

RETURN TO:
South Jordan City
1600 West Towne Center Drive
South Jordan, Utah 84095

10968593

COPY

RESOLUTION NO. R2010-07

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SOUTH JORDAN, COUNTY OF SALT LAKE, UTAH, EXECUTING THE FIRST AMENDMENT TO THE AGREEMENT FOR THE DEVELOPMENT OF THE KUNKLER TRUST PROPERTY BY THE BOYER COMPANY, L.C. A LIMITED LIABILITY COMPANY.

WHEREAS, Boyer Company, L.C., a Utah Limited Liability Company ("Developer") and the City of South Jordan, a Utah municipal corporation ("City"), entered into an agreement dated February, 21, 2006, entitled, "DEVELOPMENT AGREEMENT" ("Agreement") to develop the Kunkler Trust Property ("Property"); and

WHEREAS, the Developer has proposed to the City, an amendment to the Agreement ("Amendment"); and

WHEREAS, the Mayor and City Council of the City find that the Amendment is in the interest of health, safety, and general welfare of the citizens of the City

NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SOUTH JORDAN, AS FOLLOWS:

Section 1. The Amendment is hereby approved and adopted; and

Section 2. The City Manager is hereby authorized to execute the Amendment on behalf of the City of South Jordan.

PASSED AND APPROVED this 18th day of May, 2010.

ATTEST:

By: Anna M. West
Anna West, City Recorder

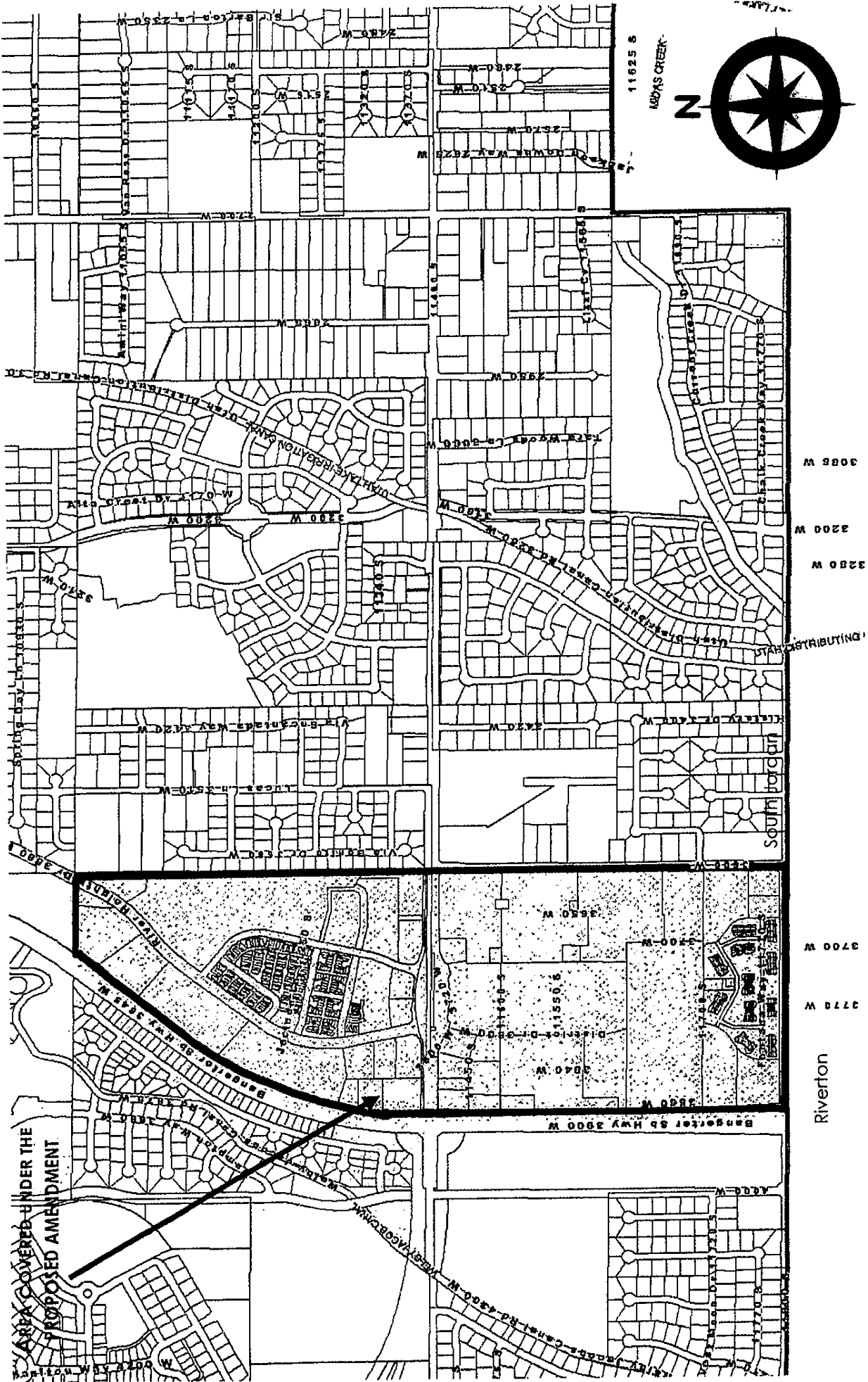
W. Kent Money
W. Kent Money, Mayor



APPROVED AS TO FORM:

By: Robert Wolf
Attorney for South Jordan City

10968593
06/10/2010 10:14 AM \$0.00
Book - 9832 Pg - 1357-1392
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SOUTH JORDAN
1600 W TOWNE CENTER DR
SOUTH JORDAN UT 84095-8265
BY: ARG, DEPUTY - WI 36 P.



Location Map

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("Amendment") is entered into this 18th day of May, 2010 by and between the City of South Jordan, a Utah municipal corporation ("City") and The Boyer Company, L.C. a Utah Limited Liability Company ("Developer"). The City and the Developer are jointly referred to as the "Parties".

RECITALS

- A. The City and the Developer entered into an agreement entitled, "Development Agreement" ("Agreement") dated February 21, 2006, a copy of which is attached to this Amendment as Exhibit 1, to facilitate the development of property commonly known as the Kunkler property.
- B. A portion of the Kunkler property has become commonly know as the North District.
- C. The Developer has requested certain amendments to the Agreement with respect to the development of the North District.
- D. The City Council has reviewed the amendments requested by the Developer and concluded that the amendments will result in planning and economic benefits to the City and its residents and will provide certainty useful to the Developer and the City in ongoing future communications and relations with respect to the development of the North District.

NOW, THEREFORE, the Agreement is hereby amended as follows:

1. Section III. Paragraph A. is amended to read as follows:
 - A. Permitted Uses the permitted uses for the Property shall be those uses specifically listed in Sections 17.40 (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 Exhibit "D" 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.
2. Section III. Paragraph C. is amended to read as follows:
 - C. 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 on the policies, facts, and circumstances meeting the compelling, countervailing public interest exception

to the vested right 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.

3. Section V. is amended to read as follows:

V. City's Obligations

A. The City assures that should the Zoning be approved as requested and shown on Exhibit "C", the City Shall 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", with the terms 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 VI below.

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

4. Section VI. paragraph B. is amended to read as follows:

B. Developer agrees to the types of development on the BH-MU Zone Property, as described in the BHMU Zone Master Development Plan found in Attachment "D", 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 11400 South Street (see Attachment "D"); and
2. Creating 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 west towards Bangerter Highway.

5. The heading **BH-MU Zone** and the text listed under the heading **BH-MU Zone**, entitled, "17.70.020: PERMITTED USES", found in Exhibit "B", is deleted

6. The rights and obligations of this Amendment shall inure to the benefit of and be valid and binding upon the Parties, only upon adoption by the City Council of the City of South Jordan of Ordinance No. 2010.04, dated May 18, 2010 entitled, "AN ORDINANCE AMENDING SECTION 17.70 OF TITLE 17 OF THE SOUTH JORDAN MUNICIPAL CODE PERTAINING TO THE BANGERTER HIGHWAY MIXED USE ZONE (B"H-MU)" including also the adoption of the BH-MU Zone Master Development Plan included with said Ordinance.

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

CITY OF SOUTH JORDAN
a Utah municipal corporation

ATTEST:

By: *John H. Geilmann*
John H. Geilmann, City Manager



By: *Anna M. West*
City Recorder

APPROVED AS TO FORM:

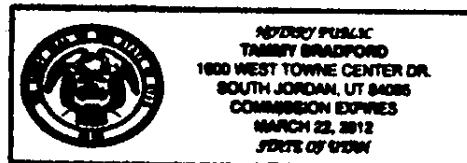
By: *[Signature]*
Attorney for South Jordan City

STATE OF UTAH)
) SS.)
COUNTY OF SALT LAKE)

On June 1, 2010 personally appeared before me, a Notary Public, John H. Geilmann, the City Manager of the City of South Jordan personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he/she executed the above instrument on behalf of and with authority from the City of South Jordan.

WITNESS my hand and official Seal.

Sammy Bradford
Notary Public



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

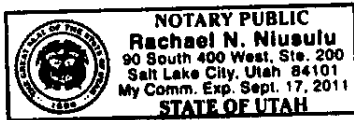
By: 

Title: Manager

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

On May 25, 2010, 2010 personally appeared before me, a Notary Public, Steven B. Oster, the manager of The Boyer Company, L.C., a Utah Limited Liability Company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he/she executed the above instrument on behalf of and with authority from The Boyer Company.

WITNESS my hand and official Seal.



Rachael N. Niusulu
Notary Public

Exhibit 1

**(to *FIRST AMENDMENT TO DEVELOPMENT AGREEMENT* between the City of South Jordan,
a Utah municipal corporation and The Boyer Company, L.C.)**

(“Development Agreement” dated February 21, 2006
between The Boyer Company, L.L.C. and the City of South Jordan)

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 Bangarter and canal; Phase III is comprised of the property on the east side of the Bangarter 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 Bangarter 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 40th west that accesses the residential development from 114th south street north for a distance of approximately 1125 feet to the point where 40th 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 40th west from the point such street reaches the Kennecott parcel to the northern boundary of Developer's parcel. All curb, gutter, curb 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 40th 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.

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:

By: Anna West
Anna West, City Recorder



CITY OF SOUTH JORDAN
a Utah municipal corporation

By: Ricky A. Horst
Ricky A. Horst, City Manager

APPROVED AS TO FORM:

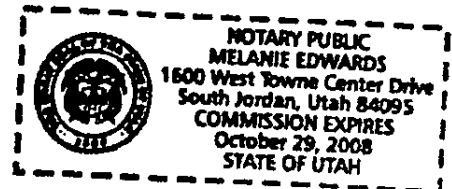
By: John H. Geilmann
John H. Geilmann, City Attorney

STATE OF UTAH)
County of Salt Lake)ss)

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 11th day of 2006, by DENNIS 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

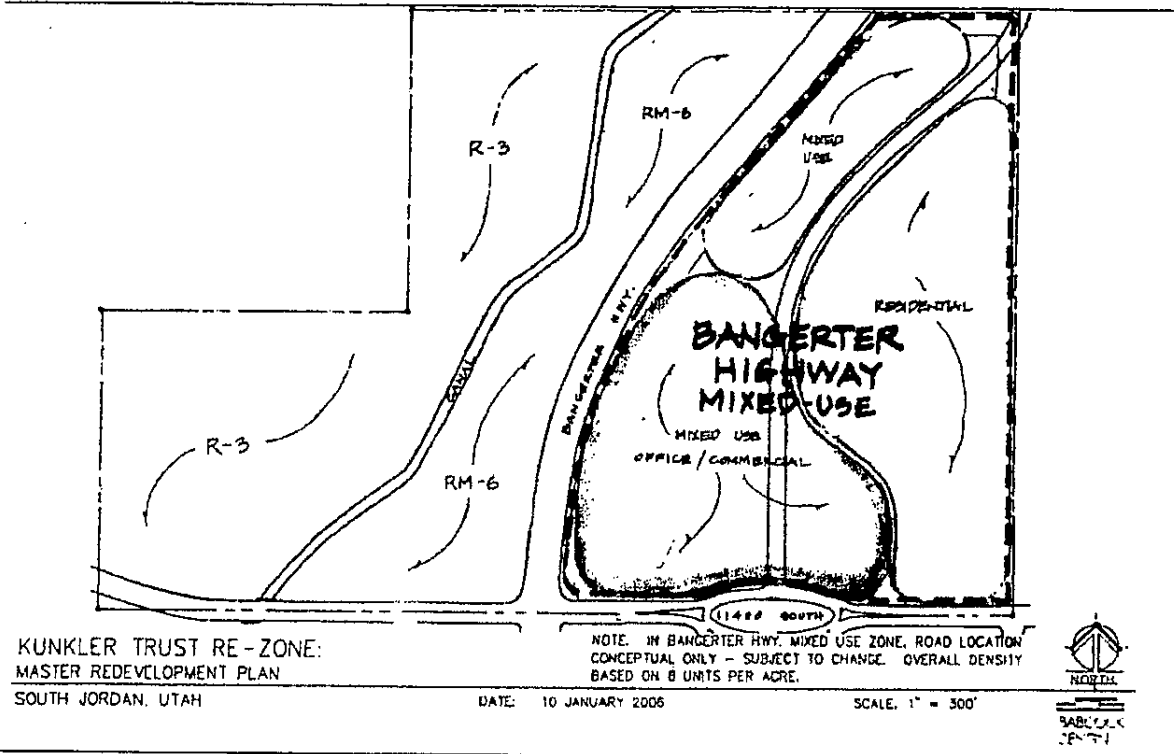


Exhibit D
(to Development Agreement dated February 21, 2006)

BHMU Zone Text Amendments and BHMU Zone Master Development Plan
as adopted by the South Jordan City Council 5/18/10

ORDINANCE NO. 2010.04

**AN ORDINANCE AMENDING SECTION 17.70 OF TITLE 17 OF THE
SOUTH JORDAN MUNICIPAL CODE PERTAINING TO THE BANGERTER
HIGHWAY MIXED USE ZONE (BH-MU)**

WHEREAS, the South Jordan City Council has previously adopted Section 17.70 of the South Jordan City Municipal Code, which determine the uses allowed and regulations for the Bangerter Highway Mixed Use zone; and

WHEREAS, the South Jordan Planning Commission, after holding a public hearing, has reviewed the proposed text amendments to Section 17.70; and

WHEREAS, the City Council has held a public hearing and has reviewed the proposed amendments and considered the recommendation of the Planning Commission regarding the proposed amendment; and

WHEREAS, in accordance with principles of sound municipal planning, the City Staff, the City Planning Commission, and the City Council have taken into account the impact the proposed amendment will or may have on existing or future development projects, and to the extent legally permissible or practical, the City Staff, Planning Commission and Council have taken reasonable steps to ensure that the proposed amendment meets the purposes and objectives of the Planning and Land Use Code; and

WHEREAS, the City Council desires to amend the Development Code as proposed; and

WHEREAS, the City Council has found and determined that the proposed amendments to Section 17.70 of the South Jordan Municipal Code will support the best interests of the City and will promote the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SOUTH JORDAN CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. Amendment. Chapter 17.70 Title 17, "Planning and Land Use Code", of the South Jordan Municipal Code is hereby amended as follows:

Chapter 17.70

BANGERTER HIGHWAY MIXED USE (BH-MU) ZONE

17.70.010: PURPOSE:

The Bangerter Highway ~~M~~**ixed U**~~s~~**e Z**one may be cited as the "BH-MU ~~Z~~**zone**" and may be established along the east side of Bangerter Highway to provide areas for higher density, mixed use development. Such development will be compatible with a major arterial highway corridor and would discourage low density single-family residential development near the highway.

It is intended that a variety of retail, office, entertainment and residential uses be combined to create a self-contained environment for workers, shoppers, residents and visitors in a pedestrian oriented unified manner while accommodating automobile traffic to regional services dependent upon a major transportation facility.

The BH-MU Zzone will encourage orderly, aesthetically pleasing development and a balance of uses while discouraging strip commercial with its attendant congestion, pollution and visual blight. (Ord. 2007-02, 1-16-2007) **Buildings shall be designed to have architectural and access orientation to the street.**

17.70.020: PERMITTED USES:

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

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.

Outdoor Kiosks.

Pharmacy.

Restaurants, eating establishments.

Sewing supplies, apparel, footwear retailing.

Shopping centers and malls.

Sporting goods, toy retailing. (Ord. 2007-02, 1-16-2007)

17.70.030: CONDITIONAL USES:

A conditional use permit may be issued for the following uses in the BH-MU ~~Z~~zone:

Assisted living centers.

Indoor/underground ~~a~~Automobile sales, new and ancillary used, maximum three (3) acres per business, no closer than four hundred feet (400') from residential development.

~~Automobile sales, used; minimum eight thousand (8,000) square foot building required, maximum three (3) acres per business, no closer than four hundred feet (400') from residential development.~~

Automotive services enclosed within a building, including lube, tune up, automatic wash, inspection, tires, mufflers, minor repairs.

Bed and breakfast inn.

Convention, arena, reception and assembly facilities.

Cultural exhibits and activities.

Daycare center.

Drive-through facilities, **visually buffered**, for allowed uses.

Entertainment, amusement, recreational activities.

Equipment and appliance light repairs and service enclosed within a building.

Fast food.

Gas stations, convenience stores.

Golf courses and ranges.

Hospitals.

Laundry.

Live/Work Units.

Lumber, building material and landscaping retail sales yards.

Nature or zoological exhibits.

Office buildings.

Parks.

Public or quasi-public facilities.

Recreational vehicle and boat sales, new and ancillary used.

Religious activities.

Retail Nurseries, Lawn and Garden Supply Stores

Schools, educational and training activities.

Single-family residential PUD or condominium and integrated multi-family residential (projects with more than one housing land use type with 'village' style design, building height and architecture), maximum eight (8) units per acre of the gross acreage of the Master Development Plan. Additional dwelling units exceeding eight (8) units per acre may be approved by the City Council as an amendment to the Master Development Plan (MDP).

Street vendors.

Upper floor residential condominium combined with commercial and/or office use on the main floor in the same building. (Ord. 2008-19, 11-18-2008)

17.70.040: USE REGULATIONS:

Uses may be conducted in BH-MU zones only in accordance with the following regulations:

- A. Only allowed permitted, conditional or accessory uses as set forth in this chapter may be conducted in BH-MU **Z**ones. Residential uses (not including upper floor residential) in a BH-MU zone may not exceed twenty percent (20%) of the gross land area in the zone. A conditional use permit must be obtained prior to the establishment of a conditional use. Sexually oriented business is prohibited in **the** BH-MU **Z**ones.

- B. All uses in BH-MU Zzones shall be conducted within completely enclosed buildings, unless otherwise allowed in this chapter, except **outdoor kiosks, vendor carts, and** those temporary uses customarily conducted in the outdoors, including Christmas tree lots, fireworks stands and parking lot sales associated with an approved use on the property. Parking lot sales may be conducted up to four (4) 1-week periods per year.
- C. Accessory uses **may be conducted and accessory** buildings may be ~~conducted~~ **constructed** in BH-MU Zzones only in conjunction with allowed permitted and conditional uses. Accessory uses include, but are not limited to, parking lots and terraces, properly screened utility and loading areas and other buildings and activities which are incidental and subordinate to the principal permitted or conditional use on the premises.
- D. There shall be no open storage of trash, debris, used, wrecked or neglected materials, equipment or vehicles in BH-MU Zzones. No commercial materials, goods or inventory may be stored in open areas in BH-MU Zzones, except for temporary display items which are removed daily and which may be located only on private property no closer than ten feet (10') from any public right of way. No more than twelve (12) small party balloons and six (6) weatherproof placards, each not exceeding two feet (2') square, per business may be attached to the displays and shall be removed daily with the displays. All other signs and devices are prohibited. Outdoor storage of inventory or products such as firewood, water softener salt, garden supplies including plants and other landscaping materials and building materials is permitted only in screened areas approved for such purpose with site plan review.
- E. No vehicle, boat or trailer, or parts thereof, which is in a wrecked, junked, dismantled, inoperative or abandoned condition, attended or not, may be parked or stored in BH-MU Zzones for longer than seventy two (72) hours unless stored within a completely enclosed building.
- F. No commercial vehicles such as earthmoving or material handling equipment, semi-trucks or trailers or any commercial truck, trailer or vehicle may be stored in the BH-MU Zzone for longer than seventy two (72) hours, except in conjunction with an approved use, or approved development or construction activities on the property.
- G. Utility trailers and recreational vehicles such as motor homes, travel trailers, watercraft, campers and all-terrain vehicles, may not be stored in any area in BH-MU Zzones, except in conjunction with a single-family dwelling. Said trailers and vehicles shall be stored within lawfully constructed buildings or behind the front line of the dwelling, except that said vehicles may be stored temporarily in front or street side yards for no longer than seventy two (72) hours. Recreational and utility vehicles may be stored permanently in the street side yard of a corner lot only if stored completely behind the front line of the main building and at least eight feet (8') from the street right of way line and if enclosed with a six foot (6') high solid vinyl or masonry fence. Travel trailers, campers and motor homes may

not be occupied as living quarters in the BH-MU **Z**zone, except that a vehicle owned by a guest of the resident may be stored and occupied in the required front yard or side yard of the permanent dwelling for no more than seven (7) days per calendar year.

H. Home occupations may be licensed in any residence in BH-MU **Z**zones according to provisions of **chapter 17.98** of this title. (Ord. 2007-02, 1-16-2007)

17.70.050: ZONE ESTABLISHMENT:

Each proposed BH-MU **Z**zone shall be contiguous to the Bangerter Highway right of way. Each proposed BH-MU **Z**zone shall be accompanied by a master development plan ("MDP") which specifies land use areas and residential densities **including the total number of residential units**. Retail, office, residential **8**, mixed use (~~containing upper floor residential~~), open space and public/quasi-public land use areas will be shown on the MDP. The MDP shall be adopted as an exhibit to the ordinance establishing the BH-MU **Z**zone in which it is proposed. The MDP shall ~~may be amended~~ **adopted** by the City Council after the establishment of the BH-MU **Z**zone by following standard rezoning procedures of **chapter 17.22** of this title. **The Planning Commission City Council shall review and may approve necessary amendments to the MDP based upon appropriate changes to the land use mix and market conditions.** (Ord. 2007-02, 1-16-2007)

17.70.060: DEVELOPMENT REVIEW:

All uses proposed in **the** BH-MU **Z**zones may only be established in conformance with development review procedures of the city. Applicants shall follow the procedures and requirements of this code regarding development review in the preparation and review of development proposals in **the** BH-MU **Z**zones. All uses shall be conducted according to the approved plan or plat and any conditions of approval. Plans or plats may not be altered without prior approval of the city, except as allowed under state law. The following procedure shall be used for site plan review of projects in the BH-MU **Z**zone:

- A. The developer shall prepare and submit a concept plan as described in section **16.24.030** of this code.
- B. The developer shall prepare and submit a design book with the concept plan containing typical renderings of cross sections and plan views of the following:
 1. Existing and proposed public street curb, gutter, sidewalk, park strip, landscaping, streetlights and pavement.
 2. Yard areas between buildings and public streets, including trees, grass, shrubs, ground cover, signs and screen walls.

3. Parking areas, walkways, driveways, landscaped areas and storm detention/retention areas.

4. Architectural features, including materials and colors, of buildings, freestanding and wall mounted signs and light fixtures, trash enclosures, utility and loading area screen walls, pedestrian furniture and artwork.

5. Other improvements as required by city staff.

- C. The city staff shall review the concept plan and design book and provide comments to the developer who will make needed revisions to the documents. Upon final review and approval of city staff, the concept plan and design book for the development will be scheduled on the Planning Commission agenda for a public hearing. **Amendments or changes to the approved design book may be approved by the Planning Commission subsequent to their review and a public hearing to hear comments regarding the proposed amendments or changes.**
- D. Upon approval of the concept plan and design book by the Planning Commission, site plans for all or portions of the BH-MU Zone may be prepared according to section 16.24.040 of this code and submitted to city staff for review. City staff may approve, approve with conditions, or deny the site plans for the proposed development.
- E. A decision of the city staff regarding site plans in the BH-MU Zone may be appealed according to procedures set forth in section 16.04.370 of this code. (Ord. 2007-02, 1-16-2007)

17.70.070: LOT WIDTH AND FRONTAGE:

No minimum lot width is required in the BH-MU Zone except as established with development approval. Each lot or parcel in BH-MU Zones must front on or have legal access to a public street. (Ord. 2007-02, 1-16-2007)

17.70.080: AREA REQUIREMENTS:

The following area requirements shall apply in the BH-MU zone:

- A. Minimum Zone Area: The minimum area of a BH-MU Zone shall be one hundred (100) acres.
- B. Minimum Project Area: "Project" shall be defined as any development in BH-MU Zones for which preliminary plat or site plan approval has been proposed or granted. The minimum area of any project in BH-MU Zones shall be one **quarter** acre.
- C. Minimum Lot Area: There shall be no minimum lot area in BH-MU Zones, except as established with development approval.

~~D. Maximum Residential Area: Maximum residential use area in BH-MU zones is twenty percent (20%) of the gross land area in the zone. (Ord. 2007-02, 1-16-2007)~~

17.70.090: PRIOR CREATED LOTS:

Nonconforming lots or parcels of land which legally existed or were created by a preliminary or final plat approval prior to the establishment of a BH-MU **Z**zone shall be brought into conformance with the requirements of this chapter prior to **new** development. (Ord. 2007-02, 1-16-2007)

17.70.100: YARD REQUIREMENTS:

Yard requirements in the BH-MU **Z**zone shall be determined with site plan, subdivision and/or condominium review by the **P**lanning **C**ommission. Non-single-family residential buildings shall be separated from single-family residential lot lines by a minimum distance of thirty feet (30'), of which ten feet (10') adjacent to the property line shall be landscaped, ~~unless said uses are contained in the same building.~~ (Ord. 2007-02, 1-16-2007)

17.70.110: PROJECTIONS INTO YARDS:

The following may be erected on or projected into any required yard space in BH-MU zones:

- A. Fences and walls in conformance with city codes and ordinances.
- B. Landscape elements, including trees, shrubs and other plants.
- C. Utility or irrigation equipment or facilities.
- D. **Single family detached residential** ~~D~~decks not more than two feet (2') in height.
- E. **Single family detached residential** ~~C~~cornices, eaves, sills, planter boxes, stairways, landings, porches, decks or similar architectural features attached to the building extending not more than two feet (2') into a side yard or four feet (4') into a front or rear yard.
- F. **Single family detached residential** ~~C~~chimneys, fireplace keys, box or bay windows or cantilevered walls attached to the building not exceeding eight feet (8') wide and extending not more than two feet (2') into a side yard or four feet (4') into a front or rear yard. (Ord. 2007-02, 1-16-2007)

17.70.120: PARKING AND ACCESS:

Parking areas and access in BH-MU **Z**zones shall meet requirements of **chapter 16.26** of this code. **In order to enhance pedestrian access and walkability, site**

design should focus on orienting buildings to streets and driveways with parking placed to the rear or side of structures.

A reduction in required parking may be granted by the Planning Commission upon recommendation by the Community Development Director and City Engineer, when justification for such can be made. Shared parking and mixed use site plan design shall be considered in determining parking reduction. Strategies for walkable commercial development as suggested by "Envision Utah's Urban Planning For Quality Growth" shall be implemented where appropriate. (Ord. 2007-02, 1-16-2007)

17.70.130: FENCING, SCREENING AND CLEAR VISION:

The following fencing, screening and clear vision requirements shall apply in BH-MU zones:

- A. All mechanical equipment, antennas (where possible), loading and utility areas and trash receptacles shall be screened from view **from a public street** with architectural features or walls consistent with materials used in the associated buildings.
- B. The boundary of a BH-MU **Z**zone which is not in or adjacent to a street and which is adjacent to a single-family residential or agricultural zone shall be fenced with a six foot (6'), decorative precast concrete panel or masonry fence as determined with development approval. Six foot (6') solid vinyl boundary fencing may be allowed in unusual circumstances such as adjacent to property which is master planned for nonresidential uses. A higher fence may be required or allowed by the city in unusual circumstances. A building permit is required for fences and walls over six feet (6') high. Other fencing or landscaping techniques may be used to buffer waterways, trails, parks, open spaces or other uses as determined with development approval.
- C. No wall, fence or screening material shall be erected between a street and a front or street side building line in BH-MU **Z**zones, except for **single family residential developments, and** as required in subsection A of this section.
- D. Landscape materials, except for mature trees which are pruned at least seven feet (7') above the ground, and fences shall not exceed two feet (2') in height within a ten foot (10') triangular area formed by the edge of a driveway and a street right of way line or within a thirty foot (30') triangular area formed by the right of way lines of intersecting streets. (Ord. 2007-02, 1-16-2007)

17.70.140: ARCHITECTURAL STANDARDS:

The following architectural standards are required in BH-MU **Z**zones:

- A. Architectural drawings and elevations, exterior materials and colors of all buildings shall be submitted in conjunction with development review. An architectural theme governing the project shall be submitted for review.
- B. All building materials shall be high quality, durable and low maintenance.
- C. **Building materials for structures**, Single family residential and townhome dwellings, **including garages**, shall ~~use be constructed with~~ brick, or stone, or cement fiber products (i.e. Hardie Board) in combinations that create aesthetically pleasing architecture. Stucco products, if used, shall clearly be used in minimal amounts and as a contrast or accent to other building materials, i.e. gables. Both vertical and horizontal elements should be used, as appropriate, to enrich and give a variety to the architectural theme. Individual buildings shall have enough architectural variation to be recognizable as separately recognizable structures. ~~in the minimum amount of three feet (3') times (x) the perimeter of the foundation (including garage);~~
- D. **Except for flat or shed-style roofed structures approved by the Planning Commission through design book review**, a minimum ~~six~~ eight to twelve (68:12) roof pitch **shall be required** and a minimum two (2) car garage (minimum 202 feet by 202 feet, or the square footage ~~approximate approved~~ equivalent **for tandem parking approved by the Planning Commission in conjunction with a site plan, subdivision plat or condominium map for the development.**
- ED. Exterior walls of buildings, in excess of sixty feet (60') in length, shall have relief features at least four inches (4") deep at planned intervals. All sides of buildings shall receive design consideration.
- FE. Signs shall meet requirements of **chapter 16.36** of this code and shall be constructed of materials which complement the buildings which they identify.
- GF. Maximum building height in BH-MU zones shall be four (4) stories, **unless otherwise approved by the City Council**, except that the maximum height shall be two (2) stories within four hundred feet (400') of any single-family residential zone.
- HG. The exteriors of buildings in the BH-MU Zzone shall be properly maintained by the owners. (Ord. 2007-02, 1-16-2007)
- I. **Architectural design and site layout shall be compliant with the basic principles of C.P.T.E.D. (Crime Prevention Through Environmental Design), i.e. natural surveillance, natural access control, territoriality, and maintenance.**

17.70.150: LANDSCAPING:

The following landscaping requirements and standards shall apply in the BH-MU Zzone:

- A. The front, side and rear yards of lots in BH-MU Zzones shall be landscaped and properly maintained with grass, trees and other plant **and/or permeable landscape** material.
- B. All areas of lots in BH-MU Zzones not approved for parking, buildings or other hard surfacing shall be landscaped and properly maintained with **ground covers that may include turfgrass**, deciduous and evergreen trees and other plant **and/or permeable landscape** material (**including properly designed xeriscape**), approved in conjunction with a site plan, plat or record of survey map for the development. **Drought resistant plant materials are encouraged.**
- C. A minimum of one tree per five hundred (500) square feet, or part thereof, of required landscaped yard areas is required in BH-MU Zzones in addition to other trees required in this section. A minimum of thirty percent (30%) of required yard area trees shall be minimum seven foot (7') evergreens. Deciduous trees shall be minimum two inch (2") caliper. Deciduous and evergreen trees required in this section shall be dispersed throughout the required yard areas on the site.
- D. ~~All collector street and other public and private P~~park strips (**planting area between streets/driveways and sidewalks**) **are required** in BH-MU Zzones **and** shall be improved **with street trees with appropriate ground covers** and maintained by the adjoining owners according to specifications adopted by the city unless otherwise allowed with development approval. **Park strips shall be of sufficient width to accommodate the root zone of the approved street tree species, i.e. at least five feet (5') for ornamental trees.**
- E. Trees may not be topped nor may any landscape material be removed in BH-MU Zzones without city approval. Any dead plant material shall be replaced in accordance with the requirements of this chapter and the conditions of site plan, plat or map approval.
- F. The following landscaping requirements shall apply in parking areas in BH-MU Zzones:
 - 1. Curbed planters with two inch (2") or larger caliper shade trees and grass, shrubs or ground cover shall be installed at the ends of parking rows. Planters shall be at least five feet (5') wide.
 - 2. Shade trees shall be planted between double parking rows at minimum intervals of six (6) stalls and along single parking rows at minimum intervals of three (3) stalls and no farther than six feet (6') from the parking area. Shade trees are not required in parking rows which are adjacent to buildings **only if parking is adjacent to a covered sidewalk.**

3. All landscaped areas adjacent to parking areas shall be curbed.

G. A minimum twenty foot (20') wide landscaped **planting area planter** shall be required along the Bangerter Highway right of way on lots and parcels in the BH-MU zone which adjoin the highway right of way. This area may be counted toward any minimum yard area that would otherwise be required adjacent to the highway right of way. These areas shall be planted with trees and other plant/**landscape** materials approved with the development.

H. Developments which are contiguous to canals, streams or drainage areas shall make reasonable efforts to include banks and rights of way in the landscaping of the project and the urban trails system. Any areas so included and perpetually preserved may be counted toward required yard space for the development. If approved by the city engineer, waterways which traverse developments may be left open if properly landscaped and maintained by the adjacent owners. Waterways may not be altered without written approval of any entity or agency having jurisdiction over said waterways.

I. All required landscaping in BH-MU **Z**zones, shall be installed (or escrowed due to season) prior to occupancy.

J. All landscaped areas, including adjoining public right of way areas, shall be properly irrigated and maintained by the owners. (Ord. 2007-02, 1-16-2007)

17.70.160: LIGHTING:

The following lighting requirements shall apply in BH-MU **Z**zones:

A. A lighting plan shall be submitted with all new developments in BH-MU **Z**zones. Site lighting shall not exceed forty feet (40') in height. Site and street lighting shall not exceed twenty feet (20') in height within three hundred feet (300') of any single-family residential zone or in public park strips.

B. Lighting for commercial uses which is within three hundred feet (300') of residential lots shall be shielded to prevent glare on said residential lots.

C. All lighting fixtures shall **evoke a 'village' feel to the development and** be architectural grade consistent with the architectural theme of the **project development**. Lighting fixture detail will be submitted for approval with the development. (Ord. 2007-02, 1-16-2007)

17.70.170: OTHER REQUIREMENTS:

The following provisions shall apply in BH-MU **Z**zones:

A. Private Covenants: The developer of a condominium project or PUD in a BH-MU **Z**zone shall submit a proposed declaration of covenants to the city attorney for

review, including an opinion of legal counsel licensed to practice law in the state that the condominium meets requirements of state law, and record the covenants with the condominium map or subdivision plat for the project.

- B. Grading and Drainage: All developments in BH-MU Zones shall be graded according to the city engineering and building requirements to provide adequate drainage on and off the property. Buildings shall be equipped with facilities for the discharge of all roof drainage onto the subject lot or parcel.
- C. Easements: Buildings may not be located within public easements without written approval from the affected parties.
- D. Maintenance: All developments shall be properly maintained by the owners.
- E. Phasing Plan: A project phasing plan shall be submitted for review at the time of preliminary plat or site plan approval. Development shall be in accordance with the phasing plan unless a revised phasing plan is approved by the city. (Ord. 2007-02, 1-16-2007)

Section 2. Amendment. The development plan included as Exhibit A to this Ordinance is hereby adopted as the amended and revised Master Development Plan("MDP") for the BH-MU Zone.

Section 3. Severability. If any section, part, or provision of this Ordinance is held invalid or unenforceable by a court of competent jurisdiction, such unenforceability shall not affect any other portion of this Ordinance, and all sections, parts and provisions of this Ordinance shall be severable.

Section 4. Effective Date. This Ordinance shall become effective immediately upon publication or posting as required by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH JORDAN CITY, STATE OF UTAH, ON THIS 18th DAY OF May, 2010 BY THE FOLLOWING VOTE.

	YES	NO	ABSTAIN	ABSENT
Brian Butters	<u>X</u>	___	___	___
Kathie L. Johnson	<u>X</u>	___	___	___
Larry Short	<u>X</u>	___	___	___
Aleta A. Taylor	<u>X</u>	___	___	___
Leona Winger	<u>X</u>	___	___	___

ATTEST:  Anna M. West, City Recorder  L. Kent Money Mayor

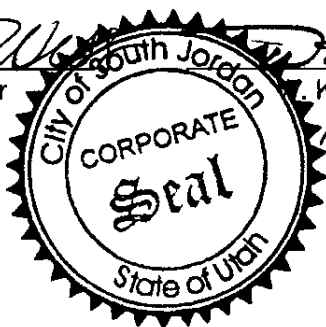


Exhibit A

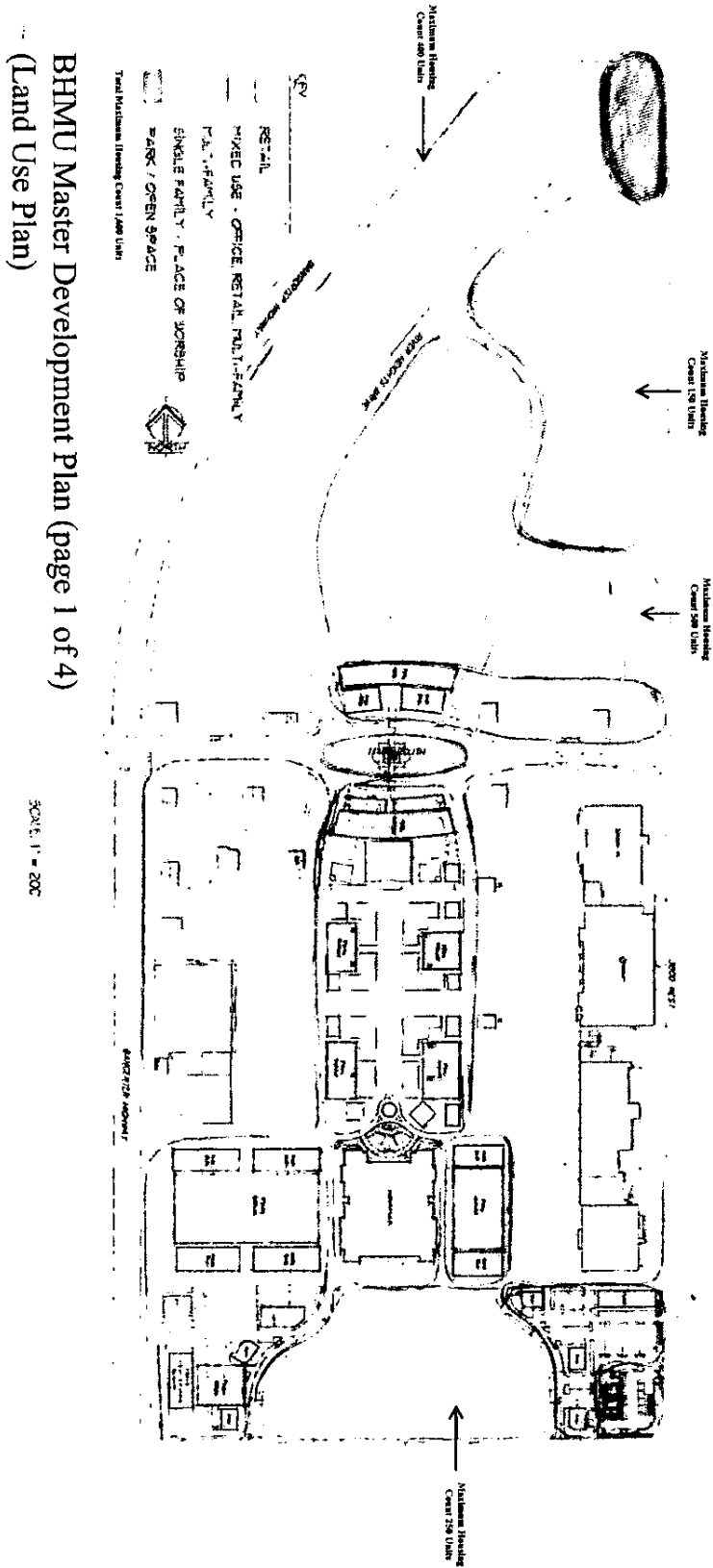
[to Ordinance 2010.04 AN ORDINANCE AMENDING SECTION 17.70 OF TITLE 17 OF THE SOUTH JORDAN MUNICIPAL CODE PERTAINING TO THE BANGERTE HIGHWAY MIXED USE ZONE (BHMU) passed and adopted by the South Jordan City Council, May 18, 2010]

BH-MU Master Development Plan (4 Pages)

EXHIBIT A

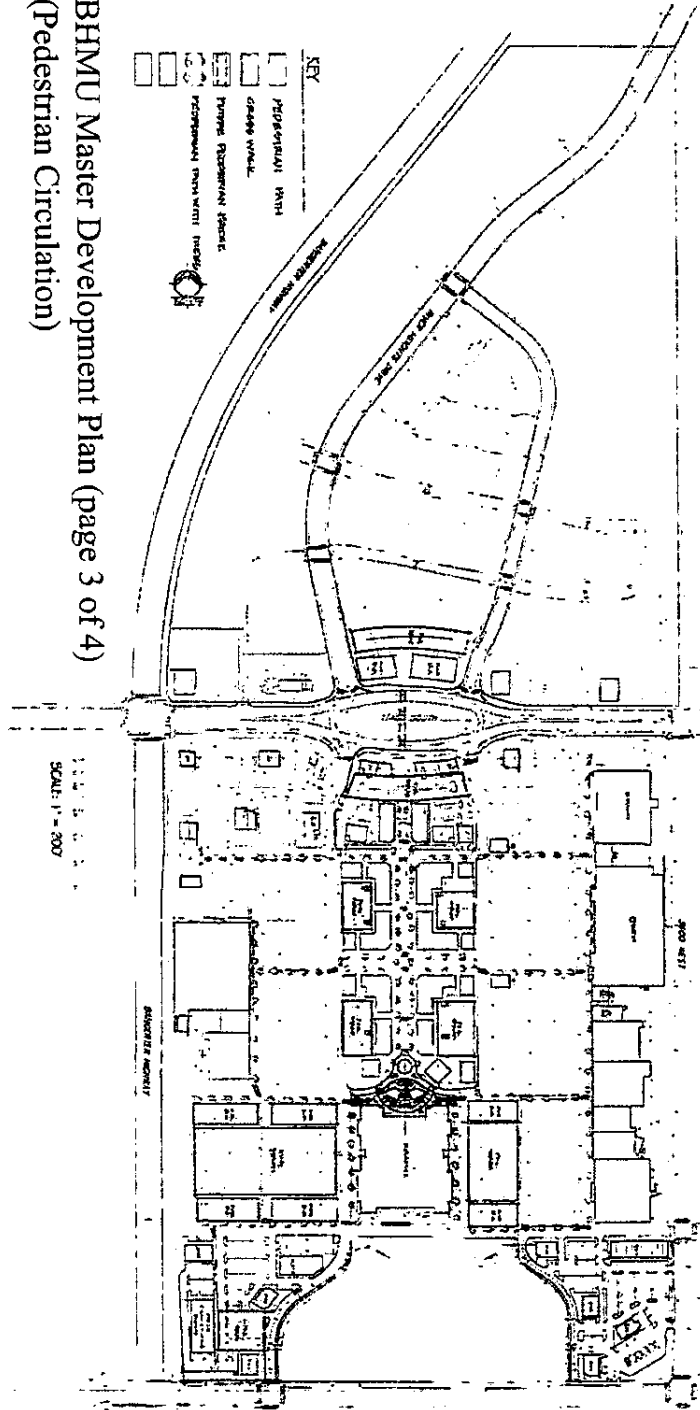
BH-MU Zone Master Development Plan (4 Pages)

Adopted 18 May 2010



BHMU Master Development Plan (page 1 of 4)
(Land Use Plan)

BHMU Master Development Plan (page 3 of 4)
(Pedestrian Circulation)



BHJU Master Development Plan (page 4 of 4)
(Maximum Build Out Plan)

