future changes to the Zoning Ordinance of the City of South Jordan, and the City of South Jordan General Plan.

E. Developer and City acknowledge and agree that the development and improvement of the "Property" pursuant to this Agreement will result in planning and economic benefits to the City and its residents, and will provide certainty useful to the Property and the City in ongoing future communications and relations with the community.

F. The City's governing body has authorized execution of this Agreement by Resolution No. 2005-10, to which this Agreement is attached.

G. The City has authorized the negotiation of and adoption of development Agreements under appropriate circumstances where proposed development contains outstanding features that advance the policies, goals and objectives of the South Jordan City General Plan and contributes to capital improvements that substantially benefit the City.

### **NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

I. **Recitals.** The recitals set forth above are incorporated herein by this reference.

II. **Conditions Precedent.** City and Developer agree, understand and acknowledge that this development Agreement is in anticipation of the acquisition of the real property described herein by Developer. Developer understands, acknowledges and agrees that any of the terms, conditions or benefits conferred by this Development Agreement is not intended to be of any benefit to the current owner or any prospective lender or any party that is not a signator of this Agreement. Reliance upon this Agreement by any third party is at risk and the City makes absolutely no representation that the benefits herein are assignable or are for the benefit of any third party without the expressed written approval of the Mayor and Council of the City of South Jordan.

### **III. Permitted Uses, Vested Rights and Reserved Legislative Powers.**

A. Permitted Uses the permitted uses for the Property shall be those uses specifically listed in Sections 17.40.020 (R-3 Zone), 17.48.020 (RM-6 Zone), and 17.70.020 (BH-MU Zone) of the City of South Jordan Zoning Ordinance, a copy of said sections is attached hereto as Exhibit "B" and incorporated herein by this reference. Any changes made to these Sections by the City of South Jordan shall be binding on the Property, except as inconsistent with section VI below.

B. Vested Rights. Developer shall have the vested right to develop and construct the Project in accordance with the zoning designations approved by the City pursuant to this Agreement, subject to compliance with the terms and conditions of this Agreement and the other applicable ordinances and regulations of the City. Developer agrees to a maximum overall single family residential density limit of not to exceed 3 units per acre in Phase I and 6 units per acre in Phase 2 (Phase I is comprised of the property west of canal; Phase II is comprised of the property between Bangerter and canal; Phase III is comprised of the property on the east side of the Bangerter Highway) The Developer shall not allow mobile homes in the Project. Multi-family, interval ownership/time share units and other similar uses shall be part of the single-family residential dwelling count.

Provided Developer meets the residential density as outlined above, and lot sizes must be as allowed by ordinance. The City and Developer acknowledge that the property west of Bangerter is bisected by a canal. Provided Developer improves or landscapes this area, the land covered by the canal may be used for purposes of determining residential density and open space requirements.

The Developer is responsible for building that portion of 40<sup>th</sup> west that accesses the residential development from 114<sup>th</sup> south street north for a distance of approximately 1125 feet to the point where 40<sup>th</sup> west is partially located on the Kennecott parcel. Once the right of way reaches the Kennecott parcel those who benefit from the road from that point will be responsible for construction of the road and any cost for such construction. Developer will agree to dedicate ½ width of 40<sup>th</sup> west from the point such street reaches the Kennecott parcel to the northern boundary of Developer's parcel. All curb, gutter, crib walls and sidewalks will be located within said dedicated right of way, and Developer will not be required to dedicate any property for sidewalks or slope easements to be located on the east side of 40<sup>th</sup> west.

Reserved Legislative Powers. Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Developer with respect to use under the zoning designations as referenced in Section 3.1 above under the terms of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in the City; and, unless in good faith the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

IV. Term. This Agreement shall be effective as of the date of recordation and shall run with the land and continue in full force and effect until all obligations hereunder have been fully performed and all rights hereunder fully exercised. In the event the obligations hereunder have not been fully satisfied, and upon mutual agreement of the Developer and the City, this agreement may be terminated and upon termination the City at its sole discretion may initiate a rezoning process to rezone the property.

V. City's Obligations

The City assures that should the Zoning be approved as requested and shown on Exhibit "C", to allow the Developer to construct a single-family residential development on Assessor's Parcel Numbers 2720100003 and 2719200003 consistent with the map attached to this Agreement as Appendix "C". that complies with Section VII of this Agreement and with the R-3, RM-6, and BH-MU Sections of the City of South Jordan Zoning Ordinance except as is inconsistent with Section VII below.

The Developer shall not be required to construct or install sidewalk improvements on the west side of 40<sup>th</sup> West Street. In the event the City determines that sidewalk improvements are to be constructed or installed on the west side of 40<sup>th</sup> West Street, the City shall require the owner/developer of the property on the west side of 40<sup>th</sup> West Street to construct or install said side walk.

VI. Developer's Obligations

- A. Developer agrees to use Developer's good faith efforts to create a mixed use development that may include Research and Development Park and Park housing, office and limited retail uses atmosphere on the Parcel zoned "BH-MU". In addition, Developer agrees to provide the City of South Jordan periodic updates relating to the status of its pre-design and design review committee determinations.
- B. Developer agrees to the types of commercial development on the BH-MU Zone Property, as described in Attachment "C", including, but not limited to:
  - 1. Neighborhood Commercial uses as described in Sections 17.56.020 and 17.56.030 of the current zoning ordinance or as amended) in the commercial area immediately surrounding the "Round-a-Bout" on 114<sup>th</sup> South Street (see Attachment "C").
  - 2. Create a buffer between the residential & other development on the Property and the Lucas Dell residential development to the east as follows:
    - a. Not build a road along the west boundary of the "Lucas Dell" subdivision.
    - b. Create 1/3 acre or larger lots along the west boundary of the "Lucas Dell" and increase the residential density, in a manner approved by the City at the plat approval process, as the development goes to the west towards Bangerter Highway.
- C. Developer agrees to limit the types of residential development on RM-6 Zoned Property as described in Attachment "C", to single family ownership with no apartment buildings.
- D. The Developer agrees and understands that Developer will supply plans and obtain any and all required permits under City, County, State or Federal regulations before commencing any redevelopment or improvements and that the Developer will pay all applicable fees as required.

VII. General Provisions.

A. Notices. All Notices, filings, consents, approvals, and other communication provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by U.S. Postal Service mail, postage prepaid to:

If to City:                      The City of South Jordan  
    1600 West Towne Center Drive  
    South Jordan City, Utah 84095

Attention: City Manager

If to Developer: Wade S. Williams  
90 South 400 West, Suite 200  
Salt Lake City, Utah 84101

or to such other addresses as either party may from time to time designate in writing and deliver in like manner. Any such change of address shall be given at least ten (10) days before the date on which the change is to become effective.

B. Mailing Effective. Notices given by mail shall be deemed delivered seventy-two (72) hours following deposit with the U.S. Postal Service in the manner set forth above.

C. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same of any other provision of this Agreement.

D. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any provision this Agreement.

E. Authority. The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Developer represents and warrants that its company is fully formed and validly exists under the Laws of the State of Utah, and is duly qualified to do business in the State of Utah and is in good standing under applicable state laws. The Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the parties on whose behalf each individual is signing. Developer represents to the City that by entering into this Agreement, Developer has bound the property and all persons and entities having a legal or equitable interest to the terms of the Agreement.

F. Entire Agreement. This Agreement, including exhibits, constitutes the entire Agreement between the parties.

G. Amendment of this Agreement. This Agreement may be amended in whole or in part with respect to all or any portion of the Property by the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. Any such amendment of this Agreement shall be recorded in the official records of the Salt Lake County Recorder's Office.

H. Severability. If any of the provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the fundamental purpose of this Agreement and the Developer's ability to complete the project is not defeated by such severance.

I. Governing Law. The laws of the State of Utah shall govern the interpretation and enforcement of the Agreement. The parties shall agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Salt Lake County, Utah, and the Parties hereby waive any right to object to such venue.

J. Remedies. If any party to this Agreement breaches any provision of this Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity.

K. Attorney's Fee and Costs. If any party brings legal action either because of a breach of the Agreement or to enforce a provision of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

L. Binding Effect. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest and assigns. This Agreement shall be incorporated by reference in any instrument purporting to convey an interest in the Property.

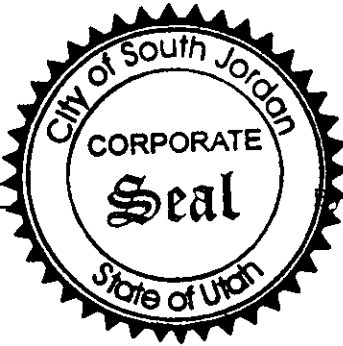
M. Assignment. The rights of the Developer under this Agreement may not be transferred or assigned, in whole or in part except by written approval of the City. Developer shall give notice to the City of any proposed or requested assignment at least thirty (30) days prior to the effective date of the assignment. City shall not unreasonably withhold its consent to assignment.

N. Third Parties. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

O. No Agency Created. Nothing contained in the Agreement shall create any partnership, joint venture, or agency relationship between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written:

ATTEST:



CITY OF SOUTH JORDAN  
a Utah municipal corporation

By: Anna West  
Anna West, City Recorder

Ricky A. Horst  
Ricky A. Horst, City Manager

APPROVED AS TO FORM:

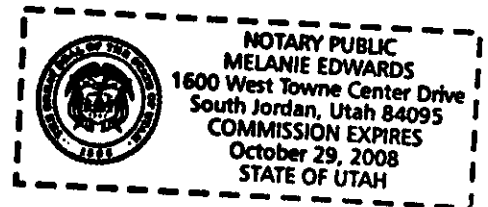
By: John H. Geilmann  
John H. Geilmann, City Attorney

STATE OF UTAH                    )  
  )ss  
County of Salt Lake            )

The foregoing instrument was acknowledged before me this 17 day of March 2000, by, on behalf of John H. Geilmann + Ricky A. Horst

Melanie Edwards Notary Public

My Commission Expires: Oct 29, 2008



The Boyer Company, L.C., a Utah Limited Liability Company

By: [Signature]  
Title: Manager

STATE OF UTAH                    )  
  )ss  
County of Salt Lake            )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of December, by Damon M. Glenn, on behalf of The Boyer Company, L.C.

Rachael N. Niusulu Notary Public

My Commission Expires: 8-20-07

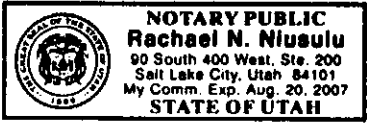




Exhibit "A"

*To be verified by the Developer before execution of the Agreement.*

Legal Description:

THE NW 1/4 OF SEC 20, T 3S, R 1W, S L M. LESS CANAL & BANGERTER HWY. 144.05 AC M OR L.

AND

THE SE 1/4 OF NE 1/4 SEC 19 T 3S R 1W S L M. LESS CANAL 38.26 AC

Exhibit "B"

***Copies of current Zoning Ordinance sections referred to in Development Agreement.***

***R-3 Zone***

17.40.020: PERMITTED USES:

The following uses may be conducted in the R-3 zone as limited herein:

Home occupations according to city ordinances.

Household pets not exceeding two (2) per species over the age of four (4) months per dwelling.

Residential accessory buildings, the footprints of which do not exceed the footprint area of the dwelling.

Residential accessory uses.

Residential facility for disabled persons as required by state law.

Single-family dwelling, detached, maximum one per lot or parcel. (2003 Code § 17.40.020)

***RM-6 Zone***

17.48.020: PERMITTED USES:

The following uses may be conducted in the R-M zone as limited herein:

Home occupations according to city ordinances.

Household pets not exceeding two (2) per species over the age of four (4) months per dwelling.

Residential accessory buildings, the footprints of which do not exceed the footprint area of the dwelling.

Residential accessory uses.

Residential facility for disabled or elderly persons as required by state law.

Single-family dwelling, detached, maximum one per lot or parcel. (Ord. 2004-06, 5-18-2004)

***BH-MU Zone***

17.70.020: PERMITTED USES:

The following uses are permitted in the BH-MU zone:

Auto and equipment parts retailing.  
Banks, credit unions, financial institutions.  
Beauty, health and fitness centers.  
Books, videos, media, photography, copies, art and drafting supplies, office supplies, stationery retail.  
Department, discount and food stores.  
Furniture, electronics, appliances and home furnishings retailing.  
Hardware and home improvement retailing.  
Health, beauty and medical products retailing; prescription drugs retailing.  
Hobbies and crafts retailing.  
Hotels and motels.  
Household goods retailing.  
Medical, dental, health services.  
Miscellaneous retail sales.  
Movie theaters, concert halls.  
Office uses.  
Pharmacy.  
Restaurants, eating establishments.  
Sewing supplies, apparel, footwear retailing.  
Shopping centers and malls.  
Sporting goods, toy retailing. (Ord. 2004-05, 5-4-2004)

***CN Zone***

17.56.020: PERMITTED USES:

The following uses may be conducted in the C-N zone:

Retail sales and services, excluding auto services such as lube, stand alone car wash, tune up, tires, repairs. (2003 Code § 17.56.020)

17.56.030: CONDITIONAL USES:

A conditional use permit may be issued for the following uses in the C-N zone:

Banks, credit unions.  
Bed and breakfast inn.

Drive-through establishments such as fast food, financial institution, pharmacy, but excluding auto services such as lube, stand alone car wash, tune up, tires, repairs.

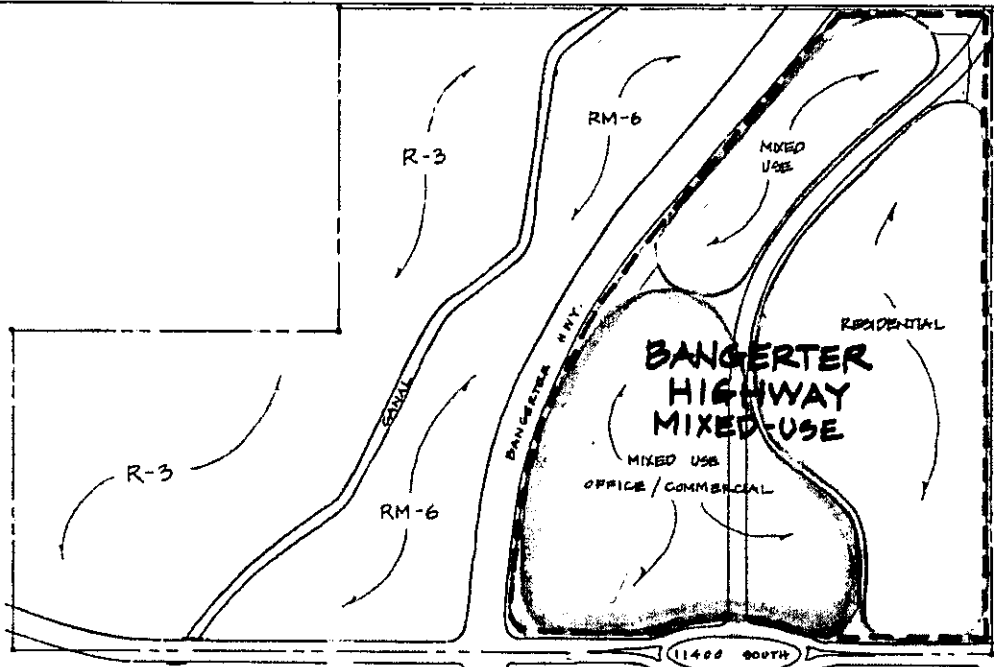
Gas stations/convenience stores.

Office, no larger than three thousand (3,000) square foot building.

Restaurants. (2003 Code § 17.56.030)

Exhibit "C"

Proposed Conceptual Plan



KUNKLER TRUST RE-ZONE:  
MASTER REDEVELOPMENT PLAN  
SOUTH JORDAN, UTAH

NOTE: IN BANGERTER HWY. MIXED USE ZONE, ROAD LOCATION  
CONCEPTUAL ONLY - SUBJECT TO CHANGE. OVERALL DENSITY  
BASED ON 8 UNITS PER ACRE.

DATE: 10 JANUARY 2006

SCALE: 1" = 300'

